



**SUPPLEMENTARY POLICY
for the
MANAGEMENT OF COMPLAINTS
relating to conduct covered by the 2020/21
AUSTRALIAN HUMAN RIGHTS COMMISSION REVIEW
into GYMNASTICS IN AUSTRALIA**

**(including Supplementary Discipline
and Appeals By-Laws)**

**This Policy must be read in conjunction with the
GA Member Protection Policy and the GA Child Safe Policy as in force from
time to time.**

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PREFACE

Gymnastics Australia (**GA**), in a demonstration of commitment to athlete safety and wellbeing and in acknowledgement of experiences recently shared by athletes, has engaged the Australian Human Rights Commission (**AHRC**) to conduct an independent review (**the AHRC Review**) of the sport of gymnastics in Australia.

The AHRC Review will examine the culture and practices in gymnastics, and provide key stakeholders, past and present, with the opportunity to have their experience heard, acknowledged, and recorded. The Review aims to identify systemic issues and recommend better practices to ensure safety and compliance with human rights principles into the future.

Specifically with regard to conduct, the AHRC will conduct a systemic review into the nature and impact on athletes of misconduct, bullying, abuse, sexual harassment and assault – conduct that will typically amount to a breach of the current GA Member Protection Policy (**GA MPP**) or Child Safe Policy (**CSP**), or equivalent policies of GA in force from time to time (**Relevant Policies**).

Accordingly, GA expects that the AHRC Review may give rise to formal complaints relating to breaches of these important GA policies aimed at protecting GA members. As part of its response to the current environment, and alongside the AHRC Review, GA has engaged with the National Sports Tribunal (**NST**) and Sport Integrity Australia (**SIA**) to establish this temporary 'Supplementary Complaints Management Policy' (this Policy), to ensure that individual complaints covered by the scope of the AHRC Review are, appropriately, managed with enhanced independence, fairness, transparency, efficiency, and consistency.

The Supplementary Complaints Procedure in Part B of this Policy will apply to all individual complaints about misconduct, bullying, abuse, sexual harassment and assault toward an athlete. For clarity, this Policy will not apply to misconduct, bullying, abuse, sexual harassment and assault toward a GA member or former GA member who is not an athlete or was not an athlete at the time of the alleged conduct.

Before making a complaint about Relevant Conduct, individuals may engage with the AHRC Review. Once a complaint about Relevant Conduct has been made, if it is assessed by the Independent Assessor (**IA**) as meeting the additional criteria for a 'Relevant Complaint for the purposes of this Policy, the Procedure for Relevant Complaints in Part C of this Policy will apply. The GA MPP and CSP will remain in force for any matter or complaint that falls outside of the scope of this Policy or that does not meet the criteria for being a Relevant Complaint.

The GA CEO, GA Board, as well as the CEO's and Boards of Association Members have determined that as the AHRC Review will focus on all levels of gymnastics from grassroots to high performance, for the purposes of this Policy, all individual complaints covered by the scope of the AHRC Review will be managed through a single process at the national level. That is, any Relevant Complaints that would ordinarily be covered at club or state/territory level must be dealt with through Part C of this Policy.

Further, to ensure independence, fairness, transparency, and to encourage those athletes affected by misconduct, bullying, abuse, sexual harassment and assault to come forward, the GA CEO and the GA Board have determined that for the purposes of this temporary Policy, it is preferable for the GA CEO and/or their delegate to be at arm's length from discretionary decisions regarding the management of complaints covered by the scope of the AHRC Review to the greatest extent possible.

Accordingly, the Supplementary Complaints Procedure (Part B) established by this Policy limits the involvement of GA and the discretion of the GA CEO and/or their delegate by



incorporating SIA and the NST. These independent national authorities and the IA will manage discretionary aspects of the complaints procedure – making recommendations to the GA CEO that will be adopted and implemented.

Importantly, the GA CEO and the GA Board have committed to adopting and implementing (without change) any recommendations of the IA and SIA when exercising any powers of the GA CEO under this Policy. The GA CEO is contractually required under law to comply with determinations of the NST.

1. PART A – INTRODUCTION AND OVERVIEW

1.1 Title and Short Title of this Policy

- (a) The title of this Policy is the ***Supplementary Policy for the Management of Complaints relating to conduct covered by the 2020/21 Australian Human Rights Commission Review into Gymnastics in Australia***
- (b) The short title of this Policy is the ***'Supplementary Complaints Management Policy'***

1.2 Overview and Purpose of this Policy

This Policy establishes a procedure for dealing with Relevant Complaints – complaints about conduct within scope of the AHRC Review into Gymnastics in Australia (the **Supplementary Complaints Procedure** – Parts B and C).

Importantly, this Policy does not establish new codes of conduct, or new breaches. Rather, it applies an enhanced independent, transparent and fair procedure for dealing with Relevant Complaints under the existing GA MPP and CSP, and other relevant Policies that may have been in force from time to time.

Regardless of the GA Policy that gives rise to the alleged breach, the Supplementary Complaints Procedure (Part B) will apply to all complaints of Relevant Conduct made during the Specified Period. The Procedure for Relevant Complaints (Part C) also sets out additional procedures as well as the Supplementary Disciplinary By-law and Supplementary Appeals By-law that will apply to all Relevant Complaints.

In broad terms and importantly, this means that this Policy will focus on complaints about:

- conduct amounting to misconduct, bullying, abuse, sexual harassment and assault toward athletes; committed by
- people who are current members of, or who remain currently bound by policies of GA; against
- complainants who are or were athletes in Gymnastics in Australia at the time of the alleged conduct.

1.3 The AHRC Review

The AHRC is conducting community engagement and receiving submissions for the AHRC Review for the **Specified Period**.

All individuals seeking to make a complaint about Relevant Conduct during the Specified Period may engage with the AHRC Review.

1.4 The Supplementary Complaints Procedure

During the Specified Period, all complaints about Relevant Conduct must be made to the IA.

During the Specified Period all complaints made by an individual to any official of GA, a GA Association Member or a GA Affiliated Club that relate or appear to relate to misconduct, bullying, abuse, sexual harassment or assault toward athletes in gymnastics in Australia must be redirected to the IA in accordance with the Supplementary Complaints Procedure in Part B of this Policy – regardless of the level of gymnastics at which the report or relevant complaint was made, and regardless of

the level of the sport where the conduct giving rise to the relevant complaint occurred.

Individuals will also be informed of and encouraged to engage with the AHRC Review.

Complaints or reports about conduct other than misconduct, bullying, abuse, sexual harassment and assault of athletes will continue to be handled under the relevant existing GA Policy in force (for instance, the GA MPP or CSP), and at the relevant level of gymnastics (club, state or national).

Individuals who engage with the AHRC Review in the Specified Period will be notified about the new Supplementary Complaints Procedure by the AHRC, and will be provided with the contact details of the IA.

Information about the Supplementary Complaints Procedure and the contact details for the IA will also be made available on the relevant parts of the AHRC and GA and Association Member websites.

When a complaint is made, the IA will assess the complaint and determine:

1. whether the Complainant has made a Relevant Complaint for the purposes of this Policy, and
2. the **Complaint Handling Process** that will be applied.

Where a complaint is determined to *not* be a **Relevant Complaint** for the purposes of this Policy, the current GA Member Protection Policy (GA MPP) and Child Safe Policy (CSP) will apply, and the IA will assist the complainant to submit their complaint to the relevant authority.

1.5 **Other new features of the Supplementary Complaints Procedure, and Procedure for Relevant Complaints**

There are several new, important features of this Supplementary Complaints Procedure that differentiate it from the current Complaints Procedure as set out in the GA MPP and CSP.

