



## Administration Guidelines/Policies

### Judicial Procedure

Endorsement Date:	09.11.2020
Policy Topic:	Administration – Judicial Procedure
Policy Number:	ADM003
Document Version Control:	Version 1

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#### 1. Purpose and Background

- 1.1 To guide the members of the Judiciary Committee and the Club members in general as to the procedures contained in Regulation 5 of the SLSA Regulations.
- 1.2 The procedures prescribed in Regulation 5 have for this purpose been amended to be applied at Club level.

#### 2. Policy Statement

- 2.1 Discipline and judicial matters affecting members of Club should be conducted in accordance with SLSA Regulation 5.
- 2.2 These Judiciary Regulations are authorised under clauses 16, 18 and 39 of the SLSA Constitution and Clause 18 of the Club's Constitution and By-Law clauses 2.1, 2.2, 2.3; 2.4; 2.5; 2.6, 2.7 and 2.8.

#### 3. Applicability

- 3.1 This procedure applies to all members of the Marcoola Surf Life Saving Club. The responsibility of implementing this policy/procedure rests with the Board.

#### 4. Statutory/Constitution/By-Laws Requirements

- 4.1 This procedure specifically relates to By-Laws 2.1, 2.2, 2.3; 2.4; 2.5; 2.6, 2.7 and 2.8.

## 5. Considerations

- 5.1 Matters of discipline, judiciary hearings and appeals must be treated with “Procedural Fairness” that is to say that:
  - 5.1.1 In a hearing, it is the duty of a decision maker/s to ensure that any person whose interests may be adversely affected by a decision is given an opportunity to make submissions on that proposed decision;
  - 5.1.2 The decision makers are to be both impartial about the outcome and are seen to be impartial;
  - 5.1.3 Every decision is based upon clear evidence that supports submissions made; and arguably; and
  - 5.1.4 Decision makers should provide written reasons as to why a decision is made.

## 6. Breach

- 6.1 A Breach is where a Member has allegedly:
  - 6.1.1 Breached, failed, refused or neglected to comply with the membership directives or any resolution or determination of the Board, a State Centre, a Branch, or any duly authorised SLSA committee; or
  - 6.1.2 Acted in a manner unbecoming of a Member or prejudicial to the Objects and interests of SLSA and/or surf lifesaving; or
  - 6.1.3 Brought themselves, SLSA, any State Centre, Branch or the Club or surf lifesaving into disrepute; or
  - 6.1.4 Competed or in any way participated in a lifesaving competition and/or used SLSA equipment contrary to SLSA Regulation 4.3(c) or has failed to obtain the permission of SLSA to so compete or participate in that competition or use that SLSA equipment.
- 6.2 The Board, or Club Council may commence or cause to be commenced investigatory and/or disciplinary proceedings ("proceedings") against that Member, and that Member will be subject to and submits totally to the jurisdiction, procedures, penalties and appeal mechanisms contained in the SLSA Regulations; providing that, the Board, State Centre, Branch or the Club may commence proceedings, or investigate conduct, which may warrant the commencement of proceedings by referring the matter to a Judiciary Committee.

## 7. Judiciary Committee

- 7.1 Judiciary Committees shall be convened and function as follows:

### **Convening of Committee**

- 7.1.1 In accordance with By-Law 2.6
- 7.1.2 The Board will appoint a Judiciary Committee (consisting of three members one of which will have legal qualifications) from the pool of

nominated members from the AGM;

- 7.1.3 The Judiciary Committee, once convened, shall elect one of its members to act as the Judiciary Committee Secretary.

#### **Jurisdiction**

- 7.2.1 The jurisdiction of a Judiciary Committee shall be as follows:

7.2.1.1 Where a Judiciary Committee has been convened by the Board that Judiciary Committee shall have unlimited authority in all matters referred to it and shall deal with the concerned person.

7.2.1.2 Where the matter, in the opinion of the Board, is better dealt with by the criminal justice system, it will not be considered; however, the Board may reserve its rights to take action as it seems fit.

