



AUSTRALIAN KENDO RENMEI

REVIEW AND APPEALS POLICY

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Contents

1. Introduction	3
2. Definitions	3
3. Jurisdiction	6
4. Dealing with Disputes	7
5. Hearing Tribunals and Appeals	8
6. Referral of Disputes to the NST	10
7. Interpretation and other information	10

1. Introduction

This Policy:

- (a) Seeks to guide Relevant Persons and Relevant Organisations on the processes for resolving Disputes;
- (b) Does not cover Personal Grievances or conduct and disciplinary matters arising under policies that form part of the National Integrity Framework or other Relevant Organisation policies;
- (c) Is subject to the Australian Kendo Renmei Constitution and if there is any inconsistency, the Constitution will prevail.

2. Definitions

In this Policy the following words have the corresponding meaning:

Activity means a sporting contest, match, competition, grading examination, event, or activity (including training), whether on a one-off basis or as part of a series, league, or competition, sanctioned or organised by a Relevant Organisation.

Administrator means a person who is fulfilling an administrative function for a Kendo, Iaido and Jodo Organisation, including (but not limited to) managers, executives, and Board members.

Affiliated Body means State or Territory associations listed under 4.7 of the AKR Constitution.

AKR means Australian Kendo Renmei.

Australian Kendo Renmei means Australian Kendo Renmei Inc.

Alternative Dispute Resolution is a collective term for processes, other than arbitration, such as mediation, conciliation or case appraisal that may be used to resolve the Dispute under this Policy.

Appeals Tribunal means the NST Appeals Division or other appeals tribunal (including an appeals tribunal established internally by a Relevant Organisation as per Section 1.16.1.6 of the Australian Kendo Renmei Manual of Documents) established to hear an appeal of a decision of a Hearing Tribunal.

Athlete means a person who is registered, or entitled to participate, in an Activity.

Board means the National Council of Australian Kendo Renmei.

Club means any club or dojo that is a member of an AKR Affiliated Body.

Contractor means any person or organisation engaged to provide services for or on behalf of a Relevant Organisation, and includes:

- (a) agents, advisers, and subcontractors of a Relevant Organisation; and
- (b) employees, officers, volunteers and agents of a contractor or subcontractor.

Dispute means any dispute between Relevant Persons, or between Relevant Persons and Relevant Organisations, or between Relevant Organisations, that arises in the context of their involvement in Sport, other than the categories of disputes set out in clause 3.2(b).

Employee means a person employed by a Relevant Organisation.

Hearing Tribunal means the NST General Division or other first instance tribunal (including a tribunal established internally by a Relevant Organisation as per Section 1.16.1.6 of the Australian Kendo Renmei Manual of Documents) established to conduct a hearing under this Policy.

Instructor means a person that teaches Kendo, laido or Jodo techniques to students or practitioners.

Kendo, laido and Jodo means the martial art of Kendo, laido and Jodo, as governed by Australian Kendo Renmei and International Kendo Federation from time to time, and a reference to Sport means collectively Australian Kendo Renmei and its Member Organisations and any other person or organisation that has agreed to be bound by this Policy.

Member means a member of Australian Kendo Renmei or a Kendo, laido and Jodo Organisation under its constitution, including:

- (a) **Member Organisation**, which means each company or incorporated association that is a member of Australian Kendo Renmei - including each:
 - i. state, territory, and Club member; and
 - ii. affiliate that is a member of a state or territory member.
- (b) **Individual Member**, which means individuals who are individuals registered with a Relevant Organisation.

National Integrity Framework means the Australian Kendo Renmei “National Integrity Framework” adopted by a Relevant Organisation from time to time, as developed by Sport Integrity Australia and consisting of the following five policies:

- (a) Safeguarding Children and Young People Policy;
- (b) Competition Manipulation and Sport Gambling Policy;
- (c) Improper Use of Drugs and Medicine Policy;
- (d) Member Protection Policy;
- (e) Complaints, Disputes and Discipline Policy (the CDDP).

NST means the National Sports Tribunal established under the NST Legislation.

NST Eligible Matter means an alleged breach that is a kind of dispute that falls within the jurisdiction of the NST¹.

NST Legislation means the *National Sports Tribunal Act 2019* (Cth) (**NST Act**), and any legislative instruments made under the NST Act as may be in force from time to time,

¹ See NST Act sections 5(2) and 6(2) and NST Rule section 7.

including the *National Sports Tribunal Rule 2020* (Cth) (**NST Rule**), *National Sports Tribunal (Practice and Procedure) Determination 2021* (Cth) and *National Sports Tribunal Act 2019 - Principles for Allocating a Member to a Dispute 2020*.

Participant means:

- (a) Athletes;
- (b) Instructors, Coaches appointed to train an Athlete or Team in an Activity;
- (c) Administrators who have a role in the administration, operation or Activity of a Relevant Organisation, including owners, directors, Board members or other persons;
- (d) Officials including referees, umpires or shinpan, technical officials, or other officials appointed by a Relevant Organisation or any league, competition, series, club or team sanctioned by a Relevant Organisation;
- (e) Support personnel who are appointed in a professional or voluntary capacity by a Relevant Organisation or any league, competition, series, grading examinations, seminars and events, club or team sanctioned by a Relevant Organisation including sports science sport medicine personnel, team managers, agents, selectors, and team staff members.

Personal Grievance means any type of interpersonal conflict or dispute between Relevant Persons or between Relevant Persons and Relevant Organisations that does not engage the rules, policies or by-laws of a Relevant Organisation.

Policy means this Review and Appeals Policy.

Protected Disclosure means, where a Sport Organisation is a "regulated entity" under the whistleblower laws in the *Corporations Act 2001* (Cth), a disclosure of information to the Sport Organisation that qualifies for protection under those laws.

Relevant Organisation means any of the following organisations:

- (a) Australian Kendo Renmei;
- (b) Member Organisations; and
- (c) Any other organisation that has agreed to be bound by this Policy.

Relevant Person means any of the following persons:

- (a) Individual Member;
- (b) Participant;
- (c) Employee;
- (d) Contractor;
- (e) Volunteer; and

- (f) Any other person who has agreed to be bound by this Policy.

Team means a collection or squad of Athletes, registered with a Relevant Organisation or entitled to participate in an Activity.

Volunteer means any person engaged by a Relevant Organisation in any capacity who is not otherwise an Employee or Contractor, including directors and office holders, coaches, officials, administrators and team and support personnel.

Vulnerable Person means a person who is:

- (a) Under the age of 18;
- (b) Aged 18 or over, but is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation, by reason of age, illness, trauma or disability, or any other reason; or
- (c) Aged 18 or over but has experienced or is experiencing poor mental health outcomes, either as a result of the incident in question, due to their life experiences, or as a result of societal factors, including but not limited to individuals from diverse backgrounds facing disproportionate mental health impacts, such as people with diverse sexualities or gender.

3. Jurisdiction

3.1 To Whom the Policy Applies

This Policy applies to Relevant Persons and Relevant Organisations.

3.2 When the Policy Applies

- (a) This Policy applies to Disputes between:
 - (i) Relevant Persons;
 - (ii) Relevant Persons and Relevant Organisations; or
 - (iii) Relevant Organisations,in their capacity as Relevant Persons or Relevant Organisations relating to their involvement in the Sport.
- (b) The Policy does not apply to the following:
 - (i) A breach of any of the policies that form part of the National Integrity Framework;
 - (ii) A breach of another Relevant Organisation policy where that breach is covered by the AKRCDDP, or any other specific dispute resolution process;
 - (iii) A Personal Grievance;
 - (iv) A Protected Disclosure (if applicable);

- (v) A breach of any other Relevant Organisation policy in respect of which a Relevant Organisation expressly excludes the application of this Policy;
- (vi) An allegation or information that is mischievous, vexatious or knowingly untrue; and
- (vii) Interactions between Relevant Persons and/or Relevant Organisations that are not related to Sport and/or are not in their capacity as Relevant Persons or Relevant Organisations.

3.3 Vulnerable Persons

Where a party to a Dispute is a Vulnerable Person, the parent or guardian of the Vulnerable Person may act on behalf of the Vulnerable Person and accompany them throughout the resolution process, including during any facilitated resolution process, hearing process or appeal process.