First, all complaints accepted as a Relevant Complaint will be handled through a single procedure at the national level. Unlike under the current MPP and CSP, no Relevant Complaint will be referred to an Association Member or Affiliated Club based on the level at which the complaint arose.

Second, independent entities will now be involved in assessing and investigating complaints and adjudicating disputes. An IA will assess each Relevant Complaint and advise which Complaint Handling Process will be applied for managing the Relevant Complaint. SIA will be responsible for conducting investigations of Relevant Complaints (subject to exceptions set out in Attachment C3) and where appropriate recommending Disciplinary Action. The NST will mediate or conciliate Relevant Complaints where appropriate and arbitrate Disciplinary Disputes.

Importantly, the GA CEO, usually responsible for discretionary decision making at critical junctures in the Complaints Handling Procedure has committed to adopt and implement recommendations and determinations made by the IA, SIA and the NST, without change. This ensures that while the GA CEO still (and appropriately) exercises power and undertakes important administrative steps, key discretionary decisions are made solely on the recommendation of an entity at arms-length. To the

extent that this Policy remains subject to any discretion of any authority (e.g. CEO) of a State or Territory Association, these authorities will also adopt and implement recommendations and determinations of the IA, SIA and the NST.

Finally, two new Complaint Handling Processes have been introduced: a Minor Breach Procedure, and a Breach Notice Process. The Minor Breach Process provides for a quick and efficient method of resolving Relevant Complaints where, if an alleged breach had been proven, the appropriate Disciplinary Measure would have been no more serious than a written or verbal (formal or informal) warning.

The Breach Notice Process provides for the GA CEO, having adopted a recommendation from SIA to undertake Disciplinary Action against a Respondent to a Relevant Complaint, to offer the Respondent the opportunity to either:

- accept the breach and the Disciplinary Measure proposed by SIA following investigation; or
- dispute the breach and/or the Disciplinary Measure by applying to the NST for arbitration of a Disciplinary Dispute.

1.6 Constitutional Matters

This Policy has been endorsed by the GA Board of Directors (**Board**) and has been adopted as a GA policy in accordance with cl 22 of the GA Constitution.

For the avoidance of doubt:

- (a) the Supplementary Discipline By-Law and the Supplementary Appeals By-Law (at Attachments C4 and C5) have been adopted as By-laws under this Policy and clauses 11.2(b) and 11.2(c) of the GA Constitution and are binding on all persons and organisations who are bound by this Policy (including Members); and
- (b) this Policy constitutes the Grievance By-Law under clause 11.2(a) of the Constitution to the extent necessary for the handling of complaints regarding Relevant Conduct, and Relevant Complaints.

1.7 The Scope and Application of this Policy

This Policy provides a process for managing complaints about Relevant Conduct and Relevant Complaints.

The IA will determine whether a complaint about Relevant Conduct is a Relevant Complaint for the purposes of this Policy. Not every complaint about conduct prohibited by the GA MPP and/or CSP will be a Relevant Complaint.

(a) What is a Relevant Complaint?

A Relevant Complaint is a complaint made by an Eligible Complainant about Relevant Conduct that if proven would amount to a breach of a Relevant Policy.

For the avoidance of doubt, a complaint can only be a Relevant Complaint if it is made during the Specified Period.

(b) **What is Relevant Conduct?**

Relevant Conduct for the purposes of this Policy is conduct toward an athlete amounting to misconduct, bullying, abuse, sexual harassment or assault.

(c) **What is a Relevant Policy?**

A Relevant Policy is any policy that was in force at the time that the Relevant Conduct is alleged to have occurred.

(d) **Who is an Eligible Complainant?**

A person (or if the person is under a legal incapacity, that person's authorised representative) will be an Eligible Complainant for the purposes of this Policy if they make a complaint during the Specified Period about:

- (i) the conduct of a natural person who is a current member of GA, or who remains bound by any Relevant Policy; and
- (ii) the conduct is Relevant Conduct; and
- (iii) was experienced by the person at a time when they were an athlete (at any level) in gymnastics in Australia.

1.8 **When this Policy is in Force**

- (a) Subject to any requirements of the GA Constitution, Part B of this Policy, which requires, during the Specified Period, that all complaints about Relevant Conduct be made through the Supplementary Complaints Procedure will be in force for the duration of the Specified Period, or until the IA has completed any necessary steps associated with the IA's Initial Assessment in respect of complaints about Relevant Conduct made during the Specified Period.
- (b) Subject to any requirements of the GA Constitution, Part C of this Policy, including the Supplementary Discipline By-Law and Supplementary Appeals By-Law that only apply to Relevant Complaints, will be in force until such time as all Relevant Complaints are resolved (refer cl 4.4), or as required to give effect to Disciplinary Action arising from the handling of Relevant Complaints.

1.9 **Policy applies to all levels of Gymnastics in Australia**

- (a) For clarity, this Policy applies to all levels of gymnastics in Australia.
- (b) All complaints relating to Relevant Conduct must be made through the process outlined in Part B of this Policy.
- (c) Part C of this Policy will apply to all Relevant Complaints.

1.10 **Who is bound by this Policy**

- (a) This Policy applies to anyone involved in the sport of gymnastics in Australia including (but not limited to):
 - (i) persons appointed or elected to boards, committees and sub-committees;
 - (ii) employees, contractors and volunteers of GA;

- (iii) Members of the National Gymsport Commissions;
 - (iv) support personnel appointed or selected to teams and squads (e.g. managers, chaperones, physiotherapists, psychologists, masseurs);
 - (v) coaches and assistant coaches;
 - (vi) Participants;
 - (vii) judges and other officials involved in the regulation of the sport;
 - (viii) Members, including Life Members;
 - (ix) personnel participating in events and activities, including camps and training sessions, held or sanctioned by GA; and
 - (x) any other person including spectators and parents/guardians.
- (b) the following organisations:
- (i) any Association Member and their members; and
 - (ii) any other organisations affiliated with GA or an Association Member and its members;

Association Members are required to adopt and implement this Policy, including any Disciplinary Measures or Interim Arrangements imposed against any Member.

GA and Association Members must also undertake to ensure that Affiliated Clubs and individual Members are bound by this Policy and are made aware of this Policy and what it says.

1.11 **Organisational responsibilities**

GA, Association Members and Affiliated Clubs must:

- (a) adopt, implement and comply with this Policy;
- (b) make such amendments to their Constitution, Rules or Policies necessary for this Policy to be enforceable;
- (c) publish, distribute and promote this Policy and the consequences of breaches;
- (d) promptly ensure that any individuals seeking to make a complaint about Relevant Conduct within the Specified Period are also provided with information on the AHRC Review;
- (e) promptly ensure that any individual seeking to make a complaint about Relevant Conduct during the Specified Period receives assistance to make a complaint to the IA, and/or seek the consent of the individual to provide any Complaint form or documentation provided by that individual to the IA to be progressed;
- (f) recognise and enforce any Disciplinary Measure or Interim Arrangement imposed under this Policy;

- (g) ensure that a copy of this Policy is available or accessible to the persons and associations to whom this Policy applies;
- (h) offer professional services (e.g. counselling) to the respondent and or complainant where deemed necessary.

1.12 Individual Responsibilities

Individuals bound by this Policy are responsible for:

- (a) making themselves aware of the policy and complying with its standards of behaviour;
- (b) placing the safety and welfare of children above other considerations and in line with the GA Child Safe Policy;
- (c) being accountable for their behaviour;
- (d) not making knowingly false, misleading or vexatious claims against any other member or person;
- (e) following the procedures outlined in this Policy if they wish to make a Complaint or report a concern about possible misconduct, bullying, abuse, sexual harassment or assault toward an athlete (Relevant Conduct);
- (f) complying with any decisions, Disciplinary Measures and/or Interim Arrangements imposed under this Policy.

1.13 Complaints Handling

(a) Child Abuse and Misconduct with a Child Allegations

GA has zero tolerance of Child Abuse, and GA will treat all allegations of child abuse and/or misconduct with children seriously, consistently and with a high degree of sensitivity.

GA, the IA, SIA, and the NST and their officers and affiliates will have regard to, and wherever possible comply with the "Procedure for Reporting and Responding to Child Abuse Allegations" set out in the GA CSP in relation to Reports and/or any complaints (including Relevant Complaints) that relate to any concerns, suspicions or incidents of, child abuse or misconduct with a child.

If a Child is at **imminent risk** of harm or in **immediate danger**, you must report the situation directly to 000.

(b) Handling Complaints

GA aims to provide a simple, fair and transparent procedure to make and handle all Complaints based on the principles of procedural fairness (Natural Justice). Naturally this also applies to any complaint about Relevant Conduct (including Relevant Complaints) for the purposes of this Policy.

Complaints under this Policy will be dealt with under Part B and Part C of this Policy.

To ensure that the procedure applied to complaints made under this Policy are managed with the highest level of independence, fairness, transparency, efficiency, and consistency, GA has engaged with the Commonwealth Government's independent NST and SIA in developing this Policy.

The IA, SIA, and the NST will play the central role in managing complaints and determining disputes under this Policy. GA's role in managing complaints under this Policy will be limited to adopting and implementing recommendations and determinations from these independent entities without change.

Where an Interim Arrangement or Disciplinary Measure is imposed under this Policy, GA where relevant will notify an Association Member and or Affiliated Club, so that they may impose, uphold or enforce the same or equivalent Interim Arrangement or Disciplinary Measure on the basis of the findings and recommendations of the IA or SIA.

Individuals may also pursue their complaint externally under anti-Discrimination, Child protection, criminal or other relevant legislation.

(c) **Vexatious Complaints and Victimisation**

GA takes complaints about Relevant Conduct and Relevant Complaints under this Policy seriously. GA aims for its complaints procedures to have integrity and be free of unfair repercussions or victimisation against any person making a complaint or against any Respondent.

GA will take all necessary steps to make sure that people involved in a complaint (either as a Complainant or Respondent) are not victimised. Disciplinary Action can be taken against anyone who harasses or victimises another person for making a complaint or supporting another person's complaint.

Any complaint not made on a proper basis, or in good faith, or motivated by malice or aimed at being 'payback' or vindictive may lead to Disciplinary Action being taken under the GA MPP against the person lodging the complaint.

(d) **Supplementary Discipline Process**

The NST's General Division (NSTGD) will hear all Disciplinary Disputes relating to alleged breaches of Relevant Policies made under this Policy. The Discipline By-Law is outlined in **Attachment C4** of this Policy.

(e) **Supplementary Appeals Process**

Only a Party to a Disciplinary Matter determined by the NSTGD under this Policy may appeal to the NST Appeals Division, in accordance with the Supplementary Appeals By-Law in **Attachment C5** of this Policy.

1.14 **Disciplinary Action**

Disciplinary Measures or Interim Arrangements imposed under this Policy must be consistent with the current GA MPP and/or GA CSP to the extent possible.

1.15 Glossary of Terms

This Glossary of Terms sets out the meaning of words used in this Policy and its attachments without limiting the ordinary and natural meaning of the words.

Affiliated Club means a club affiliated with GA and an Association Member, recognised by GA under clause 5.6 of the GA Constitution.

Association Member (State and Territory Associations) means an Association affiliated with GA, recognised by GA under clauses 5.2, 5.3 and 5.4 of the GA Constitution.

Athlete means a person who trains and/or competes in gymnastics and is a registered member of an Affiliated Club.

Authorised Representative means any person authorised by a person under a legal incapacity to represent their interests under this Policy. An authorised representative must not have a different interest to the person under a legal incapacity (for guidance, in the case of a child, the authorised representative will *usually* be that child's parent or legal guardian).

Board means the Board of GA as constituted from time to time.

Child (or Children) means a person(s) who is under the age of 18 years unless otherwise stated under the law applicable to the child.

Child Safe Policy means the GA Child Safe Policy endorsed by the Board.

Code/s of Behaviour means the Codes of Behaviour outlined in Attachments B2 to B8 of the Member Protection Policy and Attachment K of the Child Safe Policy.

Complaints Form means the form made available on the GA website and the AHRC website which must be completed to make a complaint about Relevant Conduct within the Specified Period.

Complaints Handling Processes has the meaning set out in Part B and Part C of this Policy.

Conciliation has the meaning set out in Attachment C2 of this Policy.

Director means a person appointed or elected as a director on the Board in accordance with the GA Constitution.

Disciplinary Action means a method for dealing with a respondent who has been found to or is suspected to have breached a Relevant Policy, and may include Disciplinary Measures and/or Interim Arrangements (as defined in the Relevant Policy).

Eligible Complainant has the meaning set out in clause 1.7 (d) of this Policy.

GA means Gymnastics Australia.

GA Constitution means the Constitution adopted by GA Members as amended from time to time.

Independent Assessor (IA) means the person or entity jointly recommended by Sport Integrity Australia and the National Sports Tribunal independent of GA, and on

this recommendation appointed by GA to undertake tasks set out in Part B and Part C of this Policy.

Life Member means a person granted life membership of GA under clause 5.10 of the GA Constitution.

Mediation has the meaning set out in Attachment C2 of this Policy.

Member means a member of GA as set out in clause 5 of the GA Constitution.

Member Protection Policy means the GA Member Protection Policy as currently in force, or as in force from time to time.

Minor Breach Procedure means the procedure set out in Attachment C2 of this Policy.

Natural justice (also referred to as procedural fairness) incorporates the following principles:

- (a) the Respondent must know sufficient details of what is being said against them and any alleged breach of any rules, regulations or policies so as to have the opportunity to respond;
- (b) all relevant submissions must be considered;
- (c) no person may judge their own case;
- (d) the decision maker/s must be unbiased, fair and just; and
- (e) the penalties imposed must be fair.

National Sports Tribunal (NST) means the Australian Government entity established by the *National Sports Tribunal Act 2019*, comprised of the General Division, the Anti-Doing Division, and the Appeals Division.

Participant means a person who participates in the sport of gymnastics including, but not limited to, as an athlete.

Person under a legal incapacity means:

- (a) a child; or
- (b) a person with a mental disability

Relevant Complaint has the meaning set out in cl. 1.7 of Part A of this Policy.

Relevant Conduct has the meaning set out in cl. 1.7 of Part A of this Policy.

Relevant Policy has the meaning set out in cl. 1.7 of Part A of this Policy.

Respondent means the person who is being complained about in a complaint about Relevant Conduct, and/or a Relevant Compliant.

Specified Period means the period over which the Australian Human Rights Commission will be conducting community engagement and accepting submissions (to be confirmed by the AHRC).

Sport Integrity Australia (SIA) means the Australian Government entity established by the *Sport Integrity Australia Act 2020*.

This Policy means this *'Supplementary policy for the management of complaints relating to conduct covered by the 2020/21 Australian Human Rights Commission Review into Gymnastics in Australia'*.

Victimisation means subjecting a person or threatening to subject a person to any detriment or unfair treatment because that person has or intends to pursue their rights to make a Complaint under Government legislation (eg anti-discrimination) or under this Policy, or for supporting such as person.

1.16 Interpretation

- (a) Unless the context otherwise requires, reference to:
 - (i) a clause is to a clause of this Policy;
 - (ii) the singular includes the plural and the converse also applies.
- (b) If a person to whom this Policy applies consists of more than one person, then this Policy binds them jointly and severally.
- (c) A reference to time, day or date is to time, day or date in Melbourne, Australia.
- (d) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (e) Headings are for convenience only and do not form part of this Policy or affect its interpretation.

