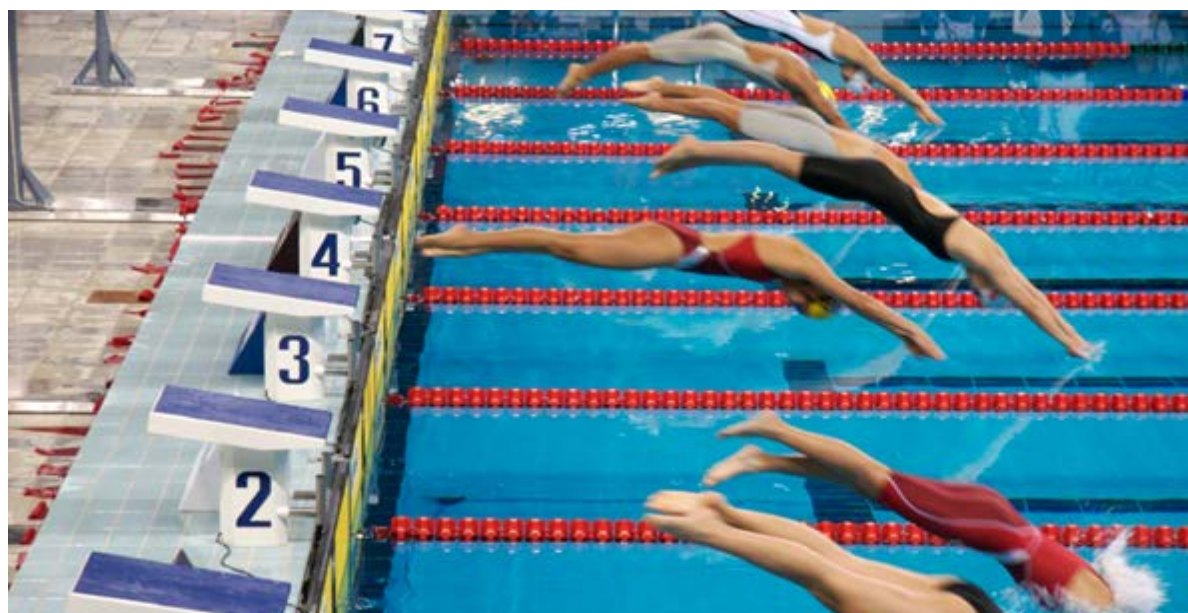




Team Members

# Code of Conduct



**April 2015**

Team Members



## Team Members Code of Conduct Index

<b>1.0</b>	<b>Introduction</b>	<b>Page 3</b>
<b>Module</b>	<b>Title</b>	
<b>1.1</b>	<ul style="list-style-type: none"><li>Swimming Australia's Engagement Infrastructure</li></ul>	
<b>2.0</b>	<b>Behaviour Standards</b>	<b>Page 4</b>
<b>Module</b>	<b>Title</b>	
<b>2.1</b>	<ul style="list-style-type: none"><li>Swimming Australia's Expectations of all Team Members</li></ul>	
<b>3.0</b>	<b>Additional Behaviour Standards (Team Competition)</b>	<b>Page 8</b>
<b>Module</b>	<b>Title</b>	
<b>3.1</b>	<ul style="list-style-type: none"><li>Additional Behaviour Standards Applicable at Team Competitions</li></ul>	
<b>4.0</b>	<b>Additional Policies, Procedures and Agreements</b>	<b>Page 9</b>
<b>Module</b>	<b>Title</b>	
<b>4.1</b>	<ul style="list-style-type: none"><li>Applicable Policies and Procedures that Underpin the Swimmer Agreement</li></ul>	
<b>5.0</b>	<b>Swimmers Disciplinary Procedures</b>	<b>Page 11</b>
<b>Module</b>	<b>Title</b>	
<b>5.1</b>	<ul style="list-style-type: none"><li>Swimming Australia Disciplinary Procedures and Sanctions</li></ul>	
<b>6.0</b>	<b>Right of Appeal</b>	<b>Page 21</b>
<b>Module</b>	<b>Title</b>	
<b>6.1</b>	<ul style="list-style-type: none"><li>Appeal Process for Aggrieved Team Members</li></ul>	

## 1. INTRODUCTION

Welcome to the Australian Swim team.

Complementing your Formal Agreement with Swimming Australia is a number of other important documents that include: -

- The Swimming Australia Ethical Framework
- The Swimming Australia Code of Conduct Booklet
- Swimming Australia Policies and Procedures
- The Swimming Australia Team Agreement

The Swimming Australia Ethical Framework is an important document which outlines what we aspire to achieve, how we will go about it, and what we desire and expect from all of those that will contribute to making it happen. In essence it describes our lifeblood, beliefs and cultural DNA.

This Code of Conduct Booklet has been designed to ensure that all Team Members understand the acceptable standards of behaviour and conduct that are expected of them as members of the Australian Swimming community.

