



## **SWIMMING AUSTRALIA MEMBER WELFARE POLICY**

### **GENERAL INFORMATION AND PROCEDURES**

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# **1. COMPLAINTS HANDLING PROCEDURES**

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The following Complaints Procedures are to be used in order to ensure the principles of Natural Justice are followed in all aspects of handling or conducting Complaints, allegations, investigations, tribunals and disciplinary measures.

All complaints will be dealt with in a fair, timely and transparent manner. All complaints will be treated seriously.

Individuals will be provided with an informal and formal process to resolve the matter, along with access to an external complaint handling body, based on their preferences and the nature of the complaint.

There will also be an appeals process for those matters where it is required.

As far as possible confidentiality will be maintained and we will ensure that no one is victimised for making, supporting or providing information about a complaint.

SAL, Member Associations and Affiliates should follow and implement the following Complaints Procedures:

- 1.1 Complaints Procedure
- 1.2 Mediation Procedure
- 1.3 Investigation Procedure
- 1.4 Hearing and Appeals Tribunal Procedure
- 1.5 Disciplinary Measures

## 1.1 COMPLAINTS PROCEDURE

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A Complaint can be about an act, behaviour, omission, situation or decision that someone believes is a breach of this Policy. Complaints will always vary. They may:

- (a) be about individual or group behaviour;
- (b) be extremely serious or relatively minor; and
- (c) be about a single incident or a series of incidents.

The person about whom the allegation is made may admit to the allegations or emphatically deny them.

Given all of the variables that can arise, this Complaints Procedure provides a step-by-step process that people may use at any stage. Organisations and individuals to which this Policy applies may also pursue their Complaint externally under anti-discrimination, child-protection or other relevant legislation but such action does not affect the application of the Complaints Procedures.

All Complaints will be kept confidential and will not be disclosed to another person without the Complainant's consent except if law requires disclosure or if disclosure is necessary to effectively deal with the Complaint.

### INFORMAL APPROACHES

#### **Step 1: Talk with the other person (if safe, reasonable and appropriate)**

As a first step, if the Complainant feels able to do so, they should try to sort out the problem with the person or people involved.

#### **Step 2: Contact a Member Protection Officer (or similar)**

If:

- the first step is not possible or reasonable;
- the Complainant is not sure how to handle the problem by themselves;
- the Complainant just wishes to talk confidentially about the problem with someone and get further information about what they can do; or
- the problem continues after the Complainant tried to approach the person or people involved,

then the Complainant should talk, in the first instance with an MPIO. A list of MPIO's will be available through the Complainant's club or state swimming association.

The MPIO role is to:

- take notes about the Complaint (which will be kept in a secure and confidential place);
- try to sort out the facts of the problem;
- ask what outcome or how the Complainant wants the problem resolved and if they need support;
- provide possible options to resolve the problem;

- explain how the Complaints Procedure works;
- act as a support person if the Complainant so wishes;
- refer the complainant to an appropriate person to help resolve the problem;
- inform the relevant Government authorities, including the police, if required by law to do so; and
- maintain strict confidentiality except if law requires disclosure or if disclosure is necessary to effectively deal with the Complaint.

For Complaints relating to child abuse, fraud or criminal behaviour, the MPIO is under a positive obligation to forward details of the Complaint to the CEO of the Involved Organisation and where required by law to advise the Police.

### **Step 3: Outcomes from the Initial Contact**

After talking with the MPIO the Complainant may decide:

- there is no problem;
- the problem is minor and the Complainant does not wish to take the matter forward;
- to try and work out a personal resolution (with or without a support person such as a MPIO);
- to seek an informal mediated resolution with the help of a third person (such as a mediator or a Manager); or
- to resolve the matter through a formal process.

If the Complainant wishes to remain anonymous, the Involved Organisation cannot assist to resolve the Complaint. The Involved Organisation must follow the principles of Natural Justice and be fair to both sides. This means that the Involved Organisation or the Complainant may be required to provide the person or people complained about with full details of the Complaint so they have a fair chance to respond to all the allegations.

## **FORMAL APPROACHES**

### **Step 4: Making a Formal Complaint**

If the Complaint is not resolved to the Complainant's satisfaction, they may:

- make a formal Complaint in writing to the CEO of the Involved Organisation; or
- approach the relevant external agency for advice (such as an anti-discrimination or equal opportunity commission).

If the Complaint is against a CEO, then the Complaint should be lodged with the President or Chairman of the Involved Organisation, who should follow the Complaints Procedure.

### **Step 5: Hearing Officer Process**

If the Complainant decides to make a formal Complaint in writing under Step 4, the CEO of the Involved Organisation should, on receiving the formal Complaint and based on the material provided, decide whether:

- he or she is the most appropriate person to receive and handle the Complaint;

- the nature and seriousness of the Complaint warrants a formal resolution procedure in accordance with the Complaints Procedure (for example, some Complaints may be of a minor or purely personal nature with no connection to the activities of the organisation);
- to appoint a person “the investigator” (an independent person) to investigate the Complaint;
- to refer the Complaint to an informal or formal mediation session;
- to refer the Complaint to a Hearing Tribunal;
- to refer the matter to the Police or other appropriate authority; or
- to implement any interim administrative or other arrangements that should apply until the processes set out in this Complaints Procedure are completed.

