

West Melton Bowling Club Incorporated Disciplinary Regulation

Explanatory Notes:

References:

- Bowls NZ Incorporated 'Guide to Using the Bowls NZ Model Club Disciplinary Code' @ April 2013
- West Melton Bowling Club Incorporated Constitution **Rule 22**

Assistance from Bowls NZ

If the Club Board /Club Judicial sub-committee hearing a dispute or allegation of misconduct is unsure about how to apply any of the procedures set out in this Regulation it may request assistance from Bowls NZ by contacting the CEO of Bowls NZ.

Natural Justice

Before a Club takes any disciplinary action against a Member, it must, as a matter of law, comply with not only the provisions in its Constitution and this Regulation but also, and most importantly, the basic requirements of natural justice.

The principles of natural justice are general principles of fairness for determining a dispute and have long been recognised as part of law. In instances where the principles apply and are not properly observed a Court will require the matter to be considered afresh.

The principles of natural justice apply to Clubs in the same way they apply to any judicial or administrative body that is required to adjudicate a dispute or other disciplinary matter.

All Clubs **must** follow the principles of natural justice to ensure all parties involved in a dispute or allegation of misconduct are treated in a **fair and just manner**.

The principles of natural justice are:

1. **The Club Board / Judicial sub-committee hearing the Dispute or Allegation of Misconduct (i.e. the Decision-Maker) Must be Unbiased and Impartial**

Essentially, any decision must be made without bias and any decision-maker must approach the matter from a disinterested perspective so there is no impropriety. A decision-maker who is biased (whether actual, imputed or apparent) should be disqualified from hearing the issue, unless the parties agree to the person's continued involvement.

For instance, if any member of the Club Board/ Judicial sub-committee hearing a dispute or allegation of misconduct was involved in any way in the factual circumstances which gave rise to the dispute or allegation, or if he or she is particularly close to any of those people involved in the matter, then that member should be disqualified from hearing the matter.

2. The Committee has the right to co-opt any person who has the relevant skills if a situation arises, which require skills outside those of the committee members.

3. **The Right to a Fair Hearing**

The right to a fair hearing requires that all participants:

- Be given **adequate prior notice of the allegation**. The notice setting out the allegation must be in writing using Form 1 attached to this Regulation.
- **Disclose and be provided with all relevant material** relating to a decision, including details of the allegations so they can prepare and have the ability to challenge or correct any material at issue.
- Have an **opportunity to be heard**. All parties to a dispute should have the right to be heard by the decision-maker.

The decision-maker(s) must keep an open mind until all parties have been heard. Any irrelevant considerations must also be disregarded by the decision-makers and the actual decision reached must not be absurd or unreasonable.

25 May 2015

Revision History

- 25 May 2015 – As a consequence of the adopted club constitution of the same date, references to Rule 22 replace references to Clauses 6.1, 28 and 28.1 and the word 'Executive' is replaced by 'Board'

West Melton Bowling Club Incorporated

Disciplinary Regulation

Commencement Date: 6th December 2014
Updated 25th May 2015

West Melton Bowling Club Incorporated

Disciplinary Regulation

1. Purpose and Status of Regulation

- 1.1 The purpose of this Regulation is to set out the procedure for determining Disputes and Misconduct at Club Level.
- 1.2 This Regulation was adopted by the Club Board, in accordance with the Constitution on 6th December 2014.

2. Commencement Date

- 2.1 This Regulation shall come into force on 6th December 2014. It shall continue in force until such time as it is revoked by the Club Board.

3. Interpretation

- 3.1 Every reference to the Constitution shall mean the Club Constitution unless specified otherwise.
- 3.2 The words and phrases used in this Regulation shall have the same meaning as defined in the Constitution of West Melton Bowling Club Incorporated, unless otherwise specified in this Regulation.
- 3.3 In addition to clauses 3.1 and 3.2 of this Regulation, the following words and phrases used in this Regulation shall mean as follows:

“**Club Board**” means the body that is responsible for the governance and management of the Club

“**Judicial Committee**” means the sub-committee appointed by the Club Board in accordance with the Club Constitution **Rule 22**.

“**Proceeding**” means any proceeding brought under this Regulation.

4. Application of Regulation and Amendment

- 4.1 **Application:** This Regulation applies to all Club Board Members, Members, Appointed Personnel and Officers.
- 4.2 **Amendment:** This Regulation may be amended by the Club Board, in accordance with the Constitution, provided such amendments are not inconsistent with the Constitution. Refer Club Constitution **Rule 22**

5. Club Board

- 5.1 **Disciplinary Functions of the Club Board:** In accordance with the Constitution, the Club **Judicial Committee** shall:
- a. hear and determine any allegation of Misconduct made to it under the Constitution;
 - b. hear and determine any Dispute made to it under the Constitution;

- c. follow the procedure to determine any allegation of Misconduct or any Dispute in accordance with clause 8 (Procedure); and
- d. generally take all steps necessary or desirable to achieve the purposes of this Regulation.