4. Dealing with Disputes

4.1 Informal steps for resolving Disputes under this Policy

- (a) Relevant Persons (and Relevant Organisations where applicable) are encouraged to attempt to resolve any Dispute that is subject to this Policy amongst themselves in the first instance.
- (b) Where a Dispute is unable to be resolved directly through discussion, or one of the parties to the disagreement is uncomfortable with approaching the other party directly or is otherwise unable to do so, the matter may then be referred to the management of the Relevant Organisation at the level at which the Dispute occurred.

[For example, if the subject of the Dispute relates to interactions at local Club level and the parties to the Dispute are unable to resolve it amongst themselves, it may then be referred to the management of that Club.]

- (c) Where the Relevant Organisation or a member of the administration of the Relevant Organisation is a party to a Dispute, the matter should instead be referred to the management of the Relevant Organisation of the next level up.

[For example, if a Dispute at local Club level involves an individual involved in the running of the Club, it should instead be referred to the relevant Member Organisation, e.g. Regional or State Association.]

- (d) If the Dispute is referred to a Relevant Organisation without clear indication of the knowledge or consent of the other party to the Dispute, the Relevant Organisation will notify that other party prior to referring the Dispute to Alternative Dispute Resolution.

4.2 Alternative Dispute Resolution

- (a) If a Relevant Organisation considers the Dispute may appropriately be resolved through Alternative Dispute Resolution, it may seek in writing the consent of the parties to the Dispute to refer the Dispute for Alternative Dispute Resolution. If

the parties to the Dispute give their consent, they must participate in the Alternative Dispute Resolution in good faith.

- (b) If a Dispute relates to an NST Eligible Matter, AKR may refer the Dispute to mediation, conciliation or case appraisal in the NST General Division.
- (c) AKR is responsible for making the application for Alternative Dispute Resolution at the NST. The application fee may be paid by the Relevant Organisation, or one party, or by the parties together, apportioned as agreed between them. In the absence of agreement, they may be apportioned anyway. Service charges may also be payable to the NST, which will be negotiated as between the parties to the dispute, AKR and the NST, and determined by the NST CEO.

4.3 Independent Facilitated Resolution of Dispute

- (a) Any mediation or conciliation (other than where conducted by the NST) will be undertaken in accordance with the rules prescribed by the Relevant Organisation (internal) or the provider (external) as the case may be.
- (b) For external mediation, any costs associated with appointing a facilitator will be agreed before the facilitated resolution session commences and may be paid by the Relevant Organisation, or apportioned evenly between the parties (unless otherwise agreed between the parties).

4.4 Failure to Resolve Dispute

- (a) If the Dispute is resolved through Alternative Dispute Resolution under this clause 4, the Dispute will be considered closed under this Policy. Any ongoing issues between the parties to the Dispute must be dealt with by them in their personal capacity.
- (b) If Alternative Dispute Resolution does not resolve the Dispute or, prior to a referral to Alternative Dispute Resolution, the Relevant Organisation considers that the Dispute is more appropriately referred to a Hearing Tribunal, the Relevant Organisation may refer the Dispute to a Hearing Tribunal.
- (c) All Disputes must be submitted by the parties to the Dispute to a hearing, and appealed if required, in accordance with this Policy before commencing any proceedings relating to the Dispute in a court of law.

5. Hearing Tribunals and Appeals

5.1 Referral to a Hearing Tribunal

- (a) A Relevant Organisation may refer a Dispute directly to a Hearing Tribunal to arbitrate the Dispute.
- (b) If the matter is a NST Eligible Matter, the Dispute may be referred by AKR to the NST General Division for arbitration. AKR is responsible for making the application to the NST. Payment of the NST fees may be paid by the Relevant Organisation, or will be as agreed by the parties or managed in accordance with the NST Legislation.
- (c) If the Dispute is not referred to the NST, it will otherwise be referred to a Hearing Tribunal convened internally either at the AKR level or other Relevant

Organisation level (refer to Section 1.16.1.6 of the Australian Kendo Renmei Manual of Documents).

