



# **Safeguarding Children and Young People Policy**

# Swimming Australia

## Safeguarding Children and Young People Policy

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# COMMITMENT STATEMENT

Swimming Australia and each of its Member Associations (being Swimming New South Wales, Swimming Victoria, Queensland Swimming Association, Western Australian Swimming Association, Swimming SA, Tasmanian Swimming, Swimming Northern Territory, Australian Swimming Coaches and Teachers Association and Australian Swimmers Association) are committed to ensuring the safety and wellbeing of all Children or Young People who access any of Swimming's activities, programs, events or services.

We are committed to providing Children or Young People with positive and nurturing experiences and will strive to ensure that Children or Young People are protected.

As custodians responsible for Swimming's future, we are committed to ensuring that our organisations, Clubs and everyone involved also provide a safe environment for Children and Young People.

This Policy aims to ensure that Swimming is safe, fair and an inclusive environment for all Children and Young People associated with Swimming. This Policy and the Member Protection Policy form part of Swimming Australia's 'Safe Sport Framework'.

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

Leigh Russell  
CEO, Swimming Australia Limited



## 1. INTRODUCTION

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- (a) SA, its Member Associations (collectively referred to as "**Swimming Bodies**") and Clubs are committed to the safety and wellbeing of Children and Young People involved in Swimming. Swimming has a 'zero tolerance' approach to Child Abuse and is committed to ensuring Children and Young People are protected from Harm.
- (b) SA encourages everyone involved in Swimming to raise any concerns regarding the safety and wellbeing of Children or Young People.
- (c) It is critical within swimming in Australia that values drive our behaviours and conduct. While the wording of stated values and behaviours may change depending on the team or organisation within swimming, these key principles drive our conduct and behaviour:
  - (i) **COURAGE** - We are committed to having crucial conversations. We are bold, decisive and resilient.
  - (ii) **UNITY** - We act with honesty, authenticity, and transparency. We have pride in the tribe. We collaborate with purpose.
  - (iii) **EXCELLENCE** - We do as we say. We are professional and respectful in all that we do. We adopt a growth mindset.

## 2. PURPOSE

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- (a) The Swimming Bodies take seriously our responsibility to deliver a sporting environment that is caring, nurturing and safe.
- (b) The Swimming Bodies and Clubs will endorse, promote and monitor this Policy with the assistance of our Members. The Swimming Bodies recognise that the responsibility for safeguarding Children or Young People in Swimming lies with all those involved in Swimming.

## 3. SCOPE

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- (a) This Policy binds everyone who is involved in Swimming. It relates to matters concerning the safeguarding of Children or Young People within Swimming and applies to:
    - (i) SA;
    - (ii) Member Associations;
    - (iii) Clubs;
    - (iv) Members; and
    - (v) Participants.
  - (b) This Policy applies from the date of this policy (see first page) (**Commencement Date**).
  - (c) A Complaint relating to a breach of this Policy lodged from the Commencement Date, whether it involves conduct that is alleged to have occurred either before or after the Commencement Date, must be dealt with under this Policy.
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- (d) For the avoidance of doubt, this Policy seeks to deal with matters where victims of Complaints are Children or Young People and excludes matters which should be dealt with under the Member Protection Policy.

#### **4. CODE OF CONDUCT FOR DEALING WITH CHILDREN AND YOUNG PEOPLE**

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##### **PART A: Applicable to all persons**

##### **4.1 Use of language and tone of voice**

- (a) Language and tone of voice used in the presence of Children or Young People should:
  - (i) provide clear direction, boost their confidence, encourage or affirm them;
  - (ii) not be Harmful – therefore, avoid language that is intended to be, or is likely to be received by the individual it is directed at or any other person as:
    - (A) discriminatory, racist or sexist;
    - (B) derogatory, belittling or negative;
    - (C) threatening or frightening; or
    - (D) profane or sexual in nature.

##### **4.2 Sending electronic communications to Children or Young People**

- (a) Wherever possible, messages (such as text, email, Facebook, Instagram or Swim Central messages) sent to a Child or Young Person by a Person in a Position of Authority or an adult in Swimming should be copied to their parent or carer.
- (b) Where a parent or carer is not included in the communication:
  - (i) restrict such communication to issues directly associated with delivering our services, activity or program, such as advising that a scheduled swimming event (such as training) is cancelled;
  - (ii) limit the personal or social content in such communications to what is required to convey the service-related message in a polite, friendly manner. In particular, do not communicate anything that a reasonable observer could view as being of a sexual nature;
  - (iii) do not use communication to promote unauthorised 'social' activity or to arrange unauthorised contact;
  - (iv) do not request a Child or Young Person to keep a communication a secret from their parents or carers; and
  - (v) do not communicate with Children or Young People using Internet chat rooms or similar forums such as social networking sites, game sites or instant messaging.

### **4.3 Physical contact with Children or Young People**

- (a) Any physical contact with Children or Young People must be appropriate to the delivery of the Swimming Bodies and Clubs' services, events, programs or activities (such as when fitting sporting equipment like goggles and appropriately correcting technique) and based on the needs of the Child or Young Person (such as to assist or comfort a distressed young person) and should never be initiated by the desire to meet the needs of Persons in Positions of Authority.
- (b) Under no circumstances should any person have contact with Children or Young People in Swimming that involves touching of genitals, buttocks or breasts.
- (c) Contact is expressly prohibited by Persons in Positions of Authority if:
  - (i) it would appear to a reasonable observer to have a sexual connotation;
  - (ii) is intended to cause pain or distress to the Child or Young Person – for example corporal punishment;
  - (iii) is overly physical – for example, wrestling, horseplay, tickling or other roughhousing;
  - (iv) is unnecessary – for example, assisting with toileting when a Child or Young Person does not require assistance;
  - (v) is initiated against the wishes of the Child or Young Person, except if such contact may be necessary to prevent injury to the Child or Young Person or to others, in which case:
    - (A) physical restraint should be a last resort;
    - (B) the level of force used must be appropriate to the circumstances, and aimed solely at restraining the Child or Young Person to prevent Harm to themselves or others; and
    - (C) the incident must be reported to a Senior Person as soon as possible.
- (d) Persons in Positions of Authority are required to report to a Senior Person any physical contact initiated by a Child or Young Person that is sexual and/or inappropriate (for example, acts of physical aggression) as soon as possible, to enable the situation to be managed in the interests of the safety of the Child or Young Person, Persons in Positions of Authority and any other Participants.

### **4.4 Sexual Misconduct**

- (a) Except to the extent permitted by law, under no circumstances is any form of sexual behaviour to occur between, with, or in the presence of, Children or Young People participating in any Swimming Bodies or Club environment.
- (b) While the Swimming Bodies and Clubs do not seek to prohibit lawful sexual behaviour, any sexual behaviour occurring in the presence of Children or Young People participating in a Swimming Bodies or Club environment has the potential to:



- (i) make other Participants uncomfortable; or
  - (ii) impact on the overall success of the activity, including the ability of other Participants to successfully participate to their fullest extent.
- (c) The Swimming Bodies and Clubs acknowledge that, in certain circumstances, consenting Children or Young People can engage in lawful sexual behaviour, and that age of consent laws differ between each State and Territory. See the [“Age of Consent Information”](#) document on the Safe Sport Resources section of the SA website.
- (d) Sexual behaviour needs to be interpreted widely, to encompass the entire range of actions that would reasonably be considered to be sexual in nature, including but not limited to:
- (i) ‘contact behaviour’, such as sexual intercourse, kissing, fondling, sexual penetration or exploiting a Child or Young Person through prostitution; and
  - (ii) ‘non-contact behaviour’, such as flirting between adults and Children or Young People, sexual innuendo, inappropriate text messaging, inappropriate photography or exposure to pornography or nudity.

## **PART B: Applicable to all Persons in Positions of Authority**

### **4.5 Positive guidance**

- (a) Swimming Bodies and Clubs strive to ensure that Children or Young People participating in swimming events, services, programs and activities receive positive guidance to create a positive environment.
- (b) Swimming Bodies and Clubs require Persons in Positions of Authority to use guidance strategies that are fair, respectful and appropriate to the developmental stage of the Children or Young People involved. Children or Young People need to be provided with clear directions and given an opportunity to redirect their misbehaviour in a positive manner.
- (c) Under no circumstances are Persons in Positions of Authority to take disciplinary action involving physical punishment. Nor is any form of treatment that could reasonably be considered as degrading, cruel, frightening or humiliating to be tolerated.

### **4.6 Adhering to role boundaries**

- (a) Persons in Positions of Authority should act within the confines of their duties at all times, subject to a direction by a relevant Senior Person.
- (b) Except where permitted under this Policy or expressly and specifically authorised by the relevant parents/carers of a Child or Young Person to act otherwise, Persons in Positions of Authority must not:
  - (i) provide transportation;
  - (ii) engage in inappropriate activities or seek contact with, Children or Young People in Swimming; or

- (iii) accept an invitation to attend any private social function at the request of a Child or Young Person in Swimming.
- (c) For the purposes of this provision, express consent will only be construed as specific consent for particular activities that are stated verbally or in writing.
- (d) If any Persons in Positions of Authority become aware of a situation in which a Child or Young Person requires assistance that is beyond the confines of that person's role, or beyond the scope of the Swimming Bodies' or a Club's usual service, they should at the earliest opportunity seek advice from a Senior Person, and, if necessary:
  - (i) contact the Child or Young Person's parent or guardian as appropriate (which may be in consultation with SA);
  - (ii) refer the matter to an appropriate support agency, as well as to SA; or
  - (iii) refer the Child or Young Person to an appropriate support agency.

#### **4.7 Uniform and identity card/pass/badge/WWCC**

- (a) Persons in Positions of Authority should wear their uniform or identification tag/badge/pass (where available) only while involved in delivering services, programs, events or activities or as required by their role, such as when representing Swimming Bodies or Clubs at designated events and functions, or to and from that work.

#### **4.8 Supervision of Children or Young People**

- (a) Persons in Positions of Authority responsible for supervising Children or Young People must strive to ensure that Participants:
  - (i) engage positively within the delivery of the service, program or event;
  - (ii) behave appropriately toward one another; and
  - (iii) are in a safe environment and are protected from external threats.
- (b) Persons in Positions of Authority are required to avoid unsupervised situations with Children or Young People in Swimming. Where possible, all activities and/or discussions with Participants should be conducted in view of other Persons in Positions of Authority or adult Participants.

#### **4.9 Use of electronic communications**

- (a) All Persons in Positions of Authority who are involved in delivering services, programs, events and activities are required to follow our '**Acceptable Use**' policy in relation to browsing websites on Swimming Bodies and Clubs' computers. (See the Safe Sport section of the SA website).
- (b) Persons in Positions of Authority are required to ensure appropriate monitoring of Children or Young People when they use Swimming Bodies and Clubs' electronic communication equipment to ensure that they do not inadvertently place themselves at risk of committing Abuse or Sexual Exploitation via social networking sites, gaming sites, web searches, inappropriate email communication or other inappropriate use.

#### **4.10 Giving gifts to Children or Young People**

- (a) The giving of gifts by Persons in Positions of Authority to Children or Young People to whom Swimming Bodies and Clubs provide service must be appropriate and is subject to:
  - (i) obtaining prior authorisation from an Senior Person; and
  - (ii) parents/carers or other responsible adults being made aware of any gift given.

