



Member Protection Policy

Swimming Australia

Member Protection Policy

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COMMITMENT STATEMENT

Swimming Australia and each of its Member Associations (being Swimming New South Wales, Swimming Victoria, Queensland Swimming Association, Western Australian Swimming Association, Swimming SA, Tasmanian Swimming, Swimming Northern Territory, Australian Swimming Coaches and Teachers Association and Australian Swimmers Association) are committed to creating and upholding a safe, fair and inclusive environment for everyone involved in Swimming.

We do not tolerate and seek to prevent inappropriate or unlawful behaviour, including any form of harassment, discrimination or abuse within Swimming. This Member Protection Policy sets out codes of behaviour setting standards of behaviour in swimming. Disciplinary action may be taken against a person who breaches this Member Protection Policy.

As part of our commitment to ensuring the safety and wellbeing for everyone involved in swimming, we place a particular emphasis on Children and Young People in Swimming and have developed a Safeguarding Children and Young People Policy which should be read in conjunction with this Member Protection Policy. This Member Protection Policy and the Safeguarding Children and Young People Policy form part of Swimming Australia's 'Safe Sport Framework'.

This Member Protection Policy has been endorsed and adopted by the Swimming Australia Board in accordance with Rule 45 of the Swimming Australia Constitution. It is binding on Swimming Australia and its Member Associations, Clubs, Members (an individual who is registered as a financial/paid up member of a Club) and Participants (anyone who participates in a swimming service, event, activity or program).

Leigh Russell
CEO, Swimming Australia Limited



1. INTRODUCTION

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

2. PURPOSE

- (a) Swimming Bodies and Clubs will promote and monitor this Member Protection Policy to the fullest extent possible. Swimming Bodies and Clubs recognise that the responsibility for safeguarding Participants in Swimming lies with all those involved in Swimming. In particular, Member Associations and Clubs must adopt this Member Protection Policy to effectively handle and resolve Complaints.
- (b) SA places great importance on its approach to prioritising and safeguarding Children and Young People in Swimming. In this regard, SA has developed a separate **Safeguarding Children and Young People Policy** which should be read in conjunction with this Member Protection Policy. Matters or complaints concerning the safety and wellbeing of Children or Young People in Swimming must be considered under the Safeguarding Children and Young People Policy.

3. SCOPE

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

- (c) Where a member protection complaint is lodged prior to the Commencement Date, that complaint must be dealt with under the relevant existing (at the date the complaint is lodged) policies and processes of the applicable Swimming Bodies and/or Clubs.
- (d) A complaint concerning the safeguarding of a Child or Young Person lodged from the Commencement Date, whether it involves conduct that is alleged to have occurred either before or after the Commencement Date, must (to the exclusion of this Member Protection Policy) be dealt with under the Safeguarding Children and Young People Policy.

4. BREACHES OF OUR MEMBER PROTECTION POLICY

- (a) Everyone who is involved in Swimming must comply with this Member Protection Policy.
- (b) Failure to comply with this Member Protection Policy may result in disciplinary action in accordance with section 9.

5. GENERAL CODE OF CONDUCT

5.1 Introduction to the General Code of Conduct

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

5.2 Commitment to the General Code of Conduct

- (a) The General Code of Conduct should be read in conjunction with:
 - (i) the specific requirements of your role as defined in your 'position description' statement, if applicable;
 - (ii) the Code of Conduct for dealing with Children or Young People;
 - (iii) our relevant policies, guidelines or procedure documents, including, but not limited to the SA Privacy Policy, Social Media Guidelines, Risk Management Policy, Anti-Doping Policy, Illicit Drugs in Sport Policy and the Gambling, Betting and Match Fixing Policy; and
 - (iv) all applicable laws in your jurisdiction.
- (b) Swimming Bodies and Clubs may consider a failure to observe the General Code of Conduct as misconduct and may take appropriate disciplinary action in accordance with this Member Protection Policy.

5.3 Exceptions

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

5.4 General Code of Conduct

Swimming Bodies and Clubs expect that the following General Code of Conduct and the Code of Conduct for dealing with Children or Young People are followed at all times and by all people involved in any way with Swimming:

- (a) Treat everyone involved in Swimming in a considerate, objective and courteous manner with proper regard for their rights, dignity and worth.
- (b) Be ethical, considerate, fair, courteous and honest.
- (c) Be professional in, and accept responsibility for, your actions.
- (d) Avoid any real or perceived conflicts of interest.
- (e) Give all people equal opportunity to participate.
- (f) Follow and encourage others to follow SA's standards, rules, policies and procedures at all times.
- (g) Operate within the rules and spirit of Swimming, including the national and international guidelines that govern SA.
- (h) Report any concerns or breaches of this Member Protection Policy through the appropriate channels and in a timely manner.
- (i) Abide by the position statements in this Member Protection Policy and in particular, refrain from any form of Abuse, Harassment, Discrimination, Victimisation and Bullying towards others.
- (j) Provide a safe environment for the conduct of activities in accordance with any relevant Swimming Body's policy.
- (k) Show concern, empathy and caution toward others.
- (l) Be a positive role model to all and do not shame, humiliate, oppress, belittle, harass or degrade any person.
- (m) Respect and protect confidential information at all times - particularly personal information of any Member or Child or Young Person or other sensitive issues or matters, whether regarding individuals or organisations.
- (n) Maintain the required standard of accreditation and/or licensing of professional competencies, as applicable to your role(s).
- (o) Ensure that any physical contact with others is appropriate to the situation, such as being necessary for the person's skill development.
- (p) Ensure your actions or inaction do not bring or are not reasonably likely to bring the sport of Swimming into disrepute.
- (q) Provide a safe, welcoming and inclusive environment that places the health, welfare and wellbeing of participants above all else.
- (r) Conduct yourself appropriately when using Social Networking.

- (s) Do not engage in or advocate the possession and use of banned performance enhancing substances or methods, or illicit drugs.
- (t) Do not participate in or encourage action that may jeopardise the integrity of Swimming including match-fixing, illegal sports betting or other corruption.
- (u) Adopt and maintain a responsible attitude towards the consumption of tobacco products and alcohol.

6. MEMBER PROTECTION CONTACTS (MPC)

- (a) MPCs are persons appointed by Swimming Bodies or Clubs as a contact point in relation to this Member Protection Policy.
- (b) Swimming Bodies and Clubs will administer the ongoing appointment of MPCs to ensure Members, Participants and others within Swimming have available to them a person who is familiar with the processes within this Member Protection Policy.
- (c) The MPC provides impartial information about policy, process and procedures under this Member Protection Policy to any person with a concern arising from an alleged breach, or any person against whom there is an allegation of a breach of this Member Protection Policy.
- (d) The MPC provides support and procedural advice but must not either determine the method of dealing with a Complaint, or make a decision or impose any disciplinary measure regarding a Complaint.
- (e) Any person wishing to contact a MPC should contact their Club, Member Association or SA, or visit the website, to ascertain their relevant MPC's contact details.

7. OUR POSITION STATEMENTS

7.1 Generally

- (a) People may not be able to enjoy themselves or perform at their best if they are treated unfairly, abused, discriminated against, bullied, harassed or victimised. The Swimming Bodies are committed to providing an inclusive environment in Swimming in which people are treated fairly and equitably and do not tolerate any form of:
 - (i) **Abuse;**
 - (ii) **Harassment;**
 - (iii) **Discrimination;**
 - (iv) **Bullying;** or
 - (v) **Victimisation,**
 for any reason.

