

Swimming New Zealand Disputes & Disciplinary Policy

1. Title

1.1 The Policy:

- (a) Is made by the Board under rule 21 of the Constitution;
 - (b) Shall be called be the Swimming New Zealand Disputes & Disciplinary Policy (“Disputes & Disciplinary Policy”).
-

2. Definitions

2.1 In this Disputes & Disciplinary Policy, the following words have the following meanings:

- (a) **Anti-Doping Rule Violation** has the meaning given by the Sports Anti-Doping Rules;
 - (b) **Board** means the board of Swimming New Zealand as defined by the Constitution;
 - (c) **Board Member** means a member of the Board of Swimming New Zealand;
 - (d) **Code of Conduct** means the Swimming New Zealand Code of Conduct ordered by the Board and as amended by the Board from time to time;
 - (e) **Constitution** means the constitution of Swimming New Zealand in force and as amended from time to time;
 - (f) **CPA** means Child Protection Advisor appointed by Swimming New Zealand;
 - (g) **FINA** is the international governing body for swimming;
 - (h) **GM** means a general meeting of Swimming New Zealand called in accordance with the Constitution, whether an AGM or SGM;
 - (i) **Member** has the meaning given by the Constitution;
 - (j) **Member Protection Policy** means the Swimming New Zealand Member Protection Policy ordered by the Board as amended from time to time;
 - (k) **Panel** means the panel formed by the CEO under rule 8.1;
 - (l) **President** means the President of Swimming New Zealand;
 - (m) **Regional Association** has the meaning given by the Constitution;
 - (n) **ST** means the Sports Tribunal of New Zealand.
-

3. Objectives

- 3.1 The Objectives of the Disputes & Disciplinary Policy are:
- (a) To determine alleged breaches of the Code of Conduct;
 - (b) To determine alleged breaches of the Member Protection Policy;
 - (c) To resolve disputes that arise between Members;
 - (d) To make decisions on appeals by a Member against a decision of a Regional Association or Member Club involving suspension, expulsion, penalty or material detriment to the Member.
-

4. When this Disputes & Disciplinary Policy Applies

- 4.1 **Resolution in Region at first instance:** Subject to rules 4.2 and 4.2(e) below, it is the intention that alleged breaches of the Code of Conduct, Member Protection Policy, or disputes between Members shall be dealt with in the first instance by the Regional Association whose Member is in breach or between whose Members the dispute has arisen.
- 4.2 In relation to alleged breaches of the Code of Conduct and Member Protection Policy, this Disputes & Disciplinary Policy shall only apply where:
- (a) The alleged breach is by a member of the Swimming New Zealand High Performance programme; or
 - (b) The alleged breach is by a person who is not a member of a Regional Association;
 - (c) The alleged breach relates to a complaint made under the Code of Conduct or Member Protection Policy which the complainant knew was untrue;
 - (d) The Regional Association who has jurisdiction to determine the breach under rule 4.1 above requests that Swimming New Zealand determine the breach in accordance with this Disputes & Disciplinary Policy and the Board agrees;
 - (e) Where the Board considers in its sole discretion that the breach is of such severity and significance to the sport of swimming that it should be determined under this Disputes & Disciplinary Policy.
- 4.3 In relation to disputes that arise between Members, this Disputes & Disciplinary Policy shall only apply where:
- (a) The dispute involves an important activity or responsibility of Swimming New Zealand and which the Board considers in its discretion is of such importance or

is causing such a level of disruption to Members or activities of Swimming New Zealand that it must be addressed; AND

- (i) The dispute is not able to be resolved at a regional level; or
- (ii) One of the parties to the dispute is a Regional Association.

