

## Part 4 – Safe Sport Complaint Procedures

### 4.1 Introduction

Swimming Australia strives to provide the best possible delivery of its activities, programs, services and events. However, Swimming Australia recognises that from time-to-time, issues may arise that require assistance or support to resolve.

Swimming Australia encourages everyone involved in swimming to voice concerns that they may have at any point regarding the safety, health, welfare, behaviour or conduct of associated persons or organisations. This is particularly so in relation to complaints regarding Children or Young People, which is our priority to resolve.

This Safe Sport Complaint Procedures sets out the steps involved to address Complaints, whether they relate to Children or Young People, Members, Participants or Persons in Positions of Authority. It also provides advice and guidance to Complainants and Swimming Australia Members, Clubs and Persons in Positions in 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.

The Safe Sport Complaint Procedures aim to set out a unified and consistent process for resolving complaints in our Sport for all.

A number of resources have been created to assist all Persons in Positions of Authority to manage Safe Sport Complaints, including the Safe Sport Complaint Management Guidance document contained in the Resources section of our Safe Sport website.

### 4.2 Application

These Safe Sport Complaint Procedures, including all resources, tools and templates apply to all complaints lodged under this Safe Sport Framework, whether at Club, Member Association or Swimming Australia Limited level.

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 Safe Sport Framework.

### 4.3 Safe Sport Complaint Procedures Commitment

Swimming Australia is committed to:

- addressing any complaints brought to its attention regarding the welfare, health and safety of all Children or Young People, Members, Persons in Positions of Authority and/or Participants in swimming;
- dealing with all complaints in a fair, timely and transparent manner, as appropriate;

- escalating complaints as appropriate to ensure that appropriate Persons in Positions of Authority and Senior Persons are involved;
- considering the wishes of the Complainant(s);
- providing communication on a regular basis as to the progress of the Complaint;
- clearly explaining the next steps and options to all parties involved in the Complaint at every step;
- maintaining appropriate confidentiality regarding Complaints, subject always to legal requirements regarding disclosure or if disclosure is necessary to deal with the Complaint;
- reporting any serious issues involving a Child or Young Person to relevant authorities, in accordance with relevant State and Territory legislation;
- ensuring that the principles of Natural Justice and Procedural Fairness are followed when dealing with Complaints; and
- maintaining appropriate records of Complaints in a safe and confidential manner.

#### **4.4 Safe Sport Complaint Procedures Principles**

The Safe Sport Complaint Procedures are guided by the principles set out below. In the event of any uncertainty regarding how to deal with Complaints, please draw on these principles to guide an appropriate course of action:

- (a) All matters involving one or more of Child Abuse or Serious Criminal Conduct should immediately be referred to Swimming Australia Limited and/or Police (if there is an immediate threat of Harm or a serious offence has occurred) and/or the appropriate external agencies by Members, Participants and/or Persons in Positions of Authority. Such incidents are Case 1 Complaints – refer Table A in section 4.10.
- (b) With the exception of Case 1 Complaints, where possible, Complaints should be dealt with as soon as practicable after they become known and dealt with at Club, Member Association, ASCTA or ASA level to minimise:
  - Harm to Children or Young People;
  - distress to Complainants and those against whom allegations are made; and
  - time taken by Clubs, Member Associations and Swimming Australia Limited to resolve Complaints.
- (c) Maintain appropriate confidentiality regarding a Complaint, subject to legal requirements regarding disclosure or if disclosure if necessary to deal with the Complaint.
- (d) Always involve appropriately skilled Persons in Positions of Authority to work through a Complaint consistent with mandatory reporting requirements.

- (e) Persons in Positions of Authority should consult other Persons in Positions of Authority at a more senior level than them when resolving contentious Complaints.
- (f) If you are unsure of how to deal with a Complaint, always escalate that Complaint to your Club, Member Association or Swimming Australia Limited, as appropriate.
- (g) Use the tools and templates provided in this Policy to record actions when resolving Complaints and keep these records safe and confidential.

#### **4.5 Record Keeping and Sharing**

Swimming Australia Limited, Clubs and Member Associations must keep records of all Complaints in keeping with the “Safe Sport Complaint Register Template” set out in the Safe Sport Resources section of the Swimming Australia Limited website. For Case 2 and 3 Complaints, records must be kept for a minimum of 3 years. For all Case 1 Complaints, records must be maintained for a minimum of 7 years.

Records must be maintained in a secure and confidential place – preferably both in electronic and hard copy (if any) versions.

All Clubs and Member Associations will share records with Swimming Australia Limited and provide those records upon request.

#### **4.6 Complaints regarding Children or Young People**

Complaints regarding the safety, health or wellbeing of a Child or Young Person will be treated by Swimming Australia as a high priority. This is because Children or Young People are more vulnerable and need to be safeguarded and protected by all.

Where Complaints arise regarding a Child or Young Person in swimming, it may be necessary for Swimming Australia and its Persons in Positions of Authority to take very particular steps, such as reporting incidents to authorities. For that reason, Complaints regarding a Child or Young Person are to be addressed in accordance with sections 4.11 and 4.13.

#### **4.7 Who can make complaints?**

Complaints may be made by:

- Members, parents, swimmers, coaches officials and Clubs;
- (non-Member) Swimming Australia Participants;
- Persons in Positions of Authority;
- other organisations; or
- any person in the general community who has concerns about a person or their behaviour or conduct in swimming.

#### **4.8 What can Complaints be about?**

Complaints may be about an act, behaviour, conduct, omission, situation or decision that is in breach of this Safe Sport Framework. It may be about:

- a Child or Young Person or an adult;
- a group or organisation;
- a single incident or a series of incidents;
- in relation to issues with Children or Young People - a seemingly minor issue or a very serious issue, such as Harm to a Child or Young Person;
- a breach of our Child Protection Commitment Statement; or
- a breach by a Member, Athlete or Person in a Position of Authority of our Code(s) of Conduct.

#### **4.9 Complaints from Other Organisations**

Swimming Australia is committed to working collaboratively, respectfully and ethically with all other sporting, community service and business organisations.

In some circumstances, Swimming Australia and its 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 at 4.1 will be applied.

#### **4.10 Initial stages of complaints**

Most Complaints can be dealt with initially at Club, ASCTA or ASA level. However, there may be some situations in which it is more appropriate to raise a Complaint initially with your State or Territory Member Association first rather than at Club or facility level. 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 Safe Sport Framework.

To ensure that Complaints are dealt with by the appropriate organisation and that there is an available escalation process if necessary, Complaints should be dealt with by the organisations listed at Table A.

Member Associations and/or Swimming Australia Limited may also, at their discretion, refer Complaints received back to Club, ASCTA, ASA or a Member Association level, should that be appropriate. Flowcharts of the steps to take for Case 1 and Cases 2 and 3 Complaints can be found in the Safe Sport Resources section of the Swimming Australia Limited website.

For each type of complaint, there are three common stages of resolving a complaint:

- a) Reporting a Complaint;
- b) Investigating a Complaint; and
- c) Determining a Complaint.

#### **Table A - Incident Categorisation**

Case	Incident/Allegation Type	Initial Contact/Referral
Case 1	<ul style="list-style-type: none"> <li>All Child Abuse matters and allegations of Sexual Misconduct or Serious Criminal Conduct</li> <li>Case 1 &amp; 2 Appeals</li> </ul> <p>Refer section 4.10 for details of steps to resolve</p>	Swimming Australia Limited
Case 2	<ul style="list-style-type: none"> <li>State-related complaints or inter-club matters not involving Child Abuse or Serious Criminal Conduct.</li> <li>Case 3 Appeals</li> </ul>	State or Territory Swimming Association
Case 3	General complaints related to adults in our Sport including Bullying, Harassment, dissatisfaction with Safe Sport Framework-related decisions or interactions not involving Child Abuse or Serious Criminal Conduct.	Clubs, ASCTA or ASA

Note – for Case 1 Complaints, Swimming Australia Limited may decide to take Provisional Action

#### 4.11 Summary of Steps to Resolve Complaints - Case 1 Complaints

The steps that should be taken to resolve a Complaint when a Member, Participant or Person in a Position of Authority has concerns about a Case 1 breach of this Safe Sport Framework are listed below.

##### **Case 1 Complaints:**

##### *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 facts, explains next steps and reports Complaint to a Senior Person.

**If immediate threat of Harm or mandatory reporting scenario, Person in a Position of Authority and/or Senior Person report to police and/or relevant external agency**

**Step 3 -** Senior Person documents Complaint using Templates in this Framework.

**If Complaint not already reported to police and/or external agency, Senior Person reports Complaint to police and/or external agency as appropriate in a mandatory reporting scenario**

**Step 4 -** Senior Person reports Complaint to Swimming Australia Limited.

**Step 5 -** Swimming Australia Limited reports to relevant external authority if mandatory reporting is required and it has not already reported.

*Investigating Complaint*

**Step 6 -** Swimming Australia Limited conducts internal investigation of Complaint unless otherwise requested by external agency.

**Provisional Action taken by Swimming Australia Limited if required.**

**Step 7 -** Swimming Australia Limited determines whether to delegate Complaint to a Delegated Organisation.

**Step 8 -** Swimming Australia or Delegated Organisation (“**Involved Organisation**”) conducts internal investigation of Complaint.

**Provisional Action taken by Involved Organisation if required.**

**Step 9 -** (IF RELEVANT) Provisional Action taken (if required and not already taken).

*Determining Complaint*

**Step 10 -** Involved Organisation evaluates next steps and determines whether to:

- (a) make decision and impose disciplinary measures or take no further action;
- (b) refer Complaint to Independent Investigation; or
- (c) refer Complaint to Hearing Tribunal.

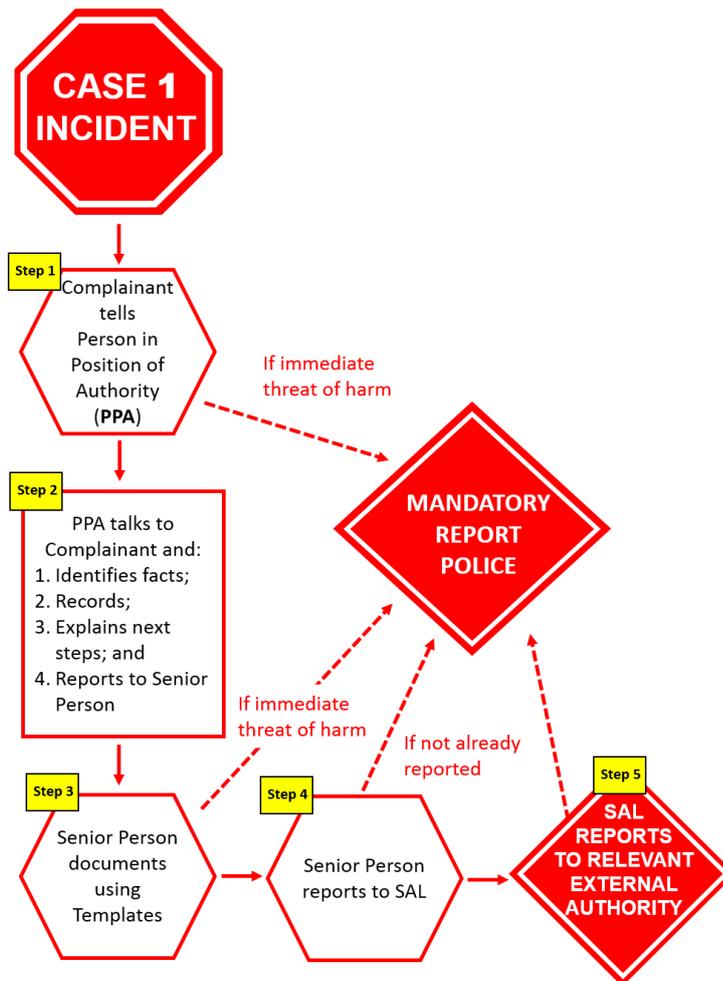
Relevant process selected by the Involved Organisation is undertaken.

**Step 11 -** Decision made and disciplinary measures (if required) imposed as a result of the chosen Step 10 process.

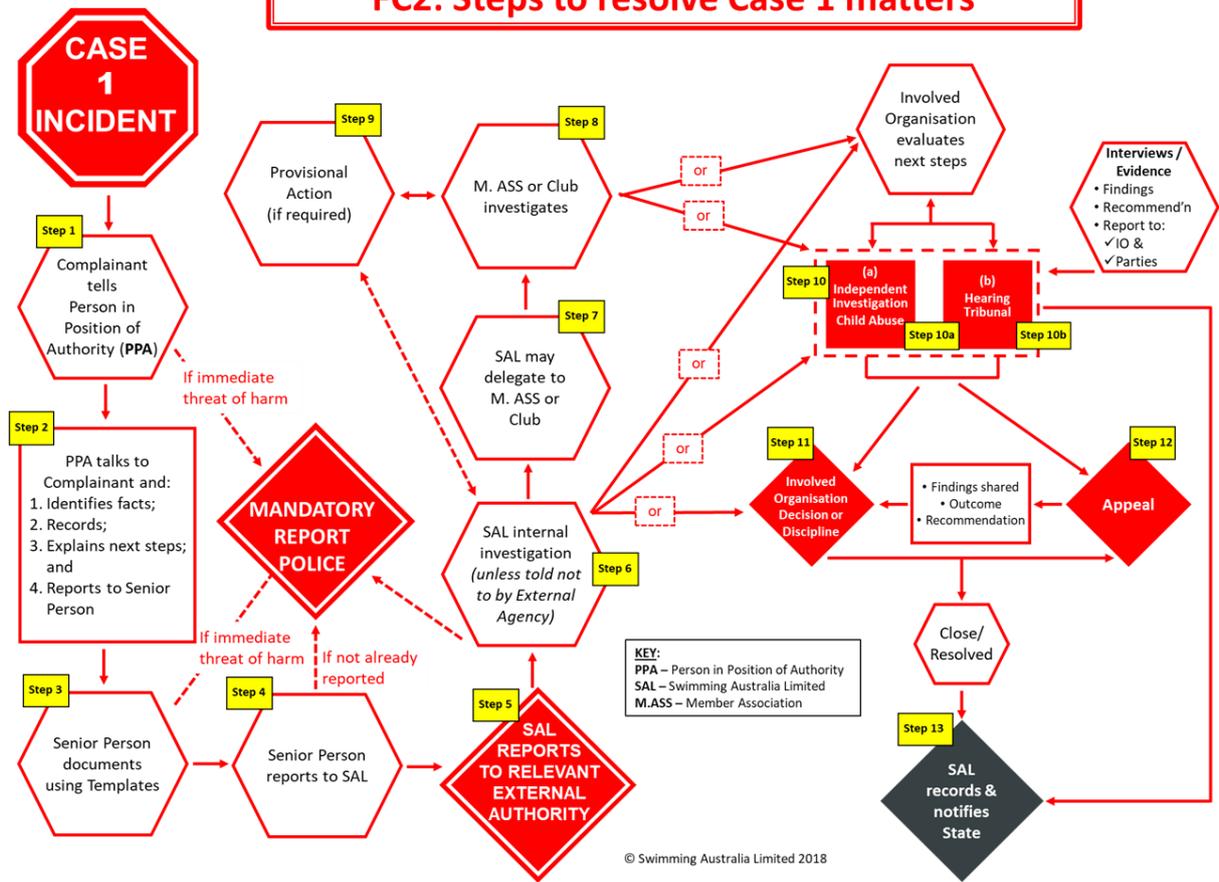
**Step 12 -** Appeal (if deemed valid) may be lodged in relation to decision. Subsequently the appeal is heard, (if relevant) new decision made and (if relevant) new disciplinary measures (if required) imposed.

**Step 13 -** Record of Complaint finalised. Swimming Australia Limited and Involved Organisation notified of outcome of Complaint. Complaint closed.

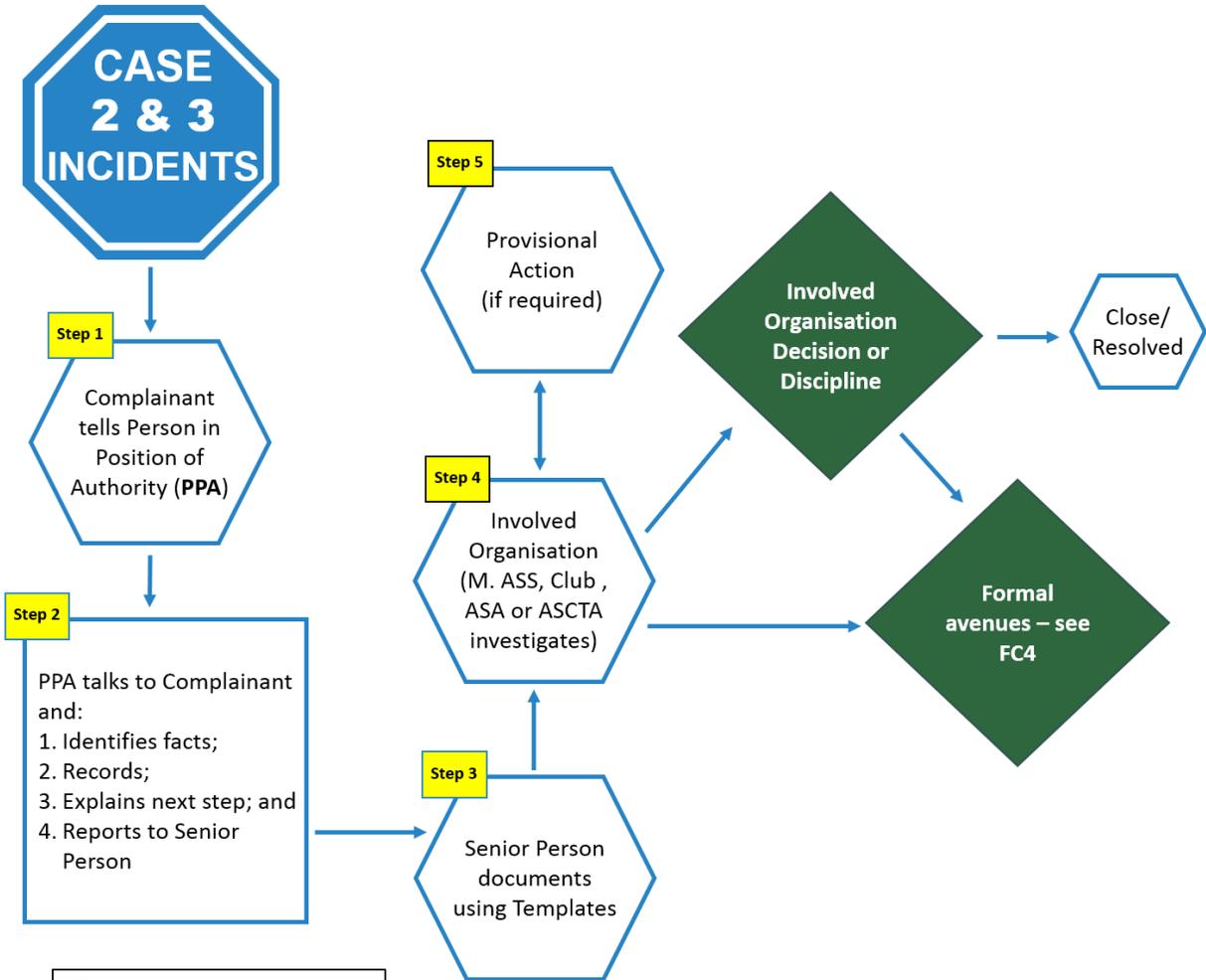
## FC1: Initial steps to report Case 1 matters



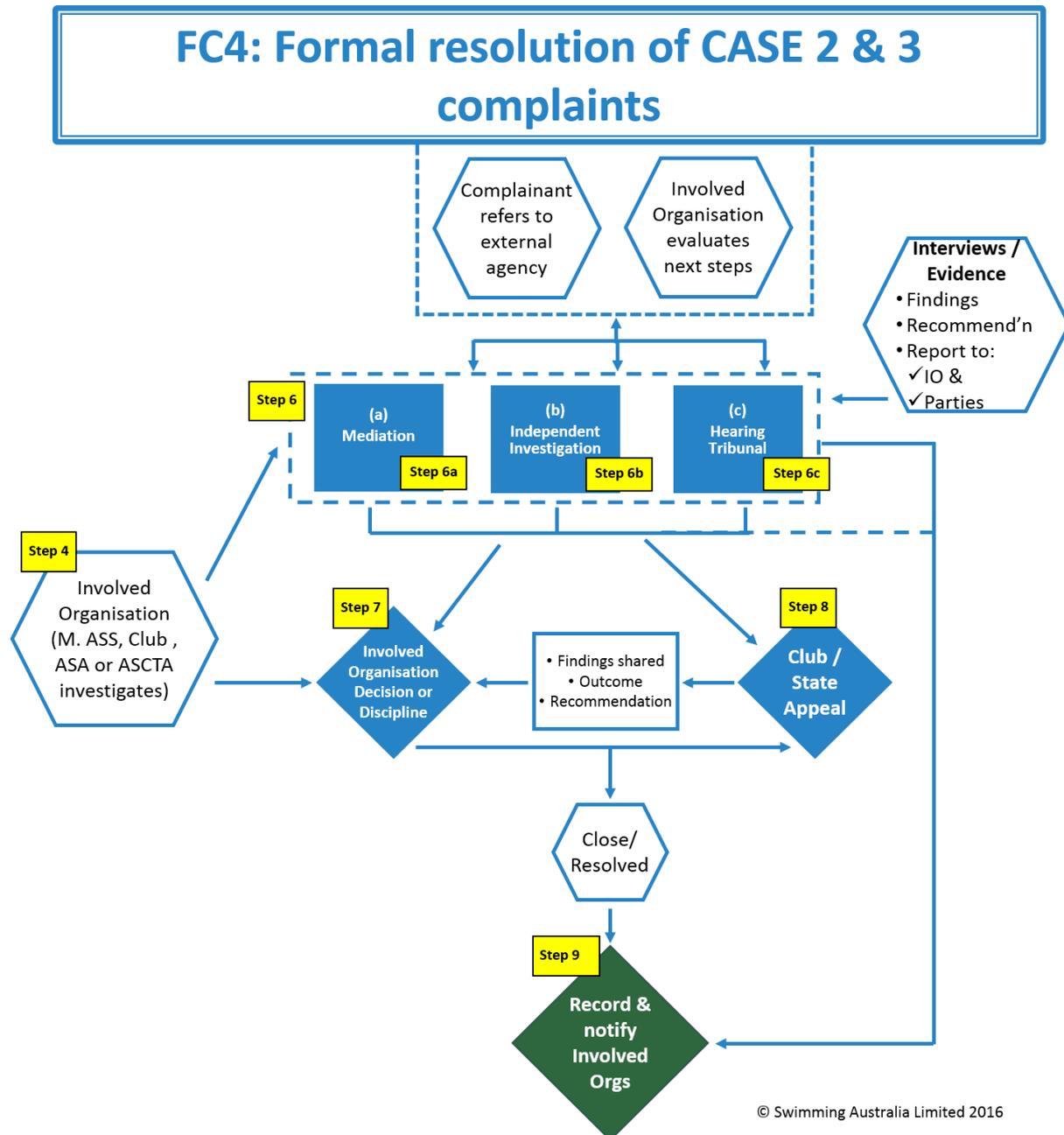
## FC2: Steps to resolve Case 1 matters



# FC3: Initial steps to report Case 2 & 3 complaints



**KEY:**  
 PPA – Person in Position of Authority  
 SAL – Swimming Australia Limited  
 M.ASS – Member Association



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### 4.12 Summary of Steps to Resolve Complaints - Case 2 and 3 Complaints

#### Case 2/3 Complaints:

#### *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 Templates in this Framework.

*Investigating Complaint*

**Step 4 -** Involved Organisation conducts internal investigation of Complaint.

**Step 5 -** Provisional Action taken if required and deemed appropriate.

*Determining Complaint*

**Step 6 -** Involved Organisation evaluates next steps and determines whether to:

- (a) make decision and impose disciplinary measures or take no further action;
- (b) refer Complaint to Mediation;
- (c) refer Complaint to Independent Investigation; or
- (d) refer Complaint to Hearing Tribunal.