5.2 Hearing Tribunals

- (a) If arbitration is sought in either the NST General Division or an internal Hearing Tribunal, the Hearing Tribunal will arbitrate the Dispute.
- (b) If arbitration is sought in the NST General Division, the NST will arbitrate the Dispute in accordance with the NST Legislation.
- (c) The Hearing Tribunal will notify the parties of the decision in accordance with its relevant procedures.

5.3 Appeals

- (a) Each party to a Dispute is entitled to appeal the decision of a Hearing Tribunal under this Policy (each an **Appellant**) solely on the following grounds:
 - (i) The Hearing Tribunal failed to abide by this Policy and/or the NST Legislation (as the case may be) and such failure resulted in a denial of natural justice; and/or
 - (ii) No reasonable decision maker in the position of the Hearing Tribunal, based on the material before them, could reasonably make such a decision.
- (b) Appeals from the NST General Division must be referred to the NST Appeals Division. Appeals from internal Hearing Tribunals may be referred to the NST (an appeal from an AKR Hearing Tribunal will be referred to the NST Appeals Division; an appeal from a non-national Hearing Tribunal can be referred to the NST General Division). Payment of the NST fees may be paid by the Relevant Organisation, or will be as agreed by the parties or managed in accordance with the NST Legislation.
- (c) The procedure for an appeal in the NST Appeals Division will be in accordance with the NST Legislation.
- (d) The Appeal Tribunal's arbitration of the appeal:
 - (i) must determine, on the balance of probabilities, whether one or both grounds of appeal (as applicable) are proven and must not, except where provided for by the NST Legislation, rehear the matter or the facts of the Dispute; and
 - (ii) may result in the Appeals Tribunal:
 - (A) dismissing the appeal;
 - (B) upholding the appeal; and/or
 - (C) varying any finding made by the Hearing Tribunal under this Policy.
- (e) The Appeal Tribunal will notify the parties to the proceeding of the decision in accordance with its relevant procedures.

5.4 Confidentiality

- (a) All Disputes (and all information disclosed in relation to them), including the outcomes of any facilitated resolution process or hearing process will be kept confidential by the Relevant Organisation, and will not be disclosed to any third parties, except as provided in this clause.
- (b) Any Relevant Organisation may disclose information as required or authorised by law.
- (c) Subject to this clause, decisions around appropriate disclosure of information will be addressed on a case-by-case basis. Disclosure of information to parties not directly affected by the Dispute may be restricted.

6. Referral of Disputes to the NST

- 6.1 The processes outlined in sections 5 and **Error! Reference source not found.** of this Policy can replace any other disciplinary process, investigation, alternative dispute resolution process or tribunal process set out in any policy, by-law or rule of any Relevant Organisation, at the absolute discretion of the President of AKR, unless specifically excluded by section 3.2(b) of this Policy.
- 6.2 AKR may require any dispute at any level of the sport to be managed or processed in accordance with this Policy at any time, and specifically may refer such dispute to be arbitrated, mediated, conciliated or appraised by the NST in accordance with the NST Legislation, irrespective of whether any deadline or time limit has expired, and irrespective of the stage of process the matter has reached.

7. Interpretation and other information

7.1 Commencement

This Policy commences on the date outlined on the front cover (**Commencement Date**).

7.2 Prior Disputes

All Disputes, including Disputes that commenced prior to the Commencement Date, can be dealt with under this Policy.

7.3 Interpretation

- (a) Any document required to be provided under this Policy may be given by:
 - (i) Sending it to an email or other electronic address, or to a postal address, nominated by the recipient party; or
 - (ii) Email, post or hand delivering it to that party's registered office.
- (b) A document is taken to have been received under this Policy if sent by email or other electronic transmission, on the date of transmission, or if hand delivered, on the date of delivery or if sent by post, 5 business days after it was sent.

7.4 Amendment

- (a) A Relevant Organisation may amend this Policy from time to time and must make the new version available on its website as soon as possible, including the date on which any amendments take effect.
- (b) Any Dispute under this Policy which is not finalised at the time of an amendment to this Policy will continue to be processed under the substantive provisions of this Policy in force at the time a Relevant Organisation receives notice of the Dispute, unless a Relevant Organisation and/or a Hearing Tribunal determines the principle of “lex mitior” appropriately applies in the circumstances.