



COMPLAINTS PROCEDURE

COMPLAINT PROCEDURE OVERVIEW

Background

The following Complaints Procedure is to be used in order to ensure the principles of Natural Justice are followed in all aspects of handling or conducting Complaints, allegations, investigations, Tribunal Hearings and Disciplinary Measures.

Tweed-Gold Coast Freediving Club Inc (TGCFD) aims to provide a simple, confidential and trustworthy procedure for resolving Complaints. In applying this Complaint Procedure, the TGCFD will ensure that each party to the dispute has been given an opportunity to be heard on the matter; and the mediator, or any person engaged under the rules to decide the outcome of the dispute, is unbiased.

The '**Complaints Officer**' shall be any Committee Member of the Management Committee, Spearfishing Committee and/or Underwater Hockey Committee (who is *not* also a Tribunal Member) who receives a Complaint from a member (the '**Complainant**'). The '**Respondent**' is the subject of the Complaint.

In relation to a dispute between the Complainant and the TGCFD, the TGCFD must not take disciplinary action against the Complainant (or a member of the association appointed to act on their behalf) until the Complaint Procedure has been completed.

This policy covers:

- [1. Section 1 - Complaint Procedure](#)
- [2. Section 2 - Mediation](#)
- [3. Section 3 - Tribunal Hearing](#)
- [4. Section 4 - Disciplinary Measures](#)

Who may lodge a Complaint

This Complaint Procedure deals with any dispute under the rules and polices of the TGCFD between—

- a member and another member; or
- a member and the Management Committee; or
- a member and the TGCFD.

A Complainant may appoint another person to act on their behalf in the Complaint Procedure.

Complaints handling process

In the first instance, Complaints should be reported to the Complaints Officer.

A Complaint may be handled informally or formally. The Complainant may indicate their preference and the Complaints Officer should consider whether that is an appropriate way to handle the particular Complaint. For example, the law may require that the Complaint/allegation be reported to an appropriate authority.



Informal Resolution could be possible by a low-key conversation where both parties accept the basic facts of a situation; the person *'in the wrong'* can be instructed about a better way to have acted.

All members should aim to resolve Complaints quickly (given the nature of the Complaint and the nature of potential harm) and fairly. Complaints may be resolved by agreement between the people involved with no need for disciplinary action.

If a Complaint is not resolved to the Complainant's satisfaction through an informal process, the Complainant may make a formal Complaint in writing.

Formal Resolution will involve the Complainant providing a written Complaint to the Complaints Officer who will investigate the dispute and must then decide appropriate further action; which may include Mediation or a Tribunal Hearing.

Mediation

Mediation is a confidential process that allows those involved in a Complaint to discuss the issues or incident in question and come up with mutually agreed solutions. Mediation might not be a suitable method for resolution of a Complaint in all cases.

If a Complainant wishes to resolve the Complaint with the help of a mediator, the Complaints Officer will, in consultation with the Complainant, arrange for an independent mediator where appropriate.

If an external mediator is engaged there may be a fee payable. The Complaints Officer will determine which party or parties (eg TGCFD, the Complainant and/or the Respondent) are responsible to pay any external mediator's fee. Where a Complaints Officer refers a Complaint to mediation, the mediation should proceed in accordance with the process in **Section 2**.

Spearfishing Tribunal | Underwater Hockey Tribunal

Each year the Management Committee must appoint a Spearfishing Tribunal and an Underwater Hockey Tribunal. Each Tribunal is to be comprised of three members. The Tribunal need not contain a Committee Member (i.e. a member of the Management Committee, Spearfishing Committee and/or Underwater Hockey Committee); but if so there should not be more than one Committee Member on a Tribunal.

The Tribunal will convene as required to deal with Complaints pertaining to their respective sports. When convened, the members of the relevant Tribunal shall appoint a Chairperson.

It is recommended the Tribunal ought to include:

- a. a barrister or solicitor, or if after reasonable attempts have been made to obtain such person without success, a person with some experience in disciplinary/tribunal hearings;
- b. a person with a thorough knowledge of the relevant issues (eg safety/club rules and policies); and
- c. a person of business acumen, experience and skills suitable to conduct a Tribunal Hearing.