#### **4.11 Visual media of Children or Young People**

- (a) Children or Young People in Swimming are to be photographed or videoed by Persons in Positions of Authority while involved in Swimming Bodies or Clubs' service, activity, event or facility only if:
  - (i) prior approval has been granted by the relevant Child or Young Person or the parents/guardian of the relevant Child or Young Person (as appropriate); or
  - (ii) the relevant Child or Young Person or their parent/guardian (as appropriate), has provided their written consent (or if written consent is not reasonably practicable in the circumstances, their verbal consent) to the person proposing to take the relevant photograph or video,  
  
and:
    - (iii) the context is directly related to participation in Swimming;
    - (iv) the Child or Young Person is appropriately dressed and posed; and
    - (v) the image/video is taken in the presence of other Persons in Positions of Authority.
- (b) Images and videos are not to be distributed (including as an attachment to an email) to anyone outside Persons in Positions of Authority other than the Child or Young Person photographed or their parent/carer, without knowledge and approval of a Senior Person.
- (c) Images and videos (digital or hard copy) are to be stored by Swimming Bodies and Clubs in a manner that prevents unauthorised access by others, for example:
  - (i) if in hard copy form, in a locked drawer or cabinet; or
  - (ii) if in electronic form, in a 'password protected' folder.
- (d) Images and videos (digital or hard copy) are to be destroyed or deleted by Swimming Bodies and Clubs as soon as they are no longer required.
- (e) Images and videos are not to be exhibited on Swimming Bodies' or Clubs' websites or other digital mediums without parental/carer approval, or such images or videos must be presented in a manner that de-identifies the Child or Young Person. Any caption or accompanying text may need to be checked so that it does not identify a Child or Young Person.

#### **4.12 Overnight stays and sleeping arrangements for Children or Young People - Swimming Bodies & Clubs**

- (a) Overnight stays are to occur only with the authorisation of appropriate Swimming Bodies or Club Senior Persons and the parents/carers of the Children or Young People involved.
- (b) Practices and behaviour by our Persons in Positions of Authority during an overnight stay must be consistent with the practices and behaviour expected during delivery of Swimming Bodies and Club services, programs, events and activities at other times.
- (c) Standards of conduct that must be observed by Persons in Positions of Authority during an overnight stay include, but are not limited to:
  - (i) providing appropriate supervision of Children or Young People at all times as practicable, allowing for their privacy when bathing and dressing;
  - (ii) observing appropriate dress standards when Children or Young People are present – such as no exposure to adult nudity;
  - (iii) not allowing Children or Young People to be exposed to pornographic or violent material, for example, through movies, television, the internet or magazines;
  - (iv) not leaving Children or Young People under the supervision or protection of unauthorised persons such as hotel staff or friends;
  - (v) not permitting sleeping arrangements that may compromise the safety of Children or Young People such as unsupervised sleeping arrangements, or an adult sleeping in the same bed as a Child or Young Person;
  - (vi) the right of Children or Young People to contact their parents, or others, if they feel unsafe, uncomfortable or distressed during the stay; and
  - (vii) allowing parents to contact their Children or Young People if they wish.
- (d) The [“Safe Trips Away Guide”](#) in the Safe Sport Resources section of the SA website provides further information.

#### **4.13 Change room arrangements**

- (a) Persons in Positions of Authority are required to supervise Children or Young People in change rooms while balancing that requirement with a Child or Young Person’s right to privacy. In addition, Persons in Positions of Authority:
  - (i) should avoid one-to-one situations with Children or Young People in a change room area;
  - (ii) are not permitted to use the change room area to undress while Children or Young People are present unless they are also competing in a Swimming Bodies or Club event or are participating in a Swimming Bodies or Club training environment;

- (iii) should avoid using a change room to undress while Children or Young People are present where there may only be one change room available - Persons in Positions of Authority must use the change room to undress at a separate time to Children or Young People unless they are also competing in a Swimming Body or Club event or are participating in a Swimming Body or Club training environment;
- (iv) need to ensure adequate supervision in 'public' change rooms when they are used;
- (v) need to provide the level of supervision required for preventing Child Abuse or general misbehaviour, while also respecting a Child or Young Person's privacy; and
- (vi) need to ensure that a person of a particular gender or who expresses and identifies with a particular gender does not enter the opposite gender's change rooms.

#### **4.14 Use, possession or supply of alcohol or drugs**

- (a) While on duty or carrying out their roles, Persons in Positions of Authority must not:
  - (i) use, possess or be under the influence of an illegal or illicit drug;
  - (ii) use or be under the influence of alcohol;
  - (iii) be incapacitated by any other legal drug such as prescription or over-the-counter drugs;
  - (iv) supply alcohol or drugs (including tobacco) to Children or Young People; or
  - (v) smoke cigarettes or any other tobacco-related product.
- (b) Use of legal drugs other than alcohol is permitted, provided such use does not interfere with the ability of Persons in Positions of Authority to care for Children or Young People in Swimming.

#### **4.15 Transporting Children or Young People**

- (a) Children or Young People are to be transported by Persons in Positions of Authority only with prior authorisation from the Child or Young Person's parent/carer. In circumstances where you have prior authorisation, you must inform another Person in a Position of Authority or a Senior Person that you will be providing transport for that Child or Young Person in each particular instance. Gaining approval involves providing information about the proposed journey, including:
  - (i) the form of transport proposed, such as private car, taxi, self-drive bus, bus with driver, train, plane or boat;
  - (ii) the reason for the journey;
  - (iii) the route to be followed, including any stops or side trips; and

- (iv) details of anyone who will be present during the journey other than Persons in Positions of Authority.

## 5. RESPONSIBILITIES WITHIN SWIMMING

The role of each entity in relation to this Policy and the Code of Conduct for dealing with Children or Young People is detailed in the table below.

Entity	Role/Responsibility
SA	<ul style="list-style-type: none"> <li>• Adopt, distribute and promote this Policy and its expectations.</li> <li>• Ensure that volunteers and employees engaged or appointed within Swimming are aware of this Policy and the Code of Conduct for dealing with Children or Young People.</li> <li>• Support Policy review and compliance on an annual cycle or at a time governed by legislation, regulations, Sport Australia directions or organisational learnings that promote or require a change to this Policy or procedural guidelines.</li> <li>• Conduct awareness training and guidance to Member Associations and Persons in a Position of Authority on a regular basis.</li> <li>• Develop opportunities for regular discussion at all levels to support a culture of openness and continued improvement and accountability to child protection and Member welfare.</li> <li>• Advocate and promote Child or Young Persons' rights, empowering and engaging Children or Young People in support of this Policy and its expectations.</li> <li>• Support Member Associations, Regional or District Associations and Clubs through any instance or allegation of Child Abuse.</li> <li>• Share information with relevant third parties, including but not limited to ASCTA in instances or allegations involving coaches who have breached this Policy.</li> <li>• Take seriously and appropriately investigate complaints or allegations made against any Persons in Positions of Authority.</li> </ul>
Member Associations	<ul style="list-style-type: none"> <li>• Ensure that all Persons in Positions of Authority understand their obligations in accordance with this Policy and any relevant procedural documentation.</li> <li>• Strive to ensure that this Policy is adhered to amongst Regional or District Associations, Clubs and their Members, staff, officials, volunteers and Participants.</li> </ul>

Entity	Role/Responsibility
	<ul style="list-style-type: none"> <li>• Strive to ensure that the development and implementation of required internal policy/work procedures and guidelines are in place to support child protection practice in accordance with the expectations of this Policy.</li> <li>• Ensure that volunteers and employees engaged or appointed within Swimming are aware of this Policy and the Code of Conduct for dealing with Children or Young People.</li> <li>• Distribute and promote this Policy among its Regional or District Associations, Clubs and provide them necessary and appropriate support.</li> <li>• Refer complaints or allegations made against any Persons in Positions of Authority to SA.</li> <li>• Proactively share resources and experience in the development of child safe initiatives in swimming as they are identified.</li> <li>• Develop opportunities for regular discussion at all levels to support a culture of continuous improvement and accountability of Child or Young Person protection and Member welfare. For example, in team meetings or regular forums, include safe sport as a regular agenda item.</li> </ul>
Clubs	<ul style="list-style-type: none"> <li>• Strive to ensure that all Persons in Positions of Authority understand their obligations in accordance with this Policy, the Code of Conduct for dealing with Children or Young People and any relevant procedural documentation.</li> <li>• Strive to ensure that the development and implementation of required internal policy and work procedures and guidelines are in place to support Child or Young Person protection practice in accordance with the expectations of this Policy.</li> <li>• Ensure that volunteers and employees engaged or appointed within Clubs are aware of this Policy and the Code of Conduct for dealing with Children or Young People.</li> <li>• Advocate and promote Child or Young Person rights, empowering and engaging Children or Young People in support of this Policy.</li> <li>• Proactively share resources and experience in the development of child safe initiatives in swimming as they are identified.</li> <li>• Develop opportunities for regular discussion at all levels to support a culture of continuous improvement and accountability of Child or Young Person protection and</li> </ul>



Entity	Role/Responsibility
	<p>Member welfare. For example, in team meetings or regular forums, include safe sport as a regular agenda item.</p> <ul style="list-style-type: none"> <li>• Refer complaints or allegations made against any Persons in Positions of Authority to SA.</li> </ul>
<p><b>Persons in Positions of Authority</b></p>	<ul style="list-style-type: none"> <li>• Understand the rights of Children or Young People, as appropriate to their role.</li> <li>• Understand and acknowledge the foundational significance of family relationships for the development of Children or Young People.</li> <li>• Respect the cultural and religious practices of families who access Swimming's services, programs or events.</li> <li>• Understand and appropriately respond to the special needs of Children or Young People with developmental delays or disabilities.</li> <li>• Be respectful of Children or Young People.</li> <li>• Appropriately act on any concerns raised by Children or Young People or their parents, guardians, carers etc.</li> <li>• Understand the definitions, relevant laws, reporting requirements, indicators and impact of Child Abuse, including but not limited to Grooming.</li> <li>• Know and follow applicable policies, regulations and codes of conduct in relation to the care of Children or Young People.</li> <li>• Co-operate with Police, relevant authorities and other formal investigations to the best of their ability to safeguard Children or Young People.</li> <li>• Always follow the Code of Conduct for dealing with Children or Young People and this Policy.</li> <li>• Not Harm or exploit Children or Young People who access our services, activities, programs, or events, nor contravene this Policy or any laws or regulations regarding the safety and wellbeing of Children or Young People.</li> </ul>

## **6. RECRUITMENT AND SCREENING PROCEDURES FOR ROLES WITH DIRECT CONTACT WITH OR PERMITTING ACCESS TO CHILDREN OR YOUNG PEOPLE**

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### **6.1 Introduction**

- (a) Best practice recruitment and screening for all persons involved in swimming who have direct contact with, or access to, Children or Young People, requires implementation of the practices outlined in sections 6.3 - 6.12.
- (b) Swimming Bodies and Clubs must apply the practices and procedures in this section 6 in relation to all prospective employees.
- (c) In recognition of the differences between legislation of Australia's States and Territories, unless otherwise stated, Swimming Bodies and Clubs must, where feasible and to the greatest extent practicable, apply the practices and procedures in this section 6 in relation to all volunteers and contractors in swimming.
- (d) In section 6, the term:
  - (i) **"volunteer"** includes any individuals volunteering their time free of charge, or receiving per diem or reimbursement expenses only;
  - (ii) **"contractor"** includes any individuals engaged by Swimming Bodies or Clubs who are remunerated for their time or services (but are not employees); and
  - (iii) **"employee"** includes any individuals, whether full time, part time or casual, employed by Swimming Bodies or Clubs and remunerated for their time or services.
- (e) Where a Member Association or Club is determining whether it is practicable to apply the practices and procedures in this section 6, the following will be taken into account:
  - (i) the size of the organisation seeking volunteers or contractors;
  - (ii) the number of prospective applications; and
  - (iii) the nature of the volunteer or contractor positions for which volunteers or contractors are being sought.

### **6.2 Purpose**

- (a) The recruitment and screening procedures have been developed to ensure that Swimming Bodies and Clubs recruit people who are suitably qualified and committed to providing professional, safe and enjoyable activities and services to Children or Young People.