7.2 Intimate Relationships

- (a) The Swimming Bodies understand that consensual intimate relationships (including, but not limited to sexual relationships) between coaches or officials and adult athletes may take place legally. If an intimate relationship does exist or develop between a coach or official and an adult Athlete, that relationship must be managed in an appropriate manner.
- (b) Swimming Bodies take the position that consensual intimate relationships between coaches or officials and the adult Athletes they coach should be avoided as they can have harmful effects on the Athlete involved, on other Athletes and coaches and on Swimming's public image. These relationships can also be perceived to be exploitative due to the differences in authority, power, maturity, status, influence and dependence between the coach or official and the Athlete.
- (c) If a consensual intimate relationship does exist or develop between an adult Athlete and a coach or official, the coach or official is expected to ensure that the relationship is appropriate and that it does not compromise impartiality, professional standards or the relationship of trust the coach or official has with the Athlete and other Athletes.
- (d) In assessing the appropriateness of an intimate relationship between a coach or official and an adult Athlete, relevant factors include, but are not limited to:
 - (i) the relative age and social maturity of the Athlete;
 - (ii) any potential vulnerability of the Athlete;
 - (iii) any financial or emotional dependence of the Athlete on the coach or official;
 - (iv) the ability of the coach or official to influence the progress, outcomes or progression of the Athlete's performance or career;
 - (v) the extent of power imbalance between the Athlete and coach or official; and
 - (vi) the likelihood of the relationship having an adverse impact on the Athlete and/or other Athletes.
- (e) If it is determined that an intimate relationship between a coach or official and an adult Athlete is inappropriate or unprofessional, disciplinary action may be taken against the coach or official under this Member Protection Policy.

7.3 Gender Identity

- (a) The Swimming Bodies will not tolerate any unlawful Discrimination or Harassment of a person because of their Gender Identity.
- (b) Excluding people from participating in sporting events and activities because of their Gender Identity or Gender Expression may have significant implications for their health, wellbeing and involvement in community life. The Swimming Bodies are committed to supporting participation in our sport on the basis of the gender with which a person identifies.

- (c) The Swimming Bodies are aware that the International Olympic Committee (IOC) has established criteria for selection and participation in the Olympic Games. Where a Transgender person intends to compete at an elite level, they are encouraged to obtain advice about the IOC's criteria which may differ from the position the Swimming Bodies have taken. Drug testing procedures and prohibitions may apply to people competing at an elite level who identify as Transgender.

7.4 Social Networking

- (a) All Participants must conduct themselves appropriately when using Social Networking in relation to sharing information or content. This includes but is not limited to using Social Networking as an electronic means of engaging with others through private messaging (e.g., What's App, Twitter, Instagram, Facebook and other electronic messaging forums).
- (b) When using Social Networking sites (or others) to share information or content related to Swimming, any postings, blogs, status updates and tweets (or similar) must not contain material which, in the reasonable opinion of SA or a Member Association:
 - (i) is or has the potential to be offensive, aggressive, defamatory, threatening, discriminatory, obscene, profane, harassing, embarrassing, intimidating, sexually explicit, bullying, hateful, racist, sexist or otherwise inappropriate;
 - (ii) is inaccurate, misleading or fraudulent;
 - (iii) is in breach of the General Code of Conduct or Code of Conduct for dealing with Children and Young People;
 - (iv) is in breach of laws, court orders, undertakings or contracts;
 - (v) breaches the privacy or confidentiality of others;
 - (vi) brings or is likely to bring SA, a Member Association, a Club, a Member, themselves or Swimming into disrepute; or
 - (vii) has the potential to, or does, derogate from or negatively affect the image, goodwill, name or reputation of SA, its Member Associations, Clubs and Members of Swimming.
- (c) Use of Social Networking by adults must be in accordance with the Code of Conduct for dealing with Children and Young People (i.e. refraining from private messaging, copying in a parent/guardian and limiting communication to required swimming activity messages, amongst others).

8. COMPLAINT PROCEDURE

8.1 Introduction

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

requirements regarding disclosure and a judgment as to whether disclosure is necessary to deal with the Complaint.

- (b) A number of resources have been created to assist all Persons in Positions of Authority to manage a Complaint, including the **Complaint Guidelines** set out in **Annexure B** and other resources which can be found on our Safe Sport website page.

8.2 Application

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

8.3 Complaint Procedure Principles

- (a) Swimming Bodies and Clubs are committed to:
 - (i) addressing any complaints brought to its attention regarding the welfare, health and safety of all Members, Persons in Positions of Authority and Participants in swimming;
 - (ii) ensuring all Complaints are dealt with by an appropriate person and in a fair, timely and transparent manner;
 - (iii) escalating Complaints as appropriate to ensure that appropriate Persons in Positions of Authority and Senior Persons are involved;
 - (iv) considering the wishes of the Complainant;
 - (v) providing communication to all parties on a regular basis as to the progress of the Complaint;
 - (vi) clearly explaining the next steps and options to all parties involved in the Complaint at every step;
 - (vii) maintaining appropriate confidentiality regarding Complaints, subject always to legal requirements regarding disclosure or if disclosure is necessary to deal with the Complaint;
 - (viii) ensuring that the principles of Natural Justice (procedural fairness) are followed when dealing with Complaints; and
 - (ix) maintaining appropriate records of Complaints in a safe and confidential manner.

- (b) Where possible, Complaints should be dealt with as soon as practicable after they become known and dealt with at Club or Member Association level, to minimise:
 - (i) distress to Complainants and those against whom allegations are made; and
 - (ii) time taken by Clubs, Member Associations and SA to resolve Complaints.
- (c) If you are unsure of how to deal with a Complaint, always escalate that Complaint to your Club, Member Association or SA, as appropriate.

8.4 Record Keeping and Sharing

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

8.5 Making a Complaint

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

8.6 Complaints from Other Organisations

- (a) The Swimming Bodies are committed to working collaboratively, respectfully and ethically with all other sporting, community service and business organisations.
- (b) In some circumstances, Swimming Bodies and Clubs will enter into a memorandum of understanding, contract or protocol with other organisations which contain specific dispute resolution procedures relating to breaches of agreements or behavioural issues. In those circumstances, those specific dispute resolution procedures will be applied. In the absence of any memorandum of understanding, contract or protocol with other organisation, this complaint procedure detailed in this section 8 will be applied.

8.7 Initial Stages of Complaints

- (a) Most Complaints can be dealt with initially by the Club, ASCTA or ASA. However, there may be some situations in which it is more appropriate to raise a Complaint initially with your Member Association first rather than at Club or pool facility. For example, if you have a Complaint regarding a Club decision or action or an incident at a State or Territory event that you regard as a possible breach of the Member Protection Policy.