In the event an existing Tribunal Member is a person who, by reason of their relationship with any of the parties to the dispute, be reasonably considered to be other than impartial, the Management Committee must co-opt another member to sit on the Tribunal.

The relevant Tribunal can determine Complaints referred to it by the Complaints Officer in accordance with **Section 3**.



SECTION 1 – COMPLAINTS PROCEDURE

Step 1 – Discuss the Complaint with the Respondent

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

Step 2 – Discuss the Complaint with the Complaints Officer

If:

- a. the first step is not possible or reasonable;
- b. the Complainant is not sure how to handle the problem by themselves;
- c. the Complainant just wishes to talk confidentially about the problem with someone and get further information about what they can do; or
- d. the problem continues after the Complainant tried to approach the person or people involved, then the Complainant should talk, in the first instance, with member of the Management Committee Spearfishing Committee or Underwater Hockey Committee (who is *not* a member of a Tribunal) with whom they feel comfortable discussing the matter. That Committee Member will become the 'Complaints Officer'. Details of Committee Members and Tribunal Members can be found at:

<https://tweedgoldcoastfreedivers.com.au/>

The Complaints Officer will facilitate the Complaint and can provide information about the rights, responsibilities and options available to an individual making a complaint.

For Complaints relating to child abuse, fraud or criminal behaviour, the Complaints Officer is obligated to forward details of the Complaint to the President of the TGCFD and where required by law to advise the Police.

Step 3 – Decide what further action to take

After talking with the Complaints Officer the Complainant may decide:

- a. there is no problem;
- b. the problem is minor, and the Complainant does not wish to take the matter forward;
- c. to try and work out a personal resolution (with or without the Complaints Officer);
- d. to seek an informal mediated resolution with the help of a third person (such as a mediator);
- e. to make a formal complaint in writing to the Complaints Officer; or
- f. approach the relevant external agency for advice.

If the Complainant wishes to remain anonymous, the TGCFD cannot assist in resolving the Complaint. The TGCFD must follow the principles of Natural Justice and be fair to both sides. This means that the TGCFD or the Complainant may be required to provide the Respondent full details of the Complaint, so they have a fair chance to respond to all the allegations. The Complainant should advise the Complaints Officer of their decision.

Step 4 – Decision of the Complaints Officer

Upon receipt of a written Complaint the Complaints Officer may decide whether:

- a. they are the most appropriate person to receive and handle the Complaint (for example, it may transpire in order to maintain objectivity another Committee Member is better suited to act as Complaints Officer in which case the role ought to be transferred to them, in consultation with the Complainant);
- b. the nature and seriousness of the Complaint warrants a formal resolution procedure in accordance with the Complaint Procedure (for example, some Complaints may be of a minor



or purely personal nature with no connection to the activities of the organization and dismissed accordingly);

- c. further investigate the Complaint, speaking to those involved in the dispute;
- d. to refer the Complaint for mediation in accordance with [Section 2 - Mediation](#);
- e. to refer the Complaint to a Tribunal Hearing in accordance with [Section 3 – Tribunal Hearing](#);
- f. to refer the matter to the Police or other appropriate authority;
- g. to implement any interim administrative or other arrangements that should apply until the processes set out in this Complaints Procedure are completed.

In making the decision outlined above, the Complaints Officer should take into account:

- a. whether they have had any personal involvement in the circumstances giving rise to the Complaint and, if so, whether they has a conflict of interest or their ability to impartially manage the Complaint is compromised or may appear to be compromised;
- b. whether, due to the nature of the Complaint, specific expertise or experience may be required to manage the Complaint;
- c. the wishes of the Complainant, and the wishes of the Respondent, regarding the manner in which the Complaint should be handled;
- d. whether, due to the nature of the Complaint, the relationship between the Complainant and the Respondent and any other relevant factors, the Complaint should be referred (or should not be referred) to mediation or Tribunal Hearing. Relevant factors may include an actual or perceived power imbalance, the nature of any ongoing working relationship between the Complainant and the Respondent, and the personal attributes of the Complainant and the Respondent;
- e. the nature and sensitivity of any information or other material that must be provided by the Complainant, the Respondent, and any of the other people involved in the Complaint;
- f. whether the facts of the Complaint are in dispute; and
- g. the urgency of the Complaint, including the likelihood and the consequences (if the Complaint is ultimately proven) that the Complainant may be subject to further unacceptable behaviour while the processes set out in this Complaints Procedure are being conducted.

