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NATIONAL INTEGRITY FRAMEWORK

Complaints, Disputes and Discipline Policy

Commencement date: 15 June 2022

TABLE OF CONTENTS

1.	Introduction	1
2.	Definitions	1
3.	Preliminary Matters	3
3.1	What is a Complaint?	3
3.2	What is an Alleged Breach?	3
3.3	What is not an Alleged Breach?	3
3.4	Who can be a Complainant?	3
3.5	Who can be a Respondent?	3
3.6	Standard of Proof	3
3.7	Confidentiality	4
3.8	Public disclosure of Sanctions	5
3.9	Failure to cooperate	5
3.10	Vulnerable Persons	5
3.11	Appointment of Swimming Australia Complaint Manager	6
3.12	Time limits	6
3.13	Management of Complaints	6
4.	How to Make a Complaint	6
4.1	Submitting a Complaint	6
4.2	Withdrawing a Complaint	6
5.	Complaint Assessment	6
5.1	Initial Threshold Questions/ Determining whether the Complaint is in-scope	6
5.2	Notification to Parties	7
5.3	Assessment	8
5.4	External Referral	8
5.5	Referral to Alternative Dispute Resolution	8
5.6	Provisional Action	9
5.7	Unreasonable demands/behaviours	10
6.	Assessment Findings and Determination	10
6.1	Findings and Determination of Sport Integrity Australia	10
6.2	Swimming Australia to manage Resolution Process	10
7.	Resolution Process	11
7.1	No Further Action	11
7.2	Breach Notice	11
7.3	Resolution without a hearing	12
7.4	Referral to a hearing	12
7.5	Sanctions	12

8.	Hearing Tribunals	13
8.1	Arbitration in the NST	13
8.2	Internal Hearing Tribunal	13
8.3	Parties and right to attend hearings	13
8.4	Notification of Hearing Tribunal decision	14
9.	Appeals	14
9.1	Decisions subject to appeal	14
9.2	Persons entitled to appeal	14
9.3	Grounds of appeal	14
9.4	Notice of appeal	14
9.5	Appeals in the NST Appeals Division	15
9.6	Internal Appeals Tribunal	15
9.7	Determination for Appeal Tribunal	15
9.8	Notification of Appeal Tribunal decision	15
10.	Finalising Complaints	16
10.1	Finalisation of Resolution Process	16
10.2	Notification of outcome and implementation of Sanction	16
10.3	Recording Decisions and Outcomes	16
11.	Interpretation & Other Information	16
11.1	Commencement	16
11.2	Prior complaints	16
11.3	Requirements for Swimming Organisations	17
11.4	Interpretation	17
11.5	Amendment	17
SCHEDULE 1 - Internal Hearing Tribunal Procedure		18
SCHEDULE 2 - Internal Appeals Tribunal Procedure		22

1. Introduction

The Complaints, Disputes and Discipline Policy:

- is a collaboration between Swimming Australia, Sport Integrity Australia and the National Sports Tribunal that will provide an independent, transparent, and fair complaint management system for all involved in Swimming.
- sets out the process for resolving complaints and disciplinary action arising from an individual or organisation engaging in prohibited conduct under the National Integrity Framework and associated integrity policies including child safeguarding, member protection, competition manipulation, sports wagering and misuse of drugs and medicine.
- only manages complaints in relation to the National Integrity Framework and does not manage complaints in relation to eligibility and selection, competition-related rules, personal grievances, code of conduct or governance matters.

The Complaints, Disputes and Discipline Policy has been designed to ensure sport integrity related complaints are dealt with efficiently and effectively and that all involved in Swimming have confidence that prohibited conduct will be managed via the most appropriate resolution and discipline mechanism.

2. Definitions

Alleged Breach has the meaning given in clause 3.1.

Alternative Dispute Resolution is a collective term for processes, such as mediation, to resolve disputes without the need for litigation that will be applied to resolve the alleged breach in accordance with clause 5.4.

Appeals Tribunal means the appeals tribunal established under clause 9, being either the NST Appeals Division or an Internal Tribunal as provided in this Policy.

Arbitration means the hearing and binding determination of a dispute conducted by a Hearings Tribunal or Appeals Tribunal.

Complaint means a formal notification of a complaint relating to Prohibited Conduct by a Respondent of an Eligible Policy.

Complaints Process means the process of handling and resolving a Complaint under this Policy from the point where the Complaint is received to the finalisation of the Resolution Process.

Complainant means a person who or an organisation which makes a Complaint about an Alleged Breach by a Respondent in accordance with this Policy.

Disciplinary Action means disciplinary action as set out in the Resolution Process.

Eligible Policies means the following Swimming Australia sports integrity-related policies adopted under the National Integrity Framework:

- Child Safeguarding Policy;
- Competition Manipulation and Sport Wagering Policy;
- Improper Use of Drugs and Medicine Policy;
- Member Protection Policy; and
- National Integrity Framework.

Employment Matter means a Complaint directly relating to allegations concerning an Employee acting in the course of their employment duties.

Hearings Tribunal means the first instance tribunal established under clause 8.0, being either the NST General Division or an Internal Tribunal as provided in this Policy.

Legal Practitioner is a person holding a current practising certificate as a lawyer or barrister in any Australian jurisdiction.

NST means the National Sports Tribunal.

NST Eligible Matter means an Alleged Breach that is a kind of dispute¹ that falls within the jurisdiction of the NST.

NST Excluded Matter means an Alleged Breach that is a kind of dispute that is expressly excluded from the NST's jurisdiction.

NST Legislation means the *National Sports Tribunal Act 2019* (Cth) (**NST Act**) and all legislative and notifiable instruments adopted under the NST Act².

Personal Grievance means any form of grievance between two or more people (including individuals and bodies corporate) that does not concern or allege a breach of an Eligible Policy.

Policy means this Complaints, Disputes and Discipline Policy, including any schedules and annexures.

Prohibited Conduct means conduct described as such in an Eligible Policy.

Provisional Action has the meaning given in clause 5.5.

Protected Disclosure means, where a Sport Organisation is a "regulated entity"³ under the whistleblower laws⁴ in the *Corporations Act 2001* (Cth), a disclosure of information to the Sport Organisation that qualifies for protection under those laws⁵.

Relevant Organisation has the meaning given in the National Integrity Framework.

Relevant Person has the meaning given in the National Integrity Framework.

Resolution Process means the chosen process for resolving an Alleged Breach under this Policy, including a Breach Offer.

Respondent means the person/s or organisation/s against whom a Complaint has been made.

Sanction means a sanction imposed on a Respondent for breaching an Eligible Policy in accordance with clause 7.4.

Sport Integrity Australia means the non-corporate Commonwealth entity of that name established by the *Sport Integrity Australia Act 2020* (Cth).

Swimming means the sport of swimming, as governed by Swimming Australia and/or Fédération Internationale de Natation from time to time.

Swimming Australia Complaint Manager means the person appointed by Swimming Australia under clause 3.10 to manage Complaints under this Policy.

Swimming Organisation has the meaning given in the National Integrity Framework.

Vulnerable Person means a person who is (a) under the age of 18; or (b) aged 18 or over, but is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation, by reason of age, illness, trauma or disability, or any other reason.

¹ See NST Legislation for more information.

² Such as the *National Sports Tribunal Rule 2020* (Cth), *National Sports Tribunal (Practice and Procedure) Determination 2020* (Cth), *National Sports Tribunal Act 2019 - Principles for Allocating a Member to a Dispute 2020* (Cth), or such other legislative instruments issued under the NST Act from time to time.

³ Refer to section 1317AAB of the [Corporations Act 2001](#) (Cth).

⁴ As above, Part 9.4AAA.

⁵ As above, s 1317AA.

Whistleblower Policy means a policy which is compliant with the requirements of section 1317AI (1) of the *Corporations Act 2001* (Cth).

3. Preliminary Matters

3.0 What is a Complaint?

A Complaint means a complaint lodged with Sport Integrity Australia in accordance with clause 4.0 of this Policy.