In making the decision outlined above, the CEO of the Involved Organisation should take into account:

- whether he or she has had any personal involvement in the circumstances giving rise to the Complaint and, if so, whether he or she has a conflict of interest or his or her ability to impartially manage the Complaint is compromised or may appear to be compromised;
- whether, due to the nature of the Complaint, specific expertise or experience may be required to manage the Complaint;
- the wishes of the Complainant, and the wishes of the Respondent, regarding the manner in which the Complaint should be handled;
- whether, due to the nature of the Complaint, the relationship between the Complainant and the Respondent and any other relevant factors, the Complaint should be referred (or should not be referred) to informal or formal mediation or to a Hearing Tribunal. Relevant factors may include an actual or perceived power imbalance, the nature of any ongoing working relationship between the Complainant and the Respondent, and the personal attributes of the Complainant and the Respondent (for example, if one party does not speak English fluently, some of the possible Complaints resolution mechanisms may not be appropriate);
- the nature and sensitivity of any information or other material that must be provided by the Complainant, the Respondent, and any of the other people involved in the Complaint;
- whether the facts of the Complaint are in dispute; and
- the urgency of the Complaint, including the likelihood and the consequences (if the Complaint is ultimately proven) that the Complainant may be subject to further unacceptable behaviour while the processes set out in this Complaints Procedure are being conducted.

If the CEO of the Involved Organisation is the appropriate person to handle the Complaint he or she should, to the extent that these steps are necessary:

- obtain full information from the Complainant about the Complaint and how the Complainant wants it resolved (if this information has not already been obtained through earlier steps);
- put the information received from the Complainant to the Respondent and ask the Respondent to provide their side of the story;

- decide whether they have enough information to determine, on the balance of probabilities, whether the matter alleged did or did not happen; or
- determine what, if any, further action to take. This action may include disciplinary action in accordance with the Involved Organisation's Constitution and by-laws, appointing a person to investigate the Complaint, referring the Complaint to a mediation session or a Hearing Tribunal or referring the Complaint to the police or other appropriate authority.

### **Step 6: Resolution Process**

If:

- a person is appointed to investigate the Complaint under **Step 5**, the Investigator should conduct the Investigation and provide a written report to the CEO of the Involved Organisation who may refer it to a Hearing Tribunal, to determine what, if any, further action to take. The CEO may direct the Investigator to make further enquiries and obtain additional information, may take disciplinary action in accordance with section 1.5 or may refer the Complaint to a mediation session, a Hearing Tribunal or the police or other appropriate authority;
- the Complaint is referred to a mediation session under **Step 5**, the mediation session should be conducted in accordance with section 1.2 or as otherwise agreed by the Complainant and the Respondent;
- the Complaint is referred to a Hearing Tribunal under **Step 5**, the hearing will be conducted in accordance with section 1.4 ; and
- the Complaint is referred to the police or other appropriate authority under **Step 5**, the Involved Organisation should provide reasonable assistance lawfully required by the police or other appropriate authority.

### **Step 7: Reconsideration of the Initial Outcome, Investigation or Appeal**

If, under **Step 6**, an informal or formal mediation session is conducted, and the parties cannot reach a mutually acceptable mediated solution to the Complaint, the Complainant may request that the CEO reconsider the Complaint in accordance with **Step 5**. This must be done within 14 days of the initial decision.

The complainant may be entitled to appeal to an Appeals Tribunal / Involved Organisation Board (at State Level) where:

- under **Step 5**, a decision was made by the CEO:
  - not to take any action; or
  - to take disciplinary action; or
- under **Step 6**, a decision was made by the CEO or a Hearing Tribunal:
  - not to take any action; or
  - to take disciplinary action.

The grounds for appeal and the process for appeals under this Policy are set out in section 1.4.

If the internal complaints processes set out in this Policy do not achieve a satisfactory resolution or outcome, where it would be impossible to get an impartial resolution within the

Involved Organisation, the Complainant may choose to approach an external agency such as an equal opportunity commission to assist with a resolution.

### **Step 8: Documenting the Resolution**

The CEO (or nominated officer) should document the Complaint, the process followed and the outcome. This document should be stored in a confidential and secure place. If the Complaint was dealt with at a State level, the information should be stored by the State Swimming Association. If the matter is of a serious nature, or if the matter was escalated to or dealt with at the national level, the original document should be stored by the national office with a copy retained by the state office.

### **External procedure**

There may be a range of external options available to the Complainant depending on the nature of the Complaint. Where the Complainant feels that they have been Harassed or Discriminated against, they can seek advice from their State or Territory equal opportunity commission without being obliged to make a formal Complaint.



## 1.2 MEDIATION

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Mediation is a process that allows the people involved in a complaint to talk through the issues with an impartial person – the mediator – and work out a mutually agreeable solution.

The mediator does not decide who is right or wrong and does not tell either side what they must do. Instead, he or she helps those involved to talk through the issues and makes sure that the process is as fair as possible for all concerned.

