

BY-LAW NO. 15

SUBJECT: DISPUTES & GRIEVANCES, DISCIPLINES, PENALTIES & APPEALS

DRAFT FOR CONSIDERATION: 28 DECEMBER 2019

1. DISPUTES & GRIEVANCES

a) A Dispute or Grievance means a situation where a Member may disagree with another Club Member and/or a Club decision, and the matter remains unresolved.

Disputes/Grievances may include:

- (i)** Development and training availability;
- (ii)** How an issue has been handled;
- (iii)** The club environment;
- (iv)** Safety in the workplace (Club);
- (v)** The treatment by an official or officer;
- (vi)** Discrimination;
- (vii)** Harassment; **or**
- (viii) Other alleged breaches of Surf Life Saving Codes of Conduct**

b) To maintain good relationships with the Membership the dispute/**grievance** is dealt with at an early stage; through an informal negotiation process between the parties and the Disputes Committee;

c) An unresolved dispute may be formalised and directed to the Board of Management for reference to the Judiciary Committee at the recommendations of the Disputes Committee;

d) The Board of Management may determine that a Mediation or Alternative Dispute Resolution process is a preferred course of action if no formal or informal procedure has managed to settle the matter;

e) The Association recognises **that a member cannot** do a good job or be fully productive if **they** feel other members or officers or anyone else at the organisation is treating **them unfairly**.

2. GRIEVANCES, JUDICIARY AND DISCIPLINE

The Association adopts the Grievances, Judiciary and Discipline processes of SLSQ and/or SLSA including, the SLSA Discipline Regulations, SLSA Member Protection Policy, and SLSA Grievance Policy as amended from time to time.

3. CLUB JURISDICTION – PENALISING AUTHORITIES

a) The penalising authority for the Club shall be vested in the following:

- (i)** The Club Council;

- (ii) The Board of Management;
- (iii) The President;
- (iv) The Carnival Committee;
- (v) The Judiciary Committee.

b) It is suggested that any **serious** matter of breach of club discipline be referred to a Judiciary Committee unless the circumstances are such that in the opinion of **SLSA**, SLSQ, Branch or the Club that immediate action is required.

4. BREACH OF CLUB DISCIPLINE

4.1 Where a Member has allegedly:

- a) Breached, failed, refused or neglected to comply with the membership directives or any resolution or determination of the Club, Branch, SLSQ or any duly authorised SLS **entity**; or
- b) Acted in a manner unbecoming of a Member or prejudicial to the Objects and interests of the club and/or surf lifesaving; or Brought themselves, SLSA, SLSQ, Branch or Club into disrepute; or
- c) Competed or in any way participated in a lifesaving competition and/or used SLSA equipment contrary to Regulation 4.3(c) of the SLSA regulations or has failed to obtain the permission of SLSA to compete or participate in that competition or use that SLSA equipment; **or**

d) Generally, breached Surf Life Saving Codes of Conduct

The Club may commence or cause to be commenced investigatory and/or disciplinary proceedings **in relation to that** Member, and that Member will be subject to and **will submit** unreservedly to the jurisdiction, procedures, penalties and appeal mechanisms set out in **this By-Law** providing that the Club, Branch, SLSQ may commence proceedings, or investigate conduct which may warrant the commencement of proceedings by referring the matter to a Judiciary Committee.

4.2 Judiciary Committee

- a) The Club Council shall annually elect a Judiciary Chairman;**
- b) The Board, on the advice of the Chairman (**who shall consider all expressions of interest**) shall annually or as required appoint a Judiciary Committee to investigate and/or determine matters referred to it. The Judiciary Committee shall be composed of three (3) members, one (1) of whom shall be a Life Member. A member of the committee shall act as Minutes Secretary and keep records of all investigations and decisions of that committee;
- c) The Chairman at the first meeting shall instruct the Committee members to declare **confidentiality** of **matters** discussed and disclose any **conflict of interest** in the reference;
- d) Should any member of the Judiciary Committee have an active involvement in any matter being considered; or be perceived by the Chair to be other than impartial to the

matter, the Chairman will **request** the Board of Management to appoint an alternate to replace that member.

4.3 Judiciary Rules of Procedure

4.3.1 Jurisdiction

- a) Any interested party may submit a reference to the Board of Management upon any matter touching the affairs of the Club and its Members.
- b) A reference may include matters of misconduct, serious or gross misconduct by a member
- c) Misconduct may include:
 - (i) Using inappropriate language;
 - (ii) Internet misuse;
 - (iii) Minor instances of failing to follow a Club Officer's reasonable and lawful instruction;
 - (iv) Minor breaches of the Club Rules, **Branch** and/or SLSQ Codes **of** Conduct **or** Policies; **or**
 - (v) Not meeting Patrol obligations.
- d) Serious Misconduct may include:
 - (i) Violent behaviours;
 - (ii) Bullying, harassment or victimization;
 - (iii) Corruption, theft or fraud;
 - (iv) Embezzlement and other unlawful behaviours;
 - (v) Behaviours that **endanger** the health and safety of the members or others;
 - (vi) Use of illegal drugs during club activities;
 - (vii) Dishonesty; **or**
 - (viii) Serious breaches of Club Rules, Branch and/or SLSQ Codes of Conduct or Policies**
- e) Gross Misconduct may include:
 - (i) Threats or actions of violence or harm; **or**
 - (ii) Unlawful conduct.
- f) Every reference shall be in writing setting out clearly the **matter** sought to be investigated by the Board of Management, and it shall then decide where such reference shall be directed for hearing and resolution;
- g) Every reference submitted to the Judiciary Committee shall be dealt with by that committee;
- h) Every person bringing a reference shall have a right to be heard by the Committee provided that:
 - (i) the person has an interest in the subject matter of the reference; **and**
 - (ii) their reference is clear and unambiguous.

5. PROCEDURE

The following procedures shall be followed by the Judiciary Committee, having conduct of a reference under **Clause 4.3.1** hereof:

- a) Upon receipt of a reference,
 - (i) the Minutes Secretary shall forthwith appoint the time and place for the hearing **which are** suitable to the Members of the Judiciary Committee;
 - (ii) the **Chairman** of the Committee may, if appropriate and as soon as practicable, appoint an independent person to act as investigator upon the reference. Such appointment, if made, shall be in writing, enclosing a copy of the reference and instructing the investigator to make all relevant inquiries and prepare to assist the Judiciary Committee **within fourteen (14) days**;
- b) The investigator, if appointed, shall make all relevant inquiries and shall appear at the time and place appointed for the hearing by the Minutes Secretary of the Judiciary Committee;
- c) The Minutes Secretary of the Judiciary Committee shall:
 - (i) Give at least **seven (7) days' notice** of the hearing to the party or parties concerned in the referral to appear before the Judiciary Committee; and
 - (ii) such notice shall be in, or to the effect of, the following form:

MAROOCHYDORE SURF LIFESAVING CLUB INC.

To:

Dear Sir/**Madam**,

You are hereby notified that a meeting of the Judiciary Committee of this Club will be held at _____ on _____ 20____ at _____ am/pm to inquire into the following matter, referred to the Committee by the (**Club/Branch/SLSQ**).

[Insert Summary of the Reference]

You are required to be (present)(represented) at that time and place together with such witnesses as you may desire to call.

[**Mr/Ms** _____ has been appointed pursuant to the Club Constitution as an independent investigator to make all relevant inquiries and assist the Committee at the hearing. (This paragraph optional)]

The **Minutes** Secretary will, upon receipt of your request in writing, at least five (**5**) days before the day appointed for the investigation setting out the names and addresses of Members of the Association who you desire to call as witnesses, require such Members to be present at the investigation. If the time and place appointed are not suitable to you, you may apply for an adjournment by application in writing, to be in my hands at least three (3) days before the time appointed to appear.

You are not entitled to legal representation **as** of right, but you may apply at the commencement of the inquiry for such representation. **The** Committee may grant or refuse such application as it thinks fit. **The** same provisions shall apply where representation other than legal representation (**e.g., a support person**) is required.

Yours faithfully,

Minutes Secretary
Judiciary Committee.

- d) The Judiciary Committee shall have power to require the attendance of any Member at any hearing by the Committee. The Minutes Secretary of the Committee shall give at least **seven (7) days' notice in writing** to a Member informing him of the time and place of the hearing, and that he is required to attend, and shall give such notice in writing at least **three (3) days** before the day appointed for the hearing to any Member whom the subject of the inquiry requests **to be called** as a witness;
- e) In the case of a complaint against a Member of the Association who has been suspended, **they** shall remain under suspension until the decision of the Judiciary Committee, unless the Chairperson of the Committee decides otherwise;
- f) The independent investigator, if appointed by the **Chairman** of the Judiciary Committee, shall make **their** inquiries within a reasonable time;
- g) The Judiciary Committee shall likewise conduct the inquiry within a reasonable time, subject to any reasonable application for an adjournment in writing received by the Minutes Secretary at least **three (3) days** before the time fixed for the inquiry;
- h) No interested party shall be entitled to legal representation as of right at the Judiciary Committee hearing provided always that an application may be made at the commencement of the hearing for such representation. The Judiciary Committee may grant or refuse such application as it sees fit. The same provisions shall apply where an application is made for representation other than legal representation (**e.g., a support person**), provided that where a minor (U18) Member is charged, it shall be **MANDATORY** for a parent(s) or guardian to be invited to attend at all times, and every effort should be made to encourage these persons to be in attendance in the interests of the young Member;
- i) Any Member who fails without reasonable excuse to comply with the requirements of any notice addressed to him by the Secretary of the Committee shall be subject to such action as the Board of Management shall, on the report of the Judiciary Committee, think fit.

5.3.3 At the Judiciary Hearing

- a) All interested parties shall be present at the hearing;
- b) A quorum of the Judiciary Committee shall be **three (3) Members**;
- c) In the case of a complaint against a Member, all Witnesses, other than the Member concerned, must remain out of the hearing until called upon to give evidence;
- d) The independent investigator, if appointed, shall be present to assist the Committee;
- e) The reference to the Judiciary Committee shall be read by the Chairman;
- f) The independent investigator, if appointed, shall present relevant evidence including the calling of witnesses. Any submissions by the investigator, or documentary evidence submitted by him, shall be given whatever weight the Committee thinks fit, subject always to the consideration that oral evidence from a witness may be of more weight than other forms of evidence;
- g) The person, the subject of the reference, has a right to ask questions of each witness, subject to the guidance of the Chairman as to relevance and appropriate respect being shown;**

- h) In all cases, witnesses called shall be examined by the party (if any) on whose behalf he is called, and then cross-examined by the other interested parties to the reference. The party calling the witness shall have the right to re-examine the witness **on matters of clarification of their evidence**. The Judiciary Committee Members may ask questions of the witness, but no other examination or cross-examination of that witness shall be allowed except by leave of the Chairman;
- i) The Judiciary Committee may, in its discretion, refuse to admit evidence which is irrelevant or of so little weight as to be properly excluded;
- j) At the conclusion of all the evidence, each interested party and the investigator (if appointed) may make submissions to the Judiciary Committee in such speaking order as the **Chairman** may direct. Right of reply by any party shall be at the discretion of the **Chairman**.

5.3.4 At the Conclusion of the Judiciary Hearing

- a) The Committee shall meet in confidence after the hearing has been completed. **If the reference is found to be proved, the Committee shall hear from the person the subject of the reference, or their representative, on the question of penalty. The Committee shall then deliberate in confidence as to** a recommendation to the Board of Management of an appropriate order or penalty;
- b) The findings of the Judiciary Committee and the order agreed upon may be by the majority, with the **Chairman** having a casting vote in the event of a tied decision. The minority may furnish separate findings, but the majority findings and order shall be deemed to be the decision of the Committee;
- c) The Judiciary Committee shall furnish its report at the first meeting of the appointing body after the hearing is completed. That appointing body shall either confirm the decision of the Committee or proceed according to the next succeeding paragraph;
- d) The recommended decision and penalty of the Judiciary Committee cannot be altered by the appointing body, but a **two-thirds (2/3) majority** of those present and voting may return the reference to the Committee for further consideration or the hearing of additional evidence. The grounds of such return of the reference shall be clearly stated;
- e) Written notice of the decision shall forthwith be given by the Minutes Secretary of the Committee, after Board of Management endorsement of the decision of the Judiciary Committee, to all interested parties, together with notice of any penalty imposed **or order made**, and the penalty **or order** shall become effective forthwith;
- f) A person exonerated by the Judiciary Committee may start under protest at any Carnival or Association event held before the meeting of the appointing body at which the Committee's decision is presented for confirmation or return as the case may be.

5.3.5 Penalties

- a) Penalties which may be imposed include:
 - (i) A reprimand **or** admonishment;
 - (ii) Suspension from **participation in** such activities, on such terms and for such period as the Judiciary Committee thinks fit;
 - (iii) **Exclusion from a particular activity, event or events or from entering a place;**

- (iv) **Suspension of membership for a specified period not exceeding two (2) years;**
- (v) Expulsion;
- (vi) Fines imposed in such manner and in such amount as the Judiciary Committee thinks fit;
- (vii) Such combination of any of the above penalties as the Judiciary Committee thinks fit;
- (viii) Additional Service, requiring the Member to undertake an activity-based penalty, imposed in such manner as the Penalising Authority deems fit.

b) 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. They shall remain suspended unless the appointing authority decides otherwise (e.g., under Clause 5.3.4(f) or for some other extenuating circumstance). Ordinarily, they shall remain under suspension until the Judiciary Committee's decision is endorsed by the Board of Management under Clause 4.3.4(c)-(e) hereof.

6. APPEALS

6.1 Maroochydore SLSC Internal Appeal Procedure

- a) These internal appeals procedures are based on **SLSA Regulation 5** but have been adopted to align with the Club's By-Laws;
- b) 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 2.3.5(a)(vii)**;
- c) **There is avenue for appeal against suspension or expulsion or penalty imposed by a penalising authority;**
- d) 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. **In the case of Club Judiciary, an Appeal lies to the Club Council (General Meeting), subject to Regulation 5.2, SLSA Regulations, which directs that there is only one Appeal from a Club Judiciary decision. A member may wish to appeal to Club Council and can do so. But in the case of a controversial issue at Club level, the member may seek to appeal to the Branch or State instead. It will be a decision for Branch or State as to whether it will accept the Appeal;**
- e) There is no right of appeal to a behavioural direction issued by a Club Officer under **By-Law 1 Patrol Rules**.

6.2 Appeal to Club Council

- a) **An** appeal to the Club Council must:
 - (i) be in writing addressed to the **Director of Administration and Membership**;
 - (ii) **clearly state the grounds of appeal;**

- (iii) be lodged with the **Director of Administration and Membership** within 14 days of receipt of notification of the decision;
 - (iv) Make such investigations they consider necessary and consider the matter.
- b) **Upon receipt of the notice of appeal, the Director of Administration and Membership** shall within 14 days of receipt of the appeal:
- (i) Issue a Notice of Special General Meeting of the Club Council to hear and determine the appeal;
 - (ii) Serve a Notice in writing on all relevant parties:
 - a. Setting the date, time, and place of the Special General Meeting of the Club Council to hear and determine the appeal; and
 - b. Informing the relevant parties (including the appellant) that they may attend the Special General Meeting of the Club Council to present their appeal.
- c) The Club Council shall conduct the appeal hearing in such manner as it sees fit, including:
- (i) **Giving all relevant parties (e.g., the Appellant, the Judiciary Chairman or other interested party)**, an opportunity to be heard; and
 - (ii) **Considering** any written statements received from any relevant or interested party.

6.3 Representation

- a) The member is not entitled to legal representation for the hearing of the appeal but may be permitted representation through an advocate;
- b) If an advocate is permitted such advocate is not entitled to be legally trained or qualified;
- c) 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 **difficulties for the Appellant**. The onus of proof is on the individual seeking legal assistance;
- d) The Club Council may refuse to grant such application for legal or **advocate** representation in its absolute discretion without giving reasons;
- e) The appeal should be conducted, **as far as possible, by way of submissions. Witnesses may be heard if the Chairman of the Club Council meeting, upon advice, considers if appropriate that a witness or witnesses be heard if the Club Council, after considering the matter, resolves by majority that one or more specified witnesses be heard;**
- f) The Club Council having considered the evidence presented at the appeals hearing, may uphold the appeal or dismiss the appeal **and/or** impose an appropriate **fresh** penalty;
- g) The decision of the Club Council shall be a simple majority decision. **The decision of the Club Council shall be final.**

6.4 Notification of Appeal Decision

- a) The **Director of Administration and Membership** shall notify all relevant parties (including Branch, SLSQ and SLSA) of the Club Council decision **on** the appeal;
- b) The Club Council appeal proceedings are not closed and are not confidential;

c) There is no further avenue of appeal available to the concerned member/s and is final, in accordance with SLSA Regulation 5.2

7. SUSPENSION

- a) Where a Member is suspended under these **Rules** and **By-laws**, all rights and privileges of that Member shall be forfeited, either partially or completely, during the period of suspension;
- b) The Board shall immediately provide SLSQ the names and addresses of Individual Members who have had their membership cancelled or suspended and such information, including the period of suspension/cancellation of membership shall be set out in a register provided for that purpose;
- c) Member(s) that have had their membership cancelled or suspended shall not be allowed to compete in intra or inter Club or in any other SLSQ or SLSA competition, while under suspension or expulsion;
- d) A member suspended through the season shall lose all rights to any trophies and/or **prizes** won during the season.

HISTORY OF AMENDMENTS:

Second draft for consideration by Club Council at the General Meeting on 28 December 2019