3.1 What is an Alleged Breach?

An Alleged Breach is an allegation or information that a Relevant Person or Relevant Organisation (including Swimming Australia or Swimming Organisations where appropriate) has engaged in Prohibited Conduct under an Eligible Policy but does not include a Complaint that falls under clause 3.2(a).

3.2 What is not an Alleged Breach?

- (a) An Alleged Breach does not include an allegation or information:
 - (i) that does not relate to Prohibited Conduct under an Eligible Policy;
 - (ii) that constitutes a Protected Disclosure;
 - (iii) that is solely a Personal Grievance;
 - (iv) that is mischievous, vexatious, or knowingly untrue;
 - (v) that has been the subject of a previous complaint; or
 - (vi) where the Respondent is excluded by clause 3.4.
- (b) A Complaint is not excluded from being an Alleged Breach by clause 3.2(a)(v) if the Complaint contains additional information and evidence that was not known at the time of the original Complaint.

3.3 Who can be a Complainant?

A Complainant can be any person or organisation, including Swimming Australia or a Swimming Organisation, who has information that an Alleged Breach of an Eligible Policy has occurred.

3.4 Who can be a Respondent?

- (a) A Respondent must be a Relevant Person or a Relevant Organisation who is bound by the Eligible Policy they are alleged to have breached.
- (b) In accordance with clause 2.1(e) of the National Integrity Framework, a person or organisation who was bound by the Eligible Policy that they are alleged to have breached at the time they allegedly committed the breach who would otherwise cease to have been bound by that Eligible Policy may still be a Respondent if they were bound by the Framework at the time when they became aware that a complaint may be made against them.
- (c) Once a Complaint has been made under this Policy, the Respondent will continue to be bound by this Policy and the relevant Eligible Policy/ies in respect of that Complaint and any related complaint until the Complaints Process has been finalised.
- (d) A Respondent cannot be a person or organisation that Swimming Australia or a Swimming Organisation has no jurisdiction over.

3.5 Standard of Proof

- () Unless otherwise specified, the standard of proof that applies to all decisions made under this Policy (including by a Hearings Tribunal) is "balance of probabilities".
- (a) Where a Respondent has been convicted or found guilty in a criminal, disciplinary or professional proceeding of engaging in conduct which would be a breach of an Eligible Policy, the Respondent is deemed under this Policy to have committed Prohibited Conduct without requiring further investigation.

3.6 Confidentiality

- () All Complaints (and all information disclosed in relation to them), including the outcomes of any Resolution Process, will be kept confidential by Sport Integrity Australia, Swimming Australia and Swimming Organisations, and will not be disclosed to any third parties, except as provided in this clause.
- (a) Sport Integrity Australia may make the following disclosures:
 - (i) to Swimming Australia and Swimming Organisations in accordance with this Policy;
 - (ii) to the parties to a Complaint (Respondent and the Complainant) to ensure a fair process;
 - (iii) to any person to facilitate the proper handling of the Complaint under this Policy;
 - (iv) in accordance with clause 5.0, where a Complaint is determined to not be an Alleged Breach under this Policy;
 - (v) to the employer of a Respondent, where Sport Integrity Australia considers it reasonably necessary to allow the employer to take action under and in accordance with the Respondent's employment relationship with the employer;
 - (vi) to external agencies so they can deal with the alleged conduct (e.g., law enforcement agencies, government or regulatory authorities, a child protection agency);
 - (vii) to:
 - (A) Relevant Organisations; or
 - (B) Relevant Persons,
 to inform them of relevant Sanctions or Provisional Actions imposed;
 - (viii) in accordance with clause 3.7, where a Sanction is to be publicly disclosed;
 - (ix) to any third party, including foreign sporting bodies, law enforcement agencies and government or regulatory authorities, for the primary purpose of:
 - (A) preventing or lessening a risk to the safety, health, or wellbeing of a person; or
 - (B) protecting children participating in a sport; or
 - (C) protecting the safety of participants in a sport;
 - (x) in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia; and
 - (xi) as required by law, any court or the NST.
- (c) Swimming Australia and Swimming Organisations can make the following disclosures:
 - () to the parties to an Alleged Breach (Respondent and the Complainant) in relation to the Resolution Process;
 - (i) to the employer of a Respondent, in accordance with clause 5.6(e) or as otherwise necessary to allow the employer to take action under and in accordance with the Respondent's employment relationship with the employer where:
 - (A) one or more other employees of the Respondent's employer may be at risk of suffering harm; or
 - (B) the employer may be in breach of an applicable law by failing to take action in relation to the Respondent;
 - (ii) to any person to facilitate the proper handling of the Alleged Breach, including any Provisional Action under this Policy;
 - (iii) to external agencies so they can deal with the alleged conduct (e.g., law enforcement agencies, government or regulatory authorities, a child protection agency);
 - (iv) to:
 - (A) Relevant Persons; or
 - (B) other Relevant Organisations,
 to inform them of relevant Sanctions or Provisional Actions imposed;
 - (v) in accordance with clause 3.7, where a Sanction is to be publicly disclosed;
 - (vi) to any third party for the primary purpose of:
 - (A) preventing or lessening a risk to the safety, health, or wellbeing of a person; or

- (B) protecting children participating in a sport; or
- (C) protecting the safety of participants in a sport; and
- (vii) as required by law, any court or the NST.

3.7 Public disclosure of Sanctions

- (a) Where an Alleged Breach is found to have been substantiated and Sanctions are imposed, Sport Integrity Australia may give a direction to Swimming Australia that the Sanctions imposed are to be publicly disclosed where Sport Integrity Australia reasonably considers that this is necessary to give full effect to the Sanctions. The direction will include the period for which the Sanction is to remain on the public register. Where the Sanctions are imposed by the NST the public disclosure of the Sanctions will be in accordance with the NST Legislation.
- (b) Sanctions that may be subject to a direction of public disclosure include, but are not limited to:
 - () Suspension of membership or from certain activities;
 - (i) Removal of accreditation; and
 - (ii) Expulsion.
- (c) Swimming Australia will maintain a register of persons subject to publicly disclosable Sanctions on its website. The public register will include the name of the individual or organisation being sanctioned, the Sanction imposed, and the period of the Sanction. Swimming Australia will remove Sanctions from the public register when the period of disclosure directed by Sport Integrity Australia in accordance with clause 3.7(a) has expired.
- (d) Details of Breaches will not be published on Swimming Australia's website, but where appropriate, may be disclosed to third parties (such as to the National Sport Organisation for another sport that the individual who committed the Breach is a member of) in accordance with clauses 3.6(c)(v) and 3.6(c)(vi) (as applicable).
- (e) Sanctions will not be publicly disclosed until the Complaint has been finalised in accordance with clause 10.

3.8 Failure to cooperate

- (a) Subject to clause 3.8(c), persons bound by this Policy must cooperate fully with a Complaints Process they are involved in, including any Resolution Process chosen to resolve an Alleged Breach.
- (b) Subject to clause 3.8(c), Sport Integrity Australia, a Hearings Tribunal or an Appeals Tribunal may draw an inference adverse to the Respondent based on a Respondent's failure or refusal, after a request has been made in a reasonable time in advance, to answer any relevant question, provide relevant documentation, and/or participate in the Complaints Process. The Respondent must be made aware of such an inference being drawn in relation to any particular allegation forming part of an Alleged Breach.
- (c) No individual or organisation bound by this Policy is required to answer a question or provide information where to do so would be a breach of any applicable law, and no adverse inference (such as those in clause 3.8(b)) may be drawn where that individual or organisation discloses the relevant law.

3.9 Vulnerable Persons

- (a) Where a Complainant or Respondent is a Vulnerable Person, the parent or guardian of the Vulnerable Person may act on behalf of the Vulnerable Person and accompany them throughout the Complaints Process, including at any interview, Alternative Dispute Resolution process, or Hearings Tribunal or Appeals Tribunal.
- (b) Sport Integrity Australia, Swimming Australia and Swimming Organisations will have regard to the guide entitled "Complaint Handling Guide: Upholding the rights of children and young people" issued by the National Office for Child Safety in managing Complaints made on behalf of or involving Vulnerable Persons, currently available at [Complaint Handling Guide: Upholding the rights of children and young people \(pmc.gov.au\)](http://Complaint Handling Guide: Upholding the rights of children and young people (pmc.gov.au)), or such other guide that may replace it.
- (c) This clause is at all times subject to clauses 8.0(b) and 8.1(b) of this Policy and clause 15 of SCHEDULE 1.