2. PART B: SUPPLEMENTARY COMPLAINTS PROCEDURE

To ensure due process and consistency and to ensure that the principles of natural justice are followed in all aspects of managing complaints, allegations, investigations, Disciplinary Action and appeals, the following Supplementary Complaints Procedure has been established under this Policy.

2.1 The AHRC Review

The AHRC Review will deal with Relevant Conduct – being conduct toward an athlete amounting to misconduct, bullying, abuse, sexual harassment or assault.

The AHRC is conducting community engagement and receiving submissions for the AHRC Review for the Specified Period.

2.2 Making a complaint about Relevant Conduct

(a) Step One: Engage with the AHRC

- (i) During the Specified Period, any person making a complaint about Relevant Conduct alleging a breach of any GA policy may engage with the AHRC.

(b) Step Two: Make a complaint about Relevant Conduct to the IA

- (i) During the Specified Period, any complaint about Relevant Conduct alleging a breach of any GA policy must be made to the IA.
- (ii) All reports or complaints made to any official of GA, a GA Association Member, a GA Affiliated Club, SIA or the NST that relate or appear to relate to Relevant Conduct during the Specified Period will be referred to the IA, regardless of the level of gymnastics at which the report or complaint was made, and regardless of the level of the sport where the conduct giving rise to the complaint occurred
- (iii) For the avoidance of doubt, no complaints about Relevant Conduct alleging a breach of any GA Policy can be accepted by GA or any Association Member or Affiliated Club during the Specified Period.
- (iv) Individuals who engage with the AHRC Review in the Specified Period will be notified about the Supplementary Complaints Procedure by the AHRC, and will be provided with the contact details of the IA.
- (v) Information about the Supplementary Complaints Procedure and the contact details for the IA will also be made available on the relevant parts of the AHRC and GA and Association Member websites.
- (vi) Information provided to individuals by the AHRC and made available on the AHRC and GA and Association Member websites will include:
 - (A) Matters relating to confidentiality;
 - (B) The different ways that a complaint about Relevant Conduct, and Relevant Complaints may be dealt with;

- (C) What a complainant may expect from the process if they make a formal complaint, including how involved a Complainant may need to be depending on how the complaint is dealt with.
- (vii) To make a complaint about Relevant Conduct a complainant must complete and submit the specified IA Complaints Form to the IA including the following information and any additional information that is requested:
 - (A) Details of the alleged Relevant Conduct that gives rise to the alleged breach of a Relevant Policy;
 - (B) if applicable, the particular section of any relevant Code of Ethics, Code of Behaviour and/or GA policy which the Complainant believes has been breached; and
 - (C) the outcome(s) or resolution they are seeking.
- (c) **Step Three: IA's Initial Assessment**
 - (i) When the IA receives a specified IA Complaints Form from a Complainant the IA will assess the information provided by the Complainant and take one of the following actions:
 - (A) If the IA determines that the matter is a 'Relevant Complaint', for the purposes of this Policy, the Relevant Complaint will be dealt with under Part C – Procedure for Relevant Complaints.
 - (B) If the IA determines that the complaint about Relevant Conduct is not a 'Relevant Complaint' for the purposes of this Policy, the IA will advise the Complainant of this determination and provide options for and facilitate next steps, including making a Complaint under the GA MPP or CSP, or referring the matter to law enforcement.
 - (C) If the IA determines that the purported complaint is knowingly false, misleading or vexatious, the IA will recommend to the GA CEO that the Complaint be closed and no further action taken. The GA CEO will adopt and implement this recommendation and comply with paragraphs 4.3 and 4.5 below as appropriate.
 - (D) In the IA's sole discretion, the IA may, if the IA determines that the purported complaint is knowingly false, misleading or vexatious, refer the matter to GA for possible Disciplinary Action under the GA MPP.

2.3 Other Complaints

Complaints about conduct other than Relevant Conduct (misconduct, bullying, abuse, sexual harassment and assault of athletes) will continue to be handled under the relevant existing GA Policy in force (for instance, the GA MPP or CSP).

Complaints about conduct other than Relevant Conduct should be made in accordance with the relevant GA policy, at the level of gymnastics at which the complaint arises, and should not be made to the IA.

2.4 Confidentiality

Complaints and/or purported complaints about Relevant Conduct made to the IA will be kept strictly confidential to IA, until such time as:

- (a) The complaint is assessed as a Relevant Complaint and dealt with under Part C;
- (b) The complaint is assessed as not being a Relevant Complaint, and the complainant authorises the IA to refer the complaint to the relevant authority (including, the GA CEO or their delegate)
- (c) The purported complaint is assessed as knowingly false, misleading or vexatious, and the IA recommends that the matter to be closed, and/or that possible Disciplinary Action be taken under the GA MPP.

2.5 Fact Finding

Under this Policy, and for the purposes of making the initial assessment under (Step 3) above, the IA, which may be supported by SIA from time to time, may conduct initial fact finding, which may include contacting the Complainant, and/or GA for basic information (including personal details) confirming such matters as:

- (a) The period over which the complainant was or has been a Member of GA and whether during that time the complainant was an athlete;
- (b) The period over which any Respondent was or has been a member of GA;
- (c) The Disciplinary history of any Respondent

The IA or SIA will conduct any initial fact finding in a manner that does not disclose particulars of any Complaint that they have received.

3. PART C: PROCEDURE FOR RELEVANT COMPLAINTS

This Part sets out the procedure that will apply to a complaint that the IA has assessed as a Relevant Complaint.

3.1 Procedure for Relevant Complaints and Complaints Handling Processes

All Relevant Complaints will be dealt with through a formal **Complaints Handling Process** (refer to Attachment C1 in this Policy) to be determined for each Relevant Complaint by the IA based on the nature of the Relevant Complaint and GA's rules and regulations, and may involve an external investigation undertaken by SIA.

Informal processes available under the GA MPP are not available under this Procedure for Relevant Complaints.

Individuals may also pursue their complaint externally under anti-discrimination, child protection, criminal or other relevant legislation.

3.2 Costs

Any costs incurred by a person involved in the Supplementary Complaints Procedure and the Procedure for Relevant Complaints must be borne by that person.

3.3 Confidentiality

Once a Relevant Complaint is made and a Complaints Handling Process has been determined by the IA, the IA will notify GA of the Relevant Complaint and the Complaints Handling Process to be applied. If the IA forms the view that the Relevant Complaint requires investigation, SIA will be notified and will undertake the investigation.

Beyond GA, the IA and SIA, Relevant Complaints will be kept confidential and will not be disclosed to another person without the Complainant's consent except if the disclosure is required or authorised by or under Australian law.

GA will take all reasonable steps to ensure that no one is victimised for making, supporting or providing information about a Relevant Complaint. Victimisation of a person for making, supporting or providing information about any Complaint is in itself a breach of the GA MPP and will be dealt with in the strongest possible terms under that policy.

A Complainant may wish for their identity to remain confidential to the IA when choosing or purporting to make a Relevant Complaint, and not have their identity disclosed to GA or any other individual or organisation.

Under these circumstances, the IA, GA, and SIA will have difficulty resolving or investigating the Relevant Complaint, because natural justice means that a Respondent must be provided with sufficient details of a Relevant Complaint so that they have a fair and reasonable chance to respond to any allegations. However the Relevant Complaint may be considered 'relevant information' and taken into account in a broader investigation.

3.4 Commitment Regarding CEO's Discretionary Powers

The GA CEO, and to the extent necessary, the CEOs of all State and Territory Association Members of GA commit for the purposes of the application of this Procedure for Relevant Complaints to exercise any power or responsibilities under this Policy by adopting and implementing any relevant recommendation or determination of the IA, SIA or the NST.



Any powers or responsibilities of the GA CEO under this Procedure for Relevant Complaints may be delegated to an appropriate officer of GA as determined by the GA CEO. 4.4

4. ATTACHMENT C1: DEALING WITH A RELEVANT COMPLAINT

4.1 Receiving a Relevant Complaint and Determining the Complaints Handling Process to be Applied

- (a) If the IA determines that the matter is a Relevant Complaint, the IA will advise the Complainant and the GA CEO of this determination, as well as the IA's recommendation to the GA CEO regarding the appropriate Complaint Handling Process to be applied to the Relevant Complaint.
- (i) If the Complainant has requested that their identity remain confidential *from* GA or any other entity, the IA will notify the Complainant that their Relevant Complaint will be provided confidentially and de-identified to SIA as 'relevant information', and that no further action will be taken in respect of the specific Relevant Complaint.
- (b) The IA will determine and recommend to the GA CEO the appropriate Complaint Handling Process to be applied to the Relevant Complaint, based on the nature and seriousness of the Relevant Complaint. The GA CEO will adopt and implement the recommendation/s of the IA.
- (c) The **Complaints Handling Processes** that may be applied to Relevant Complaints are:
- (i) **Mediation or Conciliation** administered by the NST (refer to Attachment C2 for procedure);
- (ii) the **Minor Breach Procedure** (refer to Attachment C2 for procedure);
- (iii) independent **external investigation by SIA** (refer to Attachment C3 for procedure);
- (iv) referral to the **police or other appropriate authority**. If the Relevant Complaint is referred to the police or another external agency, GA will endeavour to provide all reasonable assistance required by the police or the agency.

4.2 Interim Arrangements

- (a) The IA or, where SIA is conducting an investigation, SIA may, at their discretion, determine that Interim Arrangements should be put in place while the Procedure for Relevant Complaints is underway, and recommend Interim Arrangements to the GA CEO (or their delegated person), having regard to applicable risks associated with the Relevant Complaint and those involved in the Relevant Complaint, in the context of GA's duty of care to its Members and personnel.
- (b) Any Interim Arrangement will apply until the Procedure for Relevant Complaints is resolved. The Interim Arrangements may include (without limitation):
- (i) suspension, restriction of duties or temporary re-deployment; and/or
- (ii) suspension or restriction of rights, privileges and benefits.

4.3 **Communicating with the Complainant and Respondent**

When the IA has determined that a Relevant Complaint has been made, the GA CEO (or their delegated person responsible), will be responsible for communicating formal determinations and decisions *recommended* by the IA and/or SIA *and adopted and implemented* by the GA CEO (or their delegated person responsible) under this Policy to the Complainant and any Respondent.

Progress updates relating to processes undertaken by the IA or SIA or the NST will be communicated to the Complainant and Respondent by the relevant entity undertaking that process.

Once a Relevant Complaint has been resolved the GA CEO will communicate the resolution of the Relevant Complaint to the Complainant and Respondent using the most appropriate method as determined by the GA CEO.

As relevant and appropriate, GA, the IA, or SIA will include in communication/s to the Complainant, and the Respondent, at the relevant time/s:

- (a) the actions taken by GA, IA and SIA in response to the Relevant Complaint, and any recommendations of IA and/or SIA;
- (b) progress of any investigation undertaken by SIA and expected timelines;
- (c) the findings of any investigation and any recommendations arising from those findings; and
- (d) any Disciplinary Action taken by GA, and as relevant, any recommendation of SIA that was adopted by GA or determination of the NST that forms the basis for the Disciplinary Action taken.

All communications to the Complainant, and to the Respondent will respect the importance of confidentiality and the rights of confidentiality of parties involved as set out in this Policy.

4.4 **When a Relevant Complaint is Resolved**

A Relevant Complaint will be resolved when:

- (a) the IA makes a recommendation that the complaint is vexatious and the matter be closed (note that GA may still take action under existing MPP for vexatious complaints);
- (b) the GA CEO issues a letter to the Respondent in accordance with cl.5.7 (Minor Breach Procedure);
- (c) a settlement agreement is executed as part of a mediation or conciliation in the NST;
- (d) the GA CEO notifies the parties that no further action be taken and that the matter is closed after an investigation by SIA is concluded, and where the SIA investigation report recommends that no further action be taken;
- (e) the Respondent accepts or is deemed to have accepted Breach Notice;

- (f) the National Sports Tribunal General Division (NSTGD) makes a determination under section 27 of the NST Act (if the determination is not appealed to the National Sports Tribunal Appeals Division (NSTAD));
- (g) the NSTAD makes a determination under section 36 of the NST Act;
- (h) the Relevant Complaint has been referred to the police or other appropriate authority and it is pursued by the police or the appropriate authority.

4.5 Documenting the resolution

Where possible, taking into account the confidentiality preferences of the Complainant, the Relevant Complaint, the process and the outcome will be documented by GA, including any advice, recommendations, reports and determinations of the IA, SIA and the NST. This document will be stored in a confidential and secure location at the GA national office.

Notwithstanding any other clause in this Policy, GA will establish and administer a system under which some or all the following information will be made available to Affiliated Clubs and Association Members (and any other persons or organisations as determined by GA) through one or more of GA's database systems (**Flagging System**):

- (a) any Disciplinary Measures or Interim Arrangements imposed on an individual under this Policy and whether they have served, or are currently subject to, such Disciplinary Measure or Interim Arrangement;
- (b) whether an individual has been found guilty of relevant criminal offences;
- (c) whether an individual:
 - (i) is currently under formal investigation and/or subject to Interim Arrangement(s);
 - (ii) has been subject to an unresolved disciplinary process under this Policy; or
 - (iii) has previously had one or more Relevant Complaints lodged against them that, for whatever reason did not result in Disciplinary Measures or Interim Arrangements; and
- (d) any other directly related information which GA, in its absolute discretion, considers relevant.

5. ATTACHMENT C2: MEDIATION, CONCILIATION, AND MINOR BREACH PROCEDURE FOR RELEVANT COMPLAINTS

Mediation and Conciliation are processes where a neutral third party, called a mediator or a conciliator, helps people in conflict negotiate a resolution to a dispute.

In a **Mediation**, the mediator will not decide who is right or wrong or tell either side what they must do. Instead, they help those involved discuss the issues and seek to facilitate a mutually agreeable solution.

In a **Conciliation** the conciliator takes an active and advisory role regarding the factual and legal issues in dispute. A conciliator will not decide who is right or wrong or decide an outcome, but the conciliator will provide opinions as to the strengths and weaknesses of the parties' positions, and offer advice regarding possible outcomes.

The **Minor Breach Procedure** is a procedure that allows for the efficient resolution of complaints that would only result in a warning as a Disciplinary Measure.

Mediation and Conciliation

5.1 **When Mediation and Conciliation are not appropriate**

There are some situations where mediation or conciliation may not be appropriate, including:

- (a) when the parties involved have completely different versions of the incident;
- (b) when one or both parties are unwilling to attempt mediation;
- (c) when there is a real or perceived power imbalance between the parties involved; or
- (d) when the matter involves serious allegations,

in which case, the IA will consider an alternative method as set out in 4.1 (c).

5.2 **Mediation and Conciliation to be conducted by the NST**

- (a) If the IA recommends mediation or conciliation, the GA CEO will, with the consent of the Complainant and the Respondent, refer the matter for mediation or conciliation under this Policy by making a formal application to the NSTGD (Alternative Dispute Resolution) in accordance with the NST Legislation.
- (b) The NST will determine which of mediation or conciliation will be conducted in consultation with the Parties (the Complainant, the Respondent, and GA).
- (c) The mediation or conciliation will be conducted in accordance with the NST Procedure.

