



## **SWIMMING AUSTRALIA CHILD WELFARE POLICY**

### **GENERAL INFORMATION AND PROCEDURE**

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## **1.0: COMPLAINTS PROCEDURES**

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, 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 – Other than for Child Abuse
- 1.4 Investigation Procedure- For allegations of Child Abuse
- 1.5 Hearing and Appeals Tribunal Procedure
- 1.6 Disciplinary Measures

## **1.1: COMPLAINTS PROCEDURE**

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 who 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 begin 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 set out in this Part C.

If at any point in the Complaint process the CEO or MPIO considers that a Complainant has knowingly made an untrue Complaint or the Complaint is vexatious or malicious, they may reject the complaint and the matter will not proceed. 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.

### **Step 1**

As a first step, if the Complainant feels able to do so under the circumstances, they should try to discuss and resolve the problem with the person or people involved.

### **Step 2**

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 more information about what they can do; or
- the problem continues after the Complainant has tried to approach the person or people involved,

then the Complainant should talk, in the first instance with the MPIOs, as arranged by the club or Member Association or Affiliate.

The MPIO will:

- 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 the Complainant what outcome or how they want the problem resolved and if the Complainant needs 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 SAL, and where required by law to advise the Police.

### **Step 3**

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 their own resolution (with or without a support person such as a MPIO; or
- to seek an informal mediated resolution with the help of a third person (such as a mediator or a Manager).

If the Complainant wishes to remain anonymous, the Involved Organisation cannot assist them 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 you have complained about with full details of the Complaint so they have a fair chance to respond to all the allegations.

### **Step 4**

If your Complaint is not resolved to the Complainants satisfaction, they may:

- make a formal Complaint in writing to the CEO of the Involved Organisation; or
- approach the relevant external agency for advice.

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**

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 the Complainant has 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” (a person with the skills and confidentiality to undertake an investigation and report to the tribunal) , 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 will 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 they want 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 Organisations Constitution and by-laws, appointing a person to investigate the Complaint, referring the Complaint to mediation session or a Hearing Tribunal or referring the Complaint to the police or other appropriate authority

### **Step 6**

If:

- a person is appointed to investigate the Complaint under **Step 5** (“the Investigator”), 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 the Clause 1.5, or may refer the Complaint to a formal 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 Clause 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 Clause 1.5;
- the Complaint is referred to the police or other appropriate authority under **Step 5**, the Involved Organisation should to provide reasonable assistance lawfully required by the police or other appropriate authority; and

### **Step 7**

If, under **Step 6**, a 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**.

The parties 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 Clause 1.5

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**

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 will 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 Complainants depending on the nature of your 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 by which people who are in conflict can be helped to communicate with each other about what is important for them and how to make decisions about resolving their dispute. Mediators provide a supportive atmosphere and method of talking to one another, to assist in sorting out the issues, coming up with acceptable solutions and making mutually satisfactory agreements.

This attachment outlines the general procedure of mediation that it is strongly recommended be followed pursuant to this Policy.

1. The people involved in a formal Complaint (Complainant and Respondent(s)) **if appropriate in the circumstances** may work out their own resolution of the Complaint or seek the assistance of a neutral third person or a mediator. Mediation may occur either before or after an investigation of the Complaint under **Step 6** of the Complaints Procedure.
2. Mediation (getting those involved to come to a joint agreement about how the Complaint should be resolved) may only be recommended if:
  - a. after the Complainant and Respondent have had their chance to tell their version of events to the MPIO;
  - b. where the MPIO does not believe that any of the allegations warrant any form of disciplinary action - proven serious allegations should not be mediated, no matter what the Complainant or Respondent desires; and
  - c. mediation looks like it may work (i.e. the versions given by the Complainant and Respondent tally or almost tally or at the very least, it looks as though it will be possible for each party to understand the other party's point of view).
3. Mediation will not be recommended if:
  - a. the Respondent has a completely different version of the events and he or she won't deviate from these;
  - b. the Complainant or Respondent are unwilling to attempt mediation; or
  - c. due to the nature of the Complaint, the relationship between you and the Respondent(s) and any other relevant factors, the Complaint is not suitable for mediation.
4. If mediation is chosen to try to resolve the Complaint, the MPIO or CEO should, in consultation with the Complainant and the Respondent(s), arrange for a Mediator to mediate the Complaint. The MPIO's or CEO's choice of Mediator will be final.
5. The MPIO or CEO will notify the Respondent(s) that a formal Complaint has been made, provide them with details of the Complaint and notify them the organisation has decided to refer the matter to mediation to resolve the Complaint.
6. The mediator's role is to assist the Complainant and Respondent(s) reach an agreement on how to resolve the problem. The mediator, in consultation with the Complainant and Respondent(s), should choose the procedures to be followed during the mediation. At a minimum, an agenda of issues for discussion should be prepared by the mediator.
7. The mediation will be conducted confidentially and without prejudice to the rights of the Complainant and the Respondent(s) to pursue an alternative process if the Complaint is not resolved through 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 it should be signed by them as their agreement.