The Complaints Officer should, to the extent that these steps are necessary:

- a. obtain full information from the Complainant about the Complaint and how the Complainant wants it resolved (if this information has not already been obtained through earlier steps);
- b. put the information received from the Complainant to the Respondent and ask the Respondent to provide their side of the story;
- c. decide whether they have enough information to determine, on the balance of probabilities, whether the matter alleged did or did not happen;
- d. determine what, if any, further action to take (as above).



Step 5 – External options

There may be a range of External Options available to the Complainant depending on the nature of the Complaint. If the internal Complaints processes set out in this Policy does not achieve a satisfactory resolution or outcome, the Complainant may choose to approach an external agency, Court or Tribunal under anti-discrimination, child protection, criminal, or other relevant legislation (such external agencies include but are not limited to the Office of Fair Trading, Queensland Human Rights Commission and Supreme Court).

Where the Complainant feels that they have been Harassed or Discriminated against, they can seek advice from their State or Territory equal opportunity commission without being obliged to seek a Formal Resolution.

If you are personally involved in a dispute, you could consider non-legal options. On many occasions the time, energy and stress associated with an internal dispute will not be worth it, particularly where your involvement with the association is voluntary. Unfortunately, at times, the best option may be to simply leave the association.

Human Rights Commission

Anti-discrimination and human rights laws protect everyone in Queensland. You don't have to be a resident, a citizen, or have a particular visa status to make a complaint:
<https://www.qhrc.qld.gov.au/complaints/making-a-complaint>

Ask the Office of Fair Trading to investigate or intervene

The Queensland Office of Fair Trading (the regulator for Queensland incorporated associates) has wide ranging powers to take action if there is evidence that the dispute involves a breach of the Act.

While the Office of Fair Trading can investigate the affairs of an association, if it's suspected the association is acting in a manner inconsistent with the Act or in breach of its rules, the association may be referred to the Supreme Court. Only the Supreme Court can make orders about how an association is to be run.

Is going to court an option?

The law provides options for going to court about an 'internal dispute' or disciplinary action against a member. This is particularly where an association has not followed its rules or has not provided Natural Justice.

However, the courts have been reluctant to interfere in the internal affairs of community organisations and going to court is stressful and time consuming. It should be considered only as a last resort or where there are complex matters that are critical to resolve or can't be resolved without the intervention of a court.

Step 6 – Document the Complaint

In the event the Complaint involves Formal Resolution the Complaints Officer should document the Complaint, the process followed and the outcome. This document should be stored in a confidential and secure place.



SECTION 2 - MEDIATION

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

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

The following is the general procedure for the conduct of mediations under this policy.

1. The Complaints Officer may recommend Mediation if:
 - a. the Complainant and Respondent have had their chance to tell their version of events to the relevant Complaints Officer; and
 - b. the relevant Complaints Officer does not believe that any of the allegations warrant any form of disciplinary action (proven serious allegations will not be mediated, no matter what the Complainant desires); and
 - c. mediation looks like it will work (i.e. the versions given by the Complainant and Respondent align or almost align and/or at the very least, it looks as though it will be possible for each party to understand the other party's point of view).
2. The Complaints Officer will **not** recommend Mediation if:
 - a. the Respondent has a completely different version of the events and they won't deviate from these;
 - b. the Complainant or Respondent 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;
 - e. matters that involve serious, proven allegations; or
 - f. the Complaint is not suitable for mediation due to the nature of the Complaint, the relationship between the Complainant and the Respondent(s) and any other relevant factors.
3. If mediation is chosen to try and resolve the Complaint the relevant Complaints Officer will, in consultation with the parties, arrange for a mediator to mediate the Complaint.
4. The mediator may be an appropriately objective and qualified member of the TGCFD in which no costs shall apply (for example, in a dispute involving Underwater Hockey a member of the Spearfishing Tribunal may be an appropriate mediator, or vice versa); or someone who is appropriately objective and qualified external to the TGCFD in which case a mediator's fee is likely to apply. The [Queensland Law Society](#) maintains a register of approved mediators; [here](#) is a guideline as to potential costs of an external mediator.
5. Each party shall bear their own costs in relation to the Mediation, except in cases where an external mediator's fee and other costs may apply. In which case, prior to engaging any external mediator, the Complaints Officer will: ascertain the amount of the fee and any other costs (i.e. venue hire) from the proposed mediator; determine who is to pay the fee and any other costs (which may be shared between the parties); and obtain the agreement of the proposed fee payer(s) to pay the proposed fee and any other costs. In circumstances where no party(ies) agrees to pay the mediators fee and other costs then an external mediator may not be an appropriate option.
6. The mediator's role is to assist the parties reach an agreement on how to resolve the issues between them.



