

Swimming Australia

Code of Conduct & Discipline Policy

Code of Conduct & Discipline Policy

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1. INTRODUCTION

- (a) SA, its Member Associations (collectively referred to as “**Swimming Bodies**”) and Clubs are committed to the health, safety and general wellbeing of everyone involved in the sport of swimming. Whether people swim for competitive, recreational, health and wellbeing or leisure purposes, swimming should be fun, enjoyable, inclusive and safe for all.
- (b) It is critical within swimming in Australia that values drive our behaviours and conduct. While the wording of stated values and behaviours may change depending on the team or organisation within swimming, these key principles drive our conduct and behaviour:
 - (i) **COURAGE** - We are committed to having crucial conversations. We are bold, decisive and resilient.
 - (ii) **UNITY** - We act with honesty, authenticity and transparency. We have pride in the tribe. We collaborate with purpose.
 - (iii) **EXCELLENCE** - We do as we say. We are professional and respectful in all that we do. We adopt a growth mindset.

2. PURPOSE

- (a) Swimming Bodies and Clubs will promote and monitor this Code of Conduct & Discipline Policy to the fullest extent possible. Swimming Bodies including Member Associations and Clubs must adopt this Code of Conduct & Discipline Policy to effectively handle and resolve Complaints relating to a breach of the Code of Conduct.

3. SCOPE

- (a) This Code of Conduct & Discipline Policy binds everyone who is involved in Swimming, including (but not limited to):
 - (i) SA;
 - (ii) Member Associations;
 - (iii) Clubs;
 - (iv) Members; and
 - (v) Participants.
- (b) This Code of Conduct & Discipline Policy applies from the date of this policy (see first page) (**Commencement Date**).

4. BREACHES OF OUR CODE OF CONDUCT & DISCIPLINE POLICY

- (a) Everyone who is involved in Swimming must comply with this Code of Conduct & Discipline Policy.
 - (b) Failure to comply with this Code of Conduct & Discipline Policy may result in disciplinary action in accordance with section 7.
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5. CODE OF CONDUCT

5.1 Introduction to the Code of Conduct

This Code of Conduct outlines the expected behavioural standards for interactions with each other in Swimming.

5.2 Commitment to the Code of Conduct

- (a) The Code of Conduct should be read in conjunction with:
 - (i) the specific requirements of your role as defined in your 'position description' statement, if applicable;
 - (ii) the National Integrity Framework;
 - (iii) our relevant policies, guidelines or procedure documents, including, but not limited to the SA Privacy Policy and Anti-Doping Policy; and
 - (iv) all applicable laws in your jurisdiction.
- (b) Swimming Bodies and Clubs may consider a failure to observe the Code of Conduct & Discipline Policy as misconduct and may take appropriate disciplinary action in accordance with this Code of Conduct & Discipline.

5.3 Exceptions

- (a) There may be exceptional situations where the Code of Conduct does not apply, for example, in an emergency situation. However, it is crucial that, where possible, you seek authorisation of a Senior Person prior to taking action that may contravene the Code of Conduct or that you advise a Senior Person as soon possible after any incident of any breach.

5.4 Code of Conduct

Swimming Bodies and Clubs expect that the following Code of Conduct is followed at all times and by all people involved in any way with Swimming:

- (a) Treat everyone involved in Swimming in a considerate, objective and courteous manner with proper regard for their rights, dignity and worth.
- (b) Be ethical, considerate, fair, courteous and honest.
- (c) Be professional in, and accept responsibility for, your actions.
- (d) Avoid any real or perceived conflicts of interest.
- (e) Give all people equal opportunity to participate.
- (f) Follow and encourage others to follow SA's standards, rules, policies and procedures at all times.
- (g) Operate within the rules and spirit of Swimming, including the national and international guidelines that govern SA.

- (h) Report any concerns or breaches of this Code of Conduct & Discipline Policy or the National Integrity Framework through the appropriate channels and in a timely manner.
- (i) Provide a safe environment for the conduct of activities in accordance with any relevant Swimming Body's policy.
- (j) Show concern, empathy and caution toward others.
- (k) Be a positive role model to all and do not shame, humiliate, oppress, belittle, harass or degrade any person.
- (l) Respect and protect confidential information at all times - particularly personal information of any Member or Child or Young Person or other sensitive issues or matters, whether regarding individuals or organisations.
- (m) Maintain the required standard of accreditation and/or licensing of professional competencies, as applicable to your role(s).
- (n) Ensure that any physical contact with others is appropriate to the situation, such as being necessary for the person's skill development.
- (o) Ensure your actions or inaction do not bring or are not reasonably likely to bring the sport of Swimming into disrepute.
- (p) Provide a safe, welcoming and inclusive environment that places the health, welfare and wellbeing of participants above all else.
- (q) Conduct yourself appropriately when using Social Networking.
- (r) Adopt and maintain a responsible attitude towards the consumption of tobacco products and alcohol.

5.5 Social Networking

- (a) All Participants must conduct themselves appropriately when using Social Networking in relation to sharing information or content. This includes but is not limited to using Social Networking as an electronic means of engaging with others through private messaging (e.g., What's App, Twitter, Instagram, Facebook and other electronic messaging forums).
- (b) When using Social Networking sites (or others) to share information or content related to Swimming, any postings, blogs, status updates and tweets (or similar) must not contain material which, in the reasonable opinion of SA or a Member Association:
 - (i) is or has the potential to be offensive, aggressive, defamatory, threatening, discriminatory, obscene, profane, harassing, embarrassing, intimidating, sexually explicit, bullying, hateful, racist, sexist or otherwise inappropriate;
 - (ii) is inaccurate, misleading or fraudulent;
 - (iii) is in breach of the National Integrity Framework;
 - (iv) is in breach of laws, court orders, undertakings or contracts;

- (v) breaches the privacy or confidentiality of others;
- (vi) brings or is likely to bring SA, a Member Association, a Club, a Member, themselves or Swimming into disrepute; or
- (vii) has the potential to, or does, derogate from or negatively affect the image, goodwill, name or reputation of SA, its Member Associations, Clubs and Members of Swimming.

6. COMPLAINT PROCEDURE

6.1 Introduction

- (a) This Complaint Procedure sets out the steps involved to address Complaints within the scope of this Code of Conduct & Discipline Policy. It also provides advice and guidance to Complainants, Respondents, Swimming Bodies, Clubs and Persons in Positions of Authority when dealing with Complaints. Maintaining appropriate confidentiality is key when dealing with Complaints, particularly regarding sensitive issues or matters. This, however, is subject to legal requirements regarding disclosure and a judgment as to whether disclosure is necessary to deal with the Complaint.