3.10 Appointment of Swimming Australia Complaint Manager

- (a) Swimming Australia will appoint a person to be the Swimming Australia Complaint Manager, who will be the person within Swimming Australia with primary responsibility for managing Swimming Australia's obligations under this Policy.
- (b) The Swimming Australia Complaint Manager will be responsible for:
 - (i) being the point of contact between Swimming Australia and Sport Integrity Australia in relation to the functions of this Policy;
 - (ii) providing information to Sport Integrity Australia as required to enable Sport Integrity Australia to assess Complaints against the initial threshold questions, including membership details of the Complainant and/or Respondent and records of disciplinary history of the Respondent and any other relevant information; and
 - (iii) managing the Resolution Process as determined by Sport Integrity Australia.

3.11 Time limits

Where there is a time limit imposed by this Policy (other than a time limit relating to a Hearing Tribunal or Appeals Tribunal before the NST) and a person requests an extension to that time limit, Sport Integrity Australia or Swimming Australia (as applicable) may at its discretion grant the extension, having regard to any relevant circumstances.

3.12 Management of Complaints

- (a) Sport Integrity Australia may, in managing any part of the Complaints Process, seek any assistance from the Swimming Australia Complaint Manager and/or otherwise from Swimming Australia or a relevant Swimming Organisation it deems appropriate. Such assistance may include undertaking aspects of the Complaints Process on Sport Integrity Australia's behalf.
- (b) Sport Integrity Australia will maintain oversight over any actions taken on its behalf under this Policy and will retain responsibility for all decisions to be made in relation to the Initial Threshold Questions, Provisional Action, findings, and determinations under clause 6.0, Sanctions, and directions relating to public disclosure of Sanctions.

4. How to Make a Complaint

4.0 Submitting a Complaint

- (a) A person, organisation, Swimming Australia or a Swimming Organisation may submit a Complaint by completing the Complaint Form and submitting it to Sport Integrity Australia as soon as reasonably possible following the Alleged Breach.
- (b) A Complaint Form may only be submitted on behalf of Swimming Australia or a Swimming Organisation by the CEO or equivalent of the organisation.
- (c) A Complaint Form may be submitted by a parent or guardian on behalf of a Vulnerable Person.
- (d) A Complaint Form cannot be submitted anonymously.
- (e) Sport Integrity Australia will acknowledge receipt of the Complaint Form.

4.1 Withdrawing a Complaint

- () A Complainant may withdraw their Complaint at any time before Sport Integrity Australia makes a finding under clause 6.0.
- (a) Withdrawing a Complaint must be done by writing to Sport Integrity Australia from the same contact address used in the Complaints Form, or another contact address that has been previously notified to Sport Integrity Australia during the Complaints Process.

5. Complaint Assessment

5.0 Initial Threshold Questions/ Determining whether the Complaint is in-scope

- (a) Upon receipt of a Complaint Form, Sport Integrity Australia must initially determine whether:

- () (if Swimming Australia has a Whistleblower Policy) the Complaint is a Protected Disclosure, in which case it must be dealt with under the relevant Swimming Organisation Whistleblower Policy;
 - (i) the Complaint is solely a Personal Grievance;
 - (ii) the Complaint is not an Alleged Breach of an Eligible Policy;
 - (iii) the Complaint is mischievous, vexatious, or knowingly untrue;
 - (iv) the Respondent is not an eligible Respondent as outlined in clause 3.4;
 - (v) the Complaint is primarily an Employment Matter;
 - (vi) the Complaint relates to Prohibited Conduct under an Eligible Policy which also falls under another Swimming Australia policy; or
 - (vii) the Complaint requires mandatory reporting to occur under Australian Child Protection Legislation or other laws, in which case Sport Integrity Australia must do so in accordance with the Child Safeguarding Policy⁶.
- (b) Subject to clause 5.1(e), if the Complaint falls within any of the circumstances set out in clause 5.0(a)() to (iv), the process under this Policy is permanently discontinued.
- (c) If a Complaint falls within the circumstances set out in clause 5.0(a)(vii), it will be handled in accordance with clause 5.3.
- (d) Sport Integrity Australia may refer Complaints that fall under clauses 5.0(a)() to (iv) to Swimming Australia or a Swimming Organisation to be dealt with under the appropriate process.
- (e) In assessing a Complaint that falls under clauses 5.1(a)(vi) or (vii), Sport Integrity Australia will undertake a risk assessment which considers the following:
- (i) the overall risk to swimming; and
 - (ii) whether the Respondent is engaged or accredited by <NSO> or a Member Organisation in any capacity other than as an employee.
- (f) After undertaking the assessment in clause 5.1(e) and at Sport Integrity Australia's discretion, Complaints that fall under clause 5.0(a)(v) or (vi) may be referred to Swimming Australia or a Swimming Organisation to be dealt with under the appropriate process, which for Employment Matters includes the human resources policies of the Respondent's employer, in which case the process under this Policy is permanently discontinued, or they may be deemed to be Alleged Breaches within scope of this Policy and assessed in accordance with this Policy.
- (g) A determination by Sport Integrity Australia under clause 5.1(f) to deem an Employment Matter to be an Alleged Breach within scope of this Policy does not preclude the employer of the Respondent from taking its own separate action under and in accordance with the Respondent's employment relationship with the employer. Any such action may be taken in addition to any action taken by Sport Integrity Australia under this Policy.

5.1 Notification to Parties

- (a) Sport Integrity Australia will communicate with the Complainant and the Respondent at appropriate intervals throughout the Complaints Process to keep them informed about the process until a Resolution Process has been chosen or the Complaints Process is otherwise discontinued, including:
- (i) notifying the Complainant of whether the Complaint satisfies the Initial Threshold Questions, including whether it has been referred back to Swimming Australia or a Swimming Organisation or to an external referral organisation;
 - (ii) after a Complaint is determined to have satisfied the Initial Threshold Questions and when Sport Integrity Australia considers that it is appropriate to do so, notifying the Respondent that a Complaint has been made against them;
 - (iii) notifying the Respondent of any Provisional Actions to be put in place;
 - (iv) notifying both the Complainant and the Respondent if the Complaint is referred to Alternative Dispute Resolution under clause 5.4;
 - (v) notifying both the Complainant and the Respondent of the Resolution Process chosen; and
 - (vi) providing a Breach Notice to the Respondent.

⁶ Refer to the "Responding to Child Abuse Allegations" attachment to the Child Safeguarding Policy.

- (b) The Respondent will not be entitled to a copy of the Complaint Form as submitted by the Complainant but will be provided with a summary of the Alleged Breach(es) and sufficient details of the Complaint to allow them to respond. Both the Complainant and the Respondent will be informed of any relevant additional information that becomes known as part of the assessment process and provided with a reasonable opportunity to respond.
- (c) Swimming Australia will be responsible for communicating with the Respondent throughout the Resolution Process and will notify both the Complainant and the Respondent of the outcome of the Complaints Process when it has been finalised in accordance with clause 10.

5.2 Assessment

- (a) If a Complaint is found to have met the Initial Threshold Questions and is not permanently discontinued, Sport Integrity Australia will undertake an assessment and may collect further information to determine:
 - (i) if the Complaint is an Alleged Breach; and
 - (ii) if so, the most appropriate Resolution Process to deal with the Complaint.
- (b) Subject to 5.3(d), an assessment may be conducted in such manner as determined by Sport Integrity Australia in its absolute discretion. Sport Integrity Australia may, on the basis of the assessment, make findings as to whether the Standard of Proof has been met in respect of the Alleged Breach.
- (c) This assessment may or may not involve formal interviews and collection of additional evidence at Sport Integrity Australia's discretion.
- (d) In conducting assessments, Sport Integrity Australia will comply with the rules of procedural fairness and will provide both the Complainant and the Respondent a reasonable opportunity to be heard

5.3 External Referral

- () Sport Integrity Australia may, at any time before or while dealing with a Complaint under this Policy, refer the Complaint to a relevant external organisation (this may include a law enforcement agency, government or regulatory authority or child protection agency).
- (a) If an external referral is made, Sport Integrity Australia may suspend the Complaints Process pending external resolution. Sport Integrity Australia shall inform the Complainant of any such decision unless directed not to do so by the external referral organisation.
- (b) If the Resolution Process is suspended due to an external referral, Sport Integrity Australia must determine whether any Provisional Action should be taken against the Respondent under clause 5.5.
- (c) If the Complaint is not resolved by the external referral organisation and is referred back to Sport Integrity Australia, Sport Integrity Australia may resume the Complaints Process.