### **6.3 Advertising**

- (a) All Swimming Bodies and Club advertised positions and internal position descriptions for positions that require direct contact with or permit access to Children or Young People should contain the following statement:

**“We require all applicants to undergo an extensive screening and background check process prior to appointment.”**

#### **6.4 Provision for Safeguarding Children or Young People**

- (a) This Policy must be supplied to all applicants for advertised positions at the same time as the position description and application documentation, and at least prior to an interview. All positions advertised online should contain a link to this Policy or a PDF version attached to the advertisement.

#### **6.5 Face-to-face or video interview**

- (a) All applicants that require direct contact with, or that permit access to, Children or Young People, are required to attend or participate in at least one face-to-face or video interview.
- (b) As part of the face-to-face or video interview, Swimming Bodies and Clubs should highlight our commitment to protecting Children or Young People from Abuse. Swimming Bodies and Clubs should also explain our screening requirements and their purpose.
- (c) During face-to-face or video interviews, the Swimming Bodies or Club Persons in Positions of Authority conducting the interview must consider the following issues and the applicant’s suitability to work with Children or Young People:
  - (i) the applicant’s general awareness and understanding of Child or Young Person protection issues and the importance of ensuring the safety and wellbeing of Children or Young People in particular;
  - (ii) the applicant’s beliefs and values in relation to the treatment of Children or Young People;
  - (iii) the applicant’s professional experience, qualifications and competence;
  - (iv) the applicant’s reasons for leaving previous positions involving work with Children or Young People; and
  - (v) any potential concerns regarding the applicant’s resume or work history, such as gaps in their work history, frequent job changes, or inability to nominate precise start or end dates for previous roles.
- (d) In undertaking an interview with any applicant for any role requiring direct contact with, or access to, Children or Young People, hiring Persons in Positions of Authority must reference and choose appropriate ["Interview questions"](#) (suggested Interview questions can be found on the Safe Sport Resources section on SA’s website). An applicant’s responses should be documented and, if they are the successful applicant, add it to their personnel file.

#### **6.6 Proof of Identity and Qualifications Check**

- (a) The identity and qualifications of each shortlisted applicant for any position requiring direct contact with, or access to, Children or Young People must be confirmed by sighting ‘proof of identity’ and ‘proof of qualifications’ documents presented by the applicant that are relevant to their role and their suitability to work with Children or Young People. On completion of the recruitment process,

copies of the successful applicant's 'proof of identity' and 'proof of qualifications' documents should be added to their personnel file.

- (b) If a variation to these requirements is required in relation to proof of identity or proof of qualifications, such as an applicant being unable to provide specific documentation, an appropriate Senior Person should be advised and approval for a variation sought. The Senior Person may withhold approval for any variation requested at their absolute discretion.

## **6.7 Background and Screening Checks**

- (a) Unless the law provides otherwise, all SA, Member Association and Club boards (however named) and employees must have a satisfactory Working with Children Check in the appropriate jurisdiction in which they spend the majority of their working time.
- (b) In addition, at the discretion of the engaging organisation, applicants may also be required to satisfy a number of background checks, at the commencement of, and in some cases during the time in which they hold their position. These include (but are not limited to) the following:
  - (i) a National Criminal History Record Check;
  - (ii) a signed declaration;
  - (iii) a reference check; and
  - (iv) any other relevant background checks to assess a person's suitability to work with Children or Young People.
- (c) Whenever possible, no applicant is to be offered a position with any Swimming Bodies or a Club until after completion of the relevant background and screening checks. When this is not possible, appointment of that person must be contingent on the relevant Swimming Bodies or Club receiving a satisfactory background and screening check. At a minimum and subject to specific State or Territory 'Working With Children Check' requirements which can be found at the websites set out in the table at **Annexure D**, the applicant must have completed the application documentation for the relevant Working with Children Check or background check (or both) and the employing organisation must sight that documentation prior to the commencement date of that person's position.
- (d) If the applicant has already commenced holding a position with any Swimming Bodies or a Club and the results of any background or screening checks are unsatisfactory, subject to the individual employment contract and laws, the Swimming Bodies or the Club may terminate the individual's position without notice.
- (e) Swimming Bodies and Clubs only recruit staff and volunteers with appropriate qualifications and experience and if at any stage (including before or after engagement) it is discovered that any aspect of the applicant's curriculum vitae or references or background checks provided in support of the application are dishonest or misleading, Swimming Bodies and Clubs may terminate the engagement immediately without notice.

## 6.8 Working with Children Checks

- (a) Each Australian jurisdiction has its own legislated screening schemes for undertaking checks to assess a person's suitability to work or interact with Children or Young People. Examples of this include 'Working with Children' or 'Blue Card' checks.
- (b) Accordingly, our recruitment procedures require that such checks be obtained for all applicants (including all applicants who are Children or Young People) who are to be offered or have accepted a position with any Swimming Bodies or Clubs that involves direct contact with, or permits access to, Children or Young People (i.e. including, but not limited to team managers, coaching staff, technical officials, etc). Swimming Bodies or the relevant Club will direct the applicant to the check required and make clear the relevant jurisdiction for the relevant check.
- (c) Where an applicant is not required to obtain a Working with Children Check by law, the applicant may be required to provide evidence to the satisfaction of the Swimming Body or Club confirming this, such as a letter or statement from the relevant State or Territory external agency.
- (d) The Person in a Position of Authority that is responsible for recruiting must either verify with the appropriate Working with Children or Blue Card Authority or, if the information cannot be verified through the appropriate authority, sight a copy of the applicable 'Working with Children' or Blue Card check documentation and record relevant details using our "[Working with Children and Background Check Register Template](#)" (this can be found on the Safe Sport Resources section on SA's website).
- (e) Swimming Bodies and Clubs must not employ or engage a person who returns a negative 'Working with Children' or Blue Card check (or similar). For the avoidance of doubt, volunteers who return negative checks must not be engaged by Swimming Bodies or Clubs also.

## 6.9 National criminal history record checks

- (a) Swimming Bodies or a Club may at any time require a National Criminal History Check. This might be required, for example, where a person may be exempt from a Working with Children Check requirement, but it can also be an additional requirement imposed by Swimming Bodies or a Club. If such record check is required, obtain application forms from Police in the relevant State or Territory, or download forms from their website, as detailed in the table at **Annexure D**.
- (b) No copy of the Police Check may be retained, and the original must be destroyed – in a secure manner – on completion of the selection process. However, Swimming Bodies and Clubs should record the date and certificate number of the Police Check in the applicant's personnel file on a 'National Criminal History Record Check' form.
- (c) When this is not possible, the person may be appointed contingent upon them receiving a satisfactory check. The person is to be subject to additional supervision until the check procedures are completed.

## **6.10 Record Keeping and Sharing of Information – Working with Children and/or National Criminal History Checks**

- (a) Swimming Bodies and all Clubs must comply with relevant laws in relation to record keeping. Best practice record keeping requires Swimming Bodies and Clubs to maintain:
  - (i) records of all employees, contractors and volunteers, including proof of identify and proof of qualification documents and records; and
  - (ii) a register of Working with Children Check and National Criminal History Checks for all employees, contractors and volunteers for whom checks have been obtained. This register must detail application and approval or rejection details (including Working with Children Check or equivalent identifiers), expiry dates and any other identifying and useful information.
- (b) Please see the “**WWCC and Background Check Register Template**” in the Safe Sport Resources section on the SA website.
- (c) When requested by SA, Member Associations and Clubs must to the extent permitted by law share information from relevant employment records or their register of Working with Children Check or National Criminal History Checks in order to resolve any recruitment or screening issues and in the interests of resolving any complaints relating to Children or Young People. Subject to relevant laws, Clubs must also share employment records and proof of identity or qualifications information when requested by Member Associations for those same purposes.
- (d) For the avoidance of any doubt, all applicants provide their consent to SA, Member Associations and Clubs disclosing their personal information as set out above.

## **6.11 Undertaking reference checks**

- (a) Swimming Bodies and Clubs must conduct a minimum of two reference checks for all shortlisted applicants for any employment, contractor or volunteer roles. This is to gather additional information about the applicant’s suitability to work in the role for which they have applied and to ensure the applicant holds the professional qualification, experience or registration they claim to hold in relation to their suitability to work with Children or Young People.
- (b) Applicants being considered for appointment should, in the first instance, be asked to provide contact details for two referees who can provide information relating to the applicant’s suitability to the role, including relating to the applicant’s suitability to work with Children or Young People. Referees (preferably professional):
  - (i) should include a representative of the applicant’s:
    - (A) current or most recent employer; or
    - (B) an employer in the past 5 years provided that if the applicant is offered the role, he/she must provide a reference from their current or most recent employer prior to commencing; and

- (ii) must, where practicable, have had a direct managerial relationship with the applicant and so be capable of commenting with direct knowledge in relation to the applicant, and ideally have been the applicant's supervisor or line manager.
- (c) Personal referees are not recommended. However, if there is no option but to include a personal referee (for example – applicants are applying for their first job), then that referee:
  - (i) should not be related to the applicant;
  - (ii) should have known the applicant for at least 12 months; and
  - (iii) must be able to attest to the applicant's reputation, good standing and character.
- (d) For any shortlisted applicant being considered for an employment, contractor or volunteer coaching role, Swimming Bodies and Clubs must also conduct reference checks with:
  - (i) ASCTA; and
  - (ii) the applicant's current or most recent engagement where he or she coached (if applicable) or from an engagement in the past 5 years provided that if the applicant is offered the role, he/she must provide a reference from their current or most recent engagement prior to commencing.
- (e) The referee checks undertaken must involve direct contact with the referee, whether in-person, by phone, video link or email. Written character references are not sufficient unless also followed up and verified through direct contact.
- (f) A completed 'Reference Check' form is to be filed in a successful applicant's personnel file prior to the applicant starting their engagement with the relevant Swimming Body or Club. Please see the "[Reference Check Template](#)" located in the Safe Sport Resources section on the SA website.

#### **6.12 Guidance for volunteers, contractors and Children or Young People in Positions of Authority**

- (a) Swimming Bodies and Clubs must comply with any 'Working with Children' check legislation that applies in the jurisdiction in which they operate and must undertake such checks for all prospective parent/carer contractors or volunteers in accordance with the relevant Australian State or Territory. More information can be found at the websites set out in the table at **Annexure D**.

### **7. COMPLAINT PROCEDURE**

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- (a) Complaints regarding the safety, health or wellbeing of a Child or Young Person will be treated by Swimming Bodies and Clubs as a high priority.
- (b) Where Complaints arise regarding a Child or Young Person in Swimming, it may be necessary for Swimming Bodies 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 the Complaint Procedure outlined in section 7.5, while having regard to the Complaint Guidelines set out in **Annexure C**.



- (c) The Complaint Procedure in section 7.5 including all resources, tools and templates apply to all Complaints lodged under this Policy, whether at Club, Member Association or SA level.
- (d) Existing disciplinary procedures contained within the constitution or rules, regulations or policies of any Club or Member Association remain and may be the relevant process to deal with any relevant breaches other than of this Policy.

### **7.1 Breaching this Policy**

- (a) Complaints may be made about an act, behaviour, conduct, omission, situation or decision that is a suspected breach of this Policy. It may be:
  - (i) 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; or
  - (ii) a suspected breach of our Code of Conduct for dealing with Children or Young People set out in section 4,provided that such Complaint is not mischievous, vexatious or knowingly untrue.

### **7.2 Making a Complaint**

- (a) Complaints in relation to this Policy may be made by any person who has concerns about a person or their behaviour or conduct in Swimming.
- (b) Complaints should be referred to the Head of Integrity and Risk at SA or such other person as directed by SA from time to time.