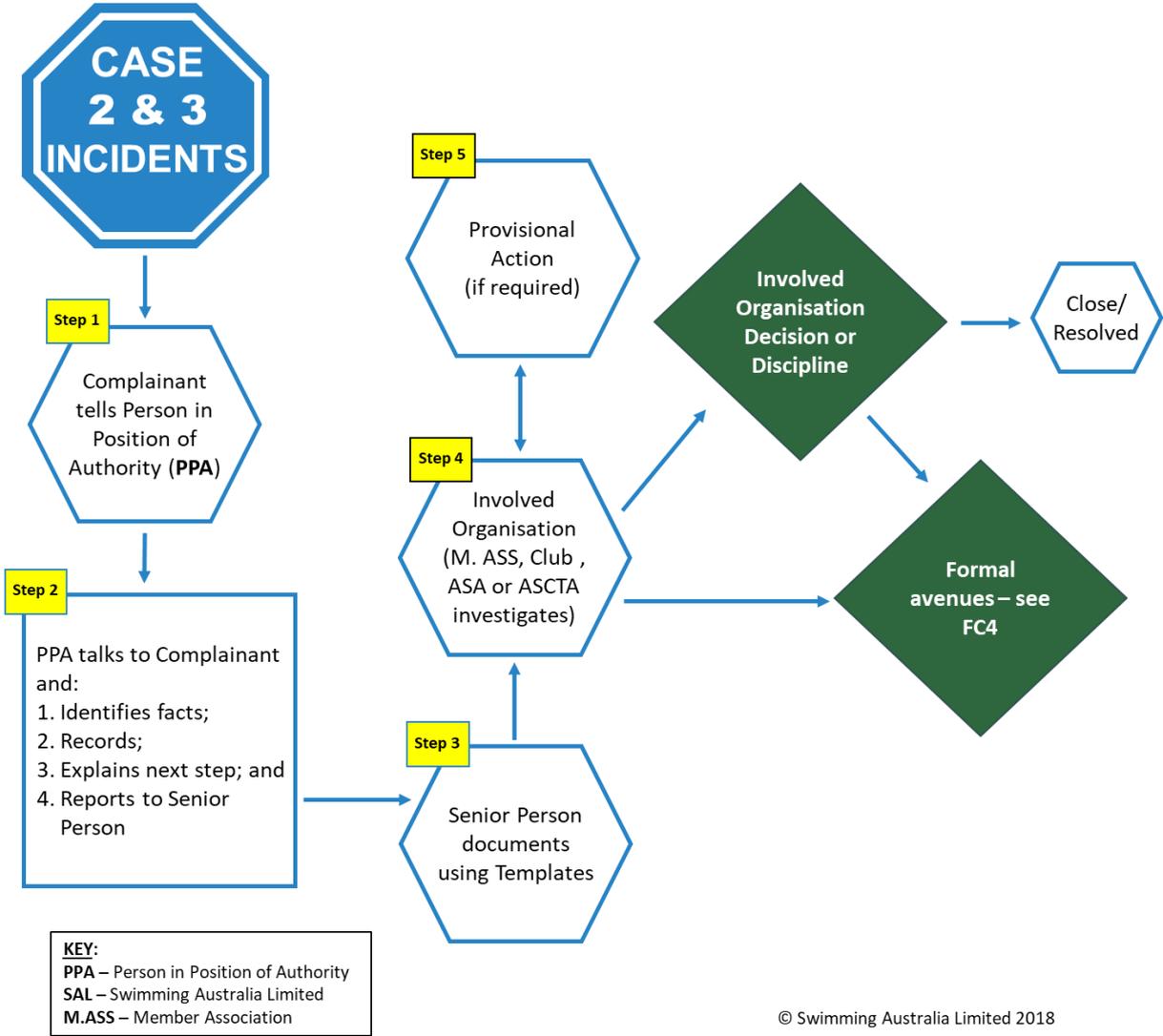
Relevant process selected by the Involved Organisation is undertaken.

**Step 7 -** Decision made and disciplinary measures (if required) imposed as a result of the relevant Step 6 process.

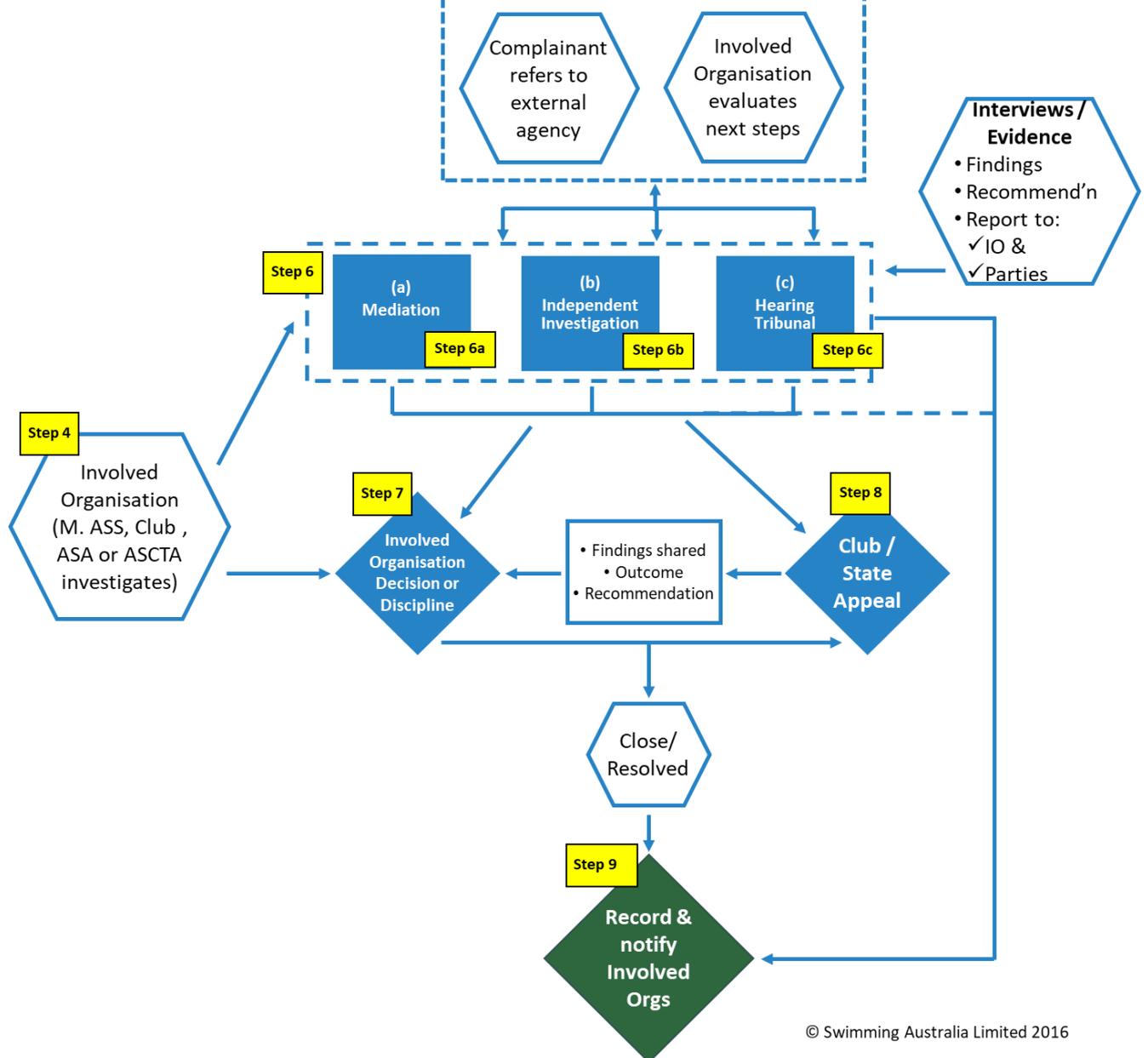
**Step 8 -** Appeal (if deemed valid) may be lodged in relation to decision. Subsequently the appeal is heard, (if relevant) new decision made and (if relevant) new disciplinary measures (if required) imposed.

**Step 9 -** Record of Complaint finalised. Swimming Australia Limited and Involved Organisation notified of outcome of Complaint. Complaint closed.

# FC3: Initial steps to report Case 2 & 3 complaints



# FC4: Formal resolution of CASE 2 & 3 complaints



#### 4.13 Guidelines for each Step - Case 1 Complaints

##### **Step 1 - Complainant tells PPA**

If any person involved in our Sport has concerns about a breach of this Safe Sport Framework, they are encouraged to seek out a Person in Position of Authority to tell them about their concerns. This may be a coach, swimmer, parent, technical official, volunteer or employee of a Club, Member Association or Swimming Australia Limited. Wherever possible, the Complainant should provide to that person details about:

- a) who was involved (Respondent and 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 the Complainant observed or heard;
- d) when the Complainant observed the concerning incident, behaviour or conduct;
- e) where the concerning incident, behaviour or conduct occurred;
- f) why the Complainant is concerned and the impact of the incident (ie injuries, others at risk of Harm); and
- g) if known, what the Complainant would like to happen next and the outcome the Complainant is seeking.

Refer to the "Reporting a Complaint Template" in the Safe Sport Resources section on the Swimming Australia Limited website template to assist.

As a guide to help in documenting a complaint, the Complainant should think of this initial guidance as the "who, what, when, where, why, what next?" This is also helpful for those who are responding to the Complaint.

Depending on the nature of the Complaint, once the initial contact is made and it is known what the Complainant would like to occur next, there are two options:

- (h) talk to a Person in a Position of Authority who can guide you/the Complainant as to next steps; and/or
- (i) depending on the nature and seriousness of the Complaint, formalise the Complaint to your Club, Member Association or Swimming Australia Limited, as appropriate, based on the incident categorisation (Table A at Section 4.10).

##### **Step 2 - PPA talks to Complainant**

Regardless of whether the Complainant is a Member, Participant or a Person in a Position of Authority, it is critical that all Complaints are treated seriously and without judgment. We all have a role to play to ensure that appropriate steps are taken and in a sensitive and non-judgmental way.

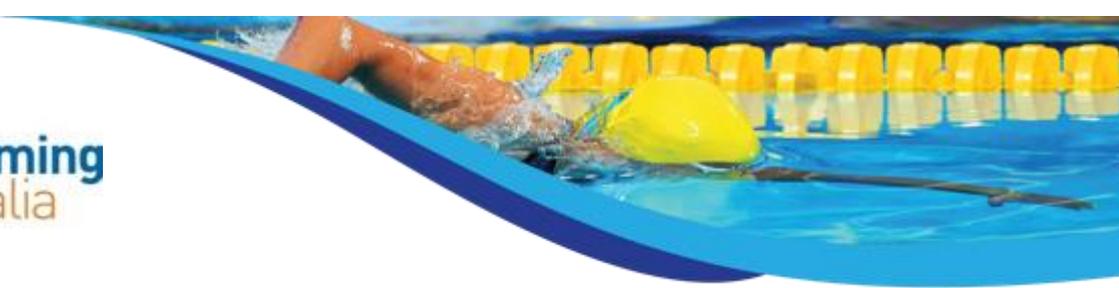
There are certain circumstances that make it inappropriate for a particular Person in a Position of Authority to speak to a Complainant about a Complaint, regardless of whether the Complainant specifically informed that Person in a Position of Authority of their Complaint. In the following circumstances, 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:

- (j) where the particular Person in a Position of Authority has had personal involvement in the circumstances giving rise to the Complaint;
- (k) where the Complainant does not wish to discuss the Complaint further with that particular Person in a Position of Authority;
- (l) where there is a significant (actual or perceived) power imbalance between that particular Person in a Position of Authority and the Complainant; or
- (m) where the particular Person in a Position of Authority shares another relationship with the Complainant outside the swimming context, including immediate or extended family members.

Where any of the circumstances in (j) - (m) above 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.**

Where a Person in a Position of Authority or Senior Person is talking to a Complainant about a Complaint, remember to:

- (n) talk to the Complainant calmly and without judgment or opinion;
- (o) ensure that your conversation is occurring in a private and safe environment;
- (p) 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?);
- (q) 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;
- (r) if the person receiving details of the Complaint is not an employee, official or coach of Swimming Australia or Club and the Complaint is not easily resolved, seek out a Swimming Australia employee, official or coach and tell them what you and/or the Complainant know about the Complaint; and



- (s) take notes or record the details of what you find out regarding the Complaint.

Once the above steps have been taken, please refer to the flowchart diagram in Section 4.11 to help reference what steps to take next and read the guidance in the corresponding sections of this Policy.

Depending on the nature of the Complaint being made regarding a Child or Young Person (or Persons), certain steps must be taken. It is crucial that these steps are taken immediately or within 24 hours of becoming aware of a Complaint where a Child or Young Person is at risk of potential or future Harm.

The initial response is crucial to the well-being of the Child or Young Person. It is important for the person receiving the information to:

- (t) listen to, be supportive and do not dispute what the Complainant says;
- (u) reassure the Child or Young Person and let them know that what has occurred is not the fault of the Child or Young Person;
- (v) ensure that the Child or Young Person is safe;
- (w) remain calm and do not express shock, panic or disbelief;
- (x) be honest and explain that other people may need to be told in order to stop what is happening;
- (y) ensure that what the Child or Young Person says is quite clear but do not elicit detailed information about the Abuse. Use objective, non-leading and non-suggestive questions that don't put words into the Child or Young Person's mouth as much as possible; and
- (z) make written notes during or as soon as possible after the discussion.

In **all circumstances** where Persons in Positions of Authority are aware of information about any Complaint concerning Abuse of a Child or Young Person, they **will not discuss it with anyone other than their relevant Senior People**. They may be required to discuss their allegations with Police as directed

Once details of the Complaint have been established the relevant **Person in a Position of Authority must:**

- (aa) discuss their concerns with their immediate Senior Person or another Senior Person who is available; and
- (bb) collaborate with the Senior Person to develop a plan that aims to address the concerns regarding the particular Child or Young Person.

*It is imperative that no discussion occurs with the Child or Young Person's parents/carers or other family member/s until the plan has been developed and authorised by the Senior Person.*

### **Step 3 - Senior Person documents using Templates**

Once a Complaint is reported to a Senior Person under Step 2, the Senior Person must:

- (a) ensure that all relevant information is recorded regarding the Complaint in the "Complaint Recording Template" in the Safe Sport Resources section on the Swimming Australia Limited website and in relation to the outcomes of decision-making; and
- (b) ensure that all allegations of Sexual Abuse of a Child or Young Person are reported to police (see **Mandatory Reporting**).

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) above. The inclusion of as much information as possible in the Complaint Recording Template makes it easier for Swimming Australia Limited or the Delegated Organisation to investigate and action the Complaint.

Complaint Recording Templates for Case 1 Complaints 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 Section 4.5 for more information regarding record-keeping.

### **Step 4 - Senior Person reports to Swimming Australia Limited**

Once a Complaint is documented by the Senior Person, the Senior Person must report the Complaint to the CEO of Swimming Australia Limited. In reporting the Complaint, the Senior Person must provide the following information:

- (a) the Complaint Recording Template in full;
- (b) any materials lodged by the Complainant in relation to the Complaint;
- (c) any transcripts or notes taken by the Person in a Position of Authority or Senior Person when dealing with the Complainant;
- (d) the record of any communications between representatives of the Involved Organisation and the Complainant in relation to the Complaint; and
- (e) any other information requested by Swimming Australia Limited.

### **Mandatory reporting**

There are certain circumstances where individuals will be legally required to report a Complaint that they receive to the relevant external authority. Please see the ACF Mandatory Reporting Guidelines June 2016 located on the Safe Sport Resources section of the Swimming Australia Limited website.

'Mandatory reporting' refers to legislative requirements imposed on specific classes of persons to report suspected cases of Child Abuse and Neglect to government authorities. Mandatory reporting laws exist in each State and Territory of Australia.

Child Protection Concerns are defined in this Policy as including:

- (a) disclosures of actual Harm, Abuse or Sexual Exploitation of a Child or Young Person;
- (b) the potential risk of Harm, Abuse or Sexual Exploitation of a Child or Young Person; or
- (c) breaches of the protection policies or Code of Conduct by Persons in Positions of Authority.

The 'state of mind' requirement and 'extent of Harm' requirements differ between each jurisdiction in Australia. However, for the purposes of this Framework, it is generally required that the person to whom the Case 1 Complaint was reported to "reasonably believes" that a Child or Young Person is at risk of Harm caused by Child Abuse.

You do not have to prove that the Abuse or breach of the relevant Code of Conduct is happening. It is not the Person in a Position of Authority's job to investigate Child Abuse. **The relevant Person in a Position of Authority, Senior Person or Investigation Officer must report a Child Protection Concern if they form a reasonable belief that it is occurring or is at risk of occurring.** A reasonable belief is defined as "*an inclination to believe something rather than not believe something*". Such a person should trust their judgement, and never ignore their concerns.

The persons referred to above **must** notify a Senior Person of any Child Protection Concerns.

Depending on:

- (d) the jurisdiction within which the Person in a Position of Authority to which a Complaint is lodged is located;
- (e) the employment of the Person in a Position of Authority to which a Complaint is lodged; and
- (f) the specific allegations contained within a Case 1 Complaint,

certain Persons in a Position of Authority and/or Senior Persons dealing with a Case 1 Complaint may also be required by law to mandatorily report the Complaint to an external authority.

The following individuals are likely to be required to mandatorily report a Case 1 Complaint involving Child Abuse to the relevant external authority under the mandatory reporting laws:

- (g) any person over the age of 18 in the Northern Territory;
- (h) any employee or volunteer of an Involved Organisation that assists in the provision of swimming-related services in South Australia;
- (i) any person who holds a reasonable belief that a Child or Young Person in Victoria has been Sexually Abused;
- (j) any employee of an Involved Organisation that assists in the provision of live-in camps in New South Wales; and
- (k) any volunteer who in their fulltime employment falls within a class of employee that is a mandatory reporter in that jurisdiction.

To determine whether any specific Person in a Position of Authority, Senior Person or Investigation Officer falls under mandatory reporting laws, please refer to the Australian Government's *Child, Family, Community Australia* website below, which provides an outline of who must report, and in what circumstances they must report, in each jurisdiction. Swimming Australia Limited is able to provide guidance and advice to any person who is unsure about their reporting obligations.

<https://aifs.gov.au/cfca/publications/mandatory-reporting-child-abuse-and-neglect>

**IMPORTANT NOTE:** If an individual receives a Case 1 Complaint under this Policy and is classified as a mandatory reporter in their relevant jurisdiction, and holds the relevant belief regarding the risk of Harm to the Child or Young Person, the individual is **personally legally responsible** for reporting their belief to the relevant external authority. If any individual within this Policy requires assistance in determining whether they should report a Case 1 Complaint, they should immediately speak to a Senior Person.

Contact the government department in the relevant State or Territory to find out about relevant mandatory reporting legislation in the jurisdiction as per below.

#### **Australian Capital Territory:**

Office for Children, Youth and Families

<http://www.communityservices.act.gov.au/ocyfs/reporting-child-abuse-and-neglect>

#### **New South Wales:**

Department of Family and Community Services

<http://www.community.nsw.gov.au/preventing-child-abuse-and-neglect/reporting-suspected-abuse-or-neglect>

**Northern Territory:**

Office of Children and Families

<https://nt.gov.au/emergency/child-safety/protect-your-child-from-sexual-abuse/introduction>

**Queensland:**

Department of Communities, Child Safety and Disability

<http://www.communities.qld.gov.au/childsafety/protecting-children/reporting-child-abuse>

**South Australia:**

Department for Families and Communities

<http://www.families.sa.gov.au/pages/protectingchildren/ReportingChildAbuse>

**Tasmania:**

Department of Health & Human Services

[http://www.dhhs.tas.gov.au/children/child\\_protection\\_services](http://www.dhhs.tas.gov.au/children/child_protection_services)

**Victoria:**

Department of Human Services

<http://www.dhs.vic.gov.au/for-individuals/children,-families-and-young-people/child-protection>

**Western Australia:**

Department for Child Protection

<http://mandatoryreporting.dcp.wa.gov.au/Pages/Home.aspx>

**Step 5 – Swimming Australia Limited reports to relevant external authority**

Once a Complaint is reported to Swimming Australia Limited under Step 4, the relevant Senior Person within Swimming Australia Limited that is dealing with the Complaint must:

- (a) determine whether or not the concerns should be reported to the relevant child protection authority or police. If the Person in a Position of Authority strongly disagrees with a decision not to report, he/she maintains the right to report the matter to the relevant child protection authority or police. In this event, it is expected that the report will occur jointly with the Senior Person. See **Mandatory Reporting** for further information;

- (b) if a report is made to the relevant child protection authority or the police, determine who, when and what will be communicated to the relevant child protection authority or police.
- (c) in conjunction with the Person in a Position of Authority, determine whether or not the decision to notify the relevant protection authority is communicated to the Child or Young Person's parents/carers. As a principle, parents/carers of Children or Young Persons will be informed of and be involved in the process of the decision to make a notification to the relevant child protection authority unless doing so jeopardises the Child or Young Person's safety or the safety of any other person;
- (d) if a report is not made to the relevant child protection authority, arrange for Swimming Australia Limited to develop and document a plan that will offer an appropriate range of support to the Child or Young Person and their family to address the concerns, should that be appropriate in the circumstances.
- (e) establish a plan to offer support and counselling as required to the Child or Young Person who has been allegedly assaulted and his/her family, where appropriate;
- (f) establish a plan to offer support and debriefing to other relevant Persons in Positions of Authority about the incident as soon as practicable;
- (g) subject to (i) below, once informed of the allegations, provide the Respondent with access to counselling and support as organised by the relevant Senior People, as appropriate;
- (h) set a review date to evaluate any changes arising from the support offered to the family of the Child or Young Person. At any stage, additional concerns about the Child or Young Person will be addressed. The Senior Person may escalate the extent of intervention provided to the Child or Young Person and family if the concerns for the Child or Young Person's safety increase; and
- (i) not, and must ensure that Swimming Australia Limited does not, communicate with the Respondent against whom the allegations have been made. Police will determine the procedure for communicating with the Child or Young Person, their parents or carers and the Person in Positions of Authority against whom the allegations have been made.

All Persons in Positions of Authority who are aware of this information will not discuss it with anyone other than their relevant Senior Person. They may be required to discuss their allegations with police as legally required.

