

Swimming Wellington Policies - Conduct



Title: Disputes & Disciplinary Policy

Number: 403

Approved – 27/7/2021
Review - annually

Purpose

To set out the process for Swimming Wellington receiving, managing and resolving disputes and, if necessary, imposing any appropriate disciplinary action.

This policy applies in place of the Complaints and Discipline Policy in the February 2021 version of the Swimming New Zealand Member Protection Policy Manual (as that Manual may be amended and/or updated from time to time).

For the avoidance of doubt, the remainder of the Swimming New Zealand Member Protection Manual applies to Members and Member Clubs in the Swimming Wellington region.

1. Title

1.1 This Policy:

- a) is made by the Board under rule 9 of the Constitution;
- b) addresses the matters required under rule 16 of the Constitution;
- c) shall be called be the Swimming Wellington Disputes & Disciplinary Policy (“Disputes & Disciplinary Policy”).

2. Definitions

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

Anti-Doping Rule Violation has the meaning given by the Sports Anti-Doping Rules as adopted by Drug Free Sport New Zealand and available at www.drugfreesport.org.nz ;

Board means the board of Swimming Wellington as defined by the Constitution;

Board Member means a member of the Board of Swimming Wellington;

Chair means the Chair of Swimming Wellington;

Code of Conduct means either:

- a) the Code of Conduct set out in the Member Protection Policy Manual; or
- b) a Code of Conduct adopted by the Board.

Constitution means the constitution of Swimming Wellington in force and as amended from time to time;

CPA means a child protection advocate appointed by Swimming Wellington or a Member Club;

FINA is the international governing body for swimming;

General Manager means:

- a) the person employed by Swimming Wellington in a general manager or similar role; or
- b) if no person is employed by Swimming Wellington in a general manager or similar role, either:
 - (i) a person employed by Swimming Wellington; or
 - (ii) a Board member,

appointed by the Board for the purpose of exercising any rights of the General Manager under this Disputes & Disciplinary Policy;

GM means a general meeting of Swimming Wellington called in accordance with the Constitution, whether an AGM or SGM;

Member has the meaning given by the Swimming New Zealand constitution;

Member Club has the meaning given in the Constitution;

Member Protection Policy Manual means the Swimming New Zealand Member Protection Policy Manual approved by the Swimming New Zealand Board as amended from time to time;

Panel means a panel formed by Swimming Wellington under rule 8.1;

Photography Policy means the policy adopted and amended by the Board from time to time regarding photography, filming and videos at swimming meets carried out in the Swimming Wellington region by Swimming Wellington or Member Clubs;

Regional Association has the meaning given by the Constitution;

ST means the Sports Tribunal of New Zealand;

Swimming New Zealand means Swimming New Zealand Incorporated;

Swimming Wellington means Swimming Wellington Incorporated.

3. Objectives

3.1 The objectives of the Disputes & Disciplinary Policy are to:

- a) determine alleged breaches of the Code of Conduct;
- b) determine alleged breaches of the Member Protection Policy Manual;
- c) determine alleged breaches of the Photography Policy
- d) resolve disputes that arise between Members;
- e) determine alleged breaches of any other policy applicable to Members as adopted by Swimming Wellington or Swimming New Zealand from time to time;
- f) make decisions on appeals by a Member against a decision of a Member Club involving suspension, expulsion, penalty or material detriment to the Member.