### **7.3 Mandatory Reporting**

- (a) All Complaints or concerns involving Child Abuse or criminal conduct should immediately be referred to SA and the Police (if there is an immediate threat of Harm or a serious offence has occurred) and/or the appropriate external agencies.
- (b) There are certain circumstances where individuals will be legally required to report a Complaint that they receive to the relevant external authority.

Please refer to **Annexure B** for further responsibilities and information in relation to 'Mandatory Reporting' and relevant external authorities.

### **7.4 Initial Stages of a Complaint**

- (a) Where a Complaint is referred to SA and SA in its absolute discretion, determines it is not appropriate to deal with the Complaint or that the matter does not fall within the scope of this Policy (for example a Club dispute not involving a Child or Young Person), SA may refer the Complaint elsewhere or dismiss it accordingly.
- (b) For the avoidance of doubt, Member Associations or SA may also, at their discretion, refer Complaints received back to Club, ASCTA, ASA or a Member Association, should that be appropriate.

## 7.5 Procedure for Handling Complaints under this Policy

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

### Complaints Procedure

#### *Reporting Complaint*

**Step 1:** Complainant tells a Person in a Position of Authority about their Complaint.

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

**Step 2:** Person in a Position of Authority talks to Complainant and identifies facts, records, explains next steps and reports to a Senior Person.

**Step 3:** Senior Person documents Complaint using the Complaint Recording Template set out in **Annexure A**.

**Step 4:** Senior Person reports Complaint to SA.

**Step 5:** SA reports to relevant external authority if mandatory reporting is required and it has not already been reported or if SA otherwise considers it appropriate to do so.

#### *Internal Investigation of Complaint*

**Step 6:** SA determines whether to delegate Complaint to a Delegated Organisation or refer the Complaint elsewhere. For the avoidance of doubt, all Complaints reported or dealt with under this Policy (or relating to conduct that is or may be a breach of this Policy) shall be dealt with by SA unless SA (at its sole discretion) determines that it should be delegated to a Delegated Organisation.

**Step 7:** SA or Delegated Organisation conducts internal investigation of Complaint unless otherwise requested by external agency.

#### *Determining Complaint*

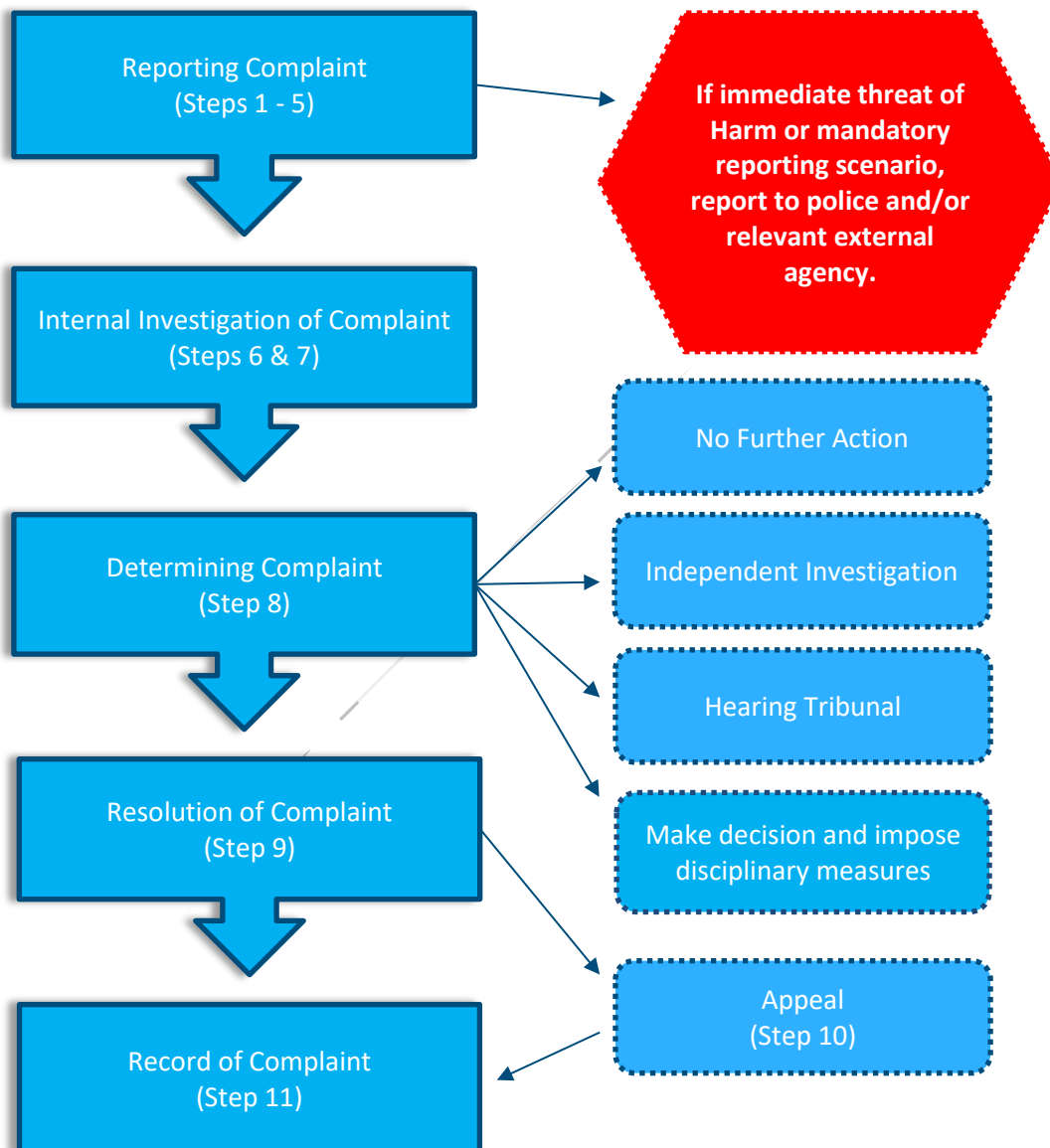
**Step 8:** After the internal investigation is completed, the CEO of SA or Delegated Organisation evaluates next steps and determines whether to:

- (a) close the Complaint where no further action is required, or no longer sought by the Complainant;
- (b) make decision and impose disciplinary measures (in accordance with section 8);
- (c) refer Complaint to Independent Investigation (refer to section 7.8); or
- (d) refer Complaint to Hearing Tribunal (refer to section 7.9).

### *Resolution of Complaint*

- Step 9:** Decision made and disciplinary measures (if required) imposed as a result of the chosen Step 8 process.
- Step 10:** Appeal (if deemed valid) may be lodged in relation to decision. If the appeal is heard, a decision is made and new disciplinary measures may be imposed. Refer to section 7.10.
- Step 11:** Record of Complaint finalised. SA and Delegated Organisation notified of outcome of Complaint. Complaint closed.

The above process is reflected in the diagram below:



## 7.6 Provisional Action

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

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

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

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

## 7.7 Internal Investigation

So that SA or Delegated Organisation has sufficient information to determine the appropriate step to be taken, the Investigation Officer within SA or Delegated Organisation should conduct an internal investigation. Step 7 and 8 of the Complaint Guidelines in **Annexure C** provides guidance on the conduct of an internal investigation.

## 7.8 Independent Investigation Procedure

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

- (iv) The Respondent(s) should be interviewed by the Investigator and given the opportunity to respond to the allegations. The response to the Complaint should be documented in writing by the Investigator. The Respondent is entitled to have a support person present during any interview, subject to the support person not being a current practicing solicitor or barrister. Where the Respondent is a Child or Young Person, the Respondent's parent or guardian should also be present during the interview.
- (v) If, in the process of the Independent Investigation, there continues to be a dispute regarding the facts, then statements from witnesses and other relevant evidence should be obtained by the Investigator to assist in reaching conclusions and preparation of a report and recommendations.
- (vi) The Investigator must make a finding, on the balance of probabilities, as to whether the Complaint, or each of the allegations in the Complaint (as appropriate) is:
  - (A) substantiated (there is sufficient evidence to support the Complaint);
  - (B) inconclusive (there is insufficient evidence either way);
  - (C) unsubstantiated (there is sufficient evidence to show that the Complaint is unfounded or not enough evidence to substantiate the Complaint); or
  - (D) mischievous, vexatious or knowingly untrue.
- (vii) A report documenting the Complaint, the investigation process, evidence, finding(s) and, if requested, recommendations, should be given to the CEO (or a person with delegated authority of the CEO) of SA or Delegated Organisation who may, in consideration of the report of the Investigator, either:
  - (A) take disciplinary action against either the Respondent, Complainant or any other person/persons involved in the Complaint in accordance with section 8;
  - (B) refer the Complaint to a Hearing Tribunal (which will take place in accordance with the Hearing Tribunal Procedure in Section 7.8) to determine what, if any, further action to take; or
  - (C) take no further action and close the Complaint.
- (viii) Within 14 days of the CEO (or a person with delegated authority of the CEO) of SA or Delegated Organisation receiving a report of an Investigator, a report must be provided to the Complainant(s) and the Respondent(s) which summarises the investigation process and documents key points that were found to be substantiated, inconclusive, unsubstantiated or mischievous (**Report**). The Report may be redacted to the extent required to protect necessary confidential or sensitive issues.
- (ix) All parties to the Complaint receiving a copy of the Report of the Investigator must maintain strict confidentiality of the Report, other than

where necessary to disclose the contents of the Report in order to obtain legal advice or as required by law. Any disclosure of the Report other than in accordance with this section 7.8(c)(ix) is a breach of this Policy and may result in disciplinary action being taken against the party making the disclosure.

- (x) Subject to sections 7.8(c)(ii) and 7.8(c)(iv), both the Complainant and the Respondent(s) are entitled to support throughout this process from their chosen support person/adviser.

## **7.9 Hearing Tribunal Procedure**

SA or a Delegated Organisation may (at its discretion) refer a Complaint to:

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

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

### ***Preparing for a Hearing Tribunal***

- (b) The Hearing Tribunal shall be constituted by SA or the Delegated Organisation.
- (c) The CEO of SA or the Delegated Organisation should convene the Panel Members to hear a Complaint. The Panel Members should be provided with a copy of all the relevant correspondence, reports or information received and sent by the CEO relating to the Complaint.
- (d) The Hearing Tribunal should be scheduled as soon as practicable but must allow adequate time for the Respondent(s) to prepare to respond to the Complaint.
- (e) Subject to 7.9(j), the number of Panel Members required to be present throughout the Hearing Tribunal process is 3.
- (f) The Hearing Tribunal must not include any person who has any actual or perceived conflict of interest, preconceived opinions, vested interests or personal involvement relating to the Complaint.
- (g) The Hearing Tribunal must comprise at least one person who has knowledge, and preferably experience, of any relevant laws relating to the Complaint (e.g. anti-discrimination).
- (h) One of the Panel Members shall be appointed Chairperson by the CEO of SA or the Delegated Organisation.
- (i) Any objection to a Hearing Tribunal Panel Member must be made by a party in writing to the CEO of SA or the Delegated Organisation no later than 72 hours prior to the Hearing Tribunal.