#### **Steps 6 & 8- Swimming Australia Limited or Delegated Organisation conduct internal investigation**

##### **When not to conduct an internal investigation**

In response to a report involving Child Abuse, an external authority may themselves undertake an investigation, with or without requesting assistance from Swimming Australia Limited/the Delegated Organisation. The external authority may determine an internal investigation by Swimming Australia Limited/the Delegated Organisation will negatively impact on its own investigation and subsequent outcomes, or on the Child or Young Person or Respondent involved in the Complaint.

**IMPORTANT:** Where a Complaint is reported to an external authority under Steps 2 or 5 (see 'Mandatory Reporting'), Swimming Australia Limited or the Delegated Organisation **must not** conduct an internal investigation in the following circumstances:

- (a) where the external authority has requested that Swimming Australia Limited/the Delegated Organisation does not conduct an investigation in general; or
- (b) where the external authority has requested that Swimming Australia Limited/the Delegated Organisation does not conduct an investigation until a certain date, or until the happening of a certain event, upon which Swimming Australia Limited/the Delegated Organisation may commence an internal investigation.

If the external authority requests that Swimming Australia Limited/the Delegated Organisation does not conduct an internal investigation, the relevant entity and Senior Persons and Person(s) in a Position of Authority involved in dealing with the Complaint must still cooperate with, and provide all reasonable assistance, to the external authority.

#### **When conducting an internal investigation**

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.

When investigating a Complaint, the Investigation Officer within Swimming Australia Limited or the Delegated Organisation will:

- (c) connect with the Complainant(s) on behalf of the appropriate Involved Organisation responding to and investigating the Complaint;
- (d) connect with the Respondent(s) against whom the allegation refers at an appropriate time and give the Respondent an opportunity to:
  - (i) hear the allegation(s) against him/her/it in full;
  - (ii) explain or respond to the allegation(s), either orally, in writing or both;
  - (iii) identify any witnesses and supporting evidence in favour of the Respondent;

- (iv) invite a support person or advisor, who must not be qualified as a lawyer or barrister, to attend any meeting with the person investigating; and
  - (v) be provided support (for example, professional counselling) if necessary;
- (e) where possible, obtain a signed statement and record of interview from the Respondent;
  - (f) make contact with any witnesses and obtain, where possible, written and signed statements outlining details of the allegation (what happened, when, how); and
  - (g) obtain other information that could assist in making a decision on the allegation.

If the Respondent is an employee, swimmer, coach or official within swimming, the Investigation Officer will:

- (h) convene separate meetings with the parties (as appropriate) and discuss the outcomes of the investigation; and
- (i) determine and implement a plan for managing feedback and counselling to the parties as appropriate.

If the parent/carer of the Child or Young Person at the centre of the allegations is not satisfied with the outcome of the investigation, the parent/carer can request the Involved Organisation to re-open the matter or raise their concerns with Swimming Australia Limited or its Board of Directors.

#### **Step 7 – Swimming Australia Limited may delegate to a Delegated Organisation**

Under this Policy, Swimming Australia Limited retains the right at its absolute discretion to delegate the handling of a Complaint to a Delegated Organisation.

When considering whether to delegate a Complaint, Swimming Australia Limited may consider the following:

- (a) the seriousness of the allegations contained in the Complaint;
- (b) who the relevant Involved Organisation is;
- (c) whether Swimming Australia Limited is the best organisation to handle the Complaint; and
- (d) any other factors that are relevant to the decision to delegate a Complaint.

#### **Step 9 - Provisional Action (if required)**

Provisional Action is defined as action that may be taken by Swimming Australia Limited or its Delegated Organisation (in relation to Case 1 Complaints).

Provisional Action is action taken against a Respondent to Case 1 Complaints where the alleged incident is serious enough to warrant such action being taken until the outcome(s) of the internal investigation, Independent Investigation or Hearing Tribunal is known.

Provisional Action may include, but is not limited to:

- (a) suspension, restriction of duties or temporary re-deployment; or
- (b) suspension or restriction of rights, privileges and benefits.

In all circumstances in which Case 1 Complaints are reported to Swimming Australia Limited or the relevant external authorities, Swimming Australia Limited reserves the right in its sole discretion to recommend that the activities undertaken by the Respondent are revised and amended as necessary to minimise risk to others and to the Respondent.

Involved Organisations should be mindful of any contractual or employment issues arising where the Involved Organisation is contemplating Provisional Action. For instance:

- (c) the contract governing a service provider's obligations to an Involved Organisation;  
or
- (d) an individual's employment contract with an Involved Organisation,

may have an impact on what type of Provisional Action may be legally taken by an Involved Organisation.

**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 a suspension, special care must be taken before imposing any such Provisional Action. An Involved Organisation should seek legal advice prior to imposing Provisional Action in those circumstances.

### Evaluating Next Steps

After completing the internal investigation under Step 6, Swimming Australia Limited or the Delegated Organisation 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 or 8);
- (c) referring the Complaint to an Independent Investigation; or



- (d) referring the Complaint to a Hearing Tribunal.

When evaluating which process to undertake in relation to any specific Complaint, the following table provides guidance as to when each process may be the most beneficial, noting that it is not required for ALL factors listed to be present or proven.

**Table B - Processes for resolving Complaints**

Case	When to use
<b>Involved Organisation makes decision</b>	<ul style="list-style-type: none"> <li>Complainant and Respondent are both Children or Young People</li> <li>There is little dispute as to the facts or the facts of the case are clear to the Involved Organisation</li> <li>Complaint is relatively minor</li> </ul>
<b>Independent Investigation</b>	<ul style="list-style-type: none"> <li>There are inconsistencies between each party's version of events</li> <li>Involved Organisation has not been able to sufficiently establish what occurred through internal investigation</li> <li>Complainant is not comfortable appearing in the same room as the Respondent at a Hearing Tribunal</li> </ul>
<b>Hearing Tribunal</b>	<ul style="list-style-type: none"> <li>Respondent is an employee or independent contractor of the Involved Organisation</li> <li>Respondent's livelihood will be impacted by any adverse finding or disciplinary measures</li> </ul>

### Step 10 - Complaint resolution procedure

The relevant procedure that must be followed for an Independent Investigation or Hearing Tribunal under this Policy are outlined at:

- (a) section 4.16 for Independent Investigations; and  
 (b) section 4.17 for Hearing Tribunals.

In accordance with the Case 1 Complaint Flowchart at Section 4.11, Swimming Australia Limited or its Delegated Organisation may proceed straight to Step 11 after completing Step 6 (or 8 for a Delegated Organisation).

As outlined at "Evaluating Next Steps" above, it may be beneficial for the Involved Organisation to make a decision and impose disciplinary measures (if required) at the completion of Step 6/8 where:

- (c) both the Complainant and Respondent are Children or Young People;
- (d) there is little dispute as to the facts of the Complaint or the facts of the case are clear to the Involved Organisation; or
- (e) the Complaint is at the minor end of the Case 1 Complaint scale.

Where an Involved Organisation decides to make a decision and impose disciplinary measures (if required) after the completion of Step 6/8, the following should have occurred to satisfy the requirements of Natural Justice:

- (f) the Respondent was made aware in writing of the specific allegations against him/her/it and the identity of the Complainant;
- (g) the Respondent was provided the opportunity to respond to the specific allegations within the Complaint, either in writing or in person; and
- (h) the Respondent was afforded the opportunity to have a support person, who must not be a lawyer or barrister, present at any meeting or interview with a representative of the Involved Organisation.

The Respondent is also granted a right of appeal from any adverse decision and disciplinary measures imposed by an Involved Organisation in response to a Complaint (see Step 12).

### **Step 11 - Decision and/or discipline**

Under Section 4.15, an Involved Organisation may impose a variety of disciplinary measures against a Respondent (whether an individual or organisation) who has breached this Policy.

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) in a case where action is taken concurrently with or in lieu of a resolution of a Formal Complaint, the wishes of the Complainant;
- (c) if the Respondent knew or should have known that the behaviour was a breach of the Policy;
- (d) level of contrition of the Respondent;
- (e) the effect of the proposed disciplinary measures on the Respondent including any personal, professional or financial consequences;
- (f) if there have been relevant prior warnings or disciplinary action; or

- (g) if there are any mitigating circumstances such that the Respondent should not be disciplined at all or not disciplined so seriously.

### **Step 12 - Appeal**

Once a decision is made and disciplinary measures imposed (if required) in response to a Complaint, whether through the Involved Organisation itself, the CEO after considering an Independent Investigation or a Hearing Tribunal, a Respondent is entitled to lodge an appeal.

An appeal from such a decision must be lodged within 48 hours of the Respondent being notified of the original decision. The Appeal Procedure (section 4.18) sets out the specific procedure that must be followed where an appeal is lodged.

Where an appeal is lodged, 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 (see Table A).

The Chairperson of the Appeal Tribunal will consider whether the appeal is valid. The validity of an appeal is based on:

- (a) whether the appeal refers to one or both of the grounds of appeal outlined in the Appeal Procedure; and
- (b) there are sufficient grounds for the appeal to proceed.

The Appeal Tribunal is convened, held and makes its decision based on the Appeal Procedure in section 4.18.

### **Step 13 - Record, notify and finalise**

Swimming Australia Limited, Clubs and Member Associations must keep records of all Case 1 Complaints (updated as necessary) in keeping with the Safe Sport Complaint Register Template and Complaint Recording Templates located in the Safe Sport Resources section on the Swimming Australia Limited website for a minimum of 7 years.

Records must be maintained in a secure and confidential place – preferably both in electronic and hard copy (if any) versions.

When recording details at the finalisation of a Complaint, the Senior Person must:

- (a) file all materials lodged by each party to the Complaint in a confidential and secure location;
- (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.

The relevant Involved Organisation must:

- (e) where it is a Club, notify its Member Association; or
- (f) where it is a Member Association, notify Swimming Australia Limited,

As soon as possible after the Complaint is resolved, the Involved Organisation must notify the appropriate person within the organisation outlined at (e) or (f) above, as notified to the Involved Organisation from time to time.

#### 4.14 Guidelines for each Step - Case 2/3 Complaints

##### **Step 1 - Complainant tells PPA**

If any person involved in our Sport has concerns about a breach of this Safe Sport Framework, they are encouraged to seek out a Person in 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 Swimming Australia Limited. Wherever possible, please provide to that person details about:

- (g) who was involved (Respondent & Complainant, as well as witnesses, including any known contact details);
- (h) if a Child or Young Person was involved, the details of the Child or Young Person's age and parent/guardian details;
- (i) what you observed or heard;
- (j) when you observed the concerning incident, behaviour or conduct;
- (k) where the incident, behaviour or conduct occurred is alleged to have occurred;
- (l) why you are concerned and the potential impact of the incident (ie, injuries, others at risk of Harm); and
- (m) if known, what you would like to happen next and the outcome you are seeking.

Refer to the "Complaint Recording Template" located in the Safe Sport Resources section on the Swimming Australia Limited website to assist.

To help remember, think of this initial guidance as the "who, what, when, where, why, what next?". This is also helpful for those who are responding to the Complaint.

Depending on the nature of the Complaint, once the initial contact is made and it is known what the Complainant would like to occur next, there are two options:

- (n) talk to a Person in a Position of Authority who can guide you/the Complainant as to next steps; and/or
- (o) depending on the nature and seriousness of the Complaint, formalise the Complaint to your Club or Member Association, as appropriate, based on the incident categorisation (Table A at Section 4.10).

### Step 2 - PPA talks to Complainant

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. We all have a role to play to ensure that appropriate steps are taken and in a sensitive and non-judgmental way.

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.

Where any of the circumstances in (a) - (d) above 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.**

Where a Person in a Position of Authority or Senior Person is talking to a Complainant about a Complaint, remember to:

- (e) talk to the Complainant calmly and without judgment or opinion;
- (f) ensure that your conversation is occurring in a private and safe environment;

- (g) 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?);
- (h) 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;
- (i) if the person receiving details of the Complaint is not an employee, official or coach of Swimming Australia 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
- (j) take notes or record the details of what you find out regarding the Complaint.

Once the above steps have been taken, please refer to the flowchart diagram in Section 4.12 to help reference what steps to take next and read the guidance in the corresponding sections of this Framework.

Where the person reporting a Case 2 or 3 Complaint is a Child or Young Person, the initial response is crucial to the well-being of the Child or Young Person. It is important for the person receiving the information to:

- (k) listen to, be supportive and do not dispute what the Complainant says;
- (l) reassure the Child or Young Person and let them know that what has occurred is not the fault of the Child or Young Person;
- (m) ensure that the Child or Young Person is safe;
- (n) remain calm and do not express shock, panic or disbelief;
- (o) be honest and explain that other people may need to be told in order to stop what is happening; and
- (p) make written notes during or as soon as possible after the discussion.

Once details of the Complaint have been established the relevant **Person in a Position of Authority** must:

- (q) discuss their concerns with their immediate Senior Person or another Senior Person who is available; and
- (r) collaborate with the Senior Person to develop a plan that aims to address the concerns regarding the particular Child or Young Person.

### **Step 3 - Senior Person documents using Templates**

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” located in the Safe Sport Resources section on the Swimming Australia Limited website) and in relation to the outcomes of decision-making.

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) above. 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.

Recording Templates for Case 2 and 3 Complaints must be retained in a safe and secure location for 3 years after the incident, to ensure a copy is available for the duration of relevant limitations of liability period under the law. Refer to Section 4.5 for more information regarding record-keeping.

#### **Step 4 - Involved Organisation conducts internal investigation**

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.

When investigating a Complaint, the Investigation Officer within the Involved Organisation will:

- (a) connect with the Complainant(s) on behalf of the appropriate Involved Organisation responding to and investigating the Complaint;
- (b) connect with the Respondent(s) against whom the allegation refers at an appropriate time and give the Respondent an opportunity to:
  - (i) hear the allegation(s) against him/her/it in full;
  - (ii) explain or respond to the allegation(s), either orally, in writing or both;
  - (iii) identify any witnesses and supporting evidence in favour of the Respondent;
  - (iv) invite a support person or advisor, who must not be qualified as a lawyer or barrister, to attend any meeting with the person investigating; and
  - (v) be provided 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 must have been provided with written particulars of the allegations prior to this 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.

If the Respondent is an employee, swimmer, coach or official within swimming, the Investigation Officer will:

- (f) convene separate meetings with the parties (as appropriate) and discuss the outcomes of the investigation; and
- (g) determine and implement a plan for managing feedback and counselling to the parties as appropriate.

If the parent/carer of the Child or Young Person who may have reported the Complaint is not satisfied with the outcome of the investigation, the parent/carer can request the Involved Organisation to re-open the matter or raise their concerns with the Board of Directors of the Involved Organisation.

#### **Step 5 - Provisional Action (if required)**

Provisional Action is defined as action that may be taken by an Involved Organisation in relation to Case 2 or 3 Complaints.

Provisional Action is action taken against a Respondent to Case 2 or 3 Complaints where the alleged incident is serious enough to warrant such action being taken until the outcome(s) of the internal investigation, Independent Investigation or Hearing Tribunal is known.

Provisional Action may include, but is not limited to:

- (a) suspension, restriction of duties or temporary re-deployment; or
- (b) suspension or restriction of rights, privileges and benefits.

In all circumstances in which Case 2 or 3 Complaints are reported to an Involved Organisation or the relevant external authorities, the Involved Organisation reserves the right in their sole discretion to recommend that the activities undertaken by the Respondent are revised and amended as necessary to minimise risk.

Involved Organisations should be mindful of any contractual or employment issues arising where the Involved Organisation is contemplating Provisional Action. For instance:

- (c) the contract governing a service provider's obligations to an Involved Organisation; or
- (d) an individual's employment contract with an Involved Organisation,

may have an impact on what type of Provisional Action may be legally taken by an Involved Organisation.

**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 a suspension, special care must be taken before imposing any such Provisional Action. An Involved Organisation should seek legal advice prior to imposing Provisional Action in those circumstances.

Where a Respondent to a Case 2 or 3 Complaint is either an independent contractor providing services to an Involved Organisation, or an employee of an Involved Organisation, or has a livelihood that would likely be impacted by any disciplinary measures, it is strongly recommended that the Involved Organisation seeks legal advice prior to imposing any Provisional Action.

### **Evaluating Next Steps**

After completing the internal investigation under Step 6, the Involved Organisation 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 or 7);
- (c) referring the Complaint to mediation.
- (d) referring the Complaint to an Independent Investigation; or
- (e) referring the Complaint to a Hearing Tribunal.

When evaluating which process to undertake in relation to any specific Complaint, the following table provides guidance as to when each process may be the most beneficial.



**Table C - Processes for resolving Complaints**

Case	When to use
<b>Mediation</b>	<ul style="list-style-type: none"> <li>Both parties have had their chance to tell their version of events</li> <li>Person in a Position of Authority does not believe that any of the allegations warrant any form of disciplinary action</li> <li>Mediation has a chance of success in resolving the Complaint</li> </ul>
<b>Involved Organisation makes decision</b>	<ul style="list-style-type: none"> <li>There is little dispute as to the facts</li> <li>Complaint is relatively minor</li> </ul>
<b>Independent Investigation</b>	<ul style="list-style-type: none"> <li>There are inconsistencies between each party's version of events</li> <li>Involved Organisation has not been able to sufficiently establish what occurred through internal investigation</li> <li>Complainant is not comfortable appearing in the same room as the Respondent at a Hearing Tribunal</li> </ul>
<b>Hearing Tribunal</b>	<ul style="list-style-type: none"> <li>Respondent is an employee or independent contractor of the Involved Organisation</li> <li>Respondent's livelihood will be impacted by any adverse finding or disciplinary measures</li> </ul>

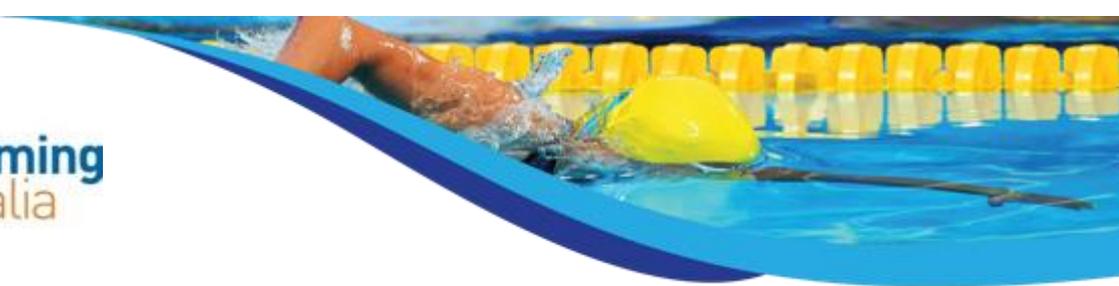
**Step 6 - Complaint resolution procedure**

The relevant procedure that must be followed for a Mediation, Independent Investigation or Hearing Tribunal under this Policy are outlined at:

- (a) section 4.16 for Independent Investigations;
- (b) section 4.17 for Hearing Tribunals; and
- (c) section 4.19 for Mediation.

In accordance with the Case 2 and 3 Complaint Flowchart at Section 4.12, the Involved Organisation may proceed straight to Step 6 after completing Step 4.

As outlined at "Evaluating Next Steps" above, it may be beneficial for the Involved Organisation to make a decision and impose disciplinary measures (if required) at the completion of Step 4 where:



- (d) there is little dispute as to the facts of the Complaint; or
- (e) the Complaint is at the minor end of the Case 2 or 3 Complaint scale.

Where an Involved Organisation decides to make a decision and impose disciplinary measures (if required) after the completion of Step 4, the following should have occurred to satisfy the requirements of Natural Justice:

- (f) the Respondent was made aware of the specific allegations against him/her/it and the identity of the Complainant;
- (g) the Respondent was provided the opportunity to respond to the specific allegations within the Complaint, either in writing or in person; and
- (h) the Respondent was afforded the opportunity to have a support person, who must not be a lawyer or barrister, present at any meeting or interview with a representative of the Involved Organisation.

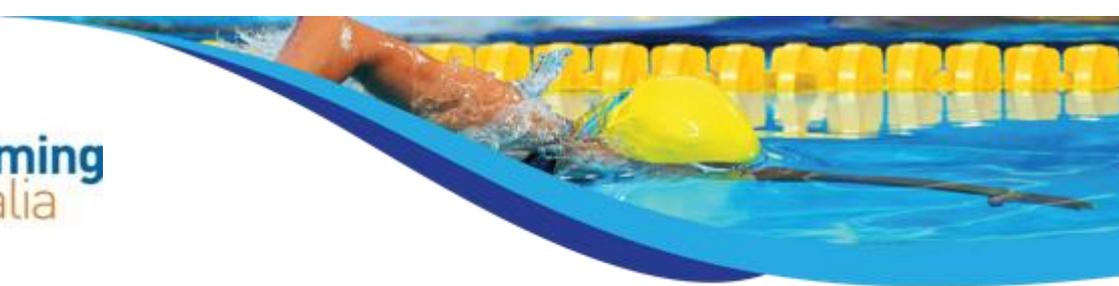
The Respondent is also granted a right of appeal from any decision and disciplinary measures imposed by an Involved Organisation in response to a Complaint (see Step 8).

#### **Step 7 - Decision and/or discipline**

Under Section 4.15, an Involved Organisation may impose a variety of disciplinary measures against a Respondent (whether an individual or organisation) who has breached this Policy.

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) in a case where action is taken concurrently with or in lieu of a resolution of a Formal Complaint, the wishes of the Complainant;
- (c) if the Respondent knew or should have known that the behaviour was a breach of the Policy;
- (d) level of contrition of the Respondent;
- (e) the effect of the proposed disciplinary measures on the Respondent including any personal, professional or financial consequences;
- (f) if there have been relevant prior warnings or disciplinary action; or
- (g) if there are any mitigating circumstances such that the Respondent should not be disciplined at all or not disciplined so seriously.



### **Step 8 - Appeal**

Once a decision is made and disciplinary measures imposed (if required) in response to a Complaint, whether through the Involved Organisation itself, the CEO after considering an Independent Investigation or a Hearing Tribunal, a Respondent is entitled to lodge an appeal.

An appeal from such a decision must be lodged within 48 hours of the Respondent being notified of the original decision. The Appeal Procedure (section 4.18) sets out the specific procedure that must be followed where an appeal is lodged.

Where an appeal is lodged, 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 (see Table A at section 4.10).

The Chairperson of the Appeal Tribunal will consider whether the appeal is valid. The validity of an appeal is based on:

- (a) whether the appeal refers to one or both of the grounds of appeal outlined in the Appeal Procedure; and
- (b) there are sufficient grounds for the appeal to proceed.

The Appeal Tribunal is convened, held and makes its decision based on the Appeal Procedure in section 4.18.

### **Step 9 - Record, notify and finalise**

Swimming Australia Limited, Clubs and Member Associations must keep records of all Case 2 or 3 Complaints (updated as necessary) in keeping with the Safe Sport Complaint Register Template and Complaint Recording Templates located in the Safe Sport Resources section on the Swimming Australia Limited website for a minimum of 3 years.

Records must be maintained in a secure and confidential place – preferably both in electronic and hard copy (if any) versions.

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.

The relevant Involved Organisation must:

- (e) where it is a Club, notify its Member Association; or
- (f) where it is a Member Association, Swimming Australia Limited.

As soon as possible after the Complaint is resolved, the Involved Organisation must notify the appropriate person within the organisation outlined at (e) or (f) above, as notified to the Involved Organisation from time to time.

#### 4.15 Disciplinary Measures

##### Who can impose disciplinary measures?

The following individuals/entities may impose a disciplinary measure in response to a breach of this Safe Sport Framework in accordance with Step 11 for Case 1 Complaints and Step 7 for Case 2 & 3 Complaints:

1. the CEO of the Involved Organisation after considering the findings of an internal investigation;
2. the CEO of the Involved Organisation after considering the findings of an Independent Investigation;
3. the Hearing Tribunal panel after conducting a Hearing Tribunal; or
4. an Appeal Tribunal after conducting an Appeal Tribunal,

(together, the **Disciplining Body**).

The relevant Disciplining Body may impose any disciplinary measure available to it under this section 4.15.

##### How are disciplinary measures imposed?

Any disciplinary measure imposed under this section must:

1. observe any contractual and employment rules and requirements;
2. conform to the principles of Natural Justice;
3. be based on the evidence and information presented;
4. be within the powers of the position imposing the disciplinary measure; and
5. must be reasonable in all circumstances.

##### Individuals

Subject to contractual and employment requirements, if a finding is made that a Respondent who is an individual has breached a provision of the Safe Sport Framework, the measures that may be taken by the Disciplining Body are:

1. maintain any Provisional Action already taken in relation to the Complaint;
2. direct that the Respondent make a verbal or written apology;

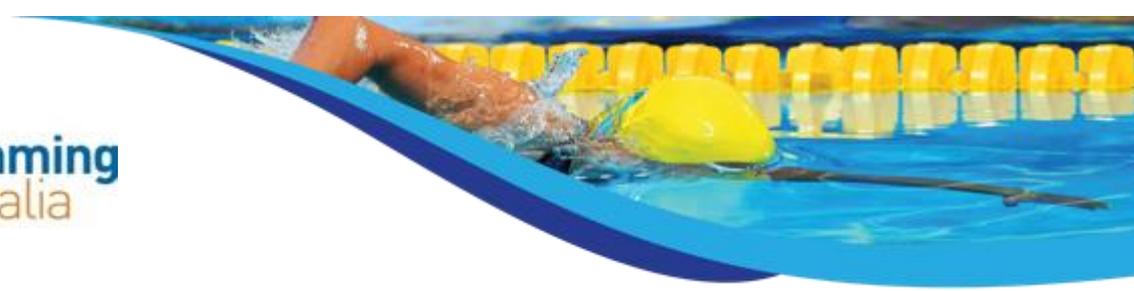
3. provide a written warning;
4. direct that the Respondent attend counselling to address their behaviour;
5. direct that the Respondent do something, or refrain from doing something, to remedy the breach of this Policy;
6. withdraw any awards, placings, records, achievements bestowed in any competition, activities or events held or sanctioned by the organisation;
7. demote or transfer the Respondent to another location, role or activity;
8. suspend the Respondent's membership or participation or engagement in a role or activity;
9. recommend that another organisation suspend the Respondent's membership, appointment or engagement;
10. 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;
11. termination or other disciplinary action in accordance with the Respondent's contract of employment and/or workplace legislation; or
12. any other form of discipline that the Disciplining Body considers appropriate.

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.

### Organisations

If a finding is made that a Respondent who is an organisation has breached the Safe Sport Framework, the measures that may be taken by the Disciplining Body are:

1. a written warning;
2. a monetary fine;
3. a direction to set aside and remake a decision that is the subject of a Complaint under this Policy, which may or may not be subject to guidelines;
4. a direction that the Respondent do something, or refrain from doing something, to remedy the breach of this Policy;
5. a recommendation that any rights, privileges and benefits provided to the Respondent by Swimming Australia Limited or another peak association be suspended for a specified period;
6. a recommendation that any funding granted or given to it by Swimming Australia Limited cease from a specified date;
7. a recommendation that Swimming Australia Limited ceases to sanction events held by or under the auspices of the Respondent;
8. a recommendation that the Respondent's membership of Swimming Australia Limited be suspended or terminated in accordance with the relevant constitution or rules; or
9. any other form of discipline that the Disciplining Body directs to be appropriate under this Policy.



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

### **Appeal**

An appeal from the decision of a Disciplining Body to impose one or more disciplinary measures on a Respondent is available in accordance with the Appeal Procedure in section 4.18.

#### 4.16 Independent Investigation Procedure

Following an internal investigation into a Complaint to establish the facts and the position of the parties to a Complaint, the Senior Person of the Involved Organisation may determine that it is appropriate to appoint an Independent Investigator to review the circumstances of the Complaint and conduct an Independent Investigation.

For Complaints lodged under this Framework, the Involved Organisation must conduct its own internal investigation (Step 6 - Case 1 Complaints, Step 4 - Case 2/3 Complaints) into the circumstances surrounding the allegation(s). The internal investigation may include the appointment of an Independent Investigator.

On completion of the internal investigation, the Involved Organisation may wish to refer the Complaint to an Independent Investigation under Step 10 (Case 1 Complaints) or Step 6 (Case 2/3 Complaints).

Where an Independent Investigator is appointed, the steps set out below must be followed.

Any internal or Independent Investigation process conducted in relation to Case 1 Complaints must occur concurrently with any external organisation process, as long as the internal or Independent Investigation process is placed on hold should an external organisation request the Involved Organisation to do so.

In conducting an Independent Investigation, the below steps must be followed:

##### Investigation

1. The Involved Organisation will provide a written brief to the Investigator to ensure that the terms of engagement and scope of the Investigator's role and responsibilities are clear.
2. 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 never being admitted as a lawyer or barrister.
3. 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.
4. The Respondent(s) should be interviewed by the Investigator and given the opportunity to respond to the allegations. The Respondent(s) 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 never having been admitted as a lawyer or barrister.
5. 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 Independent Investigator to assist in reaching conclusions and preparation of a report and recommendations.

6. 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:
  - (g) substantiated (there is sufficient evidence to support the Complaint);
  - (h) inconclusive (there is insufficient evidence either way);
  - (i) unsubstantiated (there is sufficient evidence to show that the Complaint is unfounded or not enough evidence to substantiate the Complaint); or
  - (j) mischievous, vexatious or knowingly untrue.
7. A report documenting the Complaint, the investigation process, evidence, finding(s) and, if requested, recommendations, should be given to the CEO (or his/her delegate) of the Involved Organisation who may, in consideration of the report of the Independent Investigator, either:
  - (a) take disciplinary action against either the Respondent, Complainant or any other person/persons involved in the Complaint in accordance with "Sanction" below;
  - (b) refer the Complaint to a Hearing Tribunal (which will take place in accordance with the Hearing Tribunal Procedure) to determine what, if any, further action to take; or
  - (c) take no further action and close the Complaint handling procedure under this Policy.
8. Within 14 days of the CEO (or his/her delegate) of the Involved Organisation receiving a report of an Independent 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**). Where the Report relates to one or more Children or Young Persons, as either the Complainant or a witness, the Report may be redacted to the extent required to protect the identity of the Children or Young Persons. Each party to the Complaint must be provided an opportunity to provide a written response to the Report, should they wish.
9. All parties to the Complaint receiving a copy of the Report of the Independent 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 item 9 is a breach of this Policy and may result in disciplinary action being taken against the party making the disclosure.
10. Subject to item 4, both the Complainant and the Respondent(s) are entitled to support throughout this process from their chosen support person/adviser.

#### 4.17 Hearing Tribunal Procedure

Where an Involved Organisation refers a Complaint under this Policy to a Hearing Tribunal, the below steps must be followed.

Any reference to the CEO of an Involved Organisation in this Hearing Tribunal Procedure is replaced by the Board of an Involved Organisation, where no CEO is employed by the Involved Organisation.

##### Preparing for a Hearing Tribunal

1. A Hearing Tribunal panel should be constituted as set out below. The level at which the Hearing Tribunal is constituted (ie Swimming Australia Limited, Member Association or Club) is determined by the Case number (1, 2 or 3) of the Complaint, in accordance with the Table A at Section 4.10.
2. The CEO of the Involved Organisation, should organise for a Hearing Tribunal to be convened to hear a Complaint by notifying Panel Members that they are required to hear a Complaint. The Panel Members should be provided with a copy of all the relevant correspondence, reports or information received and sent by the CEO relating to the Complaints.
3. The Hearing Tribunal should be scheduled as soon as practicable, but must allow adequate time for the Respondent(s) to prepare to respond to the Complaint.
4. Subject to item 8 below, the number of Panel Members required to be present throughout the Hearing Tribunal Process is three.
5. The Hearing Tribunal will not include any person who has any actual or perceived conflict of interest, preconceived opinions, vested interests or personal involvement relating to the Complaint.
6. The Hearing Tribunal must comprise at least one person who has knowledge, and preferably experience, of any relevant laws relating to the Complaint (e.g. anti-discrimination).
7. One of the Panel Members shall be appointed Chairperson by the CEO of the Involved Organisation.
8. If for any reason three Panel Members are not maintained, the discontinuing Member may be replaced if it is considered appropriate by the Chairperson. Factors to consider should include the circumstances of the Complaint and the ability of the new Panel Member to be reasonably and impartially informed of the hearing evidence up until the time of his or her appointment. If the Chairperson believes it is not appropriate for a new Panel Member to be appointed then the Tribunal should be rescheduled to a later date. The Chairperson should inform the CEO of the Involved Organisation of the need to reschedule, and the CEO of the Involved Organisation should organise for the Hearing Tribunal, with a new Panel, to be reconvened.

9. The CEO must inform the Respondent by written notification that a Hearing Tribunal will take place. The written notification must outline:
- (a) that the Respondent has a right to appear at the Hearing Tribunal to defend the Complaint/allegation(s);
  - (b) 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);
  - (c) the date, time and venue of the Hearing Tribunal;
  - (d) that the Respondent can make either verbal or written submissions to the Hearing Tribunal;
  - (e) 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);
  - (f) an outline of any possible penalties that may be imposed if the Complaint is found to be true;
  - (g) that legal representation will not be allowed; and
  - (h) that if the Respondent is considered a Child or Young Person, they should have a parent or guardian present.

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

10. The CEO will inform the Complainant by written notification that a Hearing Tribunal will take place. The written notification will outline:
- (a) that the Complainant has a right to appear at the Hearing Tribunal to support their Complaint;
  - (b) details of the Complaint, including any relevant policies, rules or regulations (if there is more than one Complaint these should be set out separately);
  - (c) the date, time and venue of the Hearing Tribunal;
  - (d) that the Complainant can make either verbal or written submissions to the Hearing Tribunal;

- (e) 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);
- (f) that legal representation will not be allowed; and
- (g) that if the Complainant is considered a Child or Young Person, they should have a parent or guardian present.

A copy of any information or documents that have been given to the Hearing Tribunal will also be provided to the Complainant subject to the approval of the Chairperson of the Hearing Tribunal.

11. If the Complainant believes the details of the Complaint are incorrect or insufficient they should inform the CEO as soon as possible so that the Respondent and the members of the Tribunal can be properly informed of the Complaint.

### **Hearing Tribunal Procedure**

12. The following people are allowed to attend the Hearing Tribunal:
  - (a) the Panel Members;
  - (b) the Respondent;
  - (c) the Complainant;
  - (d) 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;
  - (e) 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;
  - (f) any parent or guardian or support person, excluding a legal representative, required to support the Respondent; and
  - (g) any parent or guardian or support person, excluding a legal representative, required to support the Complainant.
13. The Chairperson should call the hearing to order at the designated time and determine if the Respondent is present.
14. If the Respondent is not present and the Chairperson considers that no valid reason has been presented for their absence, the Hearing Tribunal may continue subject to the Tribunal Chairperson being satisfied that all notification requirements under the Hearing Tribunal procedures have been carried out correctly and that the principles of Natural Justice will not be prejudiced solely by the absence of the Respondent.

