

PART 1 - COMPLAINTS PROCESS

1. Complaints Form

- a) Any person making a complaint (**Complainant**) in relation to a breach of the AUSTSWIM Teacher Code (the **Code**) must submit such complaint to the Hearings Officer in the form set out in **Appendix A - Complaint Form (also refer to website)**.
- b) Notwithstanding anything above, if the Hearings Officer becomes aware of a potential breach of the Code, he/she may deal with that potential breach under this By-law as if a complaint had been received under rule 2(a).

2. Investigations

- a) Where a complaint is received by the Hearings Officer, the Hearings Officer may investigate, or appoint a person to investigate on his or her behalf, the alleged offence and establish whether there is sufficient merit to the complaint for the matter to be submitted to the Review Panel.
- b) The person conducting the investigation shall have all powers reasonably required for the purposes of the investigation, including, but not limited to, calling for and viewing any evidence, inspecting documents and/or questioning witnesses.
- c) Following an investigation, the Hearings Officer may convene the Review Panel if he/she considers it appropriate to do so, in his/her sole discretion.

3. Duties of Hearings Officer

- a) If the Hearings Officer considers that a complaint necessitates convening the Review Panel, the Hearings Officer shall have the following duties:
 - i. provide details of the alleged offence(s) to the members of the Review Panel as soon as possible;
 - ii. provide details of the results of the investigation conducted under rule 2;
 - iii. schedule the venue, time and date to be set aside for a hearing of the Review Panel;
 - iv. ensure that three members of the Review Panel are present to deal with any matters referred to it for determination;
 - v. receive and refer to the Review Panel Complaint Form and all other material relevant relating to the complaint;
 - vi. notify the person cited of the date, time and place of the Review Panel hearing;
 - vii. notify the person cited of the details of the complaint including providing them with a copy of the AUSTSWIM Complaint Form;
 - viii. notify the parties of their right to have an adviser advocate on their behalf at the hearing (who may be a legal practitioner) if that person is notified to the Review Panel in accordance with rule 6(d):
 - i. notify the Complainant and any witnesses required to be in attendance, of the date, time and place of the Review Panel hearing; and

- ii. notify each of the required attendees at the hearing of the consequences of non-attendance at the Review Panel hearing.

4. Convening Review Panel hearings

- a) The Review Panel hearing will be convened between 21 and 35 days after the investigation under rule 2 is completed.
- b) A person cited shall be entitled to continue teaching as an accredited AUSTSWIM Teacher until such time as the Review Panel has heard and determined the matter, unless:
 - i. a criminal charge has been brought by the police arising out of the actions that are the subject of the hearing; or
 - ii. the Review Panel Chair has a reasonable belief that there is a threat to the ongoing safety of the community.

PART 2 - CONDUCT OF PANEL HEARINGS

5. Responsibilities of Review Panel Chair

Without limiting any other duties of the Review Panel Chair as set out under this Disciplinary By-law, the Review Panel Chair shall:

- a) chair hearings of the Review Panel or ensure that such task is appropriately delegated to a member of the Review Panel;
- b) provide all relevant parties with an opportunity to be heard;
- c) ensure accurate records are kept of all of the Review Panel's proceedings and decisions using the form set out in Appendix B – **Minutes of Hearing**;
- d) communicate to AUSTSWIM the results of hearings of the Review Panel and provide a copy of the record to AUSTSWIM within 3 days of the hearing; and
- e) consider and deal with any potential or possible conflict of interest issues which may arise from time to time.

6. Attendance at Review Panel Hearings

- a) The following persons shall attend the hearing and be heard by the Review Panel:
 - i. the person cited on the Complaint Form;
 - ii. the Complainant;
 - iii. any witnesses required by the person cited, the Complainant, the Hearings Officer or the Review Panel; and
 - iv. where the person cited or the Complainant is under the age of 18 years, an adult adviser.
- b) The following persons shall be entitled to attend the Review Panel hearing with the permission of the Review Panel Chair:

- i. AUSTSWIM representatives; and
 - ii. any other person.
- c) Each party to the Review Panel shall bear their own costs.
- d) The Complainant and the person cited will be allowed to have an adviser advocate on his/her behalf during the hearing (who may be a legal practitioner), provided that the Hearings Officer is notified at least seven days prior to the hearing that an adviser will be acting.

