



Triathlon Western Australia

DISCIPLINARY RULES & PROCEDURES BY-LAW - HEARINGS AND APPEALS PROCEDURE

Definitions and Interpretation

Definitions

In this By-law, unless the contrary intentions appear -

Applicant means a person who has lodged an application with TWA or a State Association to be accepted as a Member of TWA.

Business Day means a day not being a Saturday, Sunday or gazetted public holiday.

EO means the person appointed to the position of Executive Officer of TWA from time to time or such other person nominated by the TWA Board.

Chairperson means the chairperson of the Tribunal as constituted in respect of a particular proceeding.

Constitution means the Constitution of TWA as amended from time to time.

Corporation means corporation as defined in the *Association Incorporations Act 1983*.

Investigations Officer means a person appointed pursuant to Rule 2.1.1.

Member means a member for the time being of the Association as per the constitution of TWA comprising Individual Members and Affiliated Clubs

Misconduct means conduct by a Member referred to in Clause 13 of TWA's Constitution.

Rules means the rules made under this Disciplinary Rules & Procedures By-law as amended from time to time.

State Referral means a complaint referred by a State Association to TWA pursuant to the Rules in connection with a complaint made about the conduct of a Member and which complaint specifically calls for disciplinary action permitted under the Rules.

TWA or Triathlon Australia means Triathlon Western Australia Incorporated.

TWA Board means the Board of TWA as defined in the Constitution.

TWA President means the President of TWA as defined in the Constitution.

Tribunal means the Tribunal established by the TWA Board pursuant to Rule 3.1.1.

Tribunal Chairperson means the person appointed to that position from time to time by the TWA Board or otherwise made under Rule 3.1.8 and 3.1.9.

Interpretation

In the interpretation of the Rules -



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- (i) any word or expression used in this By-law that is not defined in this dictionary, but is defined in TWA's Constitution, has the meaning provided in TWA's Constitution, unless the contrary intention applies.
- (ii) Headings are disregarded;
- (iii) References to person or persons includes individuals, partnerships, associations, corporations, companies unincorporated and incorporated whether by Act of Parliament or otherwise;
- (iv) Singular includes plural and vice versa and words importing any gender include all other genders;
- (v) all references to statutory provisions are construed as references to any statutory modification or re-enactment for the time being in force;
- (vi) where the Rules provide for the provision of a notice in writing, that notice may be delivered to the recipient by way of post, hand delivery, facsimile transmission or email;
- (vii) references to time are construed as references to Sydney local time;
- (viii) where a time period is designated in Business Days, that period terminates at 5.00pm on the last Business Day of the period; and
- (ix) if there is an inconsistency between the provisions of the rules and the Constitution then the provisions of the Constitution prevail.

2. Investigation of Complaints

2. 1. Receipt of Complaints

2.1.1 The TWA Board will appoint one or more persons to the position of Investigations Officer. Each person appointed to the position of Investigations Officer must have qualifications, skills or experience to the satisfaction of the TWA Board and must not be a member of the TWA Board. The powers of an Investigations Officer may be exercised by each person so appointed.

2.1.2. A complaint received by TWA from any person, including but not limited to any Member, in relation to conduct of a Member, will be referred directly to an Investigations Officer. A complaint may be received and acted upon regardless of its origin or form, and regardless of whether the complainant is identified in the complaint. TWA may impose an application fee (determined by the TWA Board from time to time) payable by a complainant for the submission and processing of a complaint, where the complaint is referred to the Investigations Officer. The fee, if any, must be paid before the Investigations Officer will take any action in relation to the complaint.

2.1.3 The Investigations Officer will within their discretion, elect whether or not to conduct an investigation upon a complaint in accordance with this By-law, provided that they must elect to not conduct or continue to conduct an investigation –

- (a) unless they suspect on a bona fide basis that a Member may have committed Misconduct;
- (b) if they are of the opinion that it is more appropriate that the complaint be dealt with by a court or another independent complaints, disciplinary, conciliation, or arbitration body or procedure;
- (c) if the complainant seeks any compensation or reimbursement whatsoever;
- (d) if the act or omission giving rise to the complaint occurred before the date of the commencement of this By-law;

- (e) if the subject matter of the complaint was the basis of a complaint by the same person (or any one or more of them) previously considered by an Investigations Officer or the Tribunal unless the Investigations Officer is of the opinion that relevant new evidence is available;
- (f) if they are of the opinion that the complaint is frivolous or vexatious, is being pursued by the complainant in a frivolous or vexatious manner or for an improper purpose; or
- (g) unless otherwise required by this or another TWA By-law.

2.1.4 The Investigations Officer may, before electing whether to conduct an investigation, require that the complainant provide a complaint in written form and particulars of the complainant's identity and where in the Investigations Officer's opinion it is necessary to afford procedural fairness to the Member subject of the complaint, the complainant's written consent to the disclosure of his, her or its identity. In all cases, the Investigations Officer will keep the identity of the complainant confidential except where the complainant has consented in writing to the disclosure of his, her or its identity.

2.1.5 Where the Investigations Officer is of the opinion that disclosure of the identity of the complainant is necessary to afford procedural fairness to the Member the subject of the complaint, but the complainant refuses to provide such written consent, the Investigations Officer must not take any further action in relation to the complaint other than to advise the complainant that no further action will be taken in relation to the complaint.

2.2 Conduct of Investigation

2.2.1. The Investigations Officer may use all legal means to conduct the investigation of a complaint and may conduct the investigation in any manner that the Investigations Officer considers fit.

2.2.2. The Investigations Officer may inspect TWA's membership register and other records.

2.2.3. The Investigations Officer may require a Member to produce to the Investigations Officer documents (including records kept in electronic form) within the possession, custody or control of the Member, by written notice to the Member specifying particular documents or categories of documents, provided that the documents required to be produced must in the Investigations Officer's reasonable opinion be potentially relevant to the subject matter of a current investigation being conducted by the Investigations Officer. A Member who receives such a notice must produce the documents required to the Investigations Officer immediately or, if that is not possible, within the shortest time that is practicable.

2.2.4 The Investigations Officer may require a Member who is a natural person to be interviewed, by telephone or other electronic means or in person by written notice to the Member specifying the date, time and place of the interview. A Member who receives such a notice must attend the interview and must answer all questions asked of them in the interview.

2.2.5 The Investigations Officer may issue a notice in writing to a member that is a Corporation requiring that the Member make available for interview any Officer of the Member, or requesting that the Member make available for interview any employee of the Member as specified in the notice. The Member must upon receiving such a notice cause the Officer specified to attend the interview.

2.3 Investigations Officer's power to suspend

2.3.1 If at any time in the course of an investigation the Investigations Officer suspects on reasonable grounds that a Member has committed, or been directly or indirectly involved in the commission of, an act involving fraud or dishonesty, the Investigations Officer may, by notice in writing forwarded to the Member, make an order suspending the Member from membership of the Association, and subject to Rule 2.3.8 such notice has effect from the date on which the Investigations Officer determines that it will have effect or, if the Investigations Officer does not specify such a date, immediately from the date on which the order is made.

2.3.2 An order for suspension made by an Investigations Officer pursuant to Rule 2.3.1 will remain in effect until revoked by that Investigations Officer or the Tribunal.

2.3.3 A Member who is the subject of an order for suspension made by an Investigations Officer pursuant to Rule 2.3.1 may, by notice in writing to the Investigations Officer, require that the Investigations Officer refer the subject matter of the order to the Tribunal.

2.3.4. Where the Investigations Officer has received a notice in writing pursuant to Rule 2.3.1, the Investigations Officer must forward the notice together with the notice containing the order for suspension and such supporting information as the Investigations Officer thinks fit, to the Tribunal Chairperson within two Business Days.

2.3.5. Where the Investigations Officer has made an order for suspension of a Member pursuant to Rule 2.3.1, the Investigations Officer may refer the subject matter of the order to the Tribunal of his or own volition, in which event the Investigations Officer must forward the notice containing the order for suspension and such supporting information as the Investigations Officer thinks fit, to the Tribunal Chairperson, and at the same time notify the Member who is the subject of the order that the Investigations Officer has done so.