6.2 Application

- (a) The Complaint Procedure, including all resources, tools and templates applies to all Complaints lodged under this Code of Conduct & Discipline Policy, whether at a Club, Member Association or SA.
- (b) Complaints may be about an act, behaviour, conduct, omission, situation or decision that is a suspected breach of this Code of Conduct & Discipline Policy. A Complaint must not be mischievous, vexatious or knowingly untrue.
- (c) Existing disciplinary procedures contained within the constitution or rules, regulations or policies of any Club or Member Association remain and will be the relevant process to deal with any relevant breaches other than of this Code of Conduct & Discipline.

6.3 Complaint Procedure Principles

- (a) Swimming Bodies and Clubs are committed to:
 - (i) addressing any complaints brought to its attention regarding the Code of Conduct & Discipline Policy;
 - (ii) ensuring all Complaints are dealt with by an appropriate person and in a fair, timely and transparent manner;
 - (iii) escalating Complaints as appropriate to ensure that appropriate Persons in Positions of Authority and Senior Persons are involved;
 - (iv) considering the wishes of the Complainant;
 - (v) providing communication to all parties on a regular basis as to the progress of the Complaint;

- (vi) clearly explaining the next steps and options to all parties involved in the Complaint at every step;
 - (vii) maintaining appropriate confidentiality regarding Complaints, subject always to legal requirements regarding disclosure or if disclosure is necessary to deal with the Complaint;
 - (viii) ensuring that the principles of Natural Justice (procedural fairness) are followed when dealing with Complaints; and
 - (ix) maintaining appropriate records of Complaints in a safe and confidential manner.
- (b) Where possible, Complaints should be dealt with as soon as practicable after they become known and dealt with at Club or Member Association level, to minimise:
- (i) distress to Complainants and those against whom allegations are made; and
 - (ii) time taken by Clubs, Member Associations and SA to resolve Complaints.
- (c) If you are unsure of how to deal with a Complaint, always escalate that Complaint to your Club, Member Association or SA, as appropriate.

6.4 Record Keeping and Sharing

- (a) The Swimming Bodies and Clubs must keep records of all Complaints. Records must be maintained for a minimum of 7 years.
- (b) Records must be maintained in a secure and confidential place.
- (c) All Clubs and Member Associations will share records with SA and provide those records upon request.

6.5 Making a Complaint

- (a) Complaints in relation to this Code of Conduct & Discipline may be made by any person who has concerns about a person or their behaviour or conduct in Swimming.
- (b) All Complaints or concerns involving Serious Criminal Conduct should immediately be referred to SA and the Police (if there is an immediate threat of harm or a serious offence has occurred) and any appropriate external agencies.

6.6 Complaints from Other Organisations

- (a) The Swimming Bodies are committed to working collaboratively, respectfully and ethically with all other sporting, community service and business organisations.
- (b) In some circumstances, Swimming Bodies and Clubs will enter into a memorandum of understanding, contract or protocol with other organisations which contain specific dispute resolution procedures relating to breaches of agreements or behavioural issues. In those circumstances,

those specific dispute resolution procedures will be applied. In the absence of any memorandum of understanding, contract or protocol with other organisation, this complaint procedure detailed in this section 6 will be applied.

6.7 Initial Stages of Complaints

- (a) Most Complaints can be dealt with initially by the Club, ASCTA or ASA. However, there may be some situations in which it is more appropriate to raise a Complaint initially with your Member Association first rather than at Club or pool facility. For example, if you have a Complaint regarding a Club decision or action or an incident at a State or Territory event that you regard as a possible breach of the Code of Conduct & Discipline.
- (b) There are occasions where a dispute arises between two or more parties which is more appropriate to be resolved without the need to resort to a formal complaint process (for example, a minor issue which can easily be remedied, and no person is in danger). In such circumstances, notwithstanding that a party may have initiated a Complaint under this Code of Conduct & Discipline, SA and/or a Member Association (as the case may be) may take steps to resolve the Complaint at that time, refer it elsewhere and/or dismiss it, as is appropriate.
- (c) Where a Complaint is referred to SA and SA determines it is not appropriate to deal with the Complaint or that the matter does not fall within the scope of this Code of Conduct & Discipline, SA in its absolute discretion, may refer the Complaint elsewhere or dismiss it.
- (d) For the avoidance of doubt, Member Associations and SA may, at their discretion, refer Complaints received back to a Club, ASCTA, ASA or a Member Association, should that be appropriate.

6.8 Procedure for Handling Complaints under this Code of Conduct & Discipline Policy

Any person who has concerns about a breach of this Code of Conduct & Discipline Policy must follow the Complaints Procedure outlined below.

Complaints Procedure

Reporting Complaint

- Step 1:** Complainant tells a Person in a Position of Authority about their Complaint.
- Step 2:** Person in a Position of Authority talks to Complainant and identifies facts, records, explains next steps and reports to Senior Person.
- Step 3:** Senior Person documents Complaint using Complaint Recording Template (refer to **Annexure A**).

Internal Investigation of Complaint

Step 4: Involved Organisation (Investigation Officer) conducts internal investigation of Complaint.

Determining Complaint

Step 5: After the internal investigation is completed, the CEO of the Involved Organisation evaluates next steps and determines whether to:

- (a) close the Complaint where no further action is required, or no longer sought by the Complainant;
- (b) make decision and impose disciplinary measures (in accordance with section 9);
- (c) refer Complaint to Independent Investigation (refer to section 6.11);
- (d) refer Complaint to Mediation (refer to section 6.14); or
- (e) refer Complaint to Hearing Tribunal (refer to section 6.12).