5.2 **Conflicts and Confidentiality:** All information received by the Club Board/Judicial Committee in accordance with this Regulation, and its deliberations, shall be kept confidential except to the extent required by law. Any Club Board Member who considers she/he may have a potential conflict of interest in determining a disciplinary matter in accordance with this Regulation shall declare that potential conflict of interest to the Chair and if the Chair considers it appropriate to do so, she/he may require that member to vacate their position on the Club Board/Judicial Committee. If the Chair considers she/he may have a potential conflict of interest, he or she shall notify the Club Board and if the Club Board considers it appropriate to do so, it may require the Chair to vacate their position on the Club Board/Judicial Committee.

5.3 The Committee has the power to co-opt, in the event 5.2, and also if they require the use of skills outside of the areas of their expertise.

5.4 **No Personal Liability:** No Club Board Member will be liable for any act done or omitted to be done by a Club Board Member in good faith pursuance or intended pursuance of the functions, duties, powers or authorities as specified in this Regulation.

6. Proceedings

6.1 **Commencement of Proceedings:** An application under this Regulation shall be commenced by a person alleging the Dispute or Misconduct (under clause 5.1a or clause 5.1b) shall be made in writing (**Rule 22** of the Club Constitution) and submitting it to the Club Board/ Judicial Committee as soon as possible but no later than 14 days after the Dispute or alleged Misconduct occurred. The Club Board/ Judicial Committee may request the filing of the prescribed form (Form 1)

6.2 **Exception:** The Club Board/Judicial Committee, in its discretion, may accept an allegation after 14 days if exceptional circumstances, as determined by the Club Board, exist.

7. Service

7.1 **Service:** Every document which is filed with the Club Board shall also be served on all other parties in the Proceeding (including Interested Parties) at the address for service notified by that party in its documents in the Proceedings. If an Interested Party has not notified such an address, service shall be at the last known address of that party.

7.2 **Delivery:** Documents to be filed with the Club Board, or served on another party, shall be delivered in person.

8. Procedure

- 8.1 **Notice of Hearing:** Prior to the commencement of any hearing, the Club Board/Judicial Committee shall ensure all parties in the Proceeding are provided with at least 7 days' notice of the hearing, unless the Club Board/Judicial Committee considers the matter must be determined urgently in which case it may vary the notice requirements in this clause. The notice of hearing must:
- a. Be in writing.
 - b. State whether the parties are required to appear in person or whether the matter will be determined on the papers.
 - c. State whether the matter is a Dispute or an allegation of Misconduct, the possible penalties and the date, place and time of the hearing.
- 8.2 **Procedure:** Except as provided for in the Constitution or this Regulation, the Club Board/Judicial Committee may determine its own practices and procedures for performing the functions specified in this Regulation, and may prescribe or approve forms for the purposes of any Proceeding. The Chair shall explain the procedure to all those present at the hearing.
- 8.3 **Preliminary Matters:** Preliminary matters may be heard and determined by the Club Board/Judicial Committee as it thinks fit.
- 8.4 **Interested Party:** The Club Board/Judicial Committee may, either on its own motion or on the application of a person whom the Club Board/Judicial Committee determines has sufficient interest in the matter, add a further person or persons as parties to a Proceeding, or allow a person or persons to make submissions or provide evidence in any Proceeding. If this occurs, that person(s) will be bound by these Regulations as if that person(s) was a party to the Proceeding.
- 8.5 **Absence:** If any party is absent or fails to make submissions the Club Board/Judicial Committee may, in its discretion, make a decision in their absence or grant an adjournment. Before making a decision in the absence of any party, the Club Board/Judicial Committee must be satisfied that the person concerned had been notified of the hearing in accordance with this Regulation.
- 8.6 **Hearing:** The hearing shall take place as soon as practicable and will be held in person, or by consideration of written submissions as determined by the Club Board/Judicial Committee. At the hearing all parties, including Interested Parties and witnesses (if any), shall be given an opportunity to be heard.
- 8.7 **Power to Inquire and Direct:** The Club Board/Judicial Committee shall have the power to inquire into the subject-matter of any Proceeding in accordance with this Regulation. For the purposes of any inquiry, the Club Board/Judicial Committee, or any person authorised in writing by it may:
- a. inspect and examine any papers, documents, records or items;
 - b. require any party or person bound by this Regulation, and request any other person, to produce for examination any papers, documents, records or things in that person's possession or under that

person's control and to allow copies of or extracts from any such papers, documents or records to be made;

- c. require any party or person bound by this Regulation, and request any other person, to provide, in a form approved by or acceptable to it, any information or particulars that may be required by it, and any copies of or extracts from any such papers, documents or records;
- d. in respect of any Proceeding, hear evidence; and
- e. make such inferences and draw such conclusions as it considers appropriate from the failure by any person or party to comply with any requirement made by the Club Board under this clause 8.7.

8.8 **Natural Justice:** The Club Board/Judicial Committee shall, in all matters, observe the principles of natural justice.