2.3.6. Where the Investigations Officer has made an order for suspension of a Member pursuant to Rule 2.3.1, if the Investigations Officer subsequently forms the opinion that he no longer has reasonable grounds to suspect that the Member has committed, or been directly or indirectly involved in the commission of, an act involving fraud or dishonesty, whether or not the subject matter of the order has been referred to the Tribunal pursuant to Rule 2.3.4 or 2.3.5, Investigations Officer may by notice in writing to the Member revoke the order for suspension and that revocation will have immediate effect.

2.3.7. Where an order for suspension pursuant to Rule 2.3.1 has been made in respect of a Member, whether or not the subject matter of the order has been referred to the Tribunal pursuant to Rule 2.3.4 or 2.3.5, the Rule 2.3.4 or 2.3.5, who made the order for suspension must within five Business Days after making the order for suspension issue a Notice of Charges against that Member pursuant to Rule 2.4.1, failing which the order for suspension will automatically be deemed to have been revoked, and that revocation will take effect five Business Days after the order for suspension was made.

2.3.8. Notwithstanding any other provision of these Rules, no order for suspension of a Member shall take effect unless and until –

- (a) the Member concerned has been given an opportunity within the period of two Business Days prior to the date upon which the suspension order is to take effect to make such representations and to provide such information to the Investigations Officer as that Member thinks fit in relation to the suspension order however the Investigations Officer is not bound by any representations made by the Member; and
- (b) (b) 2 members of the Tribunal have signed an endorsement to the suspension order approving the making of it.

2.3.9 Unless an order for suspension has been made the member will be allowed to participate in all TWA activities and events, pending the decision of the Tribunal, including any available appeal process.

2.4 Notice of Charges and Investigation Report

2.4.1 Where, upon investigation of a complaint, the Investigations Officer considers that a Member should be charged with Misconduct, the Investigations Officer must prepare a written Notice of Charges which must include particulars of the charges being made. The Investigations Officer must at the same time prepare a written Investigation Report, containing a detailed report in support of the Notice of Charges.

2.4.2 The Investigations Officer must provide copies of the Notice of Charges and Investigation Report at the same time to - the Member who is the subject of the Notice of Charges; and the Tribunal Chairperson.

2.4.3 The Investigations Officer must include with the Investigation Report copies of any correspondence received by the Investigations Officer from the Member who is the subject of the Notice of Charges, or any legal or other representative of the Member, and from the complainant except in the case where the written consent of the complainant under Clause 2.1.5 is not required.

2.4.4 Where pursuant to this Clause the Investigations Officer may issue a Notice of Charges, as the case may require the Investigations Officer may prepare and provide an amended Notice of Charges or a Notice of Further Charges as the case may require.

3. Disciplinary Tribunal

3.1 Composition of the Tribunal

3.1.1 There will be a Tribunal for the purposes of –

- (a) carrying out the functions of the Tribunal pursuant to these Rules; and
- (b) carrying out such other functions as are delegated to it by the TWA Board.

3.1.2 The Tribunal will be referred to as the Disciplinary Tribunal.

3.1.3 The TWA Board must appoint a Chairperson and a Deputy Chairperson of the Tribunal, each of whom is a legal practitioner of at least five years' standing and has the right to practice law within a State or Territory of Australia. Both persons must be appointed for such period or periods as are determined by the TWA Board.

3.1.4 The Chairperson or Deputy Chairperson may, but need not, be Members of TWA.

3.1.5 The CEO must maintain a Tribunal panel, consisting of a list of at least 5 persons appointed by the TWA Board, each of whom is in the majority opinion of the TWA Board a person of good character and of good standing and with relevant experience. Persons selected to be on the Tribunal Panel may, but need not, be members of the TWA Board or a State or Territory Association, Members, or Officers or employees of Members.

3.1.6 For the purposes of a hearing, the Tribunal must be comprised by –

- The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson; and
- Two persons from the Tribunal Panel, selected by the President of TWA; or
- Where both the Chairperson and Deputy Chairperson are unable or not prepared to sit on a particular hearing, three persons from the Tribunal Panel, selected by the President of TWA, one of whom will be designated by the TWA President, as chairperson for the purposes of that particular hearing.

3.1.7 In the absence of the Chairperson and the Deputy Chairperson, the person designated by the TWA President as chairperson for the purposes of a particular hearing must be a legal practitioner of at least five years standing and who has the right to practice law within a State or Territory of Australia.

3.1.8 In selecting the composition of the Tribunal for any particular matter, the TWA President will endeavour so far as possible to appoint any persons who are resident in the same State as the Member who is the subject of the relevant Notice of Charges.

3.2 Proceedings of the Tribunal

3.2.1 Upon receiving a Notice of Charges pursuant to Rule 2.4.2 or a notice pursuant to Rule 2.3.4 or 2.3.5, the TWA President must appoint the Tribunal to deal with that particular proceeding. The Tribunal Chairperson must ensure each member of the Tribunal is provided with all of the documents provided to the Tribunal Chairperson by the Investigations Officer in connection with the proceeding. In addition –

- (a) a person that has made a complaint (the complainant), if applicable, has a right to appear at the Tribunal hearing to support their complaint;
- (b) the person the subject of the Tribunal hearing must be notified –
 - (i) of the details of the complaint, including any relevant By-laws, rules or regulations the person(s) is accused of breaching;

- (ii) of the date, time and venue of the tribunal hearing;
- (iii) that they can make either verbal or written submissions to the Tribunal;
- (iv) that they may arrange for witnesses to attend the Tribunal in support of their position; and
- (v) that legal representation will not be allowed, other than with the consent of the Tribunal.

(c) a copy of any information / documents that have been given to the Tribunal (e.g. investigation report findings) will also be provided to the complainant, if applicable.

(d) if the complainant believes the details of the complaint are incorrect or insufficient they should inform the Investigations Officer or the CEO of TWA as soon as possible so that the person the subject of the Tribunal hearing and the Tribunal Panel members can be properly informed of the complaint, if applicable.

3.2.2 The Chairperson of the Tribunal must convene the Tribunal as quickly as is practicable, which may be done in person or by telephone, audiovisual link or other electronic means as the chairperson considers fit, and –

(a) where an order for suspension pursuant to Rule 2.3.1 is in effect, and whether or not a notice pursuant to Rule 2.3.4 or 2.3.5 has been received, the Tribunal may make an order that the order for suspension be continued until further order of the Tribunal, or an order that the order for suspension be revoked, without conducting a hearing or receiving evidence or submissions from any party to the proceeding;

(b) in any proceeding, if the Tribunal has reason to suspect that a Member has committed, or been directly or indirectly involved in the commission of, an act involving fraud or dishonesty, the Tribunal may make an order suspending the Member from membership of TWA;

(c) in any proceeding, determine whether the proceeding will be dealt with and determined in the absence of the parties, or whether a hearing will be convened.

3.2.3 Where the Tribunal has made an order pursuant to Rule 3.2.1(a) or (b), the Tribunal may at any time in the proceeding, prior to issuing its final determination, on the motion of a party or on its own motion make an order revoking or varying its original order pursuant to Rule 3.2.1(a) or (b).

3.2.4 Where the Tribunal has made an order pursuant to Rule 3.2.1(a) or (b) in respect of a Member, the Tribunal must immediately notify the Investigations Officer of the order and Rule 2.3.7 will then apply as if the order had been made by the Investigations Officer.

3.2.5 Where the Tribunal has determined pursuant to Rule 3.2.1(c) that a proceeding will be dealt with in the absence of the parties, the chairperson must notify the Investigations Officer and the Member who is the subject of the proceeding of that determination, and that all parties may provide submissions and evidence in writing to the chairperson within such period as the chairperson designates.

3.2.6 Where the Tribunal is proceeding pursuant to Rule 3.2.1, the Tribunal must not proceed to determine the Notice of Charges until the period designated by the chairperson for the provision of submissions and evidence has expired and the Tribunal has considered all such material provided to it.

3.2.7 Where the Tribunal has determined pursuant to Rule 3.2.1(c) that a hearing will be convened in respect of a proceeding, the chairperson must appoint a date, time and place for the hearing and must give notice in writing of these particulars to the Investigations Officer and the Member who is the subject of the Notice of Charges. The period of notice must be not less than five Business Days prior to the date of the hearing.

3.2.8 The Tribunal may adjourn, postpone or reconvene a hearing as it thinks fit, provided that reasonable notice is given to the parties of any change to the hearing.

4. Hearings

4.1 Conduct of hearings



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4.1.1 A hearing of the Tribunal must be held in private except that –
(a) the Investigations Officer, and the Member (if the hearing relates to a Member who is a natural person), or two representatives of the Member (if the hearing relates to a Member that is a Corporation) are entitled to attend;

(b) the Tribunal may allow other representatives of TWA and the Member to attend and make submissions.

4.1.2 A party has no right to a legal representation. The Tribunal may permit a party to be legally represented before the Tribunal on terms that it thinks fit.

4.1.3 No party may be compelled to appear at a hearing of the Tribunal, but any party to a hearing may provide written submissions and evidence to the chairperson at least three Business Days before the hearing.

4.1.4 The Tribunal may make such procedural arrangements as it thinks fit, including directions for the provision of written submissions and evidence and the taking of a transcript of the hearing.

4.1.5 The Tribunal must conduct hearings with as little formality and technicality as possible and otherwise may conduct hearings as it considers fit, having regard to the necessity that adequate consideration be given to matters before it.

4.2 General rules governing the Tribunal

4.2.1 The laws and rules of evidence do not apply to proceedings before the Tribunal.

4.2.2 The Tribunal must act expeditiously in hearing and determining all proceedings before it.

4.2.3 The Tribunal must act without bias and treat all parties with fairness and in accordance with the rules of natural justice.

4.2.4 The Tribunal may obtain legal advice and have legal advisers in attendance at a hearing.

4.2.5 The Tribunal may conduct hearings or other meetings of the Tribunal in person or by other means provided that all members of the Tribunal are able to hear and speak to each other.

4.2.6 All determinations and decisions of the Tribunal must be made by simple majority vote of the members of the Tribunal.

4.2.7 All correspondence between a party and the Tribunal must be dealt with on the Tribunal's behalf by the chairperson or, in the chairperson's absence, by another member of the Tribunal with the consent of the chairperson.

4.2.8 The Tribunal may but is not required to issue written reasons for any determination made by it. Any such written reasons must be issued by the Tribunal to all parties to the proceeding within one month after the date on which the determination is made.

4.2.9 The Tribunal may proceed to determine any matter before it despite that the Member who is the subject of the Notice of Charges has failed to make submissions or provide documents or information or to appear at a hearing within the period specified by the Tribunal for this purpose.

4.3 Powers of the Tribunal & Penalties

Any disciplinary measure imposed by Disciplinary Tribunal under this policy must:

- Observe any contractual and employment rules and requirements;
- Conform to the principles of natural justice;
- Be fair and reasonable;
- Be based on the evidence and information presented;
- Be within the powers of the Disciplinary Tribunal to impose the disciplinary measure.

4.3.1 Any act or omission by an Officer, employee or contractor of a Member is deemed for the purposes of these Rules to be an act or omission by the Member.

4.3.2 If the Tribunal determines that a Member has engaged in Misconduct, the Tribunal may -

Individuals

(a) Subject to contractual and employment requirements, if a finding is made that an individual has breached the TWA Member Protection By-law (including the Codes of Conduct), one or more of the following forms of discipline may be imposed by the Disciplinary Tribunal –

- (i) A direction that the individual make a verbal and/or written apology;
- (ii) A written warning;
- (iii) A direction that the individual attend counselling to address their behaviour;
- (iv) A withdrawal of any awards, placings, records, achievements bestowed in any tournaments, activities or events held or sanctioned by TWA;
- (v) A demotion or transfer of the individual to another location, role or activity;
- (vi) A suspension of the individual's membership or participation or engagement in a role or activity for such period and on such terms or conditions as the Tribunal thinks fit (where the Member is already the subject of an order for suspension, continue that suspension for such period and on such terms or conditions as the Tribunal thinks fit);
- (vii) Termination of the individual's membership, appointment or engagement;
- (viii) Censure the individual;
- (ix) Deny the individual the right to access such benefits and privileges of Membership for such time and on such terms and conditions as the Tribunal thinks fit;
- (x) Require the individual to pay a fine to TWA on such terms as it thinks fit;
- (xi) Require the individual to undertake such education program as the Tribunal thinks fit, provided that the purpose of such program is to reduce the likelihood of future acts of Misconduct by the individual;
- (xii) In the case of a coach or official, a direction that the relevant organisation de-register the accreditation of the coach or official for a period of time or permanently; and/or
- (xiii) Any other form of discipline or remediation that the Disciplinary Tribunal considers appropriate.