- (b) There are occasions where a dispute arises between two or more parties which is more appropriate to be resolved without the need to resort to a formal complaint process (for example, a minor issue which can easily be remedied, and no person is in danger). In such circumstances, notwithstanding that a party may have initiated a Complaint under this Member Protection Policy, SA and/or a Member Association (as the case may be) may take steps to resolve the Complaint at that time, refer it elsewhere and/or dismiss it, as is appropriate.
- (c) Where a Complaint is referred to SA and SA determines it is not appropriate to deal with the Complaint or that the matter does not fall within the scope of this Member Protection Policy (for example a Club Complaint involving the safeguarding of a Child or Young Person), SA in its absolute discretion, may refer the Complaint elsewhere or dismiss it.
- (d) For the avoidance of doubt, Member Associations and SA may, at their discretion, refer Complaints received back to a Club, ASCTA, ASA or a Member Association, should that be appropriate.
- (e) The following incident categorisation table should be used as a guide for persons seeking to initiate a Complaint under this Member Protection Policy.

Incident Categorisation Table

Incident / Allegation Type	Initial Contact / Referral
Allegations of Sexual Misconduct or Serious Criminal Conduct	SA
State-related complaints or inter-club matters not involving Serious Criminal Conduct	State or Territory Swimming Association
General complaints related to adults in Swimming including Bullying, Harassment, dissatisfaction with Member Protection Policy - related decisions or interactions not involving Serious Criminal Conduct	Clubs, ASCTA or ASA
Complaints concerning the safeguarding of a Child or Young Person	Refer to Safeguarding Children and Young People Policy / SA

8.8 Procedure for Handling Complaints under this Member Protection Policy

Any person who has concerns about a breach of this Member Protection Policy must follow the Complaints Procedure outlined below while having regard to the Complaint Guidelines set out in **Annexure B**.

Complaints Procedure

Reporting Complaint

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

Internal Investigation of Complaint

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

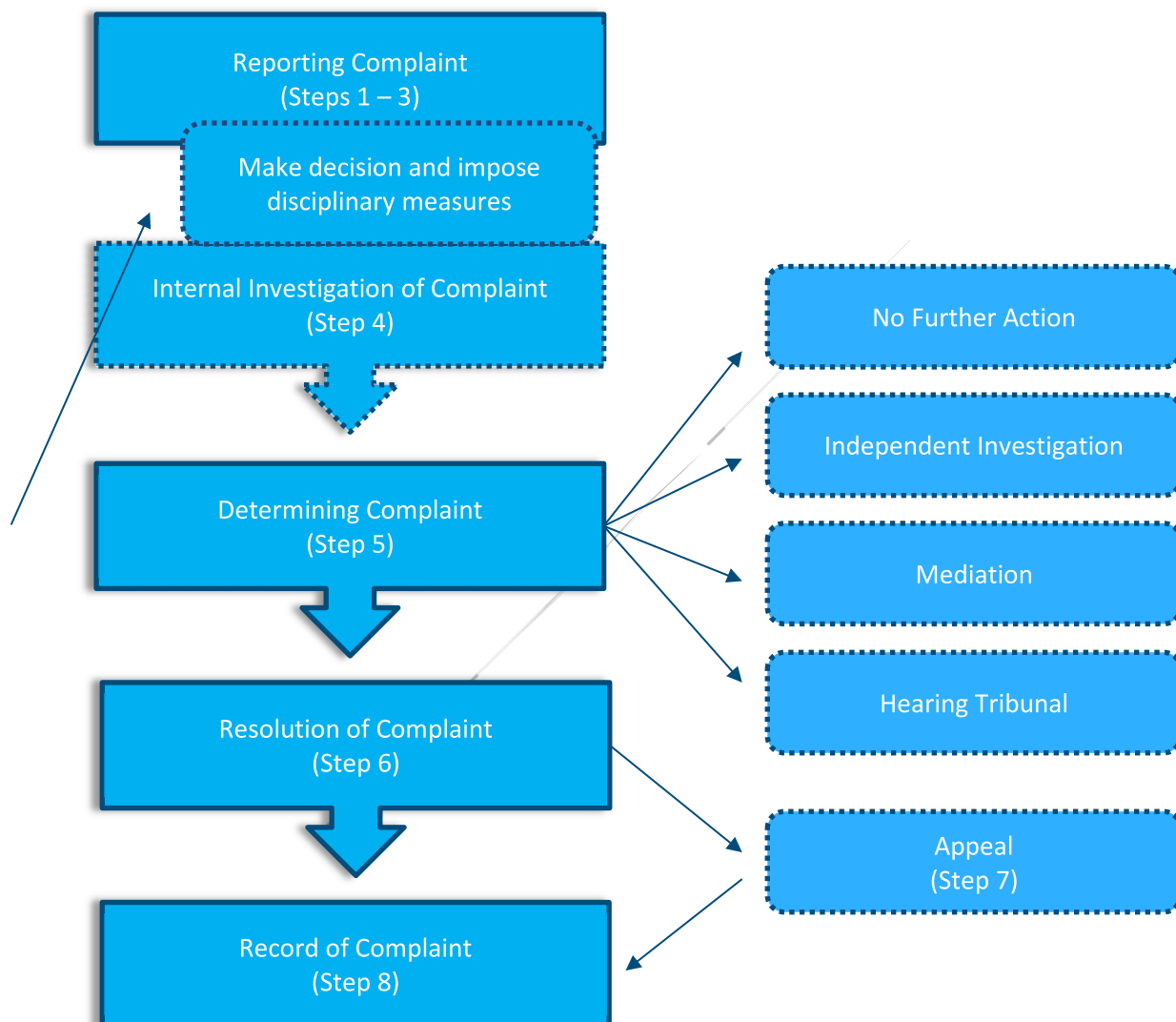
Determining Complaint

- Step 5:** After the internal investigation is completed, the CEO of the Involved Organisation evaluates next steps and determines whether to:
- (a) close the Complaint where no further action is required, or no longer sought by the Complainant;
 - (b) make decision and impose disciplinary measures (in accordance with section 9);
 - (c) refer Complaint to Independent Investigation (refer to section 8.11);
 - (d) refer Complaint to Mediation (refer to section 8.14); or
 - (e) refer Complaint to Hearing Tribunal (refer to section 8.12).

Resolution of Complaint

- Step 6:** Decision made and disciplinary measures (if required) imposed as a result of the relevant Step 5 process.
- Step 7:** Appeal (if deemed valid) may be lodged in relation to decision. If the appeal is heard, a decision is made and new disciplinary measures may be imposed. Refer to section 8.13.
- Step 8:** Record of Complaint finalised. SA and Involved Organisation notified of outcome of Complaint. Complaint closed.

The above process is reflected in the diagram below:



8.9 Provisional Action

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

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

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

8.10 Internal Investigation

So that the Involved Organisation has sufficient information to determine the appropriate step to be taken, the Investigation Officer within the Involved Organisation should conduct an internal investigation. Step 4 of the Complaint Guidelines in **Annexure B** provides guidance on the conduct of an internal investigation.

8.11 Independent Investigation Procedure

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

Respondent is entitled to have a support person present during any interview, subject to the support person not being a current practicing solicitor or barrister. Where the Respondent is a Child or Young Person, the Respondent's parent or guardian should also be present during the interview.

- (v) If, in the process of the Independent Investigation, there continues to be a dispute regarding the facts, then statements from witnesses and other relevant evidence should be obtained by the Investigator to assist in reaching conclusions and preparation of a report and recommendations.
- (vi) The Investigator must make a finding, on the balance of probabilities, as to whether the Complaint, or each of the allegations in the Complaint (as appropriate) is:
 - (A) substantiated (there is sufficient evidence to support the Complaint);
 - (B) inconclusive (there is insufficient evidence either way);
 - (C) unsubstantiated (there is sufficient evidence to show that the Complaint is unfounded or not enough evidence to substantiate the Complaint); or
 - (D) mischievous, vexatious or knowingly untrue.
- (vii) A report documenting the Complaint, the investigation process, evidence, finding(s) and, if requested, recommendations, should be given to the CEO (or a person with delegated authority of the CEO) of the Involved Organisation who may, in consideration of the report of the Investigator, either:
 - (A) take disciplinary action against either the Respondent, Complainant or any other person/persons involved in the Complaint in accordance with section 9;
 - (B) refer the Complaint to a Hearing Tribunal (which will take place in accordance with the Hearing Tribunal Procedure in Section 8.11) to determine what, if any, further action to take; or
 - (C) take no further action and close the Complaint.
- (viii) Within 14 days of the CEO (or a person with delegated authority of the CEO) of the Involved Organisation receiving a report of an Investigator, a report must be provided to the Complainant(s) and the Respondent(s) which summarises the investigation process and documents key points that were found to be substantiated, inconclusive, unsubstantiated or mischievous (**Report**). The Report may be redacted to the extent required to protect necessary confidential or sensitive issues.
- (ix) All parties to the Complaint receiving a copy of the Report of the Investigator must maintain strict confidentiality of the Report, other than where necessary to disclose the contents of the Report in order to obtain legal advice or as required by law. Any disclosure of the Report other than in accordance with this section 8.11(b)(ix) is a breach of this

Member Protection Policy and may result in disciplinary action being taken against the person making the disclosure.

- (x) Subject to sections 8.11(b)(ii) and 8.11(b)(iv), both the Complainant and the Respondent(s) are entitled to support throughout this process from their chosen support person/adviser.

8.12 Hearing Tribunal Procedure

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

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

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

Preparing for a Hearing Tribunal

- (b) The level at which the Hearing Tribunal is constituted depends on the Involved Organisation handling the Complaint (i.e. SA, Member Association or Club).
- (c) The CEO of the Involved Organisation should convene the Panel Members to hear a Complaint. The Panel Members should be provided with a copy of all the relevant correspondence, reports or information received and sent by the CEO relating to the Complaint.
- (d) The Hearing Tribunal should be scheduled as soon as practicable but must allow adequate time for the Respondent(s) to prepare to respond to the Complaint.
- (e) Subject to 8.12(j), the number of Panel Members required to be present throughout the Hearing Tribunal process is 3.
- (f) The Hearing Tribunal must not include any person who has any actual or perceived conflict of interest, preconceived opinions, vested interests or personal involvement relating to the Complaint.
- (g) The Hearing Tribunal must comprise at least one person who has knowledge, and preferably experience, of any relevant laws relating to the Complaint (e.g. anti-discrimination).
- (h) One of the Panel Members shall be appointed Chairperson by the CEO of the Involved Organisation.
- (i) Any objection to a Hearing Tribunal Panel Member must be made by a party in writing to the CEO of the Involved Organisation no later than 72 hours prior to the Hearing Tribunal.
- (j) If for any reason 3 Panel Members are not maintained, the discontinuing Member may be replaced if it is considered appropriate by the CEO of the Involved Organisation. Factors to consider should include the circumstances

of the Complaint and the ability of the new Panel Member to be reasonably and impartially informed of the hearing evidence up until the time of his or her appointment. If the CEO of the Involved Organisation believes it is appropriate for a new Panel Member to be appointed, then he or she should organise for the Hearing Tribunal to be rescheduled, with a new Panel.

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

available to attend and from character witnesses may also be provided to the Tribunal hearing);

- (vi) legal representation is not allowed; and
- (vii) if the Complainant is a Child or Young Person (or a person with an intellectual disability or mental illness), they should have a parent, guardian or support person present.
- (n) A copy of any information or documents that have been given to the Hearing Tribunal will also be provided to the Complainant subject to the approval of the Chairperson of the Hearing Tribunal.
- (o) If the Complainant believes the details of the Complaint are incorrect or insufficient they should inform the CEO as soon as possible so that the Respondent and the members of the Tribunal can be properly informed of the Complaint.

Hearing Tribunal

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

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

- (iii) draw an adverse inference where a Complainant who is a Child or Young Person provides evidence only by statutory declaration or other written statement prior to the Hearing Tribunal.
- (cc) Video evidence, if available, may be presented. The arrangements for such presentation will be the responsibility of the person/s wishing to offer this type of evidence.
- (dd) If the Hearing Tribunal considers that at any time during the Hearing Tribunal there is any unreasonable or intimidating behaviour from any person, the Chairperson has the power to deny any further involvement of the person in the Hearing Tribunal.
- (ee) After all of the evidence has been presented the Hearing Tribunal will, subject to section 8.12(hh), make its decision in private. If the Hearing Tribunal believes the Complaint has been substantiated on the balance of probabilities, the Respondent should then be given an opportunity to address the Hearing Tribunal and make submissions on any disciplinary measures that may be imposed and including but not limited to mitigating circumstances.
- (ff) The Hearing Tribunal may impose a disciplinary measure on the Respondent where it upholds the Complaint in whole or in part. The Hearing Tribunal will impose the disciplinary measure in accordance with section 9.
- (gg) All decisions made by the Hearing Tribunal will be made by a majority vote.
- (hh) Where a decision is made at the hearing the Chairperson should announce the decision in the presence of all those involved in the Tribunal Hearing and then declare the Tribunal Hearing closed. Where a decision will be made after the hearing, the Chairperson should inform the parties of this fact and declare the Tribunal Hearing closed.
- (ii) Within 48 hours, the Chairperson should:
 - (i) forward to the CEO of the Involved Organisation a copy of the Hearing Tribunal decision including any disciplinary measures imposed; and
 - (ii) forward a letter to the Respondent confirming the Hearing Tribunal's decision and any disciplinary measures imposed. The letter should outline the process and grounds for an appeal to be made.
- (jj) The Hearing Tribunal does not need to provide written reasons for its decision but may do so if it chooses.

8.13 Appeal Procedure

- (a) Subject to this Appeal Procedure, an Appellant may appeal a decision arising from:
 - (i) a decision to take disciplinary action following an internal investigation;
 - (ii) a decision to take disciplinary action following an Independent Investigation; or
 - (iii) a Hearing Tribunal,

conducted or imposed in accordance with this Member Protection Policy.