This section outlines the general procedure of mediation:

1. Mediation may occur either before or after an investigation of the Complaint under **Step 6** of the complaints procedure.
2. Mediation may only be recommended if:
  - both parties have had their chance to tell their version of events to the MPIO;
  - the MPIO does not believe that any of the allegations warrant any form of disciplinary action. Serious allegations should not be mediated, even if both parties would like to attempt mediation; and
  - mediation looks like it may work.
3. We recognise that there are some situations where mediation will not be appropriate, including:
  - when the people involved have completely different versions of the incident
  - when one or both parties are unwilling to attempt mediation
  - when the issues raised are sensitive in nature
  - when there is a real or perceived power imbalance between the people involved
  - matters that involve serious, proven allegations.
4. The MPIO or CEO should, in consultation with the Complainant and the Respondent(s), appoint a Mediator to help resolve the Complaint. The MPIO's or CEO's choice of Mediator will be final.
5. The mediator will talk with the complainant and respondent(s) about how the mediation will take place and who will participate. At a minimum, the mediator will prepare an agenda of issues to be discussed.
6. All issues raised during mediation will be treated confidentially. We also respect the rights of the complainant and the respondent(s) to pursue an alternative process if the complaint is not resolved.
7. For the avoidance of doubt, neither party is entitled to be represented by a legal practitioner at the mediation.
8. At the end of a successful mediation the mediator will prepare a document that sets out the agreement reached between the Complainant and Respondent(s) and they should sign it as their agreement. We expect the parties involved to respect the terms of the agreement.
9. If the formal Complaint is not resolved by mediation, the Complainant may:
  - write to the CEO to request reconsideration of the Complaint in accordance with **Step 5** of the Complaints Procedure; or
  - approach an external agency such as an anti-discrimination commission or equal opportunity commission to resolve the matter.

### 1.3 INVESTIGATION PROCESS

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There will be times when a complaint will need to be investigated and evidence gathered. An investigation helps determine the facts relating to the incident, as well as possible findings and recommendations. Any investigation that we conduct will be fair to all people involved.

If an investigation is to be conducted it is strongly recommended that the following steps be followed:

1. A written brief should be provided to the Investigator to ensure the terms of engagement and scope of the Investigator's role and responsibilities are clear.
2. The Complainant should be interviewed and the Complaint documented in writing.
3. The details of the Complaint will be conveyed to the person/people complained about (Respondent(s)) in full. The Respondent(s) should be given sufficient information to enable them to properly respond to the Complaint.
4. The Respondent(s) should be interviewed and given the opportunity to respond. The Respondent(s) response to the Complaint should be documented in writing.
5. If there is a dispute over the facts, then statements from witnesses and other relevant evidence should be obtained to assist in a determination.
6. The Investigator should make a finding, on the balance of probabilities, as to whether the Complaint is:
  - Substantiated (there is sufficient evidence to support the Complaint);
  - Inconclusive (there is insufficient evidence either way);
  - Unsubstantiated (there is sufficient evidence to show that the Complaint is unfounded or not enough evidence to substantiate the Complaint); or
  - Mischievous, vexatious or knowingly untrue.
7. A report documenting the Complaint, the investigation process, evidence, finding and, if requested, recommendations, should be given to the CEO (or nominated officer) who may refer it to a Hearing Tribunal to determine what, if any, further action to take.
8. A report documenting the Complaint and summarising the investigation process and key points that were found to be substantiated, inconclusive, unsubstantiated or mischievous should be provided to the Complainant and the Respondent(s).
9. Both the Complainant and the Respondent(s) are entitled to support throughout this process from their chosen support person/adviser (e.g. MPIO or other person).
10. The Complainant and the Respondent(s) may have the right to appeal against any decision based on the investigation.

Information on the appeals process can be found at section 1.4.

More detailed information on conducting internal investigations can be found at:

[www.ausport.gov.au/supporting/ethics/resources/info\\_sheets](http://www.ausport.gov.au/supporting/ethics/resources/info_sheets)

## **1.4 HEARING TRIBUNAL PROCEDURE AND APPEALS PROCEDURE**

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The following Hearing Tribunal Procedure should be followed by hearing tribunals established by Involved Organisations to deal with Complaints pursuant to this Policy in accordance with the principles of natural justice.

### **Preparing for a Hearing Tribunal**

1. A Hearing Tribunal panel should be constituted as set out below. For all complaints that allege criminal behaviour a Hearing Tribunal may be constituted at a State level.
2. The CEO of the Involved Organisation, should organise for a Hearing Tribunal to be convened to hear a Complaint by notifying Panel Members that they are required 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 Complaints.
3. 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.
4. The number of Panel Members required to be present throughout the Hearing Tribunal Process should be three.
5. The Hearing Tribunal will not include any person who has any actual or perceived conflict of interest, preconceived opinions, vested interests or personal involvement relating to the Complaint.
6. The Hearing Tribunal should comprise at least one person who has knowledge, and preferably experience, of any relevant laws relating to the Complaint (e.g. anti-discrimination).
7. One of the Panel Members shall be appointed Chairperson by the CEO of the Involved Organisation.

If for any reason three Panel Members are not maintained, the discontinuing member may be replaced if it is considered appropriate by the Chairperson. 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 Chairperson believes it is not appropriate for a new Panel Member to be appointed then the Tribunal should be rescheduled to a later date. The Chairperson should 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, with a new Panel, to be reconvened.

8. The CEO should inform the Respondent by written notification that a Hearing Tribunal will take place. The written notification should outline:
  - that the Respondent has a right to appear at the Hearing Tribunal to defend the Complaint/allegation;
  - 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);
  - the date, time and venue of the Hearing Tribunal;
  - that the Respondent can make either verbal or written submissions to the Hearing Tribunal;

- 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);
- an outline of any possible penalties that may be imposed if the Complaint is found to be true;
- that legal representation will not be allowed; and
- that if the Respondent is considered a Child, they should have a parent or guardian present.

A copy of any information / documents that have been given to the Hearing Tribunal should also be provided to the Respondent subject to the approval of such action by the Chair of the Hearing Tribunal.

