

# SWIMMING AUSTRALIA

## Safe Sport Framework

May 2018

### CONTENTS

**Part 1 – Introduction - Safe Sport Framework**

**Part 2 – Child Protection Commitment Statement**

**Part 3 – Codes of Conduct**

**Part 4 – Safe Sport Complaint Procedures**

#### Review history of Swimming Australia's Safe Sport Framework

<b>Version</b>	<b>Date reviewed</b>	<b>Date endorsed</b>	<b>Content reviewed/purpose</b>
One	March 2018	18.5.18 (SAL Board)	<ul style="list-style-type: none"> <li>• Additions recommended by December 2017 ASC draft Member Protection Policy template for national sporting organisations</li> <li>• New rules relating to Transgender, Intersex and Gender Diverse participation (section 2B)</li> <li>• Changes to Code of Conduct to broaden application to transgender (section 3.6)</li> <li>• Changes to the social networking rules (section 3.5A)</li> <li>• Safe Sport Complaint Procedures (Part 4)</li> <li>• New definitions inserted</li> </ul>

## TABLE OF CONTENTS

1.	PART 1 – INTRODUCTION - SAFE SPORT FRAMEWORK .....	4
1.1	Introduction.....	4
1.2	Our Safe Sport Framework .....	4
1.3	Who is bound by the Safe Sport Framework?.....	5
1.4	Our Safe Sport Commitment .....	5
1.5	Breaches of our Safe Sport Framework.....	5
1.6	Whistle blower statement.....	6
1.7	Member Protection Information Officers .....	6
1.8	Safe Sport Framework Definitions.....	7
2.	PART 2 – COMMITMENT TO SAFETY, WELLBEING AND INCLUSION.....	17
2A.	CHILD PROTECTION COMMITMENT STATEMENT.....	17
2.1	What is our commitment to protecting Children or Young People?.....	17
2.2	How does this Child Protection Commitment Statement apply to Persons in Positions of Authority? .....	18
2.3	What are the requirements of and commitment to Persons in Positions of Authority in relation to protecting Children or Young People? .....	19
2.4	What support will Swimming Australia and its Clubs provide Persons in Positions of Authority?.....	23
2.5	Who is responsible for implementing the Child Protection Commitment Statement? .....	25
2.6	Recruitment and Screening Procedures for Roles with direct contact with or permitting access to Children or Young People .....	26
2B.	COMMITMENT TO SAFETY, WELLBEING AND INCLUSION FOR ALL.....	35
2.7	Generally .....	35
2.8	Transgender, Intersex and/or Gender Diverse Participation .....	36
3.	PART 3 – CODES OF CONDUCT.....	36
3.1	Introduction to the Codes of Conduct.....	36
3.2	Commitment to the Codes of Conduct.....	36
3.3	Exceptions.....	37
3.4	Our Values-based Sport.....	37
3.5	General Code of Conduct .....	38
3.6	Code of Conduct for dealing with Children or Young People.....	41
	PART A - applicable to all persons.....	41
	PART B - applicable to all Persons in Positions of Authority.....	43
4.	PART 4 – SAFE SPORT COMPLAINT PROCEDURES .....	49
4.1	Introduction.....	49
4.2	Application.....	49
4.3	Safe Sport Complaint Procedures Commitment .....	49
4.4	Safe Sport Complaint Procedures Principles .....	50
4.5	Record Keeping and Sharing.....	51
4.6	Complaints regarding Children or Young People .....	51
4.7	Who can make complaints? .....	51



4.8	What can Complaints be about? .....	52
4.9	Complaints from Other Organisations .....	52
4.10	Initial stages of complaints .....	52
4.11	Summary of Steps to Resolve Complaints - Case 1 Complaints .....	53
4.12	Summary of Steps to Resolve Complaints - Case 2 and 3 Complaints .....	58
4.13	Guidelines for each Step - Case 1 Complaints .....	62
4.14	Guidelines for each Step - Case 2/3 Complaints .....	75
4.15	Disciplinary Measures.....	83
4.16	Independent Investigation Procedure.....	86
4.17	Hearing Tribunal Procedure .....	88
4.18	Appeal Procedure .....	93
4.19	Mediation Procedure.....	96

## 1. Part 1 – Introduction - Safe Sport Framework

### 1.1 Introduction

Swimming is part of Australia’s DNA. Whether people swim for competitive, recreational, health and wellbeing or leisure purposes, swimming benefits many Australians. We want swimming to be fun, enjoyable, inclusive and safe for all.

Unfortunately, like many other sports and activities in society, the misconduct of one individual can negatively impact the welfare, health and safety of Members and Participants. Misconduct has the potential to result in profound psychological and/or physical damage to Members and/or Participants – whether they are adults or, in particular, Children or Young People. These risks must be minimised to every extent possible.

All of us in the Australian swimming community have a role to play in ensuring that we keep our proud Sport as safe, inclusive and enjoyable as possible. We must proudly stand behind high behavioural standards in our Sport and hold others to these standards too – it is in the best interests of our Members, Participants, the community and our Sport.

### 1.2 Our Safe Sport Framework

Swimming Australia Limited, its Member Associations (collectively referred to as “Swimming Australia”) and their Clubs are committed to the health, safety and general wellbeing of everyone involved in the Sport of swimming. That is why we have developed this Safe Sport Framework, which has been endorsed by the Boards of Swimming Australia and its Member Associations.

The Swimming Australia Safe Sport Framework consists of the following Parts:

- (a) Part 1: Introduction – our Safe Sport Framework and Safe Sport Commitment;
- (b) Part 2: Our Commitment to Safety, Wellbeing and Inclusion, including:
  - (i) our Child Protection Commitment Statement; and
  - (ii) our Commitment to Safety, Wellbeing and Inclusion for all.
- (c) Part 3: Our Codes of Conduct (including in relation to Children or Young People); and
- (d) Part 4: Our Safe Sport Complaint Procedures.

Our Safe Sport Framework and supporting resources are available at [www.swimming.org.au/safesport](http://www.swimming.org.au/safesport).

Swimming Australia and its Clubs will promote and monitor this Safe Sport Framework to the fullest extent possible and with the assistance of our Members. Swimming Australia recognises that the responsibility for safeguarding Children or Young People and Participants in our Sport lies with all those involved in the Sport and is not the sole responsibility of any one person at club, regional, State or national level.

### 1.3 Who is bound by the Safe Sport Framework?

The Safe Sport Framework binds everyone who is involved in our Sport.

The Safe Sport Framework applies from its date of commencement as outlined on page 1 (**Commencement Date**).

Where a member protection complaint is lodged prior to the Commencement Date, that complaint must be dealt with under the relevant existing policies and processes of Swimming Australia.

Any child or member welfare complaint lodged on or after 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 Safe Sport Framework.

### 1.4 Our Safe Sport Commitment

Swimming Australia and its Clubs strive to:

- provide a safe environment for everyone involved in our Sport;
- take an inclusive approach in its activities;
- foster an inclusive environment for people from culturally diverse backgrounds;
- ensure the safety and wellbeing of people who are vulnerable in society, such as those with a disability; and
- ensure the safety and wellbeing of Children or Young People.

In delivering on our commitment to the health, safety and wellbeing of all, Swimming Australia and its Clubs take seriously their positive obligation to educate and inform everyone involved in our Sport of each person's responsibilities to:

- protect and look after each other;
- protect and look after Children or Young People from Child Abuse and Grooming;
- protect and look after those who are from culturally diverse backgrounds and those who are vulnerable in society; and
- create and maintain a child-safe culture and a culture of inclusion and safety that is understood, endorsed and put into action by all.

This is our "Safe Sport Commitment".

### 1.5 Breaches of our Safe Sport Framework

We encourage everyone in our swimming community to comply with our Safe Sport Framework. We require compliance with this Framework by Swimming Australia, Clubs,

Members, parents/guardians of Members who are Children or Young People, employees, administrators, coaches and technical officials.

Failure to comply with this Safe Sport Framework may be considered a breach of the Safe Sport Framework and result in disciplinary action in accordance with section 4.15.

### **1.6 Whistle blower statement**

A whistle blower is defined in the Oxford Dictionary as a person who informs on a person or organisation regarded as engaging in an unlawful or immoral activity.

For the purposes of this Safe Sport Framework, "unlawful or immoral activity" includes any breach or suspected breach of the Safe Sport Framework, and a "whistle blower" is (subject to this section 1.6) a Complainant filing a Complaint under this Safe Sport Framework.

Swimming Australia and its Clubs are committed to protecting and respecting the rights of a person who reports a complaint or suspected breach of this Safe Sport Framework in good faith. Swimming Australia and its Clubs will not tolerate any retaliatory action or threats of retaliatory action against any person or organisation who has made or who is believed to have made a report or a complaint of a suspected breach of this Safe Sport Framework. For example the Complainant must not be disadvantaged or victimised by having made the report or complaint by:

- dismissal;
- demotion;
- any form of Harassment;
- Discrimination;
- current or future bias; or
- threats of any of the above.

Any such retaliatory action or victimisation in reprisal for a report being made under this Safe Sport Framework will be treated as serious misconduct, and a breach of the Safe Sport Framework, and may result in disciplinary action.

Where it is shown that a Complainant has knowingly made a false report or Complaint, then that conduct itself will be considered a serious matter and that Complainant may be subject to disciplinary action where the complained-about matters the Complainant knows, or is in a position to know, have no substance.

### **1.7 Member Protection Information Officers**

MPIOs are persons appointed by Swimming Australia or its Clubs as a contact point in relation to this Safe Sport Framework.

Swimming Australia and its Clubs will administer the ongoing appointment of MPIOs to ensure Members, Participants and others within our Sport have available to them a person who is familiar with the processes within this Safe Sport Framework.

The MPIO provides impartial information about policy, process and procedures under this Safe Sport Framework to any person with a concern arising from an alleged breach, or any person against whom there is an allegation of a breach of this Safe Sport Framework.

The MPIO provides support and procedural advice, but has no jurisdiction to either determine the method of addressing a Complaint, or make a decision or impose any disciplinary measure regarding a Complaint, under this Safe Sport Framework.

Any person wishing to contact a MPIO should contact their Club, Member Association or SAL, or visit the organisation's website, to ascertain their relevant MPIO's contact details.

### 1.8 Safe Sport Framework Definitions

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

Term	Definition
<p><b>Aboriginal and Torres Strait Islander</b></p>	<p>Government agencies and community organisations usually accept three 'working criteria' as proof or confirmation of Aboriginal or Torres Strait Islander heritage:</p> <ul style="list-style-type: none"> <li>• being of Aboriginal or Torres Strait Islander descent;</li> <li>• identifying as an Aboriginal or Torres Strait Islander person; and</li> <li>• being accepted as such by the community in which you live, or formerly lived.</li> </ul> <p>All of the above criteria must apply. The way you look or how you live are not requirements.</p> <p>The information above about this definition has been sources from the Australian Institute of Aboriginal and Torres Strait Islander Studies: <a href="https://aiatsis.gov.au/research/finding-your-family/before-you-start/proof-aboriginality">https://aiatsis.gov.au/research/finding-your-family/before-you-start/proof-aboriginality</a></p>
<p><b>Abuse</b></p>	<p>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.</p>

Term	Definition
<b>Appeals Tribunal</b>	Appeals Tribunal means the panel created in accordance with this Framework to handle an appeal under this Framework.
<b>Appellant</b>	Appellant means the person or organisation who initiates an appeal
<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 Swimming Australia Limited.
<b>Attachment</b>	Attachment means an attachment 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 person or a Child or Young Person. For the avoidance of doubt, Bullying includes cyber Bullying, which can also have lasting and damaging consequences.</p>
<b>Case 1 Complaints</b>	<p>Case 1 Complaints are those Complaints that should be immediately escalated to Swimming Australia. Case 1 Complaints include:</p> <ul style="list-style-type: none"> <li>• Child Abuse;</li> <li>• Sexual Misconduct; and</li> <li>• Serious Criminal Conduct.</li> </ul>
<b>Case 2 Complaints</b>	Case 2 Complaints are those State-related Complaints or inter-Club matters not involving Child Abuse or Serious Criminal Conduct.
<b>Case 3 Complaints</b>	Case 3 Complaints are those general Complaints related to adults in our Sport including Bullying, Harassment, dissatisfaction with Safe Sport Framework-related decisions or interactions not involving Child Abuse or Serious Criminal Conduct
<b>CEO</b>	CEO means the chief executive officer of Swimming Australia Limited, 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.
<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

Term	Definition
	the avoidance of doubt, this includes but is not limited to Emotional or Psychological Abuse, Bullying, Grooming, Sexual Exploitation, Neglect and Harassment.
<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> <li>breaches of the Codes of Conduct by staff or volunteers.</li> </ul>
<b>Child or Young Person / Children or Young People</b>	A Child or Young Person is a person under the age of eighteen years and Children and Young People mean more than one Child or Young Person.
<b>Clubs</b>	Clubs means swimming clubs within Australia that are currently affiliated with a Member Association. Clubs must agree to adhere to the Swimming Australia Safe Sport Framework.
<b>Codes of Conduct</b>	The Codes of Conduct include the General Code of Conduct and the Code of Conduct for dealing with Children and Young People. The Codes of Conduct aim to identify and prevent behaviour that may be Harmful to Members, Participants, Children or Young People in our swimming communities. The Codes of Conduct outline what is, and what is not acceptable behaviour or practice when working with others or engaging with Children or Young People.
<b>Complainant</b>	A Complainant is the person or persons making a Complaint and includes a parent, guardian or adult representative of the Child or Young Person.
<b>Complaint</b>	<p>Complaint means a complaint made to a Person in a Position of Authority in writing and may be a Case 1, 2 or 3 Complaint. Where possible, it should set out:</p> <ul style="list-style-type: none"> <li>the details or particulars of the complaint, including dates, times, persons, Clubs and Persons in Positions of Authority involved;</li> <li>the Complainant(s)' wishes as to how they would like the complaint resolved; and</li> <li>what outcome the Complainant is seeking.</li> </ul>
<b>Delegated Organisation</b>	Delegated Organisation means an organisation delegated by Swimming Australia Limited to handle a Case 1 Complaint, such as a Member Association.
<b>Discrimination</b>	<b>Discrimination</b> 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