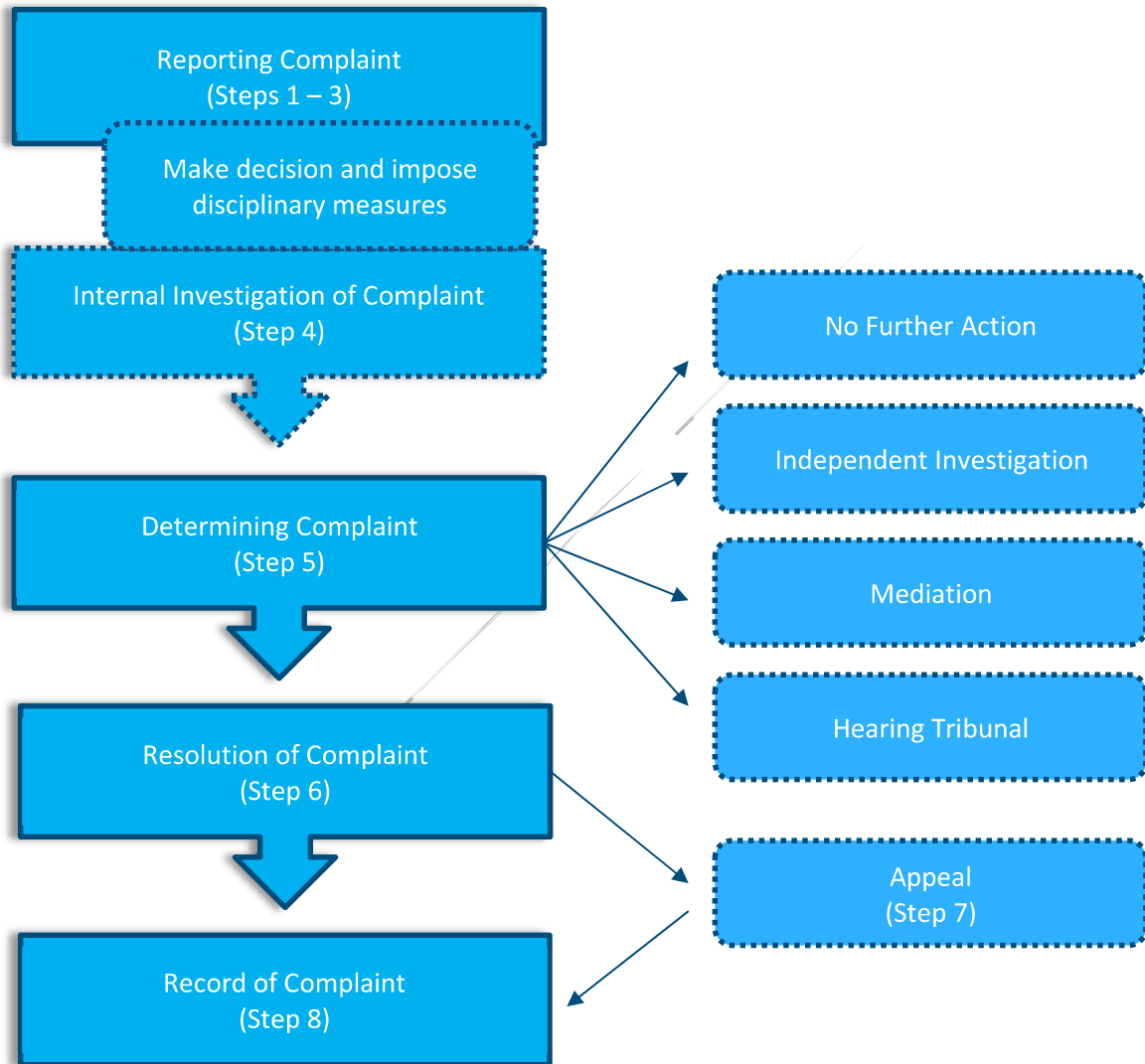
Resolution of Complaint

Step 6: Decision made and disciplinary measures (if required) imposed as a result of the relevant Step 5 process.

Step 7: Appeal (if deemed valid) may be lodged in relation to decision. If the appeal is heard, a decision is made and new disciplinary measures may be imposed. Refer to section 6.13.

Step 8: Record of Complaint finalised. SA and Involved Organisation notified of outcome of Complaint. Complaint closed.

The above process is reflected in the diagram below:



6.9 Provisional Action

- (a) Provisional Action may be taken at any time by the Involved Organisation (in relation to Complaints) until the outcome(s) of an internal investigation, Independent Investigation or Hearing Tribunal (including any Appeal) is known.
- (b) Provisional Action may include, but is not limited to:
 - (i) suspension, restriction of duties or temporary re-deployment; or
 - (ii) suspension or restriction of rights, privileges and benefits.
- (c) In all circumstances in which a Complaint is reported to an Involved Organisation or the relevant external authorities, the Involved Organisation reserves the right in its sole discretion to determine that the activities undertaken by the Respondent are revised and amended as necessary to minimise risk.

- (d) Involved Organisations should be mindful of any contractual or employment issues arising where the Involved Organisation is contemplating Provisional Action. For instance:
 - (i) the contract governing a service provider's obligations to an Involved Organisation; or
 - (ii) an individual's employment or other contract with an Involved Organisation,

may have an impact on the type of Provisional Action which may be legally taken.

- (e) **IMPORTANT NOTE:** Where the livelihood of a Respondent to a Complaint is likely to be adversely impacted by any disciplinary measures imposed, including Provisional Action such as suspension, special care must be taken before imposing Provisional Action. An Involved Organisation should seek legal advice prior to imposing Provisional Action in those circumstances.

6.10 Internal Investigation

6.11 So that the Involved Organisation has sufficient information to determine the appropriate step to be taken, the Investigation Officer within the Involved Organisation should conduct an internal investigation. Independent Investigation Procedure

- (a) Following or as part of an internal investigation into a Complaint, the Senior Person of the Involved Organisation may appoint an Investigator to review the circumstances of the Complaint and conduct an Independent Investigation.
- (b) In conducting an investigation (and where an Investigator is appointed), the below steps must be followed:
 - (i) The Involved Organisation will provide a written brief to the Investigator to ensure the terms of engagement and scope of the Investigator's role and responsibilities are clear.
 - (ii) The Complainant should be interviewed by the Investigator and the Complaint and any key information arising from the interview(s) documented in writing by the Investigator. The Complainant is entitled to have a support person present during any interview that takes place, subject to the support person not being a current practicing solicitor or barrister. Where the Complainant is a Child or Young Person, the Complainant's parent or guardian should also be present during the interview.
 - (iii) The key details of the Complaint should be conveyed to the Respondent(s). The Respondent(s) must be given sufficient information to enable them to properly respond to the Complaint.
 - (iv) The Respondent(s) should be interviewed by the Investigator and given the opportunity to respond to the allegations. The response to the Complaint should be documented in writing by the Investigator. The Respondent is entitled to have a support person present during any interview, subject to the support person not being a current practicing solicitor or barrister. Where the Respondent is a Child or Young Person,

the Respondent's parent or guardian should also be present during the interview.