This booklet also outlines the formal procedures by which complaints can be made and consequential disciplinary action that can be taken by Swimming Australia including the penalties and sanctions that may be applied, as well as the appeal process which is available for aggrieved individuals.

Swimming Australia's Policies and Procedures provide you with more detailed information in relation to specific and important terms and conditions of your Swimmers' Agreement.

Should you be selected in a Swimming Australia Team, a separate Team Agreement will be provided which describes the specific conditions applicable to that particular team/competition, however to clarify any ambiguity the behavioural principles outlined in this Code of Conduct still apply in addition to those covered in the Team Agreement.

All of these documents (as well as your Swimmer Agreement) combine to create the overall framework within which you have been engaged by Swimming Australia. You are encouraged to read each document thoroughly and to seek relevant legal or financial advice prior to signing should you have any queries or concerns.

We are pleased that you have joined us here at Swimming Australia and trust that this union signifies the next step on your journey towards success as an elite swimmer representing our country.

Best wishes on achieving your aspirations and goals as a member of the Australian Swimming Team.

Regards,

**John Bertrand AM**

## 2. TEAM MEMBERS BEHAVIOUR STANDARDS

As a member of the Australian Swimming Team you are responsible for observing and complying with the following behaviour standards that are binding upon you for the duration of your Swimmer Agreement or your Team Agreement: -

- 1) You shall at all times behave professionally and responsibly in a way that is consistent with and upholds Swimming Australia's Ethical Framework.
- 2) You shall at all times behave in a manner that enhances and supports the good reputation of Swimming Australia.
- 3) You shall display courtesy, respect, tact and patience when dealing with fellow team members, Swimming Australia employees, officials, volunteers and spectators

At no time shall you:

- Verbally or physically abuse a fellow team member, Swimming Australia employee, official, volunteer or spectator regardless of any provocation; or
  - Use abusive language to deliberately cause offence or to intimidate a fellow team member, Swimming Australia employee, official, volunteer or spectator.
- 4) In recognising each individual's right to privacy, you shall not at any time divulge the private contact details or any other material (including images) reasonably considered private of a fellow team member, Swimming Australia employee, official or volunteer without their prior permission.
  - 5) You shall comply with all lawful directions that may be issued to you by an authorised representative of Swimming Australia, and you shall at all times follow Swimming Australia's policies and procedures.
  - 6) You shall at all times act with care and diligence and in a manner that is conducive to the health and safety of yourself and of your fellow team members, Swimming Australia employees, officials, volunteers or spectators.
  - 7) You shall not give or disclose, directly or indirectly, any information to others about Swimming Australia's business or operations, including those of the Australian Swim Team and any of its Team Members unless you have been expressly authorised to do so.
  - 8) You shall not at any time provide false or misleading information to Swimming Australia or any authorised Swimming Australia representative.
  - 9) You shall not steal or deliberately damage Swimming Australia equipment, files, records or property.

- 10)** You shall not deliberately mislead, defraud or assist another person to steal or defraud fellow team members, Swimming Australia employees, or volunteers.
- 11)** You shall not be involved in any act, controversy, scandal, ridicule or contempt that brings or might bring your reputation or the reputation of Swimming Australia and its nominated sponsors and stakeholders into disrepute.
- 12)** You shall immediately inform Swimming Australia if you are charged with a criminal offence which is punishable by a fine or imprisonment, or if found guilty will adversely impact upon your ability to maintain your normal duties and responsibilities under your Swimmer Agreement or Team Agreement.
- 13)** You shall not be in possession of, traffic in, or consume illegal drugs at any time on Swimming Australia premises or at any Swimming Australia or other FINA sanctioned event, competition or activity.
- 14)** If at any Swimming Australia or other FINA sanctioned event, competition or activity you are taking medication or prescription drugs of any kind, you shall notify the Swimming Australia Chief Medical Officer, Team Doctor and/or Team Leader.
- 15)** You must ensure that you do not report for any organised training or any Swimming Australia or other FINA sanctioned event, competition or activity affected by alcohol or illegal drugs.
- 16)** You shall not be in possession of or use any form of illegal weapon at any time on Swimming Australia premises or at any Swimming Australia or other FINA sanctioned event, competition or activity.
- 17)** You shall not directly or indirectly participate or engage in or assisting any other person, corporation or entity to:
  - Bet, gamble or wager on any aspect of any event involving Swimming Australia swimmers, or facilitate or assist others in doing so;
  - Contrive or attempt to contrive the result of any Swimming Australia or other FINA sanctioned event in exchange for any bribe, benefit or reward; or
  - Disclose or provide any information about yourself or any other Swimming Australia team-member participating in a competition unless such information is already in the public domain or given in a bona fide media interview.
- 18)** You shall not use Swimming Australia's electronic communication facilities at any time for:
  - The intentional downloading, receiving, forwarding or storage of obscene messages, pornography or explicit images which may cause offence;
  - The making of derogatory, inflammatory, or discriminatory comments about another team member, Swimming Australia employee, official or volunteer;

- The disclosure of private or confidential information about Swimming Australia swimmers, coaches, Swimming Australia employees or team support staff;
- The transmission without authorisation of any copyrighted or licensed materials;
- Any usage that is illegal, unethical or indecent; or
- Any usage that is detrimental to Swimming Australia's professional reputation.