4.4 Where any breach or dispute is to be determined by a Regional Association it shall be determined in accordance with the rules of that Regional Association. Where a Regional Association has no rules which deal with disciplinary matters or disputes, the Regional Association shall determine the matter in accordance with rules 8 to 10 of this Disputes & Disciplinary Policy amended as follows:

- (a) Rule 8.1 shall be amended so that the board or executive committee of the Regional Association shall determine the members of the panel to hear the matter;
- (b) Rule 9.3 shall be amended to reflect that in relation to breaches of the Code of Conduct and Member Protection Policy there is a right of appeal to Swimming New Zealand under rule 7 of this Disputes & Disciplinary Policy. Determinations in relation to disputes between members shall be final and binding.

4.5 **Relationship to Constitution:** This Disputes & Disciplinary Policy must not be interpreted as restricting or limiting the powers of Swimming New Zealand, the Board or the CEO as provided for in the Constitution or the powers of a Regional Association under its rules.

4.6 **Relationship to law:** Any action taken under this Disputes & Disciplinary Policy shall be without prejudice to any right or remedy Swimming New Zealand or a Regional Association may have in law.

4.7 **Doping:** This Disputes & Disciplinary Policy does not apply to Anti-Doping Rule Violations for which the provisions of:

- (a) Any FINA or IOC anti-doping rules; and / or
- (b) The Sports Anti-Doping Rules;

shall apply to Members.

4.8 **Selection appeals:** this Disputes & Disciplinary Policy shall not apply to appeals against:

- (a) A Member's non-selection to a New Zealand swimming team;
- (b) A Member's non-nomination or non-selection to a New Zealand Olympic or Commonwealth Games Team.

5. Investigation of Breaches of the Code of Conduct or Member Protection Policy

- 5.1 Where this Disputes & Disciplinary Policy applies in accordance with rule 4.2:
- (a) the CEO may of his own motion investigate breaches of the Code of Conduct or Member Protection Policy.
 - (b) Any Member, Board Member, Regional Association Board Member, President, or a CPA may report a breach of the Code of Conduct or the Member Protection Policy to the CEO, but any subsequent action in relation to that complaint shall be in the CEO's sole discretion.
- 5.2 The CEO may postpone investigation of any alleged breach or enforcement of the Code of Conduct or Member Protection Policy pending any separate investigation by an outside agency.
- 5.3 In investigating a possible breach of the Code of Conduct or Member Protection Policy the CEO may require a Member to provide such information as necessary to assist with that investigation for the purpose of determining whether there is a case to answer.
- 5.4 Where the CEO determines that there is a case to answer in relation to the allegation the CEO shall convene a Panel in accordance with rule 8.1.
- 5.5 Where the CEO determines that there is no case to answer the CEO shall take no further action in relation to the allegation.
- 5.6 In relation to alleged breaches of the Member Protection Policy the CEO may delegate any of his powers of investigation under this rule to a CPA or the President.
-

6. Disputes Between Members

- 6.1 Where a Member who has a dispute with another Member believes that this Disputes & Disciplinary Policy may apply in accordance with rule 4.2(e) above, that Member may refer the dispute to the CEO in writing.
- 6.2 Upon receipt of notice of that dispute the CEO may investigate the dispute by asking the parties to the dispute to provide further information.
- 6.3 When the CEO is satisfied that he has all the information relevant to the dispute the CEO shall refer the dispute to the Board which shall determine in its sole discretion whether such dispute meets the criteria set out in rule 4.2(e) of this Disputes & Disciplinary Policy.
- 6.4 Where the Board is satisfied that the dispute meets the criteria in rule 4.2(e) it shall:

- (a) Refer the parties to the dispute to mediation to be facilitated by the President or such person suitably qualified to mediate the dispute; and
 - (b) Direct the CEO to appoint a Panel in accordance with rule 8 to resolve the dispute in the event that mediation is unsuccessful.
- 6.5 Where the Board is not satisfied that the dispute meets the criteria in rule 4.2(e) it shall either:
- (a) Refer the parties to the dispute to mediation to be facilitated by the President or such person suitably qualified to mediate the dispute; or
 - (b) Take no further action in relation to the referral.