#### **Referrals**

- 7.2.2 Every referral to a Judiciary Committee shall be clear and unambiguous and shall clearly set out the matter(s) required to be investigated or determined by the Judiciary Committee.

7.2.3 Upon a referral to a Judiciary Committee, the committee secretary shall, as soon as practicable, appoint a time and place suitable to the Judiciary Committee for the proceedings and may appoint an investigator to inquire into the referral.

7.2.4 A Judiciary Committee shall process any referral to it within such time as the Board, or Club directs, provided always that a concerned person may apply for an adjournment by application in writing to the committee secretary. Such an application must be received at least two days prior to commencement of proceedings.

7.2.5 A Judiciary Committee shall have power to require the attendance of any member at any proceedings. Notice shall be given in accordance with these Regulations.

7.2.6 The referring authority shall decide the quorum for a Judiciary Committee.

7.2.7 Should an investigator have been appointed, the Chairperson of the Judiciary Committee should in conjunction with the investigator determine if the matter should proceed.

### **8. Procedure**

- 8.1 Proceedings commenced under **SLSA Regulation 5** shall be conducted as follows:

### **Request to Appear**

- 8.1.1 Upon receipt of a referral, the Judiciary Committee shall request the party or parties concerned in the referral to appear before them.
- 8.1.2 This request shall be in writing either delivered personally or in appropriate cases by post or facsimile to the appropriate address (mail or electronic) or facsimile number of the concerned person/s.
- 8.1.3 A notice given by post shall be deemed to have been given on the second day following that on which it shall be posted. A notice given by facsimile shall be deemed to be given on the date when the facsimile confirmation report was received at the facsimile number to which it was sent. A notice given by email shall be deemed to be given on the date when the email was sent unless an email is received in reply stating email not successfully transmitted.

### **Notice**

- 8.2. Proceedings shall take place as soon as practicable. All parties concerned shall be given at least seven days' notice of the proceedings by the Judiciary Committee. The notice shall:
  - 8.2.1 Be in writing; (Policies and Procedures Manual Template TEMP No. TEMP003);
  - 8.2.2 State that the party or parties concerned are required to appear and in what capacity;
  - 8.2.3 State the nature of the proceedings and the matters or alleged offence(s), the subject of investigation or determination, the possible penalty or penalties and the date, place and time of the hearing; and
  - 8.2.4 Be delivered in accordance with 8.1.3

### **Appearance**

- 8.3.1 Persons appearing before the Judiciary Committee shall be entitled to call witnesses, but must state their case in person unless the Judiciary Committee has permitted representation through an advocate.
- 8.3.2 If an advocate is permitted such advocate is not entitled to be legally trained or qualified.
- 8.3.3 For the avoidance of doubt persons appearing before a Judiciary Committee are not entitled to legal representation in the Judiciary Committee proceedings.
- 8.3.4 They and their witnesses shall be given a full opportunity to be heard call and / or present evidence and make submissions regarding the allegations made against them. In their absence, or in the absence of their witnesses, a decision may be made by default.
- 8.3.5 Before making a decision in default of appearance, the Judiciary Committee must satisfy itself that the party concerned was aware of the time, date and place of hearing and had been requested to appear in

accordance with 8.1.3.

## 9. Procedure at Proceedings

9.1 Judiciary proceedings shall be conducted as follows:

9.1.1 The Judiciary Committee Chairperson shall announce the opening of the proceedings, stating the Judiciary Committee's authority, jurisdiction, composition and the nature and purpose(s) of the proceedings.

9.1.2 The procedure to be followed at proceedings shall be clearly explained by the Judiciary Committee Chairperson. The Judiciary Committee Chairperson shall state who is entitled to be present throughout proceedings during evidence and submissions.

9.1.3 The matter(s) the subject of proceedings shall then be read to the person(s) concerned. The body or person reporting the matter(s) and the subjects of the proceeding shall be given the opportunity to report the circumstances of those matter(s). The person(s) concerned will be given the opportunity to respond to this report and present evidence/submissions as to their view of the circumstances of those matter(s). Any witnesses called by either the reporting body or the person(s) concerned will be given the opportunity to provide evidence or make submissions. Witnesses may be questioned on their evidence. Evidence and/or submissions shall be tendered in writing.

