



AUSTRALIAN PARACHUTE FEDERATION

MISCONDUCT POLICY AND PROCEDURES MANUAL



VERSION 01-2022
STATUTE: MANDATORY

Warning

Parachuting and flying in parachuting aircraft can be dangerous.

IMPORTANT: Version Control

It is important that members refer to the current version of this Manual. Current Version number is shown on the front cover and in the below table. As this Manual is administered exclusively by the APF, it will be updated and amended when and as required.

Significant changes made from the previous version are shown in Amendments.

CURRENT VERSION	RELEASE DATE
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PREVIOUS VERSIONS	REPLACED BY

AMENDMENTS

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PART 1 – GENERAL INFORMATION

1.1 About this Manual/Purpose

- (a) The primary audience for this Manual is APF Members and Group Members who are involved in disciplinary matters. This includes Authorised Persons and Internal Review Panel members, individuals who are alleged to have breached the APF rules or regulations, and those persons who have had an allegation(s) made against them.
- (b) The objectives of this Manual are to:
 - (i) define APF policy and principles for dealing with misconduct and discipline consistent with Part 149 of CASR;
 - (ii) set out the processes and procedures for dealing with breaches of APF Rules and Regulations, including the Code of Ethics, unacceptable behaviour and other infringements that may require attention under law; and
 - (iii) make it clear and ensure that members in positions of authority (both within the APF and within Group Members) know the appropriate procedure when allegations or reports of misconduct are made or arise.

1.2 Misconduct and Discipline policy

1.2.1 Compliance

- (a) When a person joins the APF or renews their APF membership, that person does so on the condition that they agree to be bound by and will comply with APF's Rules and Regulations including those Rules and Regulations that provide for enforcement action to be imposed upon that Member, particularly those contained within this Manual.
- (b) Members undertaking parachuting activities may be required to comply with additional policy requirements imposed through legislative requirements or APF's involvement with external bodies. One example is that members participating as athletes in certain competitions must abide by the *APF Anti-Doping Policy* that applies to the relevant Sporting Administration Bodies.

1.2.2 Examples of misconduct

- (a) It is not possible to exhaustively list everything that may constitute misconduct. While it mainly relates to breaches of the APF Rules and Regulations, it also covers other conduct, including the following examples:
 - Failing to abide by APF policy, such as a breach of the Privacy Policy by disclosing a member's sensitive, personal information;
 - Falsification of records, including maintenance records or packing cards;
 - Knowingly authorising APF rating application forms which include false information or otherwise being reckless as to the contents;
 - Disregarding manufacturer's equipment requirements, such as by not removing a container system from service when required or using equipment contrary to a manufacturer's instructions;
 - Verbally or physically assaulting another person, intimidating another person, or creating a hostile environment within the APF sporting community;
 - Intentionally injuring the professional or personal reputation of another Member or the APF by spreading false or misleading information or making repeated vexatious, frivolous, or malicious claims;

- Sexual harassment, which includes but is not limited to inappropriate touching of tandem passengers, circulating inappropriate material, or making unsolicited advances of a sexual nature;
- Disclosing to any unauthorised person or organisation information obtained as an APF member that is of a private, confidential, or privileged nature;
- A Group Member or operator cancelling first jump students from the system after they have completed their jumps or leaving their status as pending (waiting to jump) and not reporting to the APF that they have jumped (i.e. retaining the student fees which are due and payable to the APF);
- Discriminating against, harassing or bullying (including cyber-bullying) any person.

1.2.3 Disciplinary Measures

- (a) There are a variety of different options, depending on the severity of the issue, the attitude of the individual or organisation and if the infringement is a first offence. Options include a combination of the following:
- (i) a direction that the individual or organisation makes a verbal and/or written apology;
 - (ii) a written warning (noted on a members records);
 - (iii) suspension or variance of privileges of a certificate, crest, rating or endorsement, or cancelation of a rating, endorsement, or appointment;
 - (iv) counselling and/or retraining;
 - (v) referral to other relevant authorities, including law enforcement or regulatory authorities; or
 - (vi) if the matter is found to be baseless or vexatious, then-disciplinary action against the complainant may be considered.

1.2.4 Nature and intent of proceedings

- (a) APF's misconduct processes are designed for skydivers, by skydivers, in a sport environment. They are not proceedings being conducted in a court of law and are intended to be as informal as possible while observing and respecting the rights of the parties involved. Parties do not have a right to be legally represented in disciplinary proceedings or at any panel hearing.
- (b) In dealing with any allegations of misconduct under the Manual the APF will be guided by and will observe the Guiding Principles as set out below in 1.3.

1.3 Guiding Principles for misconduct procedures

1.3.1 Just and Fair Culture

- (a) The APF fosters a "just and fair safety culture" that discourages blaming an individual for making an honest mistake that may have contributed to an accident or incident. A just and fair culture does not seek to punish honest mistakes for that reason alone. Gross negligence or recklessness is not considered to be an honest mistake.
- (b) The processes described in this manual are intended to promote a "just and fair safety culture": in that any enforcement action taken is to be proportionate, properly founded, conducive to positive safety outcomes and mindful of the particular circumstances of those involved, including promoting the safety management of the skydiving industry. Sanctions will generally only be applied where there is evidence of a conscious violation, or intentional, reckless or negligent behaviour. The safety of APF members and the public is the primary consideration when managing and making decisions about misconduct.

1.3.2 Procedural Fairness and natural justice

- (a) Procedural fairness and natural justice are concerned with the procedures followed by a decision maker, irrespective of the actual outcome. The following procedural fairness and natural justice principles must be considered and observed by persons involved in disciplinary proceedings:
- Keeping people informed – this includes persons whose interests may be adversely affected or who are the subject of an inquiry, including providing details of the grounds for the inquiry;
 - Providing respondents adequate and appropriate opportunity to respond to allegations of suspected breaches at the right time and based on all appropriate information – (see the Hearing Rule);
 - Considering all relevant material related to the matter, including that presented by the accused;
 - Making reasonable attempts to gather evidence which explains the facts of a situation
 - Acting in a fair, reasonable, impartial and unbiased manner always. This includes declaring potential conflicts of interest if and when they arise;
 - Not taking into account irrelevant considerations;
 - Conducting inquiries and all associated tasks in a timely manner; and
 - Keeping appropriate records.

1.3.3 The Hearing Rule

- (a) The Hearing Rule requires a decision maker to make sure they inform a person of the case against them or their interests in a case and give them a fair opportunity to be heard. What is considered a fair opportunity varies according to the circumstances and requires consideration of what is reasonable in any given situation.

1.3.4 Conflict of Interest

- (a) A conflict of interest arises where an interest or activity of a decision maker or relevant party could be reasonably seen to influence the decision maker – whether directly, indirectly or by creating a perception that it may. The person nominated to conduct investigatory duties is to ensure they do not have any conflicts of interest which may jeopardise the impartiality of the Inquiry. Some examples of conflicts of interest include where there is a prior or current personal relationship with the witness, complainant or respondent; previous disputes with a party to the matter; a financial interest with one of the parties (such as co-owner of a business); or, having previously investigated and made recommendations against the respondent, etc.

1.3.5 Records to be kept

- (a) Accurate and detailed records are to be kept by the Authorised Person, Internal Review Officers and other assigned persons at all times during the course of an investigation. This includes information such as (but not limited to):
- Any contact with the member, including times/dates, methods (e.g. by phone/email/in person) and subject matter
 - Responses from Members
 - Feedback from witnesses, other Members and/or the public
 - Any information relevant to the subject matter.
- (b) All records are to be forwarded to and stored at the APF Office.

PART 2 – PROCESS UPON RECEIVING A COMPLAINT

2.1 Informal Process

- (a) Depending upon the seriousness of the complaint or allegations, an informal approach may be appropriate for an honest mistake or minor misdemeanours, or when an unsubstantiated or anonymous allegation has been made.
An informal procedure may involve a discussion between the parties to resolve the issue and may result in a verbal warning. Verbal warnings (although oral in nature) and any counselling or retraining must still be documented and retained on file. This will assist if the person should be the subject of further infringements or in the event of any related later claims.

2.1.1 Alternative Dispute Resolution

- (a) An Authorised Person or an Internal Review Officer may refer a matter or any issue arising in a matter under their control for Alternative Dispute Resolution, including but not limited to arbitration, conciliation, mediation, and/or expert determination.
- (b) If Alternative Dispute Resolution is unsuccessful the matter will continue to be managed under this MPPM.
- (c) While an Internal Review Panel may take into consideration any report, recommendation or determination made in the course of Alternative Dispute Resolution, it is not bound by any conclusions reached and must satisfy itself as to whether the alleged conduct occurred.

2.2 Initiating Action

- (a) Any person may report in writing to any Authorised Person that a Member(s) or Group Member has acted in breach of the Rules and Regulations or otherwise engaged in misconduct.
- (b) An Authorised Person who has authority or responsibility under the Rules and Regulations for any matter referred to under this Manual may initiate proceedings against a Member Group Member in accordance with their delegation.
- (c) When an allegation of misconduct or a breach of the rules or regulations is made, or an alleged infringement occurs and it is either witnessed or reported to an Authorised Person, the Authorised Person will assess the matter and take appropriate action.
- (d) In the event that a report has been made in writing to more than one Authorised Person concerning the same conduct of a member or Group Member, then the preference will be for the reports to be treated as one matter.
- (e) The Authorised Person is to conduct an initial assessment, including investigating and gathering evidence, while ensuring procedural fairness and affording the respondent a fair opportunity to be heard. The Authorised Person may then decide to proceed as follows:
- (i) Where an allegation or breach is substantiated, the Authorised Person will frame the matter for action and may at his/her discretion and subject to any exceptional circumstances, issue sanctions by way of Regulatory Infringement Notice (**RIN**); or
 - (ii) Where an allegation or report cannot be substantiated, or is deemed vexatious, frivolous or malicious, or the assessment suggests no action is warranted, the Authorised Person may determine not to proceed further with the matter; or
 - (iii) The Authorised Person may determine some alternative action is required, including:
 - (a) informal resolution procedures;
 - (b) education;

- (c) counselling, retraining and/or issue of a warning and/or;
 - (d) referral of the matter to the Safety and Training, or to consult with the CEO if referral to police is considered.
- (f) An Authorised Person is required to report disciplinary matters to the STM, APF office and/or the CEO within 7 days of either issuing a RIN or finalising the complaint
- (g) CASA may direct the APF to initiate enforcement action against a Member in accordance with Part 149 of the Civil Aviation Safety Regulations 1998 and the APF Part 149 Exposition. The APF Exposition is available on the APF web site.
- (h) CASA may initiate action itself against an APF Member in accordance with Part 149 of the Civil Aviation Safety Regulations 1998 and the APF Part 149 Exposition. The APF Exposition is available on the APF web site.

2.3 Regulatory Infringement Notices (RIN)

- (a) A RIN may only be issued by an Authorised Person.
- (b) A RIN will be issued, other than in exceptional circumstances and at the discretion of the Authorised Person, where an infringement of the Rules or Regulations has been established and the conduct warrants a disciplinary response.
- (c) A RIN should be issued to the Member or Group Member within 14 days of an Authorised Person becoming aware of the infringement.
- (d) With the authorisation of the National Review Officer, the 14-day time limit set out in 2.3(c) may be extended. If the matter is considered exceptionally serious the time can be extended to a maximum of two years.
- (e) Disciplinary action should not be finalised until the respondent has been notified of the impending RIN and been given the chance to respond. All attempts must be made to contact the Member or Group Member immediately, notifying them of the RIN details.
- (f) All details relating to an infringement, including sanctions imposed and notification records, must be formalised and recorded on a RIN with copies to be provided to the Member or Group Member, the STM and the APF Office.
- (g) In the case of a Group Member, the RIN will be issued to the Nominated Person, Chief Instructor and/or Chief Executive.
- (h) The RIN should state any disciplinary action and/or corrective action required. It should list the regulation(s) alleged to have been breached, as well as making it clear to the respondent when and where the alleged breaches occurred.
- (i) Should the offense details change, or further details are discovered during the disciplinary process, an Authorised Person may modify or vary the RIN without requiring the disciplinary process to be restarted.

PART 3 - POWERS

3.1 Authorised Person

The following is a list of Authorised Persons and their enforcement powers.

3.1.1 Drop Zone Safety Officer (DZSO), Chief Instructor (CI)

The DZSO and CI have the following enforcement powers:

- (i) immediate suspension from any or all operations where there is reasonable cause to suspect that, a member has contravened the rules or regulations and/or acted in a manner dangerous to themselves or others in the course of parachuting activities; and
- (ii) suspend or vary any privilege of any certificate, rating or endorsement held by a member, where any RIN suspension or variance period is not to exceed 7 days by a DZSO or 28 days by a CI.

3.1.2 Safety and Training Officer (STO)

The STO has the following enforcement powers:

- (i) all the powers of a DZSO and CI as listed under 3.1.1; and
- (ii) the power to set aside or otherwise vary any RIN suspension or variance of privileges applied in 3.1.1,
- (iii) subject to any RIN suspension or variance period not exceeding 90 days.

3.1.3 National Officers

The National Officers, acting only within their respective technical area, have the enforcement powers including:

- (i) all the powers of a DZSO, CI and STO as listed under 3.1.1 and 3.1.2; and
- (ii) subject to any RIN suspension or variance period issued not exceeding 90 days.

3.1.4 Safety and Training Manager

The STM has the following enforcement powers:

- (i) all the powers of a DZSO, CI, STO and National Officers as listed under 3.1.1 and 3.1.2; and
- (ii) subject to any RIN suspension or variance period exceeding 180 days,
- (iii) the power to set aside or otherwise vary any RIN suspension or variance of privileges applied in 3.1.1, 3.1.2 or 3.1.3,
- (iv) the power to refer a matter to a Review Officer, through the APF office.

PART 4 - INTERNAL REVIEW PROCESS AND DECISIONS

4.1 Purpose

- (a) The purpose of an Internal Review is to independently examine the facts of a matter and any determination by the Authorised Person, to ensure that:
 - (i) the grounds for an Internal Review meet the requirements of 4.3 below;
 - (ii) the determination made by the Authorised Person was properly based on the facts and application of the rules and regulations;
 - (iii) that procedural fairness and natural justice requirements were observed and did not adversely affect the determination; and
 - (iv) the request for a review is not vexatious, frivolous or malicious.

- (b) Subject to there being identified grounds for an Internal Review in accordance with 4.3, the Internal Review process serves as the Member's opportunity to have their matter internally reviewed by the APF.
- (c) In the case of a penalty applied by means of a RIN exceeding 60 days, the matter will be automatically referred to a Review Officer, whether or not the member has requested an Internal Review. The Review Officer will then exercise their discretion under section 4.4 in the same manner as if processing a request.

4.2 How to lodge an Internal Review Request

- (a) A Member who is the subject of a determination made and served on them by an Authorised Person may have that determination reviewed by lodging a Request for Internal Review Form MP5 (RfR):
 - (i) with the APF Office within seven days after the Member has received a RIN or sanction(s); and
 - (ii) which references the relevant RIN(s) and sets out in detail the grounds for requesting the Internal Review.
- (b) The APF Office will forward the RfR to a Review Officer within seven days of receipt who will nominate a provisional Internal Review Panel.

4.2.1 Time Limitation on Review Officers for Internal Review Panel

- (a) If a RfR is not lodged within the seven day time limit, then a member who is the subject of a determination by an Authorised Person may within 12 months of the determination **AND** with the authorisation of the National Review Officer **AND** demonstrating some exceptional circumstances exist, apply for an extension of the time period to lodge an RfR.
- (b) In no circumstances will an extension request to lodge an RfR be accepted more than 12 months after a determination is made by an Authorised Person.
- (c) An APF Review Officer will endeavour to make the initial determination within 21 days of receiving a RfR request. In the event that is not feasible then the APF will consult with the Member to confirm whether they wish to proceed with the RfR request or whether they instead wish to seek CASA review of the decision. In the event the Member wishes to proceed with the RfR the Member is to acknowledge that they do so on the basis they will not seek CASA review until such time as the internal review decision has been made or that they will give the APF 7 days' notice of their intention to proceed by way of a CASA review.

4.3 Grounds for Internal Review

- (a) An RfR must raise at least one the following grounds that the Member seeks to rely upon, together with sufficient details in support of the stated grounds for a Review Officer to conduct an Internal Review:
 - (i) the initial facts or further facts of the matter (new evidence) were not properly considered by the Authorised Person in making a determination;
 - (ii) a failure to afford procedural fairness or natural justice by the Authorised Person
 - (iii) a conflict of interest or unfair bias affecting the Authorised Person,
 - (iv) the sanctions were manifestly excessive or inadequate.

4.4 Processing a Request – Review Officer

- (a) A Review Officer may be appointed to hear a Request for Internal Review referred to them by the APF Office.
- (b) The Review Officer shall decide whether the Request for Internal Review meets the requirements under clause 4.3 and may:
 - (i) accept the recommendation of the Authorised Person and not proceed any further with the matter; or
 - (ii) refer the matter for further review by an Internal Review Panel; or
 - (iii) refer the matter for Alternative Dispute Resolution; or
 - (iv) postpone in part or whole any sanctions imposed upon a Member by the Authorised Person until the Internal Review is heard and decided; or
 - (v) cancel or vary the existing sanctions.
- (c) The Review Officer shall in every case notify the APF Office and the Member of the proposed action/result within five days.
- (d) If the Review Officer is unable to act for any reason, including if the Review Officer considers that the matter is outside their expertise or a conflict of interest may arise, an alternate Review Officer will be appointed.

4.5 Fees

- (a) A Member will be charged administration fees and may incur any other charges as the APF considers appropriate and proportionate, in relation to the conduct of the Internal Review process.
- (b) When a member submits an RfR and it is accepted for lodgement:
 - (i) they must pay an administrative fee of \$500, or an amount otherwise determined by the Review Officer to be reasonable in the circumstances; and
 - (ii) in the event the Internal Review finds in favour of the respondent, the administrative fee will be fully or partially refunded to the member at the discretion of the Review Officer.
- (c) A Member's administration fee or an amount payable remains unpaid after a period of 90 days, membership of the APF, or the Member's sporting licence, may be suspended until such time as the fees are fully paid.
- (d) If a Group Member administration fee or an amount payable remains unpaid after a period of 90 days, the amount will be either:
 - (i) charged to the Group Member's account; or
 - (ii) the Group Member's membership of the APF, may be suspended until the fine is fully paid.
- (e) In accordance with the APF Constitution rule 14.2(b), the Board may terminate a membership (whether for an individual or a Group Member) where fees or an amount payable remain unpaid.

PART 5 INTERNAL REVIEW PANEL HEARING

5.1 Internal Review Panel

- (a) An Internal Review Panel ('Panel') may be convened to hear a Request for Internal Review referred by a Review Officer under 4.2(b).
- (b) Each Panel member must hold a current APF Membership.
- (c) Panel members may include industry peers, experts in relevant fields or persons with relevant expertise as determined at the discretion of the Review Officer provided they are APF members. A Panel must consist of either 3 or 5 members.
- (d) The Review Officer will appoint a Panel Chairperson and the Panel members (noting the Review Officer may be appointed to any of those roles).

5.2 Notification

- (a) If a decision is made to hear an allegation of a breach, notice of the hearing must be served on the Member at least 21 days before the date of the hearing by way of a Hearing Notification, which specifies:
- (i) particulars of all allegations to be heard and the grounds upon which they are based;
 - (ii) the date, place and time of the hearing and details of the Panel; and (iii) that the Member may do one or more of the following:
 - (1) attend and speak at the hearing;
 - (2) submit to the Panel at or prior to the hearing written representations relating to the matter; and /or
 - (3) be assisted at the hearing by a support person other than a legal practitioner

5.3 Procedure at Hearing

- (a) At a hearing, the Panel is to:
- (i) give to the Member an opportunity to make oral representations;
 - (ii) give due consideration to any written representation submitted by the Member;
 - (iii) make a determination as to whether the evidence supports the allegations and determine what disciplinary action, if any, is warranted against the Member.
- (b) Relevant expert evidence may be called, or allowed to be called, on behalf of the either party.
- (c) If the Panel Members wish to discuss or debate the merits of the matter, they should adjourn the hearing and proceed to do so in the absence of the Member, any support person and any other witnesses or parties at the hearing.
- (d) Where the Member has the assistance of a support person during the hearing, the Panel may refuse the further involvement of the support person if they do not conduct themselves in an appropriate manner or fail to comply with any directions made by the Panel during the conduct of the hearing.