7. Appeals from Regional Member and Member Clubs

- 7.1 Any Member who wishes to appeal a decision of a Regional Association or Member Club involving suspension, expulsion, penalty or any other material detriment may appeal to Swimming New Zealand by providing written notice to the CEO within 28 days of the date of the decision appealed against.
- 7.2 The written notice provided under rule 7.1 shall:
- (a) Include a copy of the decision being appealed against;
 - (b) Include a summary of the reasons why the Member wishes to appeal against the decision; and
 - (c) Indicate whether the Member wishes to appeal against a part of the decision (and if so the grounds for doing so) or wishes to have a rehearing of the entire matter;
 - (d) Be copied to the Regional Association or Member Club who made the decision being appealed against.
- 7.3 Upon receipt of the notice the CEO may either:
- (a) Convene a Panel in accordance with rule 8; or
 - (b) Require that the Regional Member / Member Club and the Member submit to the jurisdiction of the ST for the hearing of the appeal.

8. Hearing

- 8.1 **Appointment of Panel:** the CEO shall appoint a panel of enquiry which comprises a three members made up as follows:

- (a) An appropriately qualified person who shall act as the Panel's Chair;
 - (b) Such other persons as he judges to be suitable to hear the matter.
- 8.2 **Conflict of interest:** No person may sit on the Panel who has an actual or potential conflict of interest which may affect their impartiality in hearing the matter before them.
- 8.3 **Procedures to be adopted:** In hearing any matter under this Disputes & Disciplinary Policy, the Panel will have the right to determine all procedures to be adopted.
- 8.4 **Non-attendance by party to hearing:** Once a hearing is convened, the Panel has power to make a determination upon the available evidence on the date set for the hearing, or such later date, irrespective of whether any party attends the hearing or makes written submissions.
- 8.5 **Documents:** any documents upon which any party to the hearing wishes to rely must be sent to the other party and the Panel at least two business days prior to the date convened for the hearing. The Panel may exclude any documents not sent to them in accordance with this rule.
- 8.6 **Witnesses:** The Panel may, in relation to any hearing, require the attendance of any person and ask any questions and call any evidence as the Panel, in its absolute discretion, thinks fit. It is acknowledged that the Panel has no legal power to compel such witnesses to attend, other than Members who are contractually bound to do so.
- 8.7 **Written submissions:** Any party to a hearing (including the CEO and / or CPA) may make any written submissions to the Panel provided that copies of such written submissions are provided to the Panel and the other parties prior to their presentation.
- 8.8 **Representation:** At any hearing any Member may be represented by a support person who may make submissions on that Member's behalf but who shall not be entitled to provide evidence on that Member's behalf.
- 8.9 **Confidentiality:** all hearings before the Panel shall be confidential and any matters discussed shall be held in the strictest confidence between those in attendance at the hearing.
-

9. Determination

- 9.1 **General justice and fairness:** The Panel will make its determinations in the following manner:
- (a) by reference to considerations of general justice and fairness;
 - (b) consistently with any contractual or employment rules which may apply;

- (c) based on the evidence presented to the Panel and the seriousness of the breach.
- 9.2 **Written Reasons:** The Panel will with as little delay as possible after the conclusion of a hearing, contemporaneously provide a written determination to the parties, which sets out the reasons for the determination.
- 9.3 **Determinations final and binding:** Subject only to the right of appeal set out in rule 11, all Determinations of the Panel will be final and binding.
- 9.4 **Determinations confidential:** All determinations of the Panel shall be confidential between the parties unless the Panel determines that publication of the determination is in the best interests of the sport (for example, to deter others from similar conduct).
- 9.5 **Manifest error:** The Panel may at any time correct, vary or set aside a determination where there is a manifest error in the determination.
- 9.6 **What the Panel may determine:** After hearing the evidence, the Panel may make one or more of the following orders:
- (a) In relation to alleged breaches of the Code of Conduct or Member Protection Policy:
 - (i) Make an order that the Member is found to have breached the Code of Conduct or Member Protection Policy and shall refrain from committing any further breach of either the Code of Conduct or Member Protection Policy;
 - (ii) Find the alleged breach of the Code of Conduct or Member Protection Policy to have been proven and impose a sanction;
 - (iii) Find the alleged breach of the Code of Conduct or Member Protection Policy or any part to be proven, but decline to take any further action in the matter;
 - (iv) Find the alleged breach of this Code of Conduct or Member Protection Policy or any part of it not proven and make an order that the allegation be dismissed.
 - (b) In relation to a dispute between Members, make such findings of fact or other such orders which the Panel considers necessary in order to resolve the dispute which may include (but not necessarily be limited to):
 - (i) Ordering one Member to pay the other Member a sum in compensation which represents any actual financial loss suffered by that Member which is caused by the other Member;