8.9 **Evidence in Proceedings:** The Club Board/Judicial Committee may:

- a. receive as evidence any statement, document, information, or matter that may, in its opinion, assist it to deal effectively with the matters before it, whether or not the same would be admissible in a court of law;
- b. take evidence on oath, and for that purpose any Club Board Member may administer an oath; and
- c. permit a person appearing as a witness before it to give evidence by tendering a written statement and, if the Club Board/Judicial Committee thinks fit, verifying it by oath.

8.10 **Representation:** The parties, including any Interested Party, may be represented or assisted in the Proceeding by a person of their choice.

8.11 **Minors:** A person who has not attained the age of 18 years, (referred to in this Regulation as a "Minor") may be a party to, and shall be bound by a Proceeding before the Club Board/Judicial Committee as if the Minor were a person of full age and capacity. Where a Minor is a party to any Proceeding, the Club Board may, if the Minor agrees and it considers it would be in the interests of the Minor to do so, at any time appoint a person to represent the Minor. The Minor shall be responsible for any costs incurred as a result of such representation.

8.12 **Applicable Law:** All Proceedings shall be determined according to the laws of New Zealand.

8.13 **Decisions:**

- a. A decision of the Club Board/Judicial Committee in any Proceeding shall be made by majority decision of the Club Board Members hearing the Proceeding.
- b. In the event there is no majority decision of the Club Board Members hearing the Proceeding, the Chairperson shall decide the matter.
- c. The Club Board/Judicial Committee will issue a written decision with reasons as soon as expedient.

- d. The Club Board/Judicial Committee may also make non-binding recommendations to a Club, or any other party of any Proceeding.
- e. Any decision of the Club Board/Judicial Committee made under this Regulation shall be enforceable, by any party to the Proceeding in which the order is made, in the courts of New Zealand under the law of contract.

8.14 **General:** Where any matter is not otherwise provided for in this Regulation, the Club Board/Judicial Committee shall have jurisdiction to make such orders or give such directions as it considers to be consistent with the just, speedy, and inexpensive determination of the Proceeding.

8.15 **Mediation:** The Club Board/Judicial Committee may, if requested by the parties, or on its own violation, order that the substantive issue in a Proceeding, or any sub-issue, be mediated before an independent person.

8.16 **Records:** The Club Board shall keep records of all Proceedings, including all investigations and decisions.

8.17 **Costs:** Unless otherwise determined by the Club Board/Judicial Committee, every party and person involved in any Proceeding shall bear their own costs.

9. Club Board Orders

9.1 **Orders:** The Club Board/Judicial Committee may make such orders as it considers appropriate to give effect to its decision, including imposing any of the following sanctions:

- a. a reprimand or warning;
- b. suspension or termination from such activities of the Club including events, competitions, tournaments, meetings, and functions, on such terms and for such period as it thinks fit;
- c. suspension or termination of the person's membership of the Club;
- d. fines, imposed in such manner and in such amount as the Club Board/Judicial Committee thinks fit;
- e. such other penalty as the Club Board/Judicial Committee considers commensurate with the offence; and/or
- f. such combination of any of the above penalties as the Club Board/Judicial Committee thinks fit.

10. Appeals

10.1 **Appeal to a Regional Judicial Committee:** Any Member who is subject to a decision of the Club Board/Judicial Committee under this Regulation, may appeal the decision to a Regional Judicial Committee in accordance with the Bowls NZ Regulations.

Appendices of Forms

Reference	Explanation
Form 1	Application for Proceedings to be Heard by the Club Board

FORM 1

**APPLICATION FOR PROCEEDINGS
TO BE HEARD BY THE CLUB BOARD**

1. Details of Applicant

Name	TITLE	FIRST NAME	SURNAME
Postal Address	STREET		SUBURB
	CITY	POSTCODE	

Contact Person for this Application

Name	TITLE	FIRST NAME	SURNAME
Position			
Telephone	WORK	MOBILE	
Facsimile	WORK		
Email			

2. Details of Representative (if applicable)

Please insert the details of your legal representative or other person, if any, who will be representing you in these Proceedings.

Name of Representative	TITLE	FIRST NAME	SURNAME
Firm/Company			
Postal Address	STREET		SUBURB
	CITY	POSTCODE	

3. Alleged Dispute or Misconduct

(a) Give details of the alleged Dispute or Misconduct.

[Redacted area for details of the alleged Dispute or Misconduct]

(b) Summarise the evidence which will be produced in support of the alleged Dispute or Misconduct (the summary will not prevent further evidence being brought in accordance with any direction given by the Club Board).

[Redacted area for summary of evidence]

4. Result Sought

Please supply the outcome sought in accordance with the applicable rules/policies.

[Redacted area for result sought]

5. Authority

Name	TITLE	FIRST NAME	SURNAME
Signed			
Position			
Date			

Filing and Service Instructions

1. This application should be signed and filed with the Club Board/Judicial Committee at the address given below.
2. Where possible, a summary of the evidence to be brought in support of the allegations and a copy of documents evidencing the allegation should be attached.
3. The Applicant is to personally serve a copy of this application and attachments on the Respondent as soon as practical after the original has been filed with the Club Board/Judicial Committee and provide confirmation of this to the Club Board.