Term	Definition
	<p>effect of disadvantaging persons with a personal characteristic covered by anti-discrimination laws.</p> <p>In Australia, it is against the law to discriminate against someone because of the following (including but not limited to):</p> <ul style="list-style-type: none"> <li>• age</li> <li>• sex or gender</li> <li>• gender identity</li> <li>• intersex status</li> <li>• race, colour, descent, national or ethnic origin, nationality, ethno-religious origin, immigration</li> <li>• disability, mental and physical impairment</li> <li>• family/carer responsibilities, status as a parent or carer</li> <li>• marital status</li> <li>• pregnancy, potential pregnancy, breastfeeding</li> <li>• sexual orientation and gender identity</li> <li>• physical features</li> <li>• irrelevant medical record</li> <li>• irrelevant criminal record, spent convictions</li> <li>• political beliefs or activities</li> <li>• religion, religious beliefs or activities</li> <li>• national extraction or social origin</li> <li>• lawful sexual activity</li> <li>• profession, trade, occupation or calling</li> <li>• member of association or organisation of employees or employers, industrial activity, trade union activity</li> <li>• defence service</li> <li>• personal association with someone who has, or is assumed to have, any of the above characteristics</li> </ul> <p>Examples of discrimination are available on the Play by the Rules website: <a href="http://www.playbytherules.net.au/legal-stuff/discrimination">www.playbytherules.net.au/legal-stuff/discrimination</a></p> <p>Some exceptions to state, territory and federal anti-discrimination law apply, including exceptions for sporting activities, such as:</p> <ul style="list-style-type: none"> <li>• holding a competitive sporting activity for a specific age or age group (e.g. only those who are under the age of 15 years);</li> <li>• excluding people on the basis of their sex and/or gender identity status from participation in a competitive sporting activity where the strength, stamina or physique of competitors is relevant to the specific activity (note that this does not apply to activity by children who are under the age of 12 years); and</li> <li>• not selecting a participant if the person's disability means he or she is not reasonably capable of performing the actions reasonably required for that particular sporting activity.</li> </ul>

Term	Definition
<b>Emotional or Psychological Abuse</b>	<p>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.</p>
<b>Gender Expression</b>	<p>The term 'gender expression' refers to the way in which a person externally expresses their gender or how they are perceived by others.</p>
<b>Gender Identity</b>	<p>The term 'gender identity' refers to a person's deeply held internal and individual sense of gender.</p>
<b>Grooming</b>	<p>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 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 person or a Child or Young Person is any detrimental effect of a significant nature to the person or 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 behaviour that the other person does not want and that is offensive, abusive, belittling or threatening <b>and that is reasonably likely to cause Harm to the person who is the</b></p>

Term	Definition
	<p><b>subject of the Harassment.</b> The behaviour is unwelcome and of a type that a reasonable person would recognise as being unwelcome and likely to cause the recipient to feel offended, humiliated or intimidated. Harassment includes Bullying.</p> <p>Unlawful Harassment includes the above but is either sexual or targets a person because of their race, gender, pregnancy, marital status, sexual orientation or other characteristic (see characteristic list under Discrimination).</p> <p>It does not matter whether the Harassment was intended: the focus is on the impact of the behaviour. As a guide, if someone finds behaviour or actions harassing, then it could be considered as Harassment. Harassment may be a single incident or repeated. It may be explicit, implicit, verbal or non-verbal and includes public acts of hatred.</p>
<b>Hearing Tribunal</b>	Hearing Tribunal means the panel created in accordance with the “Child Welfare Policy General Information and Procedures” to hear a complaint under this Policy.
<b>Intersex</b>	The term ‘intersex’ refers to people who have genetic, hormonal or physical characteristics that are not exclusively ‘male’ or ‘female’. A person who is intersex may identify as male, female, intersex or as being of indeterminate sex.
<b>Investigation Officer</b>	Investigation Officer refers to a Person in a Position of Authority that has been appointed by a Club, Member Association or Swimming Australia Limited to conduct initial investigations into a complaint.
<b>Investigator</b>	Investigator means the person appointed by an Involved Organisation to conduct an Independent Investigation in accordance with Step 10(a) (Case 1 Complaints) or Step 6(b) (Case 2 and 3 Complaints).
<b>Involved Organisation</b>	Involved Organisation means the relevant organisation to receive a Complaint and may be SAL, a Club, Member Association or Affiliate.
<b>Mediator</b>	Mediator means a person appointed to mediate a Complaint made under this Policy, preferably with relevant skills, qualifications or training in mediation.
<b>Member</b>	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”, “life member” and so on.
<b>Member Associations</b>	Member Associations are the Australian State and Territory Swimming Associations, the Australian Swimming Coaches and Teachers Association and the Australian Swimmers Association. For those States and Territories that have Regional or District Associations, Member Associations include Regional or District Associations. Member

Term	Definition
	Associations have agreed to follow and adhere to the Swimming Australia Safe Sport Framework in its entirety.
<b>Member Protection Information Officer or MPIO</b>	Member Protection Information Officer or MPIO means a person appointed by Swimming Australia or its Clubs as a contact person regarding possible breaches of this Safe Sport Framework. The MPIO provides impartial information about policy, process and procedures to the person with the concern or the person who is alleging a breach of this Safe Sport Framework.
<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 their own defence;</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 Safe Sport Framework 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 Tribunal Panel member under this Safe Sport Framework.
<b>Participant</b>	A Participant includes anyone who participates in a Swimming Australia or Club service, event, activity or program, including people who may not be a Member. A Participant may be provided the service or program for free, yet is still under the care of Persons in Positions of Authority whilst participating.
<b>Person in a Position of Authority</b>	A Person in a Position of Authority includes everyone who holds a position of authority in our Sport, whether paid or unpaid, and includes, but is not limited to, all Swimming Australia 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

Term	Definition
	hold a position of authority in our Sport over other Children or Young People.
<b>Physical Abuse</b>	Physical Abuse occurs when a person subjects a person or a Child or Young Person to non-accidental physically aggressive acts. The abuser may inflict an injury 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 the Safe Sport Complaint Procedures and Attachments.
<b>Provisional Action</b>	Provisional Action is action that may be taken by Swimming Australia Limited or its Delegated Organisation in relation to Case 1 Complaints. Provisional Action is action taken against a Respondent of Case 1 Complaints where the alleged incident is serious enough to warrant such action being taken until the outcome(s) of the internal investigation, Independent Investigation or Hearing Tribunal is known. Provisional action may include, but is not limited to, suspension, restriction of duties or temporary re-deployment.
<b>Regional or District Association</b>	A Regional Swimming or District Association includes a governing body that is given powers at a local level for the advancement of our Sport in certain States or Territories. These Associations are required to comply with all applicable provisions of this Safe Sport Framework.
<b>Respondent</b>	Respondent means the person or organisation responding to the 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 being initiated.
<b>Safe Sport Complaints Procedures</b>	The procedures dealing with complaints in relation to Child or Young Person and Member Welfare issues set out in <b>Part 4</b> of this Safe Sport Framework.
<b>Senior Person</b>	The President, CEO, Secretary or designated delegate of Swimming Australia Limited, a Member Association or Club, as applicable.
<b>Serious Criminal Conduct</b>	Serious Criminal Conduct means any of the following:

Term	Definition
	<ul style="list-style-type: none"> <li>• Sexual Offences;</li> <li>• drug possession, use, sale or any other drug-related conduct;</li> <li>• assault causing serious injury; and</li> <li>• any criminal conduct deemed serious enough to warrant escalation to SAL by the Involved Organisation.</li> </ul>
<b>Sexual Abuse</b>	<p>Sexual Abuse occurs when an adult or person of authority (eg older, or younger but more physically or intellectually developed) 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.</p>
<b>Sexual Exploitation</b>	<p>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.</p>
<b>Sexual Harassment</b>	<p>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.</p>
<b>Sexual Misconduct</b>	<p>Sexual Misconduct means any of the following:</p> <ul style="list-style-type: none"> <li>• Sexual Offences;</li> <li>• Sexual Harassment; and</li> <li>• the use of technology or social media platforms with sexual connotation.</li> </ul>
<b>Sexual Offence</b>	<p>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:</p> <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> </ul>

Term	Definition
	<ul style="list-style-type: none"> <li>• incest;</li> <li>• sexual penetration of child under the age of 16;</li> <li>• indecent act with child under the age of 16;</li> <li>• sexual relationship with child under the age of 16;</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 under the age of 16;</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>Sexual Orientation</b>	The term 'sexual orientation' refers to a person's emotional or sexual attraction to another person, including, amongst others, the following identities: heterosexual, gay, lesbian, bisexual, pansexual, asexual or same-sex attracted.
<b>Social Networking</b>	'Social networking' refers to any interactive website or technology that enables people to communicate and/or share content via the internet. This includes social networking websites such as Facebook and Twitter.
<b>Sport</b>	The sport of swimming in Australia, whether recreational or competitive.
<b>Swimming Australia Child Protection Commitment Statement</b>	The Commitment Statement in Part 2 of this Safe Sport Framework that defines the principles and procedures that are implemented to ensure that Children or Young People who access a Swimming Australia or Club program, activity, event, service or facility are protected.
<b>Swimming Australia Limited</b>	The national governing body for swimming in Australia.
<b>Transgender</b>	'Transgender' is an umbrella term that refers to a person whose gender identity is different to their physical sex as recorded at birth. Transitioning refers to the process where a transgender person commences living as a member of another sex. This is sometimes referred to as the person 'affirming' their gender because transitioning means they start living in what they identify as their true gender. For people who are transitioning/affirming their gender, having their identity fully recognised in all areas of life is a crucial part of the experience of living as their affirmed gender.

## 2. Part 2 – Commitment to Safety, Wellbeing and Inclusion

Swimming Australia is committed to providing an environment in which:

- Children and Young People are protected from Harm; and
- people are treated fairly and equitably - free from all forms of Abuse, Discrimination, Bullying, Harassment and Victimisation.

That is why Swimming Australia has introduced two specific commitments:

- a) our Child Protection Commitment Statement in Part 2A; and
- b) our Commitment to Safety, Wellbeing and Inclusion for All in Part 2B.

### 2A. Child Protection Commitment Statement

An integral part of Swimming Australia's Safe Sport Commitment is the Swimming Australia Child Protection Commitment Statement. It consists of a set of principles and procedural benchmarks in relation to the protection of Children or Young People that Swimming Australia and its Clubs have in place for everyone involved in our Sport.

#### 2.1 What is our commitment to protecting Children or Young People?

Swimming Australia and its Clubs endorse and support the principles of the United Nations Convention on the Rights of the Child 1989 (ratified in Australia in 1990). The Convention recognises that Children or Young People under the age of 18 years need special care and protection.

In recognition of our support for the Convention on the Rights of the Child, Swimming Australia and its Clubs make the following commitments:

##### (a) Our commitment to and Children or Young People

- We are committed to the safety and wellbeing of all Children or Young People who access any of our activities, programs, events or services.
- We are committed to providing Children or Young People with positive and nurturing experiences.
- We will support families and communities to promote Children or Young People's healthy development and wellbeing.
- We will strive to ensure that Children or Young People are protected.
- We will strive to ensure that Children or Young People are not exploited, Abused or Harmed during their involvement with any of our activities, programs, events or services.

- We will listen to Children or Young People and address any concerns that they raise with us.
- We will ask for consent from Children, Young People and their parents/carers before we seek out or provide information about them to any other individuals or organisation. However, we may not ask for consent to disclose information to Police, regulatory authorities or relevant statutory child protection agencies in the event that we have concerns about the safety and wellbeing of a specific Child or Young Person.

**(b) Our commitment to parents and carers**

- We are committed to supporting parents and carers to protect their Children or Young People.
- We will offer assistance that builds on a family's strengths, is sensitive to their cultural and religious beliefs and empowers them to meet the changing needs of their Children or Young People.
- We are committed to communicating honestly and openly with parents and carers about the wellbeing and safety of their Children or Young People.
- We will promote and distribute information about this Child Protection Commitment Statement to Children, Young People and parents/carers as part of an introduction to our services and programs. The information will be made available in a developmentally appropriate language and translated to accommodate the main communities that access our services.
- We aim to be transparent in our decision-making with parents and carers as long as doing so does not compromise the safety of Children or Young People or breach any confidentiality obligations.

**(c) Our commitment to ensuring a child safe organisation**

- We are committed to using best practice standards in the recruitment, screening and employment of any Persons in Positions of Authority.
- We will work to create an environment in which Children or Young People are safe and feel safe in any of our program, activities, or events.
- We will strive to ensure that Persons in Positions of Authority do not Harm, Abuse or exploit Children or Young People who are involved with our programs or services.

**2.2 How does this Child Protection Commitment Statement apply to Persons in Positions of Authority?**

It is a requirement of Swimming Australia and its Clubs that Persons in Positions of Authority:

- (a) adhere to the Child Protection Commitment Statement; and

- (b) follow and adhere to the Complaints Procedure with respect to any breaches of this Safe Sport Commitment.

In addition, Swimming Australia and its Clubs will endeavour to become and remain compliant at all times with the Seven Standards of the Safeguarding Children Accreditation Program of the Australian Childhood Foundation. The Standards as set out below, when implemented in their totality, support Swimming Australia and its Clubs to develop and maintain an effective child safe culture across all of their activities, programs and services.

Standard One Commitment to Safeguarding Children or Young People

Standard Two Personnel roles and conduct

Standard Three Recruitment and screening

Standard Four Personnel induction and training

Standard Five Involving Children or Young People and parents

Standard Six Child Abuse reports and allegations

Standard Seven Supporting a child-safe culture

### 2.3 What are the requirements of and commitment to Persons in Positions of Authority in relation to protecting Children or Young People?

#### (a) Swimming Australia and its Clubs' Commitment to Persons in Positions of Authority

Swimming Australia and its Clubs commit to the follow regarding Persons in Positions of Authority:

- Providing the necessary support to enable them to fulfil their roles.
- Putting in place a management structure that supports and develops them, as applicable, in their roles.
- Providing appropriate guidance and development.
- Ensuring that there is access to a Senior Person to make decisions in relation to any action required to protect Children or Young People from Child Abuse.
- Working to ensure that there are safeguards in place to protect Children or Young People.

#### (b) Swimming Australia's Requirements of Persons in Positions of Authority

In summary, we expect Persons in Positions of Authority to:

- (i) **Understand the rights of Children or Young People, as appropriate to their role.**

A working knowledge of Children or Young People's rights should inform decisions about how to behave with and act on behalf of Children or Young People. It enables us to identify when Children or Young Persons' needs and entitlements are compromised and when they require support.

**(ii) Understand and acknowledge the foundational significance of family relationships for the development of Children or Young People.**

This includes recognising, respecting and, where appropriate, working to strengthen the capacities of parents/carers and other family members to support, care and protect their Children or Young People.

**(iii) Respect the cultural and religious practices of families who access our services, programs or events.**

Whilst we recognise the importance of culture and religion in the lives of Children, Young People and families, the right of Children or Young People to protection from Harm takes precedence over any cultural or religious belief.

**(iv) Understand and appropriately respond to the special needs of Children or Young People with developmental delays or disabilities.**

This includes:

- acting in ways that communicate effectively with and are supportive of Children or Young People with developmental delays or disabilities; and
- being proactive in recognising the additional vulnerability to exploitation and Harm that Children or Young People with developmental delays or disabilities experience.

**(v) Be respectful of Children or Young People by:**

- facilitating opportunities for Children or Young People to tell us their views and feedback;
- treating Children or Young People as individuals and respecting their unique abilities and vulnerabilities; and
- expressing attitudes and engaging in behaviour that respect and support Children or Young People.

**(vi) Appropriately act on any concerns raised by Children, Young People and/or their parents/carers.**

We will take seriously and appropriately investigate complaints or allegations made against any Persons in Positions of Authority. Any alleged crimes against Children, Young People or other family members will be reported to the Police in accordance with the policies and procedures of the relevant Member Associations or Clubs. We expect Persons in Positions of Authority to follow our Complaints Procedure without hesitation in response to concerns raised by Children, Young People and/or their parents.

**(vii) Understand the definitions, indicators and impact of Child Abuse, including Grooming.**

Experiences of Child Abuse and Grooming are significant sources of trauma for Children or Young People and intensify the risk of them developing a range of emotional, psychological, social and behavioural problems. Through the Safe Sport training provided by Swimming Australia, we expect Persons in Positions of Authority to be able to define Child Abuse, be aware of its indicators and understand its consequences.

Persons in Positions of Authority must – wherever possible and practicable:

- intervene to identify and prevent Child Abuse from occurring by following the Steps within section 4.11 of Part 4 of this safe Sport Framework; and
- take action to protect Children or Young People from further Child Abuse by following the Steps within section 4.11 of Part 4 of this Safe Sport Framework.

**(viii) Know and follow regulations in relation to the care of Children or Young People.**

Rules and regulations governing how we safeguard Children or Young People engaged in our services, events, programs and activities may vary across

Australian jurisdictions. Persons in Positions of Authority must understand and follow laws and regulations in place in the jurisdiction in which they operate. It is the responsibility of the appropriate managers of our services, programs, events and activities to take all reasonable steps to ensure that the regulations are adhered to by all Persons in Positions of Authority under their supervision in the relevant jurisdiction(s).

**(ix) Know and follow the relevant law(s) in relation to reporting Child Abuse and Grooming.**

In doing so, we expect Persons in Positions of Authority to consult with a Senior Person to ensure that appropriate action is taken to respond to concerns about the wellbeing or safety of a Child or Young Person.

**(x) Co-operate with Police and/or other formal investigations to the best of their ability to safeguard Children or Young People.**

Where Persons in Positions of Authority are contacted by the Police or any external agency including government child welfare departments, they must use best endeavours to cooperate as requested. Any unreasonable failure to reasonably cooperate with the external agency will constitute a breach of this Safe Sports Framework. Co-operating with an external agency may involve, but is not limited to, the following:

- speaking to a representative of the external agency and answering any questions they may have;
- providing a statement regarding any particular conduct or facts the Person in a Position of Authority witnessed or experienced; and
- where practicable, giving evidence at any external hearing.

**(xi) Always follow the Codes of Conduct in this Safe Sport Framework.**

Where possible, Persons in Positions of Authority will be asked to personally endorse the General Code of Conduct and the Code of Conduct in dealing with Children or Young People to formalise their acknowledgment of and adherence to their content.

**(xii) Not Harm or exploit Children or Young People who access our services, activities, programs, or events, nor contravene any laws or regulations regarding the safety and wellbeing of Children or Young People.**

It is a serious breach of this Safe Sport Framework and possibly the law, if any Persons in Positions of Authority Harm or exploit Children or Young People who are involved in any of our activities, services, events or programs. Breaches of this include, but are not limited to, any Persons in Positions of Authority who:

- (A) sexually assault Children or Young People;

- (B) physically assault Children or Young People;
  - (C) verbally abuse, denigrate or bully Children or Young People;
  - (D) sexually harass Children or Young People;
  - (E) engage in Grooming behaviour of Children or Young People;
  - (F) take inappropriate photos of Children or Young People, or reproduce and/or distribute photos of Children or Young People for an inappropriate purpose or distribute photos without their consent or the consent of their guardians;
  - (G) publish any material containing images of Children or Young People without the consent of the parent/guardian of the Children or Young people included in the images; and/or
  - (H) access, download, store or distribute any form of child pornography.
- (xiii) **Support Children, Young People and their families as directed by Senior Persons in the event that a Child or Young Person is or is suspected of being Abused, Bullied or Exploited.**

We recognise that the impact of Child Abuse on Children or Young People is traumatic. We will provide opportunities for formal debriefing and/or counselling to the Children, Young People and their families who have experienced Child Abuse and any other Child, Young Person and family in the community who may indirectly be affected by the incident(s).

The listed expectations are requirements of this Child Protection Commitment Statement and must be included in the policies, Codes of Conduct and operational procedures developed and implemented by Swimming Australia and its Clubs.

#### **2.4 What support will Swimming Australia and its Clubs provide Persons in Positions of Authority?**

We will strive to ensure that relevant Persons in Positions of Authority:

- (a) **receive training to keep Children or Young People safe from Child Abuse.**

Swimming Australia and Clubs will aim to provide training opportunities regularly and as appropriate to the various roles of Persons in Positions of Authority.

- (b) **are clear about what is expected of them regarding the welfare and safety of Children or Young People**

Through clarifying applicable procedures at regular opportunities and, where possible, encouraging standing agenda items at regular forums to discuss best practice procedures.

- (c) **are aware of the appropriate recruitment, screening and employment practice in relation to individuals with specific roles in working, coaching or volunteering with Children or Young People and families.**

As applicable, Persons in Positions of Authority will be informed during their recruitment that their employment, coaching or volunteering will be subject to clearance under the Working with Children Check system and a National Criminal Records Check. It is a serious breach of this Policy if an individual who has convictions that would make him/her ineligible to be granted a Working with Children Check (or equivalent) clearance gains employment or is allowed to volunteer with Children or Young People who access our services, programs, events or activities. It is also a serious breach if an individual continues in his/her employment, coaching or volunteer role with us if he/she has been charged or convicted of a crime that would make him/her ineligible to be granted a Working with Children Check (or equivalent) clearance.

- (d) **receive guidance and supervision in relation to their role with Children, Young People and families.**

To assist with some of the complexity and challenges of working with Children, Young People and their families, we will provide regular guidance for all relevant Persons in Positions of Authority in relation to their specific roles with Children, Young People and families. For example, the circulation and notification of changes to legislation involving the safety and welfare of Children or Young People.

- (e) **make joint decisions with Senior Persons about initiating action to protect Children or Young People from Child Abuse.**

We acknowledge Child Abuse is a serious allegation and of the importance of addressing allegations as soon as possible. In accordance with Step 2 of section 4.11 of Part 4, Persons in a Position of Authority must report any complaint lodged with them to a Senior Person as soon as possible. The Senior Person will work with the Person in a Position of Authority to address the complaint and ensure appropriate action is taken in response. The Person in a Position of Authority should therefore not feel they must deal with the complaint themselves, as we will provide as much support as required.

- (f) **receive appropriate and timely debriefing and/or counselling opportunities in the event that it is required following stressful or challenging situations involving Children, Young People and/or their families.**

We will provide debriefing and counselling opportunities at our own cost for Persons in Positions of Authority who have dealt with, or are dealing with, challenging situations involving Children and Young People, or their families. Any Person in a Position of Authority should contact a Senior Person that they trust and feel comfortable speaking to as soon as they consider they require assistance.

## 2.5 Who is responsible for implementing the Child Protection Commitment Statement?

The Swimming Australia Safe Sport Committee is responsible for the development and endorsement of the Swimming Australia Child Protection Commitment Statement. It delegates the implementation of the commitment to the Swimming Australia Limited Executive Team, Member Associations and Clubs. The role of each entity in relation to the development and compliance of the Swimming Australia Child Protection Commitment Statement is detailed in the table below.

Entity	Role/Responsibility
<b>Swimming Australia Limited</b>	<ul style="list-style-type: none"> <li>• Promote the commitment to this Statement and its expectations.</li> <li>• Support policy review on an annual cycle as a minimum or at a time governed by legislation, regulations, Australian Sports Commission directions or organisational learnings that promote a change to the Statement and all relevant policy or procedural guidelines.</li> <li>• Strive to ensure compliance to the Statement via an inbuilt review mechanism.</li> <li>• Strive to ensure that adequate resources are allocated to allow for the periodic review of a Swimming Australia Safe Sport Commitment and all relevant policy and procedure creation and review, inclusive of effective implementation.</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 Statement and its expectations.</li> </ul>
<b>Member Associations</b>	<ul style="list-style-type: none"> <li>• Strive to ensure that all Persons in Positions of Authority understand their obligations in accordance with the Child Protection Commitment Statement and any relevant policy and procedural documentation.</li> <li>• Strive to ensure that the Child Protection Commitment Statement is implemented and adhered to amongst Clubs and their Members, staff, officials, volunteers and Participants.</li> <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 the Child Protection Commitment Statement.</li> <li>• Strive to ensure that adequate resources are allocated to allow effective implementation of the Child Protection Commitment Statement.</li> </ul>

Entity	Role/Responsibility
	<ul style="list-style-type: none"> <li>• Advocate and promote Child or Young Person rights, empowering and engaging Children or Young People in support of this Statement.</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 the Child Protection Commitment Statement and any relevant policy and procedural documentation.</li> <li>• Strive to ensure that the Child Protection Commitment Statement is implemented and adhered to amongst its Members, staff, officials, volunteers and Participants.</li> <li>• Strive to ensure that the development and implementation of required internal policy/work procedures and guidelines are in place to support Child or Young Person protection practice in accordance with the expectations of the Child Protection Commitment Statement.</li> <li>• Strive to ensure that adequate resources are allocated to allow effective implementation of the Child Protection Commitment Statement.</li> <li>• Advocate and promote Child or Young Person rights, empowering and engaging Children or Young People in support of this Statement.</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 as a regular agenda item.</li> </ul>

## 2.6 Recruitment and Screening Procedures for Roles with direct contact with or permitting access to Children or Young People

### (a) Introduction

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 2.6(d) - 2.6(k) below.

**(b) Application of procedures in section 2.6**

Swimming Australia and its Clubs must apply the practices and procedures in this section 2.6 in relation to all prospective **EMPLOYEES**.

In recognition of the differences between legislation of Australia's States and Territories, unless otherwise stated, Swimming Australia and its Clubs must, where feasible and to the greatest extent practicable, apply the practices and procedures in this section 2.6 in relation to all **VOLUNTEERS** and **SHORT-TERM APPOINTEES** in swimming.

In section 2.6:

- the term "volunteer" includes any individuals volunteering their time free of charge, or receiving reimbursement expenses only; and
- the term "employee" includes any individuals, whether full time, part time or casual, being employed by Swimming Australia or its Clubs and being remunerated for their time and/or services.

Where a Member Association or Club is determining whether it is practicable to apply the practices and procedures in this section 2.6, the following will be taken into account:

- the size of the organisation seeking volunteers;
- the number of prospective applications; and
- the nature of the volunteer positions for which volunteers are being sought.

**(c) Purpose**

The recruitment and screening procedures have been developed to ensure that Swimming Australia and all Clubs recruit people who are suitably qualified and committed to providing professional, safe and enjoyable activities and services to Children or Young People. There are specific recruitment and screening procedures that must be consistently and comprehensively followed by Swimming Australia and all Clubs when recruiting roles that have direct contact with or permit access to Children or Young People in swimming.

**(d) Advertising**

All Swimming Australia 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.”**

**(e) Provision of Safe Sport Framework**

The Safe Sport Framework 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. Swimming Australia suggests that all positions advertised online contain a link to our Safe Sport Framework or that a PDF version of it is attached to the advertisement.

**(f) Face-to-face or video interview**

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.

As part of the face-to-face or video interview, we highlight our commitment to protecting Children or Young People from Abuse. We also explain our screening requirements and their purpose.

During face-to-face or video interviews, the Swimming Australia or Club Persons in Positions of Authority conducting the relevant interview must examine the following issues relating to the applicant’s suitability to work with Children or Young People:

- 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;
- the applicant’s beliefs and values in relation to the treatment of Children or Young People;
- the applicant’s professional experience, qualifications and competence;
- the applicant’s reasons for leaving previous positions involving work with Children or Young People; and
- any potential concerns regarding the applicant’s resume or work history, such as gaps in their work history, frequent job changes, and inability to nominate precise start or end dates for previous roles.

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’** as linked on the Safe Sport Resources section on Swimming Australia Limited’s website. We document an applicant’s responses and, if they are the successful applicant, we will add that documentation to their personnel file.

**(g) Proof of Identity and Qualifications Check**

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, we will add copies of the successful applicant's 'proof of identity' and 'proof of qualifications' documents to their employment file.

If a variation to these requirements is required in relation to proof of identity or proof of qualifications requirements, such as an applicant being unable to provide specific documentation, we advise an appropriate Senior Person and seek approval for a variation. The Senior Person may withhold approval for any variation requested at their absolute discretion.

**(h) Background and Screening Checks**

Unless the law provides otherwise, all Swimming Australia Limited, 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.

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:

- a National Criminal History Record Check;
- a Signed Declaration;
- a reference check; and/or
- any other relevant background checks to assess a person's suitability to work with Children or Young People.

Whenever possible, no applicant is to be offered a position with Swimming Australia 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 upon Swimming Australia or a Club receiving a satisfactory background and screening check. At a minimum and subject to specific State or Territory requirements set out in the websites at the "Working with Children Checks" section below, the potential employee must have completed the application documentation for the relevant Working with Children Check and/or background check and the employing organisation must sight that documentation prior to the commencement date of that person's position.

If the applicant has already commenced holding a position with Swimming Australia or a Club and the results of any background or screening checks are unsatisfactory, subject to the individual employment contract, Swimming Australia or the Club may terminate the individual's position without notice.

Swimming Australia 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 the references or background checks that are provided in support of the application are dishonest or misleading, Swimming Australia and its Clubs will be entitled to terminate the engagement immediately without notice.

### ***Working with Children Checks***

Swimming Australia and Clubs operate in and sometimes across all Australian jurisdictions. 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.

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 Swimming Australia or its Clubs that involves direct contact with or permits access to Children or Young People (ie, including, but not limited to Team Managers, coaching staff, Technical Officials, etc). Swimming Australia or the relevant Club will direct the applicant to the relevant check that is required and in doing so will make clear which jurisdiction(s) the relevant check(s) is or are to be obtained in.

The Person in a Position of Authority that is responsible for recruiting must either verify with the appropriate WCCC 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 Check Record'.

Swimming Australia and its Clubs must not employ a person who returns a negative check based on 'Working with Children' or Blue Card check legislation in our jurisdictions. For the avoidance of doubt, volunteers who return negative checks must not be engaged by Swimming Australia or its Clubs also.

Further information regarding the operation of Working with Children Checks can be obtained from:

#### **New South Wales**

Office of the Children's Guardian

Telephone: 02 8219 3600

Web: [www.kidsguardian.nsw.gov.au](http://www.kidsguardian.nsw.gov.au)

#### **Queensland**

Blue Card Services

Telephone: 07 3211 6999

Web: [www.bluecard.qld.gov.au](http://www.bluecard.qld.gov.au)

#### **Victoria**

Working with Children Check Unit, Department of Justice & Regulation

Telephone: 1300 652 879

Web: [www.workingwithchildren.vic.gov.au](http://www.workingwithchildren.vic.gov.au)

#### **Western Australia**

Working with Children Screening Unit

Telephone: 08 6217 8100

Web: [workingwithchildren.wa.gov.au](http://workingwithchildren.wa.gov.au)

#### **Northern Territory**

Northing Territory Screen Authority

Telephone: 1800 SAFE NT (1800 723 368)

Web: [www.workingwithchildren.nt.gov.au](http://www.workingwithchildren.nt.gov.au)

#### **South Australia**

Department for Communities and Social Inclusion

Telephone: 1300 321 592

Web: [screening.dcsi.sa.gov.au](http://screening.dcsi.sa.gov.au)

#### **Australian Capital Territory**

Background Screening Unit, Access Canberra

Telephone: 02 6207 3000

Web:

[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#)

#### **Tasmania**

Department of Justice

Telephone: 1300 13 55 13

Web: [www.justice.tas.gov.au/working\\_with\\_children](http://www.justice.tas.gov.au/working_with_children)

#### ***National criminal history record checks***

Swimming Australia 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 Australia or a Club. If such record check is required, we obtain application forms from Police in the relevant State or Territory, or download forms from their website, as detailed below:

### **Australian Capital Territory**

Australian Federal Police

Phone: 02 6140 6502

Web: [www.afp.gov.au/business/criminal\\_police\\_checks.html](http://www.afp.gov.au/business/criminal_police_checks.html)

### **New South Wales**

New South Wales Police

Phone: 02 8835 7888

Web: [www.police.nsw.gov.au](http://www.police.nsw.gov.au)

### **Northern Territory**

Northern Territory Police

Phone: 08 8922 5511

Web: [www.pfes.nt.gov.au](http://www.pfes.nt.gov.au)

### **Queensland**

Queensland Police Service

Phone: 07 3364 6562

Web: [www.police.qld.gov.au](http://www.police.qld.gov.au)

### **South Australia**

South Australia Police

Phone: 08 7322 3347

Web: <https://www.police.sa.gov.au/services-and-events/apply-for-a-police-record-check>

### **Tasmania**

Tasmania Police

Phone: 03 6173 2928

Web: <http://www.police.tas.gov.au/services-online/police-history-record-checks/>

### **Victoria**

Victoria Police

Phone: 1300 881 596

Web: [www.police.vic.gov.au/content.asp?Document\\_ID=274](http://www.police.vic.gov.au/content.asp?Document_ID=274)

### **Western Australia**

Western Australia Police

Phone: 08 9351 0699

Web: <https://www.police.wa.gov.au/Police-Direct/National-Police-Certificates>

No copy of the Police Check must be retained, and the original must be destroyed – in a secure manner – on completion of the selection process. However, we record the date and certificate number of the Police Check in the applicant's personnel file on a 'National Criminal History Record Check' form.

When this is not possible, we appoint the person contingent upon them receiving a satisfactory check. The person is to be subject to additional supervision until the check procedures are completed.

**(i) Record Keeping and Sharing of Information – Working with Children and/or National Criminal History Checks**

Swimming Australia and all Clubs must comply with relevant laws in relation to record keeping. Best practice record keeping requires Swimming Australia and Clubs to maintain:

- Records of all employees and volunteers, including proof of identify and proof of qualification documents and/or records.
- A register of Working with Children Check and/or National Criminal History Checks for all employees 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.

Please see the "WWCC and Background Check Register Template" in the Safe Sport Resources section on the Swimming Australia Limited website.

Swimming Australia Limited, Member Associations and Clubs will work together in the best interests of their Members, Participants and Persons in Positions of Authority. As such, when requested by Swimming Australia Limited, Member Associations and Clubs must to the extent permitted by law share information from relevant employment records and/or their register of Working with Children Check and/or National Criminal History Checks in order to resolve any recruitment or screening issues and/or in the interests of resolving any complaints relating to Children or Young People. Subject to relevant laws, Clubs must also share employment records and/or proof of identity or qualifications information when requested by Member Associations for those same purposes.

For the avoidance of any doubt, all applicants provide their consent to Swimming Australia, Member Associations and Clubs disclosing their personal information as set out above.

**(j) Undertaking reference checks**

Swimming Australia and its Clubs must conduct a minimum of two reference checks for all shortlisted applicants for any employment 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.

Applicants being considered for appointment should, in the first instance, be asked to provide contact details for two professional 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. Professional referees:

- should include a representative of the applicant's current or most recent employer; and
- 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.

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:

- should not be related to the applicant;
- should have known the applicant for at least 12 months; and
- must be able to vouch for the applicant's reputation, good standing and character.

The referee checks we undertake must involve direct contact with the referee, whether in-person, by phone, via video link or email. Written character references are not sufficient unless also followed up and verified through direct contact.

Difficulty in contacting referees, such as those based overseas, or those who have left an organisation, is not justification for accepting lower standards of scrutiny.

We use a 'Referee Discussion' form to record details of our discussions with referees in relation to the suitability of an applicant to work with Children or Young People. We use 'Referee Questions' to guide our discussion with a referee.

A completed 'Reference Check' form is to be filed in a successful applicant's personnel file prior to the applicant starting their engagement with Swimming Australia or a Club. Please see the "Reference Check Template" located in the Safe Sport Resources section on the Swimming Australia Limited website.

**(k) Guidance for volunteers, short-term appointees and Children or Young People in Positions of Authority**

Sensitivity is required in relation to asking parents/carers of the Children or Young People to whom we deliver activities, events, programs and services to undergo

'Working with Children' or 'National Criminal History Record' checks before they are accepted as volunteers.

Swimming Australia and Club Persons in Positions of Authority must emphasise to these parents/carers the importance we place on protecting the Children or Young People to whom we deliver activities, programs, events and services, informing them that, whilst rare, there have been instances of parents/carers using their volunteer status within organisations such as ours as a path to abusing Children or Young People. At the same time, we also state that we appreciate that the vast majority of parent/carer volunteers find the idea of Abusing a Child or Young Person abhorrent and that parents/carers make a considerable contribution to our Sport and thereby to the wellbeing of the Children or Young People to whom we provide activities, events, programs and services.

We inform prospective parent/carer volunteers that, in the light of the above, our approach is to take every precaution to protect the Children or Young

People in our care. Accordingly, we have adopted this Framework, which requires Swimming Australia and Clubs to comply with any 'Working with Children' check legislation that applies across the jurisdiction(s) in which we operate and to undertake such checks for all prospective parent/carer volunteers.

## 2B. Commitment to Safety, Wellbeing and Inclusion for All

### 2.7 Generally

We recognise that people may not be able to enjoy themselves or perform at their best if they are treated unfairly, abused, discriminated against, bullied, harassed or victimised. Swimming Australia does not tolerate any form of Abuse, Harassment, Discrimination, Bullying or Victimisation for any reason. This is reinforced in the General Code of Conduct contained in section 3.5 of this Safe Sport Framework.

Inclusion within our Sport is key to enjoyment and participation generally. We are committed to fair and appropriate treatment for all and providing a safe and welcoming environment for:

- persons with a **disability** to ensure that we maximise participation potential for all persons with a disability in swimming.
- **pregnant women**, including removing any unreasonable barriers to their full participation in swimming. This includes taking reasonable care to ensure the continuing safety, health and wellbeing of pregnant women. Wherever possible, we will advise pregnant women that there may be risks involved with their continuing participation in sport, and we will encourage them to obtain medical advice about those risks.

- people on the basis of their **Gender Identity, Gender Expression or Intersex status**. We expect all people bound by this Framework to act with sensitivity when a person is undergoing or has undergone Gender Transition/affirmation.
- people from **culturally and/or linguistically diverse backgrounds**. This includes, but is not limited to:
  - Accepting, respecting, recognising and welcoming the differences between and within cultures, without valuing one over another (eg, religious or cultural holidays or occasions).
  - Employing staff that are representative of the diversity of your local community and/or who display cultural sensitivity and competency.
  - Taking steps to share knowledge, raise awareness and develop understanding that leads to cultural sensitivity and competence.

**2.8 Transgender, Intersex and/or Gender Diverse Participation** To support their participation in our sport on the basis of the gender with which they identify, and to implement a policy which provides for their inclusion in swimming.

### 3. Part 3 – Codes of Conduct

#### 3.1 Introduction to the Codes of Conduct

Our Codes of Conduct outline the expected behavioural standards for interactions with each other in the Australian swimming community as well as providing guidelines specific to safeguard Children or Young People.

There are two key elements to the Codes of Conduct:

- (a) The General Code of Conduct, which relates to interactions between Members, Participants and Persons in Positions of Authority (at section 3.5); and
- (b) The Code of Conduct for interactions with Children or Young People who take part in our programs, activities, services, or events (at section 3.6). We have developed this Code of Conduct to help to safeguard those Children or Young People.

As part of your commitment to observing the General Code of Conduct and the Code of Conduct for engagement with Children or Young People ("**Codes of Conduct**"), you will be required to formally acknowledge your commitment to the Codes of Conduct, wherever practicable.

#### 3.2 Commitment to the Codes of Conduct

The Codes of Conduct should be read in conjunction with:

- the specific requirements of your role as defined in your 'position description' statement, if applicable;
- our relevant policy and procedure documents, including our Safe Sport Commitment;
- Child Protection Commitment Statement;
- Safe Sport Complaint Procedures;
- Other Swimming Australia policies and guidelines available on the Swimming Australia website here, including, but not limited to, the Privacy Policy, Social Media Guidelines, Risk Management Policy, Anti-Doping Policy, Illicit Drugs in Sport Policy and the Gambling, Betting and Match Fixing Policy.
- all applicable laws as relevant to the jurisdiction you are in; and
- general community expectations in relation to appropriate behaviour between adults and Children or Young People and between Children or Young People themselves.

Swimming Australia and its Clubs may consider a failure to observe the Codes of Conduct as misconduct, and may take appropriate disciplinary action in accordance with Part 4, section 4.15 of this Safe Sport Framework.

### 3.3 Exceptions

There may be exceptional situations where the Codes of Conduct do not apply, for example, in an emergency situation. However, it is crucial that, where possible, you seek authorisation of a Senior Person prior to taking action that contravenes the Codes or that you advise a Senior Person as soon possible after any incident in which the Codes are breached.

### 3.4 Our Values-based Sport

It is critical within swimming in Australia that values drive our behaviours and conduct. Whilst the wording of stated values and behaviours may change depending on the team or organisation within Swimming with which you are associated, there are some key principles that drive our conduct and behaviour which are common across our Sport:

#### **INTEGRITY and RESPECT**

Recognising the contribution that people make to our Sport, treating them with dignity and consideration, as well as caring for the property and equipment they use. We employ fairness in decision making out of respect to all.

#### **TEAMWORK**

We collaborate and work together to achieve outcomes and resolve issues. We support one other in and out of the pool.

## **FUN AND ENJOYMENT**

We aim to make swimming enjoyable for all those participating in it. We recognise and reward the efforts of others and fuel the passion for everyone in our Sport to swim and have fun along the way.

## **EXCELLENCE**

We strive for best practice in everything we do - seeking the highest standards in order to achieve the best possible outcomes for ourselves, our team and our Sport.

### **3.5 General Code of Conduct**

Swimming Australia and Clubs expect that the following General Code of Conduct and the Code of Conduct for dealing with Children or Young People are followed at all times and by all people involved in any way with the Sport of swimming:

- (a) Respect the rights, dignity and worth of others – treat others as you would like to be treated yourself.
- (b) Be ethical, considerate, fair, courteous and honest in all dealings with other people and organisations.
- (c) Be professional in, and accept responsibility, for your actions.
- (d) Be familiar with and follow - at all times - Swimming Australia's standards, rules, policies and procedures and promote those standards, rules, policies and procedures to others. This includes the Code of Conduct for dealing with Children or Young People.
- (e) Operate within the rules and spirit of the Sport, including the national and international guidelines that govern Swimming Australia.
- (f) Understand the possible consequences of breaching the Safe Sport Framework.
- (g) Report any breaches of the Swimming Australia Safe Sport Framework to the appropriate Person(s) in a Position of Authority, as appropriate.
- (h) Abide by our Child Protection Commitment Statement and our Commitment to the Safety, Wellbeing and Inclusion for all contained in Part 2 of this Safe Sport Framework and refrain from any form of Abuse, Harassment, Discrimination, Victimisation and Bullying towards others.
- (i) Raise concerns regarding decisions or conduct of Persons in Positions of Authority through the appropriate channels and in a timely manner.
- (j) Provide a safe environment for the conduct of activities in accordance with any relevant Swimming Australia policy.
- (k) Show concern, empathy and caution toward others that may be sick or injured.

- (l) Be a positive role model to all – particularly to your team.
- (m) Respect and protect confidential information obtained through Swimming Australia activities or services – whether regarding individuals or organisational information.
- (n) Maintain the required standard of accreditation and/or licensing of professional competencies, as applicable to your role(s).
- (o) Ensure that any physical contact with others is appropriate to the situation, such as being necessary for the person’s skill development.
- (p) Subject to lawful exceptions, refrain from encouraging or participating in intimate relationships with persons over whom you have authority.
- (q) Maintain appropriate confidentiality at all times – particularly in relation to details of complaints, disciplinary processes and any personal information of any Member or child (sensitive issues or matters).
- (r) Ensure your actions or inaction does not bring the Sport into disrepute.
- (s) Consider and respect the needs and background of indigenous persons, persons with a disability and/or those who are more vulnerable in society.
- (t) Consider and respect the needs of Transgender, Intersex and Gender Diverse participants.
- (u) Conduct yourself appropriately when using Social Networking in accordance with Section 3.5A.

### **3.5A Social Networking**

Swimming Australia acknowledges the enormous value of social networking to promote our Sport and celebrate the achievements and success of the people involved in our Sport.

All Participants must conduct themselves appropriately when using social networking. This includes using social networking as an electronic means of engaging with others through private messaging (ie, What’s App and other electronic messaging forums).

When using sites to share information related to our Sport, social media activity including, but not limited to, postings, blogs, status updates and tweets must not contain material which:

- Has the potential to be offensive, aggressive, defamatory, threatening, discriminatory, obscene, profane, harassing, embarrassing, intimidating, sexually explicit, bullying, hateful, racist, sexist or otherwise inappropriate;
- Is inaccurate, misleading or fraudulent;
- Is in breach of the General Code of Conduct or Code of Conduct for dealing with Children and Young People;

- Is in breach of laws, court orders, undertakings or contracts;
- Breaches the privacy or confidentiality of others; or
- Has the potential to derogate from or negatively affect the image, goodwill, name or reputation of Swimming Australia Limited, its Member Associations, our Members or our Sport.

Use of social networking by adults must be in accordance with section 3.6(b) of the Code of Conduct for dealing with Children and Young People (ie. refraining from private messaging, copying in a parent/guardian and limiting communication to required swimming activity messages, amongst others).

### 3.6 Code of Conduct for dealing with Children or Young People

#### PART A - applicable to all persons

Part A of this Code of Conduct applies to all persons to which this Safe Sport Framework applies.

##### (a) Use of language and tone of voice

Language and tone of voice used in the presence of Children or Young People should:

- provide clear direction, boost their confidence, encourage or affirm them;
- not be Harmful – therefore, avoid language that is intended to be, or is received or likely to be received by the individual it is directed at or any other person as:
  - discriminatory, racist or sexist;
  - derogatory, belittling or negative, for example, by calling a Child or Young Person a ‘loser’ or telling them they are ‘too fat’;
  - threatening or frightening; and /or
  - profane or sexual.

##### (b) Sending electronic communications to Children and Young People

Wherever possible, social media messages (such as text, email, Facebook or Instagram) sent to a Child or Young Person by a Person in a Position of Authority and/or adults in our Sport should be copied to their parent or carer.

Where a parent or carer is not included in the communication:

- 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.
- 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.
- Do not use such communication to promote unauthorised ‘social’ activity or to arrange unauthorised contact.
- Do not request a Child or Young Person to keep a communication a secret from their parents or carers.

- 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.

**(c) Physical contact with Children or Young People**

Any physical contact with Children or Young People must be appropriate to the delivery of Swimming Australia and its 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.

Under no circumstances should any person have contact with Children or Young People in our Sport that involves touching of genitals, of buttocks or of the breast area (of female Children or Young People).

Contact is expressly prohibited by Persons in Positions of Authority if:

- It would appear to a reasonable observer to have a sexual connotation;
- is intended to cause pain or distress to the Child or Young Person – for example corporal punishment;
- is overly physical – as is, for example, wrestling, horseplay, tickling or other roughhousing;
- is unnecessary – as is, for example, assisting with toileting when a Child or Young Person does not require assistance;
- 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:
  - physical restraint should be a last resort;
  - the level of force used must be appropriate to the specific circumstances, and aimed solely at restraining the Child or Young Person to prevent Harm to themselves or others; and
  - the incident must be reported to a Senior Person as soon as possible.

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.

**(d) Sexual Misconduct**

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 Australia or Club environment.

Whilst Swimming Australia and its Clubs do not seek to prohibit lawful sexual behaviour, any sexual behaviour occurring in the presence of Children or Young People participating in the Swimming Australia or Club environment has the potential to:

- make other Participants uncomfortable; or
- impact on the overall success of the activity, including the ability of other Participants to successfully participate to their fullest extent.

Swimming Australia and its 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 Swimming Australia Limited website.

'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:

- 'contact behaviour', such as sexual intercourse, kissing, fondling, sexual penetration or exploiting a Child or Young Person through prostitution; and/or
- '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**

Part B of this Code of Conduct applies to all Persons in Positions of Authority in our Sport.

##### **(e) Positive guidance**

We strive to ensure that Children or Young People participating in Swimming Australia and Club events, services, programs and activities receive positive guidance to create a positive environment.

We 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.

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.

**(f) Adhering to role boundaries**

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.

Except where 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:

- provide unauthorised transportation;
- engage in activities with, or seek contact with, Children or Young People in our Sport; or
- accept an invitation to attend any private social function at the request of a Child or Young Person in our Sport.

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.

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 Swimming Australia or its Club's usual service, they should at the earliest opportunity seek advice from a Senior Person (see Part 4, sections 4.11 and 4.13, Step 2), and, if necessary:

- contact the Child or Young Person's parent or guardian as appropriate (which may be in consultation with Swimming Australia Limited) (see Part 4, sections 4.11 and 4.13, Step 2);
- refer the matter to an appropriate support agency, as well as to Swimming Australia Limited (see Part 4, sections 4.11 and 4.13, Step 5); or
- refer the Child or Young Person to an appropriate support agency (see Part 4, sections 4.11 and 4.13, Step 5).

**(g) Uniform and identity card/pass/badge/WWCC**

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 Australia and/or its Clubs at designated events and functions, or to and from that work.

**(h) Supervision of Children or Young People**

Persons in Positions of Authority responsible for supervising Children or Young People in relation to whom Swimming Australia and its Clubs have a direct role in providing activities, events, programs and services must strive to ensure that those Participants:

- engage positively within the delivery of the service, program or event;

- behave appropriately toward one another; and
- are in a safe environment and are protected from external threats.

Persons in Positions of Authority are required to avoid unsupervised situations with Children or Young People in our Sport. Where possible, all activities and/or discussions with such Participants should be conducted in view of other Persons in Positions of Authority or adult Participants.

**(i) Use of electronic communications**

All Persons in Positions of Authority who deliver services, programs, events and activities are required to follow our 'acceptable use' policy in relation to browsing websites on Swimming Australia and its Clubs' computers.

Persons in Positions of Authority are required to ensure appropriate monitoring of Children or Young People when they use Swimming Australia and its 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 or web searches, or through inappropriate email communication.

**(j) Giving gifts to Children or Young People**

The giving of gifts by Persons in Positions of Authority to Children or Young People to whom we provide service is subject to:

- obtaining prior authorisation from a Senior Person permitted to authorise gift-giving from Swimming Australia or its Clubs; and
- parents/carers or other responsible adults being made aware of any gift given.

**(k) Visual media of Children or Young People**

Under these guidelines:

- Children or Young People in our Sport are to be photographed/videoed by Persons of Positions of Authority while involved in Swimming Australia or its Clubs' service, activity, event or facility only if:
  - prior approval has been granted by the relevant Child or Young Person or the parents/guardian of the relevant Child or Young Person; or
  - the relevant Child or Young Person or their parent/guardian has provided their verbal consent to the person proposing to take the relevant photograph/video,

and:

- the context is directly related to participation in our Sport;

- 
- the Child or Young Person is appropriately dressed and posed; and
  - the image/video is taken in the presence of other Persons in Positions of Authority.
  - Images/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.
  - Images/videos (digital or hard copy) are to be stored by Swimming Australia and Clubs in a manner that prevents unauthorised access by others, for example:
    - if in hard copy form, in a locked drawer or cabinet; or
    - if in electronic form, in a 'password protected' folder.
  - Images/videos (digital or hard copy) are to be destroyed or deleted by Swimming Australia and Clubs as soon as they are no longer required.
  - Images/videos are not to be exhibited on Swimming Australia or its Clubs' websites or other digital mediums without parental/carer approval, or such images/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 if such identification is **potentially detrimental**.

**(l) Overnight stays and sleeping arrangements for Children or Young People**

Overnight stays are to occur only with the authorisation of appropriate Swimming Australia or Club Senior Persons and of the parents/carers of the Children or Young People involved.

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 Australia and Club services, programs, events and activities at other times.

Standards of conduct that must be observed by Persons in Positions of Authority during an overnight stay include, but are not limited to:

- providing appropriate supervision of Children or Young People at all times as practicable, allowing for their privacy when bathing and dressing;
- observing appropriate dress standards when Children or Young People are present – such as no exposure to adult nudity;
- not allowing Children or Young People to be exposed to pornographic material, for example, through movies, television, the Internet or magazines;
- not leaving Children or Young People under the supervision or protection of unauthorised persons such as hotel staff or friends;
- 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;
- the right of Children or Young People to contact their parents, or others, if they feel unsafe, uncomfortable or distressed during the stay; and
- allowing parents to contact their Children or Young People if they wish.

The “Safe Trips Away Guide” in the Safe Sport Resources section of the Swimming Australia Limited website provides further information.

**(m) Change room arrangements**

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:

- should avoid one-to-one situations with Children or Young People in a change room area;
- are not permitted to use the change room area to, for example, undress, while Children or Young People are present unless they are also competing in a Swimming Australia or Club event or are participating in a Swimming Australia or Club training environment;

- need to ensure adequate supervision in 'public' change rooms when they are used;
- 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
- need to ensure that females do not enter male change rooms and males do not enter female change rooms.

**(n) Use, possession or supply of alcohol or drugs**

Whilst on duty or carrying out their roles, Persons in Positions of Authority must not:

- use, possess or be under the influence of an illegal or illicit drug;
- use or be under the influence of alcohol;
- be incapacitated by any other legal drug such as prescription or over-the-counter drugs;
- supply alcohol or drugs (including tobacco) to Children or Young People; and
- smoke cigarettes or any other tobacco-related product.

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 our Sport.

**(o) Transporting Children or Young People**

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:

- the form of transport proposed, such as private car, taxi, self-drive bus, bus with driver, train, plane or boat;
- the reason for the journey;
- the route to be followed, including any stops or side trips; and
- details of anyone who will be present during the journey other than Persons in Positions of Authority.

## **4. Part 4 – Safe Sport Complaint Procedures**

### **4.1 Introduction**

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

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

This Safe Sport Complaint Procedures sets out the steps involved to address Complaints, whether they relate to Children or Young People, Members, Participants or Persons in Positions of Authority. It also provides advice and guidance to Complainants and Swimming Australia Members, Clubs and Persons in Positions in Authority when dealing with complaints. Maintaining appropriate confidentiality is key when dealing with complaints, particularly regarding sensitive issues or matters. This, however, is subject to legal requirements regarding disclosure and a judgment as to whether disclosure is necessary to deal with the complaint.

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

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

### **4.2 Application**

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

Existing disciplinary procedures contained within the constitution or rules, regulations or policies of any Club or Member Association remain, and will be the relevant process to deal with any relevant breaches other than of this Safe Sport Framework.

### **4.3 Safe Sport Complaint Procedures Commitment**

Swimming Australia is committed to:

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

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

#### 4.4 Safe Sport Complaint Procedures Principles

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

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

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

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

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

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

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

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

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

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

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

Complaints may be made by:

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

#### 4.8 What can Complaints be about?

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

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

#### 4.9 Complaints from Other Organisations

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

In some circumstances, Swimming Australia and its Clubs will enter into a memorandum of understanding, contract or protocol with other organisations which contain specific dispute resolution procedures relating to breaches of agreements or behavioural issues. In those circumstances, those specific dispute resolution procedures will be applied. In the absence of any memorandum of understanding, contract or protocol with other organisation, this complaint procedure detailed at 4.1 will be applied.

#### 4.10 Initial stages of complaints

Most Complaints can be dealt with initially at Club, ASCTA or ASA level. However, there may be some situations in which it is more appropriate to raise a Complaint initially with your State or Territory Member Association first rather than at Club or facility level. For example, if you have a Complaint regarding a Club decision or action or an incident at a State or Territory event that you regard as a possible breach of the Safe Sport Framework.

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

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

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

- a) Reporting a Complaint;

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

**Table A - Incident Categorisation**

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

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

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

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

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

##### *Reporting Complaint*

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

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

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

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

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

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

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

#### *Investigating Complaint*

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

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

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

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

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

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

#### *Determining Complaint*

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

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

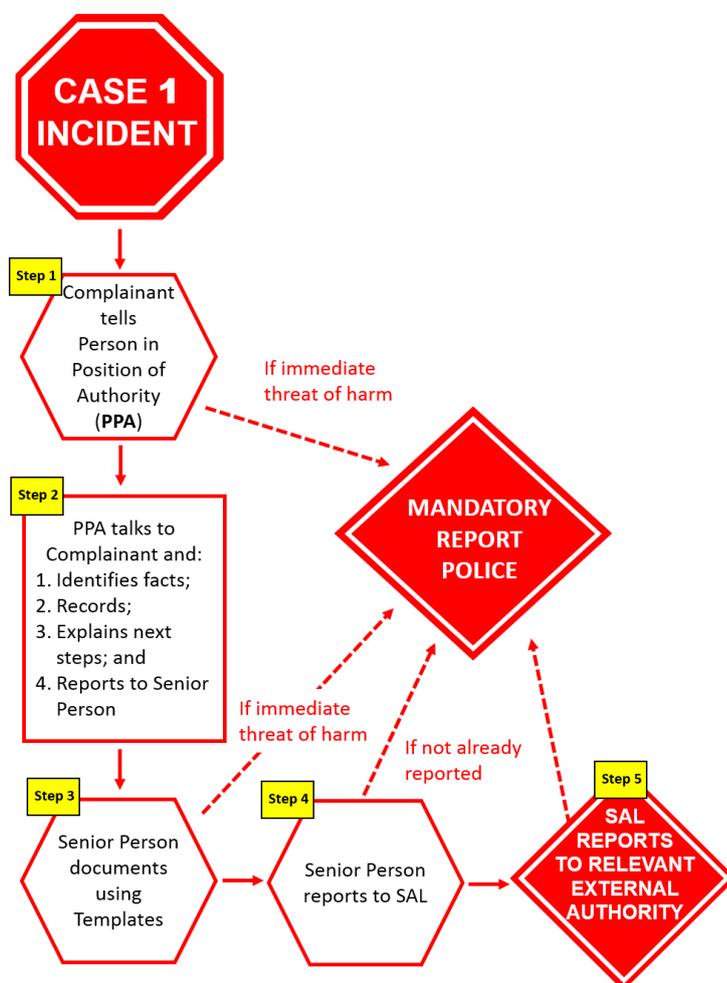
Relevant process selected by the Involved Organisation is undertaken.

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

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

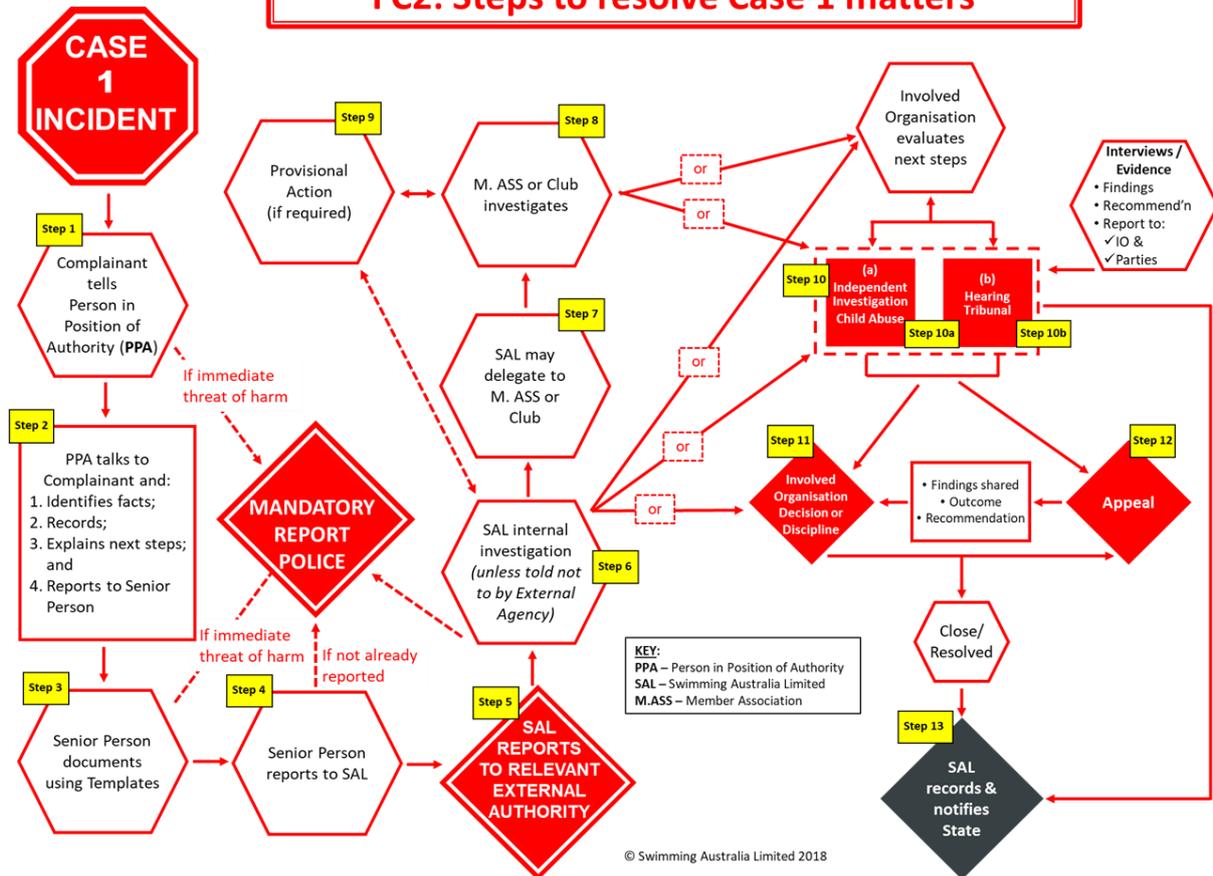
**Step 13 -** Record of Complaint finalised. Swimming Australia Limited and Involved Organisation notified of outcome of Complaint. Complaint closed.

## FC1: Initial steps to report Case 1 matters

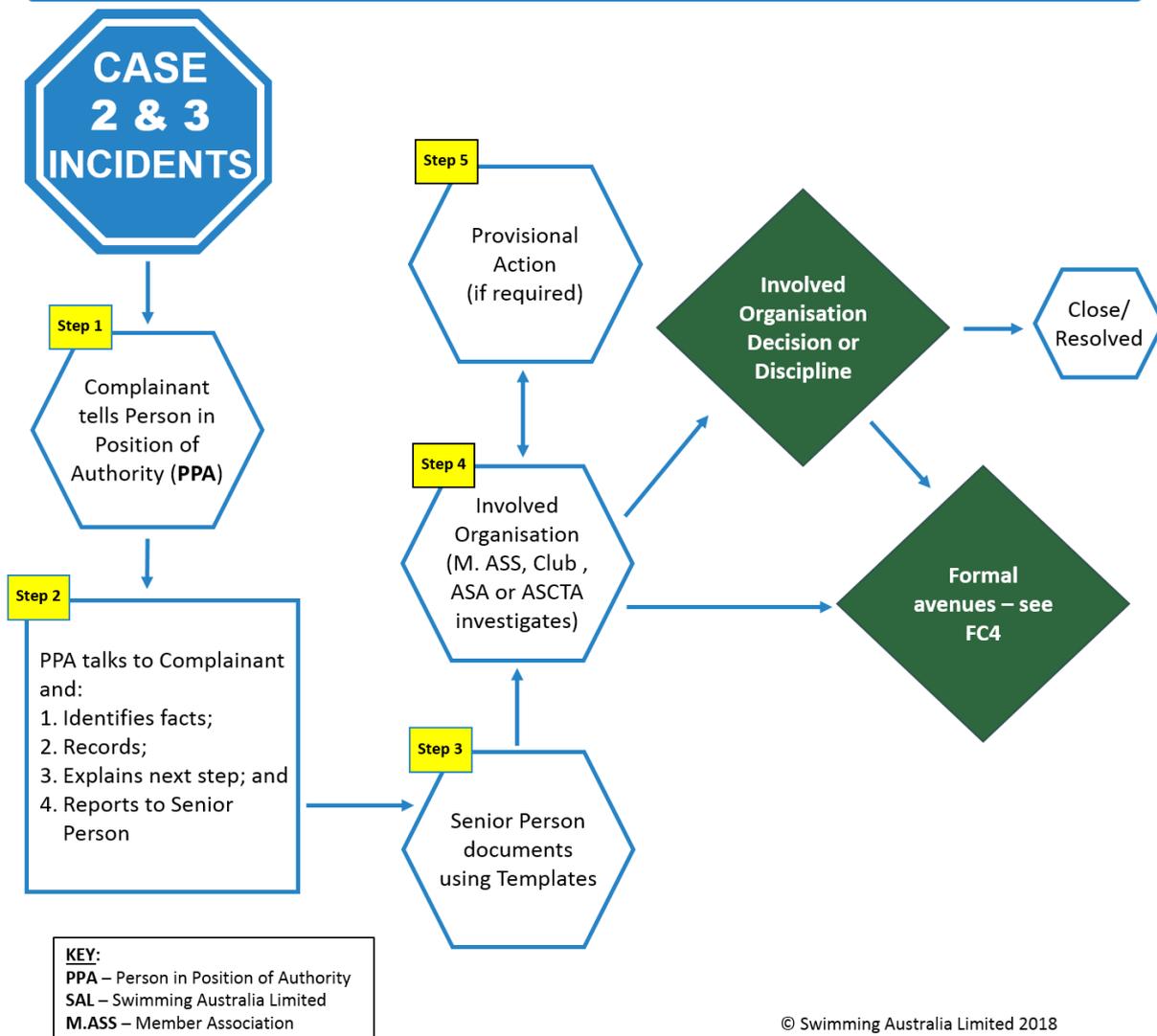


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### FC2: Steps to resolve Case 1 matters

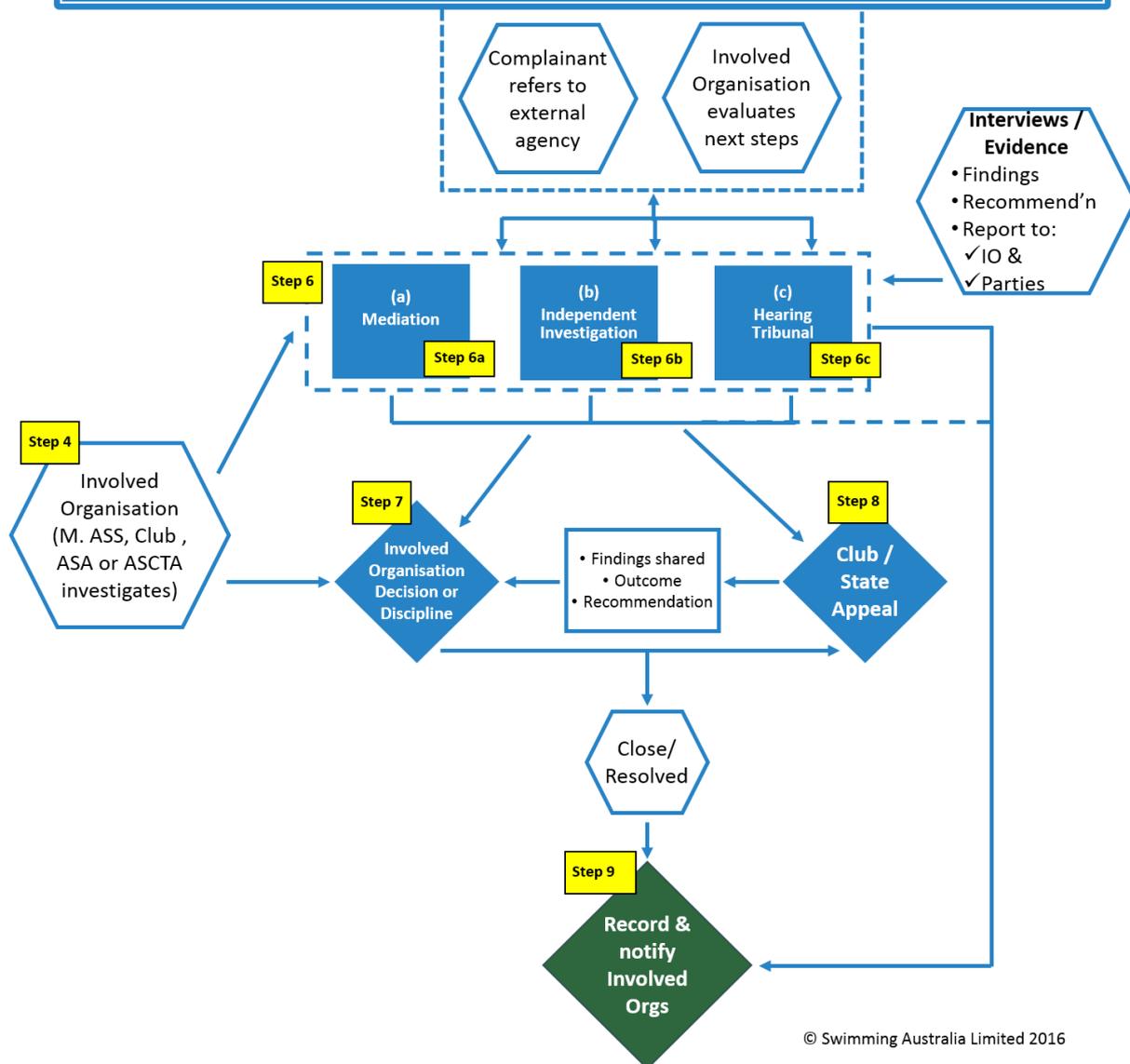


## FC3: Initial steps to report Case 2 & 3 complaints



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## FC4: Formal resolution of CASE 2 & 3 complaints



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

#### Case 2/3 Complaints:

##### *Reporting Complaint*

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

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

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

*Investigating Complaint*

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

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

*Determining Complaint*

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

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

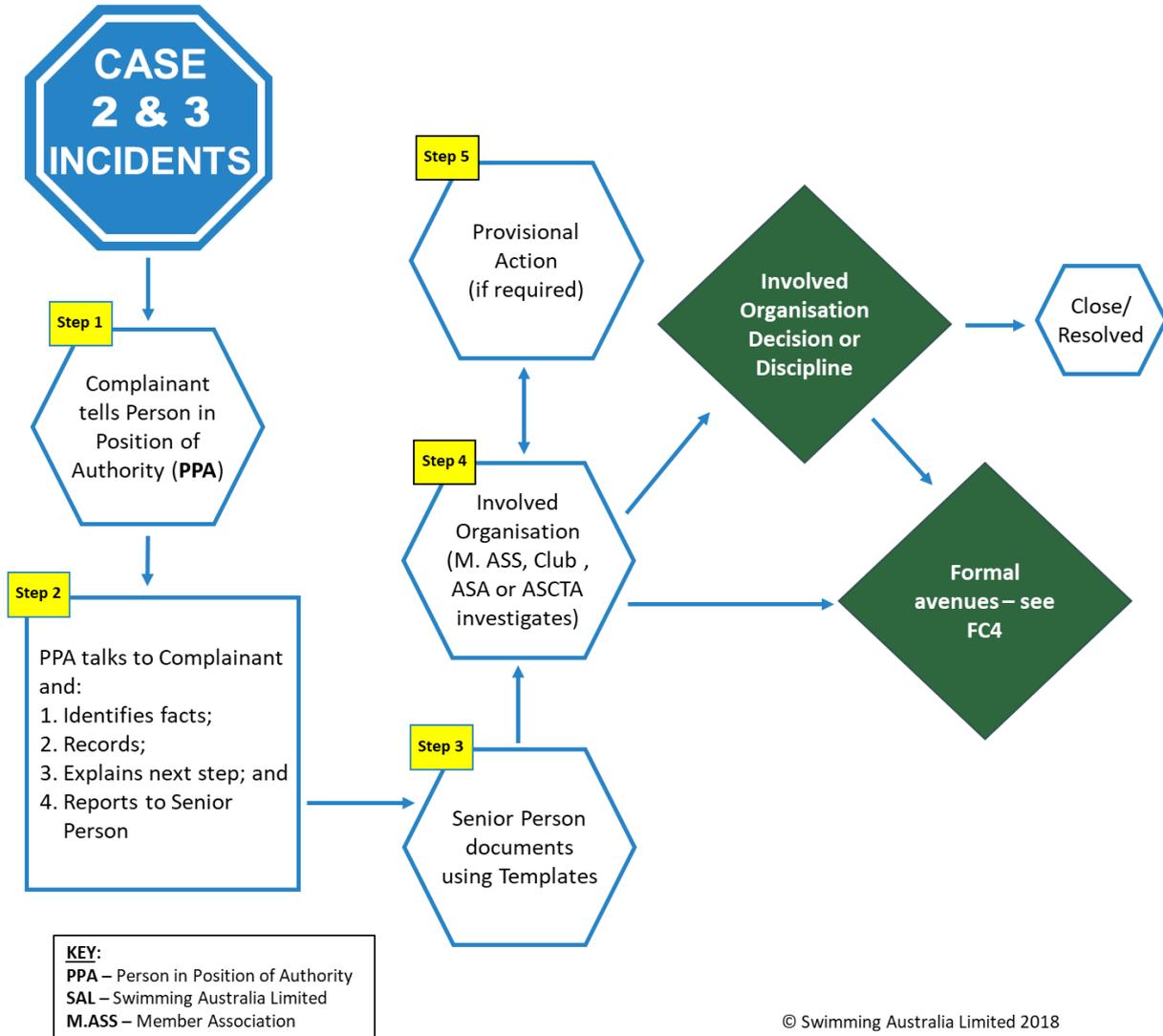
Relevant process selected by the Involved Organisation is undertaken.

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

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

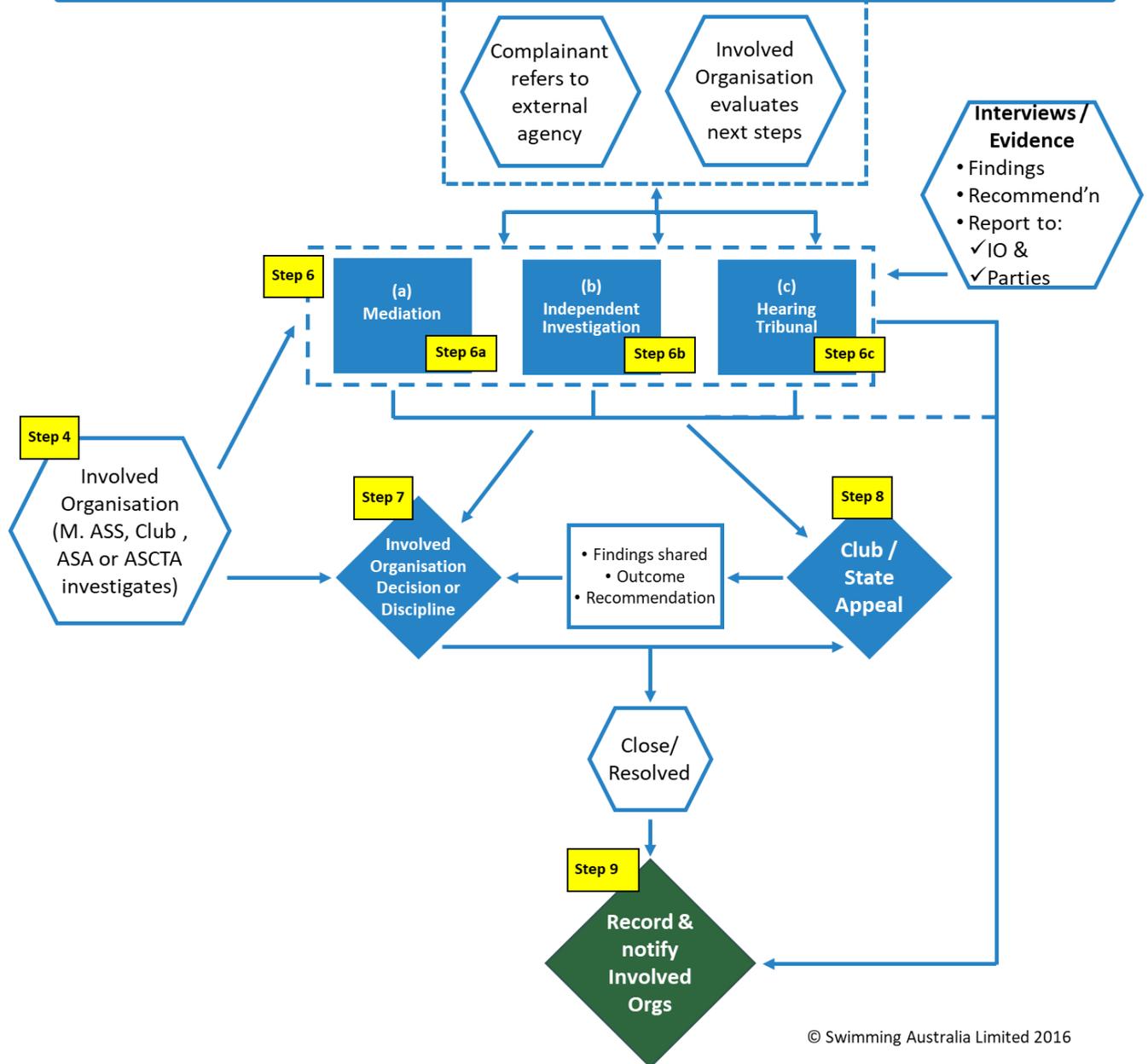
**Step 9 -** Record of Complaint finalised. Swimming Australia Limited and Involved Organisation notified of outcome of Complaint. Complaint closed.