9.1.4 Any points of law can only be answered by the duly qualified legal person.

9.1.5 The Judiciary Committee will consider the evidence presented. The Judiciary Committee may adjourn the hearing if considered necessary. No other person shall be present or participate in any discussion with the Judiciary Committee at this time. If the Judiciary Committee finds an offence has not been committed or not proved, it will advise the referring authority and dismiss the charge, accordingly.

9.1.6 If the Judiciary Committee finds an offence has been committed or proved, it may impose, at its discretion, an appropriate penalty, or penalties, or it may report its findings to the referring authority with such recommendations, as it considers appropriate. The Judiciary Committee Chairperson will declare the proceedings closed.

9.1.7 If a decision cannot be given immediately after proceedings, the relevant party or parties must be advised of the time and place at which the decision will be given. The decision, any penalty, the reasons for the decision and notice of the person's appeal rights shall be given in writing and signed by the Judiciary Committee Chairperson within 7 days of the conclusion of the hearing. A referring authority must advise persons found guilty of an

offence under these Regulations of their rights of appeal. Noting, particularly, that there is only one avenue of appeal either to the Club Council or SLSQ.

9.1.8 Every decision of a Judiciary Committee appointed by the Board, or the Club under these By-Laws shall be conveyed in writing within seven days of the conclusion of the hearing to:

- i. The parties concerned;
- ii. Where an individual Member, to that individual Member's Branch and State Centre; and
- iii. State Centre.

9.1.9 It shall be incumbent on the Club to give effect to the decision immediately and to notify the referring authority that such has been done.

## **10. Penalties**

10.1 Penalties which may be imposed include:

10.1.1 A reprimand; (admonishment);

10.1.2 Suspension of such activities, on such terms and for such period as the Judiciary Committee thinks fit;

10.1.3 Exclusion from a particular activity, event or events; the act of not allowing someone to take part in an activity or to enter a place;

10.1.4 Expulsion;

10.1.5 Fines, imposed in such manner and in such amount as the Judiciary Committee thinks fit;

10.1.6 Such combination of any of the above penalties as the Judiciary Committee thinks fit.

10.1.7 Additional Service, requiring the Member to undertake an activity based penalty, imposed in such manner as the Judiciary Committee deems fit.

10.2 During proceedings, the concerned person/s of the proceedings may be suspended, on such terms and for such period as the relevant referring authority thinks fit, and shall remain under suspension unless the relevant referring authority decides otherwise.

## **11. Reporting**

11.1 Unless the decision of a Judiciary Committee is unanimous, a separate report may be made to the referring authority by the minority. The decision of the majority; however, will be deemed to be the decision of the Judiciary Committee. Where voting is equal, the Judiciary Committee Chairperson may exercise a casting vote.

- 11.2 A decision of a Judiciary Committee cannot be altered by the referring authority.

## 12. Effect of Penalty

- 12.1 Where an Affiliated Club is suspended under these Regulations, its membership of, and representation rights and privileges in, SLSA shall be forfeited during the period of such suspension. Officers of SLSA who may be members of a suspended Affiliated Club shall not be affected by such suspension nor shall a suspension, absolve the Club from any beach patrol responsibilities.
- 12.2 Where an individual Member is suspended under these Regulations, all rights and privileges of that Member shall be forfeited, either partially or completely, during the period of suspension. In the case of complete suspension, a member shall also forfeit all Affiliated Club rights during the currency of the suspension. Partial suspension shall prevent a Member's participation in inter-Club, Branch, State Centre or SLSA activities, but shall not interfere with their rights as a member of an Affiliated Club or their beach patrol responsibilities.
- 12.3 Where an Affiliated Club or Individual Member is expelled under these Regulations, their membership of, and representation rights and privileges in, SLSA shall be forfeited immediately and membership shall cease.
- 12.4 No monies will be refunded to expelled or suspended Members.
- 12.5 The provisions of **clauses 17 and 18** of the SLSA Constitution shall apply.
- 12.6 The provisions of SLSA **Regulation 6: Membership Directives** apply to any penalties under this SLSA **Regulation 5**.

## 13. Appeals

NOTE: The Appeal process has been included to assist Judiciary Committees to understand the complete process.

- 13.1 SLSA shall appoint or recognise a panel of persons ("SLS Appeals Panel") from which SLS Appeals Tribunals shall be appointed as required. The SLS Appeals Panel shall comprise persons appointed by SLSA and/or each State Centre.
- 13.2 A Member who has received a penalty or an adverse finding from a Judiciary Committee under SLSA **Regulation 5.1** or a Carnival Disciplinary Committee under SLSA **Regulation 5** may, within 14 days from the date of receiving the determination in writing, appeal to the Club Council or SLS Appeals Tribunal. The appeal to the Club Council shall be in writing to the Club Secretary and the appeal to the SLS Appeals tribunal in writing to SLSQ. There is only one appeal from a Judiciary Committee regardless of whether that Judiciary Committee was appointed by the Board or by a Club, Branch or State Centre.
- 13.3 Appeals under this clause will be determined in accordance with SLSA Regulation 5.

- 13.4 An appeal is only permitted on one or more of the following grounds:
- 13.4.1 The decision was affected by actual bias; or
  - 13.4.2 There was no material on which the decision could reasonably be based.
- 13.5 An appeal must be lodged in writing with the relevant State Centre. The appeal must set out the:
- 13.5.1 Ground(s) on which the appeal is made (under SLSA Regulation 5.2 (d)); and
  - 13.5.2 Reasons or circumstances supporting the alleged ground(s) of appeal; and
  - 13.5.3 Must be accompanied by a non-refundable appeal fee of \$250.
- 13.6 In these Regulations, the "relevant body" and "relevant State Centre" are those in which the appellant (whether Individual Member or Club is located).
- 13.7 Nothing in this Regulation prevents the withdrawal of an appeal at any time in writing to the relevant State Centre. If the concerned person/s seeks to withdraw an appeal after an appeal hearing has commenced, the appeal may only be withdrawn with the consent of the relevant appeal panel Chairperson. Once an appeal is withdrawn a new appeal in respect of the same matter cannot be lodged.
- 13.8 On receipt of an appeal in accordance with this Regulation, the relevant State Centre must as soon as practicable convene an SLS Appeals Tribunal and forward the appeal documents to the nominated Chairperson of the convened Tribunal.
- 13.9 An SLS Appeals Tribunal shall be constituted by up to three persons (but a minimum of two) available to hear the appeal from members of the SLS Appeals Panel, which must include the following:
- 13.9.1 Up to two persons with a thorough knowledge of surf lifesaving; and
  - 13.9.2 A barrister or solicitor who will chair the Appeals Tribunal.
- 13.10 No member of the SLS Appeals Tribunal may be a party to or directly interested in the matter under consideration.
- 13.11 The SLS Appeals Tribunal has complete jurisdiction and discretion to re hear the matter in its entirety.
- 13.12 The Chairperson of an appointed SLS Appeals Tribunal shall, as soon as practical after receiving the appeal documents under SLSA **Regulation 5.2(g)**, investigate and consider the matter and determine whether the:
- 13.12.1 The appeal should be dismissed as:
  - 13.12.2 It does not set out a valid ground of appeal;
  - 13.12.3 There are sufficient grounds for the appeal to proceed; or



- 13.12.4 The matter is trifling in nature or has no merit; or
  - 13.12.5 The appeal warrants further review and determination in accordance with these Regulations.
- 13.13 The Chairperson has complete discretion in undertaking this review and there is no further appeal against a decision to dismiss under SLSA Regulation 5.2 (j) (k).
- 13.14 If the SLS Appeals Tribunal determines the matter warrants further review under SLSA **Regulation 5.2(j)(ii)**, it shall, as soon as practicable, having regard to timing, serve a notice in writing on all relevant parties:
- 13.14.1 Stating that the parties may address the SLS Appeal Tribunal at a hearing to be held as soon as practicable, being not earlier than four days from the date of the notice;
  - 13.14.2 Stating the date, place and time of that hearing; and
  - 13.14.3 Informing the parties that they may do any one or more of the following:
    - i. Attend that meeting (either personally or by their representative who subject to SLSA **Regulation 5.2(m)** may not be legally trained or qualified) and bring such witnesses as they wish to rely upon in respect of the matter the subject of appeal; and/or
    - ii. Give the SLS Appeal Tribunal, no later than 24 hours before the time of that meeting, a further written statement setting out relevant information surrounding the appeal.
- 13.15 The SLS Appeal Tribunal may conduct a hearing convened in accordance with SLSA **Regulation 5.2(k)** (or any adjournment) in such manner as it sees fit, but shall:
- 13.15.1 Give to all relevant parties and their witnesses every opportunity to be heard;
  - 13.15.2 Give due consideration to any written statements received from any relevant party; and
  - 13.15.3 Allow relevant parties to be present along with their adult representative; and may request or require such parties or other witness to attend the hearing or provide such evidence as is available to enable the SLS Appeals Tribunal to properly consider the matter.
- 13.16 Persons appearing before the SLS Appeals Tribunal are not entitled as of right to:
- 13.16.1 Legal representation before the SLS Appeals Tribunal. Subject to paragraph 13.16.2 below the Appeal Tribunal may grant a right to legal representation to a party where that party has made written application to the SLS Appeals Tribunal for such representation. Such application must be received by the Chairperson of the SLS Appeals Tribunal within 7 days from the date of the notice served under SLSA **Regulation 5.2(k)**.

- 13.16.2 Legal representation will only be permitted by the SLS Appeals Tribunal where the party seeking legal representation can demonstrate to the SLS Appeals Tribunal that the matter is serious, complex or the consequences for that party proceeding without legal representation are significant from a livelihood or business perspective. The onus is on the party seeking legal representation to prove that such representation should be permitted.
- 13.16.3 The SLS Appeals Tribunal may refuse or grant such application in its absolute discretion. The SLS Appeals Tribunal's decision in respect to legal representation is final and there is no appeal from such decision.
- 13.17 Following consideration of all information which the SLS Appeals Tribunal considers relevant and which is available, the SLS Appeals Tribunal shall arrive at a finding. The SLS Appeals Tribunal can impose new penalties or vary an existing penalty. A decision of the SLS Appeals Tribunal may be by a majority decision. A decision of the SLS Appeals Tribunal is final.
- 13.18 The SLS Appeals Tribunal shall notify all relevant parties, including SLSA and the relevant State Centre of its decision as soon as practicable.
- 13.19 An SLS Appeals Tribunal has no power to award costs. That is, each party will be responsible for their own costs of the appeal.

#### **14. Competition Discipline**

- 14.1 The SLSA Surf Sports Manual and in particular but not only **clause 14.5** of the Surf Sports Manual applies to SLS carnival and competition discipline.

##### **Appeals**

- 14.2 For the purposes of **clauses 14.5.1(c) and (d)** of the SLSA Surf Sports Manual the appeal body for any appeal against a penalty imposed by a Competition Disciplinary Committee shall be the SLS Appeals Tribunal and SLSA **Regulation 5.2** shall apply to such appeal.

#### **15. Revocation of SLSA Service and Recognition Awards**

- 15.1 The SLSA Board may, by special resolution, revoke a previously issued award of recognition, including, but not limited to, SLSA Life Membership, in circumstances where a Member who has been issued an award of recognition has:
- 15.1.1 Been convicted of a serious criminal offence;
  - 15.1.2 Committed a serious breach and/or repeated breaches of a SLSA policy or policies;
  - 15.1.3 Committed a serious breach and/or repeated breaches of SLSA codes of conduct;
  - 15.1.4 Brought surf lifesaving and/or SLSA into disrepute; and
  - 15.1.5 Rejected and/or returned a previously issued award
- 15.2 Prior to considering the revocation of an award, the member shall be invited to

make a written submission to the SLSA Board as to why the award should not be revoked.