The mediator, in consultation with the parties, will determine the procedures to be followed during the mediation. An agenda of issues for discussion will be prepared by the mediator.

7. The mediation will be conducted confidentially and without prejudice. The rights of the parties to pursue an alternative process if the Complaint is not resolved will be preserved.
8. If the Complaint is resolved by mediation, the mediator will prepare a document that sets out the agreement reached between the parties. The relevant Complaints Officer will be advised of the resolution of the matter. TGCFD expects parties involved to respect and comply with the terms of any agreement reached.
9. If the formal Complaint is not resolved by mediation, the Complainant may:
 - a. If the matter has not already been referred to the appropriate Tribunal, write to the Complaints Officer within 14 days of the mediation requesting they do so; or
 - b. Seek External Options.

SECTION 3 – TRIBUNAL HEARING

The following hearing procedure will be followed where a Complaints Officer refers a Complaint to the relevant Tribunal (Spearfishing Tribunal or Underwater Hockey Tribunal):

Before the Tribunal Hearing:

1. The Complaints Officer, as soon as possible, must do the following:
 - a. prepare and send to the Complainant(s) and Respondent(s) a notice setting out the alleged breach (**Notice of Alleged Breach**) in accordance with clauses 1(3) of this Section; and
 - b. send a copy of the Notice of Alleged Breach to the Chairperson of the Tribunal.
2. Frivolous, vexatious or malicious Complaints
 - a. If within 48 hours of receiving the Notice of Alleged Breach, a Respondent alleges in writing to the Complaints Officer that the Complaint is frivolous, vexatious or malicious, the Chairperson of the relevant Tribunal shall as a preliminary issue, determine whether or not such Complaint is frivolous, vexatious or malicious and advise the parties of their determination.
 - b. The Complaints Officer shall provide to the other parties to the hearing a copy of the written allegation made by the Respondent that the Complaint is frivolous, vexatious or malicious.
 - c. The Chairperson shall determine the preliminary issue of whether the Complaint is frivolous, vexatious or malicious as soon as practicable and in whatever manner the Chairperson considers appropriate in the circumstances provided that they do so in accordance with the principles of Natural Justice.
 - d. If the Complaint is determined to be frivolous, vexatious or malicious by the Chairperson, then the Complaint will be dismissed.
 - e. The decision of the Chairperson under this clause is not subject to appeal.
3. The Tribunal will send a Notice of Alleged Breach to both the Complainant(s) the Respondent(s) in writing informing them that a Tribunal Hearing will take place. The notice will outline:
 - a. the date, time and venue of the Tribunal Hearing;
 - b. the details of the Complaint/allegations, as well as the provision or clause of any TGCFD policy, rule or regulation that the Respondent is accused of breaching;
 - c. that the Complainant has a right to appear at the Tribunal Hearing to support their



Complaint/allegations;