9. If the formal Complaint is not resolved by mediation, the Complainant may:
  - a. write to the CEO to request reconsideration of the Complaint in accordance with **Step 5** of the Complaints Procedure; or
  - b. approach an external agency such as an anti-discrimination commission.

### **1.3: INVESTIGATION PROCESS FOR MATTERS OTHER THAN CHILD ABUSE**

If an investigation needs to be conducted the following steps are to be followed:

1. A written brief will 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 should be conveyed to the person/people complained about (Respondent(s)) in full. The Respondent(s) must 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 will 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 our appeals process is in Clause 1.5.

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: INVESTIGATION PROCEDURE FOR ALLEGATIONS OF CHILD ABUSE**

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An allegation of Child Abuse is a very serious matter and must be handled with a high degree of sensitivity. The initial response to a Complaint that a Child has allegedly been abused should be immediate if the incident is serious or criminal in nature while less serious or urgent allegations should be actioned as soon as possible, preferably within 24 hours.

The following is a basic outline of the key processes to follow.

### **Step 1 - Clarify basic details of the allegation**

- Any complaints, concerns or allegations of Child Abuse should be made or referred to the CEO.
- The initial response of the person that receives the Complaint from the Child (or person on behalf of the Child) is crucial to the well-being of the Child. It is important for the person receiving the information to:
  - listen to, be supportive and do not dispute what the Child says;
  - reassure the Child that what has occurred is not the fault of the Child;
  - ensure the Child is safe;
  - remain calm and do not express shock, panic or disbelief;
  - be honest with the Child and explain that other people may need to be told in order to stop what is happening;
  - ensure that what the Child says is quite clear but do not elicit detailed information about the abuse. Avoid suggestive or leading questions that put words into a Child's mouth; and
  - make written notes during or as soon as possible after the disclosure.
- The person receiving the Complaint should obtain and clarify basic details (if possible) such as:
  - Child's name, age and address;
  - person's reason for suspecting abuse (observation, injury or other); and
  - names and contact details of all people involved, including witnesses.

### **Step 2 – Report allegations of a serious or criminal nature**

- Any individual or organisation to which this Policy applies, should immediately report any incident of a serious or a criminal nature to the police and other appropriate authority or the CEO of SAL.
- If the allegation involves a Child at risk of harm, the incident should immediately be reported to the police or other appropriate Government agency or the CEO of SAL. You may need to report to both the police and the relevant Government agency.
- The Police or other appropriate Government agency should be contacted for advice if there is **any** doubt about whether the Complaint should be reported. It is not necessary for the person reporting the Child Abuse to know for sure if the Child Abuse is happening.

- If the Child's parents or guardians are suspected of committing the Child Abuse, report the allegation to the Police or relevant Government agency.

### **Step 3 – Protect the child**

- The CEO of the Involved Organisation should assess the risks and take interim action to ensure the Child's safety. Some options could include redeployment of the alleged offender to a non-Child related position, supervision of the alleged offender or removal or suspension from his or her duties until the allegations are determined.
- The CEO of the Involved Organisation should also address the support needs of the person against whom the Complaint is made. Supervision of the person should ideally occur with the knowledge of the person. If stood down, it should be made clear to all parties that are aware of the incident that this does not mean the person is guilty and a proper investigation still needs to be undertaken.