5.4 Referral to Alternative Dispute Resolution

- (a) At any time after determining that the Complaint satisfies the Initial Threshold Questions but before making a finding in accordance with clause 6.1, Sport Integrity Australia may, where it considers it appropriate to do so, refer the Complainant and the Respondent to Alternative Dispute Resolution and direct the Swimming Australia Complaint Manager to coordinate the process.
- (b) Swimming Australia, the Respondent or the Complainant may, at any time before a finding is made under clause 6.0, request that Sport Integrity Australia refer a matter to Alternative Dispute Resolution and Sport Integrity Australia may refer the matter under clause 5.4(a) if it considers it appropriate to do so.
- (c) An Alternative Dispute Resolution process may include:
 - (i) Mediation;
 - (ii) Conciliation; or
 - (iii) Case Appraisal (only at the NST).
- (d) In accordance with clause 5.4(e), the Alternative Dispute Resolution process will be facilitated by:
 - (i) The NST if the Alternative Dispute Resolution process can be facilitated by the NST;
 - (ii) Where the Alternative Dispute Resolution process cannot be facilitated by the NST, by:
 - (A) Swimming Australia;
 - (B) Swimming Organisation; or
 - (C) An independent third- party provider.

- (e) In order to implement the Alternative Dispute Resolution process, the Swimming Australia Complaint Manager will:
 - (i) if the matter is an NST Eligible Matter, make an application to the NST for mediation, conciliation, or case appraisal of the Alleged Breach;
 - (ii) if the matter is neither an NST Eligible or NST Excluded Matter, apply to the NST CEO for approval of the dispute to be referred to the NST for Alternative Dispute Resolution, failing which it will be dealt with under (iii); or
 - (iii) refer the Complaint to Alternative Dispute Resolution facilitated by Swimming Australia, a Swimming Organisation or a third-party provider.
- (f) The parties to an Alternative Dispute Resolution process will be the Complainant, the Respondent, and Swimming Australia or a Swimming Organisation (the Parties). Additional persons may participate in exceptional circumstances and only if the facilitator of the Alternative Dispute Resolution process deems it appropriate.
- (g) The Parties are required to participate in the Alternative Dispute Resolution process in good faith.
- (h) Where the Alternative Dispute Resolution process is facilitated by the NST:
 - (i) Swimming Australia is responsible for making the application and paying the application fee; and
 - (ii) The procedure will be in accordance with the NST Legislation.
- (i) Where the Alternative Dispute Resolution process is facilitated by Swimming Australia, a Swimming Organisation or a third-party provider:
 - (i) Swimming Australia is responsible for paying the appointed facilitator's fee, if any; and
 - (ii) The procedure will be in accordance with the rules prescribed by those bodies, as the case may be.
- (j) An Alleged Breach will be finalised through Alternative Dispute Resolution where Swimming Australia, the Complainant and the Respondent execute a written agreement as to an outcome.
- (k) If the Complaint of an Alleged Breach is resolved through Alternative Dispute Resolution, the Swimming Australia Complaint Manager must proceed to finalising the complaint in accordance with clause 10.
- (l) If:
 - (i) either the Complainant or the Respondent fails and/or refuses to participate in the Alternative Dispute Resolution Process; or
 - (ii) Alternative Dispute Resolution does not resolve the Complaint,
 the Swimming Australia Complaint Manager must refer the Alleged Breach back to Sport Integrity Australia, who will resume the Complaints Process.

5.5 Provisional Action

- (a) Where the Alleged Breach involves behaviour that:
 - (i) may be "Prohibited Conduct" under the Child Safeguarding Policy; and/or
 - (ii) has or may result in, serious criminal charges⁷ being laid against the Respondent; and/or
 - (iii) suggests there is a further or ongoing risk of harm being suffered by one or more persons involved in the Sport,
 Sport Integrity Australia, in its absolute discretion, will determine whether any Provisional Action(s) will be taken.
- (b) Provisional Action includes, but is not limited to, suspension, restriction of duties or temporary redeployment, suspension or restriction of rights, privileges and benefits, or any other action(s) at the discretion of Sport Integrity Australia, including seeking advice from Swimming Australia.

⁷ A "serious criminal charge" is a charge under any Commonwealth or State/Territory criminal law that is punishable by imprisonment for a maximum period of five years or more. Such offences include (but are not limited to) recklessly, negligently, or intentionally causing injury, indecent assault, theft, possession of child pornography, manslaughter, rape, sexual penetration of a child, sexual assault, drug trafficking,

- (c) Sport Integrity Australia will notify the Swimming Australia Complaint Manager of any Provisional Action to be imposed on a Respondent and the Swimming Australia Complaint Manager will ensure that Swimming Australia:
- (i) Implements; or
 - (ii) Where the Provisional Action is not under the direct control of Swimming Australia, facilitates the implementation of,
- the Provisional Action as soon as reasonably possible.
- (d) In the event that Provisional Action is imposed a Respondent may seek to have that decision reviewed only by an expedited hearing convened in accordance with clause 8. An expedited hearing convened under this clause shall only consider the decision to impose the Provisional Action and will not consider the merits of the Complaint.
- (e) Where Sport Integrity Australia determines that Provisional Action will be taken in relation to an Employment Matter deemed to be an Alleged Breach within scope of this Policy in accordance with clause 5.1(f) Sport Integrity Australia will provide the <NSO> Complaint Manager with all necessary information relating to that Employment Matter, which will be provided to the Respondent's employer within a timely manner, to allow that employer to:
- (i) implement the Provisional Action in accordance with its obligations to the Respondent;
 - (ii) determine whether separate action will be taken under the Respondent's employment with the employer; and
 - (iii) if deemed necessary by the employer, take all relevant action in relation to the Employment Matter under the Respondent's employment with the employer.

5.6 Unreasonable demands/behaviours

- (a) Where a Complainant makes unreasonable demands or exhibits unreasonable behaviour, such as:
- (i) raising the same issues, which have previously been reported, without presenting new evidence;
 - (ii) unreasonable persistence regarding outcomes;
 - (iii) unreasonable demands relating to timeframes for resolutions;
 - (iv) being rude, aggressive, or abusive towards Sport Integrity Australia or Swimming Australia staff,

Complaints may not be acknowledged and Swimming Australia or Sport Integrity Australia may exercise discretion to minimise or control its dealings with the Complainant. The Complainant will be given clear advice and reasons why.

6. Assessment Findings and Determination

6.0 Findings and Determination of Sport Integrity Australia

- (a) After conducting its Assessment of a Complaint under clause 5.2, Sport Integrity Australia will:
- (i) make findings as to whether, to the requisite Standard of Proof, the Alleged Breach is:
 - (A) substantiated;
 - (B) unsubstantiated; or
 - (C) unable to be substantiated.
 - (ii) make a determination as to the Resolution Process to be applied, which will be:
 - (A) No Further Action; or
 - (B) Breach Notice.
- (b) Sport Integrity Australia will notify the Complainant, the Swimming Australia Complaint Manager and the Respondent of its findings and determination under this clause.

6.1 Swimming Australia to manage Resolution Process

- (a) Swimming Australia must implement the Resolution Process as determined by Sport Integrity Australia.