15. If the Chairperson considers that a valid reason for the non-attendance of the Respondent is presented, or the Chairperson does not believe the notification requirements have been carried out correctly, then the Hearing Tribunal should be rescheduled to a later date. The Chairperson will inform the CEO of the Involved Organisation of the need to reschedule, and the CEO of the Involved Organisation should organise for the Hearing Tribunal to be reconvened.
16. The Chairperson will read out the Complaint, ask the Respondent if they understand the Complaint being made against them, and if they agree or disagree with the Complaint.
17. If the Respondent agrees with the Complaint, he or she will be asked to provide any evidence or witnesses that should be considered by the Hearing Tribunal when determining any disciplinary measures.
18. If the Respondent disagrees with the Complaint, the Complainant should be asked to describe the circumstances that led to the Complaint being made. The Complainant may:
  - (a) refer to brief notes; and
  - (b) call witnesses.

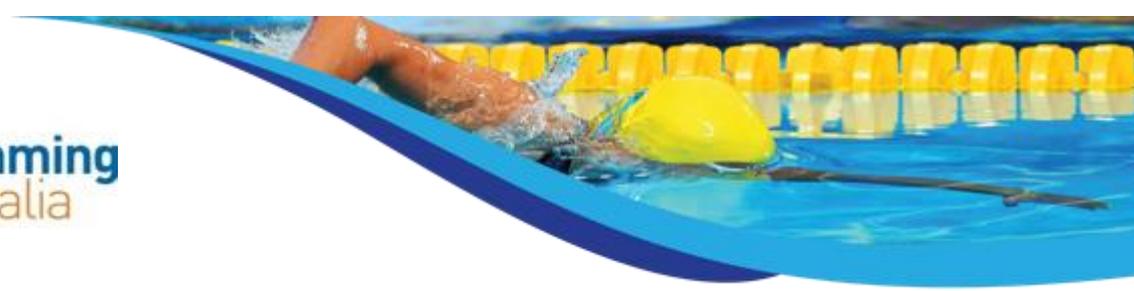
The Respondent or their representative may apply to the Hearing Tribunal to be allowed to question the Complainant and their witnesses. It is in the Hearing Tribunal's sole discretion whether the Respondent should be allowed to question the Complainant.

19. The Respondent should then be asked to respond to the Complaint. The Respondent may:
  - (a) refer to brief notes; and
  - (b) call witnesses.

The Complainant or their representative may apply to the Hearing Tribunal to be allowed to ask questions of the Respondent and their witnesses. It is the Hearing Tribunal's sole discretion whether the Complainant should be allowed to question the Respondent.

20. 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.
21. The Hearing Tribunal may:
  - (a) consider any evidence, and in any form, that it deems relevant;
  - (b) question any person giving evidence; and
  - (c) limit the number of witnesses presented to those who provide new evidence.

22. The Hearing Tribunal must not:
  - (a) 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;
  - (b) allow the Respondent to submit that an adverse inference should be drawn from the circumstances in (a) above; or
  - (c) 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.
23. 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.
24. If the Hearing Tribunal considers that at any time during the Hearing Tribunal that there is any unreasonable or intimidating behaviour from anyone, the Chairperson has the power to deny any further involvement of the person in the Hearing Tribunal.
25. After all of the evidence has been presented the Hearing Tribunal will, subject to paragraph 28 below, make its decision in private. If the Hearing Tribunal believes the Complaint has been substantiated on the balance of probabilities (i.e. more probable than not), the Respondent should then be given an opportunity to address the Hearing Tribunal and make submissions on any disciplinary measures that may be imposed and including but not limited to mitigating circumstances.
26. 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 4.15.
27. All decisions made by the Hearing Tribunal will be based on a majority vote.
28. 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 should 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.
29. Within 48 hours, the Chairperson should:
  - (a) forward to the CEO of the Involved Organisation a copy of the Hearing Tribunal decision including any disciplinary measures imposed; and
  - (b) forward a letter to the Respondent reconfirming the Hearing Tribunal's decision and any disciplinary measures imposed. The letter should also outline the process and grounds for an appeal to be made.



30. The Hearing Tribunal does not need to provide written reasons for its decision, but may do so if it chooses.

#### 4.18 Appeal Procedure

1. Subject to this Appeal Procedure, an Appellant may appeal a decision arising from:
  - (a) an Independent Investigation;
  - (b) a Hearing Tribunal; or
  - (c) an Involved Organisation's decision,conducted or imposed in accordance with this Framework.
2. If the appeal is accepted, an Appeal Tribunal with new Panel Members will be convened to rehear the Complaint.
3. The Tribunal hearing procedure shall be followed for the Appeal Tribunal.
4. A person wanting to appeal must lodge a Notice of Appeal:
  - (a) for a Case 1 or 2 Complaint, to the CEO of Swimming Australia Limited; or
  - (b) for a Case 3 Complaint, to the CEO of the Appellant's relevant State or Territory Member Association.

The Notice of Appeal must be lodged within 48 hours of notification to the Appellant of the decision being appealed against. An appeal fee of \$500.00 shall be included with the Notice of Appeal.

5. 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.
6. A Notice of Appeal to the organisation listed in item 4 above is only permitted on one or more of the following grounds:
  - (a) the decision was affected by actual bias; or
  - (b) there was no evidence on which the decision could be reasonably based.
7. The Notice of Appeal must set out the ground(s) of appeal relied upon by the Appellant and an outline of the Appellant's submissions in relation to the appeal.
8. Where an appeal is lodged, the relevant Involved Organisation must appoint an Appeal Panel Chairperson. Involved Organisations may appoint a permanent Tribunal Chairperson from time to time, and one or more alternate Appeal Panel Chairpersons to act from time to time as Appeal Panel Chairperson. Involved Organisations are entitled, at any time, to replace or remove any Appeal Panel Chairperson or fill any casual vacancy.

9. Where an Appeal is lodged, the relevant Appeal Panel Chairperson must in his/her absolute discretion determine, on the papers, whether:
  - (a) the appeal sets out a valid ground of appeal; and
  - (b) there are sufficient grounds for the appeal to proceed,prior to an appeal being deemed valid and proceeding to an Appeal Panel. Where determining whether an appeal is valid, the Appeal Panel Chairperson may:
  - (c) request written submissions from one or both of the Complainant and Respondent; and
  - (d) request from the Hearing Tribunal any of the materials before it.
10. Where the Appeal Panel Chairperson:
  - (a) deems the appeal invalid, or that it has not shown sufficient grounds for an appeal, 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
  - (b) deems the appeal valid, the appeal will be accepted and will proceed to an Appeal Panel for determination.
11. If the appeal proceeds to an Appeal Panel, in considering the appeal the Appeal Tribunal is only permitted to consider the materials submitted to the Hearing Tribunal, Independent Investigation or Involved Organisation. For the avoidance of doubt, the Appeal Tribunal is not a de novo hearing of the Complaint and is not permitted to consider any new materials.
12. In hearing an appeal, the Appeal Panel may:
  - (a) dismiss the Complaint in whole or in part;
  - (b) uphold the Complaint in whole or in part;
  - (c) decide on the appropriate action to be taken to resolve the Complaint; or
  - (d) recommend changes to the systems or procedures to ensure that problems of a similar nature do not reoccur.
13. Where the Appeal Panel dismisses the entirety of the Complaint, the appeal fee shall be refunded to the Appellant in full. Where the Appeal Panel upholds the Complaint in whole or in part, the appeal fee must not be refunded.
14. No person appointed to an Appeal Panel may hear and consider any appeal by reason of his or her relationship with:

- (a) the Appellant;
- (b) any member of the Board of the relevant Involved Organisation;
- (c) any persons whose interests may be affected by the outcome of the appeal; or
- (d) any person that would be reasonably considered to be other than impartial.

15. Each Appeal Panel will be bound by the following requirements:

- (a) it must observe the principles of Natural Justice;
- (b) it is not bound by the rules of evidence and may inform itself as to any matter in such manner as it thinks fit;
- (c) 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;
- (d) hearings may occur in such manner as the Appeal Panel Chairperson decides, including via telephone or video conference;
- (e) 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;
- (f) the parties to an appeal will not be entitled to be represented by a barrister or solicitor save 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;
- (g) 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 Tribunal Chairperson, adjourn the hearing of the appeal in order to obtain legal advice;
- (h) 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 upon by the Tribunal Chairperson) and the Tribunal Chairperson may give directions from time to time to assist in the efficient and expeditious conduct of the hearing;
- (i) if the Tribunal 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 or persons and that person or those persons may appear at the hearing of the appeal and/or make written submissions to the Appeal Panel;

- (j) the Appeal Panel will give its decision on any appeal as soon as practicable after the hearing and will provide the CEO, the Appellant and other parties to the appeal with a written statement of the reasons for its decision;
- (k) each Appellant must attend his or her appeal hearing in person or (if the Appeal Panel Chairperson has decided the hearing will occur by telephone or video conferencing) over the audio or audio and visual link established for the purposes of the hearing; and
- (l) notwithstanding anything else in this Appeals section, the Appeal Panel may give its decision on any appeal on the papers (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 on the papers as soon as practicable after its decision.

16. The decision of the Appeal Panel is final and binding on the parties and it is agreed that neither party will institute or maintain proceedings in any court or tribunal.

#### 4.19 Mediation Procedure

1. Mediation is a process that allows the people involved in a Complaint to talk through the issues with an impartial person – the Mediator – and work out a mutually agreeable solution.
2. The Mediator does not decide who is right or wrong and does not tell either side what they must do. Instead, he or she helps those involved to talk through the issues and makes sure that the process is as fair as possible for all concerned.
3. Mediation may occur either before or after an investigation of the Complaint
4. **Serious allegations should not be mediated, even if both parties would like to attempt mediation. Mediation is only available to Case 2 or 3 Complaints under this Policy.**
5. Mediation may only be recommended if:
  - (a) both parties have had a chance to tell their version of events;
  - (b) the Senior Person dealing with the Complaint does not believe that any of the allegations warrant any form of disciplinary action; and
  - (c) in the opinion of the Senior Person dealing with the Complaint, mediation looks like it may work.
6. There are some situations where mediation will not be appropriate, including:
  - (a) when the people involved have completely different versions of the incident;
  - (b) when one or both parties are unwilling to attempt mediation;

- (c) when the issues raised are sensitive in nature;
  - (d) when there is a real or perceived power imbalance between the people involved;  
and
  - (e) matters that involve serious, proven allegations.
7. The Person(s) in Positions of Authority or Senior Person should, in consultation with the Complainant and the Respondent(s), appoint a Mediator to help resolve the Complaint. The Person(s) in Positions of Authority or Senior Person's choice of Mediator will be final.
  8. The Mediator will talk with the Complainant and Respondent(s) about how the mediation will take place and who will participate. At a minimum, the Mediator will prepare an agenda of issues to be discussed.
  9. All issues raised during mediation will be treated confidentially. Swimming Australia and its Clubs respect the rights of the Complainant and the Respondent(s) to pursue an alternative process if the Complaint is not resolved.
  10. For the avoidance of doubt, neither party is entitled to be represented by a legal practitioner at the mediation.
  11. At the end of a successful mediation the Mediator will prepare a document that sets out the agreement reached between the Complainant and Respondent(s) and they should sign it as their agreement. The parties involved must respect and comply with the terms of the agreement.
  12. If the Formal Complaint is not resolved by mediation, the Complainant may:
    - (a) write to the Involved Organisation to request reconsideration of the Complaint via either an Independent Investigation or a Hearing Tribunal; or
    - (b) approach an external agency such as an anti-discrimination commission or equal opportunity commission to resolve the matter.