5.3 **Resolution of Mediation or Conciliation**

- (a) Following resolution of the Complaint by mediation or conciliation, the GA CEO will confirm the terms of the agreement to the Complainant and Respondent, respecting the importance of confidentiality and the rights of confidentiality.

- (b) This document will be stored in a confidential and secure location in the GA national office.

5.4 **No Resolution through Mediation or Conciliation**

- (a) If mediation or conciliation fails to resolve the Relevant Complaint, the IA will reconsider the Relevant Complaint in accordance with Attachment C1 (cl 4.1(c)).

Minor Breach Procedure

5.5 **When a Minor Breach Procedure may be appropriate**

- (a) A minor breach procedure may be appropriate where the IA, or after conducting an investigation SIA, has formed the view that the Relevant Complaint would if proved amount to no more than a minor breach of this Policy.
- (b) In forming the view that a Minor Breach Procedure may be appropriate, the IA or SIA should consider all of the information before them and specifically:
 - (i) Whether any Relevant Complaint against the Respondent has been resolved through the Minor Breach Procedure previously; and/or whether any previous complaints have been made about the Respondent that have resulted in any Disciplinary Measure being applied;
 - (ii) The sensitivity of the Relevant Complaint, the Complainant's preferences as to confidentiality of their identity, and whether or not the Minor Breach Procedure would reasonably be expected to identify the Complainant.

5.6 **What is a Minor breach?**

A Minor Breach means a breach of a Relevant Policy, if proved, that in the absolute discretion of the IA or SIA, would likely only result in a warning (whether informal or formal) being imposed on the Respondent as the applicable Disciplinary Measure.

5.7 **Minor Breach Process**

- (a) If the IA or SIA determines that a Relevant Complaint should be resolved through the Minor Breach Procedure, the IA or SIA will recommend to the GA CEO that the Minor Breach Procedure be applied.
- (b) The GA CEO will adopt and implement the recommendation of the IA or SIA. The GA CEO will:
 - (i) Notify the Respondent of the Relevant Complaint, in writing, including the following information:
 - (A) details of the Alleged Breach of this Policy and the Relevant Complaint, including the alleged conduct and the section of the Relevant Policy allegedly breached; and
 - (B) without finding the breach to be proved, the Respondent is warned that the allegations would constitute a breach of the Relevant Policy, if proved.

- (c) Sections 4.3 and 4.5 of Attachment C1 of this Policy regarding communicating and documenting the resolution will apply to the resolution of the Relevant Complaint.

6. ATTACHMENT C3: INVESTIGATION PROCESS FOR RELEVANT COMPLAINTS

There will be times when a Relevant Complaint will need to be investigated. In this Investigation Process for Relevant Complaints, only independent external investigation is available. Internal investigation, as available under the GA MPP, is not available under this Policy.

Any investigation conducted by SIA under this Policy will be fair to all people involved, and independent of GA. The GA CEO commits to adopting and implementing the findings and recommendations of SIA investigations. When the GA CEO exercises any power under this Policy in response to the findings of or recommendations made in an investigation by SIA, those findings and recommendations will be reproduced in the communication from the GA CEO.

Because this Policy establishes a modified complaints handling, investigation and adjudication process for all Relevant Complaints related to the AHRC Review, there may be multiple complaints under investigation that relate to the same respondent. For this reason, under this Policy there may sometimes be a delay in the finalisation of individual investigations as other investigations, which may relate to similar incidents, progress.

If the IA recommends that a Relevant Complaint should be investigated, the steps outlined below will be followed:

6.1 Step 1: Appointment of SIA as Investigator

- (a) The GA CEO will notify the Complainant and Respondent, and the IA will refer the Relevant Complaint to SIA for investigation.
- (b) The IA will provide a written brief to SIA.
- (c) For all investigations conducted under this Policy, the terms of engagement for the investigation, SIA's role and responsibilities, and scope of the investigation and expected outcomes are set out in this Policy Attachment C3.

6.2 Step 2: Investigation

Depending on the nature of the Relevant Complaint, SIA will do some or all of the following, at its discretion and as appropriate and required to ensure that the Respondent and Complainant are afforded procedural fairness:

- (a) interview the Complainant and record the interview by audio recording and/or in writing;
- (b) convey sufficient details of the Relevant Complaint to the Respondent so that they can respond;
- (c) interview the Respondent to allow them to answer the Relevant Complaint and record the interview either by audio recording and/or in writing;
- (d) if required based on conflicting evidence, obtain statements from witnesses and any other relevant evidence and/or re-interview the Complainant;
- (e) caution any witness, Complainant and/or Respondent that the information they provide may be used in evidence, including in a hearing, if it were to be alleged that the Respondent had breached a Relevant Policy, and that the information that they provide will become known to GA.

6.3 **Step 3: Making a finding and recommending next steps**

After undertaking its investigation, SIA will:

- (a) Make a finding as to whether the Relevant Complaint is:
 - (i) substantiated (there is sufficient evidence to support the Relevant Complaint and make a finding in relation to a breach of Relevant Policy);
 - (ii) unsubstantiated (there is sufficient evidence to show that the Complaint is unfounded);
 - (iii) neither substantiated or unsubstantiated;
 - (iv) mischievous, vexatious or knowingly untrue.
- (b) Make a recommendation to the GA CEO as to next steps that may include but will not be limited to:
 - (i) that Disciplinary Measures be imposed against a Respondent under the Supplementary Discipline By-Law in relation to a breach of a Relevant Policy; or
 - (ii) where the Complainant and Respondent agree, that the matter be referred to the NSTGD for mediation or conciliation (if the Relevant Complaint has not previously been referred for mediation or conciliation); or
 - (iii) that the matter be dealt with through the Minor Breach Procedure; or
 - (iv) that no further action be taken and/or that the Relevant Complaint be closed in accordance with this Policy.
- (c) Provide a report to the GA CEO documenting the Relevant Complaint, investigation process, evidence, findings, recommendations and if Disciplinary Measures are recommended, the recommended Disciplinary Measures.

The Complainant and the Respondent will be entitled to support throughout the investigation process from their chosen support person/adviser.

6.4 **Step 4: Adopting and Implementing SIA's findings and recommendations**

On receiving the investigation report from SIA, the GA CEO will adopt any recommendations in the report without change, and take appropriate action.

6.5 **Step 5: Report and resolution of the investigation**

- (a) The GA CEO will provide a report to the Complainant and the Respondent documenting:
 - (i) the Relevant Complaint, and the investigation process;
 - (ii) the findings and recommendations arising from SIA's investigation of the Relevant Complaint; and

- (iii) Based on the recommendations provided in the SIA investigation report, a statement that:
 - (A) the matter will be dealt with through the Supplementary Discipline By-law; or
 - (B) the matter will be dealt with through the Minor Breach Procedure; or
 - (C) the matter will be referred for Mediation or Conciliation by making an application to the NSTGD for mediation or conciliation of the Relevant Complaint; or
 - (D) no further action will be taken.
- (b) In appropriate circumstances, where the SIA investigation has made a finding that the allegations of Relevant Conduct by the Complainant is mischievous, vexatious or knowingly untrue, SIA may recommend to the GA CEO that the Complainant be liable for any costs or disbursements payable by GA related to any process conducted under this Policy.
- (c) When the Relevant Complaint is resolved, sections 4.3 and 4.5 of Attachment C1 of this Policy regarding communicating and documenting the resolution will apply.
- (d) The GA CEO can comply with any requirement to report or communicate under this cl 6.4 at the same time as or in association with any other reporting or communication required under the 'next step' recommended by SIA under cl. 6.3.