- (j) If for any reason 3 Panel Members are not maintained, the discontinuing Member may be replaced if it is considered appropriate by the CEO of SA or the Delegated Organisation. Factors to consider should include the circumstances of the Complaint and the ability of the new Panel Member to be reasonably and impartially informed of the hearing evidence up until the time of his or her appointment. If the CEO of SA or the Delegated Organisation believes it is appropriate for a new Panel Member to be appointed, then he or she should organise for the Hearing Tribunal to be rescheduled, with a new Panel.
- (k) The CEO must inform the Respondent by written notification that a Hearing Tribunal will take place. The written notification must outline:
- (i) that the Respondent has a right to appear at the Hearing Tribunal to respond to the Complaint/allegation(s);
  - (ii) details of the Complaint, including any relevant policy, rules or regulations which have allegedly been breached (if there is more than one Complaint these should be set out separately);
  - (iii) the date, time and venue of the Hearing Tribunal;
  - (iv) that the Respondent can make either verbal or written submissions to the Hearing Tribunal;
  - (v) that the Respondent may arrange for witnesses to attend the Tribunal hearing to support their position (statutory declarations of witnesses not available to attend and from character witnesses may also be provided to the Tribunal hearing);
  - (vi) an outline of any possible penalties that may be imposed if the Complaint is found to be true;
  - (vii) legal representation is not allowed; and
  - (viii) if the Respondent is a Child or Young Person (or a person with an intellectual disability or mental illness), they should have a parent, guardian or support person present.
- (l) A copy of any information or documents that have been given to the Hearing Tribunal should also be provided to the Respondent subject to the approval of the Chairperson.
- (m) The CEO will inform the Complainant by written notification that a Hearing Tribunal will take place. The written notification will outline:
- (i) that the Complainant has a right to appear at the Hearing Tribunal to support their Complaint;
  - (ii) details of the Complaint, including any relevant policies, rules or regulations (if there is more than one Complaint these should be set out separately);
  - (iii) the date, time and venue of the Hearing Tribunal;
  - (iv) that the Complainant can make either verbal or written submissions to the Hearing Tribunal;

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

### ***Hearing Tribunal***

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

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

- (iii) draw an adverse inference where a Complainant who is a Child or Young Person provides evidence only by statutory declaration or other written statement prior to the Hearing Tribunal.
- (cc) Video evidence, if available, may be presented. The arrangements for such presentation will be the responsibility of the person/s wishing to offer this type of evidence.
- (dd) If the Hearing Tribunal considers that at any time during the Hearing Tribunal there is any unreasonable or intimidating behaviour from any person, the Chairperson has the power to deny any further involvement of the person in the Hearing Tribunal.
- (ee) After all of the evidence has been presented the Hearing Tribunal will, subject to section 7.9(hh), make its decision in private. If the Hearing Tribunal believes the Complaint has been substantiated on the balance of probabilities, the Respondent should then be given an opportunity to address the Hearing Tribunal and make submissions on any disciplinary measures that may be imposed and including but not limited to mitigating circumstances.
- (ff) The Hearing Tribunal may impose a disciplinary measure on the Respondent where it upholds the Complaint in whole or in part. The Hearing Tribunal will impose the disciplinary measure in accordance with section 8.
- (gg) All decisions made by the Hearing Tribunal will be made by a majority vote.
- (hh) Where a decision is made at the hearing the Chairperson should announce the decision in the presence of all those involved in the Tribunal Hearing and then declare the Tribunal Hearing closed. Where a decision will be made after the hearing, the Chairperson should inform the parties of this fact and declare the Tribunal Hearing closed.
- (ii) Within 48 hours, the Chairperson should:
  - (i) forward to the CEO of SA or the Delegated Organisation a copy of the Hearing Tribunal decision including any disciplinary measures imposed; and
  - (ii) forward a letter to the Respondent confirming the Hearing Tribunal's decision and any disciplinary measures imposed. The letter should outline the process and grounds for an appeal to be made.
- (jj) The Hearing Tribunal does not need to provide written reasons for its decision but may do so if it chooses.

## **7.10 Appeal Procedure**

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

conducted or imposed in accordance with this Policy.

- (b) An appeal may be submitted by the original Complainant or the original Respondent and must follow the Appeal Procedure set out under section 7.10.
- (c) If the appeal is accepted, an Appeal Panel (with new Panel Members) will be convened to determine the Complaint on appeal.
- (d) A person wanting to appeal must lodge a **Notice of Appeal** (this can be found on the Safe Sport Resources section on SA's website) to the CEO of SA or the Delegated Organisation within **7 days** of notification to the Appellant of the decision they are appealing. An appeal fee of **\$500.00** must be included with the Notice of Appeal.
- (e) If the Notice of Appeal is not received by the CEO of the relevant organisation (SA or the Delegated Organisation) within this time, the right of appeal will lapse. If the Notice of Appeal is received but the appeal fee is not received within this time, the appeal will also lapse.
- (f) An Appeal can only be granted on one or more of the following grounds:
  - (i) the decision was affected by actual bias; or
  - (ii) there was no evidence on which the decision could be reasonably based.
- (g) The Notice of Appeal must set out the ground(s) of appeal relied on by the Appellant and an outline of the Appellant's submissions.
- (h) Where an appeal is lodged, SA or the Delegated Organisation must appoint an Appeal Panel Chairperson. A permanent Appeal Panel Chairperson may be appointed from time to time and an alternate Appeal Panel Chairpersons. SA or the Delegated Organisation is entitled, at any time, to replace or remove any Appeal Panel Chairperson or fill any casual vacancy.
- (i) Where an Appeal is lodged, the relevant Appeal Panel Chairperson must in his/her absolute discretion determine, on the written submissions, whether:
  - (i) the appeal sets out a prima facie valid ground of appeal; and
  - (ii) there are sufficient grounds for the appeal to proceed,prior to an appeal being deemed valid and proceeding to an Appeal Panel for determination. Where determining whether an appeal is valid, the Appeal Panel Chairperson may:
  - (iii) request written submissions from one or both of the Complainant and Respondent; and
  - (iv) request from the Hearing Tribunal any of the materials before it.
- (j) Where the Appeal Panel Chairperson:
  - (i) deems the appeal invalid, or that it has not shown sufficient grounds, the appeal will be rejected and will not proceed. The Appellant will be notified in writing, including the reasons for the decision. The appeal fee will be forfeited; or

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

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

## **8. DISCIPLINARY MEASURES**

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### **8.1 Individuals/entities who may impose disciplinary measures**

- (a) The following individuals/entities may impose a disciplinary measure in response to a breach of this Policy in accordance with the Complaints Procedure:
  - (i) the CEO (or a person with delegated authority of the CEO) of SA or the Delegated Organisation after considering the findings of an internal investigation;
  - (ii) the CEO (or a person with delegated authority of the CEO) of SA or the Delegated Organisation after considering the findings of an Independent Investigation;
  - (iii) the Hearing Tribunal panel after conducting a Hearing Tribunal; or
  - (iv) the Appeal Panel after conducting an appeal hearing,

(referred to as, the **Disciplining Body**).

- (b) The relevant Disciplining Body may impose any disciplinary measure available to it under this section 8.

## **8.2 Considerations when imposing disciplinary measures**

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

## **8.3 Individual sanctions**

- (a) Subject to contractual and employment laws, if a finding is made that a Respondent who is an individual has breached a provision of this Policy, the Disciplining Body may take any one or more of the following measures:
  - (i) maintain any Provisional Action already taken in relation to the Complaint on the same or amended terms as the Disciplining Body thinks fit;
  - (ii) direct that the Respondent make a verbal or written apology;
  - (iii) provide a written warning;
  - (iv) direct that the Respondent undertake appropriate training, education or counselling;
  - (v) direct that the Respondent do something, or refrain from doing something, to remedy the breach of this Policy;



- (vi) withdraw any awards, placings, records, achievements bestowed in any competition, activities or events held or sanctioned by the organisation;
  - (vii) demote or transfer the Respondent to another location, role or activity;
  - (viii) suspend the Respondent's membership or participation or engagement in a role or activity;
  - (ix) recommend that another organisation suspend the Respondent's membership, appointment or engagement;
  - (x) in the case of a coach, Athlete or official, direct that the relevant accrediting organisation de-register the accreditation of the coach or official for a period of time or permanently, including but not limited to ASCTA or ASA membership;
  - (xi) termination or other disciplinary action in accordance with the Respondent's contract of employment and/or workplace laws; or
  - (xii) any other form of discipline that the Disciplining Body considers appropriate.
- (b) When imposing any form of discipline, it should be accompanied by a warning that a similar breach by that Respondent in the future may result in the imposition of a more serious form of discipline.

#### **8.4 Organisational sanctions**

- (a) If a finding is made that a Respondent who is an organisation has breached this Policy, the Disciplining Body may take any one or more of the following measures:
- (i) a written warning;
  - (ii) a fine;
  - (iii) a direction to set aside and remake a decision that is the subject of a Complaint under this Policy, which may or may not be subject to guidelines;
  - (iv) a direction that the Respondent do something, or refrain from doing something, to remedy the breach of this Policy;
  - (v) a recommendation that any rights, privileges and benefits provided to the Respondent by SA or another peak association be suspended for a specified period;
  - (vi) a recommendation that any funding granted or given to it by SA cease from a specified date;
  - (vii) a recommendation that SA ceases to sanction events held by or under the auspices of the Respondent;
  - (viii) a recommendation that the Respondent's membership of SA be suspended or terminated in accordance with the relevant constitution or rules; or

- (ix) any other form of discipline that the Disciplining Body considers appropriate.
- (b) When imposing any form of discipline, it should be accompanied by a warning that a similar breach of this Policy by the Respondent in the future may result in more serious form of discipline.

### **8.5 Disciplinary action against criminal convictions or findings of guilt**

- (a) In circumstances where a Complaint is referred to Police and the Respondent receives a criminal conviction or finding of guilt for an offence relating to Children or Young People, SA reserves the right to impose any form of discipline it considers appropriate having regard to the Complaint, the circumstances of the criminal conviction or finding of guilt and the overall reputation, safety and wellbeing for Children or Young People in Swimming.
- (b) If SA acts under 8.5(a), it may do so without acting in accordance with Steps 1 - 8 of the Complaint Procedure. Notwithstanding this, SA may still undertake its own investigation into the Complaint if considered necessary (Step 7 of the Complaint Procedure) and provide the Respondent with the opportunity to submit written submissions in response to the Complaint (criminal conviction or finding of guilt) and any proposed disciplinary measures. SA will consider the Respondent's submissions before deciding to impose any disciplinary measures.
- (c) Any decision to impose disciplinary measures on a Respondent under this section 8.5 shall be taken to be a decision as if it was made under Step 9 of the Complaint Procedure and an appeal of such decision may be available in accordance with the Appeals Tribunal procedure outlined in section 7.10.

### **8.6 Disciplinary action against mischievous, vexatious or knowingly untrue Complaints**

A Complaint which is found to be mischievous, vexatious or knowingly untrue will be considered a breach of this Policy and the Disciplining Body reserves the right to impose disciplinary sanctions on the individual or organisation who made the Complaint in accordance with the sanctions outlined in section 8.3 or 8.4.

## **9. DEFINITIONS**

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

<b>Term</b>	<b>Definition</b>
<b>Abuse</b>	Abuse means Physical Abuse, Emotional or Psychological Abuse, Sexual Abuse, and abuse of power that has caused, is causing or is likely to cause Harm to a person's wellbeing or development, whether in person directly or as the result of a publication viewable by any other person by any means. Examples of Abuse include, but are not limited to, Bullying, humiliation, verbal abuse and insults, Grooming, Harassment (including Sexual Harassment), Discrimination, Neglect and Sexual Exploitation.
<b>Appeals Panel</b>	Appeals Panel means the panel created in accordance with section 7.10.
<b>Appellant</b>	Appellant means the person or organisation who initiates an appeal.