- (ii) Requiring any Member to comply with any rule, regulation or policy of Swimming New Zealand or a Regional Association.
 - (c) In relation to an appeal by a Member from a decision of a Regional Association or Member Club:
 - (i) Allow the appeal and set aside the decision being appealed against and substitute its own decision;
 - (ii) Dismiss the appeal.
-

10. Sanctions for Breaches of the Code of Conduct or Member Protection Policy

10.1 If a Member is found to have breached any part of the Code of Conduct or Member Protection Policy, the Panel may impose one or more of the following sanctions:

- (a) Issue a written warning;
- (b) Direct that the Member attend counselling to address their behaviour as a condition of their membership;
- (c) Withdrawal of any awards, placings, records, activities or events sanctioned by Swimming New Zealand;
- (d) Suspend the Member's membership rights in Swimming New Zealand for a period;
- (e) Suspend the Member from participating in any swimming related activity which is run under the auspices of Swimming New Zealand, a Regional Association or a Member Club;
- (f) Require an apology, or order reparation or compensation to any Member affected by the breach;
- (g) Recommend the expulsion of the Member from either Swimming New Zealand, the Member's Regional Association or Member Club;
- (h) Enforce any sanction imposed by the IOC, FINA or the ST in addition to any sanction of its own which it thinks appropriate in the circumstances;
- (i) Any other form of discipline the Panel considers appropriate;
- (j) Where the Member is a Regional Association or Member Club:
 - (i) direct that any funding granted or given to it by Swimming New Zealand cease from a specified date;

- (ii) Direct that any rights or privileges or benefits provided cease from a certain date;
 - (iii) A direction that Swimming New Zealand cease to sanction events held by or under its auspices.
- (k) Decline to take any further action.
- 10.2 In determining what sanction to impose the Panel shall take into account the following factors:
- (a) Nature and seriousness of the breach;
 - (b) If the person knew or should have known that the behaviour was a breach;
 - (c) Level of contrition;
 - (d) The effect of the proposed disciplinary measures on the person including any personal, professional or financial consequences;
 - (e) If there have been relevant prior warnings or disciplinary action;
 - (f) Ability to enforce discipline if the person is a parent/guardian or spectator;
 - (g) Any mitigating circumstances.
- 10.3 **Child Protection:** Where a determination involves child protection concerns the safety of the child is the priority and the Panel must consult with the CPA assigned to the matter prior to making any determination or imposing any sanction.
- 10.4 Without limiting the generality of the remedies available to the Panel and this rule, the Panel may suspend the enforcement of any such remedy on such terms and conditions as it thinks fit.
- 10.5 **Costs:** Each party will be responsible for bearing its own costs in relation to the Hearing.
-

11. Right of Appeal

- 11.1 Any Member against whom a determination has been made under rule 4.2 may appeal that determination to the ST in accordance with the Rules of the ST. Until such appeal is determined, any sanction imposed by the Panel shall remain in place.
- 11.2 No appeal shall lie against determinations made under rules 4.2(e) or 7 which shall be final and binding.

Chair

By order of the Board of Swimming New Zealand

Dated: