



# **AUSCYCLING**

## **DISCIPLINARY POLICY**

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## 1. Application and Administration

- 1.1. This Policy applies to conduct and behaviour which is not otherwise captured by AusCycling's Code of Conduct, Member Protection Policy, Whistleblower Policy, Australian Cycling Team Agreement, Anti-Doping Policy, Anti-Match Fixing Policy, Integrity and Gambling, HR and other AusCycling Policies ("Other AusCycling Policies").

Typically, the breaches captured by this Policy will relate to behaviour and conduct that occurs 'off-field'. Where there is any inconsistency between this Policy and the Other AusCycling Policies, those Other AusCycling Policies shall prevail to the extent of such inconsistency. However, if there is uncertainty as to which policy applies to the conduct or behaviour, the Ethics and Integrity Committee shall decide which policy is applied.

- 1.2. The Policy applies to and binds all individuals described in clause 3 of AusCycling's Member Protection Policy.
- 1.3. If anything in this Policy is inconsistent with any Federal, State or Territory law, the relevant Federal, State or Territory law prevails to the extent of the inconsistency.
- 1.4. Subject to clause 1.3, the investigation of an alleged contravention of this Policy will be referred to the AusCycling CEO or Nominated Official where the alleged breach occurred, except where:
- a) the relevant individual that is alleged to have contravened this Policy is member of the Australian Cycling Team or other individual who has a separate agreement or arrangement with AusCycling, in which case the Ethics and Integrity Committee ('the Committee') may elect to investigate; and
  - b) where the CEO believes that the alleged contravention is otherwise sufficiently serious to warrant AusCycling conducting the investigation of the alleged contravention, and in such circumstances it will be referred to the AusCycling Ethics and Integrity Committee ("Committee").

For the avoidance of doubt, all appeals against a Committee decision under clause 5, shall be administered by AusCycling or the National Sports Tribunal ('NST').

Any penalty imposed upon a person under this Policy must be recognised and respected by all Member Clubs. An individual is not permitted to participate in any cycling competition, event, team, function, training or practice sessions or other event conducted or managed by or under the auspices of AusCycling or Member Clubs during the time of any suspension imposed under this Policy.

- 1.5. Unless otherwise indicated, capitalised terms used in this Policy shall have the meaning given to them in AusCycling's Member Protection Policy.
- 1.6. All parties to any matter dealt with pursuant to this Policy shall bear their own costs.

## 2. Categories of Breaches

- 2.1. This Policy recognises two categories of breaches; minor breaches and serious breaches. The following is an indicative, although non-exhaustive, classification of what may constitute a minor or serious breach. AusCycling may at any time add to or amend this list of breaches.

### Minor Breaches

Any of the following if done during or in connection with a cycling activity conducted or managed under the auspices of AusCycling or a Member Club, constitute a minor breach:

- a) inappropriate consumption of alcohol or tobacco (including consumption of alcohol whilst under the age of 18) and/or being drunk and disorderly;
- b) breaching a curfew or other rules;
- c) any other disruptive, disorderly, unreasonable, untoward or inappropriate behaviour.

### Serious Breaches

Any of the following if done during or in connection with a cycling activity conducted or managed under the auspices of AusCycling or a Member Club, constitute a serious breach:

- a) consuming or aiding and abetting the consumption of illegal or illicit drugs and other prohibited substances;
- b) improperly incurring debts (e.g. telephone or accommodation charges) on behalf of AusCycling;
- c) committing any criminal breach or any other unlawful activity;

- d) acts, omissions, conduct and any other behaviour that brings, or is reasonably likely to bring the sport of cycling and/or AusCycling into ridicule or disrepute;
- e) any “match-fixing” or other act or omission that may artificially, improperly, illegally or unreasonably alter the outcome of a cycling race.
- f) gambling, or placing any wager or bet or assisting another individual to gamble or place a wager or bet, on the outcome or details of a cycling race in respect of which the relevant individual is involved or has some specialist, confidential, “insider” or other sensitive information;
- g) disclosing any specialist, confidential, “insider” or other sensitive information as described immediately above to any third party for the purposes of or relating to gambling, betting, “match-fixing”, or any act or omission designed to artificially, improperly, illegally or unreasonably alter the outcome of a cycling race;
- h) underage or inappropriate sexual activity; inappropriate use of social media and technology, including:
  - i. posting or distributing actual or potentially defamatory, offensive, derogatory, private or otherwise sensitive photos, videos, comments or other information of or relating to another person or AusCycling;
  - ii. recording and/or photographing another individual without their consent; and
  - iii. any other disruptive, disorderly, unreasonable, untoward or inappropriate behaviour, that is of a serious nature (even if such behaviour or conduct is capable of being classified as a ‘minor breach’).

2.2. The AusCycling CEO or such person nominated by that AusCycling CEO (in each case the “Nominated Official”), shall be solely responsible for characterising any alleged breach of this Policy by an individual referred to in clause 1.2. That Nominated Official must in his/her absolute discretion characterise the alleged breach as either minor or serious breach in accordance with clause 2.3.

2.3. The relevant Nominated Official may be guided in the characterisation of a breach/s by one or more of the following non-exhaustive list of factors:

- a) the categories of breaches outlined in clause 2.1;
- b) the impact or damage caused by the alleged breach upon AusCycling, the sport of cycling, and/or the victim;
- c) the intent of the alleged offender;
- d) the need for a penalty to be imposed;
- e) the appropriate level of penalty proportionate to the offending conduct;
- f) the need for general and specific deterrence; and
- g) parity and consistency of approach.

2.4. This Policy sets out the disciplinary procedures for hearing both minor and serious breaches and the penalties applicable to each category of breach.

2.5. In the event that the conduct consists of both types of breaches, the matters must be consolidated into the one disciplinary procedure to be dealt with according to the procedures set out in this Policy for dealing with serious breaches.

If a hearing is convened to determine both serious and minor breaches, as provided for under clause 2.5 of this Policy, the Tribunal is limited in the scope of penalties it may impose in the following manner:

- a) in relation to minor breaches the Tribunal is limited to those penalties provided for in clause 3.5; and
- b) in relation to serious breaches the Tribunal may penalise an offender in accordance with clause 4.11.

### 3. Minor Breaches

3.1. Minor breaches are less serious breaches which attract penalties reflecting this fact.

3.2. Minor breaches will be dealt with as expeditiously as possible but always adhering to the procedures set out in this Policy. The Nominated Official may (in his or her discretion) impose a provisional suspension on the alleged offender while the matter is being dealt with.

3.3. The person will be notified in writing by the Nominated Official of the following:

- a) details of the alleged contravention; and
- b) confirmation that this Policy applies (a copy of this Policy should be provided).

If the Nominated Official has decided to impose provisional suspension, the written notification must include details of the provisional suspension. The provisional suspension will commence on the date determined by the Nominated Official and continue until the matter is considered and determined under clause 3.5. The Nominated Official must advise the Chief Executive Officer which will recognise the provisional suspension imposed upon the alleged offender. The Nominated Official may also notify any relevant organisation as required of the suspension.

If the alleged offender is under the age of 18 years old, notification should be given to that person's parent/ guardian as well as the alleged offender.

- 3.4. The alleged offender shall have seven (7) days (or other such longer period determined by the Nominated Official) from receipt of the notice in clause 3.3 to provide a written response to the alleged breach/s.
- 3.5. The Nominated Official will consider relevant facts and information concerning the alleged breach (including statements from witnesses and any response from the alleged offender) and must then make a determination on the balance of probabilities (i.e. more probable than not) as to whether the alleged offender committed the applicable minor breach. The Nominated Official shall then determine the sanction to be imposed under the Policy. If a provisional suspension has been imposed, the Nominated Official is to have regard to the provisional suspension when determining a suitable sanction. Where possible in the circumstances, the alleged offender should be given the opportunity to address the Nominated Official regarding the penalty to be imposed for the alleged breach.

In imposing a penalty for a minor breach, the Nominated Official may choose from one or more of the following range of penalties:

- a) impose a warning;
  - b) the requirement for a written apology from the offender to specified persons / organisations;
  - c) a reprimand; and/or
  - d) suspending the alleged offender from current or future cycling events, competition, teams, functions, training or practices sessions, or other event conducted or managed under the auspices of AusCycling (or any part for no longer than 3 months).
- 3.6. The Nominated Official will notify the offender in writing of any penalty imposed and will notify the Chief Executive Officer. Such notification must be made within seven (7) days of the determination of the matter.
  - 3.7. An offender may only appeal against a conviction or penalty for a minor breach on the grounds that:
    - a) the Nominated Official displayed bias or relied upon a manifest error in their decision making process;
    - b) clauses 3.3 or 3.6 of this Policy have not been complied with; or
    - c) the penalty imposed by the Nominated Official is manifestly disproportionate to the alleged breach.

Any appeal against a conviction or penalty for a minor breach must otherwise follow the procedure outlined in clause 5.

- 3.8. Subject only to clauses 3.7 and 5:
  - a) the determination by the Nominated Official will be final and binding on all parties; and
  - b) no further right of appeal exists within AusCycling, or to an external tribunal or any civil court of law.

## 4. Serious Breaches

- 4.1. Any person bound by this Policy must report conduct they consider to be a serious breach to the Nominated Official of AusCycling as soon as possible in the circumstances. A brief report setting out the circumstances surrounding the alleged breach as well as identifying material witnesses and a summary of the evidence those material witnesses can give, must be submitted with the report. Without limiting clause 2, a failure to report a breach under this clause 4.1 is not generally itself a breach.

The Nominated Official must review the brief report and may, in circumstances where the alleged offender has been charged with a serious breach make an application to the Tribunal Chair to consider imposing a provisional suspension on the alleged offender.

- 4.2. Following review under clause 4.1, the Nominated Official must notify the alleged offender in writing of the following:
- a) confirmation that this Policy applies (a copy of this Policy should be provided);
  - b) details of the alleged contravention, and possible penalties that may be imposed by the Tribunal;
  - c) the date, time and place of the Tribunal hearing' and the likely composition of the Tribunal; and
  - d) If applicable, notification that the Nominated Official has sought a provisional suspension from the Tribunal Chair, and the alleged offender has seven (7) days to make a written submission prior to the Tribunal Chair making their determination of the provisional suspension.

If the Tribunal Chair imposes a provisional suspension then the Nominated Official must provide written notification to the alleged offender of the decision (including date of commencement, noting that any provisional suspension shall continue until the matter is determined by a Tribunal).

If the alleged offender is under the age of 18 years old notification should be given to that person's parent/ guardian as well as the alleged offender.

- 4.3. AusCycling will appoint a Tribunal of three (3) members to hear and determine the matter. Such Tribunal shall be comprised of the following persons:
- a) a lawyer or, if after reasonable attempts have been made to obtain one without success, then a person with considerable previous experience in the legal aspects of a disciplinary tribunal (who shall be Chair);
  - b) a person with a thorough knowledge of cycling; and
  - c) one other person of experience and skills suitable to the functions of a disciplinary tribunal,
- 4.4. The Tribunal must allow the alleged offender a reasonable opportunity to speak and state their case. The alleged offender may elect to provide written submissions instead of oral submissions, in which case any party who elects to provide a written submission shall not also be entitled to provide verbal submissions at the hearing, other than in accordance with clause 4.8 and 4.9 of if the Tribunal so permits. The Tribunal shall otherwise:
- a) hear and determine the alleged breach in whatever manner it considers appropriate in the circumstances (including by way of teleconference, video conference or otherwise) provided that it does so in accordance with the principles of natural justice;
  - b) not be required to adhere to any specific legal rules, formalities or processes (including any rules of evidence), and shall be free to hear and consider any materials, information or evidence whatsoever that it considers appropriate (including evidence of past indiscretions, breaches or convictions); and
  - c) make its decision on a matter by majority vote.
- 4.5. The purpose of the hearing shall be to determine whether the alleged offender has committed a serious breach. If the tribunal determines that on the balance of probabilities (i.e. more probable than not) a serious breach has been committed, it may impose any one or more of the penalties set out in clause 4.11.
- 4.6. If within 30 minutes of the notified time for commencement of the hearing, the alleged offender is not present, the Tribunal may elect to conduct the hearing in the absence of the alleged offender or adjourn the hearing and reconvene at a later date advised at the sole and reasonable discretion of the Nominated Official.
- 4.7. The parties may be represented at the hearing by any person who is not a legal practitioner save that the Tribunal may give leave for the parties to be legally represented where it considers it is necessary in order to do justice to both parties. One observer may present with the alleged offender in the hearing room however this person may not involve themselves in the hearing in any manner. If the alleged offender is under the age of 18 years old, two observers may be present.
- 4.8. If the charge is proven the offender will be given an opportunity to be heard in relation to mitigation or penalty only. This is not an opportunity for the offender to re-argue his/her case and any attempt to do so will be immediately halted.
- 4.9. Prior convictions of a disciplinary tribunal may be disclosed to the Tribunal who may give weight to prior convictions of a similar nature.
- 4.10. In imposing a penalty for a serious breach, the Tribunal may impose the following range of penalties:
- a) in extreme circumstances, permanent suspension from all competitions/ racing;

- b) suspension from all competitions/ races for a period reasonably determined by the Tribunal;
- c) suspension from all competitions/ races at international level only for a period reasonably determined by the Tribunal;
- d) suspension from competition/ racing at national level for a period reasonably determined by the Tribunal;
- e) suspension from competition/ racing at state level only for a period reasonably determined by the Tribunal;
- f) suspension from competing/ racing in one or more events;

and may also impose any one or more of the following penalties:

- g) suspension from attending or participating in tours, teams, functions, training or practice sessions, or other functions or events conducted by or under the auspices of AusCycling for a period reasonably determined by the Tribunal;
- h) directing the offender to attend counselling to address their conduct;
- i) recommending termination of any appointment of any role the offender holds with a cycling organisation;
- j) imposing a monetary fine;
- k) in the case of a coach or other cycling official or administrator, suspending or directing relevant bodies not to renew that person's AusCycling accreditation or membership for a period or indefinitely; and
- l) any other such penalty the Tribunal considers appropriate in the circumstances (including any penalty that may be imposed on an offender under the Member Protection Policy).

If a provisional suspension has been imposed, the Tribunal is to have regard to the provisional suspension when determining a suitable sanction. In considering the length of any suspension, the Tribunal must consider what is reasonable in the circumstances.

- 4.11. The Tribunal must publish reasons for its decision.
- 4.12. The Chair of the Tribunal will confirm in writing with the offender any penalty imposed and will notify the Chief Executive Officer who will immediately recognise the penalty imposed upon the offender. Such notification must be made within seven (7) days of the determination of the matter, or in the event the matter is dealt with on tour, within seven (7) days of return.
- 4.13. Subject only to the appeals process outlined in clause 5:
  - a) the determination by the Tribunal will be final and binding on all parties; and
  - b) no further right of appeal exists within AusCycling, or an external tribunal or any civil court of law.
- 4.14. If the circumstances require decisive and immediate action, the AusCycling CEO may determine and impose a suitable sanction without convening a Tribunal under this clause 4. If this occurs, an appeal may be made in accordance with clause 5.2(a) to an Appeal Tribunal established by AusCycling in accordance with clauses 5.2(a), 5.3(a), 5.4(a), 5.7, 5.8, 5.09, 5.10, 5.11 and 5.12 (if applicable).

## 5. Appeals Procedures

- 5.1. Appeals may only be lodged against:
  - a) a minor breach on the grounds listed in clause 3.8; and
  - b) subject only to (a), Tribunal decisions relating to serious breaches. Where a matter for determination involves both minor and serious breaches, an appeal can only be lodged in relation to those breaches categorised and dealt with by the Tribunal as serious.
- 5.2. An appeal may only be lodged:
  - a) in the case of appeals from a Tribunal decision, established in accordance with this clause 5, an appeal is only validly lodged where:
    - (i) an appeal notice is lodged with the applicable Nominated Official within seven (7) days of the Tribunal's decision;



- (ii) the appeal notice is accompanied by a written submission as specified in clause 5.5 and an appeal application fee of \$1,000 (in the form of a bank cheque) refundable only at the discretion of the Appeal Tribunal (as defined below) and in circumstances where the offender is successful in overturning the Tribunal's finding of guilt and/or reduces the penalty imposed. The Appeal Tribunal may withhold all or part of the amount to cover the costs of the Appeal Tribunal hearing and deal with those monies and any fines payable by an offender as it considers appropriate.

- b) in the case of an appeal to the National Sports Tribunal ("NST"), an appeal is only validly lodged where an application is completed and filed in accordance with the requirements of the NST.

Both the NST, and an Appeal Tribunal established by AusCycling, shall be known as the "Appeal Tribunal" for the purposes of this clause 5.

5.3. An appeal against the findings of the Tribunal and/or the imposition of a penalty shall be conducted:

- a) in the case of appeals that proceed under clause 5.2(a) – within 21 days of receipt by AusCycling's Nominated Official of the notice of appeal, although AusCycling shall have the discretion to convene an appeal hearing outside of the 21 day period but only after it has been established that it would be impossible to hear the appeal any earlier; and
- b) in the case of appeals that proceed under clause 5.2(b) – in accordance with the NST prescribed processes and timelines.

5.4. The Appeal Tribunal shall:

- a) in the case of appeals that proceed under clause 5.2(a) – consist of three members appointed by AusCycling's CEO who shall comply with clause 4.3, none of which has had a prior involvement in the matter. The Appeal Tribunal will have the discretion to conduct proceedings at their discretion and in accordance with the powers described in clause 4.4, subject always to the procedures set out in this Policy. A majority decision will determine the matter; and
- b) in the case of appeals that proceed under clause 5.2(b) – be constituted in accordance with the processes and rules of the NST, in which case clauses 5.6 to 5.9 (inclusive) of this Policy will not apply to that appeal.

5.5. In order for a matter to proceed to an appeal, the offender must establish on the balance of probabilities that it is more likely than not that s/he has an arguable case. This shall be done by written submissions only, lodged pursuant to clause 5.2. AusCycling's Nominated Official will have the right of reply to any submissions lodged by the offender, such submissions in reply which must be lodged with the Appeal Tribunal and served upon the offender within seven (7) days of receipt by AusCycling's Nominated Official of the offender's submissions. The Appeal Tribunal Chair alone shall determine whether the offender has sufficiently made out one or more ground/s of appeal within seven (7) days of receiving AusCycling's Nominated Official's submissions. There is no right to appeal against this decision. The Appeal Tribunal Chair's decision will be conveyed to each of the parties.

5.6. If it is determined by the Appeal Tribunal Chair on the balance of probabilities that the offender has an arguable case and the appeal is in relation to penalty only, the matter will proceed by way of written submissions only.

5.7. Each party will be required to submit in writing their arguments with the offender obliged to lodge their written arguments no less than three (3) business days before the matter is scheduled to proceed. A copy of the submissions of the offender will be provided to AusCycling's Nominated Official who will then have a further 48 hours to submit their own reasons.

If the appeal is against both conviction and penalty, the appeal will proceed according to the procedures set out in clause 5.4 of this Policy (to the extent applicable, as determined by the Appeal Tribunal's Chair).

5.8. An appeal against conviction is a re-hearing of the matter and the parties may recall any earlier relevant witnesses and may submit fresh evidence, provided that the Appeal Tribunal is satisfied that the new evidence is relevant to the matter. The Appeal Tribunal has the power to dismiss the appeal, grant the appeal, impose any of the penalties provided for in clause 4.11, and/or impose a new penalty as provided for in clause 4.11 of this Policy, the new penalty which may be greater than the penalty handed down by the original Tribunal.

5.9. The determination by the Appeal Tribunal will be final and binding on all parties. No further right of appeal exists within AusCycling, or to an external tribunal or any civil court of law.

5.10. The Nominated Official will keep a register of all penalties imposed for serious breaches.

- 5.11. If the offender is suspended by the Tribunal, this suspension shall remain in force pending the determination of the matter by way of appeal.
- 5.12. The Appeal Body has no power to award costs and each party shall bear their own costs in relation to the appeal.

END.

**LET'S RIDE TOGETHER**