

SOUTH NARRABEEN SLSC

BY- LAW

NO. 8

ISSUE: Discipline, Penalties and Appeals

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PROVISIONS:

1. JURISDICTION

(a) The penalising authorities for the Club (in hierarchical order) are:

- The Club Committee
- The Judiciary Panel
- The President
- Any Director holding office

(b) Any member may submit a complaint or reference to the Club Committee on any matter concerning the affairs of the Club or its members.

(c) The complaint or reference must be in writing signed by the member and set out details of the complaint or the matter/s to be investigated.

(d) If the complaint or reference is not frivolous or vexatious, the Club Committee shall refer the complaint or reference to any one of the Club penalising authorities listed in para (a) for determination.

(e) All serious matters shall be referred to the Judiciary Panel for hearing and determination.

(f) Should the Club Committee decide the complaint or reference is beyond the responsibility of the Club, the matter shall be referred to the Branch for determination.

(g) Should any complaint or reference to the Club Committee involve a member of the Club Committee that member must step aside for the duration of the investigation of the complaint.

2. DISCIPLINE

(a) General

The Club, through its penalising authorities listed in point 1 may hear and determine any complaint or reference and penalise any member who, at any Club, competition, meeting, function, carnival, training session, social occasion or other activity or at any other time who:

- i. has been charged with or convicted of any indictable offence either within Australia or elsewhere;

- ii. has behaved in a manner considered to be injurious or prejudicial to the interests of the Club;
- iii. improperly places pressure on another member to obtain any form of grace or favour, either sexual or otherwise;
- iv. owes the Club money for any reason (such as a failure to pay membership fees, fines or craft storage charges);
- v. breaches any Club rules or policies;
- vi. damages or misuses Club property;
- vii. uses or removes Club property without the consent of the appropriate Club officer;
- viii. fails to comply with any lawful direction from a Club officer.

(b) All Club Directors shall have power to give reasonable behavioural directions to members when necessary to maintain the orderly conduct and running of their section.

(c) Penalty decisions shall be promptly conveyed in writing to the member concerned.

(d) Written reasons for penalty decisions by penalising authorities must set out the relevant findings supporting the decision, including, where possible, the proven or admitted facts.

(e) Penalty decisions by a Club Director may be given orally to take effect immediately but must be conveyed in writing to the member by the Director of Administration within seven (7) days.

(f) Behavioural directions issued by Club Directors need not be in writing and need not specify reasons.

(g) The Club shall notify the Branch and SLS NSW of any penalty decision imposed upon a member other than a minor penalty.

3. PENALTIES

(a) Without limiting the scope of penalties that may be imposed, the form a penalty may take includes:

- i. Reprimand - with the offence being recorded in the Club records;
- ii. Suspension - may be applied as a complete or partial suspension of a member's privilege for a definite period of time or until a definite pre-set goal is reached, and partial suspension could require the member to carry out all or part of his duties in the Club without being able to avail himself of the normal facilities and privileges of a member. A period of suspension shall not extend beyond two years;
- iii. Exclusion - from a particular activity, event or events;
- iv. Termination - Club membership may be terminated because of the prevailing circumstances, and when the extreme action of expulsion is not warranted; (A member whose membership is

- terminated may not re-apply for membership of the Club for a period of at least two years);
- v. Expulsion - from Club Membership would be applied only as a response to a very serious offence;
- vi. Fines - imposed in such amounts as the penalising authority thinks fit;
- vii. Additional Service – requiring the member to undertake an activity based penalty, imposed in such manner as the penalising authority thinks fit;
- viii. Any combination of the penalties listed in this By-Law;
- ix. Any other penalty as the penalising authority thinks fit.

(b) Where a Club member is suspended by the Club, they shall forfeit either completely or partially, as may be decided, all privileges as a member of an affiliated Club during the period of suspension. In the case of complete suspension, a member shall forfeit all rights during the suspension period.

(c) The only purposes for which penalties may be imposed on a member are:

- i. to punish the member to an extent or in a way that is just in all the circumstances;
- ii. to assist the member to be rehabilitated;
- iii. to deter the member or other members from committing the same breach of Club rules or behaving in a similar way;
- iv. to make it clear that the Club denounces the sort of conduct or behaviour the member was engaged in;
- v. a combination of any of these purposes.