4. When this Disputes & Disciplinary Policy Applies

- 4.1 **Resolution in Club at first instance:** Subject to rules 4.2 and 4.3 below, the matters set out in clause 3.1(a) to (e) shall be dealt with in the first instance by the Member Club whose Member is alleged to be in breach or between whose Members the dispute has arisen.
- 4.2 In relation to alleged breaches of the Code of Conduct and/or Member Protection Policy Manual, this Disputes & Disciplinary Policy shall only apply where the alleged breach is by a Member who is a member of Swimming Wellington and:
- a) the alleged breach relates to a complaint made under the Code of Conduct and/or Member Protection Policy Manual which the complainant knew was untrue; or
 - b) the Member Club who has jurisdiction to determine the breach under rule 4.1 above requests that the General Manager Swimming Wellington determine the breach in accordance with this Disputes & Disciplinary Policy and the Swimming Wellington Board agrees; or
 - c) where the Board considers in its sole discretion that the breach is of such severity and significance to the sport of swimming that it should be determined by Swimming Wellington under this Disputes & Disciplinary Policy.
- 4.3 In relation to disputes that arise between Members, this Disputes & Disciplinary Policy shall only apply where:
- (a) the dispute involves an important activity or responsibility of Swimming Wellington, or other swimming-related activities in the Swimming Wellington region, which the Swimming Wellington Board considers at its discretion:
 - (i) is of such importance; and/or
 - (ii) is causing such a level of disruption, to the activities of Swimming Wellington and/or Members that it must be addressed; and
 - (b) either:
 - (i) the Member and/or Member Club can demonstrate that despite best endeavours, the dispute could not be resolved at a Member Club level; and/or
 - (ii) one of the parties to the dispute is a Member Club.
- 4.4 Where any alleged breach or dispute is to be determined by a Member Club it shall be determined in accordance with the rules of the Member Club. Where a Member Club has no rules which deal with disciplinary matters or disputes, the Member Club shall determine the matter in accordance with rules 8 to 10 of this Disputes & Disciplinary Policy, amended as follows:
- (a) Rule 8.1 shall be amended so that the board, executive committee or equivalent governing body of the Member Club shall determine the members of the panel to hear the matter; and
 - (b) Rule 9.3 shall be amended to reflect that in relation to breaches of the Code of Conduct and/or Member Protection Policy Manual there is a right of appeal to Swimming Wellington under rule 7 of this Disputes & Disciplinary Policy.

- 4.5 **Relationship to Constitution:** This Disputes & Disciplinary Policy must not be interpreted as restricting or limiting the powers of Swimming Wellington, the Board or the Chair as provided for in the Constitution.
- 4.6 **Relationship to law:** Any action taken under this Disputes & Disciplinary Policy shall be without prejudice to any right or remedy Swimming Wellington or a Member Club may have in law.
- 4.7 **Doping:** This Disputes & Disciplinary Policy does not apply to Anti-Doping Rule Violations for which the provisions of:
- (a) any FINA or International Olympic Committee anti-doping rules; and / or
 - (b) the Sports Anti-Doping Rules,
- shall apply to Members.
- 4.8 **Selection appeals:** This Disputes & Disciplinary Policy shall not apply to appeals against:
- (a) a Member's non-selection to a Swimming Wellington team;
 - (b) a Member's non-selection to a New Zealand swimming team;
 - (c) a Member's non-nomination or non-selection to a New Zealand Olympic or Commonwealth Games Team.

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

- 5.1 Where this Disputes & Disciplinary Policy applies in accordance with rule 4.2:
- (a) the General Manager may, after discussion and consultation with the Swimming Wellington Board investigate alleged breaches of the Code of Conduct and/or Member Protection Policy Manual;
 - (b) any Member, Board Member, any member of a Member Club board, committee or similar, or a CPA may report an alleged breach of the Code of Conduct or the Member Protection Policy Manual to the General Manager or the Board, but any subsequent action in relation to that complaint shall be at the General Manager's sole discretion after discussion and consultation with the Swimming Wellington Board, taking into account sections 4.3 and 7.
- 5.2 The General Manager may postpone investigation of any alleged breach or enforcement of the Code of Conduct and/or Member Protection Policy Manual pending any separate investigation by an outside agency.
- 5.3 In investigating an alleged breach of the Code of Conduct and/or Member Protection Policy Manual the General Manager may require Member or Member Clubs to provide such information as necessary to assist with that investigation for the purpose of determining whether there is a case to answer.
- 5.4 Where the General Manager determines that there is a case to answer in relation to the allegation the General Manager shall convene a Panel in accordance with rule 8.1.
- 5.5 Where the General Manager determines that there is no case to answer the General Manager shall take no further action in relation to the allegation.
- 5.6 In relation to alleged breaches of the Code of Conduct and/or Member Protection Policy Manual the General Manager may delegate any of their powers of investigation under this rule to a Child Protection Advocate or the Board.