**19)** You shall not at any time utilise any social networking website (whether via Swimming Australia or any other internet service provider) to: -

- Deliberately post confidential, misleading, inappropriate or detrimental information about Swimming Australia, a sponsor or stakeholder of Swimming Australia or another team member or Swimming Australia employee;
- To engage in any form of public dissent or criticism of Swimming Australia or a team member, Swimming Australia employee, or a sponsor or stakeholder of Swimming Australia; or
- To publicly respond to or specifically address any adverse media or public comment.

**20)** You shall not discriminate against any other team member or Swimming Australia employees in relation to their:-

- Gender, disability/impairment, marital status, political and religious belief or activity, lawful sexual activity, race, breastfeeding, gender identity or sexual orientation, status as a parent or carer, age, physical features, pregnancy or potential pregnancy or industrial activity; or
- Make unwelcome or discriminatory comments or take unwelcome or discriminatory actions against any other swimmer, coach, Swimming Australia employees or team support staff member

Whether at training or participating in a Swimming Australia or other FINA sanctioned competition, you shall not engage in harassing or offensive behaviour with any other team member or Swimming Australia employee in areas including but not limited to: -

- Making persistent, unwelcome demands of a sexual nature (especially after prior refusal);
- Constantly requesting meetings or dates (especially after prior refusal);
- Physically touching or being unnecessarily familiar;
- Making offensive or inappropriate comments about physical appearance, dress or private life;
- Sending sexually explicit or offensive letters, phone calls, emails or text messages; and
- Asking intrusive questions or making comments about a person's private life or making reference to a person's sexuality or physical appearance.

**21)** Swimming Australia acknowledges that mutual friendships and relationships may develop between swimmers which are a private matter and as such do not

constitute sexual harassment. Where however an ongoing relationship has been established, the swimmers involved shall at all times: -

- Not engage in any form of behaviour, which though it might be consensual, may interfere with the working environment or offend a team member;
- Not display excessive intimate physical affection in public, or engage in continuous personal communication while performing normal duties;
- Conduct any intimate contact in their relationship in their own time and separately from their duties and obligations with Swimming Australia; and
- Act professionally and responsibly at all times when on Swimming Australia premises or at any Swimming Australia or other FINA sanctioned event, competition or activity.

Should circumstances arise whereby it is alleged the involved swimmers are not meeting the standards as previously outlined, the matter shall be referred for actioning in accordance with the Discipline and Sanctions sections contained within this booklet.

**22)** You shall not engage in any form of bullying, harassment or vilification that is designed to deliberately demean, insult, humiliate or unnecessarily embarrass any team member, Swimming Australia employee in areas including but not limited to: -

- Making hurtful, demeaning or disparaging remarks on one or more occasions to them in private or in public;
- Making fun of their abilities, results or performances on one or more occasions in private or in public;
- Making them perform humiliating or inappropriate activities in order to be accepted as a part of a swimming team; and
- Excluding or stopping them from performing their normal swimming schedules, working with other people or participating in regular team activities.

**23)** You acknowledge that it is the right of any person to lodge a complaint concerning an alleged breach of the Standards of Behaviour and that regardless of whether you are the Complainant, the person who is complained about, a witness to an incident that has initiated a Complaint or a member of a team who becomes aware by whatever communication of the Complaint, that you shall be obliged to:

- Not disclose to any person including to the person who has lodged a Complaint your knowledge of the existence of the Complaint that was lodged or any details of the allegations that you may be aware of;
- Not communicate with the Complainant, any potential witness, or the person about who the Complaint is lodged, whether asked to do so by a party involved in the Complaint or on your own volition;
- Approach a designated Swimming Australia Integrity Officer to report if you believe you have first-hand knowledge about the circumstances that led to the Complaint; and

- Co-operate fully to offer your truthful version of events to a designated Swimming Australia Integrity Officer to allow a comprehensive transparent investigation into the circumstances of what occurred that could have initiated the Complaint.

It is important you understand that the Behaviour Standards as previously outlined form an express term of your Swimmer Agreement and/or Team Agreement and an important part of your overall agreement with Swimming Australia.

Should circumstances arise whereby you are alleged to have breached any of these standards, at its sole discretion Swimming Australia may instigate the processes outlined in the Discipline and Sanctions sections contained within this booklet.



### **3. INCORPORATION OF BEHAVIOUR STANDARDS INTO TEAM COMPETITION**

The Behaviour Standards outlined in this Code of Conduct are applicable when you are attending or participating in any Swimming Australia, FINA, Australian Commonwealth Games Association (AGCA), Australian Olympic Committee (AOC) or Australian Paralympic Committee (APC) sanctioned competition (whether within Australia or overseas) and are specifically incorporated into the expressed terms of both the Swimmer and the Team Agreements.