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



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## FC4: Formal resolution of CASE 2 & 3 complaints



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

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

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

- (a) who was involved (Respondent and Complainant, as well as witnesses, including any known contact details);
- (b) if a Child or Young Person was involved, the details of the Child or Young Person's age and parent/guardian details;
- (c) what the Complainant observed or heard;
- (d) when the Complainant observed the concerning incident, behaviour or conduct;
- (e) where the concerning incident, behaviour or conduct occurred;
- (f) why the Complainant is concerned and the impact of the incident (ie injuries, others at risk of Harm); and
- (g) if known, what the Complainant would like to happen next and the outcome the Complainant is seeking.

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

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

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

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

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

Regardless of whether the Complainant is a Member, Participant or a Person in a Position of Authority, it is critical that all Complaints are treated seriously and without judgment. We all

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

There are certain circumstances that make it inappropriate for a particular Person in a Position of Authority to speak to a Complainant about a Complaint, regardless of whether the Complainant specifically informed that Person in a Position of Authority of their Complaint. In the following circumstances, it may be appropriate for another Person in a Position of Authority, or a Senior Person, to talk to the Complainant once a Complaint is lodged:

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

Where any of the circumstances in (j) - (m) above arise, it may be appropriate for a different Person in a Position of Authority to talk to the Complainant, **unless the Complainant specifically requests, or will only speak to, that particular Person in a Position of Authority.**

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

- (n) talk to the Complainant calmly and without judgment or opinion;
- (o) ensure that your conversation is occurring in a private and safe environment;
- (p) ask non-leading questions to establish what the Complainant's concerns are. This can be in the form of the questions set out at Step 1 (a)-(g) (who, what when, where, why, what next?);
- (q) if appropriate (for example, the issue is minor, easily resolved and no person is in danger) take steps to resolve the Complaint at that time;
- (r) if the person receiving details of the Complaint is not an employee, official or coach of Swimming Australia or Club and the Complaint is not easily resolved, seek out a Swimming Australia employee, official or coach and tell them what you and/or the Complainant know about the Complaint; and
- (s) take notes or record the details of what you find out regarding the Complaint.

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

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

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

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

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

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

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

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

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

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

- (a) ensure that all relevant information is recorded regarding the Complaint in the "Complaint Recording Template" in the Safe Sport Resources section on the

Swimming Australia Limited website and in relation to the outcomes of decision-making; and

- (b) ensure that all allegations of Sexual Abuse of a Child or Young Person are reported to police (see **Mandatory Reporting**).

When completing the Complaint Recording Template, the Senior Person should include as much information as possible in response to the specific questions at Step 1(a) - (g) above. The inclusion of as much information as possible in the Complaint Recording Template makes it easier for Swimming Australia Limited or the Delegated Organisation to investigate and action the Complaint.

Complaint Recording Templates for Case 1 Complaints must be retained in a safe and secure location for 7 years after the incident, to ensure a copy is available for the duration of relevant limitations of liability period under the law. Refer to Section 4.5 for more information regarding record-keeping.

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

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

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

#### **Mandatory reporting**

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

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

Child Protection Concerns are defined in this Policy as including:

- (a) disclosures of actual Harm, Abuse or Sexual Exploitation of a Child or Young Person;

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

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

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

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

Depending on:

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

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

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

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

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

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

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

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

**Australian Capital Territory:**

Office for Children, Youth and Families

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

**New South Wales:**

Department of Family and Community Services

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

**Northern Territory:**

Office of Children and Families

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

**Queensland:**

Department of Communities, Child Safety and Disability

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

**South Australia:**

Department for Families and Communities

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

**Tasmania:**

Department of Health & Human Services

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

**Victoria:**

Department of Human Services

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

**Western Australia:**

Department for Child Protection

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

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

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

- (a) determine whether or not the concerns should be reported to the relevant child protection authority or police. If the Person in a Position of Authority strongly disagrees with a decision not to report, he/she maintains the right to report the matter to the relevant child protection authority or police. In this event, it is expected that the report will occur jointly with the Senior Person. See **Mandatory Reporting** for further information;
- (b) if a report is made to the relevant child protection authority or the police, determine who, when and what will be communicated to the relevant child protection authority or police.
- (c) in conjunction with the Person in a Position of Authority, determine whether or not the decision to notify the relevant protection authority is communicated to the Child or Young Person's parents/carers. As a principle, parents/carers of Children or Young Persons will be informed of and be involved in the process of the decision to make a notification to the relevant child protection authority unless doing so jeopardises the Child or Young Person's safety or the safety of any other person;
- (d) if a report is not made to the relevant child protection authority, arrange for Swimming Australia Limited to develop and document a plan that will offer an appropriate range of support to the Child or Young Person and their family to address the concerns, should that be appropriate in the circumstances.
- (e) establish a plan to offer support and counselling as required to the Child or Young Person who has been allegedly assaulted and his/her family, where appropriate;
- (f) establish a plan to offer support and debriefing to other relevant Persons in Positions of Authority about the incident as soon as practicable;
- (g) subject to (i) below, once informed of the allegations, provide the Respondent with access to counselling and support as organised by the relevant Senior People, as appropriate;
- (h) set a review date to evaluate any changes arising from the support offered to the family of the Child or Young Person. At any stage, additional concerns about the Child or Young Person will be addressed. The Senior Person may escalate the extent of

intervention provided to the Child or Young Person and family if the concerns for the Child or Young Person's safety increase; and

- (i) not, and must ensure that Swimming Australia Limited does not, communicate with the Respondent against whom the allegations have been made. Police will determine the procedure for communicating with the Child or Young Person, their parents or carers and the Person in Positions of Authority against whom the allegations have been made.

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

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

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

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

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

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

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

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

Natural Justice requires that each person that is a party to the complaint is informed about the allegations and has an opportunity to respond to them.

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

- (c) connect with the Complainant(s) on behalf of the appropriate Involved Organisation responding to and investigating the Complaint;

- (d) connect with the Respondent(s) against whom the allegation refers at an appropriate time and give the Respondent an opportunity to:
  - (i) hear the allegation(s) against him/her/it in full;
  - (ii) explain or respond to the allegation(s), either orally, in writing or both;
  - (iii) identify any witnesses and supporting evidence in favour of the Respondent;
  - (iv) invite a support person or advisor, who must not be qualified as a lawyer or barrister, to attend any meeting with the person investigating; and
  - (v) be provided support (for example, professional counselling) if necessary;
- (e) where possible, obtain a signed statement and record of interview from the Respondent;
- (f) make contact with any witnesses and obtain, where possible, written and signed statements outlining details of the allegation (what happened, when, how); and
- (g) obtain other information that could assist in making a decision on the allegation.

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

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

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

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

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

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

- (a) the seriousness of the allegations contained in the Complaint;
- (b) who the relevant Involved Organisation is;

- (c) whether Swimming Australia Limited is the best organisation to handle the Complaint; and
- (d) any other factors that are relevant to the decision to delegate a Complaint.

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

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

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

Provisional Action may include, but is not limited to:

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

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

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

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

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

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

### **Evaluating Next Steps**

After completing the internal investigation under Step 6, Swimming Australia Limited or the Delegated Organisation must determine what action is taken next, namely:

- (a) closing the Complaint where no further action is required, or no longer sought by the Complainant;

- (b) making a decision and imposing disciplinary measures (if required) in response to the internal investigation of the Complaint (see Step 6 or 8);
- (c) referring the Complaint to an Independent Investigation; or
- (d) referring the Complaint to a Hearing Tribunal.

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

**Table B - Processes for resolving Complaints**

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

### **Step 10 - Complaint resolution procedure**

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

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

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

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

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

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

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

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

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

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

The form of disciplinary measures to be imposed on an individual or organisation should depend on factors such as:

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

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

### **Step 12 - Appeal**

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

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

Where an appeal is lodged, the Appellant (who may be the original Complainant or the original Respondent) is required to submit a Notice of Appeal to the CEO of the Involved Organisation which will hear the Appeal (see Table A).

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

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

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

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

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

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

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

- (a) file all materials lodged by each party to the Complaint in a confidential and secure location;
- (b) document the decision made with respect to the Complaint;
- (c) document any disciplinary measures arising out of the Complaint; and
- (d) record any additional outcomes of the Complaint.

The relevant Involved Organisation must:

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

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

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

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

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

- (a) who was involved (Respondent & 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 incident, behaviour or conduct occurred is alleged to have 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.

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

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

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

- (h) talk to a Person in a Position of Authority who can guide you/the Complainant as to next steps; and/or

- (i) depending on the nature and seriousness of the Complaint, formalise the Complaint to your Club or Member Association, as appropriate, based on the incident categorisation (Table A at Section 4.10).

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

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

There are certain circumstances that make it inappropriate for a particular Person in a Position of Authority to speak to a Complainant about a Complaint, regardless of whether the Complainant specifically informed that Person in a Position of Authority of their Complaint. In the following circumstances, it may be appropriate for another Person in a Position of Authority, or a Senior Person, to talk to the Complainant once a Complaint is lodged:

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

Where any of the circumstances in (a) - (d) above arise, it may be appropriate for a different Person in a Position of Authority to talk to the Complainant, **unless the Complainant specifically requests, or will only speak to, that particular Person in a Position of Authority.**

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

- (e) talk to the Complainant calmly and without judgment or opinion;
- (f) ensure that your conversation is occurring in a private and safe environment;
- (g) ask non-leading questions to establish what the Complainant's concerns are. This can be in the form of the questions set out at Step 1 (a)-(g) (who, what when, where, why, what next?);
- (h) if appropriate (for example, the issue is minor, easily resolved and no person is in danger) take steps to resolve the Complaint at that time;
- (i) if the person receiving details of the Complaint is not an employee, official or coach of Swimming Australia and the Complaint is not easily resolved, seek out a Member Association or Club employee, official or coach and tell them what you and/or the Complainant know about the Complaint; and

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

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

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

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

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

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

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

Once a Complaint is reported to a Senior Person under Step 2, the Senior Person must ensure that all relevant information is recorded regarding the Complaint (see “Complaint Recording Template” located in the Safe Sport Resources section on the Swimming Australia Limited website) and in relation to the outcomes of decision-making.

When completing the Complaint Recording Template, the Senior Person should include as much information as possible in response to the specific questions at Step 1(a) - (g) above. The inclusion of as much information as possible in the Recording Template makes it easier for the Involved Organisation to investigate and action the Complaint.

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

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

Natural Justice requires that each person that is a party to the Complaint is informed about the allegations and has an opportunity to respond to them.

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

- (a) connect with the Complainant(s) on behalf of the appropriate Involved Organisation responding to and investigating the Complaint;
- (b) connect with the Respondent(s) against whom the allegation refers at an appropriate time and give the Respondent an opportunity to:
  - (i) hear the allegation(s) against him/her/it in full;
  - (ii) explain or respond to the allegation(s), either orally, in writing or both;
  - (iii) identify any witnesses and supporting evidence in favour of the Respondent;
  - (iv) invite a support person or advisor, who must not be qualified as a lawyer or barrister, to attend any meeting with the person investigating; and
  - (v) be provided support (for example, professional counselling) if necessary;
- (c) where possible and appropriate, obtain a signed statement and record of interview from the Respondent. The Respondent must have been provided with written particulars of the allegations prior to this occurring;
- (d) make contact with any witnesses and, where possible and appropriate, obtain written and signed statements outlining details of the allegation (what happened, when, how); and
- (e) obtain other information that could assist in making a decision on the allegation.

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

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

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

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

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

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

Provisional Action may include, but is not limited to:

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

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

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

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

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

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

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

### **Evaluating Next Steps**

After completing the internal investigation under Step 6, the Involved Organisation must determine what action is taken next, namely:

- (a) closing the Complaint where no further action is required, or no longer sought by the Complainant;

- 
- (b) making a decision and imposing disciplinary measures (if required) in response to the internal investigation of the Complaint (see Step 6 or 7);
  - (c) referring the Complaint to mediation.
  - (d) referring the Complaint to an Independent Investigation; or
  - (e) referring the Complaint to a Hearing Tribunal.

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

**Table C - Processes for resolving Complaints**

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

### Step 6 - Complaint resolution procedure

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

- section 4.16 for Independent Investigations;
- section 4.17 for Hearing Tribunals; and
- section 4.19 for Mediation.

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

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

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

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

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

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

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

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

The form of disciplinary measures to be imposed on an individual or organisation should depend on factors such as:

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

### **Step 8 - Appeal**

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

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

Where an appeal is lodged, the Appellant (who may be the original Complainant or the original Respondent) is required to submit a Notice of Appeal to the CEO of the Involved Organisation which will hear the Appeal (see Table A at section 4.10).

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

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

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

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

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

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

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

- (a) file all materials lodged by each party to the Complaint;
- (b) document the decision made with respect to the Complaint;
- (c) document any disciplinary measures arising out of the Complaint; and
- (d) record any additional outcomes of the Complaint.

The relevant Involved Organisation must:

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

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

### **4.15 Disciplinary Measures**

#### **Who can impose disciplinary measures?**

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

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

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

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

#### **How are disciplinary measures imposed?**

Any disciplinary measure imposed under this section must:

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

#### **Individuals**

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

1. maintain any Provisional Action already taken in relation to the Complaint;
2. direct that the Respondent make a verbal or written apology;
3. provide a written warning;
4. direct that the Respondent attend counselling to address their behaviour;
5. direct that the Respondent do something, or refrain from doing something, to remedy the breach of this Policy;
6. withdraw any awards, placings, records, achievements bestowed in any competition, activities or events held or sanctioned by the organisation;
7. demote or transfer the Respondent to another location, role or activity;
8. suspend the Respondent's membership or participation or engagement in a role or activity;
9. recommend that another organisation suspend the Respondent's membership, appointment or engagement;
10. in the case of a coach, Athlete or official, direct that the relevant accrediting organisation de-register the accreditation of the coach or official for a period of time or permanently;
11. termination or other disciplinary action in accordance with the Respondent's contract of employment and/or workplace legislation; or
12. any other form of discipline that the Disciplining Body considers appropriate.

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

#### **Organisations**

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

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

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

### **Appeal**

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

#### 4.16 Independent Investigation Procedure

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

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

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

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

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

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

##### **Investigation**

1. The Involved Organisation will provide a written brief to the Investigator to ensure that the terms of engagement and scope of the Investigator's role and responsibilities are clear.
2. The Complainant should be interviewed by the Investigator and the Complaint and any key information arising from the interview(s) documented in writing by the Investigator. The Complainant is entitled to have a support person present during any interview that takes place, subject to the support person never being admitted as a lawyer or barrister.
3. The key details of the Complaint should be conveyed to the Respondent(s). The Respondent(s) must be given sufficient information to enable them to properly respond to the Complaint.
4. The Respondent(s) should be interviewed by the Investigator and given the opportunity to respond to the allegations. The Respondent(s) response to the Complaint should be documented in writing by the Investigator. The Respondent is entitled to have a support person present during any interview, subject to the support person never having been admitted as a lawyer or barrister.
5. If, in the process of the Independent Investigation, there continues to be a dispute regarding the facts, then statements from witnesses and other relevant evidence should be obtained by the Independent Investigator to assist in reaching conclusions and preparation of a report and recommendations.
6. The Investigator must make a finding, on the balance of probabilities, as to whether the Complaint, or each of the allegations in the Complaint (as appropriate) is:

- (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.
7. A report documenting the Complaint, the investigation process, evidence, finding(s) and, if requested, recommendations, should be given to the CEO (or his/her delegate) of the Involved Organisation who may, in consideration of the report of the Independent Investigator, either:
  - (a) take disciplinary action against either the Respondent, Complainant or any other person/persons involved in the Complaint in accordance with "Sanction" below;
  - (b) refer the Complaint to a Hearing Tribunal (which will take place in accordance with the Hearing Tribunal Procedure) to determine what, if any, further action to take; or
  - (c) take no further action and close the Complaint handling procedure under this Policy.
8. Within 14 days of the CEO (or his/her delegate) of the Involved Organisation receiving a report of an Independent Investigator, a report must be provided to the Complainant(s) and the Respondent(s) which summarises the investigation process and documents key points that were found to be substantiated, inconclusive, unsubstantiated or mischievous (**Report**). Where the Report relates to one or more Children or Young Persons, as either the Complainant or a witness, the Report may be redacted to the extent required to protect the identity of the Children or Young Persons. Each party to the Complaint must be provided an opportunity to provide a written response to the Report, should they wish.
9. All parties to the Complaint receiving a copy of the Report of the Independent Investigator must maintain strict confidentiality of the Report, other than where necessary to disclose the contents of the Report in order to obtain legal advice or as required by law. Any disclosure of the Report other than in accordance with this item 9 is a breach of this Policy and may result in disciplinary action being taken against the party making the disclosure.
10. Subject to item 4, both the Complainant and the Respondent(s) are entitled to support throughout this process from their chosen support person/adviser.

#### 4.17 Hearing Tribunal Procedure

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

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

##### Preparing for a Hearing Tribunal

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

- (b) details of the Complaint, including any relevant policy, rules or regulations which have allegedly been breached (if there is more than one Complaint these should be set out separately);
- (c) the date, time and venue of the Hearing Tribunal;
- (d) that the Respondent can make either verbal or written submissions to the Hearing Tribunal;
- (e) that the Respondent may arrange for witnesses to attend the Tribunal hearing to support their position (statutory declarations of witnesses not available to attend and from character witnesses may also be provided to the Tribunal hearing);
- (f) an outline of any possible penalties that may be imposed if the Complaint is found to be true;
- (g) that legal representation will not be allowed; and
- (h) that if the Respondent is considered a Child or Young Person, they should have a parent or guardian present.

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

10. The CEO will inform the Complainant by written notification that a Hearing Tribunal will take place. The written notification will outline:
- (a) that the Complainant has a right to appear at the Hearing Tribunal to support their Complaint;
  - (b) details of the Complaint, including any relevant policies, rules or regulations (if there is more than one Complaint these should be set out separately);
  - (c) the date, time and venue of the Hearing Tribunal;
  - (d) that the Complainant can make either verbal or written submissions to the Hearing Tribunal;
  - (e) that the Complainant may arrange for witnesses to attend the Tribunal hearing to support their position (statutory declarations of witnesses not available to attend and from character witnesses may also be provided to the Tribunal hearing);
  - (f) that legal representation will not be allowed; and
  - (g) that if the Complainant is considered a Child or Young Person, they should have a parent or guardian present.

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

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

### **Hearing Tribunal Procedure**

12. The following people are allowed to attend the Hearing Tribunal:
  - (a) the Panel Members;
  - (b) the Respondent;
  - (c) the Complainant;
  - (d) any witnesses called by the Respondent, but only for the period deemed required by the Chairperson for the witness to provide evidence and be questioned;
  - (e) any witnesses called by the Complainant, but only for the period deemed required by the Chairperson for the witness to provide evidence and be questioned;
  - (f) any parent or guardian or support person, excluding a legal representative, required to support the Respondent; and
  - (g) any parent or guardian or support person, excluding a legal representative, required to support the Complainant.
13. The Chairperson should call the hearing to order at the designated time and determine if the Respondent is present.
14. If the Respondent is not present and the Chairperson considers that no valid reason has been presented for their absence, the Hearing Tribunal may continue subject to the Tribunal Chairperson being satisfied that all notification requirements under the Hearing Tribunal procedures have been carried out correctly and that the principles of Natural Justice will not be prejudiced solely by the absence of the Respondent.
15. If the Chairperson considers that a valid reason for the non-attendance of the Respondent is presented, or the Chairperson does not believe the notification requirements have been carried out correctly, then the Hearing Tribunal should be rescheduled to a later date. The Chairperson will inform the CEO of the Involved Organisation of the need to reschedule, and the CEO of the Involved Organisation should organise for the Hearing Tribunal to be reconvened.
16. The Chairperson will read out the Complaint, ask the Respondent if they understand the Complaint being made against them, and if they agree or disagree with the Complaint.
17. If the Respondent agrees with the Complaint, he or she will be asked to provide any evidence or witnesses that should be considered by the Hearing Tribunal when determining any disciplinary measures.
18. If the Respondent disagrees with the Complaint, the Complainant should be asked to describe the circumstances that led to the Complaint being made. The Complainant may:

- (a) refer to brief notes; and
- (b) call witnesses.

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

19. The Respondent should then be asked to respond to the Complaint. The Respondent may:

- (a) refer to brief notes; and
- (b) call witnesses.

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

20. Both the Complainant and Respondent should be allowed to be present when evidence is presented to the Hearing Tribunal. Witnesses may be asked to wait outside the Hearing Tribunal until required.

21. The Hearing Tribunal may:

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

22. The Hearing Tribunal must not:

- (a) draw any adverse inference solely from a Complainant who is a Child or Young Person failing to be present at the Hearing Tribunal, or failing to be present and being represented by their parent/guardian;
- (b) allow the Respondent to submit that an adverse inference should be drawn from the circumstances in (a) above; or
- (c) draw an adverse inference where a Complainant who is a Child or Young Person provides evidence only by statutory declaration or other written statement prior to the Hearing Tribunal.

23. Video evidence, if available, may be presented. The arrangements for such presentation will be the responsibility of the person/s wishing to offer this type of evidence.

24. If the Hearing Tribunal considers that at any time during the Hearing Tribunal that there is any unreasonable or intimidating behaviour from anyone, the Chairperson has the power to deny any further involvement of the person in the Hearing Tribunal.

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25. After all of the evidence has been presented the Hearing Tribunal will, subject to paragraph 28 below, make its decision in private. If the Hearing Tribunal believes the Complaint has been substantiated on the balance of probabilities (i.e. more probable than not), the Respondent should then be given an opportunity to address the Hearing Tribunal and make submissions on any disciplinary measures that may be imposed and including but not limited to mitigating circumstances.
26. The Hearing Tribunal may impose a disciplinary measure on the Respondent where it upholds the Complaint in whole or in part. The Hearing Tribunal will impose the disciplinary measure in accordance with section 4.15.
27. All decisions made by the Hearing Tribunal will be based on a majority vote.
28. Where a decision is made at the hearing the Chairperson should announce the decision in the presence of all those involved in the Tribunal Hearing and should then declare the Tribunal Hearing closed. Where a decision will be made after the hearing, the Chairperson should inform the parties of this fact and declare the Tribunal Hearing closed.
29. Within 48 hours, the Chairperson should:
- (a) forward to the CEO of the Involved Organisation a copy of the Hearing Tribunal decision including any disciplinary measures imposed; and
  - (b) forward a letter to the Respondent reconfirming the Hearing Tribunal's decision and any disciplinary measures imposed. The letter should also outline the process and grounds for an appeal to be made.
30. The Hearing Tribunal does not need to provide written reasons for its decision, but may do so if it chooses.

#### 4.18 Appeal Procedure

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

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

5. If the Notice of Appeal is not received by the CEO of the relevant Involved Organisation within this time, the right of appeal will lapse. If the Notice of Appeal is received but the appeal fee is not received within this time, the appeal will also lapse.
6. A Notice of Appeal to the organisation listed in item 4 above is only permitted on one or more of the following grounds:
  - (a) the decision was affected by actual bias; or
  - (b) there was no evidence on which the decision could be reasonably based.
7. The Notice of Appeal must set out the ground(s) of appeal relied upon by the Appellant and an outline of the Appellant's submissions in relation to the appeal.
8. Where an appeal is lodged, the relevant Involved Organisation must appoint an Appeal Panel Chairperson. Involved Organisations may appoint a permanent Tribunal Chairperson from time to time, and one or more alternate Appeal Panel Chairpersons to act from time to time as Appeal Panel Chairperson. Involved Organisations are entitled, at any time, to replace or remove any Appeal Panel Chairperson or fill any casual vacancy.
9. Where an Appeal is lodged, the relevant Appeal Panel Chairperson must in his/her absolute discretion determine, on the papers, whether:

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

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

- (a) it must observe the principles of Natural Justice;
- (b) it is not bound by the rules of evidence and may inform itself as to any matter in such manner as it thinks fit;
- (c) it will conduct its hearings with as little formality and technicality and with as much expedition as the gravity and proper consideration of the matter permits;
- (d) hearings may occur in such manner as the Appeal Panel Chairperson decides, including via telephone or video conference;
- (e) each Appellant must establish one or more grounds of appeal to the reasonable satisfaction of the Appeal Panel with full regard to the full importance and gravity of the issue;
- (f) the parties to an appeal will not be entitled to be represented by a barrister or solicitor save with the leave of the Appeal Panel Chairperson, which will only be given in exceptional circumstances and, if given, may be given unconditionally or on such conditions as the Appeal Panel Chairperson thinks fit;
- (g) if a question of law arises during the course of an Appeal, the Appeal Panel may, at the request of the parties or at the discretion of the Tribunal Chairperson, adjourn the hearing of the appeal in order to obtain legal advice;
- (h) the Appeal Panel Chairperson may require the parties to attend a directions hearing or hearings (whether in person or by any other means of communication determined upon by the Tribunal Chairperson) and the Tribunal Chairperson may give directions from time to time to assist in the efficient and expeditious conduct of the hearing;
- (i) if the Tribunal Chairperson is of the view that the outcome of the appeal may affect the interests of any person in addition to the Appellant, the Appeal Panel Chairperson may, so far as practicable, require that notice be given to such other person or persons and that person or those persons may appear at the hearing of the appeal and/or make written submissions to the Appeal Panel;
- (j) the Appeal Panel will give its decision on any appeal as soon as practicable after the hearing and will provide the CEO, the Appellant and other parties to the appeal with a written statement of the reasons for its decision;
- (k) each Appellant must attend his or her appeal hearing in person or (if the Appeal Panel Chairperson has decided the hearing will occur by telephone or video conferencing) over the audio or audio and visual link established for the purposes of the hearing; and
- (l) notwithstanding anything else in this Appeals section, the Appeal Panel may give its decision on any appeal on the papers (i.e. without holding a hearing) if so determined by the Appeal Panel having regard to the principles of Natural Justice. The Appeal Panel will give its decision on any appeal on the papers as soon as practicable after its decision.

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

#### 4.19 Mediation Procedure

1. Mediation is a process that allows the people involved in a Complaint to talk through the issues with an impartial person – the Mediator – and work out a mutually agreeable solution.
2. The Mediator does not decide who is right or wrong and does not tell either side what they must do. Instead, he or she helps those involved to talk through the issues and makes sure that the process is as fair as possible for all concerned.
3. Mediation may occur either before or after an investigation of the Complaint
4. **Serious allegations should not be mediated, even if both parties would like to attempt mediation. Mediation is only available to Case 2 or 3 Complaints under this Policy.**
5. Mediation may only be recommended if:
  - (a) both parties have had a chance to tell their version of events;
  - (b) the Senior Person dealing with the Complaint does not believe that any of the allegations warrant any form of disciplinary action; and
  - (c) in the opinion of the Senior Person dealing with the Complaint, mediation looks like it may work.
6. There are some situations where mediation will not be appropriate, including:
  - (a) when the people involved have completely different versions of the incident;
  - (b) when one or both parties are unwilling to attempt mediation;
  - (c) when the issues raised are sensitive in nature;
  - (d) when there is a real or perceived power imbalance between the people involved; and
  - (e) matters that involve serious, proven allegations.
7. The Person(s) in Positions of Authority or Senior Person should, in consultation with the Complainant and the Respondent(s), appoint a Mediator to help resolve the Complaint. The Person(s) in Positions of Authority or Senior Person's choice of Mediator will be final.
8. The Mediator will talk with the Complainant and Respondent(s) about how the mediation will take place and who will participate. At a minimum, the Mediator will prepare an agenda of issues to be discussed.

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9. All issues raised during mediation will be treated confidentially. Swimming Australia and its Clubs respect the rights of the Complainant and the Respondent(s) to pursue an alternative process if the Complaint is not resolved.
  10. For the avoidance of doubt, neither party is entitled to be represented by a legal practitioner at the mediation.
  11. At the end of a successful mediation the Mediator will prepare a document that sets out the agreement reached between the Complainant and Respondent(s) and they should sign it as their agreement. The parties involved must respect and comply with the terms of the agreement.
  12. If the Formal Complaint is not resolved by mediation, the Complainant may:
    - (a) write to the Involved Organisation to request reconsideration of the Complaint via either an Independent Investigation or a Hearing Tribunal; or
    - (b) approach an external agency such as an anti-discrimination commission or equal opportunity commission to resolve the matter.