4. APPEALS

(a) No right of appeal lies from a behavioural direction issued by a Club Director under By-Law 2(b).

(b) Any member penalised by a penalising authority for the Club (other than Club Director) shall have the right to appeal to the Club Committee against the decision and/or the penalty imposed.

(c) The appeal must:

- i. be in writing addressed to the Director of Administration;
- ii. set out the grounds of appeal;
- iii. identify the error or errors made by the penalising authority;
- iv. be accompanied by an appeals fee of \$250 which may be refunded if the appeal is successful.
- v. be lodged with the Director of Administration within fourteen days (14) of receipt of notification of the decision.

(d) As soon as practicable after receiving the appeal the Club President (or his/her delegate such as the Club Solicitor) shall:

- i. investigate and consider the matter;

- ii. make such enquiries as s/he considers appropriate;
- iii. decide whether the appeal should be dismissed on any one or more of the following grounds:
 - a. the matter is lacks importance to the member or the Club;
 - b. the appeal has no merit;
 - c. the appellant has failed to show the penalising authority was in error.

(e) If the Club President (or delegate) decides the appeal should not be dismissed and should proceed to the Club Judiciary for hearing the Secretary, within 14 days of receipt of the appeal:

- i. issue a Notice of Special General Meeting of the Club Judiciary 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;
 - b. informing the relevant parties (including the appellant) that they may attend the Special General Meeting of the Club Council to present the appeal.

(f) The Club Judiciary shall conduct the appeal hearing in such manner as it sees fit but shall:

- i. give all relevant parties and their witnesses an opportunity to be heard;
- ii. give due consideration to any written statements received from any relevant or interested party.

(g) The appellant is not entitled as of right to legal representation for the hearing of the appeal.

- i. Legal representation may be granted where the member seeking legal representation can demonstrate the matter is sufficiently serious and/or complex or the consequences of proceeding without legal representation will cause the appellant significant hardship from a livelihood or business perspective. The onus is on the party seeking legal representation to prove that such representation should be permitted;

(j) The Club Judiciary may refuse to grant such application for legal representation in its absolute discretion without giving reasons;

(k) The appeal should be conducted as a hearing de novo (a new hearing);

(l) Following consideration of the evidence presented at the Club Judiciary appeals hearing, the Club Judiciary may impose such penalty as it considers appropriate;

- (m) The decision of the Club Judiciary shall be a simple majority decision;
- (n) The Secretary shall notify all relevant parties (including Branch, SLS NSW and SLSA) of its decision in relation to the appeal;
- (o) The Club Judiciary 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;
- (p) Appeal proceedings conducted by the Club Judiciary are not *in camera* and are not confidential;
- (q) Any member penalised by the Club Judiciary shall have the right to appeal to the Branch (Surf Life Saving Sydney Northern Beaches) provided they can show the Club Judiciary was in error;
- (r) Any appeal to Branch shall be made within fourteen (14) days of imposition of the penalty by the Club Judiciary;
- (s) The appeal to Branch shall be lodged through the Secretary

5 - JUDICIARY PANEL

5.1 DEFINITIONS

For the purposes of By-Law 8.5:

- (a) "Panel" means the Judiciary Panel.
- (b) "Secretary" means the Secretary of the Judiciary Panel.
- (c) "Member" means a member of the Club whether currently financial or not.
- (d) "Reference" includes any complaint against a member of the Club brought by any member, and any dispute involving members' rights in relation to Club affairs or any other dispute under this Constitution.

5.2 JURISDICTION

The Judiciary Panel has power to hear and determine any complaint or reference referred to it by the Club Committee.

5.3 PROCEDURE

The following procedure shall be followed by the Panel having conduct of a reference under Rule 2 hereof:

- (a) Upon receipt of a reference:
 - i. the Chairperson of the Panel or delegate shall appoint an independent person to act as investigator upon the reference. The appointment shall be in writing, enclosing a copy of the reference and shall instruct the investigator to make all relevant enquiries and prepare to assist the Judiciary Panel within fourteen (14) days.