In the case of attending or participating in either the Paralympic Games, Olympic Games or the Commonwealth Games: -

- a) The General Behaviour Standards (as previously outlined in Section Two)
- b) The Additional Policies, Procedures and Agreements (as outlined in Section Four)
- c) The Swimmers Disciplinary Procedures (as outlined in Section Five)  
and
- d) The Swimmers Right of Appeal (as outlined in Section Six)

shall operate in conjunction with the AOC, APC or ACGA prevailing policies, procedures and code of conduct. Should circumstances arise whereby there exists a conflict in interpretation/application, the AOC, APC or ACGA prevailing policies, procedures and code of conduct shall be applicable.

## 4. ADDITIONAL POLICIES, PROCEDURES & AGREEMENTS

The following policies (as currently in force or as amended from time to time into the future) are incorporated into your Swimmer Agreement and your Team Agreement and are to be read in conjunction with this Code of Conduct and in the context of your overall engagement with Swimming Australia: -

- 1) Ethical Framework
- 2) Team Uniform Policy
- 3) Appearances Policy
- 4) Use of Supplements Policy
- 5) Gambling Policy
- 6) Anti-Doping Policy
- 7) Illicit Drugs Policy
- 8) Media Policy
- 9) Harassment & Discrimination Policy
- 10) Members Welfare Policy
- 11) Child Welfare Policy
- 12) Match Fixing Policy

A hard-copy of these policies and agreements will be provided to you as part of your induction program, or alternatively all specified policies can be accessed and downloaded at any time from the Swimming Australia website.

You acknowledge and agree that in the event of an inconsistency between these policies and this Code of Conduct, the relevant Policy will apply to the extent of the inconsistency.

You also acknowledge and agree that any disciplinary matter will be dealt with under part 5 of the terms of this Code of Conduct irrespective of whether a Policy or Agreement contains a disciplinary procedure or sanction.

## 5. DISCIPLINARY PROCEDURES

### 5.1 REPORTING AN ALLEGED BREACH OF THE CODE OF CONDUCT

**5.1.1** Any swimmer, coach, Swimming Australia employee, contractor or team support staff member (Team Member) shall in the first instance report any alleged breach of the Code of Conduct (as outlined below) to a designated Swimming Australia Integrity Officer (as defined below).

**5.1.1.1** An allegation may include but is not limited to: -

- (a) Information that a Team Member has breached the Code Of Conduct by acting inconsistently with the Behaviour Standards or the policies, procedures and agreements incorporated therein, towards a team member reporting the allegation; or
- (b) Information that a team member has breached the Code Of Conduct by acting inconsistently with the Behaviour Standards or the policies, procedures and agreements incorporated therein, as witnessed by the team member reporting the allegation has witnessed; or
- (c) Information that a team member has breached the Code Of Conduct by acting inconsistently with the Behaviour Standards or the policies, procedures and agreements incorporated therein, as notified to the team member reporting the allegation from a third party, internal or external to Swimming Australia.

**5.1.1.2** A designated Swimming Australia Integrity Officer may be: -

- (a) A Swimming Australia employee located at any office; or
- (b) A Swimming Australia employee or contracted team support staff member specifically appointed as part of a team competition.

**5.1.2** Upon notification of an alleged breach from a team member the designated Integrity Officer shall, in the first instance: -

- a) Clarify with the aggrieved person if they have made their concerns/issues known to the person against whom the complaint has been lodged
- b) Clarify with the aggrieved person if in the first instance they would prefer the designated Integrity Officer to attempt to satisfactorily resolve the matter between the parties on an informal basis
- c) Clarify with the aggrieved person if the person against whom the complaint has been made is their immediate manager or another senior executive/official therefore making points (a) and (b) impractical to achieve

- 5.1.3** Where point b) as previously outlined in 5.1.2 is applicable and is subsequently proven to be ineffective, or in the case of point c), at the specific request of the aggrieved person they shall complete and submit a formal written complaint identifying the general particulars of the incident which is the subject of the complaint and the person whom the complaint concerns, for signature and authorisation prior to being submitted to a designated Swimming Australia Integrity Officer.
- 5.1.4** A team member formally reporting an allegation will only be identified to the Concerned Party where it is necessary to do so to ensure procedural fairness in the course of investigating the allegation.