<b>Term</b>	<b>Definition</b>
<b>ASA</b>	ASA means the Australian Swimmers Association.
<b>ASCTA</b>	ASCTA means the Australian Swimming Coaches and Teachers Association.
<b>Athlete</b>	Athlete means a swimmer - whether recreational or competitive - and who is an individual Member of a Club or Member Association, and therefore a Member of SA.
<b>Annexure</b>	Annexure means an annexure to this Policy.
<b>Bullying</b>	<p>Bullying involves the inappropriate use of power by one or more persons or groups of persons over another less powerful person or group of persons and is generally an act that is repeated over time. Bullying has been described by researchers as taking many forms which are often interrelated and include:</p> <ul style="list-style-type: none"> <li>• <i>Verbal</i> (name calling, put downs, threats);</li> <li>• <i>Physical</i> (hitting, punching, kicking, scratching, tripping, spitting);</li> <li>• <i>Social</i> (ignoring, excluding, ostracising, alienating); and/or</li> <li>• <i>Psychological</i> (spreading rumours, stalking, dirty looks, hiding or damaging possessions).</li> </ul> <p>Bullying may have Harmed, is Harming or is likely to Harm or endanger a Child or Young Person. For the avoidance of doubt, Bullying includes cyber Bullying.</p>
<b>CEO</b>	CEO means the Chief Executive Officer of SA, a Member Association or a Club, and includes the executive officer, general manager or other similar title. If the Member Association or Club has no executive officer (for example, for small Clubs or Districts) the CEO means the President of the organisation. If the CEO is unable to perform his or her role for the purposes of this Policy, the President may appoint another senior person to do so.
<b>Chairperson</b>	Chairperson means the chairperson of a Hearing Tribunal or Appeal Panel appointed in accordance with this Policy.
<b>Child Abuse</b>	Child Abuse is the mistreatment of a Child or Young Person that has Harmed, is Harming or is likely to Harm or endanger that Child or Young Person's physical or emotional health, development or wellbeing. For the avoidance of doubt, this includes but is not limited to Emotional or Psychological Abuse, Bullying, Grooming, Sexual Exploitation, Neglect and Harassment.
<b>Child or Young Person / Children or Young People</b>	A Child or Young Person is a person under the age of 18 years and Children and Young People mean more than one Child or Young Person.
<b>Child Protection Concern</b>	<p>A Child Protection Concern includes:</p> <ul style="list-style-type: none"> <li>• disclosures of actual Harm, Abuse or Sexual Exploitation of a Child or Young Person;</li> <li>• the potential risk of Harm, Abuse or Sexual Exploitation of a Child or Young Person; and</li> </ul>

Term	Definition
	<ul style="list-style-type: none"> <li>breaches of the Codes of Conduct by staff or volunteers.</li> </ul>
<b>Club(s)</b>	Clubs means swimming clubs within Australia that are currently affiliated or registered with a Member Association. Clubs must agree to adhere to this Policy.
<b>Code of Conduct for dealing with Children or Young People</b>	The Code of Conduct for dealing with Children or Young People as set out in section 4 of this Policy.
<b>Complainant</b>	A Complainant is a person making a Complaint and includes a parent, guardian or adult representative of the Child or Young Person.
<b>Complaint</b>	Complaint means a complaint made to a Person in a Position of Authority relating to a suspected breach of this Policy.
<b>Complaint Guidelines</b>	The guidelines set out at <b>Annexure C</b> which should be applied in relation to the Complaint Procedure. The Complaint Guidelines are for guiding purposes only and are not mandatory.
<b>Complaint Procedure</b>	The procedure and steps for dealing with complaints in relation to Child or Young Person set out in section 7.5 of this Policy.
<b>Complaint Recording Template</b>	The complaint recording template as set out at Annexure A which should be used when reporting a Complaint.
<b>Delegated Organisation</b>	Delegated Organisation means an organisation delegated by SA to handle a Complaint, such as a Member Association.
<b>Disciplining Body</b>	The Disciplining Body has the meaning given to it in section 8.1 of this Policy.
<b>Discrimination</b>	Discrimination occurs when someone is treated (or is proposed to be treated) unfairly or less favourably than another person in the same or similar circumstances because of one of the personal characteristics covered by anti-discrimination laws. This is known as direct discrimination. Indirect discrimination occurs when there is (or is proposed) an unreasonable requirement, condition or practice that seems to treat everyone equally, but which has or is likely to have the effect of disadvantaging persons with a personal characteristic covered by anti-discrimination laws.
<b>Emotional or Psychological Abuse</b>	Emotional or Psychological Abuse occurs when a Child or Young Person does not receive the love, affection or attention they need for healthy emotional, psychological and social development. Such abuse may involve repeated rejection or threats to a Child or Young Person. Constant criticism, teasing, ignoring, threatening, yelling, scapegoating, ridicule and rejection or continual coldness are all examples of emotional abuse. Specific to swimming, overtraining can constitute Emotional or Psychological Abuse where these behaviours continue to an extent that results or has the potential to result in significant damage to the Child or Young Person's physical, intellectual or emotional wellbeing and development, including any form of Harm. The issue of Emotional or Psychological Abuse must be considered within the context of resources reasonably available to the Child or Young Person through their family or carer network.
<b>Grooming</b>	Grooming is a term used to describe what happens when a perpetrator of Abuse builds a relationship with a Child or Young Person with a view to

Term	Definition
	<p>abusing them at some stage. There is no set pattern in relation to the Grooming of Children or Young People. For some perpetrators, there will be a lengthy period of time before the Abuse begins. The Child or Young Person may be given special attention and what starts as an apparently normal display of affection, such as cuddling, can develop into sexual touching or masturbation and then into more serious sexual behaviour. Other perpetrators may draw a Child or Young Person in and Abuse them relatively quickly. Some abusers do not groom Children or Young People but Abuse them without forming a relationship at all. Grooming can take place in any setting where a relationship is formed, such as leisure, music, sports and religious activities, or in internet chatrooms, in social media or by other technological channels.</p>
<b>Harm</b>	<p>Harm to a Child or Young Person is any detrimental effect of a significant nature to the Child or Young Person’s physical, psychological or emotional wellbeing. It is immaterial how the harm is caused. Harm can be caused by:</p> <ul style="list-style-type: none"> <li>• Physical, Psychological or Emotional Abuse or Neglect;</li> <li>• Sexual Abuse or Exploitation;</li> <li>• a single act, omission or circumstance; and</li> <li>• a series or combination of acts, omissions or circumstances.</li> </ul>
<b>Harassment</b>	<p>Harassment means any type of unwelcome behaviour which has the effect of offending, humiliating, intimidating or reasonably likely to cause Harm to the person harassed. Harassment includes Bullying.</p> <p>Harassment may be sexual in nature or target a person because of their race, gender, pregnancy, marital status, sexual orientation or other characteristic (see characteristic list under the definition of Discrimination above).</p>
<b>Hearing Tribunal</b>	<p>Hearing Tribunal means the panel created in accordance with section 7.9.</p>
<b>Independent Investigation</b>	<p>Independent Investigation means an investigation conducted in accordance with section 7.8.</p>
<b>Investigation Officer</b>	<p>Investigation Officer refers to a Person in a Position of Authority that has been appointed by a Club, Member Association or SA to conduct internal investigations into a Complaint.</p>
<b>Investigator</b>	<p>Investigator means the person appointed by SA or the Delegated Organisation to conduct an Independent Investigation in accordance Step 8 of the Complaints Procedure.</p>
<b>Involved Organisation</b>	<p>Involved Organisation means the relevant organisation to receive a Complaint and may be SA, a Club, Member Association or affiliate.</p>
<b>Member</b>	<p>A Member is generally an individual who is registered as a financial (paid up) member of a Club. A Member can also include (but is not limited to) those classes of members used by Clubs such as “honorary member” and “life member” (or similar categories).</p>

<b>Member Associations</b>	Member Associations are the Australian State and Territory Swimming Associations, ASCTA and ASA. For those States and Territories that have Regional or District Associations, Member Associations include Regional or District Associations. Member Associations have agreed to follow and adhere to this Policy in its entirety.
<b>Member Protection Policy</b>	The Member Protection Policy means SA's Member Protection Policy document as amended from time to time which can be found at <a href="https://www.swimming.org.au/integrity/safe-sport-framework">https://www.swimming.org.au/integrity/safe-sport-framework</a>
<b>National Sports Tribunal</b>	The National Sports Tribunal established under the National Sports Tribunal Act 2019 (Cth).
<b>Natural Justice (or procedural fairness)</b>	<p>Natural Justice (or procedural fairness) is the principle that, when resolving a complaint:</p> <ul style="list-style-type: none"> <li>• both the Complainant and the Respondent must know the full details of what is being said against them;</li> <li>• both the Complainant and the Respondent must be given full opportunity to respond to the allegations and raise any matters in support of their position;</li> <li>• all parties need to be heard and all relevant submissions considered;</li> <li>• irrelevant matters should not be taken into account;</li> <li>• no person may judge their own case;</li> <li>• the decision maker(s) must be unbiased, fair and just; and</li> <li>• the penalties imposed must not outweigh the breach of this Policy or offending behaviour.</li> </ul>
<b>Neglect</b>	Neglect is the persistent failure or deliberate failure or denial to provide a Child or Young Person with the basic necessities of life. Such Neglect includes the failure to provide adequate food, clothing, shelter, adequate supervision, clean water, medical attention or supervision to the extent that the Child or Young Person's health and development is, or is likely to be, Harmed. Categories of Neglect include physical neglect, medical neglect, abandonment or desertion, emotional neglect and educational neglect. The issue of Neglect is to be referred to the relevant external authority in the jurisdiction in which it occurs.
<b>Panel Member</b>	Panel Member refers to either a Hearing Tribunal Panel or Appeals Panel member under this Policy.
<b>Participant</b>	A Participant includes anyone who participates in a Swimming Body or Club service, event, activity or program (whether for payment or otherwise), including people who may not be a Member.
<b>Person in a Position of Authority</b>	A Person in a Position of Authority includes everyone who holds a position of authority in Swimming, whether paid or unpaid, and includes, but is not limited to, all Swimming Bodies and Club staff, coaches, officials and volunteers. For the avoidance of doubt, a Person in a Position of Authority also includes Children or Young People who may hold a position of authority in Swimming over other Children or Young People.
	Physical Abuse occurs when a person subjects a Child or Young Person to non-accidental physically aggressive acts. The abuser may inflict an injury

<b>Physical Abuse</b>	intentionally or inadvertently as a result of physical punishment or the aggressive treatment of a person or a Child or Young Person. Physically abusive behaviour includes (but is not limited to) shoving, hitting, slapping, shaking, throwing, punching, biting, burning, harmful overtraining, and kicking.
<b>Police Check</b>	Police Check means a national criminal history record check conducted as a pre-employment, pre-engagement or current employment background check on a person.
<b>Policy</b>	Policy means this Safeguarding Children and Young People Policy as amended from time to time.
<b>Provisional Action</b>	Provisional Action is action that may be taken by SA or its Delegated Organisation in relation to Complaints. Provisional Action is action taken against a Respondent of a Complaint 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 (including an Appeal) is known. Provisional action may include, but is not limited to, suspension, restriction of duties or temporary re-deployment.
<b>Regional or District Association</b>	A Regional or District Association includes a governing body that is given powers at a local level for the advancement of Swimming in certain States or Territories. These Associations are required to comply with all applicable provisions of this Policy.
<b>Respondent</b>	Respondent means the person or organisation responding to a Complaint up to the conclusion of a Hearing Tribunal.  From the commencement of an Appeals Tribunal process, the Respondent means the person responding to the Appeal that has been initiated.
<b>SA</b>	SA means Swimming Australia Ltd ACN 109 333 628 which is the national governing body for swimming in Australia.
<b>Senior Person</b>	The President, CEO, Secretary or designated delegate of SA, a Member Association or Club, as applicable.
<b>Sexual Abuse</b>	Sexual Abuse occurs when an adult or person of authority (eg older) involves a Child or Young Person in any sexual activity. Perpetrators of Sexual Abuse take advantage of their power, authority or position over the Child or Young Person for their own benefit. It can include making sexual comments to a Child or Young Person, engaging Children or Young People to participate in sexual conversations over the internet or on social media, kissing, touching a Child or Young Person's genitals or breasts, oral sex or intercourse with a Child or Young Person. Encouraging a Child or Young Person to view pornographic magazines,