- ii. the Secretary shall appoint the time and place for the hearing suitable to the members of the Panel. They shall give at least seven (7) days' notice of the hearing to all interested parties and such notice shall be in or to the effect of the following form –

SOUTH NARRABEEN SURF LIFE SAVING CLUB

To:.....

Dear Member,

You are hereby notified that a meeting of the Judiciary Panel of this Club will be held at on20.. ata.m./p.m. to enquire into the following complaint/reference, referred to the Judiciary Panel by the Club Committee.

You are required to be present at that time and place.

Mr/Ms has been appointed as an independent investigator to make all relevant enquiries and to appear to assist the Panel at the hearing. You are entitled to call witnesses and you are entitled to require them to be present at the hearing. If you require these members to be present please let me know at least seven (7) days before the nominated hearing date.

If the date and time of the hearing is not suitable to you, you may apply for an adjournment by application in writing at least five (5) days beforehand.

You are not entitled to legal representation as of right but you may apply at the commencement of the enquiry for such representation. The Panel may grant or refuse such application as it thinks fit. The same provisions shall apply where representation other than legal representation is required.

Yours faithfully,

Secretary
Judiciary Panel

(b) The investigator shall make all relevant enquiries and shall appear at the time and place appointed for the hearing.

(c) The Panel shall have power to require the attendance of any member at the hearing. The Secretary shall give reasonable notice to a member informing him/her of the time and place of the hearing, and that he/she is required to attend.

(d) In the case of a complaint against a member of the Club who has been suspended by the Club Committee, the member shall remain under suspension until the decision of the Panel is handed down.

(e) No interested party shall be entitled to legal representation as of right at the Panel hearing. Application may be made at the commencement of the hearing for such representation. The Panel may grant or refuse such the application as it sees fit. The same provisions shall apply where an application is made for representation other than legal representation, provided that where a minor (U18) member is charged it shall be mandatory for a parent/s or guardian to be invited to attend and every effort should be made to encourage these persons to be in attendance in the interests of the minor (U18) member.

(f) Any notice required by the Rules to be given by the Secretary shall be given in writing.

(g) Any member who fails without reasonable excuse to comply with the requirements of any notice addressed to him by the Secretary shall be subject to such action as the Club Committee shall on the report of the Panel think fit.

(h) Disciplinary proceedings conducted by the Judiciary Panel shall be "*in camera*".

5.4 AT THE HEARING

(a) All interested parties shall be present at the hearing.

(b) A quorum of the Panel 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 shall be present to assist the Panel.

(e) The reference to the Panel shall be read by the Chairperson.

(f) The independent investigator 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 Panel thinks fit, subject always to the consideration that oral evidence from a witness will be of more weight than other forms of evidence.

(g) The person, the subject of the reference shall then present relevant evidence on his/ her own behalf.

(h) In all cases, witnesses called shall be examined by the party (if any) on whose behalf s/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 in relation to matters arising out of the cross-examination. The Panel 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 Chairperson.

(i) The Panel may, in its discretion, refuse to admit evidence which is irrelevant or of so little weight as to be properly excluded.

(j) The Panel Chairperson alone shall rule upon all matters of law.

(k) At the conclusion of all the evidence, each interested party and the investigator may make submissions to the Committee in such speaking order as the Chairperson may direct. Right of reply by any party shall be at the discretion of the Chairperson.

5.5 AT THE CONCLUSION OF THE HEARING

(a) The Panel shall meet *in camera* after the hearing has been completed and if the reference is found to be proved may deliberate upon an appropriate order or penalty.

(b) The standard of proof required is balance of probabilities.

(c) The findings of the Panel and penalty decided upon may be by majority, with the Chairperson having a casting vote in the event of a tied decision. The minority may furnish separate findings, but the majority findings and penalty shall be deemed to be the decision of the Panel.

(d) The Secretary of the Panel shall give notice of the decision of the Panel to all interested parties, together with notice of any order or penalty imposed.

(e) The Panel shall furnish its report to the first meeting of the appointing authority after the hearing is completed.

(f) A decision of the Panel cannot be altered by the Club Committee.