- (b) Swimming Australia, at its discretion, may delegate the management of the Resolution Process to another Swimming Organisation. When determining if the Resolution Process should be delegated, Swimming Australia must consider:
 - (i) any conflict of interest that may arise if the Resolution Process were to be managed at the Swimming Organisation level;
 - (ii) the nature and seriousness of the Alleged Breach;
 - (iii) whether the matter would best be resolved through the NST, which would require Swimming Australia to remain a party to the proceedings; and
 - (iv) the capacity of the Swimming Organisation to manage the Resolution Process.
- (c) The Swimming Australia Complaint Manager is responsible for communicating with the Complainant, Respondent, Sport Integrity Australia and Swimming Australia and/or Swimming Organisations (where applicable) and for ensuring that the Resolution Process is implemented.

7. Resolution Process

7.0 No Further Action

- (a) Where Sport Integrity Australia has made a determination of No Further Action and has notified the parties of this determination under clause 6.0(a)(ii)(A), the Swimming Australia Complaint Manager:
 - (i) is not required to also notify the Parties of this outcome under clause 5.1; and
 - (ii) shall keep a record of the Complaint as per clause 10.2.

7.1 Breach Notice

- (a) Where Sport Integrity Australia has made a determination of Breach Notice and has notified the parties of this determination under clause 6.0(a)(ii)(B), Sport Integrity Australia will make a recommendation to Swimming Australia as to:
 - (i) the Alleged Breach;
 - (ii) whether or not a Sanction is to be imposed on the Respondent and if so, the Sanction;
 - (iii) whether or not a reduced Sanction should be offered to the Respondent, and if so, the reduced Sanction; and
 - (iv) whether or not the Sanction is to be publicly disclosed in accordance with clause 3.7.
- (b) Swimming Australia will adopt and implement Sport Integrity Australia's recommendation under clause 7.1(a).
- (c) Sport Integrity Australia will then issue the Respondent with a Breach Notice. The Breach Notice will:
 - (i) notify the Respondent of the Alleged Breach, including the alleged conduct and relevant section(s) of the Eligible Policy;
 - (ii) state the proposed Sanction for the Alleged Breach, and if applicable, any proposed discounted Sanction;
 - (iii) state that the Sanction is to be publicly disclosed (if applicable);
 - (iv) state that the Respondent has a right to a hearing in relation to the Alleged Breach and/or the proposed Sanction;
 - (v) state that the Respondent may admit the Alleged Breach, waive their right to a hearing and accept the proposed Sanction or the proposed discounted Sanction (if applicable);
 - (vi) state that if the Respondent does not respond within 14 days of receipt of the Breach Notice, they will be deemed to have admitted the Alleged Breach, waived their right to a hearing and accepted the proposed Sanction;
 - (vii) state that any response to the Breach Notice must be made to Swimming Australia, and provide the Respondent with the contact details of the Swimming Australia Complaint Manager; and
 - (viii) be provided to the Respondent, Swimming Australia, and (if applicable) Swimming Organisation (if applicable).
- (d) In response to a Breach Notice, a Respondent may:

- (i) admit the Alleged Breach, waive their right to a hearing and accept the proposed Sanction or proposed reduced Sanction (if applicable);
- (ii) dispute the Alleged Breach and/or the proposed Sanction, in which case the Alleged Breach will be referred to a Hearing Tribunal under this Policy; or
- (iii) not respond, in which case they will be deemed to have admitted the Alleged Breach, waived their right to a hearing and accepted the proposed Sanction.
- (iv) A Respondent has 14 days from receipt of the Breach Notice to notify the Swimming Australia Complaints Manager of their decision.

7.2 Resolution without a hearing

Where a Respondent admits the Alleged Breach (thereafter, a Breach), waives their right to a hearing and accepts the Sanction, or is deemed to have done so, the Swimming Australia Complaint Manager must take all necessary steps to impose and implement the Sanction (if applicable), and proceed to finalising the Complaint in accordance with clause 10.

7.3 Referral to a hearing

- (a) If the Respondent disputes the Alleged Breach and/or Sanction, the Swimming Australia Complaint Manager must:
 - (i) if an NST Eligible Matter, refer the Alleged Breach to the NST General Division for arbitration;
 - (ii) if neither an NST Eligible or NST Excluded Matter, apply to the NST CEO for approval for the matter to be arbitrated in the NST General Division, failing which it must be dealt with under (iii); or.
 - (iii) refer the Alleged Breach to an Internal Hearing Tribunal, either at the Swimming Australia level or Swimming Organisation level.
- (b) If a Swimming Organisation and/or Swimming Australia is a Respondent, the Swimming Australia Complaint Manager will in the first instance apply to the NST General Division for arbitration either under (i) or (ii), failing which an Internal Hearing Tribunal at the Swimming Australia level will be convened.
- (c) Where an application to the NST for arbitration is made, Swimming Australia is responsible for making the application and paying any application and service fees to the NST, even if the matter has been delegated under clause 6.1(b). The charges may be apportioned in accordance with the NST Legislation.
- (d) The Swimming Australia Complaint Manager must notify Sport Integrity Australia if the matter is referred to a hearing under this clause.

7.4 Sanctions

- (a) Where a Respondent is found to have committed a Breach of an Eligible Policy, Sport Integrity Australia, or a Hearing Tribunal (if applicable) may subject to clause 7.5(b), determine to impose a Sanction on that Respondent.
- (b) Sport Integrity Australia or a Hearing Tribunal (as applicable) is not permitted to issue a Sanction in relation to the Respondent's employment that may only lawfully be imposed by the Respondent's employer (including, but not limited to, termination or suspension of the Respondent's employment with their employer, demotion of the Respondent and a verbal or written warning regarding the Respondent's breach of their employment agreement).
- (c) Subject to clause 7.5(b), the Sanction may include any of the following measures (but is not limited to these measures), or any combination of such:
 - (i) a reprimand or warning;
 - (ii) verbal or written apology;
 - (iii) direction to attend counselling or training to address their behaviour;
 - (iv) suspended Sanction and/or good behaviour period;
 - (v) removal of accreditation;
 - (vi) removal or withdrawal of awards or achievements (such as life membership);
 - (vii) exclusion from a particular event or events, competition, or activity;

- (viii) suspension of membership from Swimming Australia or a Swimming Organisation and any other members or affiliates;
 - (ix) suspension from such activities or events held by or under the auspices of Swimming Australia or a Swimming Organisation;
 - (x) suspension and/or termination of any rights, privileges and benefits provided by Swimming Australia or a Swimming Organisation;
 - (xi) expulsion from Swimming Australia or a Swimming Organisation; and
 - (xii) any other form of discipline that is considered appropriate.
- (d) Sport Integrity Australia or a Hearing Tribunal (if applicable) have absolute discretion to determine the appropriate Sanction, including as to whether a combination of measures is to be imposed, and the terms and the period of any measures, subject to clause 7.4(e)7.5(b) and (e).
- (e) A financial penalty may only be imposed as or as part of a Sanction where the Respondent is an incorporated entity.
- (f) The following factors will be considered when determining the appropriate Sanction:
- (i) the nature and seriousness of the behaviour or incidents;
 - (ii) the considerations (if any) of the Complainant;
 - (iii) the contrition, or lack thereof, of the Respondent;
 - (iv) any Provisional Action taken in relation to the Breach;
 - (v) the effect of the Sanction on a Respondent including any personal, professional, or financial consequences;
 - (vi) if there have been relevant prior warnings or disciplinary action against the Respondent; and
 - (vii) if there are any mitigating circumstances.
- (g) If there is more than one Breach of an Eligible Policy, where appropriate, the Sanction may be imposed having regard to all of the Breaches considered together, and the seriousness of the overall conduct in question.
- (h) Sanctions imposed under this Policy shall commence from the date of the decision, unless otherwise directed.

8. Hearing Tribunals

8.0 Arbitration in the NST

- (a) If arbitration is sought in the NST General Division, the NST will:
- (i) determine whether the Provisional Action imposed is disproportionate; or
 - (ii) arbitrate the Alleged Breach and determine whether a Sanction be imposed, and if so, what Sanction, in accordance with clause 7.4.
- (b) The procedure for an arbitration in the NST will be in accordance with the NST Legislation.