- d. that the Complainant may appoint another person to act on their behalf at the Tribunal Hearing;
 - e. that the Respondent has a right to appear at the Tribunal Hearing to defend the Complaint/allegations;
 - f. that the respondent may be assisted by a support person at a Tribunal Hearing. For example, where the respondent is a minor, they should have a parent or guardian present.
 - g. that verbal and/or written submissions can be presented at the Tribunal Hearing;
 - h. that witnesses may attend the Tribunal Hearing to support the parties respective positions;
 - i. contain a reference to Section 4 of this Policy as to any possible sanctions that may be imposed if the Complaint is found to be substantiated; and
 - j. A copy of any information/documents that have been given to the Tribunal as regards the Complaint/allegations.
4. If upon receipt of the Notice of Alleged Breach the Tribunal has any concerns that pending the determination of the matter the Respondent may put at risk the safety and welfare of the Complainant or others it may order that the Respondent be:
- a. suspended from any role they hold within TGCFD;
 - b. banned from any event or activities held by TGCFD; and/or
 - c. required not to contact or in any way associate with the Complainant or other person about whom the alleged breach relates, pending the determination of the hearing.

At the Tribunal Hearing:

5. The Tribunal shall hear and determine the alleged breach in whatever manner it considers appropriate in the circumstances (including by way of teleconference, video conference or otherwise) provided that it does so in accordance with the principles of Natural Justice.
6. The purpose of the hearing shall be to determine whether the Respondent has committed a breach of any relevant rule, regulation or policy of TGCFD. If the Tribunal considers that the Respondent has committed any such breach it may impose Disciplinary Measures as per Section 4.
7. All decisions made by the Tribunal will be based on a majority vote.
8. The parties to the hearing shall include the Complainant, the Respondent, the Complaints Officer and any relevant witnesses which the Tribunal considers necessary.
9. If the Respondent is not present and the Chairperson considers that no valid reason has been presented for the Respondent's absence, the Tribunal Hearing may continue subject to the Chairperson being satisfied that all notification requirements under the Tribunal Hearing procedures have been carried out correctly and that the principles of Natural Justice will not be prejudiced solely by the absence of the Respondent.
10. 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 Tribunal Hearing should be rescheduled to a later date. The Chairperson will inform the Complaints Officer of the need to reschedule, and the Complaints Officer should organise for the Tribunal Hearing to be reconvened.



11. If the Tribunal considers that at any time during the hearing that there is any unreasonable or intimidatory behaviour from anyone allowed to be present, the Chairperson has the power to stop any further involvement of the person in the Tribunal Hearing.
12. After all of the evidence has been presented at the hearing the Tribunal will make its decision in private. If the Hearing Tribunal believes the Complaint has been substantiated on the balance of probabilities (i.e. more probable than not), the Respondent should then be given an opportunity to address the Tribunal and make submissions on any disciplinary measures that may be imposed and including but not limited to mitigating circumstances.
13. Any disciplinary measure imposed must be reasonable in the circumstances.
14. 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.
15. The determination of the Tribunal is final and there is no internal right of appeal.
16. Each party to the Tribunal Hearing shall bear their own costs in relation to the hearing.
17. Within 48 hours, the Chairperson should:
 - a. Forward to the President of the TGCFD a copy of the Tribunal Hearing decision including any disciplinary measures imposed; and
 - b. Forward a letter to the Respondent reconfirming the Tribunal's decision and any disciplinary measures imposed, and refer them to this Complaints Procedure in relation to any External Options they may wish to seek.

SECTION 4 - DISCIPLINARY MEASURES

1. Any disciplinary measure imposed by a Tribunal must:
 - a. conform to the principles of Natural Justice;
 - b. be fair and reasonable;
 - c. be based on the evidence and information presented; and
 - d. be within the powers of the Tribunal to impose the disciplinary measure.
2. If a Tribunal considers that a person has breached a rule, regulation or policy of TGCFD it may impose any one or more of the following penalties:
 - a. direct that the offender attend counselling to address their conduct;
 - b. recommend that TGCFD terminate any position the offender holds within the organisation;
 - c. (where there has been damage to property) direct that the offender pay compensation to the relevant party which controls or has possession of the damaged property;
 - d. impose a monetary fine for an amount determined by the Tribunal;
 - e. impose a warning;
 - f. consider termination of membership under the association's constitution;
 - g. any other such penalty as the Tribunal considers appropriate.
3. When imposing any form of discipline it will be accompanied by a warning that a similar breach of policy by that individual in the future may result in the imposition of a more serious form of discipline.