9. The Respondent may be allowed to participate in all swimming activities and events, pending the decision of the Hearing Tribunal, including any Appeal Process, unless the CEO of the Involved Organisation believes it is warranted to exclude the Respondent from all or some activities and events, after considering the nature of the Complaint.

Where the CEO decides to take such exclusory action, such action will not be taken as an indication that a breach has been found to occur but will be simply based on the precautionary principle or for the benefit of all parties.

10. The CEO will inform the Complainant by written notification that a Hearing Tribunal will take place. The written notification will outline:

- that the Complainant has a right to appear at the Hearing Tribunal to support their Complaint;
- details of the Complaint, including any relevant policies, rules or regulations (if there is more than one Complaint these should be set out separately);
- the date, time and venue of the Hearing Tribunal;
- that the Complainant can make either verbal or written submissions to the Hearing Tribunal;
- 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);
- that legal representation will not be allowed; and
- that if the Complainant is considered a Child, they should have a parent or guardian present.

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 Chair of the Hearing Tribunal.

11. 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 Procedure

12. The following people should be allowed to attend the Hearing Tribunal:
  - The Panel Members;
  - The Respondent;
  - The Complainant;
  - Any witnesses called by the Respondent;
  - Any witnesses called by the Complainant;
  - Any parent or guardian or support person, excluding a legal representative, required to support the Respondent; and
  - Any parent or guardian or support person, excluding a legal representative, required to support the Complainant.
13. The Chairperson should call the hearing to order at the designated time and determine if the Respondent is present.
14. 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 Tribunal 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.
15. 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.
16. 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.
17. If the Respondent agrees with the Complaint, 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.
18. If the Respondent disagrees with the Complaint, the Complainant should be asked to describe the circumstances that led to the Complaint being made. The Complainant may:
  - Refer to brief notes; and
  - Call witnesses.

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.
19. The Respondent should then be asked to respond to the Complaint. The Respondent may:
  - Refer to brief notes; and

- Call witnesses.

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.

- 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.
- The Hearing Tribunal may:
  - Consider any evidence, and in any form, that it deems relevant;
  - Question any person giving evidence; and
  - Limit the number of witnesses presented to those who provide new evidence.
- 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.
- If the Hearing Tribunal considers that at any time during the Hearing Tribunal that there is any unreasonable or intimidatory behaviour from anyone, the Chairperson has the power to deny any further involvement of the person in the Hearing Tribunal.
- After all of the evidence has been presented the Hearing Tribunal will make its decision in private. If the Hearing Tribunal believes the Complaint has been substantiated on the balance of probabilities (i.e. more probable than not), 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. Any disciplinary measure imposed must be reasonable in the circumstances.
- All decisions made by the Hearing Tribunal will be based on a majority vote.
- The Chairperson should announce the decision in the presence of all those involved in the Tribunal Hearing and should then declare the Tribunal Hearing closed.
- Within 48 hours, the Chairperson should:
  - Forward to the CEO of the Involved Organisation a copy of the Hearing Tribunal decision including any disciplinary measures imposed; and
  - Forward a letter to the Respondent reconfirming the Hearing Tribunal's decision and any disciplinary measures imposed. The letter should also outline the process and grounds for an appeal to be made.
- The Hearing Tribunal does not need to provide written reasons for its decision.

### **Appeals Procedure**

- A Complainant or a Respondent who is not satisfied with a decision described in **Step 7** of the Complaints Procedures may lodge one appeal on one or more of the following grounds:
  - That a denial of Natural Justice has occurred;

- Any new evidence which would make the original decision unjust or unsafe; or
  - That the disciplinary measures imposed is unjust or unreasonable.
30. A person wanting to appeal in accordance with clause 29 must lodge a letter stating their intention and the basis for their appeal with the CEO of the Involved Organisation within 21 days of the relevant decision.

If the letter of appeal is not received by the CEO of the Involved Organisation within the relevant time period the right of appeal will lapse.

31. Upon receipt of the letter of appeal, the CEO of the Involved Organisation must then refer the appeal as follows:

Complaint involves an accredited coach (member of ASCTA)

- If the appeal was lodged at Club Level, the CEO of the Involved Club must refer the appeal to the CEO of the relevant District (if applicable) or the CEO of ASCTA, who will convene an Appeal Tribunal to hear the appeal;
- If the appeal was lodged at the District/State level, the CEO of the Involved District must refer the appeal to the CEO of ASCTA, who will convene an Appeal Tribunal to hear the appeal;
- If the appeal was lodged to ASTCA, the CEO must refer the appeal to the CEO of SAL who will convene an Appeal Tribunal to hear the appeal.

Complaint did not involve an accredited coach (member of ASCTA)

- If the appeal was lodged at the Club level, the CEO of the Involved Club must refer the appeal to the CEO of the relevant District (if applicable) or State Swimming Association, who will convene an Appeal Tribunal to hear the appeal;
- If the appeal was lodged at the District level, the CEO of the Involved District must refer the appeal to the CEO of the relevant State Swimming Association, who will convene an Appeal Tribunal to hear the appeal;
- If the appeal was lodged at the State Swimming Association level, the CEO of the State Swimming Association must refer the appeal to the CEO of SAL, who will convene an Appeal Tribunal to hear the appeal; and
- If the appeal was lodged at the national level, the CEO of SAL who will convene an Appeal Tribunal to hear the appeal.