6. Disputes Between Members

- 6.1 Where a Member who has a dispute with another Member believes that this Disputes & Disciplinary Policy may apply in accordance with rule 4.3 above, that Member may refer the dispute to the General Manager in writing.
- 6.2 Upon receipt of notice of that dispute the General Manager may investigate the dispute by asking or requiring the parties to the dispute to provide further information.
- 6.3 When the General Manager is satisfied the General Manager has all the information relevant to the dispute, or that further relevant information is unlikely to be provided or parties have refused to provide information, the General Manager shall refer the dispute to the Board which shall determine in its sole discretion whether such dispute meets the criteria set out in rule 4.3 of this Disputes & Disciplinary Policy.
- 6.4 Where the Board is satisfied that the dispute meets the criteria in rule 4.3 it shall:
- (a) refer the parties to the dispute to mediation to be facilitated by a person suitably qualified to mediate the dispute; and
 - (b) direct the General Manager to appoint a Panel in accordance with rule 8 to resolve the dispute in the event that mediation is unsuccessful.
- 6.5 Where the Board is not satisfied that the dispute meets the criteria in rule 4.3 it shall either:
- (a) refer the parties to the dispute to mediation to be facilitated by the Chair or such person suitably qualified to mediate the dispute; or
 - (b) advise the parties that it will take no further action in relation to the referral, and provide the reasons for its decision.

7. Appeals from a Member and Member Clubs

- 7.1 Any Member (or the parent of the Member if the Member is under 18 years of age) who wishes to appeal a decision of a Member Club that applies to that Member involving suspension, expulsion, penalty or any other material detriment may appeal to Swimming Wellington by providing written notice to the General Manager within 28 days of the date of the decision appealed against.
- 7.2 The written notice provided under rule 7.1 shall:
- (a) include a copy of the decision being appealed against;
 - (b) include a summary of the reasons why the Member wishes to appeal against the decision;
 - (c) indicate whether the Member wishes to appeal against a part of the decision (and if so the grounds for doing so) or wishes to have a rehearing of the entire matter; and
 - (d) be copied to the Member Club who made the decision being appealed against.
- 7.3 Upon receipt of the notice the General Manager will either:
- (a) convene a Panel in accordance with rule 8.10; or
 - (b) require that the Member Club and the Member submit to the jurisdiction of the ST for the hearing of the appeal.

8. Hearing

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

9. Determination

- 9.1 **General justice and fairness:** The Panel will make its determinations in the following manner:
- (a) by reference to considerations of natural justice and fairness;
 - (b) consistently with any contractual or employment rules which may apply;
 - (c) based on the evidence presented to the Panel and the seriousness of the breach.
- 9.2 **Written reasons:** The Panel will, as soon as is practicable after the conclusion of a hearing, contemporaneously provide a written determination to the parties, which sets out the reasons for the determination.