7. Non-attendance at Review Panel Hearings

- a) If the person cited or Complainant fails to attend the Review Panel hearing without reasonable cause, the hearing may proceed and a determination may be made by the Review Panel in the absence of the person cited or Complainant provided that the Review Panel is satisfied that all notification procedures under this Disciplinary By-law have been carried out.
- b) A person cited may apply to the Hearings Officer to have a Review Panel hearing:
- i. adjourned; or
 - ii. convened in another way (e.g. teleconference),
- if there are compelling circumstances which warrant such steps being taken to avoid costs, hardship or significant inconvenience. The Hearings Officer (or the Review Panel Chair if the Review Panel hearing has commenced) has sole discretion on whether or not to grant the application.
- c) If any witness fails to attend a Review Panel hearing, the hearing may continue in his/her absence at the discretion of the Review Panel. However, if such witness has been notified by the Hearings Officer as being a required person at a Review Panel hearing, such witness may be liable to penalty by the Review Panel for obstructing the Review Panel procedures.

8. Procedures of a Review Panel

- a) At the commencement of a hearing the Review Panel Chair shall identify the members of the Review Panel and determine whether the person cited is present to answer the matter(s) set out in the complaint.
- b) The person cited and the Complainant shall be notified of their right to remain in the hearing until all evidence is presented but not to be present whilst the Review Panel considers its findings and determines an appropriate penalty (if any).
- c) The matter(s) as contained in the complaint shall be read out in the presence of all persons eligible to be present.
- d) The person cited shall be asked whether the charge is understood and the Complainant asked whether the charge correctly represents his/her intention.
- e) The person cited shall be asked whether or not they intend to contest the matter(s).
- f) If the person cited does not contest the matter(s), the Review Panel Chair may read a short summary of the facts, admit the Complainant's evidence (written/verbal) and no witnesses need be called to give evidence unless the Review Panel requires it.

- g) If the person cited contests the matter(s), then the Review Panel Chair shall ask all witnesses except the Complainant and the person cited (and their advisers if appointed in accordance with this By-law) to leave the room and to wait to be called to give their evidence.
- h) The Complainant (or the adviser to a Complainant who is a minor) shall proceed to give evidence and the witnesses of the Complainant shall be called upon to give his/her evidence in turn, subject to the approval of the number of witnesses to be called by the Review Panel in its discretion. The person cited or his/her adviser may ask questions of the Complainant or any witness called.
- i) Each witness shall be entitled to leave the Review Panel hearing after giving evidence unless otherwise directed by the Review Panel. Witnesses shall be entitled to remain in the hearing room after giving evidence with the permission of the Review Panel.
- j) The person cited shall then be entitled to present their defence. Witnesses may be called subject to the approval of the number of witnesses to be called by the Review Panel in its discretion. The Complainant or adviser may ask questions of the person cited or any witness called.
- k) The Review Panel is empowered to question any person giving evidence. If the Review Panel determines that any witness is giving deliberately false or misleading evidence, the Review Panel may:
 - i. make such finding at the original Review Panel hearing; or
 - ii. require such persons to attend a further Review Panel hearing to respond to the allegations, where such person may be penalised by the Review Panel for obstructing the Review Panel procedures.
- l) Where a person cited has an adviser present in accordance with this Disciplinary By-law, a reasonable opportunity for consultation between the person cited and the adviser shall be provided by the Review Panel.
- m) Where the person cited makes video evidence available to the Review Panel, it may, at the discretion of the Review Panel, be presented. The onus of providing suitable viewing equipment shall lie with the person requesting that the evidence be presented before the hearing.
- n) At the conclusion of all of the evidence and submissions the chairperson shall ask the person cited, the Complainant and all other persons present to leave the hearing room while the Review Panel considers its findings.
- o) If the Review Panel is satisfied that a charge has been established on the balance of probabilities (i.e. more probable than not) it shall find the charge proved. Otherwise the charge shall be dismissed.
- p) If the Review Panel is not satisfied that the particular charge has been proved, but is satisfied that a lesser charge has been established, then the Review Panel may find such lesser charge established and shall apply the penalty applicable to the lesser charge.
- q) Where it appears to the Review Panel that the Complainant has made an error in laying the wrong charge or omitted charges that should have been laid, the Review Panel may amend the complaint and proceed to make a finding. Further, the Review Panel has the right to direct that a person other than the person cited be charged with an offence under this By-law on the basis of evidence presented before it during the course of conducting a hearing.