6.6 **Step 6: Follow up**

After it has provided the report to the Respondent and the Complainant, GA may, at the CEO's (or their delegated person responsible) discretion (either in writing or such other means as considered appropriate), contact the parties to:

- (a) discuss if it is appropriate to refer them to further support following the conclusion of the Procedure for Relevant Complaints;
- (b) monitor compliance with any Disciplinary Action taken; and/or
- (c) communicate any other matters it considers appropriate having regard to all the circumstances of the Relevant Complaint and the Procedure for Relevant Complaints.

6.7 **Referral to or from police or other appropriate authorities**

- (a) At any time during an investigation, SIA may refer a Relevant Complaint to the police or other appropriate authority.
- (b) If a Relevant Complaint has been referred to the police or other appropriate authority and the police or other appropriate authority make a decision not to pursue the matter:
 - (i) during the Specified Period:

- (A) SIA will investigate the matter as per the process set out in Attachment C3;
- (ii) after the Specified Period,
 - (A) the Relevant Complaint **may** be investigated by SIA at its discretion in accordance with the process set out in this Attachment C3; or
 - (B) if SIA does not investigate the Relevant Complaint, an alternative external investigator will be appointed by the GA CEO to undertake the investigation in accordance with Attachment C3.
- (iii) if an external investigator is appointed by the GA CEO under cl 6.6(b)(ii)(B), references to 'SIA or 'Sport Integrity Australia' in this Policy are to be taken as references to the 'external investigator'.

7. ATTACHMENT C4: SUPPLEMENTARY DISCIPLINE BY-LAW

This Supplementary Discipline By-law provides for a new process that will apply where, following an investigation undertaken under Attachment C3, SIA has recommended that Disciplinary Measures be imposed against a Respondent under this Supplementary Discipline By-Law in relation to an Alleged Breach of a Relevant Policy.

Under this process, the GA CEO will adopt SIA's findings and recommendations as to any breach and Disciplinary Measure, and will send a 'Breach Notice to the Respondent, who may either accept the breach and Disciplinary Measure, or dispute the Breach Notice, and elect to have a Disciplinary Dispute heard in the NSTGD. If a Respondent does not respond to the Breach Notice, the GA CEO will make the Breach finding and impose the Disciplinary Measure set out in the Breach Notice by default.

7.1 Breach Notice

- (a) If a SIA Investigation Report recommends to the GA CEO that a Disciplinary Measure be imposed against the Respondent for an Alleged Breach of a Relevant Policy; the GA CEO must notify the Respondent, in writing, and provide the following information:
 - (i) details of the Relevant Complaint and sufficient content of the SIA investigation report, including the alleged conduct and section(s) of the Relevant Policy alleged to have been breached (Alleged Breach); and
 - (ii) the proposed Disciplinary Measure that is to be imposed in relation to the Alleged Breach of the Relevant Policy; and
 - (iii) that the Respondent may:
 - (A) accept the Alleged Breach of the Relevant Policy and proposed Disciplinary Measure by responding to the GA CEO within 21 days of receiving the notice, indicating their acceptance; or
 - (B) dispute the alleged breach of the Relevant Policy and/or the Proposed Disciplinary Measure by making a valid application for arbitration of the Disciplinary Dispute in the NSTGD within 21 days of receiving the notice;
 - (iv) that if the Respondent does not respond to the GA CEO accepting the alleged Breach of the Relevant Policy and proposed Disciplinary Measure or make a valid application to the NSTGD for arbitration of the Disciplinary Dispute within 21 days of the date that the notice was received, the Respondent will be deemed to have accepted the Alleged Breach of the Relevant Policy and proposed Disciplinary Measure.
- (b) For the avoidance of doubt, a Respondent may elect to accept the alleged breach of the Relevant Policy and dispute the proposed Disciplinary Measure *only*.
- (c) If the Respondent accepts or is deemed under (7.1(a)(iv)) to have accepted the Alleged Breach of the Relevant Policy and the proposed Disciplinary

Measure(s), cl. 4.3 and 4.5 of Attachment C1 of this Policy regarding communicating and documenting the resolution will apply.

7.2 Jurisdiction of the NST – General Division

- (a) For the purposes of the NST Legislation the jurisdiction of the NST is engaged by this Policy for Disciplinary Disputes as follows:
- (i) Disciplinary Disputes are brought before the NSTGD for arbitration under section 23 of the *National Sports Tribunal Act 2019* (NST Act);
 - (ii) Disciplinary Disputes brought before the NSTGD under this Policy are ‘disciplinary disputes’ for the purposes of section 7 of the *National Sports Tribunal Rule 2020* (NST Rule);
 - (iii) The Involved Parties to the Disciplinary Dispute will be the:
 - (A) **Applicant:** the individual Respondent applying for arbitration of the Disciplinary Dispute;
 - (B) **Respondent Sporting Body:** GA, responding to the application for arbitration of the Disciplinary Dispute;
 - (C) Any ‘Interested Parties’ to the dispute.
 - (iv) The Interested Parties to a Disciplinary Dispute *may* be:
 - (A) A person who has made a Relevant Complaint that is dealt with in the Disciplinary Dispute;
 - (B) SIA.
 - (v) Where SIA is a Party to a Disciplinary Dispute in the NSTGD under this Policy, *either GA or SIA* may take the lead in presenting GA’s position in any proceedings and any hearing before the NSTGD, including being entitled to present evidence, file submissions, cross-examine witnesses and do any other thing necessary for the enforcement of this Policy (or any Relevant Policy as the case may be).

7.3 Applying to the NSTGD for the Arbitration of the Disciplinary Dispute

- (a) An application for the arbitration of a Disciplinary Dispute in NSTGD, may dispute an alleged breach of a Relevant Policy and proposed Disciplinary Measure, or dispute the proposed Disciplinary Measure *only*.
- (b) For the avoidance of doubt, a Disciplinary Dispute may relate to a single or multiple Relevant Complaints or Complainants.
- (c) An application for the arbitration of a Disciplinary Dispute in NSTGD must be made by:
 - (i) Completing and submitting the appropriate application form and a copy of the notice provided by the GA CEO; and
 - (ii) Paying any application fee required under the NST Rule; and

- (iii) Complying with any other requirements set out in the NST Legislation.
- (d) The Applicant will identify in the Application Form all potential interested parties to the Disciplinary Dispute. GA in its Response Form will confirm or identify any further interested parties not identified by the Applicant in their Application Form
- (e) All identified interested parties will be invited by the NST to advise whether they wish to be a party to the Disciplinary Dispute.

7.4 **NST Procedure for Hearing Disciplinary Disputes**

A Disciplinary Dispute arbitrated in the NSTGD will proceed in accordance with the NST Procedure, except in so far as the NST Procedure is inconsistent with the procedural matters set out below, which apply to all Disciplinary Disputes heard by the NSTGD under this Policy:

- (a) Where the NST considers it appropriate to do so and all the **involved** parties to the Disciplinary Dispute agree, the NST may determine the Disciplinary Dispute without a hearing.
- (b) Where the NST considers that it is appropriate and in the interests of justice to do so, and the where the NST considers that the Applicant will not be unfairly prejudiced in the presentation of their case, the NST may provide for an Interested Party or witness to provide evidence to the NST in a closed session without the Applicant or their representative (or any other Party) present.
 - (i) The process and procedure for facilitating a closed session will be a matter for the sole discretion of the NST.
 - (ii) At the discretion of the NST, Involved Parties may be provided with a transcript of the evidence provided by the Interested Party or witness, and provided an opportunity to respond to that evidence as required to afford that party natural justice.
 - (iii) It may be expected that closed sessions may most frequently be utilised where an Interested Party or witness is under the age of 18 at the time of giving evidence.