- (b) An appeal may be submitted by the original Complainant or the original Respondent and must follow the Appeal Procedure set out under section 8.13.
- (c) If the appeal is accepted, an Appeal Panel (with new Panel Members) will be convened to determine the Complaint on appeal.
- (d) A person wanting to appeal must lodge a **Notice of Appeal** (this can be found on the Safe Sport Resources section on SA's website) to the CEO of the Involved Organisation within **7 days** of notification to the Appellant of the decision they are appealing. An appeal fee of **\$500.00** must be included with the Notice of Appeal.
- (e) If the Notice of Appeal is not received by the CEO of the relevant Involved Organisation within this time, the right of appeal will lapse. If the Notice of Appeal is received but the appeal fee is not received within this time, the appeal will also lapse.
- (f) An Appeal can only be granted on one or more of the following grounds:
 - (i) the decision was affected by actual bias; or
 - (ii) there was no evidence on which the decision could be reasonably based.
- (g) The Notice of Appeal must set out the ground(s) of appeal relied on by the Appellant and an outline of the Appellant's submissions.
- (h) Where an appeal is lodged, the relevant Involved Organisation must appoint an Appeal Panel Chairperson. Involved Organisations may appoint a permanent Appeal Panel Chairperson from time to time and an alternate Appeal Panel Chairperson. Involved Organisations are entitled, at any time, to replace or remove any Appeal Panel Chairperson or fill any casual vacancy.
- (i) Where an Appeal is lodged, the relevant Appeal Panel Chairperson must in his/her absolute discretion determine, on the written submission, whether:
 - (i) the appeal sets out a prima facie valid ground of appeal; and
 - (ii) there are sufficient grounds for the appeal to proceed,prior to an appeal being deemed valid and proceeding to an Appeal Panel for determination. Where determining whether an appeal is valid, the Appeal Panel Chairperson may:
 - (iii) request written submissions from one or both of the Complainant and Respondent; and
 - (iv) request from the Hearing Tribunal any of the materials before it.
- (j) Where the Appeal Panel Chairperson:
 - (i) deems the appeal invalid, or that it has not shown sufficient grounds, the appeal will be rejected and will not proceed. The Appellant will be

notified in writing, including the reasons for the decision. The appeal fee will be forfeited; or

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

Chairperson, which will only be given in exceptional circumstances and, if given, may be given unconditionally or on such conditions as the Appeal Panel Chairperson thinks fit;

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

8.14 Mediation Procedure

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

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

9. DISCIPLINARY MEASURES

9.1 Individuals/entities who may impose disciplinary measures

- (a) The following individuals/entities may impose a disciplinary measure in response to a breach of this Member Protection Policy in accordance with the Complaints Procedure:
 - (i) the CEO (or a person with delegated authority of the CEO) of the Involved Organisation after considering the findings of an internal investigation;
 - (ii) the CEO (or a person with delegated authority of the CEO) of the Involved Organisation after considering the findings of an Independent Investigation;
 - (iii) the Hearing Tribunal panel after conducting a Hearing Tribunal; or
 - (iv) the Appeal Panel after conducting an appeal hearing,
(referred to as the **Disciplining Body**).
- (b) The relevant Disciplining Body may impose any disciplinary measure available to it under this section 9.

9.2 Considerations when imposing disciplinary measures

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

9.3 Individual sanctions

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

9.4 Organisational sanctions

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

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

9.5 Disciplinary action against criminal convictions or findings of guilt

- (a) In circumstances where a Complaint is referred to Police and the Respondent receives a criminal conviction or finding of guilt for an offence, SA or the Involved Organisation reserves the right to impose any form of discipline it considers appropriate having regard to the Complaint, the circumstances of the criminal conviction or finding of guilt and the overall reputation, safety and wellbeing of Swimming.
- (b) If SA acts under 9.5(a), it may do so without acting in accordance with Steps 1 - 6 of the Complaint Procedure. Notwithstanding this, SA or the Involved Organisation may still undertake its own investigation into the Complaint if considered necessary (Step 4 of the Complaint Procedure) and provide the Respondent with the opportunity to submit written submissions in response to the Complaint (criminal conviction or finding of guilt) and any proposed disciplinary measures. In doing so, SA or the Involved Organisation must consider the Respondent's submissions before deciding to impose any disciplinary measures.
- (c) Any decision to impose disciplinary measures on a Respondent under this section 9.5 shall be taken to be a decision as if it was made under Step 6 of the Complaint Procedure and an appeal of such decision may be available in accordance with the Appeals Tribunal procedure outlined in section 8.13.

9.6 Disciplinary action against mischievous, vexatious or knowingly untrue Complaints

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

impose disciplinary sanctions on the individual or organisation who made the Complaint in accordance with the sanctions outlined in section 9.3 or 9.4.

10. DEFINITIONS

These definitions apply throughout this Member Protection Policy and any tools, resources and templates referred to in the Member Protection Policy.

Term	Definition
Abuse	Abuse means Physical Abuse, Emotional or Psychological Abuse, Sexual Abuse, and abuse of power that has caused, is causing or is likely to cause harm to a person's wellbeing or development, whether in person directly or as the result of a publication viewable by any other person by any means. Examples of Abuse include, but are not limited to, Bullying, humiliation, verbal abuse and insults, Harassment (including Sexual Harassment), Discrimination, Neglect and Sexual Exploitation.
Appeals Panel	Appeals Panel means the panel created in accordance with section 8.13.
Appellant	Appellant means the person or organisation who initiates an appeal.
ASA	ASA means the Australian Swimmers Association.
ASCTA	ASCTA means the Australian Swimming Coaches and Teachers Association.
Athlete	Athlete means a swimmer - whether recreational or competitive - and who is an individual Member of a Club or Member Association, and therefore a Member of SA.
Annexure	Annexure means an annexure to this Member Protection Policy.
Bullying	Bullying involves the inappropriate use of power by one or more persons or groups of persons over another less powerful person or group of persons and is generally an act that is repeated over time. Bullying has been described by researchers as taking many forms which are often interrelated and include: • <i>Verbal</i> (name calling, put downs, threats); • <i>Physical</i> (hitting, punching, kicking, scratching, tripping, spitting); • <i>Social</i> (ignoring, excluding, ostracising, alienating); and/or • <i>Psychological</i> (spreading rumours, stalking, dirty looks, hiding or damaging possessions). Bullying may have harmed, is harming or is likely to harm or endanger a person. For the avoidance of doubt, Bullying includes cyber Bullying.
CEO	CEO means the chief executive officer of SA, a Member Association or a Club, and includes the executive officer, general manager or other similar title. If the Member Association or Club has no executive officer (for example, for small Clubs or Districts) the CEO means the President of the organisation. If the CEO is unable to perform his or her role for the purposes of this policy, the President may appoint another senior person to do so.

Term	Definition
Chairperson	Chairperson means the chairperson of a Hearing Tribunal or Appeal Panel appointed in accordance with this Member Protection Policy.
Child or Young Person / Children or Young People	A Child or Young Person is a person under the age of 18 years and Children and Young People mean more than one Child or Young Person.
Club(s)	Clubs means swimming clubs within Australia that are affiliated or registered with a Member Association. Clubs must agree to adhere to this Member Protection Policy.
Code of Conduct for dealing with Children or Young People	The Code of Conduct for dealing with Children or Young People set out in the Safeguarding Children and Young People Policy.
Complainant	A Complainant is a person making a Complaint.
Complaint	Complaint means a complaint made to a Person in a Position of Authority under this Member Protection Policy.
Complaint Guidelines	The guidelines set out at Annexure B which should be applied in relation to the Complaint Procedure. The Complaint Guidelines are for guiding purposes only and are not mandatory.
Complaint Procedure	The procedure and steps for dealing with complaints in relation to this Member Protection Policy set out in section 8.8.
Complaint Recording Template	The complaint recording template as set out at Annexure A which should be used when reporting a Complaint.
Delegated Organisation	Delegated Organisation means an organisation delegated by SA to handle a Complaint, such as a Member Association.
Disciplining Body	The Disciplining Body has the meaning given to it in section 9.1 of this Member Protection Policy.
Discrimination	Discrimination occurs when someone is treated (or is proposed to be treated) unfairly or less favourably than another person in the same or similar circumstances because of one of the personal characteristics covered by anti-discrimination laws. This is known as direct discrimination. Indirect discrimination occurs when there is (or is proposed) an unreasonable requirement, condition or practice that seems to treat everyone equally, but which has or is likely to have the effect of disadvantaging persons with a personal characteristic covered by anti-discrimination laws. In Australia, it is against the law to discriminate against someone because of the following (including but not limited to): • age • sex or gender, including on the basis of Gender Identity or Gender Expression • Intersex status • race, colour, descent, national or ethnic origin, nationality, ethno-religious origin, immigration, national extraction or social origin

Term	Definition
	• disability, mental and physical impairment • family/carer responsibilities or status as a parent or carer • marital status • pregnancy, potential pregnancy, breastfeeding • sexual orientation • physical features • irrelevant medical record • irrelevant criminal record or spent convictions • political beliefs or activities • religion, religious beliefs or activities • lawful sexual activity • profession, trade, occupation or calling • member of association or organisation of employees or employers, industrial activity, trade union activity • defence service • personal association with someone who has, or is assumed to have, any of the above characteristics Examples of discrimination are available on the Play by the Rules website: www.playbytherules.net.au/legal-stuff/discrimination Some exceptions to state, territory and federal anti-discrimination law apply, including exceptions for sporting activities, such as: • holding a competitive sporting activity for a specific age or age group (e.g. only those who are under the age of 15 years); • excluding people on the basis of their sex or gender identity status from participation in a competitive sporting activity where the strength, stamina or physique of competitors is relevant to the specific activity (note that this does not apply to activity by children who are under the age of 12); and • not selecting a participant if the person's disability means he or she is not reasonably capable of performing the actions reasonably required for that particular sporting activity.
Gender Expression	The term 'gender expression' refers to the way in which a person externally expresses their gender or how they are perceived by others.
Gender Identity	The term 'gender identity' refers to a person's deeply held internal and individual sense of gender.
General Code of Conduct	The General Code of Conduct means the code of conduct set out in section 5. The code of conduct aims to identify and prevent behaviour that may be harmful to persons in Swimming. The codes of conduct outline acceptable (and unacceptable) behaviour or practice when working with others.
Harassment	Harassment means any type of unwelcome behaviour which has the effect of offending, humiliating, intimidating or is reasonably likely to cause harm to the person who is harassed. Harassment includes Bullying.

Term	Definition
	Harassment may be sexual in nature or target a person because of their race, gender, pregnancy, marital status, sexual orientation or other characteristic (see characteristic list under the definition of Discrimination above).
Hearing Tribunal	Hearing Tribunal means the panel created in accordance with section 8.12.
Independent Investigation	Independent Investigation means an investigation conducted in accordance with section 8.11.
Intersex	The term 'intersex' refers to people who have genetic, hormonal or physical characteristics that are not exclusively 'male' or 'female'. A person who is intersex may identify as male, female, intersex or as being of indeterminate sex.
Investigation Officer	Investigation Officer refers to a Person in a Position of Authority that has been appointed by a Club, Member Association or SA to conduct internal investigation into a Complaint.
Investigator	Investigator means the person appointed by an Involved Organisation to conduct an Independent Investigation in accordance Step 5 of the Complaints Procedure.
Involved Organisation	Involved Organisation means the relevant organisation to receive a Complaint and may be SA, a Club, Member Association or affiliate.
Mediator	Mediator means a person appointed to mediate a Complaint made under this Member Protection Policy, preferably with relevant skills, qualifications or training in mediation.
Member	A Member is generally an individual who is registered as a financial (paid up) member of a Club. A Member can also include (but is not limited to) those classes of members used by Clubs such as "honorary member" and "life member" (or similar categories).
Member Associations	Member Associations are the Australian State and Territory Swimming Associations, the Australian Swimming Coaches and Teachers Association and the Australian Swimmers Association. For those States and Territories that have Regional or District Associations, Member Associations include Regional or District Associations. Member Associations have agreed to follow and adhere to the Swimming Bodies Member Protection Policy in its entirety.
Member Protection Contact or MPC	Member Protection Contact or MPC means a person appointed by a Swimming Body or Club as a contact person regarding possible breaches of this Member Protection Policy.
Member Protection Policy	Member Protection Policy means this Member Protection Policy and Annexures as amended from time to time.

Term	Definition
National Sports Tribunal	The National Sports Tribunal established under the National Sports Tribunal Act 2019 (Cth).
Natural Justice (or procedural fairness)	Natural Justice (or procedural fairness) is the principle that, when resolving a complaint: • both the Complainant and the Respondent must know the full details of what is being said; • both the Complainant and the Respondent must be given full opportunity to respond to the allegations and raise any matters in support of their position; • all parties need to be heard and all relevant submissions considered; • irrelevant matters should not be taken into account; • no person may judge their own case; • the decision maker(s) must be unbiased, fair and just; and • the penalties imposed must not outweigh the breach of this Member Protection Policy or offending behaviour.
Panel Member	Panel Member refers to either a Hearing Tribunal Panel or Appeals Panel member under this Member Protection Policy.
Participant	A Participant includes anyone who participates in a Swimming Body or Club service, event, activity or program, (whether for payment or otherwise) including people who may not be a Member.
Person in a Position of Authority	A Person in a Position of Authority includes everyone who holds a position of authority in Swimming, whether paid or unpaid, and includes, but is not limited to, all Swimming Bodies and Club staff, coaches, officials and volunteers. For the avoidance of doubt, a Person in a Position of Authority also includes Children or Young People who may hold a position of authority in Swimming over other Children or Young People.
Provisional Action	Provisional Action is action that may be taken by SA or its Delegated Organisation in relation to a Complaint. Provisional Action is action taken against a Respondent where the alleged incident is serious enough to warrant such action being taken until the outcome(s) of the internal investigation, mediation, Independent Investigation or Hearing Tribunal (including an Appeal) is known. Provisional action may include, but is not limited to, suspension, restriction of duties or temporary re-deployment.
Regional or District Association	A Regional or District Association includes a governing body that is given powers at a local level for the advancement of Swimming in certain States or Territories. These Associations are required to comply with all applicable provisions of this Member Protection Policy.
Respondent	Respondent means the person or organisation responding to the complaint up to the conclusion of a Hearing Tribunal. From the commencement of an Appeals Tribunal process, the Respondent means the person responding to the Appeal that has been initiated.

Term	Definition
Safeguarding Children and Young People Policy	This Safeguarding Children and Young People Policy means SA's safeguarding children and young people policy as amended from time to time and which can be found at https://www.swimming.org.au/integrity/safe-sport-framework
SA	SA means Swimming Australia Ltd ACN 109 333 628 which is the national governing body for swimming in Australia.
Senior Person	The President, CEO, Secretary or designated delegate of SA, a Member Association or Club, as applicable.
Serious Criminal Conduct	Serious Criminal Conduct means any of the following: • Sexual Offences; • illicit drug possession, use, sale or any other illicit drug-related conduct; • assault causing serious injury; and • any criminal conduct deemed serious enough to warrant escalation to SA by the Involved Organisation.
Sexual Harassment	Sexual Harassment means unwanted, unwelcome or uninvited behaviour of a sexual nature and which could reasonably be anticipated to make a person feel humiliated, intimidated or offended. Sexual Harassment can take many different forms and may include unwanted physical contact, verbal comments, jokes, propositions, displays of pornographic or offensive material or other behaviour that creates a hostile environment.
Sexual Misconduct	Sexual Misconduct means any of the following: • Sexual Offence; • Sexual Harassment; and/or • the use of technology or social media platforms with sexual connotation.
Sexual Offence	Sexual Offence means a criminal offence involving sexual activity or actions of indecency. Given differences between State and Territory laws, this can include but is not limited to: • rape; • indecent assault; • sexual assault; • assault with intent to have sexual intercourse; • incest; • sexual penetration of a child; • indecent act with a child; • sexual relationship with a child; • sexual offences against people with impaired mental functioning; • abduction and detention; • procuring sexual penetration by threats of fraud; • procuring sexual penetration of a child under the age of 16;

Term	Definition
	• bestiality; • soliciting acts of sexual penetration or indecent acts; • promoting or engaging in acts of Child or Young Person prostitution; • obtaining benefits from Child or Young Person prostitution; • possession of Child or Young Person pornography; and • publishing Child or Young Person pornography and indecent articles.
Sexual Orientation	The term 'sexual orientation' refers to a person's emotional or sexual attraction to another person, including, amongst others, the following identities: heterosexual, gay, lesbian, bisexual, pansexual, asexual or same-sex attracted.
Social Networking	Social networking refers to any interactive website or technology that enables people to communicate and/or share content via the internet. For example, social networking websites such as Facebook and Twitter.
Swimming	The sport of swimming in Australia, whether recreational or competitive.
Swimming Bodies	Swimming Bodies refers to SA and its Member Associations (collectively).
Transgender	'Transgender' is an umbrella term that refers to a person whose gender identity is different to their physical sex as recorded at birth. Transitioning refers to the process where a transgender person commences living as a member of another sex. This is sometimes referred to as the person 'affirming' their gender because transitioning means they start living as what they identify as their true gender. For people who are transitioning/affirming their gender, having their identity fully recognised in all areas of life is a crucial part of the experience of living as their affirmed gender.
Victimisation	Victimisation is subjecting a person or threatening to subject a person to any detriment or unfair treatment because that person has or intends to pursue their rights to make a complaint, whether under government legislation (e.g. anti-discrimination), this Member Protection Policy, other SA process or for supporting such a person to do so.

ANNEXURE A

Complaint Recording Template

Complainant Name:				
Age:		Date Formal Complaint Received: / /		
SA/ASCTA Accreditation or Membership Details				
Swim Club:				
Role/Status (in sport)	☐ Administrator (volunteer) ☐ Athlete ☐ Coach/Assistant Coach ☐ Employee ☐ Other ☐ Parent ☐ Spectator ☐ Support Personnel ☐ Official			

Alleged Victim					
Full Name:					
Date of Birth:		Sex:		Age at time of alleged offence:	
SA/ASCTA Accreditation or Membership Details					
Swim Club:					

Alleged Perpetrator					
Full Name:					
Date of Birth:		Sex:		Age at time of alleged offence:	
SA/ASCTA Accreditation or Membership Details					
Swim Club:					

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

Nature of Complaint

(Category / basis / grounds)

Tick more than one box if necessary

- | | |
|--|--|
| ☐ Harassment | ☐ Discrimination |
| ☐ Sexual/sexist | ☐ Selection dispute |
| ☐ Sexuality | ☐ Personality clash |
| ☐ Race | ☐ Bullying |
| ☐ Religion | ☐ Verbal Abuse |
| ☐ Pregnancy | ☐ Physical abuse |
| ☐ Disability | ☐ Victimisation |
| ☐ Other | |

Alleged Breaches of Safe Sport Framework (Part 3 – Codes of Conduct Breaches):

[Detail sections of the Member Protection Policy that you believe that the behaviour/conduct/incident(s) may have breached]

Methods (if any) of attempted informal resolution

Outcome the complainant is seeking
Support person (if any) and contact details
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 Appeal Panel: Decision Action Recommended

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

Signed by:	Complainant:	
	Respondent	

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

ANNEXURE B

Complaint Guidelines

Step 1: Complainant tells Person in a Position of Authority

1. If any person involved in Swimming has concerns about a breach of this Member Protection Policy, they are encouraged to seek out a Person in a Position of Authority to tell them about their concerns. This may be a coach, technical official, volunteer or employee of a Club, Member Association or SA. Wherever possible, please provide to that person details about:
 - (a) who was involved (Respondent & Complainant, as well as witnesses, including any known contact details);
 - (b) if a Child or Young Person was involved, the details of the Child or Young Person's age and parent/guardian details;
 - (c) what you observed or heard;
 - (d) when you observed the concerning incident, behaviour or conduct;
 - (e) where the incident, behaviour or conduct is alleged to have occurred;
 - (f) why you are concerned and the potential impact of the incident (i.e. injuries, others at risk of harm); and
 - (g) if known, what you would like to happen next and the outcome you are seeking.
2. Refer to the Complaint Recording Template to assist.
3. Depending on the nature of the Complaint, after you make initial contact, there are two options:
 - (a) talk to a Person in a Position of Authority who can guide you as to next steps; or
 - (b) depending on the nature and seriousness of the Complaint, formalise the Complaint to your Club or Member Association, as appropriate.

Step 2 - Person in a Position of Authority talks to Complainant

4. Regardless of whether you are a Member, Participant or a Person in a Position of Authority, it is critical that all Complaints are treated seriously and without judgment. Everyone has a role to play to ensure appropriate steps are taken in a sensitive and non-judgmental way.
5. There are certain circumstances that make it inappropriate for a particular Person in a Position of Authority to speak to a Complainant about a Complaint, regardless of whether the Complainant specifically informed that Person in a Position of Authority of their Complaint. In the following circumstances, it may be appropriate for another Person in a Position of Authority, or a Senior Person, to talk to the Complainant once a Complaint is lodged:
 - (a) where the Person in a Position of Authority has had personal involvement in the circumstances giving rise to the Complaint;

- (b) where the Complainant does not wish to discuss the Complaint further with that particular Person in a Position of Authority;
 - (c) where there is a significant (actual or perceived) power imbalance between the Person in a Position of Authority and the Complainant; or
 - (d) where the Person in a Position of Authority shares another relationship with the Complainant outside the swimming context, including immediate or extended family members.
6. Where any of the circumstances in (a) - (d) arise, it may be appropriate for a different Person in a Position of Authority to talk to the Complainant, **unless the Complainant specifically requests, or will only speak to, that particular Person in a Position of Authority.**
7. Where a Person in a Position of Authority or Senior Person is talking to a Complainant about a Complaint, remember to:
- (a) talk to the Complainant calmly and without judgment or opinion;
 - (b) ensure that your conversation is occurring in a private and safe environment;
 - (c) ask non-leading questions to establish what the Complainant's concerns are. This can be in the form of the questions set out at Step 1 (a)-(g) (who, what when, where, why, what next?);
 - (d) if appropriate (for example, the issue is minor, easily resolved and no person is in danger) take steps to resolve the Complaint at that time;
 - (e) if the person receiving details of the Complaint is not an employee, official or coach of any Swimming Body and the Complaint is not easily resolved, seek out a Member Association or Club employee, official or coach and tell them what you and/or the Complainant know about the Complaint; and
 - (f) take notes or record the details of what you find out regarding the Complaint.