## **5.2 CATEGORISING AN ALLEGED BREACH OF THE CODE OF CONDUCT**

- 5.2.1** Following receipt of a report (and based upon the extent of the evidence provided by the person making the report), the designated Swimming Australia Integrity Officer shall initially categorise the allegation as being either minor, intermediate or serious using the following indicative examples as a guide: -

### **Minor Allegation**

- (a) Being late for a team meeting on one occasion without a reasonable and valid excuse
- (b) Breaching the Team Uniform Policy
- (c) Failing to attend competition sessions without prior permission (when not racing) on more one occasion without a valid and reasonable excuse
- (d) Breaching team curfews on one occasion
- (e) Divulging the private contact details of a team member without their prior permission

### **Intermediate Allegation**

- (a) Being late for team meetings on a consistent and regular basis
- (b) Breaching the Team Uniform policy on a consistent and regular basis
- (c) Failing to attend competition sessions without prior permission (when not racing) on a consistent and regular basis
- (d) Breaching team curfews on a consistent and regular basis
- (e) Breaching standards on personal relationships on more one occasion
- (f) Divulging the private contact details of a fellow swimmer, coach, Swimming Australia employee or team support staff member without their prior permission on a recurring basis;
- (g) Behaving in a manner that effects the preparation of yourself or another swimmer/swimmers
- (h) Behaving in a manner that puts the safety or well-being of yourself or another swimmer, coach, Swimming Australia employee or team support staff member at risk
- (i) Making negative or inappropriate remarks about Swimming Australia or another team member via Social Media outlets or any other public or private forum
- (j) Using abusive language towards another team member
- (k) Consuming alcohol whilst under the bounds of any particular Team Agreement

### **Serious Allegation**

- (a) Sexually harassing another team member
- (b) Discriminating against another team member
- (c) Bullying or vilifying another swimmer, coach, Swimming Australia employee or team support staff member
- (d) Physically striking or assaulting another team member
- (e) Providing false or misleading information at the time of entering into your Swimmer Agreement or Team Agreement, or those of the Australian Olympic Committee and/or Australian Commonwealth Games Association, with Swimming Australia or in the course of your engagement with Swimming Australia
- (f) Stealing or deliberately damage Swimming Australia equipment, files, records or property
- (g) Deliberately misleading defrauding or assisting another person to steal or defraud Swimming Australia or team members
- (h) Being in possession of, trafficking in or consuming illegal drugs at any time on Swimming Australia premises or at any Swimming Australia event, competition or activity
- (i) Reporting for training or any Swimming Australia event, competition or activity effected by alcohol or illegal drugs
- (j) Being in possession of or using any form of illegal weapon at any time on Swimming Australia premises or at any Swimming Australia event, competition or activity
- (k) Breaching Swimming Australia's Gambling, Anti-Doping or Illicit Drugs Policies
- (l) Misuse of Swimming Australia's electronic communication facilities
- (m) Breaching standards on personal relationships on a consistent and regular basis

**5.2.2** Once the designated Swimming Australia Integrity Officer has completed their initial categorisation of the allegation, prior to proceeding any further they shall: -

- (a) Document the details of the allegation through the preparation of a Notification of Incident Report (which shall subsequently be securely filed for future reference).
- (b) In the case of an allegation made within Australia discuss the Notification of Incident report and their initial categorisation of the allegation with the relevant Swimming Australia General Manager (or equivalent).
- (c) In the case of an allegation made whilst overseas at a competition or camp, discuss the Notification of Incident report and their initial categorisation of the allegation with the Team Leader.
- (d) In the case of any allegation that has been initially categorised as serious, additionally discuss the Notification of Incident report and their initial categorisation with the Swimming Australia Chief Executive Officer.

- (e) In the case of any Minor or Intermediate allegation where agreement cannot be reached with either the relevant Swimming Australia General Manager (or equivalent), or Team Leader, discuss the Notification of Incident report and their categorisation with the Swimming Australia Chief Executive Officer.

### **5.3 NOTIFYING THE CONCERNED PARTY**

**5.3.1** Once the initial categorisation of the allegation has been completed (as previously outlined in 5.2.2) the designated Swimming Australia Integrity Officer and the relevant Swimming Australia General Manager (or equivalent) or Team Leader will contact the Concerned Party or in the case where the Concerned Party has not yet attained the age of 18 years, their "Support Person" (defined below) in order to advise them that: -

- (a) A Report Form has been lodged with a Designated Swimming Australia Integrity Officer;
- (b) The initial categorisation of the allegation that has been completed;
- (c) Any interim measures that need to be put in place to protect the Complainant and/or the Concerned Party;
- (d) The strict obligation that the Concerned Party is obliged to keep both the fact and any details of the Report (disclosed by the designated Swimming Australia Integrity Officer) strictly confidential and that the Concerned Party is to not otherwise communicate with the Complainant or any relevant witnesses or other team members regarding the Report to allow the investigation of the Complaint to be made; and
- (e) It shall be a breach of Behaviour Standards for a Concerned Party to contact a Complainant or a potential third party witness or to otherwise try to influence an investigation undertaken by an Integrity Officer as a result of a Report submitted by a Complainant.
- (f) A Support Person will typically be;
- If available, a parent or legal guardian;
  - A family member or extended family member over 18 years of age;
  - A Swimming Team leader chosen by the Minor if the communication occurs outside Australia; or
  - A person chosen by the Team Leader who is affiliated with but not otherwise a member of the Australian Team such as a FINA representative or a technical official.

### **5.4 INVESTIGATING AN ALLEGED MINOR OR INTERMEDIATE BREACH OF THE CODE OF CONDUCT**

**5.4.1** Once the process outlined in 5.2 and 5.3 has been completed, the designated Swimming Australia Integrity Officer will undertake a thorough and confidential investigation which may incorporate the conduct of interviews with any nominated

witnesses, the Concerned Party and thereafter any witnesses they may request before preparing a detailed Incident Report of their findings (which shall subsequently be securely filed for future reference).

**5.4.2** Once the designated Swimming Australia Integrity Officer has completed their investigation, prior to proceeding any further they shall: -

- (a) In the case of an allegation made within Australia discuss the Incident Report and their findings with the relevant Swimming Australia General Manager (or equivalent).
- (b) In the case of an allegation made whilst overseas at a competition or camp, discuss the Incident Report and their findings with the Team Leader.
- (c) In the case of any Minor or Intermediate allegation where agreement cannot be reached with either the relevant Swimming Australia General Manger (or equivalent), or the Team Leader, discuss their Incident report and findings with the Swimming Australia Chief Executive Officer.

## **5.5 SANCTIONING A MINOR OR INTERMEDIATE BREACH OF THE CODE OF CONDUCT**

**5.5.1** In the case of a Minor or Intermediate Allegation where the designated Swimming Australia Integrity Officer finds that on the balance of probability the allegation cannot be substantiated:

- (a) In the case of an allegation made within Australia, the relevant Swimming Australia General Manager (or equivalent) (accompanied by the designated Swimming Australia Integrity Officer) will inform the Concerned Party that the allegation has not been substantiated and that the matter is closed.
- (b) In the case of an allegation made whilst overseas at a competition or camp, the Team Leader (accompanied by the designated Swimming Australia Integrity Officer) will inform the Concerned Party that the allegation has been unsubstantiated and that the matter is closed.

**5.5.2** In the case of a Minor or Intermediate Allegation where the designated Swimming Australia Integrity Officer finds that on the balance of probability the allegation is substantiated: -

- (a) In the case of an allegation made within Australia, the relevant Swimming Australia General Manager (or equivalent) will recommend the appropriate sanction to the Swimming Australia Chief Executive Officer for approval.
- (b) The relevant Swimming Australia General Manager (or equivalent) (accompanied by the designated Integrity Officer) will inform the Concerned Party of the proposed sanction to be applied, and give the Concerned Party the opportunity to put forward any matters relevant to the sanction that the Concerned Party believes should be applied, directly following which the Swimming Australia General Manager (or equivalent) and the Integrity Officer

shall consider those matters and shall inform the Concerned Party of their decision regarding the sanction to be implemented immediately thereafter.

- (c) The Swimming Australia General Manager (or equivalent) will arrange for a record of the investigation report and the sanction decision to be placed upon the Concerned Party's record.
- (d) The Swimming Australia General Manager (or equivalent) may, if appropriate in the circumstances, inform the person who reported the allegation of the finding of the investigation report and/or or the sanction imposed.
- (e) In the case of an allegation made whilst overseas at a competition or camp where it is not practical to seek prior approval from the Swimming Australia Chief executive, the Team Leader will approve the appropriate sanction\* and inform the Swimming Australia Chief Executive Officer as soon as possible thereafter.
- (f) The Team Leader (accompanied by the designated Integrity Officer) will inform the Concerned Party of the proposed sanction to be applied, and give the Concerned Party the opportunity to put forward any matters relevant to the sanction that the Concerned Party believes should be applied, directly following which the Swimming Australia General Manager (or equivalent) and the Integrity Officer shall consider those matters and shall inform the Concerned Party of their decision regarding the sanction to be implemented immediately thereafter.
- (g) The Team Leader will arrange for a record of the investigation report and the sanction decision to be placed up on the Concerned Party's record.
- (h) The Team Leader may, if appropriate in the circumstances, inform the person who reported the allegation of the finding of the investigation report and/or or the sanction imposed.



## **5.6 INVESTIGATING AND SANCTIONING OF AN ALLEGED SERIOUS BREACH OF THE CODE OF CONDUCT**

**5.6.1** Upon receipt and consideration of the Incident Report completed by the designated Integrity Officer, (and other than in the case of an anti-doping allegation which shall be referred to ASADA), the Chief Executive Officer will appoint an appropriate Investigating Officer to independently investigate the serious allegation, who may be:

- A designated Swimming Australia Integrity Officer;
- A senior Swimming Australia executive or manager; or
- An independent, external person with appropriate and relevant experience in the investigation of complaints.

**5.6.2** Should it subsequently become apparent that the investigation (whether being conducted by Swimming Australia or ASADA) may take a prolonged period to complete, following discussions with either the relevant Swimming Australia Executive Manager or in the case of an overseas competition or camp the Team Leader, the Chief Executive Officer may decide to suspend the Concerned Party from their normal duties (without any loss of normal payments) until a thorough and confidential investigation has been completed.

**5.6.3** Once the investigation has been completed, the Investigating Officer shall prepare an Investigation Report for the Swimming Australia Chief Executive Officer.

**5.6.4** Where the Chief Executive Officer finds that on the balance of probability the allegation cannot be substantiated: -

- (a) In the case of an allegation made within Australia, the Performance Director will inform the Concerned Party that the allegation has been unsubstantiated and that the matter is closed.
- (b) In the case of an allegation made whilst overseas at a competition or camp, the Team Leader will inform the Concerned Party that the allegation has been unsubstantiated and that the matter is closed.

**5.6.5** Where the Chief Executive Officer finds that on the balance of probability the allegation is substantiated he/she will: -

- (a) In the case of any matter relating to Swimming Australia's Member Welfare Policy refer the allegation to a Judiciary Committee for review.
- (b) In the case of any other matter (other than anti-doping), refer the allegation to an Integrity Panel for review.

**5.6.6** Based upon the outcomes of either the appointed Judiciary Committee or the Integrity Panel, in conjunction with the relevant Swimming Australia Executive Manager or in the case of an overseas competition/camp the Team Leader, the Chief Executive Officer will determine the appropriate sanction.

- 5.6.7** The Chief Executive Officer (accompanied by the relevant Swimming Australia Executive Manager or Team Leader) will conduct a formal interview where the Concerned Party will be provided with an opportunity to respond to the allegation and the subsequent investigation.
- 5.6.8** The Chief Executive Officer (accompanied by the relevant Swimming Australia Executive Manager or Team Leader) will inform the Concerned Party of the sanction to be applied, which shall be implemented immediately thereafter.
- 5.6.9** The Chief Executive Officer will arrange for a record of the investigation report and the sanction decision to be placed upon on the Concerned Party's record.
- 5.6.10** The Chief Executive Officer may, if appropriate in the circumstances, inform the person who reported the allegation of the finding of the investigation report and/or the sanction imposed.
- 5.6.11** At all stages of an investigation, the rights of persons who have not yet achieved the age of Eighteen (18) years (the Minor) will be strictly protected by communication with that person which will either be through or in the presence of a Support Person.
- 5.6.12** A Support Person will typically be;
- (a) If available, a parent or legal guardian;
  - (b) A family member or extended family member over 18 years of age;
  - (c) A Swimming Team leader chosen by the Minor if the communication occurs outside Australia; or
  - (d) A person chosen by the Team Leader who is affiliated with but not otherwise a member of the Australian Team such as a FINA representative or a technical official.

## **5.7 BOARD REPORTING**

- 5.7.1** The Chief Executive Officer will submit a report, via the High Performance Committee, on all incidents investigated in accordance with these Disciplinary Procedures to the Swimming Australia Board at the applicable Board meeting.

## 5.8 SANCTIONS FOR SUBSTANTIATED COMPLAINTS

5.8.1 The range of sanctions which are available to the Swimming Australia Chief Executive Officer or to the Team Leader in the event the sanction is imposed whether within Australia or not are as follows;

### Minor Offences

For a **first offence** by the Concerned Party, the appropriate sanctions would include;

- (a) A verbal or written reprimand;
- (b) A direction to deliver an apology in writing or verbally to any aggrieved party;
- (c) A direction to pay for repairing damage to property or replacing damaged property;
- (d) A direction to attend education, training or any other type of support program to address the behaviour; or
- (e) Suspension in part or full of Swimmer, Coach, or Professional Services payments of not more than one month (pro-rated).

For a **second or subsequent offence**;

- (a) Any of the sanctions outlined above, plus;
- (b) Suspension in part or full of Swimmer, Coach or Professional Services payments of not more than three months (pro-rated).

### Intermediate Offences

For the **first offence** the following sanctions that are available are;

- (a) Any of the sanctions outlined above, plus;
- (b) Suspension in part or full of Swimmer, Coach or Professional Services payments of not more than three months (pro-rated).

For the **second or subsequent offence** the sanctions that are available are;

- (a) Any of the sanctions outlined above, plus;
- (b) Suspension in part or full of Swimmer, Coach or Professional Services payments of not more than three months (pro-rated).  
or
- (c) A financial penalty not exceeding \$20,000;
- (d) Termination of the Swimmer, or Employment Agreement at a date to be fixed;  
or
- (e) Immediate cancellation of the Team Agreement resulting in the team member being sent home from competition within Australia or outside Australia.

### Serious Offences

For a **serious offence** the sanctions that are available are;

- (a) Any of the sanctions outlined above, plus;
- (b) Immediate termination of the Swimmer or Employment Agreement;
- (c) Immediate cancellation of the Team Agreement resulting in the team member being sent home from competition within Australia or outside Australia;
- (d) Suspension of the Swimmer Agreement for a period of up to two years;
- (e) Suspension in part or full of Swimmer payments for a period of up to two years;
- (f) Suspension in part or full of Swimmer, Coach or Professional Services.  
or
- (g) A financial penalty not exceeding \$50,000.

**5.8.2** The following factors should be considered together with any other factors that are relevant in each particular circumstance when determining the sanction:

- (a) Age;
- (b) Length of time on the Australian Team;
- (c) Record of offences committed previously including the most recent offences;
- (d) Previous sanctions applied;
- (e) The impact of the offence on any third party;
- (f) The impact of the offence on the Team if the offence was committed during a Team event or trip;
- (g) The sanctions prescribed by a Statutory Body such as ASADA which is applicable to the offence;
- (h) The impact on the team member of the imposition of a financial penalty in the team members circumstances;
- (i) Any actions taken which demonstrate genuine remorse shown by the team member; and
- (j) The obligation to impose a sanction that is a general deterrent to the particular behaviour.

## **6. TEAM MEMBERS RIGHT OF APPEAL**

- 6.1** Where the Concerned Party is aggrieved about any finding or sanction imposed either under this Code of Conduct or in relation to a determination made by Swimming Australia pursuant to a term of the Swimmer Agreement or Team Agreement, within 14 days of receipt of the dated sanction notice, the Concerned Party may formally request (in writing) that the Swimming Australia Chief Executive Officer arrange for an independent evaluation of the decision or of the sanction or of both.
- 6.2** On receipt of the Appeal request to the Swimming Australia Chief Executive Officer, the Swimming Australia Chief Executive Officer will provide to the Concerned Party a list of three (3) names of individuals who have the requisite skills to review the decision and/or the sanction imposed by Swimming Australia (the Independent Reviewer), and the Concerned Party shall select one of the names provided. This step will not apply to the process of appeal when it is lodged outside Australia when the Australian Swim Team is travelling, training or competing in which case the provisions of paragraph 6.10 will apply.
- 6.3** In the event that the Concerned Party does not select one of the names provided by the Swimming Australia Chief Executive Officer and fails to nominate a mutually agreeable Independent Reviewer within seven (7) days of receiving the list of names from the Swimming Australia Chief Executive Officer, the appointment of a mutually agreed external person to conduct the investigation will be the person nominated by the Chair of the Australian Sports Commission or his or her delegated staff member and this nomination will be binding on both Swimming Australia and the Concerned Party.
- 6.4** The review by the Independent Reviewer will be in the nature of a re-hearing and the Concerned Party will be entitled to present further evidence which shall include the Concerned Party meeting with the Independent Reviewer and the Concerned Party shall be required to be available within fourteen (14) days for that purpose.
- 6.5** Alternately the Concerned Party may present a written document to the Independent Reviewer that shall be submissions about the evidence already presented and/or about the severity of the sanction already imposed but will not be accepted as evidence by the Independent Reviewer.
- 6.6** Thereafter, the Independent Reviewer will conduct a thorough investigation of the finding and/or the sanction and will provide a recommendation to the Swimming Australia Chief Executive Officer in writing as to the appropriateness of the finding or sanction and the finding on the decision or sanction that the Independent Reviewer has made.
- 6.7** The finding of the Independent Reviewer in relation to the decision is binding on both parties. In relation to the finding on sanction, if the Independent Reviewer makes a finding that a less serious sanction should be imposed then this decision is also

binding. If the Independent Reviewer determines that the sanction imposed should be more severe, then the Swimming Australia Chief Executive Officer has the discretion to accept the recommendation and increase the sanction or refer the finding of the Independent Reviewer to the Board of Swimming Australia for a decision to either increase the sanction or not to increase it.

- 6.8** Following consultation with the relevant Swimming Australia General Manager (or equivalent) or the Team Leader and the Swimming Australia Integrity Panel, the Swimming Australia Chief Executive Officer will inform the Concerned Party of Swimming Australia's decision which shall be confirmed in writing.
- 6.9** The Independent Reviewer will be a person who has no less than ten (10) years of experience in sport Directorship or Administration or both and will not be a current paid Employee, Contractor or Consultant of Swimming Australia. Appropriate Independent Reviewers would include former Board members, CEO's or Managers of Swimming Australia, current Board Members of State Associations excluding the State where the Concerned Party resides and trains, or properly accredited professional Accountants, Lawyers or Sporting Consultants, Technical Officials, FINA Officials or Representatives.
- 6.10** In the event the Concerned Party is seeking a review of a sanction imposed during a Team event outside Australia and the sanction includes sending the Concerned Party home, the Appeal process will be expedited to include the following specific provisions;
- (a) The appeal request can be verbal to the Team Leader;
  - (b) The Independent Reviewer will be a Technical Official, a FINA Delegate or an appropriately qualified Team staff member who has no involvement in the investigation process; and
  - (c) The decision of the Independent Reviewer will be communicated to the Team Leader orally with written reasons to be provided on request by the Concerned Party after the Independent Reviewer returns to Australia.
- 6.11** Nothing in this Appeal Process denies the Concerned Party the right to appeal the decision of the Independent Reviewer to the Court of Arbitration for Sport.