	websites and videos, or engaging Children or Young People to participate in sexual conversations over the internet is also considered Sexual Abuse.
<b>Sexual Exploitation</b>	Sexual Exploitation occurs when Children or Young People are forced or involved in sexual activities that are then unlawfully recorded in some way, or recorded without the consent of one or more parties, or used to produce pornography. Such pornography can be in the form of actual photos or videos whether or not published on the internet.
<b>Sexual Harassment</b>	Sexual Harassment means unwanted, unwelcome or uninvited behaviour of a sexual nature and which could reasonably be anticipated to make a person feel humiliated, intimidated or offended. Sexual Harassment can take many different forms and may include unwanted physical contact, verbal comments, jokes, propositions, displays of pornographic or offensive material or other behaviour that creates a hostile environment.
<b>Sexual Misconduct</b>	Sexual Misconduct means any of the following: <ul style="list-style-type: none"> <li>• Sexual Offences;</li> <li>• Sexual Harassment; and/or</li> <li>• the use of technology or social media platforms with sexual connotation.</li> </ul>
<b>Sexual Offence</b>	Sexual Offence means a criminal offence involving sexual activity or actions of indecency. Given differences between State and Territory laws, this can include but is not limited to: <ul style="list-style-type: none"> <li>• rape;</li> <li>• indecent assault;</li> <li>• sexual assault;</li> <li>• assault with intent to have sexual intercourse;</li> <li>• incest;</li> <li>• sexual penetration of a child;</li> <li>• indecent act with a child;</li> <li>• sexual relationship with a child;</li> <li>• sexual offences against people with impaired mental functioning;</li> <li>• abduction and detention;</li> <li>• procuring sexual penetration by threats of fraud;</li> <li>• procuring sexual penetration of a child;</li> <li>• bestiality;</li> <li>• soliciting acts of sexual penetration or indecent acts;</li> <li>• promoting or engaging in acts of Child or Young Person prostitution;</li> <li>• obtaining benefits from Child or Young Person prostitution;</li> <li>• possession of Child or Young Person pornography; and</li> <li>• publishing Child or Young Person pornography and indecent articles.</li> </ul>
<b>Swimming</b>	The sport of swimming in Australia, whether recreational or competitive.
<b>Swimming Bodies</b>	Swimming Bodies refers to SA and its Member Associations (collectively).
<b>Swim Central</b>	The bespoke online operating system used by Clubs, Participants and Swimming Bodies.



## ANNEXURE A

### Complaint Recording Template

<b>Complainant Name:</b> (if other than Child)			
<b>Age:</b>		<b>Date Formal Complaint Received:</b>	/ /
<b>Swim Club:</b>			
<b>Date Swimming Aust notified:</b>			

Child's Details					
<b>Full Name:</b>					
<b>Address:</b>					
<b>Date of Birth:</b>		<b>Sex:</b>		<b>Age at time of alleged offence:</b>	
<b>Swim Club:</b>					
<b>Parent/Guardian Name:</b>					
<b>Parent/Guardian Address:</b>					
<b>Parent/Guardian Telephone No.</b>					
<b>Person's reason for suspecting abuse (e.g. observation, injury, disclosure)</b>					
<b>Location of alleged Abuse:</b>					
Name of Person Complained About					
<b>Full Name:</b>					
<b>Date of Birth:</b>		<b>Sex:</b>		<b>Age at time of alleged offence:</b>	

<b>Swim Club:</b>	
<b>Role/Status (in sport)</b>	<input type="checkbox"/> Administrator (volunteer) <input type="checkbox"/> Parent <input type="checkbox"/> Athlete <input type="checkbox"/> Spectator <input type="checkbox"/> Coach/Assistant Coach <input type="checkbox"/> Support Personnel <input type="checkbox"/> Employee <input type="checkbox"/> Official <input type="checkbox"/> Other ..... .....
<b>Alleged Breaches of Safeguarding Children &amp; Young People Policy</b>	
[Detail sections of Policy that you believe that the behaviour/conduct/incident(s) may have breached]	
<b>Outcome the complainant is seeking:</b>	

Witnesses (if more than 3 witnesses attach details to this form)	
Name (1):	
Contact details:	
Consent to provide details to others?:	YES / NO
Name (2):	
Contact details:	
Consent to provide details to others?:	YES / NO
Name (3):	
Contact details:	
Consent to provide details to others?:	YES / NO
Other notes?	

<b>Interim action (if any) taken (to ensure Child's safety and/or to support needs of person complained about)</b>
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<b>Police Contacted</b>	Who:	
	When:	
	Advice provided:	

<b>Government agency contacted</b>	Who:	
	When:	
	Advice provided:	

<b>CEO contacted</b>	Who:	
	When:	

<b>Police and/or Government agency investigation: ADVICE AND/OR FINDING</b>

<b>Internal investigation (if any): PROGRESS/FINDING</b>

<b>Action taken</b>
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<b>Completed by:</b>	<b>Name:</b>	
	<b>Position in Organisation:</b>	
	<b>Signature:</b>	Date:

<b>Signed by:</b>	Complainant (if not a Child)
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*This record and any notes must be kept in a confidential place and provided to the relevant authorities (Police and Government) should they require them. This record must be kept for a minimum of 7 years.*

## ANNEXURE B

### Mandatory Reporting

1. There are certain circumstances where individuals will be legally required to report a Complaint that they receive to a relevant external authority (please see the [Mandatory Reporting Table](#) located on the Safe Sport Resources section of the SA website for more information).
2. **'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.
3. 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 for dealing with Children or Young People by Persons in Positions of Authority.
4. The 'state of mind' requirement and 'extent of Harm' requirements differ between each jurisdiction in Australia. However, for the purposes of this Policy, it is generally required that the person to whom the Complaint was reported "reasonably believes" that a Child or Young Person is at risk of Harm caused by Child Abuse.
5. You do not have to prove that the Abuse or breach of the relevant Code of Conduct for dealing with Children or Young People 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. If in doubt, report Child Protection Concerns.
6. The persons referred to above **must** notify a Senior Person of any Child Protection Concerns.
7. Depending on:
  - (a) the jurisdiction in which the Person in a Position of Authority is located;
  - (b) the employment of the Person in a Position of Authority; and
  - (c) the specific allegations contained within a Complaint,certain Persons in a Position of Authority or Senior Persons dealing with a Complaint may also be required by law to mandatorily report the Complaint to an external authority.
8. The following individuals are likely to be required to mandatorily report a Complaint involving Child Abuse to the relevant external authority under the mandatory reporting laws:

- (a) any person over the age of 18 in the Northern Territory;
  - (b) any employee or volunteer of an Involved Organisation that assists in the provision of swimming-related services in South Australia;
  - (c) any person who holds a reasonable belief that a Child or Young Person in Victoria has been Sexually Abused;
  - (d) any employee of an Involved Organisation that assists in the provision of live-in camps in New South Wales; and
  - (e) any volunteer who in their fulltime employment falls within a class of employee that is a mandatory reporter in that jurisdiction.
9. 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. SA 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>
10. **IMPORTANT NOTE:** If an individual receives a 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 Complaint, they should immediately speak to a Senior Person.
11. Contact the government department in the relevant State or Territory to find out about mandatory reporting legislation in the jurisdiction set out below:

State / Territory	Mandatory Reporting - Government Departments
NSW	Department of Family and Community Services <a href="http://www.community.nsw.gov.au/preventing-child-abuse-and-neglect/reporting-suspected-abuse-or-neglect">http://www.community.nsw.gov.au/preventing-child-abuse-and-neglect/reporting-suspected-abuse-or-neglect</a>
QLD	Department of Communities, Child Safety and Disability <a href="http://www.communities.qld.gov.au/childsafety/protecting-children/reporting-child-abuse">http://www.communities.qld.gov.au/childsafety/protecting-children/reporting-child-abuse</a>
VIC	Department of Human Services <a href="http://www.dhs.vic.gov.au/for-individuals/children,-families-and-young-people/child-protection">http://www.dhs.vic.gov.au/for-individuals/children,-families-and-young-people/child-protection</a>
WA	Department for Child Protection <a href="http://mandatoryreporting.dcp.wa.gov.au/Pages/Home.aspx">http://mandatoryreporting.dcp.wa.gov.au/Pages/Home.aspx</a>
NT	Office of Children and Families <a href="https://nt.gov.au/emergency/child-safety/protect-your-child-from-sexual-abuse/introduction">https://nt.gov.au/emergency/child-safety/protect-your-child-from-sexual-abuse/introduction</a>

<b>SA</b>	Department for Families and Communities <a href="http://www.families.sa.gov.au/pages/protectingchildren/ReportingChildAbuse">http://www.families.sa.gov.au/pages/protectingchildren/ReportingChildAbuse</a>
<b>ACT</b>	Office for Children, Youth and Families <a href="http://www.communityservices.act.gov.au/ocyfs/reporting-child-abuse-and-neglect">http://www.communityservices.act.gov.au/ocyfs/reporting-child-abuse-and-neglect</a>
<b>TAS</b>	Department of Health & Human Services <a href="http://www.dhhs.tas.gov.au/children/child_protection_services">http://www.dhhs.tas.gov.au/children/child_protection_services</a>

## ANNEXURE C

### Complaint Guidelines

#### Step 1: Complainant tells Person in a Position of Authority

1. If any person involved in Swimming has concerns about a breach of this Policy, they are encouraged to seek out a Person in a Position of Authority to tell them about their concerns. This may be a coach, swimmer, parent, technical official, volunteer or employee of a Club, Member Association or SA. 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 you observed or heard;
  - (d) when you observed the concerning incident, behaviour or conduct;
  - (e) where the concerning incident, behaviour or conduct occurred;
  - (f) why you are concerned and the potential impact of the incident (ie injuries, others at risk of Harm); and
  - (g) if known, what you would like to happen next and the outcome you are seeking.
2. Refer to the Complaint Recording Template to assist.
3. Depending on the nature of the Complaint, after you make initial contact, there are two options:
  - (a) talk to a Person in a Position of Authority who can guide you as to the next steps; or
  - (b) depending on the nature and seriousness of the Complaint, formalise the Complaint to SA.