In all cases, if the appeal relates to a criminal matter the CEO of the Involved Organisation must refer the appeal to the CEO of SAL who will convene an Appeal Tribunal to hear the appeal.

32. If the Appeal Tribunal considers that the stated grounds of appeal do not raise a ground set out in clause 29, then the Appeal Tribunal may dismiss the appeal and the person will be notified of this decision and the reasons for this decision.
33. The CEO of the Relevant Organisation shall follow the Tribunal Formation and Notification procedures outlined above in setting up any Appeal Tribunal.
34. If the Appeal Tribunal considers a ground appeal made out, it may set aside the decision of the Hearing Tribunal and review the matter from the beginning.

35. The same procedure shall be followed by Appeal Tribunal as applies for the Hearing Tribunal procedure provided that no member of the Appeal Tribunal shall also have been on the Hearing Tribunal from which the decision is being appealed.
36. The decision of the Appeal Tribunal will be final.



## 1.5 DISCIPLINARY MEASURES

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Any disciplinary measure imposed by the CEO, President or Hearing Tribunal under this Policy must:

- Observe any contractual and employment rules and requirements;
- Conform to the principles of Natural Justice;
- Be based on the evidence and information presented and the seriousness of the breach;
- Be within the powers of the CEO of the Involved Organisation or Hearing Tribunal to impose the disciplinary measure; and
- Must be reasonable in all circumstances.

### Individual

Subject to contractual and employment requirements, if a finding is made that an individual has breached the Policy (including the SAL Codes of Conduct), one or more of the following forms of discipline may be imposed by the Involved Organisation subject to their Constitution and By-laws after considering the recommendation of the Hearing Tribunal (or where there is an appeal, by the Appeal Tribunal):

1. A direction that the individual make a verbal or written apology;
2. A written warning;
3. A direction that the individual attend counselling to address their behaviour;
4. A direction that the individual do something, or refrain from doing something, to remedy the breach of this Policy;
5. A withdrawal of any awards, placings, records, achievements bestowed in any competition, activities or events held or sanctioned by the Involved Organisation;
6. A demotion or transfer of the individual to another location, role or activity;
7. A suspension of the individual's membership or participation or engagement in a role or activity;
8. Suspension of the individual's membership, appointment or engagement pending formal Police investigation;
9. Recommend that the Involved Organisation suspend the individual's membership, appointment or engagement pending formal Police investigation;
10. Termination of the individual's membership, appointment or engagement;
11. Recommend that the Involved Organisation terminate the individual's membership, appointment or engagement;
12. In the case of a coach or official, a direction that the relevant organisation de-register the accreditation of the coach or official for a period of time or permanently;
13. A monetary fine; or
14. Any other form of discipline that the Involved Organisation considers appropriate.

When imposing any form of discipline, it will be accompanied by a warning that a similar breach of the Policy by that individual in the future may result in the imposition of a more serious form of discipline.

### Organisations

Subject to the relevant Constitution and By-laws if a finding is made that a SAL Affiliate, Member Association or an Affiliate of that member Association has breached this Policy (including the SAL Codes of Conduct), one or more of the following forms of discipline may be imposed by the Hearing Tribunal or where there is an appeal, by the Appeal Tribunal:

1. A written warning;

2. A monetary fine;
3. A direction to set aside and remake a decision that is the subject of a Complaint under this Policy;
4. A direction that the organisation do something, or refrain from doing something, to remedy the breach of this Policy;
5. A recommendation that any rights, privileges and benefits provided to that organisation by the national body or other peak association be suspended for a specified period;
6. A recommendation that any funding granted or given to it by SAL cease from a specified date;
7. A recommendation that SAL ceases to sanction events held by or under the auspices of that organisation;
8. A recommendation that the Involved Organisation's membership of SAL be suspended or terminated in accordance with the relevant constitution or rules; or
9. Any other form of discipline that SAL directs to be appropriate under this Policy.

When imposing any form of discipline, it should be accompanied by a warning that a similar breach of this Policy by the organisation in the future may result in more serious form of discipline.

### **Factors to consider when imposing discipline**

The form of discipline to be imposed on an individual or organisation should depend on factors such as:

- Nature and seriousness of the breach;
- In a case where action is taken concurrently with or in lieu of a resolution of a formal Complaint, the wishes of the Complainant;
- If the individual concerned knew or should have known that the behaviour was a breach of the Policy;
- Level of contrition;
- The effect of the proposed disciplinary measures on the individual / organisation including any personal, professional or financial consequences;
- If there have been relevant prior warnings or disciplinary action;
- The ability to enforce the disciplinary measures (eg: if the individual is a parent or spectator that is bound by the Policy); or
- If there are any mitigating circumstances.

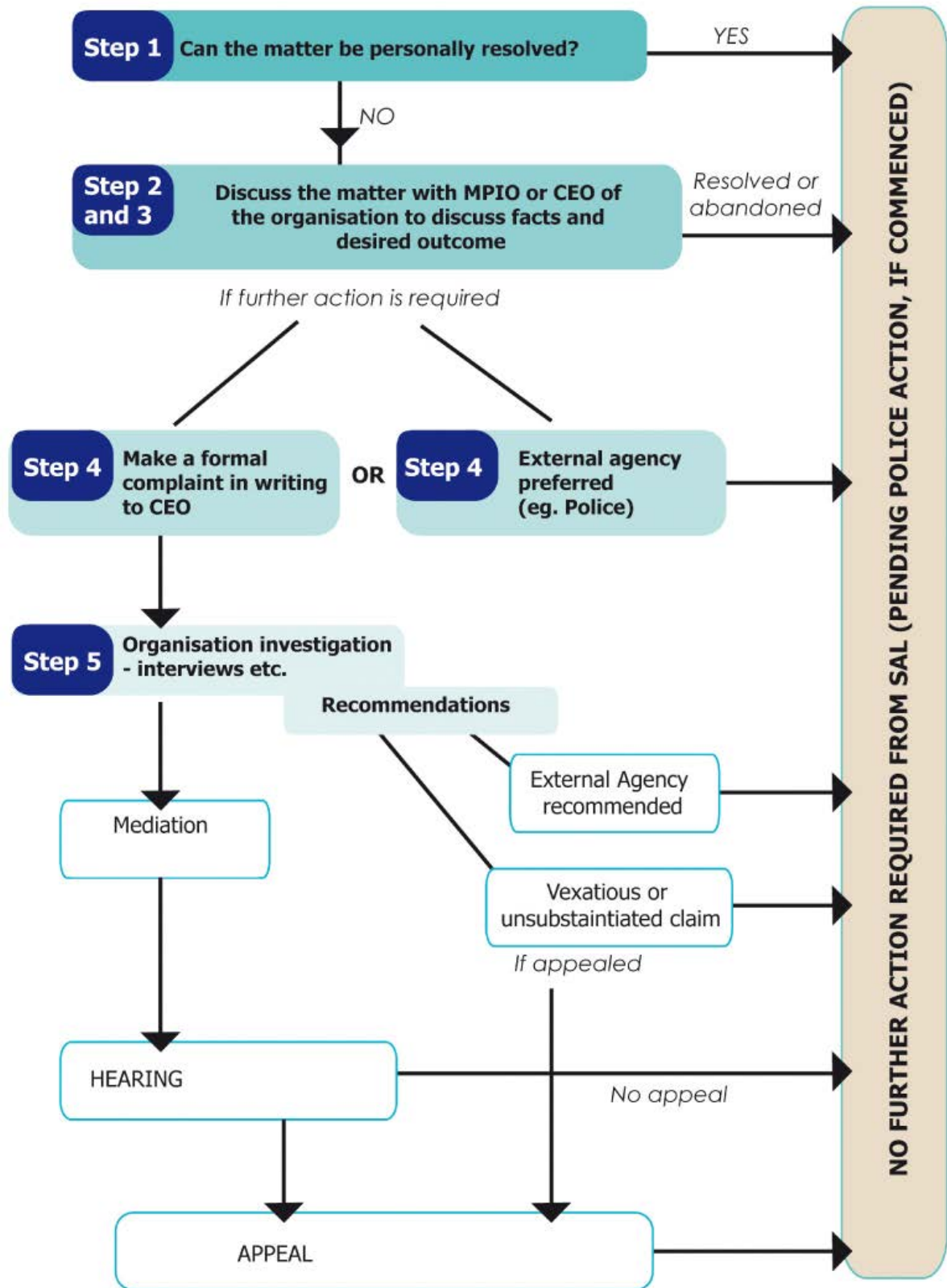
## 2.6 KEY CONTACTS

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Swimming Australia Limited	Chief Executive Officer General Manager, Community Sport and Stakeholder Relations	(02) 6219 5600 (02) 6219 5645
Swimming Queensland	Chief Executive Officer	(07) 3390 2011
Swimming New South Wales	Chief Executive Officer	(02) 9763 5833
Swimming Victoria	Chief Executive Officer	(03) 9686 5222
Swimming Tasmania	Chief Executive Officer	(03) 6222 6557
Swimming SA	Chief Executive Officer	(08) 7123 0848
Swimming WA	Chief Executive Officer	(08) 9328 4599
Swimming NT	Chief Executive Officer	(08) 8945 3578
Australian Swimming Coaches and Teachers Association	Chief Executive Officer	(07) 3376 0944
Australian Sports Commission	General Enquiries	(02) 6214 11111
Australian Human Rights and Equal Opportunity Commission		(02) 9284 9600
SA Equal Opportunity Commission		(08) 8207 1977 Freecall: 1800 188 163
Queensland Anti Discrimination Commission		(07) 3239 6408
ACT Human Rights Commission		(02) 6207 0576
VIC Human Rights Equal Opportunity Commission		(03) 9281 7111
WA Commission for Equal Opportunity		(08) 9216 3900
NSW Anti Discrimination Board		(02) 9268 5544
NT Anti Discrimination Commission		(08) 8999 1444
Tasmanian Anti Discrimination Commission		(03) 6233 4841

**1.7 MEMBER WELFARE POLICY PROCESS FLOW CHART**

Potential breach of Policy *not* involving Child Abuse  
(refer to Child Welfare Policy for Child Abuse Procedure)



## 2. REPORTING DOCUMENTS/FORMS

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All the complaints we receive, both formal and informal, will be properly documented. This includes recording how the complaint was resolved and the outcome of the complaint.