### **Step 4 – Further clarify and investigate allegation**

For allegations of a serious or criminal nature (for example, sexual abuse):

- The Involved Organisation should carry out its own internal investigation (in addition to any police or relevant Government agency investigation) but may hold over its investigation pending the finalisation of the investigation by the Police or other relevant agency.
- When appropriate, the CEO will then appoint an independent person (where possible) with appropriate expertise to conduct an investigation. The Investigator should:
  - contact the parents or guardians of the Child at an appropriate time and as directed by the police or relevant Government agency;
  - if appropriate, meet with parents or guardians and the Child to clarify the incident and offer support on behalf of the Involved Organisation;
  - meet with the Respondent against whom the allegation refers at an appropriate time and give the Respondent an opportunity to explain or respond to the allegation and identify any witnesses and supporting evidence. The person should have an opportunity to invite a support person or advisor to attend at a meeting and should be offered support (example, professional counselling) if necessary;
  - obtain a signed statement and record of interview from the Respondent;
  - make contact with any witnesses and obtain written and signed statements outlining details of the allegation (what happened, when, how); and
  - obtain other information that could assist in making a decision on the allegation.
- The information collected during the investigation can be made available to the Police or relevant authorities.
- Strict confidentiality, impartiality, fairness and due process must be maintained at all times.

For allegations of a less serious nature (e.g. verbal abuse):

- Where possible, appoint an independent person ("the Investigator") with appropriate expertise to make contact and meet with each of the people involved to obtain details of the allegation.
- The Investigator should follow the procedure set out in Attachment C3.

- Strict confidentiality, impartiality, fairness and due process must be maintained at all times.

#### **Step 5 – Record and analyse all information**

- If an internal investigation was conducted under **Step 4**, the Investigator will provide a report to the CEO.
- The CEO may direct the Investigator to make further enquiries and obtain additional information, or may refer the Complaint to a Hearing Tribunal.
- If a Hearing Tribunal is convened, Tribunal Members should consult with the CEO of the Involved Organisation and the police and relevant Government agency about the timing for any Hearing Tribunal to occur.
- The CEO and Panel Members will remain separate and at arms length from the Investigator.
- If the Complaint is referred to a Hearing Tribunal, the Hearing will be conducted in accordance with Clause 1.5.
- The Hearing Tribunal will consider all the information and determine a finding. It will also recommend action and its rationale for the action.

#### **Step 6 – Undertake disciplinary action**

- For incidents of a serious or criminal nature, consideration must be given to the findings of the Police, Courts or the other Government agency before the Hearing Tribunal.
- If disciplinary action is to be taken, follow the procedures outlined in Clause 1.6 of this Policy.
- Implement any disciplinary decision recommended by the CEO or the Hearing Tribunal.
- Check with the relevant Police or Government authority to see if you need to forward a copy of the Investigation Report (e.g. the NSW Commission for Children and Young People requires notification of relevant employment proceedings).
- Complete the report form in Part 2 of this Policy. Retain the original in a secure place and forward a copy to the CEO of SAL.

## 1.5: 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.

### **Tribunal Formation and Notification**

1. For all Child Welfare matters, where appropriate, a Hearing Tribunal Panel should be constituted as set out below. For all Child Abuse matters a Hearing Tribunal Panel will be constituted at a State level as set out below.
2. The CEO of the Involved Organisation, which in the case of a Child Abuse matter should be the CEO of the State Member Association or Affiliate 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 response 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 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, with a new Panel, to be reconvened.

8. The CEO will inform the Respondent by written notification that a Hearing Tribunal will take place. The written notification will 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 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 Hearing Tribunal in support of their position;
- an outline of any possible penalties that may be imposed if the Complaint is found to be true;
- that legal representation may be permitted, but is not preferred ; 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.

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 as been found to occur but will be simply based on the precautionary principle or for the benefit of all parties.

9. 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 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 Complainant can make either verbal or written submissions to the Hearing Tribunal;
  - that the Complainant may arrange for witnesses to attend the Hearing Tribunal in support of their position;
  - that legal representation may be allowed but is not preferred: 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.

10. 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 Tribunal can be properly informed of the Complaint.

### **Hearing Tribunal Procedure**

11. 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 required to support the Respondent;
  - any parent or guardian or support person required to support the Complainant;
  - any lawyer engaged by the Respondent; and
  - any lawyer engaged by the Complainant.
12. The Chairperson should call the hearing to order at the designated time and determine if the Respondent is present.
13. 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.
14. 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 will organise for the Hearing Tribunal to be reconvened.
15. 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.
16. If the Respondent agrees with the Complaint, they will be asked to provide any evidence or witnesses that should be considered by the Hearing Tribunal when determining any disciplinary measures.

17. If the person disagrees with the Complaint, the Complainant will 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.

18. The Respondent will 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.

19. 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.