(b) When imposing any form of discipline, it will be accompanied by a warning that a similar breach of policy by that individual in the future may result in the imposition of a more serious form of discipline.

Organisations

(c) If a finding is made that a TWA affiliated club has breached TWA's Member Protection By-law (including the Codes of Conduct), one or more of the following forms of discipline may be imposed by the Disciplinary Tribunal –

- (i) A written warning;
- (ii) A monetary fine;
- (iii) A direction that any rights, privileges and benefits provided to that organisation by the national body or other peak association be suspended for a specified period;
- (iv) A direction that any funding granted or given to it by TWA ceases from a specified date;
- (v) A direction that TWA cease to sanction events held by or under the auspices of TWA;
- (vi) A recommendation that the membership of the affiliated club with TWA be suspended or terminated in accordance with the relevant constitution or rules; and/or
- (vii) Any other form of discipline that the Disciplinary Tribunal considers appropriate.

(d) When imposing any form of discipline, it will be accompanied by a warning that a similar breach of policy by the organisation in the future may result in more serious form of discipline.

Factors to consider when imposing discipline

(e) The form of discipline to be imposed on an individual or organisation will depend on factors

such as –

- (i) If the individual is a parent and/or spectator (ability to enforce a penalty may be difficult);
- (ii) Nature and seriousness of the behaviour or incidents;
- (iii) In a case where action is taken concurrently with or in lieu of a resolution of a formal complaint, the wishes of the complainant;
- (iv) If the individual concerned knew or should have known that the behaviour was a breach of the policy;
- (v) Level of contrition of the respondent(s);
- (vi) The effect of the proposed disciplinary measures on the respondent(s) including any personal, professional or financial consequences;
- (vii) If there have been relevant prior warnings or disciplinary action; and/or
- (viii) If there are any mitigating circumstances such that the respondent(s) shouldn't be disciplined at all or not disciplined so seriously.

4.3.3 Prior to taking any action under Rule the Tribunal must provide such reasonable time as the Tribunal determines for the Member to make such representations and to provide such information to the Tribunal as the Member thinks fit in relation to the action proposed to be taken by the Tribunal.

4.4 Effect of Tribunal determinations

4.4.1 A determination, decision or order made by the Tribunal pursuant to this By-law has effect from the date on which the Tribunal determines that it will have effect or, if the Tribunal does not specify such a date, immediately from the date on which the order is made.

4.4.2 A determination, decision or order made by the Tribunal is final and binding on all parties to the proceeding. Neither TWA, nor any constituent body of TWA other than the Tribunal, has power to vary or overrule a determination, decision or order made by the Tribunal.

4.5 Notification to persons affected by determination

Where the Tribunal makes a determination, decision or order pursuant to this By-law (whether or not that determination, decision or order is then in effect) and the effect of that determination, decision or order is to cause the membership of the Member concerned to be suspended or for the Member to be expelled from membership of TWA, the Tribunal –

- (a) may in any such determination, decision or order make such ancillary orders concerning Members who are members of, the Member concerned as the Tribunal thinks fit and every such ancillary order shall bind every such person; and
- (b) must as soon as practicable in such form and manner as it thinks fit notify each such person of the effect of the determination, decision or order and the terms of any ancillary order.

4.6 Publication of determinations

TWA may, as it sees fit, publish or otherwise make available to Members, any other persons or the public generally the content of, or an extract from or précis of, any determinations by the Tribunal. All Members by this Rule provide their express consent to the publication of material encompassed within this Rule and waive and release forever any rights they may otherwise have to bring action with respect to such publication, whether by suit in defamation or other cause of action.