5.4 Hearing Chairperson Responsibilities

- (a) Where it has been resolved to have a hearing and notice of that hearing has been provided, the Chairperson must ensure all necessary arrangements are made including:
- (i) appointment of the Members of the Panel in accordance with clause 5.4 (c); and
 - (ii) providing all Members of the Panel with a copy of the Hearing Notification (including all records of the matter) served upon the Member and the RfR received from the Member.
- (b) While there is no statutory obligation to advise the Member of precisely who will sit on the Panel, it is reasonable to advise the Member of who has been chosen to form the Panel as this may avoid (legitimate) objections by the Member and delays once the Panel is assembled.
- (c) It is incumbent upon the Review Officer to ensure to his/her satisfaction that Panel members:
- (i) are suitably qualified to judge issues which may be brought before such a panel;
 - (ii) are aware of the responsibilities which they are to undertake; and
 - (iii) declare any potential conflict of interest that they may be aware of.
- (d) The Review Chairperson shall:
- (i) cause detailed minutes to be made of all hearings before a Panel; and
 - (ii) provide copies to the APF Office as soon as practicable after the determination is made, where a permanent record will be kept.

5.5 Outcomes

5.5.1 Power of the Internal Review Panel

- (a) When convened a Panel:
- (i) possesses the power to hear a review of a Member disciplinary matter;
 - (ii) may decide that all or part of any sanctions imposed be postponed until the conclusion of the Hearing or a decision is made;
 - (iii) may set aside, uphold or otherwise vary (increase, decrease or modify) any suspension or variance of privileges applied by an Authorised Person; and
 - (iv) may suspend or cancel a rating, endorsement or coach appointment.

5.5.2 Misconduct not sustained

- (a) If a matter which is the subject of the Review is not established or cannot be proven, any disciplinary action may be reduced or withdrawn at the discretion of the Panel.

5.5.3 Misconduct sustained

- (a) If the matter on Internal Review is proven and the Panel find the disciplinary action is appropriate, the Member must be provided with the details of the misconduct, the reasons for the decision and any remedial action to be taken and/or sanctions imposed (either new or existing).

5.5.3 Outcome Notification

- (a) The Member must be notified in writing by way of a Hearing Report (Form MP8) within seven days of the conclusion of the Hearing or seven days from the making of a decision by the Panel, whichever is the later.
- (b) Having concluded the hearing, the Panel may decide to reserve its decision (i.e. not hand down a decision on the day).
- (c) In the event of a suspension, variation or cancellation of any rating or endorsement, the STM must notify CASA within seven days in accordance with APF Exposition 1.4.8(i).

5.6 No Claim for Reversed Determinations

- (a) A Member who has a sanction of any kind imposed by an Authorised Person or on review, has no rights of claim against the APF, Members, Councils or any officer, employee, contractor or agent of the APF or Council, even if the determination is subsequently overturned upon review.

5.7 Application for Review by CASA

- (a) A person must exhaust internal review options under the MPPM before applying to CASA for review of an APF internal review decision.
- (b) The application to CASA must be in accordance with the requirements of Civil Aviation Safety Authority CASR Part 149.610 and:
- (i) made in the approved form
 - (ii) within 21 days after the internal (APF) review decision, or such longer period as CASA allows
 - (iii) includes all the information required by the form;

- (iv) confirm that the applicant must notify the APF of the application in accordance with regulation 149.615; and
 - (v) if a fee is payable for the application – that fee has been paid.
- (c) The making of an application to CASA under 149.610 for review of an internal (APF) decision does not set aside the APF internal review decision. It is only upon CASA making a decision that the APF internal review decision is affirmed, varied or set aside.