8.1 Internal Hearing Tribunal

- (a) If an Internal Hearing Tribunal is required under clause 7.3, the Swimming Australia Complaint Manager must convene a Hearing Tribunal to:
- (i) determine whether the Provisional Action imposed is disproportionate; or
 - (ii) arbitrate the Alleged Breach and determine whether a Sanction be imposed, and if so, what Sanction, in accordance with clause 7.4.
- (b) An Internal Hearing Tribunal convened under this clause will comply with the Tribunal Procedure in SCHEDULE 1.

8.2 Parties and right to attend hearings

- (a) The parties to a proceeding will be:
- (i) Swimming Australia, or where Swimming Australia has delegated the management of the Resolution Process to the Swimming Organisation, the Swimming Organisation; and

- (ii) the Respondent.
- (b) If the Hearing Tribunal is an Internal Hearing Tribunal, Sport Integrity Australia shall have a right to attend hearings as an observer and, where agreed between Swimming Australia and Sport Integrity Australia, to act on behalf of Swimming Australia as its agent in the proceedings.
- (c) If the Hearing Tribunal is the NST:
 - (i) notwithstanding clause 8.2(a)(i), Swimming Australia must be a party to the proceeding;
 - (ii) the NST Member may, at their discretion, allow any person who may have a relevant interest in the dispute to participate in the proceeding; and
 - (iii) Sport Integrity Australia shall have a right to attend hearings as an observer and, where agreed between Swimming Australia and Sport Integrity Australia, to act on behalf of Swimming Australia as its agent in the proceedings.

8.3 Notification of Hearing Tribunal decision

- (a) The Hearing Tribunal will notify the parties to the proceeding of the decision in accordance with its relevant procedures, after which the Swimming Australia Complaint Manager will:
 - (i) notify and provide a copy of the decision to Sport Integrity Australia (if not already done); and
 - (ii) subject to any appeal under clause 9, proceed with finalising the Complaint in accordance with clause 10.

9. Appeals

9.0 Decisions subject to appeal

- (a) A decision of a Hearing Tribunal under clauses 8.0(a)(ii) or 8.1(a)(ii) may be appealed as set out in this clause 9.
- (b) A decision of a Hearing Tribunal under clauses 8.0(a)(i) or 8.1(a)(i) is not subject to appeal.

9.1 Persons entitled to appeal

- (a) The following persons are entitled to appeal a decision of a Hearing Tribunal under clauses 8.0(a)(ii) and 8.1(a)(ii) of this Policy:
 - (i) Swimming Australia;
 - (ii) where Swimming Australia has delegated the management of the Resolution Process to the Swimming Organisation, the Swimming Organisation; and
 - (iii) the Respondent,
 (each an Appellant).

9.2 Grounds of appeal

- (a) The decision of a Hearing Tribunal can only be appealed on the following Grounds of Appeal:
 - (i) the Hearing Tribunal failed to abide by this Policy or to properly apply the relevant Eligible Policy and such failure resulted in a denial of natural justice; and/or
 - (ii) no reasonable decision maker in the position of the Hearing Tribunal, based on the material before them, could reasonably make such a decision.

9.3 Notice of appeal

- (a) To submit a valid Notice of Appeal, an Appellant must, within 14 days of the date of receipt of the decision made by the Hearing Tribunal:
 - (i) if the Hearing Tribunal was the NST General Division:
 - (A) lodge an 'Application for an Appeal' form with the NST, which must state in full their Grounds of Appeal;
 - (B) pay the requisite application fee; and

- (C) serve, by email, by post, or physically, on the other party to the appeal a copy of the 'Application for an Appeal'; or
 - (ii) if the Hearing Tribunal was an Internal Hearing Tribunal:
 - (A) if the Alleged Breach is an NST Excluded Matter:
 - (1) lodge with the Swimming Australia Complaint Manager the Notice of Appeal stating they wish to appeal, which states in full their Grounds of Appeal, including any relevant documents as annexures;
 - (2) pay the appeal fee as set from time to time by Swimming Australia; and
 - (3) serve, by email, by post, or physically, on the other party to the appeal a copy of the Notice of Appeal on the other parties; or
 - (B) if the Alleged Breach is at the Swimming Australia level and is either an NST Eligible Matter, or neither an NST Eligible Matter or NST Excluded Matter:
 - (1) lodge an 'Application for an Appeal' form with the NST, which must state in full their Grounds of Appeal;
 - (2) pay the requisite application fee; and
 - (3) serve, by email, by post, or physically, on the other party to the appeal a copy of the 'Application for an Appeal',
- (together, a Notice of Appeal).
- (b) If an appeal is lodged under:
 - (i) clause 9.3(a)(ii)(A), the matter must be dealt with by an Internal Appeals Tribunal; or
 - (ii) clause 9.3(a)(ii)(B) and it is neither an NST Eligible or NST Excluded Matter, Swimming Australia may apply to the NST CEO for approval, and if the NST CEO does not approve the matter, it must be dealt with by an Internal Appeals Tribunal; or
 - (iii) clause 9.3(a)(ii)(B) and it is an NST Eligible Matter, it must be dealt with by the NST Appeals Division.

9.4 Appeals in the NST Appeals Division

- (a) If an Appellant lodges a valid Notice of Appeal in the NST Appeals Division, the NST will determine the matter.
- (b) The procedure for an appeal in the NST Appeals Divisions will be in accordance with clause 9.3 and the NST Legislation.

9.5 Internal Appeals Tribunal

- (a) If an Appellant lodges a valid Notice of Appeal to be dealt with by an Internal Appeals Tribunal, the Internal Appeals Tribunal will determine the matter.
- (b) The procedure for an appeal in an Internal Appeals Tribunal will be in accordance with clause 9.3 and SCHEDULE 2.

9.6 Determination for Appeal Tribunal

- (a) The Appeals Tribunal's arbitration of the appeal:
 - (i) must determine, to the Standard of Proof, whether one or both Grounds of Appeal (as applicable) are proven, and must not rehear the matter or the facts of the Alleged Breach; and
 - (ii) may result in the Appeals Tribunal removing, or altering the Sanction imposed on a Respondent, in accordance with clause 7.4.

9.7 Notification of Appeal Tribunal decision

- (a) The Appeal Tribunal will notify the parties to the proceeding of the decision in accordance with its relevant procedures, after which the Swimming Australia Complaint Manager will:
 - (i) notify and provide a copy of the decision to Sport Integrity Australia (if not already done); and
 - (ii) proceed to finalising the Complaint in accordance with clause 10.

10. Finalising Complaints

10.0 Finalisation of Resolution Process

- (d) A Resolution Process will be finalised, and an outcome reached when:
- (i) No Further Action – when Sport Integrity Australia notifies the relevant parties of its determination under clause 6.0;
 - (ii) Breach Notice – where the Respondent admits the Alleged Breach, waives their right to a hearing and accepts the Sanction, or is deemed to have done so under clause 7.1(d);
 - (iii) Hearing Tribunal - where the parties to the proceeding are notified of the decision and no appeal has been filed; or
 - (iv) Appeal Tribunal - where the parties to the proceeding are notified of the decision.
- (e) Once the applicable Resolution Process (including any appeal) under this Policy has concluded, the decision is final and binding on all parties involved and there is no further right of appeal to any external body or tribunal.

10.1 Notification of outcome and implementation of Sanction

- (d) When a Resolution Process is finalised, the Swimming Australia Complaint Manager will:
- (i) notify Sport Integrity Australia, the Swimming Organisation (if applicable), the Complainant and Respondent of the outcome in writing, unless otherwise provided for in this Policy;
 - (ii) take all necessary steps to implement any Sanction imposed (if applicable); and
 - (iii) ensure Swimming Australia publicly discloses the matters referred to in clause 3.7(c) (if applicable).

10.2 Recording Decisions and Outcomes

- () Swimming Australia shall keep records of all Complaints for a minimum of 7 years from the date the Resolution Process is finalised, which will include at a minimum a record (including dates, where relevant) of:
- () the Alleged Breach;
 - (i) the Complainant;
 - (ii) the Respondent;
 - (iii) the Resolution Process;
 - (iv) the Outcome; and
 - (v) any Sanctions and/or Provisional Action imposed.
- (a) Records must be maintained in a secure and confidential place, which may be electronically.

11. Interpretation & Other Information

11.0 Commencement

This Policy commences on the date printed on the front cover (Commencement Date).