- (v) If, in the process of the Independent Investigation, there continues to be a dispute regarding the facts, then statements from witnesses and other relevant evidence should be obtained by the Investigator to assist in reaching conclusions and preparation of a report and recommendations.
- (vi) The Investigator must make a finding, on the balance of probabilities, as to whether the Complaint, or each of the allegations in the Complaint (as appropriate) is:
 - (A) substantiated (there is sufficient evidence to support the Complaint);
 - (B) inconclusive (there is insufficient evidence either way);
 - (C) unsubstantiated (there is sufficient evidence to show that the Complaint is unfounded or not enough evidence to substantiate the Complaint); or
 - (D) mischievous, vexatious or knowingly untrue.
- (vii) A report documenting the Complaint, the investigation process, evidence, finding(s) and, if requested, recommendations, should be given to the CEO (or a person with delegated authority of the CEO) of the Involved Organisation who may, in consideration of the report of the Investigator, either:
 - (A) take disciplinary action against either the Respondent, Complainant or any other person/persons involved in the Complaint in accordance with section 7;
 - (B) refer the Complaint to a Hearing Tribunal (which will take place in accordance with the Hearing Tribunal Procedure below) to determine what, if any, further action to take; or
 - (C) take no further action and close the Complaint.
- (viii) Within 14 days of the CEO (or a person with delegated authority of the CEO) of the Involved Organisation receiving a report of an Investigator, a report must be provided to the Complainant(s) and the Respondent(s) which summarises the investigation process and documents key points that were found to be substantiated, inconclusive, unsubstantiated or mischievous (**Report**). The Report may be redacted to the extent required to protect necessary confidential or sensitive issues.
- (ix) All parties to the Complaint receiving a copy of the Report of the Investigator must maintain strict confidentiality of the Report, other than where necessary to disclose the contents of the Report in order to obtain legal advice or as required by law. Any disclosure of the Report other than in accordance with this section 6.11(b)(ix) is a breach of this Code of Conduct & Discipline and may result in disciplinary action being taken against the person making the disclosure.

- (x) Subject to sections 6.11(b)(ii) and 6.11(b)(iv), both the Complainant and the Respondent(s) are entitled to support throughout this process from their chosen support person/adviser.

6.12 Hearing Tribunal Procedure

An Involved Organisation may (at its discretion) refer a Complaint to:

- (A) a Hearing Tribunal conducted by the Involved Organisation; or
- (B) the National Sports Tribunal (provided the National Sports Tribunal has jurisdiction to hear the Complaint).

Where an Involved Organisation refers a Complaint to a Hearing Tribunal, the below steps must be followed. Where there is no CEO or a person with delegated authority of a CEO employed by the Involved Organisation any reference to the CEO in this clause means the President of the Involved Organisation.

Preparing for a Hearing Tribunal

- (b) The level at which the Hearing Tribunal is constituted depends on the Involved Organisation handling the Complaint (i.e. SA, Member Association or Club).
- (c) The CEO of the Involved Organisation should convene the Panel Members to hear a Complaint. The Panel Members should be provided with a copy of all the relevant correspondence, reports or information received and sent by the CEO relating to the Complaint.
- (d) The Hearing Tribunal should be scheduled as soon as practicable but must allow adequate time for the Respondent(s) to prepare to respond to the Complaint.
- (e) Subject to 6.12(j), the number of Panel Members required to be present throughout the Hearing Tribunal process is 3.
- (f) The Hearing Tribunal must not include any person who has any actual or perceived conflict of interest, preconceived opinions, vested interests or personal involvement relating to the Complaint.
- (g) The Hearing Tribunal must comprise at least one person who has knowledge, and preferably experience, of any relevant laws relating to the Complaint (e.g. anti-discrimination).
- (h) One of the Panel Members shall be appointed Chairperson by the CEO of the Involved Organisation.
- (i) Any objection to a Hearing Tribunal Panel Member must be made by a party in writing to the CEO of the Involved Organisation no later than 72 hours prior to the Hearing Tribunal.
- (j) If for any reason 3 Panel Members are not maintained, the discontinuing Member may be replaced if it is considered appropriate by the CEO of the Involved Organisation. Factors to consider should include the circumstances of the Complaint and the ability of the new Panel Member to be reasonably and impartially informed of the hearing evidence up until the time of his or her appointment. If the CEO of the Involved Organisation believes it is

appropriate for a new Panel Member to be appointed, then he or she should organise for the Hearing Tribunal to be rescheduled, with a new Panel.

- (k) The CEO must inform the Respondent by written notification that a Hearing Tribunal will take place. The written notification must outline:
 - (i) that the Respondent has a right to appear at the Hearing Tribunal to respond to the Complaint/allegation(s);
 - (ii) details of the Complaint, including any relevant policy, rules or regulations which have allegedly been breached (if there is more than one Complaint these should be set out separately);
 - (iii) the date, time and venue of the Hearing Tribunal;
 - (iv) that the Respondent can make either verbal or written submissions to the Hearing Tribunal;
 - (v) that the Respondent may arrange for witnesses to attend the Tribunal hearing to support their position (statutory declarations of witnesses not available to attend and from character witnesses may also be provided to the Tribunal hearing);
 - (vi) an outline of any possible penalties that may be imposed if the Complaint is found to be true;
 - (vii) legal representation is not allowed; and
 - (viii) if the Respondent is a Child or Young Person (or a person with an intellectual disability or mental illness), they should have a parent, guardian or support person present.
- (l) A copy of any information or documents that have been given to the Hearing Tribunal should also be provided to the Respondent subject to the approval of the Chairperson.
- (m) The CEO will inform the Complainant by written notification that a Hearing Tribunal will take place. The written notification will outline:
 - (i) that the Complainant has a right to appear at the Hearing Tribunal to support their Complaint;
 - (ii) details of the Complaint, including any relevant policies, rules or regulations (if there is more than one Complaint these should be set out separately);
 - (iii) the date, time and venue of the Hearing Tribunal;
 - (iv) that the Complainant can make either verbal or written submissions to the Hearing Tribunal;
 - (v) that the Complainant may arrange for witnesses to attend the Tribunal hearing to support their position (statutory declarations of witnesses not available to attend and from character witnesses may also be provided to the Tribunal hearing);
 - (vi) legal representation is not allowed; and

- (vii) if the Complainant is a Child or Young Person (or a person with an intellectual disability or mental illness), they should have a parent, guardian or support person present.
- (n) A copy of any information or documents that have been given to the Hearing Tribunal will also be provided to the Complainant subject to the approval of the Chairperson of the Hearing Tribunal.
- (o) If the Complainant believes the details of the Complaint are incorrect or insufficient they should inform the CEO as soon as possible so that the Respondent and the members of the Tribunal can be properly informed of the Complaint.

Hearing Tribunal

- (p) The following people are allowed to attend the Hearing Tribunal:
 - (i) the Panel Members;
 - (ii) the Respondent;
 - (iii) the Complainant;
 - (iv) any witnesses called by the Respondent, but only for the period deemed required by the Chairperson for the witness to provide evidence and be questioned;
 - (v) any witnesses called by the Complainant, but only for the period deemed required by the Chairperson for the witness to provide evidence and be questioned; and
 - (vi) any parent, guardian or support person, excluding a legal representative, required to support the Respondent or the Complainant.
- (q) The Chairperson should call the hearing to order at the designated time and determine if the Respondent is present.
- (r) If the Respondent is not present and the Chairperson considers that no valid reason has been presented for their absence, the Hearing Tribunal may continue subject to the Chairperson being satisfied that all notification requirements under the Hearing Tribunal procedures have been carried out correctly and that the principles of Natural Justice will not be prejudiced solely by the absence of the Respondent.
- (s) If the Chairperson considers that a valid reason for the non-attendance of the Respondent is presented, or the Chairperson does not believe the notification requirements have been carried out correctly, then the Hearing Tribunal should be rescheduled to a later date. The Chairperson will inform the CEO of the Involved Organisation of the need to reschedule, and the CEO of the Involved Organisation should organise for the Hearing Tribunal to be reconvened.
- (t) The Chairperson will read out the Complaint, ask the Respondent if they understand the Complaint being made against them, and if they agree or disagree with the Complaint.