- 9.3 **Determinations final and binding:** Subject only to the right of appeal set out in rule 11, all determinations of the Panel will be final and binding.
- 9.4 **Determinations confidential:** All determinations of the Panel shall be confidential between the parties unless the Panel determines that publication of the determination is in the best interests of the sport (for example, to deter others from similar conduct) or is required in order to enforce, or facilitate enforcement of, the determination.
- 9.5 **Manifest error:** The Panel may at any time correct, vary or set aside a determination where there is a manifest error in the determination.
- 9.6 **What the Panel may determine:** After hearing the evidence, the Panel may make one or more of the following orders:
- (a) in relation to alleged breaches of the Code of Conduct and/or Member Protection Policy Manual:
 - (i) find the alleged breach of the Code of Conduct and/or Member Protection Policy Manual to have been proven and impose a sanction;
 - (ii) find the alleged breach of the Code of Conduct and/or Member Protection Policy Manual or any part to be proven, but decline to take any further action in the matter;
 - (iii) find the alleged breach of the Code of Conduct and/or Member Protection Policy Manual or any part of it not proven and make an order that the allegation be dismissed;
 - (iv) may refer the matter to another agency or authority as is appropriate to the nature of the breach.
 - (b) in relation to a dispute between Members, make such findings of fact or other such orders which the Panel considers necessary in order to resolve the dispute which may include (but not necessarily be limited to):
 - (i) ordering one Member to pay the other Member a sum in compensation which represents any actual financial loss suffered by that Member which is caused by the other Member;
 - (ii) requiring any Member to comply with any rule, regulation or policy of Swimming Wellington or a Member Club or Swimming New Zealand.
 - (c) in relation to an appeal by a Member from a decision of a Member Club:
 - (i) allow the appeal and set aside the decision being appealed against and substitute its own decision;
 - (ii) dismiss the appeal.

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

- 10.1 If the Panel finds a Member has breached any part of the Code of Conduct and/or Member Protection Policy Manual, the Panel may impose one or more of the following sanctions:
- (a) issue a written warning;
 - (b) direct that the Member attend appropriate and relevant counselling or take equivalent measures to address their behaviour as a condition of their membership, specify the period within which the

counselling must occur and the consequences if the counselling is not completed within the period specified;

- (c) withdrawal of any awards, placings, records, activities or events sanctioned by Swimming Wellington;
- (d) suspend the Member's membership rights in Swimming Wellington for a specified period;
- (e) suspend the Member from participating in any swimming related activity which is run under the auspices of Swimming New Zealand, Swimming Wellington, other Regional Associations or a Member Club for a specified period;
- (f) require an apology, or order reparation or compensation, to any Member affected by the breach;
- (g) recommend the expulsion of the Member from either Swimming New Zealand, Swimming Wellington or a Member Club;
- (h) enforce any sanction imposed by the IOC, FINA or the ST;
- (i) any other form of discipline and/or sanction the Panel (in its sole discretion) considers appropriate in the circumstances.

10.2 Where the Member is a Member Club the Panel may impose one or more of the following sanctions:

- (a) direct that any funding granted or given to it by Swimming Wellington be reduced or cease from a specified date either permanently or for a specified period of time;
- (b) direct that any rights or privileges or benefits provided by Swimming Wellington cease from a certain date either permanently or for a specified period of time;
- (c) direct that Swimming Wellington cease to sanction events held by the Member Club either permanently or for a specified period of time;
- (d) decline to take any further action.

10.3 In determining what sanction(s) to impose the Panel shall take into account the following factors:

- (a) the nature, impact, and seriousness of the breach;
- (b) if the person knew, should have known or was reckless as to whether the behaviour was a breach of the Code of Conduct and/or Member Protection Policy Manual;
- (c) the level of contrition;
- (d) the effect of the proposed disciplinary measures on the Member including any personal, professional or financial consequences;
- (e) if there have been relevant prior warnings or disciplinary action communicated to that Member;
- (f) the ability of relevant parties to enforce discipline if the person is a parent/guardian or spectator;
- (g) any mitigating circumstances;
- (h) any other circumstances the Panel (in its sole discretion) considers relevant.

10.4 **Child Protection:** Where a determination involves child protection, the safety of the child is the priority and the Panel must consult with the Child Protection Advocate assigned to the matter prior to making any determination or imposing any sanction.

10.5 Without limiting the generality of the remedies available to the Panel and this rule, the Panel may suspend the enforcement of any such remedy on such terms and conditions as it thinks fit.

11. Right of Appeal

11.1 Any Member against whom a determination has been made under rule 4.2 may appeal that determination to:

- (a) Swimming New Zealand in accordance with the Complaints and Discipline Policy in the Member Protection Policy Manual;
- (b) the ST in accordance with the Rules of the ST.

Until such appeal is determined, any sanction imposed by the Panel shall remain in place.