20. The Hearing Tribunal may be allowed to:

- consider any evidence, and in any form, that it deems relevant;
- question any person giving evidence; and
- limit the number of witnesses presented if it is agreed by all parties that they may support the person who requested them, but may not provide any new evidence.

21. 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.

22. If the Hearing Tribunal considers that at any time during the Hearing Tribunal that there is any unreasonable or intimidatory behaviour from anyone allowed to be present, the Chairperson has the power to stop any further involvement of the person in the Hearing Tribunal.

23. 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. Only those disciplinary measures outlined in the relevant Respondent's organisation Constitution and this Policy should be considered. Any disciplinary measure imposed must be reasonable in the circumstances.

24. All decisions made by the Hearing Tribunal will be based on a majority vote.
25. The Chairperson should announce the decision in the presence of all those involved in the Tribunal Hearing and should declare the Tribunal Hearing closed.
26. 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.

### **Appeals Procedure**

27. 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.
28. 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.
29. Upon receipt of the letter of appeal, the CEO of the Involved Organisation must then refer the appeal as follows:
  - if the appeal was lodged at the Club level, the CEO of the Involved Club must refer the appeal to the relevant State Swimming Association, which will convene an appeal committee to determine whether there are grounds to appeal and if so, 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 national body – SAL; which will convene an appeal committee to determine whether there are grounds to appeal and if so, to hear the appeal; and
  - if the appeal was lodged at the national level, the CEO of SAL must convene an appeal committee to determine the grounds of appeal and decide whether there are sufficient grounds for the appeal committee, and if so, to hear the appeal.

Provided always that, if the appeal relates to a Child Abuse matter, the CEO of the Involved Organisation must refer the appeal to the CEO of SAL who must convene an appeal committee to review the appeal and decide whether there are sufficient grounds for the appeal committee.

30. If it is considered that the grounds of the appeal has not shown sufficient grounds in accordance with clause 27, then the appeal will not proceed and the person will be notified of this decision and the reasons for this decision.
31. If the appeal is considered to have sufficient grounds to proceed in accordance with clause 27, the CEO shall follow the Tribunal Formation and Notification procedures outlined above in setting up any Appeal Tribunal.
32. The same procedure shall be followed by Appeal Tribunal as applies for the Hearing Tribunal procedure provided that no member of the appeal committee shall also have been on the Hearing Tribunal from which the decision is being appealed.
33. The decision of the Appeals Tribunal will be final.

## **1.6: DISCIPLINARY MEASURES**

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Any disciplinary measure imposed by the CEO 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;
- 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 this Policy, 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 Hearings 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 withdrawal of any awards, placings, records, achievements bestowed in any competition, activities or events held or sanctioned by the organisation;
5. a demotion or transfer of the individual to another location, role or activity;
6. a suspension of the individual's membership or participation or engagement in a role or activity;
7. suspension of the individual's membership, appointment or engagement pending formal Police investigation;
8. recommend that the organisation suspend the individual's membership, appointment or engagement pending formal Police investigation;
9. 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; or
10. any other form of discipline that the Involved Organisation considers appropriate.

When imposing any form of discipline, it should 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 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 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;
4. a recommendation that any funding granted or given to it by SAL cease from a specified date;

5. a recommendation that SAL ceases to sanction events held by or under the auspices of that organisation;
6. a recommendation that the Involved Organisation's membership of SAL be suspended or terminated in accordance with the relevant constitution or rules; or
7. any other form of discipline that the national body or peak organisation considers to be appropriate.

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 behaviour or incidents;
- 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 of the Respondent;
- the effect of the proposed disciplinary measures on the Respondent including any personal, professional or financial consequences;
- if there have been relevant prior warnings or disciplinary action; or
- if there are any mitigating circumstances such that the Respondent should not be disciplined at all or not disciplined so seriously.