- (u) If the Respondent agrees with the Complaint and accepts the alleged breach, he or she will be asked to provide any evidence or witnesses that should be considered by the Hearing Tribunal when determining any disciplinary measures.
- (v) If the Respondent disagrees with the Complaint or does not accept the alleged breach, the Complainant should be asked to describe the circumstances that led to the Complaint being made. The Complainant may:
 - (i) refer to brief notes; and
 - (ii) call witnesses.
- (w) The Respondent or their representative may apply to the Hearing Tribunal to be allowed to question the Complainant and their witnesses. It is in the Hearing Tribunal's sole discretion whether the Respondent should be allowed to question the Complainant.
- (x) The Respondent should then be asked to respond to the Complaint. The Respondent may:
 - (i) refer to brief notes; and
 - (ii) call witnesses.
- (y) The Complainant or their representative may apply to the Hearing Tribunal to be allowed to ask questions of the Respondent and their witnesses. It is the Hearing Tribunal's sole discretion whether the Complainant should be allowed to question the Respondent.
- (z) Both the Complainant and Respondent should be allowed to be present when evidence is presented to the Hearing Tribunal. Witnesses may be asked to wait outside the Hearing Tribunal until required.
- (aa) The Hearing Tribunal may:
 - (i) consider any evidence, and in any form, that it deems relevant;
 - (ii) question any person giving evidence; and
 - (iii) limit the number of witnesses presented to those who provide new or relevant evidence.
- (bb) The Hearing Tribunal must not:
 - (i) draw any adverse inference solely from a Complainant who is a Child or Young Person failing to be present at the Hearing Tribunal, or failing to be present and being represented by their parent, guardian or support person;
 - (ii) allow the Respondent to submit that an adverse inference should be drawn from the circumstances in (i) above; or
 - (iii) draw an adverse inference where a Complainant who is a Child or Young Person provides evidence only by statutory declaration or other written statement prior to the Hearing Tribunal.

- (cc) Video evidence, if available, may be presented. The arrangements for such presentation will be the responsibility of the person/s wishing to offer this type of evidence.
- (dd) If the Hearing Tribunal considers that at any time during the Hearing Tribunal there is any unreasonable or intimidating behaviour from any person, the Chairperson has the power to deny any further involvement of the person in the Hearing Tribunal.
- (ee) After all of the evidence has been presented the Hearing Tribunal will, subject to section 6.12(hh), make its decision in private. If the Hearing Tribunal believes the Complaint has been substantiated on the balance of probabilities, the Respondent should then be given an opportunity to address the Hearing Tribunal and make submissions on any disciplinary measures that may be imposed and including but not limited to mitigating circumstances.
- (ff) The Hearing Tribunal may impose a disciplinary measure on the Respondent where it upholds the Complaint in whole or in part. The Hearing Tribunal will impose the disciplinary measure in accordance with section 7.
- (gg) All decisions made by the Hearing Tribunal will be made by a majority vote.
- (hh) Where a decision is made at the hearing the Chairperson should announce the decision in the presence of all those involved in the Tribunal Hearing and then declare the Tribunal Hearing closed. Where a decision will be made after the hearing, the Chairperson should inform the parties of this fact and declare the Tribunal Hearing closed.
- (ii) Within 48 hours, the Chairperson should:
 - (i) forward to the CEO of the Involved Organisation a copy of the Hearing Tribunal decision including any disciplinary measures imposed; and
 - (ii) forward a letter to the Respondent confirming the Hearing Tribunal's decision and any disciplinary measures imposed. The letter should outline the process and grounds for an appeal to be made.
- (jj) The Hearing Tribunal does not need to provide written reasons for its decision but may do so if it chooses.

6.13 Appeal Procedure

- (a) Subject to this Appeal Procedure, an Appellant may appeal a decision arising from:
 - (i) a decision to take disciplinary action following an internal investigation;
 - (ii) a decision to take disciplinary action following an Independent Investigation; or
 - (iii) a Hearing Tribunal,
conducted or imposed in accordance with this Code of Conduct & Discipline.

- (b) An appeal may be submitted by the original Complainant or the original Respondent and must follow the Appeal Procedure set out under section 6.13.
- (c) If the appeal is accepted, an Appeal Panel (with new Panel Members) will be convened to determine the Complaint on appeal.
- (d) A person wanting to appeal must lodge a **Notice of Appeal** (this can be found on the Safe Sport Resources section on SA's website) to the CEO of the Involved Organisation within **7 days** of notification to the Appellant of the decision they are appealing. An appeal fee of **\$500.00** must be included with the Notice of Appeal.
- (e) If the Notice of Appeal is not received by the CEO of the relevant Involved Organisation within this time, the right of appeal will lapse. If the Notice of Appeal is received but the appeal fee is not received within this time, the appeal will also lapse.
- (f) An Appeal can only be granted on one or more of the following grounds:
 - (i) the decision was affected by actual bias; or
 - (ii) there was no evidence on which the decision could be reasonably based.
- (g) The Notice of Appeal must set out the ground(s) of appeal relied on by the Appellant and an outline of the Appellant's submissions.
- (h) Where an appeal is lodged, the relevant Involved Organisation must appoint an Appeal Panel Chairperson. Involved Organisations may appoint a permanent Appeal Panel Chairperson from time to time and an alternate Appeal Panel Chairperson. Involved Organisations are entitled, at any time, to replace or remove any Appeal Panel Chairperson or fill any casual vacancy.
- (i) Where an Appeal is lodged, the relevant Appeal Panel Chairperson must in his/her absolute discretion determine, on the written submission, whether:
 - (i) the appeal sets out a prima facie valid ground of appeal; and
 - (ii) there are sufficient grounds for the appeal to proceed,prior to an appeal being deemed valid and proceeding to an Appeal Panel for determination. Where determining whether an appeal is valid, the Appeal Panel Chairperson may:
 - (iii) request written submissions from one or both of the Complainant and Respondent; and
 - (iv) request from the Hearing Tribunal any of the materials before it.
- (j) Where the Appeal Panel Chairperson:
 - (i) deems the appeal invalid, or that it has not shown sufficient grounds, the appeal will be rejected and will not proceed. The Appellant will be notified in writing, including the reasons for the decision. The appeal fee will be forfeited; or