To assist with consistency and accuracy in following the Complaints Procedure and reporting on the issues covered by Swimming Australia Limited's Member Welfare Policy, the following documents are to be used:

- 2.1 Confidential Record of Informal (Verbal) Complaint Form** – to be used by MPIOs or others who receive a Complaint or allegation
- 2.2 Notification of Complaint Form** - to be used by a Complainant when lodging a formal complaint
- 2.3 Confidential Record of Formal Complaint Form** – to be used when a formal Complaint is received by SAL or Member Associations
- 2.4 Record of Mediation Form** – to be used by those who conduct the mediation
- 2.5 Record of Tribunal Decision Form** – to be used by those who conduct the Hearing Tribunal

### **General principles to be followed when completing a report of a Complaint:**

- Treat all Complaints seriously.
- Deal with Complaints promptly, sensitively and confidentially.
- Maintain a calm attitude.
- Ask the Complainant if they will consent to you taking notes.
- Write the description of the Complaint or problem using the Complainant's own words (as much as is possible).
- Find out the nature of the relationship between the Complainant and the person complained about (for example, coach/competitor, team members, etc) and if there is any relevant history.
- Take a note of the facts and do not pre-judge the situation.
- Ask the Complainant whether they fear victimisation or other consequences.
- Find out what outcome the Complainant wants and if they need any support.
- Ask the Complainant how they want the Complaint to be dealt with under this Policy.
- Keep the Complaint confidential and do not disclose it to another person without the Complainant's consent except if disclosure is required by law (for example, a report to government authorities) or if disclosure is necessary to effectively deal with the Complaint.

**2.1 CONFIDENTIAL RECORD OF INFORMAL (VERBAL) COMPLAINT FORM**

MPIO Name		Date:     /     /
Complainant's Name and Age	..... <input type="checkbox"/> Over 18	<input type="checkbox"/> Under 18
Role/status in [sport]	<input type="checkbox"/> Administrator (volunteer) <input type="checkbox"/> Athlete <input type="checkbox"/> Coach/Assistant Coach <input type="checkbox"/> Employee (paid) <input type="checkbox"/> Official .....	<input type="checkbox"/> Parent <input type="checkbox"/> Spectator <input type="checkbox"/> Support Personnel <input type="checkbox"/> Other
Date and location/event of alleged issue		
Facts as stated by Complainant (Annex additional page/s if necessary)		
Nature of Complaint (category/basis/grounds)  Tick more than one box if necessary	<input type="checkbox"/> Harassment or <input type="checkbox"/> Sexual/sexist <input type="checkbox"/> Sexuality <input type="checkbox"/> Race <input type="checkbox"/> Religion <input type="checkbox"/> Pregnancy <input type="checkbox"/> Disability <input type="checkbox"/> Other .....	<input type="checkbox"/> Discrimination <input type="checkbox"/> Selection dispute <input type="checkbox"/> Personality clash <input type="checkbox"/> Bullying <input type="checkbox"/> Verbal abuse <input type="checkbox"/> Physical abuse <input type="checkbox"/> Victimisation
Feelings expressed by Complainant (completing this may help to separate emotional content from facts)		

What they want to happen to resolve the issue	
What they are going to do now	
What other information did they provide	
What information I provided them	

This record and any notes must be kept in a confidential place. If the issue becomes a formal Complaint, this record is to be sent to the CEO.

## 2.2 NOTIFICATION OF FORMAL COMPLAINT FORM

Complainant's Name and Age	..... <input type="checkbox"/> Over 18 <span style="float: right;"><input type="checkbox"/> Under 18</span>
Complainant's Contact Details	Phone: Email:
Role/status in Swimming	<input type="checkbox"/> Administrator (volunteer) <span style="float: right;"><input type="checkbox"/> Parent</span> <input type="checkbox"/> Athlete <span style="float: right;"><input type="checkbox"/> Spectator</span> <input type="checkbox"/> Coach/Assistant Coach <span style="float: right;"><input type="checkbox"/> Support Personnel</span> <input type="checkbox"/> Employee (paid) <span style="float: right;"><input type="checkbox"/> Official</span> <input type="checkbox"/> Other .....
Name and age of person complained about (respondent)	..... <input type="checkbox"/> Over 18 <span style="float: right;"><input type="checkbox"/> Under 18</span>
Respondent's role/status in swimming	<input type="checkbox"/> Administrator (volunteer) <span style="float: right;"><input type="checkbox"/> Parent</span> <input type="checkbox"/> Competitor <span style="float: right;"><input type="checkbox"/> Spectator</span> <input type="checkbox"/> Coach/Assistant Coach <span style="float: right;"><input type="checkbox"/> Support Personnel</span> <input type="checkbox"/> Employee (paid) <span style="float: right;"><input type="checkbox"/> Official</span> <input type="checkbox"/> Other .....
Date and location/event of alleged issue	
Description of alleged issue	
Nature of Complaint (basis/grounds/category)  Tick more than one box if necessary	<input type="checkbox"/> Harassment or <span style="float: right;"><input type="checkbox"/> Discrimination</span> <input type="checkbox"/> Sexual/sexist <span style="float: right;"><input type="checkbox"/> Selection dispute</span> <input type="checkbox"/> Sexuality <span style="float: right;"><input type="checkbox"/> Personality clash</span> <input type="checkbox"/> Race <span style="float: right;"><input type="checkbox"/> Bullying</span> <input type="checkbox"/> Religion <span style="float: right;"><input type="checkbox"/> Verbal abuse</span> <input type="checkbox"/> Pregnancy <span style="float: right;"><input type="checkbox"/> Physical abuse</span> <input type="checkbox"/> Disability <span style="float: right;"><input type="checkbox"/> Victimisation</span> <input type="checkbox"/> Other .....
Signed by:	Complainant:  Date:     /     /

This record and any notes will be kept in a confidential place. If the Complaint is of a serious nature, or is escalated to or dealt with at the national level, the original must be forwarded to SAL and a copy kept with the organisation where the Complaint was first made.