11.1 Prior complaints

Complaints relating to conduct which occurred prior to the Commencement Date:

- (a) must be dealt with under the policies and processes of Swimming Australia or relevant Swimming Organisation existing at the time the complaint was made, regardless of where that Complaint is at in that process;
- (b) cannot be resubmitted to Sport Integrity Australia under this Policy; and
- (c) are not subject to any appeal under this Policy.

11.2 Requirements for Swimming Organisations

Swimming Organisations must adopt and implement this Policy as their complaints management policy for complaints arising under all Eligible Policies.

11.3 Interpretation

- (a) Any document required to be provided under this Policy may be given by:
 - (i) sending it to an email or other electronic address, or to a postal address, nominated by the recipient party; or
 - (ii) email, post, or hand delivering it to that party's registered office.
- (b) A document is taken to have been received under this Policy if sent by email or other electronic transmission, on the date of transmission, or if hand delivered, on the date of delivery or if sent by post, 5 business days after it was sent.
- (c) Relevant Persons are responsible for keeping their contact details up to date with Swimming Australia or the Relevant Organisation they are associated with, as appropriate. Delivery to the last known address is sufficient in circumstances where the current whereabouts of a Relevant Person are not known.

11.4 Amendment

- (a) Sport Integrity Australia may amend this Policy from time to time. Swimming Australia/Swimming Organisation must make the new version available on its website as soon as possible including the date on which any amendment/s take effect.
- (b) Any Complaint under this Policy which is not finalised at the time of an amendment to this Policy will continue to be processed under the substantive provisions of this Policy in force at the time Sport Integrity Australia received the Complaint Form, unless Sport Integrity Australia and/or the Hearing Tribunal determines the principle of "lex mitior" appropriately applies in the circumstances.

SCHEDULE 1- Internal Hearing Tribunal Procedure

Interpretation

1. In this Schedule:

Chair means the chair of a particular Hearings Tribunal in accordance with this Schedule.

Legal Practitioner is a person holding a current practising certificate as a lawyer or barrister in any Australian jurisdiction.

Sports Administrator means a person who currently, or within the previous five years, is or has been employed in the field of sports administration.

Tribunal Member means an individual person sitting on a Tribunal.

2. Defined terms not otherwise defined in this Schedule have the meaning given to them in the Policy.
3. All clause references refer to this Schedule unless otherwise provided.

Convening Tribunal

4. As required under clause 8.1 of the Policy, the Swimming Australia Complaint Manager will convene a Tribunal in accordance with this Schedule.
5. The Tribunal shall be convened as soon as reasonably practicable in the circumstances, and shall endeavour to convene a hearing:
- (a) For a referral under clause 8.1(a)(i) (provisional action) of the Policy, no later than one week after notification by the Swimming Australia Complaint Manager;
 - (b) For a referral under clause 8.1(a)(ii) (breach/sanction) of the Policy, no later than three weeks after notification by the Swimming Australia Complaint Manager.

Composition of Tribunal

6. Subject to clauses 7 and 9 each Tribunal shall:
- (a) comprise three Tribunal Members appointed by the Swimming Australia Complaint Manager;
 - (b) comprise at least one Legal Practitioner and one Sports Administrator;
 - (c) be chaired by the Chair, who shall be appointed by the Swimming Australia Complaint Manager and shall be:
 - (i) a Legal Practitioner; and
 - (ii) a person of experience and skills suitable to the function of chairing a tribunal.
7. A Tribunal convened to hear a matter referred under clause 8.1(a)(i) (Provisional Action) of the Policy will comprise of a single Tribunal Member appointed by the Swimming Australia Complaint Manager who is a person of suitable experience and skills, independent of Swimming Australia and (if applicable) Swimming Organisation.
8. The Swimming Australia Complaint Manager shall use reasonable endeavours to ensure that the Tribunal Members selected do not have any actual or perceived conflict of interest in relation to the Alleged Breach that might reasonably call into question the impartiality of the Tribunal.
9. Should a Tribunal Member become unable to sit on a Tribunal following the convening of the Tribunal for whatever reason, the Swimming Australia Complaints Manager shall appoint a replacement Tribunal Member.
10. Should a party challenge the impartiality of a Tribunal Member, the challenge will be determined by the Chair sitting alone, unless that challenge relates to the Chair in which case it will be determined by:
- (a) the Swimming Australia Complaints Manager; or

- (b) if the Swimming Australia Complaints Manager is unavailable or unable to act, the other members of the Tribunal.
11. There shall be no right of appeal from a decision made under clause 9.
12. No Internal Hearing Tribunal decision shall be invalidated by any irregularity in the appointment of a Tribunal Member.

Responsibilities of Chair

13. Without limiting any other duties of the Chair set out under this Schedule, the person appointed as Chair of the Tribunal shall have the following responsibilities:
- (a) to chair hearings of the Tribunal;
 - (b) to ensure accurate records are kept of all of the Internal Tribunal's proceedings and decisions, including at a minimum:
 - (i) particulars of the hearing, including date, time, and location;
 - (ii) the names of each Tribunal Member, Respondent, witnesses called, and any other parties permitted to attend by the Internal Tribunal;
 - (iii) the decision of the Tribunal, including any Sanction imposed, whether given to the parties orally, in writing or a combination of both, and the date(s) of communication;
 - (c) to ensure that the hearing is conducted in accordance with the principles of procedural fairness; and
 - (d) to communicate to all parties of a Tribunal the results of such Tribunal and provide a copy of the record of result to the Swimming Australia Complaints Manager within seven days of the hearing.

Attendance at Internal Hearing Tribunal

14. The following persons shall be required to attend the Internal Tribunal Hearing conducted under this Schedule:
- (a) the Respondent; and
 - (b) Swimming Australia / Swimming Organisation.
15. The following persons shall be entitled to attend a Tribunal hearing:
- (a) Sport Integrity Australia;
 - (b) any person that the Chair in their absolute discretion believes will assist the Tribunal and invites to attend the Tribunal for that purpose; and
 - (c) where a Respondent or a witness is a Vulnerable Person, an adult adviser, who will, unless unavailable or other extraordinary circumstance, be such person's parent or guardian.
16. Each party appearing at or before the Tribunal shall bear their own costs.

Non-attendance by Respondent(s)

17. If a Respondent fails to attend the Internal Tribunal Hearing without reasonable cause, the hearing may proceed and a determination may be made by the Tribunal in the absence of the Respondent, provided that the Tribunal is satisfied that this Schedule has been complied with.
18. If Swimming Australia / Swimming Organisation fails to attend a Tribunal hearing without reasonable cause, the hearing may proceed and a determination may be made by the Tribunal in the absence of that person, provided that the Tribunal is satisfied that all notification procedures under this Schedule have been carried out.

Adjournments

19. A Respondent or Swimming Australia / Swimming Organisation may apply to the Chair to have an Internal Tribunal Hearing adjourned if there are compelling circumstances that warrant such steps being taken to avoid

costs, hardship, or significant inconvenience to one or more parties. The Tribunal has sole discretion on whether or not to grant the application.