- (ii) deems the appeal valid, the appeal will be accepted and will proceed to an Appeal Panel for determination.
- (k) If the appeal proceeds to an Appeal Panel, in considering the appeal the Appeal Panel is only permitted to consider the materials submitted to the Hearing Tribunal, Independent Investigation or Involved Organisation. For the avoidance of doubt, the Appeal Panel is not a de novo hearing of the Complaint and is not permitted to consider any new materials.
- (l) In hearing an appeal, the Appeal Panel may:
 - (i) dismiss the appeal in whole or in part;
 - (ii) uphold the appeal in whole or in part;
 - (iii) decide on the appropriate action to be taken to resolve the appeal; or
 - (iv) recommend changes to the systems or procedures to ensure that problems of a similar nature do not reoccur.
- (m) Where the Appeal Panel dismisses the entirety of the appeal, the appeal fee shall not be refunded. Where the Appeal Panel upholds the appeal in whole or in part, the appeal fee shall be refunded to the Appellant in full.
- (n) No person appointed to an Appeal Panel may hear and consider any appeal if he or she:
 - (i) has a relationship with the Appellant or the Respondent;
 - (ii) has a relationship with any persons whose interests may be affected by the outcome of the appeal; or
 - (iii) would be reasonably considered to be other than impartial.
- (o) Each Appeal Panel will be bound by the following requirements:
 - (i) it must observe the principles of Natural Justice;
 - (ii) it is not bound by the rules of evidence and may inform itself as to any matter in such manner as it thinks fit;
 - (iii) it will conduct its hearings with as little formality and technicality and with as much expedition as the gravity and proper consideration of the matter permits;
 - (iv) hearings may occur in such manner as the Appeal Panel Chairperson decides, including via telephone or video conference;
 - (v) each Appellant must establish one or more grounds of appeal to the reasonable satisfaction of the Appeal Panel with full regard to the full importance and gravity of the issue;
 - (vi) the parties to an appeal are not entitled to be represented by a current practicing barrister or solicitor except with the leave of the Appeal Panel Chairperson, which will only be given in exceptional circumstances and, if given, may be given unconditionally or on such conditions as the Appeal Panel Chairperson thinks fit;

- (vii) if a question of law arises during the course of an Appeal, the Appeal Panel may, at the request of the parties or at the discretion of the Appeal Panel Chairperson, adjourn the hearing of the appeal in order to obtain legal advice;
 - (viii) the Appeal Panel Chairperson may require the parties to attend a directions hearing or hearings (whether in person or by any other means of communication determined by the Appeal Panel Chairperson) and the Appeal Panel Chairperson may give directions from time to time to assist in the efficient and expeditious conduct of the hearing;
 - (ix) if the Appeal Panel Chairperson is of the view that the outcome of the appeal may affect the interests of any person in addition to the Appellant, the Appeal Panel Chairperson may, so far as practicable, require that notice be given to such other person and that person may appear at the hearing of the appeal and/or make written submissions to the Appeal Panel;
 - (x) the Appeal Panel will give its decision on any appeal as soon as practicable after the hearing and will provide the CEO (or a person with delegated authority of the CEO), the Appellant and other parties to the appeal with a written statement of its decision; the Appeal Panel does not need to provide written reasons for its decision but may do so if it chooses;
 - (xi) each Appellant must attend his or her appeal hearing in person or audio or visual link established for the purposes of the hearing; and
 - (xii) notwithstanding anything else in this Appeals section, the Appeal Panel may give its decision on any appeal based on written submissions only (i.e. without holding a hearing) if so determined by the Appeal Panel having regard to the principles of Natural Justice. The Appeal Panel will give its decision on any appeal as soon as practicable after its decision.
- (p) The decision of the Appeal Panel is final and binding on the parties and there is no further right of appeal to any external body or tribunal.

6.14 Mediation Procedure

- (a) Mediation is a process that allows the people involved in a Complaint to talk through the issues with an impartial person – the Mediator – and attempt to reach a mutually agreeable solution.
- (b) The Mediator does not decide who is right or wrong and does not tell any person what they must do. Instead, the mediator helps those involved to talk through the issues and makes sure that the process is fair.
- (c) Mediation may occur either before or after an investigation of the Complaint.
- (d) **Serious allegations** (in the opinion of a Senior Person or other person determining how the complaint should be dealt with) **should not be mediated, even if both parties would like to attempt mediation.**
- (e) Mediation may only be recommended if:
 - (i) both parties have had a chance to tell their version of events;

- (ii) the person dealing with the Complaint does not believe that any of the allegations warrant any form of disciplinary action; and
 - (iii) in the opinion of the person dealing with the Complaint, mediation looks like it may result in an agreed resolution (and both the Complainant and the Respondent agree to Mediation).
- (f) There are some situations where mediation will not be appropriate, including:
- (i) when the people involved have completely different versions of the incident;
 - (ii) when one or both parties are unwilling to attempt mediation;
 - (iii) when one party feels unsafe in the presence of the other;
 - (iv) when the issues raised are sensitive in nature;
 - (v) when there is a real or perceived power imbalance between the people involved; and
 - (vi) matters that involve serious allegations.
- (g) The Involved Organisation may, in consultation with the Complainant and the Respondent, appoint a Mediator to help resolve the Complaint. The decision regarding the chosen Mediator will be final.
- (h) The Mediator will explain to the Complainant and Respondent how the mediation will take place and who will participate. At a minimum, the Mediator will prepare an agenda of issues to be discussed.
- (i) All issues raised during mediation will be treated confidentially. The Complainant and the Respondent may pursue an alternative process if the Complaint is not resolved.
- (j) For the avoidance of doubt, neither party is entitled to be represented by a current practicing solicitor or barrister at the mediation.
- (k) At the end of a successful mediation the Mediator will prepare a document that sets out the agreement reached between the Complainant and Respondent and they must each sign it as their agreement. The parties involved must respect and comply with the terms of the agreement.
- (l) If the Complaint is not resolved by mediation, the Complainant may:
- (i) write to the Involved Organisation to request reconsideration of the Complaint by either an Independent Investigation or a Hearing Tribunal; or
 - (ii) approach an external agency such as an anti-discrimination commission or equal opportunity commission to resolve the matter.

7. DISCIPLINARY MEASURES

7.1 Individuals/entities who may impose disciplinary measures

- (a) The following individuals/entities may impose a disciplinary measure in response to a breach of this Code of Conduct & Discipline in accordance with the Complaints Procedure:
 - (i) the CEO (or a person with delegated authority of the CEO) of the Involved Organisation after considering the findings of an internal investigation;
 - (ii) the CEO (or a person with delegated authority of the CEO) of the Involved Organisation after considering the findings of an Independent Investigation;
 - (iii) the Hearing Tribunal panel after conducting a Hearing Tribunal; or
 - (iv) the Appeal Panel after conducting an appeal hearing,
(referred to as the **Disciplining Body**).
- (b) The relevant Disciplining Body may impose any disciplinary measure available to it under this section 7.