Step 3 - Senior Person documents using Templates

- 8. Once a Complaint is reported to a Senior Person under Step 2, the Senior Person must ensure that all relevant information is recorded regarding the Complaint (see Complaint Recording Template) including the outcomes of decision-making.
- 9. When completing the Complaint Recording Template, the Senior Person should include as much information as possible in response to the specific questions at Step 1(a) - (g). The inclusion of as much information as possible in the Recording Template makes it easier for the Involved Organisation to investigate and action the Complaint.
- 10. Complaint Recording Templates must be retained in a safe and secure location for 7 years after the incident, to ensure a copy is available for the duration of relevant limitations of liability period under the law. Refer to Step 8 for more information regarding record-keeping.

Step 4 - Involved Organisation conducts internal investigation

- 11. Natural Justice requires that each person that is a party to the Complaint is informed about the allegations and has an opportunity to respond to them.

12. When investigating a Complaint, the Investigation Officer within the Involved Organisation will:
- (a) connect with the Complainant responding to and investigating the Complaint;
 - (b) connect with the Respondent against whom the allegation refers at an appropriate time and give the Respondent an opportunity to:
 - (i) hear the allegation against him/her/it in full;
 - (ii) explain or respond to the allegation, either orally, in writing or both;
 - (iii) identify any witnesses and supporting evidence in favour of the Respondent;
 - (iv) make submissions (should the Respondent wish to do so) about possible disciplinary measures that may be imposed (noting that no decision has been made at this point);
 - (v) invite a support person or advisor, who must not be a current practicing solicitor or barrister, to attend any meeting with the person investigating; and
 - (vi) obtain support (for example, professional counselling) if necessary;
 - (c) where possible and appropriate, obtain a signed statement and record of interview from the Respondent. The Respondent should have been provided with written particulars of the allegations prior to any interview occurring;
 - (d) make contact with any witnesses and, where possible and appropriate, obtain written and signed statements outlining details of the allegation (what happened, when, how); and
 - (e) obtain other information that could assist in making a decision on the allegation.
13. If the Respondent is an employee, swimmer, coach or official within swimming, the Investigation Officer will:
- (a) convene separate meetings with the parties (as appropriate) and discuss the outcomes of the investigation; and
 - (b) determine and implement a plan for managing feedback and counselling to the parties, as appropriate.

Step 5 - Determining the Complaint

14. After completing the internal investigation, the CEO must determine what action is taken next, namely:
- (a) closing the Complaint where no further action is required, or no longer sought by the Complainant;
 - (b) making a decision and imposing disciplinary measures (if required) in response to the internal investigation of the Complaint (see Step 6);
 - (c) referring the Complaint to Mediation;

- (d) referring the Complaint to an Independent Investigation; or
- (e) referring the Complaint to a Hearing Tribunal.

Where the CEO is the subject of the Complaint, a Senior Person (or delegate) shall make the determination in Step 5.

15. When evaluating which process to undertake in relation to any Complaint, the following table provides guidance:

Guidance Table - Processes for resolving Complaints

Case	When to use
Mediation	- Both parties have had their chance to tell their version of events - CEO does not believe that any of the allegations warrant any form of disciplinary action - Mediation has a chance of success in resolving the Complaint
Involved Organisation makes decision	- There is little dispute as to the facts or the facts of the case are clear to the Involved Organisation - Complaint is relatively minor
Independent Investigation	- There are inconsistencies between each party's version of events - Involved Organisation has not been able to sufficiently establish what occurred through internal investigation - Complainant is not comfortable appearing in the same room as the Respondent at a Hearing Tribunal
Hearing Tribunal	- Respondent is an employee or independent contractor of the Involved Organisation (subject to legal advice) - Respondent's livelihood will be impacted by any adverse finding or disciplinary measures

16. The relevant procedure that must be followed for a Mediation, Independent Investigation or Hearing Tribunal under this Member Protection Policy are outlined at:
 - (a) section 8.11 for Independent Investigations;
 - (b) section 8.12 for Hearing Tribunals; and
 - (c) section 8.14 for Mediation.
17. As outlined at "Step 5" above, it may be beneficial for the CEO to make a decision and impose disciplinary measures (if required) at the completion of Step 4 where:
 - (a) there is little dispute as to the facts of the Complaint; or
 - (b) the Complaint is at the minor end of the Complaint scale.

18. Where a CEO decides to impose disciplinary measures after the completion of Step 4, the following should have occurred to satisfy the requirements of Natural Justice:
- (a) the Respondent was made aware of the specific allegations against him/her/it and the identity of the Complainant;
 - (b) the Respondent was provided the opportunity to respond to the specific allegations within the Complaint, either in writing or in person; and
 - (c) the Respondent was afforded the opportunity to have a support person (who must not be a current practicing solicitor or barrister) present at any meeting or interview with a representative of the Involved Organisation.
19. As identified below (and Section 8.12), the Respondent may have a right of appeal from a decision and disciplinary measures imposed by an Involved Organisation in response to a Complaint (see Step 7).

Step 6 - Decision and/or discipline

20. Under section 9, an Involved Organisation may impose a variety of disciplinary measures against a Respondent (whether an individual or organisation) who has breached this Member Protection Policy.
21. The form of disciplinary measures to be imposed on an individual or organisation should depend on factors such as:
- (a) the nature and seriousness of the behaviour or incidents;
 - (b) if the Respondent knew or should have known that the behaviour was a breach of the Member Protection Policy;
 - (c) level of contrition of the Respondent;
 - (d) the effect of the proposed disciplinary measures on the Respondent including any personal, professional or financial consequences;
 - (e) if there have been relevant prior warnings or disciplinary action; or
 - (f) if there are any mitigating circumstances such that the Respondent should not be disciplined at all or not disciplined so seriously.

Step 7 - Appeal

22. Once a decision is made and disciplinary measures imposed (if required) a Respondent may be entitled to lodge an appeal.
23. An appeal from such a decision must be lodged within 7 days of the Respondent being notified of the original decision. The Appeal Procedure (section 8.13) sets out the grounds of appeal and the procedure that must be followed.
24. To lodge an appeal, the Appellant (who may be the original Complainant or the original Respondent) is required to submit a Notice of Appeal to the CEO of the Involved Organisation which will hear the Appeal.
25. The Chairperson of the Appeal Panel will consider whether the appeal is valid. The validity of an appeal is based on:

- (a) whether the appeal demonstrates one or both of the grounds of appeal outlined in the Appeal Procedure; and
 - (b) there are sufficient grounds for the appeal to proceed.
- 26. The Appeal Panel is convened, held and makes its decision based on the Appeal Procedure in section 8.13.

Step 8 - Record, notify and finalise

- 27. Swimming Bodies and Clubs must keep records of all Complaints for a minimum of 7 years.
- 28. Records must be maintained in a secure and confidential place.
- 29. When recording details at the finalisation of a Complaint, the Senior Person must:
 - (a) file all materials lodged by each party to the Complaint;
 - (b) document the decision made with respect to the Complaint;
 - (c) document any disciplinary measures arising out of the Complaint; and
 - (d) record any additional outcomes of the Complaint.
- 30. The relevant Involved Organisation must:
 - (a) where it is a Club, notify its Member Association; or
 - (b) where it is a Member Association, notify SA,as soon as possible after the Complaint is resolved.