- r) The decision of the Review Panel shall be given in the presence of all, by the Review Panel Chair.
- s) The Review Panel shall determine the penalty to be imposed (if any) and shall advise the person cited of the penalty. The Review Panel Chair shall notify the Hearings Officer of the decision of the Review Panel.
- t) The Review Panel is not obliged to give oral or written reasons for any decision made by it under this By-law.

PART 3 – OFFENCES AND PENALTIES

9. Penalty

- a) The Review Panel shall have power to suspend, disqualify, disaccredit, reprimand, fine, bond, ban, or otherwise deal with any person found guilty of an offence in accordance with this Disciplinary By-law.
- b) A penalty handed down under this By-law shall commence from the date of the Review Panel finding unless otherwise expressly directed by the Review Panel.
- c) The Review Panel may take into account any penalties previously ordered against the person cited when determining the penalty to be handed down in each case.
- d) A person who is disqualified, disaccredited or otherwise suspended by the Review Panel under this Disciplinary By-law shall not advertise any AUSTSWIM accreditation or association with AUSTSWIM for the duration of the period of suspension.

PART 4 – APPEALS

10. Appeals Panel

- a) The Appeals Panel shall be appointed by the Board from time to time to hear appeals as required by AUSTSWIM and shall comprise the following persons:
 - i. a chairperson who shall be a person of experience and skills suitable to the function of chairing an Appeals Panel and discharging the responsibilities set out under rule 10 (**Appeals Panel Chair**); and
 - ii. two additional Appeals Panel members.
- b) An Appeals Panel member may hold another position within AUSTSWIM, or currently be a member of AUSTSWIM.
- c) No member of the Appeals Panel shall hear any matter in which he or she has an actual or perceived conflict of interest that might call into question the impartiality of the Appeals Panel (except that an actual or perceived conflict of interest does not arise solely due to the circumstances listed in clause 10(b)).
- d) AUSTSWIM shall not appoint any of the Review Panel members who were involved in the original hearing of the matter which is the subject of an appeal to the Appeals Panel.

- e) No Appeals Panel decision shall be invalidated by any irregularity in the appointment of a Review Appeals Panel.
- f) All decisions made by the Appeals Panel will be by majority vote.
- g) If an appeal hearing is granted by the chairperson of the Appeals Panel under rule 14, the Appeals Officer shall convene an Appeals Panel to hear and determine the appeal in accordance with this Disciplinary By-law.
- h) AUSTSWIM shall appoint an officer to be responsible for the processing of appeals made under this Disciplinary By-law (**Appeals Officer**). The Appeals Officer may hold another position within AUSTSWIM and may also be the Hearings Officer. Unless another person is appointed to this role, the Appeals Officer shall be the General Manager – Accreditation and Compliance of AUSTSWIM.

11. Right of Appeals

- a) There is only one right of appeal following the decision of the Review Panel. Any appeal must be solely and exclusively resolved by the Appeals Panel and the decision of the Appeals Panel is final and binding on the parties.
- b) A person shall exercise his/her right of appeal (**Appellant**) under this Disciplinary By-law and have any appeal heard and determined by the Appeals Panel before commencing any proceedings or becoming a party to any proceedings in a court of law.

12. Notice of Appeals

- a) The Appellant must:
 - i. lodge a notice stating full details of the charges and results thereof and stating in full the grounds of appeal with the Appeals Officer within seven days of the notification of a determination of the Review Panel using the form at **Appendix C - Notice of Appeal**; and
 - ii. pay the appeal fee to the Appeals Officer when lodging the Notice of Appeal, which shall be \$100.00.
- b) An Appellant shall be notified by the Appeals Officer within seven days of receipt of the Notice of Appeal of the date and time of the Appeal Hearing which will be no later than 28 days after the notification of the result of the determination of the Review Panel.