7.5 **Cost of NST Proceedings**

- (a) An Application Fee will be payable to the NST at the time that an application is made for the arbitration of a Disciplinary Dispute in the NSTGD.
- (b) Service Fees may also be payable to the NST, which will be negotiated as between the Parties and the NST at the Preliminary Conference, and finally apportioned and determined by the NST CEO. Generally, Service Fees will be apportioned evenly between the Applicant and GA.

7.6 **Findings**

- (a) If the NSTGD is satisfied that an Alleged Breach of a Relevant Policy has been proved on the balance of probabilities (i.e. more probable than not) it shall find that Alleged Breach of the Relevant Policy proved. If the NSTGD is

not satisfied that a particular Alleged Breach has been proved, but is satisfied that a lesser breach of a Relevant Policy has been proved, then the NSTGD may find such lesser breach proved. Otherwise the Alleged Breach of a Relevant Policy shall be dismissed.

- (b) Where it appears to the NSTGD that an error has been made in putting the wrong Alleged Breach of a Relevant Policy to the Applicant and the NSTGD, the NSTGD may amend the Alleged Breach of a Relevant Policy, subject always to the requirement that the Applicant, GA and other Parties to the Disciplinary Dispute must be informed of the new alleged breach of a Relevant Policy and given an opportunity to respond.
- (c) If the NSTGD finds an alleged breach of a Relevant Policy proved, it may impose such Disciplinary Measure as it considers appropriate, consistent with the current GA MPP and CSP.
- (d) The NSTGD will consider the proposed Disciplinary Measure in the SIA Investigation Report, as well as any submissions from GA, the Respondent, the Applicant, and any interested parties to the Disciplinary Dispute.
- (e) The NSTGD will formally determine the matter under section 27 of the NST Act, and provide written reasons for its determination.

7.7 Resolution of Complaint

If the Relevant Complaint is resolved following the determination of the NSTGD and no Party to the Disciplinary Dispute exercises their right of appeal in accordance with the Modified Appeals By-Law in Attachment C5 of this Policy, cl. 4.3 and 4.5 of Attachment C1 of this Policy regarding communicating and documenting the resolution will apply

8. ATTACHMENT C5: SUPPLEMENTARY APPEALS BY-LAW

8.1 Right of Appeal – who can Appeal

- (a) Only a Party to a Disciplinary Dispute determined by the NSTGD under this Policy may appeal to the NST Appeals Division (NSTAD) under this Policy.
- (b) For the avoidance of doubt, a natural person eligible as an Interested Party to a Disciplinary Dispute who was contacted by the NST but who elected not to participate as an Interested Party in the Disciplinary Dispute cannot appeal a determination of the NSTGD to the NSTAD under this Policy.

8.2 Grounds of Appeal

An appeal of a determination made by the NSTGD pursuant to section 27 of the NST Act under this Policy may only be appealed on the following Grounds:

- (a) That the NSTGD failed to abide by the Supplementary Discipline By-Law and such failure resulted in a denial of Natural Justice;
- (b) That there was no material on which the NSTGD's decision could reasonably be based; and/or
- (c) That the Disciplinary Measure imposed by the NSTGD was manifestly excessive or manifestly inadequate.

8.3 Jurisdiction of the NST – Appeals Division

- (a) For the purposes of the NST Legislation the jurisdiction of the NST is engaged by this Policy for the arbitration of Appeals from the determination of Disciplinary Disputes under this Policy as follows:
 - (i) Appeals are brought before the NSTAD under section 34 of the NST Act;
 - (ii) Appeals brought to the NSTAD under this Policy are appeals from determinations made under this Policy in the NSTGD under section 27 of the NST Act.
 - (iii) The Involved Parties to an Appeal under this Policy are the parties to the Disciplinary Dispute determined in the NSTGD.
 - (iv) An Interested Party to an Appeal under this Policy *may* be SIA, if SIA was not a Party to the Disciplinary Dispute determined in the NSTGD.
 - (v) Where SIA is a Party to an Appeal in the NSTAD under this Policy, *either* GA *or* SIA may take the lead in presenting GA's position in any proceedings and any hearing before the NSTAD, including being entitled to present evidence, file submissions, cross-examine witnesses and do any other thing necessary for the enforcement of this Policy (or any Relevant Policy as the case may be).

8.4 Applying for an Appeal in the NST Appeals Division

- (a) A Party with a right of Appeal (cl. 8.1 above) must apply to the NSTAD within **7 days** of receiving notice of a determination under section 27 of the NST Act of the Disciplinary Dispute in the NSTGD.
- (b) An Appellant must lodge an Appeal in the NSTAD by:
 - (i) Completing and submitting the appropriate application form setting out the grounds of appeal in accordance with cl 8.2, and copy of the written reasons of the Determination made by the NSTGD;
 - (ii) Paying any application fee required under the *NST Rule*;
 - (iii) Complying with any other requirements set out in the NST Legislation.

8.5 NST Procedure for Hearing Appeals

An Appeal heard in the NSTAD will proceed in accordance with the NST Procedure, except in so far as the NST Procedure is inconsistent with the procedural matters set out below, which apply to all Appeals heard by the NSTAD under this Policy:

- (a) Where the NST considers it appropriate to do so and all the **involved** parties to the Appeal agree, the NST may determine the Appeal without a hearing.
- (b) The NSTAD must first determine whether the limited grounds of appeal provided for in cl.8.2 are made out.
- (c) If the NSTAD upholds the Appeal, the NSTAD will finally determine the issues the subject of the Disciplinary Dispute in full and may in its absolute discretion:
 - (i) make findings in accordance with cl. 7.6 (and for this purpose, all references to the NSTGD in that clause are to be read as references to the NSTAD); and
 - (ii) confirm the original Disciplinary Measure imposed by the NSTGD or impose such alternative Disciplinary Measure as it considers reasonably appropriate; or
- (d) In finally determining the issues in accordance with cl 8.5(c), the NSTAD in its absolute discretion and taking into account the nature and severity of the original Disciplinary Matter and the preference of the Parties may:
 - (i) Finally determine the appeal on the documents already before the NSTAD;
 - (ii) Conduct a full re-hearing;
 - (iii) Admit new evidence.
- (e) Where the NST considers that it is appropriate and in the interests of justice to do so, and the where the NST considers that another Party will not be unfairly prejudiced in the presentation of their case, the NST may provide for a Party

or witness to provide evidence to the NST in a closed session without other Parties present.

- (i) The process and procedure for facilitating a closed session will be a matter for the sole discretion of the NST;
- (ii) Involved Parties will be provided with a transcript of the evidence provided by the Party or witness in any closed session, and provided an opportunity to respond to that evidence.
- (iii) It may be expected that closed sessions may most frequently be utilised where an Interested Party or Witness is under the age of 18 at the time of giving evidence.

8.6 **Cost of NST Proceedings**

- (a) An Application Fee will be payable to the NST at the time that an application is made for an Appeal from a determination of the NSTGD in the NSTAD.
- (b) Service Fees may also be payable to the NST, which will be negotiated as between the Parties and the NST at the Preliminary Conference, and finally apportioned and determined by the NST CEO. Generally, Service Fees will be apportioned evenly between the Parties.

8.7 **Findings**

- (a) The NSTAD may either dismiss the Appeal or uphold the Appeal.
- (b) The NSTAD will determine the Appeal under section 36 of the NST Act. The NSTAD will provide written reasons for its determination.
- (c) The decision of the NSTAD shall be final and not subject to any further appeal.

8.8 **Resolution of Complaint**

Where the Relevant Complaint is resolved following the determination of the NSTAD, 4.3 and 4.5 of Attachment C1 of this Policy regarding communicating and documenting the resolution will apply.