4.7 Keeping Complainant informed

The Investigations Officer and/or the Tribunal may keep a complainant informed of progress in handling the complainant's complaint provided always that the Investigations Officer or the Tribunal as the case may be must not provide any information to a complainant in relation to

the progress of the complaint where in the opinion of the Investigations Officer or the Tribunal as the case may be –

- (a) to do so would expose the Investigations Officer, the Tribunal, TWA or any Officer of TWA to liability for civil damages;
- (b) to do so would or could prejudice, impede or in any other manner adversely affect the investigation of the complaint and the proceedings of the Tribunal; or
- (c) to do so would deny procedural fairness to the Member, the subject of the complaint.

4.8 Legal Proceedings

4.8.1 A Member, including a Member whose membership has been suspended or cancelled, may not bring any legal action or proceeding against TWA, any member of the Tribunal or any employee or agent of the Association (including without limitation Directors of TWA or an Investigations Officer), with respect to the publication or giving of access to any person of material pursuant to this By-law as a complete bar to the commencement or continuation of any such proceedings in any jurisdiction.

4.8.2 TWA will indemnify each member of the Tribunal and employee, contractor and agent of TWA against any claim, action or proceeding brought against that person by any other person arising out of or in connection with the conduct of an investigation by an Investigations Officer, a proceeding before the Tribunal or any order, determination or decision made by and Investigations Officer or the Tribunal, and this indemnity will extend to the conduct of the defence of any proceedings and the payment of any costs thereof.

4.8.3 The indemnity provided pursuant to Rule 4.8.2 does not extend to actions brought by TWA against any person.

5. Appeals Procedure

5.1 A complainant or a respondent(s) who is not satisfied with a decision under TWA's Disciplinary Rules & Procedures By-Law can lodge one appeal only on one or more of the following bases –

- (a) that a denial of natural justice has occurred; or
- (b) that the disciplinary measure(s) imposed is unjust and/or unreasonable.

5.2 An appeal shall be made in accordance with the following –

- (a) an appeal against a decision of a person or body, other than the Disciplinary Tribunal, under TWA's Disciplinary Rules & Procedures By-Law shall be to the Disciplinary Tribunal;
- (b) an appeal against a decision of the Disciplinary Tribunal shall be made to the appeal division of the Court of Arbitration for Sport (Oceania Registry) (CAS).

5.3 The person wishing to appeal must lodge a letter stating their intention and the basis for their appeal with the Disciplinary Tribunal and the CEO of TWA within 21 days of the relevant decision. An appeal fee prescribed by the Board of TWA (if any) shall be included with the letter of intention to appeal. The appeal fee (if any) is not refundable in any circumstances.

5.4 In the case of an appeal to CAS from a decision of the Disciplinary Tribunal the person wishing to appeal must complete and file an application to appeal with CAS in accordance with the Code of Sports Related Arbitration and provide copies to the Disciplinary Tribunal and the CEO of TWA.

5.5 If the letter of appeal is not received by the Disciplinary Tribunal and the CEO of TWA within the relevant time period the right of appeal will lapse. If the letter of appeal is received but the prescribed appeal fee (if any) is not received by the relevant time, the appeal shall be deemed to be withdrawn.

5.6 For all appeals other than to CAS, upon receipt of the letter of appeal, the Chairperson of the Disciplinary Tribunal must convene a special meeting of the Disciplinary Tribunal to review



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the letter of appeal and decide whether there are sufficient grounds for the appeal to proceed. The Disciplinary Tribunal will be able to invite any witnesses to the meeting it believes are required to make an informed decision.

If it is considered that the letter of appeal has not shown sufficient grounds for appeal in accordance with paragraph 5.2, then the appeal will not proceed and the person will be notified of this decision and the reasons for this decision. The appeal fee will be forfeited.

If the appeal is considered to have sufficient grounds to proceed then a Tribunal with a new panel will be convened to rehear the complaint.

5.7 The Tribunal Hearing Procedure shall be followed for the appeal.

5.8 The decision of the Tribunal when hearing an appeal will be final and conclusive.

No person that is a party to the appeal may institute or maintain proceedings in any court or tribunal other than to CAS or the Disciplinary Tribunal. This provision does not prevent any person or organisation taking action under state, Territory or Federal legislation.