7.2 Considerations when imposing disciplinary measures

- (a) Any disciplinary measure imposed under this section must:
 - (i) observe any contractual and employment laws;
 - (ii) conform to the principles of Natural Justice;
 - (iii) be based on the evidence and information presented;
 - (iv) be within the powers of the person or organisation imposing the disciplinary measure; and
 - (v) be reasonable in all circumstances.
- (b) The form of disciplinary measures to be imposed on an individual or organisation should depend on factors such as:
 - (i) the nature and seriousness of the behaviour or incidents;
 - (ii) if the Respondent knew or should have known that the behaviour was a breach of the Code of Conduct & Discipline;
 - (iii) level of contrition of the Respondent;
 - (iv) the effect of the proposed disciplinary measures on the Respondent including any personal, professional or financial consequences;
 - (v) if there have been relevant prior warnings or disciplinary action; or
 - (vi) if there are any mitigating circumstances such that the Respondent should not be disciplined at all or not disciplined so seriously.

7.3 Individual sanctions

- (a) Subject to contractual and employment laws, if a finding is made that a Respondent who is an individual has breached a provision of the Code of Conduct & Discipline, the Disciplining Body may take any one or more of the following measures:
- (i) maintain any Provisional Action already taken in relation to the Complaint on the same or amended terms as the Disciplining Body thinks fit;
 - (ii) direct that the Respondent make a verbal or written apology;
 - (iii) provide a written warning;
 - (iv) direct that the Respondent undertake appropriate training, education or counselling;
 - (v) direct that the Respondent do something, or refrain from doing something, to remedy the breach of this Code of Conduct & Discipline;
 - (vi) withdraw any awards, placings, records, achievements bestowed in any competition, activities or events held or sanctioned by the organisation;
 - (vii) demote or transfer the Respondent to another location, role or activity;
 - (viii) suspend the Respondent's membership or participation or engagement in a role or activity;
 - (ix) recommend that another organisation suspend the Respondent's membership, appointment or engagement;
 - (x) in the case of a coach, Athlete or official, direct that the relevant accrediting organisation de-register the accreditation of the coach or official for a period of time or permanently including but not limited to ASCTA or ASA membership;
 - (xi) termination or other disciplinary action in accordance with the Respondent's contract of employment and/or workplace laws; or
 - (xii) any other form of discipline that the Disciplining Body considers appropriate.
- (b) When imposing any form of discipline, it should be accompanied by a warning that a similar breach by that Respondent in the future may result in the imposition of a more serious form of discipline.

7.4 Organisational sanctions

- (a) If a finding is made that a Respondent who is an organisation has breached the Code of Conduct & Discipline, the Disciplining Body may take any one or more of the following measures:
- (i) a written warning;
 - (ii) a fine;

- (iii) a direction to set aside and remake a decision that is the subject of a Complaint under this Code of Conduct & Discipline, which may or may not be subject to guidelines;
 - (iv) a direction that the Respondent do something, or refrain from doing something, to remedy the breach of this Code of Conduct & Discipline;
 - (v) a recommendation that any rights, privileges and benefits provided to the Respondent by SA or another peak association be suspended for a specified period;
 - (vi) a recommendation that any funding granted or given to it by SA cease from a specified date;
 - (vii) a recommendation that SA ceases to sanction events held by or under the auspices of the Respondent;
 - (viii) a recommendation that the Respondent's membership of SA be suspended or terminated in accordance with the relevant constitution or rules; or
 - (ix) any other form of discipline that the Disciplining Body considers appropriate.
- (b) When imposing any form of discipline, it should be accompanied by a warning that a similar breach of this Code of Conduct & Discipline by the Respondent in the future may result in more serious form of discipline.

7.5 Disciplinary action against criminal convictions or findings of guilt

- (a) In circumstances where a Complaint is referred to Police and the Respondent receives a criminal conviction or finding of guilt for an offence, SA or the Involved Organisation reserves the right to impose any form of discipline it considers appropriate having regard to the Complaint, the circumstances of the criminal conviction or finding of guilt and the overall reputation, safety and wellbeing of Swimming.
- (b) If SA acts under 7.5(a), it may do so without acting in accordance with Steps 1 - 6 of the Complaint Procedure. Notwithstanding this, SA or the Involved Organisation may still undertake its own investigation into the Complaint if considered necessary (Step 4 of the Complaint Procedure) and provide the Respondent with the opportunity to submit written submissions in response to the Complaint (criminal conviction or finding of guilt) and any proposed disciplinary measures. In doing so, SA or the Involved Organisation must consider the Respondent's submissions before deciding to impose any disciplinary measures.
- (c) Any decision to impose disciplinary measures on a Respondent under this section 7.5 shall be taken to be a decision as if it was made under Step 6 of the Complaint Procedure and an appeal of such decision may be available in accordance with the Appeals Tribunal procedure outlined in section 6.13.

7.6 Disciplinary action against mischievous, vexatious or knowingly untrue Complaints

A Complaint which is found to be mischievous, vexatious or knowingly untrue will be considered a breach of this Policy and the Disciplining Body reserves the right to

impose disciplinary sanctions on the individual or organisation who made the Complaint in accordance with the sanctions outlined in section 7.3 or 7.4.

8. DEFINITIONS

These definitions apply throughout this Code of Conduct & Discipline and any tools, resources and templates referred to in the Code of Conduct & Discipline.

| Term | Definition |
|---|---|
| Appeals Panel | Appeals Panel means the panel created in accordance with section 6.13. |
| Appellant | Appellant means the person or organisation who initiates an appeal. |
| ASA | ASA means the Australian Swimmers Association. |
| ASCTA | ASCTA means the Australian Swimming Coaches and Teachers Association. |
| Athlete | Athlete means a swimmer - whether recreational or competitive - and who is an individual Member of a Club or Member Association, and therefore a Member of SA. |
| Annexure | Annexure means an annexure to this Code of Conduct & Discipline Policy. |
| CEO | CEO means the chief executive officer of SA, a Member Association or a Club, and includes the executive officer, general manager or other similar title. If the Member Association or Club has no executive officer (for example, for small Clubs or Districts) the CEO means the President of the organisation. If the CEO is unable to perform his or her role for the purposes of this policy, the President may appoint another senior person to do so. |
| Chairperson | Chairperson means the chairperson of a Hearing Tribunal or Appeal Panel appointed in accordance with this Code of Conduct & Discipline. |
| Child or Young Person / Children or Young People | A Child or Young Person is a person under the age of 18 years and Children and Young People mean more than one Child or Young Person. |
| Club(s) | Clubs means swimming clubs within Australia that are affiliated or registered with a Member Association. Clubs must agree to adhere to this Code of Conduct & Discipline. |
| Complainant | A Complainant is a person making a Complaint. |
| Complaint | Complaint means a complaint made to a Person in a Position of Authority under this Code of Conduct & Discipline. |
| Complaint Procedure | The procedure and steps for dealing with complaints in relation to this Code of Conduct & Discipline set out in section 6.8. |
| Complaint Recording Template | The complaint recording template as set out at Annexure A which should be used when reporting a Complaint. |
| Delegated Organisation | Delegated Organisation means an organisation delegated by SA to handle a Complaint, such as a Member Association. |

| Term | Definition |
|---|--|
| Disciplining Body | The Disciplining Body has the meaning given to it in section 7.1 of this Code of Conduct & Discipline. |
| Hearing Tribunal | Hearing Tribunal means the panel created in accordance with section 6.12. |
| Independent Investigation | Independent Investigation means an investigation conducted in accordance with section 6.11. |
| Investigation Officer | Investigation Officer refers to a Person in a Position of Authority that has been appointed by a Club, Member Association or SA to conduct internal investigation into a Complaint. |
| Investigator | Investigator means the person appointed by an Involved Organisation to conduct an Independent Investigation in accordance Step 5 of the Complaints Procedure. |
| Involved Organisation | Involved Organisation means the relevant organisation to receive a Complaint and may be SA, a Club, Member Association or affiliate. |
| Mediator | Mediator means a person appointed to mediate a Complaint made under this Code of Conduct & Discipline, preferably with relevant skills, qualifications or training in mediation. |
| Member | A Member is generally an individual who is registered as a financial (paid up) member of a Club. A Member can also include (but is not limited to) those classes of members used by Clubs such as “honorary member” and “life member” (or similar categories). |
| Member Associations | Member Associations are the Australian State and Territory Swimming Associations, the Australian Swimming Coaches and Teachers Association and the Australian Swimmers Association. For those States and Territories that have Regional or District Associations, Member Associations include Regional or District Associations. Member Associations have agreed to follow and adhere to the Swimming Bodies Code of Conduct & Discipline in its entirety. |
| Code of Conduct & Discipline Policy | Code of Conduct & Discipline Policy means this Code of Conduct & Discipline Policy and Annexures as amended from time to time. |
| National Sports Tribunal | The National Sports Tribunal established under the National Sports Tribunal Act 2019 (Cth). |
| Natural Justice (or procedural fairness) | <p>Natural Justice (or procedural fairness) is the principle that, when resolving a complaint:</p> <ul style="list-style-type: none"> • both the Complainant and the Respondent must know the full details of what is being said; • both the Complainant and the Respondent must be given full opportunity to respond to the allegations and raise any matters in support of their position; • all parties need to be heard and all relevant submissions considered; • irrelevant matters should not be taken into account; • no person may judge their own case; |

| Term | Definition |
|--|--|
| | <ul style="list-style-type: none"> the decision maker(s) must be unbiased, fair and just; and the penalties imposed must not outweigh the breach of this Code of Conduct & Discipline or offending behaviour. |
| Panel Member | Panel Member refers to either a Hearing Tribunal Panel or Appeals Panel member under this Code of Conduct & Discipline. |
| Participant | A Participant includes anyone who participates in a Swimming Body or Club service, event, activity or program, (whether for payment or otherwise) including people who may not be a Member. |
| Person in a Position of Authority | A Person in a Position of Authority includes everyone who holds a position of authority in Swimming, whether paid or unpaid, and includes, but is not limited to, all Swimming Bodies and Club staff, coaches, officials and volunteers. For the avoidance of doubt, a Person in a Position of Authority also includes Children or Young People who may hold a position of authority in Swimming over other Children or Young People. |
| Provisional Action | Provisional Action is action that may be taken by SA or its Delegated Organisation in relation to a Complaint. Provisional Action is action taken against a Respondent where the alleged incident is serious enough to warrant such action being taken until the outcome(s) of the internal investigation, mediation, Independent Investigation or Hearing Tribunal (including an Appeal) is known. Provisional action may include, but is not limited to, suspension, restriction of duties or temporary re-deployment. |
| Regional or District Association | A Regional or District Association includes a governing body that is given powers at a local level for the advancement of Swimming in certain States or Territories. These Associations are required to comply with all applicable provisions of this Code of Conduct & Discipline. |
| Respondent | Respondent means the person or organisation responding to the complaint up to the conclusion of a Hearing Tribunal. From the commencement of an Appeals Tribunal process, the Respondent means the person responding to the Appeal that has been initiated. |
| SA | SA means Swimming Australia Ltd ACN 109 333 628 which is the national governing body for swimming in Australia. |
| Senior Person | The President, CEO, Secretary or designated delegate of SA, a Member Association or Club, as applicable. |
| Social Networking | Social networking refers to any interactive website or technology that enables people to communicate and/or share content via the internet. For example, social networking websites such as Facebook and Twitter. |
| Swimming | The sport of swimming in Australia, whether recreational or competitive. |
| Swimming Bodies | Swimming Bodies refers to SA and its Member Associations (collectively). |

ANNEXURE A

Complaint Recording Template under the Code of Conduct & Disciplinary Policy

| | | | |
|---|---|--|-----|
| Complainant Name: | | | |
| Age: | | Date Formal Complaint Received: | / / |
| SA/ASCTA Accreditation or Membership Details | | | |
| Swim Club: | | | |
| Role/Status (in sport) | <input type="checkbox"/> Administrator (volunteer) <input type="checkbox"/> Athlete <input type="checkbox"/> Coach/Assistant Coach <input type="checkbox"/> Employee <input type="checkbox"/> Other | <input type="checkbox"/> Parent <input type="checkbox"/> Spectator <input type="checkbox"/> Support Personnel <input type="checkbox"/> Official | |

Description of Alleged Issue (include particulars of date, who was involved/witnessed, what happened, where it happened, etc)

Nature of Complaint

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| Outcome the complainant is seeking |
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| Support person (if any) and contact details |
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| Formal resolution procedures followed (outline) |
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| If investigated: Finding |
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If went to Hearing Tribunal: Decision, Action Recommended

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**If mediated: Date of Mediation | Were both parties present | Terms of Agreement
Any other action taken**

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If went to Appeal Panel: Decision | Action Recommended

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| Completed by: | Name: | |
| | Position in Organisation: | |
| | Signature: | Date: |

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| Signed by: | Complainant: | |
|-------------------|---------------------|--|

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| | Respondent | |
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This record and any notes must be kept in a confidential place and resolution of the Complaint notified to your relevant Member Association and Swimming Australia. This record must be kept for a minimum of 7 years.