## 1.7: KEY CONTACTS

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Swimming Australia Limited	Chief Executive Officer: Kevin Neil General Manager Sport Development & State Ser Adam Pine	(02) 6219 5600
Swimming Queensland	Chief Executive Officer:	(07) 3390 2011
Swimming New South Wales	Executive Director:	(02) 9763 5833
Swimming Victoria	Executive Director:	(03) 9686 5222
Swimming Tasmania	General Manager:	(03) 6211 3080
Swimming SA	General Manager:	(08) 71230848
Swimming WA	Chief Executive Officer:	(08) 9328 4599
Swimming NT	Executive Director-	(08) 8981 5483
Australian Swimming Coaches and Teachers Association	Executive Director:	(03) 9556 5854
Australian Sports Commission	Manager Sport Ethics Unit –	(02) 6214 1960
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 Opportunit Commission		(03) 9281 7111
WA Commission for Equal Opportur		(08) 9216 3900
NSW Anti Discrimination Board		(02) 9268 5544
NT Anti Discrimination Commission		(08) 8999 1444
Tasmanian Anti Discrimination Com		(03) 6233 4841

# 1.8 Child Welfare Policy Process Flow Chart

Potential breach of Policy *not* involving Child Abuse

Step 1

Can the matter be personally resolved? Yes →

Steps 2 & 3

Discuss the matter with SAL Hotline, MPIO or CEO of the organisation to discuss facts and desired outcome Resolved or abandoned →

Step 4

If further action is required

Make a formal complaint in writing to CEO **OR** External agency preferred (eg. Police) →

Steps 5 & 6

Organisation investigation – interviews, etc.

Recommendations

External Agency recommended →

Mediation (Attachment C2)

Vexatious or unsubstantiated claim →

If not successful

If appealed

**HEARING (Attachment C5)**

no appeal →

If appealed in writing within 21 days

**APPEAL (Attachment C5)** →

**NO FURTHER ACTION REQUIRED FROM SAL (PENDING POLICE ACTION, IF COMMENCED)**

# Child Welfare Policy – Child Abuse

Potential breach of Policy involving Child Abuse,  
reported to MPIO or CEO

Steps 1 & 2

Report the matter to CEO

AND/OR

Report the matter to Police or external agency

Step 3

CEO to take immediate steps to protect child

Step 4

Investigate allegations and collect statements from parties and parents

*Organisational steps from here pending Police instructions/investigations*

Step 5

Report to CEO

If the claim is vexatious/malicious

No Further Action

**HEARING**  
(Attachment C5)

If not appealed

**Discipline**  
(Attachment C6)

If appealed in writing within 21 days

**APPEAL**  
(Attachment C5)

## **PART 2: REPORTING DOCUMENTS/FORMS**

TO ASSIST IN CONSISTENCY AND ACCURACY IN FOLLOWING PROCEDURE AND REPORTING ON THE ISSUES COVERED BY SWIMMING AUSTRALIA LIMITED'S CHILD WELFARE POLICY, THE FOLLOWING DOCUMENTS ARE TO BE USED:

**2.1 CONFIDENTIAL RECORD OF INFORMAL COMPLAINT** – TO BE USED BY MPIOs OR OTHERS WHO RECEIVE A COMPLAINT OR ALLEGATION

**2.2 CONFIDENTIAL RECORD OF FORMAL COMPLAINT** – TO BE USED WHEN A FORMAL COMPLAINT IS RECEIVED BY SAL OR STAKEHOLDERS

**2.3 CONFIDENTIAL RECORD OF CHILD ABUSE ALLEGATION**

**2.44 RECORD OF MEDIATION** – TO BE USED BY THOSE WHO CONDUCT A MEDIATION

**2.5 RECORD OF TRIBUNAL DECISION**

**General principles to be followed when dealing with 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 the 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 COMPLAINT**

MPIO Name		Date: / /
Complainant's Name and Age		
Role/status in <i>[sport]</i>	<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         ..... .....
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 fix issue	
What information I provided	
What they are going to do now	

This record and any notes must be kept in a confidential place – do not enter it on a computer system. If the issue becomes a formal Complaint, this record is to be sent to the CEO.



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: / /
Signed by:	Complainant:  Respondent:

This record and any notes must 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 at the club/state/district level (whatever level the Complaint was made).



CEO contacted	Who: When:
Police and/or Government agency investigation	Finding:
Internal investigation (if any)	Finding:
Action taken	
Completed by	Name: Position in the organisation: Signature: / /
Signed by	Complainant (if not a child)

This record and any notes must be kept in a confidential place and provided to the relevant authorities (police and Government) should they require them.

## 2.4: RECORD OF MEDIATION

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 place – do not enter it on a computer system. If requested, this record is to be sent to the CEO.

**2.5: RECORD OF TRIBUNAL DECISION**

Complainant's Name and Age		Date Formal Complaint Received: / /
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"/> Other</span> <input type="checkbox"/> Official ..... .....	
Name of person complained about		
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"/> Other</span> <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 <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> Other .....	
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