**16. MARCOOLA SLSA INTERNAL APPEAL PROCEDURE Appeals**

- 16.1 These internal appeals procedures are based on SLSA **Regulation 5** but have been adopted to align with the Club's By-Laws.
- 16.2 There is no right of appeal to a penalty of Admonishment or Additional service issued by the Club President or the Club Captain under **By-Law 2.7 a)**.
- 16.3 There is avenue for appeal against suspension or expulsion or penalty imposed by a penalising authority, which has been further investigated and confirmed by the Club Council or Judiciary Committee hearing.
- 16.4 There is only one appeal available from a Judiciary Committee regardless of whether that Judiciary Committee was appointed by the Board or by the Club, Branch or State Centre.
- 16.5 There is no right of appeal to a behavioural direction issued by a Club Officer under By-Law 2.7a).
- 16.6 **To appeal to the Club Council must:**
  - 16.6.1 Be in writing addressed to the Club Secretary;
  - 16.6.2 Set-out the grounds of appeal;
  - 16.6.3 Identify the error or errors made by the penalising authority;
  - 16.6.4 Be accompanied by an appeals fee of \$250 which may be refunded if the appeal is successful; and
  - 16.6.5 Be lodged with the Club Secretary within fourteen days of receipt of notification of the decision.
- 16.7 As soon as practicable after receiving the appeal the Board shall:
  - 16.7.1 Make such investigations they consider necessary and consider the matter;
  - 16.7.2 Decide whether the appeal should be dismissed on any one or more of the following grounds:
    - i. The matter lacks importance to the member or the Club;
    - ii. The appeal has no merit;
    - iii. The member has failed to show the penalising authority was in error.
- 16.8 Should the Board decide that the appeal not be dismissed and therefore proceed to the Club Council for hearing the Club Secretary shall, within 14 days of receipt of the appeal:
  - 16.8.1 Issue a Notice of Special General Meeting of the Club Council to hear and determine the appeal;
  - 16.8.2 Serve a Notice in writing on all relevant parties:
    - i. Setting the date, time, and place of the Special General Meeting of

the Club Council to hear and determine the appeal; and

- ii. Informing the relevant parties (including the appellant) that they may attend the Special General Meeting of the Club Council to present the appeal.

- 16.9 The Club Council shall conduct the appeal hearing in such manner as it sees fit but shall:
  - 16.9.1 Appoint a solicitor or barrister to be an advisor to the appeal;
  - 16.9.2 Give all relevant parties and their witnesses an opportunity to be heard; and
  - 16.9.3 Consider any written statements received from any relevant or interested party.
- 16.10 The member is not entitled to legal representation for the hearing of the appeal but may be permitted representation through an advocate.
- 16.11 If an advocate is permitted such advocate is not entitled to be legally trained or qualified.
- 16.12 The member may seek legal assistance or representation, which may be granted if they can establish that the matter is serious and complex enough or that consequently proceeding without legal assistance may cause personal employment hardship. The onus of proof is on the individual seeking legal assistance.
- 16.13 The Club Council may refuse to grant such application for legal or avocational representation in its absolute discretion without giving reasons.
- 16.14 The appeal should be conducted as a new hearing.
- 16.15 The Club Council having considered the evidence presented at the appeals hearing, may uphold the appeal or dismiss the appeal and impose an appropriate penalty.
- 16.16 The decision of the Club Council shall be a simple majority decision.
- 16.17 The Club Secretary shall notify all relevant parties (including Branch, SLSQ and SLSA) of its decision in relation to the appeal.
- 16.18 The Club Council has no power to award costs; however, if the appeal is successful the Club Council may direct that the appeal fee be refunded to the appellant.
- 16.19 The Club Council appeal proceedings are not closed and are not confidential.

There is no further avenue of appeal available to the concerned member.