13. Serving of Review Panel Penalties

- a) Subject to rule 13(a), where a Review Panel imposes a penalty that suspends the Appellant from swim teaching, the Appellant shall serve that penalty pending the determination of the appeal, unless the Appeals Panel Chair determines that there should be a stay of the execution of the penalty imposed by the Review Panel pending the determination of the appeal.
- b) The Appeals Panel Chair may make an order under rule 13(a) at its sole discretion where it is satisfied that there are exceptional and compelling circumstances. In determining that question, the Appeals Panel shall without limitation have regard to the:
 - i. merits of the appeal and the Appellant's prospects of success;
 - ii. public reputation of AUSTSWIM; and

- iii. safety of the community.

14. Proceedings of Appeals Panel

- a) At the hearing of an appeal, evidence not called at the original hearing shall not be permitted unless the Appeals Panel Chair is satisfied that good reason has been shown as to why such evidence was not called at the Review Panel hearing.
- b) Except as expressly provided, the Appeals Officer, Appeals Panel and persons appearing before it are bound by the same procedures under this Disciplinary By-law as if the Appeals Panel was the Review Panel hearing a matter at first instance.
- c) The Appeals Officer shall provide records of the relevant Review Panel hearing to the Appeals Panel members.
- d) The Appeals Panel shall have the discretion to conduct the hearing as a complete re-hearing or to limit the hearing to consideration of the ground(s) of appeal relied upon by the Appellant in the Notice of Appeals.
- e) An Appeals Panel shall have the power to:
 - i. dismiss the appeal;
 - ii. uphold the appeal;
 - iii. impose any of the penalties set out in this Disciplinary By-law; or
 - iv. reduce, increase or otherwise vary any penalty imposed by the Review Panel, in such manner as it thinks fit.
- f) At the conclusion of the appeal, the Appeals Panel Chair shall ensure that the Appellant and the Complainant are informed of the determinations of the Appeals Panel.
- g) The Appeals Panel is not obliged to give oral or written reasons for its decision.
- h) The Appeals Panel has discretion to refund the appeal fee and shall do so where the appeal results in the charge being dismissed or reduced.

PART 5 - MISCELLANEOUS

15. Relationship with Criminal Matters

- a) If, during a hearing or an investigation under this Disciplinary By-law, it becomes known that a criminal charge has been brought or a genuine criminal investigation is underway arising out of the actions the subject of the hearing or investigation, the Hearings Officer or the Review Panel Chair may rule that further action be deferred until completion of the criminal matter.
- b) In making a determination under rule 15(a), the relevant person(s) shall have regard to the need to ensure the ongoing safety of the community.

16. Disciplining of Members

Nothing in this Disciplinary By-law shall be read to detract from or interfere with the Board's power to discipline members under rule 8 of the Constitution.

Appendix A – Complaint Form

[AUSTSWIM Letterhead]

Person Cited:

Swim School/Venue:

Complainant:

Complainant's contact details:

Signature:

Date:

Code of Conduct rule allegedly breached:

Alleged conduct breaching Code (annex any further material):

OFFICE USE:

Action taken:

Hearing Officer's signature: Date:

Appendix B – Minutes of Hearing

[AUSTSWIM Letterhead]

Minutes of: Review Panel

Held on the/...../.....

Present:

Persons:

Statement of the incident:

Notes:

Decision:

Review Panel Chair's Signature.....Date:...../...../...../

Appendix C – Notice of Appeal

[AUSTSWIM Letterhead]

Notice of Appeal

Date:...../...../.....

RE: APPEAL

I/ we hereby appeal against the findings and/or decisions of the Review Panel which were made on the following date:/...../.....

Ground of Appeal:

The evidence to be called or submitted is:

Enclosed is a cheque/money order for the amount of \$100.00 in payment of the appeal fee.

Applicant's name:.....

Signature(s):Date: