



## DISPUTES & DISCIPLINE POLICY: PHOENIX AQUATICS INCORPORATED

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*As a club, we want to try to deal with all matters before they become serious, we want all swimmers and parents to feel that they can discuss any issues however small they seem with their/their child's coach/instructor, PA Administrator or a Committee member. Wherever possible we will endeavour to keep these discussions informal, however, issues may arise that require us to implement our Disputes and Disciplinary Policy.*

### 1. The Objectives of the Disputes & Disciplinary Policy are:

- a) To determine alleged breaches of the Code of Conduct;
- b) To determine alleged breaches of the Member Protection Policies;
- c) To make decisions on appeals by a Member against a decision involving suspension, expulsion, penalty or material detriment to the Member.

### 2. Elected Panel

Phoenix Aquatics Committee shall appoint a Panel of enquiry which comprises three members made up as follows:

- a) An appropriately qualified person who shall act as the Panel's Chair (and have the casting vote);
- b) Such other persons as they judge to be suitable to hear the matter;
- c) No person may sit on the Panel who has an actual or potential conflict of interest which may affect their impartiality in hearing the matter before them.

### 3. Offences Leading to Disciplinary Action

The under noted actions by members may be interpreted by the Club Committee to fall within the Code of Conduct and Member Protection Policies mentioned in Section 1. However the lists are not to be considered as fully inclusive or covering all possible offences.

#### 3.1 "Misconduct"

The carrying out of an offence considered to be of a minor nature (unless frequently repeated) and will normally incur a written warning from the Panel together with a demand for full and appropriate corrective action which could include removal from competition or a fine. Examples of offences that may be considered misconduct include:

- Discourteous, crude or offensive behaviour at training session or organised Club events.
- Conduct of an unsafe nature
- Offensive disregard for equipment or property
- Refusal to carry out reasonable instructions issued by event officials or organisers
- Failure to comply with or adhere to the relevant Code of Conduct for their position within the Club



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- Failure to comply with or adhere to the relevant Code of Conduct as a member of the Club
- Failure of a member to comply with directions of the coach in terms of development and/or participation in regional, national and international events
- Any other actions of similar gravity to the above, at the discretion of the Elected Officers.

Repetition of the above offences or failure to comply with any demands made in writing by the Panel may result in further action by the Panel involving a disciplinary hearing.

### 3.2 “*Serious Misconduct*”

The carrying out of an offence of such gravity that in the opinion of the Panel it warrants a Phoenix Aquatics Incorporated disciplinary hearing. Examples of offences, which may be considered as serious misconduct include:

- Misconduct offences discussed above if specially grave or repeated
- Deliberate or consistent breaches of Club rules
- Any attempt to achieve gains or advantage over others by unfair or unscrupulous means
- Theft or misappropriation
- Use of threatening or abusive behaviour
- Participating in the sport whilst under the influence of drugs or alcohol
- Malicious interference with equipment or property
- Disregard for one’s own or other people’s safety
- Any other action, which in the opinion of the Club Officers may bring the sport or Phoenix Aquatics Incorporated into disrepute, or which left unpunished, may result in the detriment of the Club or its members.

### 3.3 “*Gross Misconduct*”

An action of such seriousness that the Panel will require the immediate expulsion of the offender from the association. The Panel may by means of an executive decision summarily expel such an offender without invoking a disciplinary hearing. The expelled member will have the right to a disciplinary hearing as soon as this can be arranged but will remain expelled until and unless such a hearing overturns the executive decision. Examples of gross misconduct are:

- Physical violence of assault towards other persons at a Club training or event or related activity, including serious threatening, intimidating or forceful behaviour
- Reckless disregard of safety and basic safety rules
- Being convicted of criminal offences involving physical violence or abuse
- Offences of cheating
- Being under the influence of alcohol or drugs during a Club training sessions or swimming meet or other Club activity where the party holds a position of responsibility or level of involvement



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- Other acts that are considered to be of an extremely serious nature perpetrated against the Club, its members or any other party.

### 3.4 Child Protection

If the matter relates to a child protection issue the safety of the child is the priority and the Panel will follow the child protection procedures, as provided by Swimming NZ, for dealing with a complaint then follow disciplinary procedures after outcome has been reached.

## 4. Hearing

### 4.1 Procedures to be adopted

In hearing any matter under this Disputes & Disciplinary Policy, the Panel will have the right to determine all procedures to be adopted. The procedure will largely be shaped by the level of misconduct (see section 3). The determined procedure will be clearly communicated to all parties involved.

### 4.2 Documents

Any documents upon which any party to the hearing wishes to rely must be sent to the other party and the Panel at least **two business days** prior to the date convened for the hearing. The Panel may exclude any documents not sent to them in accordance with this rule.

### 4.3 Witnesses

The Panel may, in relation to any hearing, require the attendance of any person and ask any questions and call any evidence as the Panel, in its absolute discretion, thinks fit. It is acknowledged that the Panel has no legal power to compel such witnesses to attend, other than Members who are contractually bound to do so.

### 4.4 Written submissions

Any party to a hearing (including the Phoenix Aquatics Club Committee and / or Child Protection Advocate) may make any written submissions to the Panel provided that copies of such written submissions are provided to the Panel and the other parties at least **two business days** prior to their presentation.

### 4.5 Representation

At any hearing, any Member may be represented by a support person who may make submissions on that Member's behalf but who shall not be entitled to provide evidence on that Member's behalf.

### 4.6 Non-attendance by party to hearing

Once a hearing is convened, the Panel has power to make a determination upon the available evidence on the date set for the hearing, or such later date,



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irrespective of whether any party attends the hearing or makes written submissions.

### 4.7 Confidentiality

All hearings before the Panel shall be confidential and any matters discussed shall be held in the strictest confidence between those in attendance at the hearing.

## 5. Determination

Following Panel hearings, such penalties shall be applied as the Panel considers appropriate, including temporary or permanent expulsion of the offender from the club, such penalties will have immediate effect, notwithstanding the possibility of an appeal in accordance with Section 6 under noted. Expulsion involving cases deemed as 'gross misconduct' will preclude the offender from taking part in any Phoenix Aquatics Incorporated organised activity in an official capacity. The Club will in all cases comply with the requirements of the Governing body and Child Protection policies including immediate notification of the police where required.

### 5.1 General justice and fairness

The Panel will make its determinations in the following manner:

- by reference to considerations of general justice and fairness;
- consistently with any contractual or employment rules which may apply;
- based on the evidence presented to the Panel and the seriousness of the breach.

### 5.2 Written Reasons:

The Panel will with as little delay as possible after the conclusion of a hearing, provide a written determination to the parties, which sets out the reasons for the determination.

### 5.3 Determinations final and binding:

Subject only to the right of appeal set out in section 6, all determinations of the Panel will be final and binding.

### 5.4 Determinations confidential:

All determinations of the Panel shall be confidential between the parties.

### 5.5 Manifest error:

The Panel may at any time correct, vary or set aside a determination where there is a manifest error in the determination.



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### 5.6 Costs:

Each party will be responsible for bearing its own costs in relation to the Hearing.

## 6. Right of Appeal

If an appeal of the decision or penalty is to be made then written notice of appeal by way of **1st class recorded delivery to the Club Secretary** must be given by the offender, within **28 days** of being notified of the decision. No appeal will be valid or considered after that period has elapsed. It will not be sufficient to state "I wish to appeal", the offender must give full written grounds for the appeal, stating exactly what is being appealed against and the reasons for this.

An appeal together with full and recorded argument may be considered relative to:

- the decision
- the penalty
- other

### 6.1 Appeal Process:

An appeal hearing will be convened as soon as practicable and will consist of an Appeal Committee of 3 members made up of as follows

- a) expertise not available within the club who shall act as the Appeal Committee Chair (who will have the casting vote)
- b) members of the Club Committee
- c) where there is a possible conflict of interest or close relationship between the people on the club committee and any of the parties to the complaint additional members will be sought
- d) no members of the original Panel shall be elected to the Appeal Committee.

### 6.2 Submissions:

New evidence cannot be presented at the appeal hearing.

### 6.3 Determination final and binding:

The Appeal Committee shall have power to amend or revoke any decision made at the previous disciplinary hearing.

The decision of the Appeal Committee is final and binding on the parties and not subject to further appeal.

**Club Chairman**

**By order of the Committee of Phoenix Aquatics Incorporated**