#### Step 2: Person in a Position of Authority talks to Complainant

4. 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. Everyone has a role to play to ensure appropriate steps are taken in a sensitive and non-judgmental way.
5. There are certain circumstances that make it inappropriate for a particular Person in a Position of Authority to speak to a Complainant about a Complaint, regardless of whether the Complainant specifically informed that Person in a Position of Authority of their Complaint. In the following circumstances, it may be appropriate for another Person in a Position of Authority, or a Senior Person, to talk to the Complainant once a Complaint is lodged:
  - (a) where the particular 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 that particular Person in a Position of Authority and the Complainant; or
  - (d) 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.
6. Where any of the circumstances in (a) - (d) arise, it may be appropriate for a different Person in a Position of Authority to talk to the Complainant, **unless the Complainant specifically requests, or will only speak to, that particular Person in a Position of Authority.**
7. Where a Person in a Position of Authority or Senior Person is talking to a Complainant about a Complaint, remember to:
- (a) talk to the Complainant calmly and without judgment or opinion;
  - (b) ensure that your conversation is occurring in a private and safe environment;
  - (c) ask non-leading questions to establish what the Complainant's concerns are. This can be in the form of the questions set out at Step 1 (a)-(g) (who, what when, where, why, what next?);
  - (d) if appropriate (for example, the issue is minor, easily resolved and no person is in danger) take steps to resolve the Complaint at that time;
  - (e) if the person receiving details of the Complaint is not an employee, official or coach of any Swimming Bodies or Club and the Complaint is not easily resolved, seek out a Swimming Body or Club employee, official or coach and tell them what you and/or the Complainant know about the Complaint; and
  - (f) take notes or record the details of what you find out regarding the Complaint.
8. Depending on the nature of the Complaint being made regarding a Child or Young Person, 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.**
9. The initial response is crucial to the wellbeing of the Child or Young Person. It is important for the person receiving the information to:
- (a) listen to, be supportive and do not dispute what the Complainant says;
  - (b) reassure the Child or Young Person and let them know that what has occurred is not the fault of the Child or Young Person;
  - (c) ensure that the Child or Young Person is safe;
  - (d) remain calm and do not express shock, panic or disbelief;
  - (e) be honest and explain that other people may need to be told in order to stop what is happening;

- (f) clarify statements made by the Child or Young Person 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
  - (g) make written notes during or as soon as possible after the discussion.
10. 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 **must not discuss it with anyone other than their relevant Senior People**. They may be required to discuss their allegations with Police as directed.
11. Once details of the Complaint have been established the relevant **Person in a Position of Authority must:**
- (a) discuss their concerns with their immediate Senior Person or another Senior Person who is available; and
  - (b) 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**

12. 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"** set out in **Annexure A** including 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 also additional obligations for **Mandatory Reporting - Annexure B**).
13. When completing the Complaint Recording Template, the Senior Person should include as much information as possible which makes it easier for SA or the Delegated Organisation to investigate and action the Complaint.
14. Complaint Recording Templates for 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 Step 11 for more information regarding record-keeping.

### **Step 4: Senior Person reports to SA**

15. Once a Complaint is documented by the Senior Person, the Senior Person must report the Complaint to the CEO (or a person with delegated authority of the CEO) of SA. 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 SA.

#### **Step 5: SA reports to relevant external authority**

16. Once a Complaint is reported to SA under Step 4, the relevant Senior Person within SA 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 - Annexure B** 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 SA 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 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 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 should 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 SA 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.

17. 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 discuss their allegations with Police as legally required.

#### **Step 6: SA may delegate to a Delegated Organisation**

18. Under this Policy, SA retains the right at its absolute discretion to delegate the handling of a Complaint to a Delegated Organisation.
19. When considering whether to delegate a Complaint, SA may consider the following:
  - (a) the seriousness of the allegations contained in the Complaint;
  - (b) who the relevant Involved Organisation is;
  - (c) whether SA is the best organisation to handle the Complaint; and
  - (d) any other factors that are relevant to the decision to delegate a Complaint.
20. In all circumstances in which a Complaint is reported to SA or the relevant external authorities, SA or a Delegated Organisation also reserves the right in its sole discretion to recommend that the activities undertaken by the Respondent are revised or changed as necessary to minimise risk to others and to the Respondent.

#### **Steps 7 & 8: SA or Delegated Organisation conduct internal investigation**

21. When not to conduct an internal investigation
  - (a) In response to a report involving Child Abuse, an external authority may undertake an investigation, with or without requesting assistance from SA/the Delegated Organisation. The external authority may determine an internal investigation by SA/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.
  - (b) **IMPORTANT:** Where a Complaint is reported to an external authority (see **Mandatory Reporting - Annexure B**), SA or the Delegated Organisation must not conduct an internal investigation in the following circumstances:
    - (i) where the external authority has requested that SA/the Delegated Organisation does not conduct an investigation in general; or
    - (ii) where the external authority has requested that SA/the Delegated Organisation does not conduct an investigation until a certain date, or until the happening of a certain event, upon which SA/the Delegated Organisation may commence an internal investigation.
  - (c) If the external authority requests that SA/the Delegated Organisation does not conduct an internal investigation, the relevant entity and Senior Persons and Persons in a Position of Authority involved in dealing with the Complaint must still cooperate with, and provide all reasonable assistance, to the external authority.
22. When conducting an internal investigation
  - (a) 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.

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

## 23. Evaluating Next Steps

- (a) After completing the internal investigation, the CEO of SA or the Delegated Organisation must determine what action is taken next, namely:
  - (i) closing the Complaint where no further action is required, or no longer sought by the Complainant;

- (ii) making a decision and imposing disciplinary measures (if required) in response to the internal investigation of the Complaint;
- (iii) referring the Complaint to an Independent Investigation; or
- (iv) referring the Complaint to a Hearing Tribunal.

Where the CEO is the subject of the Complaint, a Senior Person (or delegate) shall make the determination in Step 8.

- (b) When evaluating which process to undertake in relation to any Complaint, the following table provides guidance I:

**Guidance Table - Processes for resolving Complaints**

Case	When to use
<b>SA (or Delegated Organisation) makes decision</b>	Complainant and Respondent are both Children or Young People
	There is little dispute as to the facts or the facts of the case are clear to SA or the Delegated Organisation
	Complaint is relatively minor
<b>Independent Investigation</b>	There are significant inconsistencies between each party's version of events
	Complainant is not comfortable appearing in the same room as the Respondent at a Hearing Tribunal
<b>Hearing Tribunal</b>	Respondent is an employee or independent contractor of the Involved Organisation (subject to legal advice)
	Respondent's livelihood will be impacted by any adverse finding or disciplinary measures

24. The relevant procedure that must be followed for an Independent Investigation or Hearing Tribunal under this Policy are set out in:

- (a) section 7.8 for Independent Investigations; and
- (b) section 7.9 for Hearing Tribunals.

**Step 9: Complaint resolution procedure**

25. As outlined at "Evaluating Next Steps" above, it may be beneficial for the CEO to make a decision and impose disciplinary measures (if required) at the completion of Step 7 where:

- (a) both the Complainant and Respondent are Children or Young People;
- (b) there is little dispute as to the facts of the Complaint or the facts of the case are clear to the SA or the Delegated Organisation; or
- (c) the Complaint is considered to be relatively minor.

26. Where a CEO decides to impose disciplinary measures after the completion of Step 7 the following should have occurred to satisfy the requirements of Natural Justice:
- (a) the Respondent was made aware in writing of the specific allegations against him/her/it and the identity of the Complainant;
  - (b) the Respondent was provided the opportunity to respond to the specific allegations within the Complaint, either in writing or in person; and
  - (c) the Respondent was afforded the opportunity to have a support person (who must not be a current practicing solicitor or barrister) present at any meeting or interview with a representative of SA or the Delegated Organisation.
27. As identified below (and Section 7.10), the Respondent may have a right of appeal from a decision and disciplinary measures imposed by SA or the Delegated Organisation in response to a Complaint (see Step 10).
28. Under section 8, SA or the Delegated Organisation may impose a variety of disciplinary measures against a Respondent (whether an individual or organisation) who has breached this Policy.
29. The form of disciplinary measures to be imposed on an individual or organisation should depend on factors such as:
- (a) the nature and seriousness of the behaviour or incidents;
  - (b) if the Respondent knew or should have known that the behaviour was a breach of the Policy;
  - (c) level of contrition of the Respondent;
  - (d) the effect of the proposed disciplinary measures on the Respondent including any personal, professional or financial consequences;
  - (e) if there have been relevant prior warnings or disciplinary action; or
  - (f) if there are any mitigating circumstances such that the Respondent should not be disciplined at all or not disciplined so seriously.

### **Step 10: Appeal**

30. Once a decision is made and disciplinary measures imposed (if required) a Respondent may be entitled to lodge an appeal.
31. An appeal from such a decision must be lodged within 7 days of the Respondent being notified of the original decision. The Appeal Procedure (section 7.10) sets out the grounds of appeal and the procedure that must be followed.
32. To lodge an appeal, the Appellant (who may be the original Complainant or the original Respondent) is required to submit a Notice of Appeal to the CEO of SA or the Delegated Organisation which will hear the Appeal.
33. The Chairperson of the Appeal Panel will consider whether the appeal is valid. The validity of an appeal is based on:
- (a) whether the appeal demonstrates one or both of the grounds of appeal outlined in the Appeal Procedure; and

- (b) there are sufficient grounds for the appeal to proceed.
34. The Appeal Panel is convened, held and makes its decision based on the Appeal Procedure set out in section 7.10 of this Policy.

**Step 11: Record, notify and finalise**

35. Swimming Bodies and Clubs must keep records of all Complaints (updated as necessary) for a minimum of 7 years.

Records must be maintained in a secure and confidential place.

36. 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.
37. If a Delegated Organisation has handled the Complaint, it must:
- (a) where it is a Club, notify its Member Association and SA; or
  - (b) where it is a Member Association, notify SA,
- as soon as possible after the Complaint is resolved.



## ANNEXURE D

### Working with Children Check and National Police Check Authorities

Further information regarding the operation of Working with Children Checks and National Police Checks can be found by contacting the relevant external agencies below:

State / Territory	Working with Children Checks	National Police Checks
<b>NSW</b>	Office of the Children's Guardian Phone: 02 8219 3600 <a href="http://www.kidsguardian.nsw.gov.au">www.kidsguardian.nsw.gov.au</a>	New South Wales Police Phone: 02 8835 7888 <a href="http://www.police.nsw.gov.au">www.police.nsw.gov.au</a>
<b>QLD</b>	Blue Card Services Phone: 07 3211 6999 <a href="http://www.bluecard.qld.gov.au">www.bluecard.qld.gov.au</a>	Queensland Police Service Phone: 07 3364 6562 <a href="http://www.police.qld.gov.au">www.police.qld.gov.au</a>
<b>VIC</b>	Working with Children Check Unit, Department of Justice & Regulation Phone: 1300 652 879 <a href="http://www.workingwithchildren.vic.gov.au">www.workingwithchildren.vic.gov.au</a>	Victoria Police Phone: 1300 881 596 <a href="http://www.police.vic.gov.au/content.asp?Document_ID=274">www.police.vic.gov.au/content.asp?Document_ID=274</a>
<b>WA</b>	Working with Children Screening Unit Phone: 08 6217 8100 <a href="http://workingwithchildren.wa.gov.au">workingwithchildren.wa.gov.au</a>	Western Australia Police Phone: 08 9351 0699 <a href="https://www.police.wa.gov.au/Police-Direct/National-Police-Certificates">https://www.police.wa.gov.au/Police-Direct/National-Police-Certificates</a>
<b>NT</b>	Northing Territory Screen Authority Phone: 1800 SAFE NT (1800 723 368) <a href="http://www.workingwithchildren.nt.gov.au">www.workingwithchildren.nt.gov.au</a>	Northern Territory Police Phone: 08 8922 5511 <a href="http://www.pfes.nt.gov.au">www.pfes.nt.gov.au</a>
<b>SA</b>	Department of Human Services Phone: 1300 321 592 <a href="https://screening.sa.gov.au/">https://screening.sa.gov.au/</a>	South Australia Police Phone: 08 7322 3347 <a href="https://www.police.sa.gov.au/services-and-events/apply-for-a-police-record-check">https://www.police.sa.gov.au/services-and-events/apply-for-a-police-record-check</a>
<b>ACT</b>	Background Screening Unit, Access Canberra Phone: 02 6207 3000 <a href="https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1804/~/working-with-vulnerable-people-(wwvp)-registration#">https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1804/~/working-with-vulnerable-people-(wwvp)-registration#</a>	Australian Federal Police Phone: 02 6140 6502 <a href="http://www.afp.gov.au/business/criminal_police_checks.html">www.afp.gov.au/business/criminal_police_checks.html</a>

<b>TAS</b>	Department of Justice Phone: 1300 13 55 13 <a href="http://www.justice.tas.gov.au/working_with_children">www.justice.tas.gov.au/working_with_children</a>	Tasmania Police Phone: 03 6173 2928 <a href="http://www.police.tas.gov.au/services-online/police-history-record-checks/">http://www.police.tas.gov.au/services-online/police-history-record-checks/</a>
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