Procedure of Tribunal

20. The Tribunal shall conduct the hearing in such manner as it sees fit and may in its absolute discretion:
- (a) convene the hearing by way of video or teleconference if the circumstances warrant;
 - (b) consider any evidence, and in any form that it deems relevant;
 - (c) question any person giving evidence;
 - (d) limit the number of witnesses presented to those who provide any new evidence; and
 - (e) act in an inquisitorial manner in order to establish the truth of the issue/case before it.
21. Without limiting the Tribunal's power to regulate its own procedure as it sees fit, the Tribunal shall ordinarily proceed in accordance with the following steps:
- (a) If a body corporate, Swimming Australia, or Swimming Organisation is a party to a Tribunal hearing, one member of that body corporate, Swimming Australia, or Swimming Organisation shall be appointed by the body corporate, Swimming Australia, or Swimming Organisation to act as spokesperson for such body at the Tribunal.
 - (b) At the commencement of a hearing, the Chair will identify the Tribunal Members and determine whether the Respondent is present to answer the allegation(s) in the Alleged Breach.
 - (c) The parties will be notified of their right to remain in the hearing until all evidence is presented but not to be present while the Tribunal considers its findings and determines an appropriate Sanction (if any).
 - (d) The Chair shall advise all those persons present of the method of recording the hearing (if any).
 - (e) The Alleged Breach shall be read out in the presence of all persons eligible to be present.
 - (f) The Respondent shall be asked whether or not they intend to dispute the Alleged Breach and the Sanction (if any).
 - (g) If the Respondent does not dispute the Alleged Breach, the Chair will provide the parties with an opportunity to make submissions as to the appropriate Sanction (if any) to be imposed.
 - (h) If the Respondent does dispute the Alleged Breach, the Chair will invite Swimming Australia /the Swimming Organisation to give evidence and witnesses (if any) shall be called upon to give their evidence in turn, subject to the approval of the number of witnesses to be called by the Tribunal in its discretion. The Respondent has a right to cross examine any witness called. Swimming Australia /the Swimming Organisation may summon the Respondent to give evidence and cross examine them.
 - (i) Each witness shall be entitled to leave the Tribunal hearing after giving evidence unless otherwise directed by the Tribunal. Witnesses shall be entitled to remain in the hearing room after giving evidence with the permission of the Tribunal.
 - (j) The Respondent shall then be entitled to present their defence. Witnesses may be called subject to the approval of the number of witnesses to be called by the Tribunal in its discretion. Swimming Australia /the Swimming Organisation has a right to cross examine the Respondent or any witness called.
 - (k) Where a Vulnerable Person exercises his/her right to have an adult adviser present in accordance with this Schedule, a reasonable opportunity for consultation between the minor and the adviser shall be provided by the Tribunal.
 - (l) Where a party makes video evidence available to the Tribunal, it may, at the discretion of the Tribunal, be presented. The onus of providing suitable viewing equipment shall lie with the person requesting that the evidence be presented.
 - (m) The Tribunal may, so as to limit inconvenience to witnesses, allow evidence to be given by telephone or videoconference.

22. At the conclusion of all of the evidence and submissions the Chair shall ask all persons present to leave the hearing room while the Tribunal considers its findings.
23. If the Tribunal is satisfied that a breach of an Eligible Policy has been proven using the Standard of Proof, it shall find the breach proven. Otherwise, the Complaint of the Alleged Breach shall be dismissed.
24. If the Tribunal is not satisfied that the particular alleged breach has been proven but is satisfied that a lesser breach of an Eligible Policy has been proven, then the Internal Tribunal may find such lesser breach proven.
25. Where it appears to the Tribunal that Swimming Australia /the Swimming Organisation has made an error in identifying the correct alleged breach of an Eligible Policy, or omitted alleged breaches that should have been made, the Tribunal may amend the allegation(s), subject always to the requirement that the Respondent must be informed of the new allegations and given an opportunity to respond to such allegations.
26. Where the Tribunal finds that one or more alleged breaches of an Eligible Policy have been proven, it shall inform the parties of its decision and provide Swimming Australia /the Swimming Organisation and the Respondent with an opportunity to make submissions as to Sanction (if the parties have not already had an opportunity to make such submissions). The Tribunal may, in its absolute discretion, decide that it is appropriate to:
 - (a) receive oral submissions as to Sanction immediately after delivering its decision as to the Alleged Breach; or
 - (b) adjourn the hearing to allow the parties to make submissions as to Sanction on some later date, in which case, the Tribunal shall direct whether submissions should be made orally or in writing.
27. After considering the parties' submissions as to Sanction, the Tribunal shall determine the Sanction to be imposed (if any) in accordance with clause 7.4 of the Policy and shall advise the parties of its decision.
28. The decision of the Tribunal shall be given by the Chair. The Chair may either:
 - (a) give its decision as to the Alleged Breach and/or Sanction orally at the close of the hearing, with or without short- form oral reasons; or
 - (b) reserve its decision as to the Alleged Breach and/or Sanction but if it does so, it will provide its decision within 14 days of the hearing.
29. The Chair must provide written reasons for its decision within 14 days of the hearing.
30. Notwithstanding clauses 28-29 of this Schedule if the Tribunal has directed the parties to make submissions as to Sanction as per clause 26 above, the Chair will provide its decision and written reasons as to Sanction within 14 days of receipt of the submissions, or as otherwise directed by the Tribunal.
31. The Chair will notify the Swimming Australia Complaints Manager of the decision of the Tribunal and provide a copy of the written reasons. The Complaints Manager will notify the parties of the decision and provide them with a copy of the written reasons.
32. For the Tribunal to find something has been proven on the balance of probabilities, it must be satisfied that on the evidence put before it the alleged fact or matter is more probable than not. In reaching this conclusion, the Hearings Tribunal must take into account all relevant factors including the:
 - (a) nature and seriousness of the allegations; and
 - (b) impact of the potential sanctions that may be imposed if the allegations are proven.
33. The standard of proof requires greater certainty for a more serious allegation compared with a less serious allegation.

SCHEDULE 2- Internal Appeals Tribunal Procedure

Interpretation

1. In this Schedule:

Appeal Chair means the chair of a particular Appeals Tribunal in accordance with this Schedule.

Tribunal Member means an individual person sitting on an Appeals Tribunal.
2. Defined terms not otherwise defined in this Schedule have the meaning given to them in the Policy or SCHEDULE 1.
3. All clause references refer to this Schedule unless otherwise provided.

Convening Internal Appeals Tribunal

4. As required under clause 9.5 of the Policy, the Swimming Australia Complaints Manager will convene an Appeals Tribunal in accordance with this Schedule.
5. The Appeals Tribunal shall be convened as soon as reasonably practicable after a referral under clause 9.5 of the Policy and shall endeavour to convene no later than two weeks after notification by the Swimming Australia Complaints Manager.

Composition of Internal Appeals Tribunal

6. Subject to clause 7 of this Schedule, each Appeals Tribunal shall:
 - (a) comprise three Tribunal Members selected by the Swimming Australia Complaints Manager;
 - (b) comprise at least one Legal Practitioner and one Sports Administrator; and
 - (c) be chaired by the Appeal Chair who shall be appointed by the Complaints Manager and shall be:
 - (i) a Legal Practitioner; and
 - (ii) a person of experience and skills suitable to the function of chairing an Appeals Tribunal,none of whom sat on or was involved in the original Hearings Tribunal for the Alleged Breach subject of the appeal.
7. Clauses 9 - 11 (inclusive) of SCHEDULE 1 apply to an Appeals Tribunal with any necessary amendments.

Procedure of Internal Appeals Tribunal

8. Subject to this Schedule, the Appeals Tribunal and persons appearing before it are bound by the same procedures under this Policy as if the Appeals Tribunal was the Tribunal hearing a matter at first instance.
9. The Appeals Tribunal must limit its hearing to consideration of the Ground(s) of Appeal relied upon by the Appellant under clause 9.2(a) of the Policy, in accordance with clause 9.4 of the Policy.
10. The Respondent to an Appeals Tribunal will be given the opportunity to file a written submission in response to the Notice of Appeal.
11. The parties to an Appeal Tribunal may not call witnesses unless given leave to do so by the Appeals Tribunal. The Appeals Tribunal will not allow a party to call a witness to give evidence in relation to any matter outside of the Ground(s) of Appeal relied upon by the Appellant.
12. An Appeals Tribunal has the power to:
 - (a) dismiss the appeal;
 - (b) uphold the appeal;
 - (c) impose any of the Sanctions set out in the Policy; or

(d) reduce, increase, or otherwise vary any Sanction imposed by the Hearing Tribunal under the Policy, in accordance with clause 9.6 of the Policy but otherwise in such manner as it thinks fit.

13. At the conclusion of the appeal, the Appeal Chair shall ensure that the Appellant, Respondent and Swimming Australia are informed of the determinations of the Appeals Tribunal. The Appeal Chair shall also notify the Swimming Australia Complaints Manager of the decision of the Internal Appeals Tribunal.
14. The Appeals Tribunal will give oral and/or written reasons for its decision.
15. The Appeals Tribunal has discretion to order the refund of the appeal fee and shall do so where the appeal results in the breach being dismissed or the Sanction reduced.