## 2.3 CONFIDENTIAL RECORD OF FORMAL COMPLAINT FORM

Complainant's Name and Age		Date Formal Complaint Received: / /
Complainant's Contact Details	Phone: Email:	
Role/status in Swimming	<input type="checkbox"/> Administrator (volunteer) <input type="checkbox"/> Parent <input type="checkbox"/> Athlete <input type="checkbox"/> Spectator <input type="checkbox"/> Coach/Assistant Coach <input type="checkbox"/> Support Personnel <input type="checkbox"/> Employee (paid) <input type="checkbox"/> Other <input type="checkbox"/> Official  .....	
Name and age of person complained about (respondent)	..... <input type="checkbox"/> Over 18 <input type="checkbox"/> Under 18	
Role/status in swimming	<input type="checkbox"/> Administrator (volunteer) <input type="checkbox"/> Parent <input type="checkbox"/> Competitor <input type="checkbox"/> Spectator <input type="checkbox"/> Coach/Assistant Coach <input type="checkbox"/> Support Personnel <input type="checkbox"/> Employee (paid) <input type="checkbox"/> Other <input type="checkbox"/> Official  .....	
Location/event of alleged issue		
Description of alleged issue		
Nature of Complaint (basis/grounds/category)  Tick more than one box if necessary	<input type="checkbox"/> Harassment or <input type="checkbox"/> Discrimination <input type="checkbox"/> Sexual/sexist <input type="checkbox"/> Selection dispute <input type="checkbox"/> Sexuality <input type="checkbox"/> Personality clash <input type="checkbox"/> Race <input type="checkbox"/> Bullying <input type="checkbox"/> Religion <input type="checkbox"/> Verbal abuse <input type="checkbox"/> Pregnancy <input type="checkbox"/> Physical abuse <input type="checkbox"/> Disability <input type="checkbox"/> Victimisation <input type="checkbox"/> Other .....	
Methods (if any) of attempted informal resolution		
Support person (if any)		

Formal resolution procedures followed (outline)	
If investigated: Finding -	
If went to Hearing Tribunal: Decision -  Action recommended -	
If mediated: Date of mediation - Were both parties present - Terms of Agreement -  Any other action taken -	
If went to appeals tribunal: Decision  Action recommended	
Resolution	<input type="checkbox"/> Less than 3 months to resolve <input type="checkbox"/> Between 3 – 8 months to resolve <input type="checkbox"/> More than 8 months to resolve
Completed by	Name: Position in organisation: Signature: <span style="float: right;">Date    /    /</span>
Signed by:	Complainant:  Respondent:

This record and any notes will be kept in a confidential place. If the Complaint is of a serious nature, or is escalated to or dealt with at the national level, the original must be forwarded to SAL and a copy kept with the organisation where the Complaint was first made.

## 2.4 RECORD OF MEDIATION FORM

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Persons present at mediation	
Date of mediation	
Venue of mediation	
Mediator	
Summary of mediation (minutes attached)	
Outcome of mediation	
Follow-up to occur (if required)	
Completed by: (signature)	
Signed by: Complainant (signature)  Respondent (signature)	

This record and any notes must be kept in a confidential. If requested, this record is to be sent to the CEO.

**2.5 RECORD OF TRIBUNAL DECISION FORM**

Complainant's Name and Age		Date Formal Complaint Received: / /
Role/status in swimming	<input type="checkbox"/> Administrator (volunteer) <input type="checkbox"/> Competitor <input type="checkbox"/> Coach/Assistant Coach <input type="checkbox"/> Employee (paid) <input type="checkbox"/> Official ..... .....	<input type="checkbox"/> Parent <input type="checkbox"/> Spectator <input type="checkbox"/> Support Personnel <input type="checkbox"/> Other
Name of person complained about		
Role/status in swimming	<input type="checkbox"/> Administrator (volunteer) <input type="checkbox"/> Competitor <input type="checkbox"/> Coach/Assistant Coach <input type="checkbox"/> Employee (paid) <input type="checkbox"/> Official ..... .....	<input type="checkbox"/> Parent <input type="checkbox"/> Spectator <input type="checkbox"/> Support Personnel <input type="checkbox"/> Other
Location/event of alleged issue		
Description of alleged issue		
Nature of Complaint (basis/grounds/category) Tick more than one box if necessary	<input type="checkbox"/> Harassment or <input type="checkbox"/> Sexual/sexist <input type="checkbox"/> Sexuality <input type="checkbox"/> Race <input type="checkbox"/> Religion <input type="checkbox"/> Pregnancy <input type="checkbox"/> Disability <input type="checkbox"/> Other .....	<input type="checkbox"/> Discrimination <input type="checkbox"/> Selection dispute <input type="checkbox"/> Personality clash <input type="checkbox"/> Bullying <input type="checkbox"/> Verbal abuse <input type="checkbox"/> Physical abuse <input type="checkbox"/> Victimization
Methods (if any) of attempted informal resolution		
Support person (if any)		

Tribunal Members	
Hearing Tribunal Date and venue	
Tribunal Decision (attach report)	
Action recommended and any follow up report required	
Decision Appealed Date of Appeal lodged	
Appeal Hearing Date	
Appeal Decision (attach report)	
Action Recommended	
Completed by	Name: Position in the organisation: Signature: / /
Signed by:	Complainant Respondent