

NST-E23-382795

Jessica Jung v Australian Ice Racing

Determination

National Sports Tribunal General Division

sitting in the following composition:

NST Member

Dr Maria Dudycz

in the arbitration between

Jessica Jung

(Applicant)

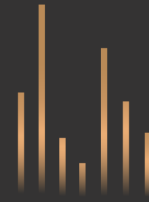
Represented by Jason Jung, Authorised Representative

And

Australian Ice Racing

(Respondent)

Represented by Margaret Blunden, General Secretary



PARTIES

1. The Applicant, Jessica Jung (Ryu) (“the Applicant”) is a coach in the sport of Ice Racing for over 20 years, coaching differing levels of skaters from juniors to seniors. At the time of the complaints, the subject of this appeal, she was Vice President of Sydney Wings Ice Racing Club Incorporated, a Member Organisation of Australian Ice Racing Limited (AIR), the Governing body for Ice Racing in Australia.

A Member Organisation under clause 3(k)(i) of the National Integrity Framework (NIF), Complaints, Disputes and Discipline Policy (CDDP) Australian Ice Racing (AIR) 9 March 2023 is defined as follows:

Member Organisations, which means each company or incorporated association that is a member of AIR – including each:

- (a) State, territory and club Member, and
- (b) Affiliate that is a member of a State and Territory Member.

Clause (3)(l) **Individual Members**, which means individuals who are individuals registered with a Member Organisation

The Applicant is both a registered coach with AIR and part of a Member Organisation at the time of the complaints, the background of which will be outlined below and hence subject to the National Sporting Organisation (NSO), namely AIR policies.

2. English is a second language for the Applicant. An independent interpreter was engaged for the Tribunal hearing. Jeune Son, was the South Korean (Hangul) interpreter. The Applicant was in Korea at the time of the hearing.
3. Jason Jung, Authorised Representative (“the Authorised Representative”) for the Applicant as permitted under S 19, the *National Sports Tribunal (Practice and Procedure) Determination 2021*, is the son of the Applicant.

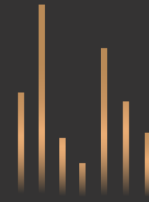
The Applicant nominated Jason Jung to act on her behalf during the Sport Integrity Australia (SIA) investigation. An appropriate OBO form was provided to SIA on 10 July 2023.

The Authorised Representative was in London at the time of the hearing.

4. Margaret Blunden, General Secretary and Integrity Manager, represented AIR (“the Respondent”).
The Respondent was in Sydney at the time of the hearing.
5. The Arbitration was conducted by Video Conference on 6 February 2024 at 6pm (AEDT).
6. Natasha Currao, Case Manager and Project Officer, National Sports Tribunal (NST) was also in attendance.

INTRODUCTION

7. In November 2022, 2 Complainants lodged complaints on behalf of vulnerable persons (“VPs”), minors VP-A and VP-B, against the Applicant and another party, that alleged, in summary that

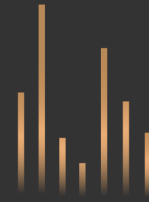


while the Applicant provided coaching services in the sport of ice racing to their children, the Applicant and another party ignored, abused, bullied and victimised the VPs, both at training and at competitions. Further, the Complainants alleged that on multiple occasions, the Applicant and other party were non-compliant with Child Safe Practices.

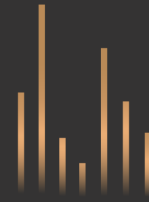
8. The process for lodgement, investigation and application of relevant policies to these complaints is outlined below commencing with paragraph 9. This appeal at the NST arises as the investigating body, SIA, found some of the complaints were substantiated and AIR consequently proposed sanctions be imposed on the Applicant. The Applicant is appealing the SIA findings and AIR proposed sanctions. This appeal is confined to those complaints that were substantiated by SIA and resulted in proposed sanctions. The parties, at hearing, confirmed this was the scope of the proceedings. Therefore, the summary of allegations and complaints lodged in November 2022 are confined to those relevant to these proceedings.
9. AIR adopted the NIF on 1 July 2022 to establish, for ice racing in Australia, a framework to support safety and fairness for participants, rules and definitions about types of unacceptable behaviour defined as **Prohibited Conduct in the CDDP under Definitions clause 3(o)**, procedures for reporting Prohibited Conduct and how allegations of such behaviour will be managed and resolved.
10. The Applicant, as a Member of AIR, is subject to the various iterations from time to time of the NIF, CDDP which incorporate a number of **Integrity Policies under Definitions clause 3(j)**. The relevant Integrity Policy claimed to have been breached, in the lodged complaints, was the NIF Child Safeguarding Policy, Australian Ice Racing iteration 1 July 2022 (CSP).
11. In November 2022, 2 separate Complainants, on behalf of VPs, being minors, lodged a number of complaints with SIA against the Applicant and another party for alleged breaches of the AIR CSP. The allegations were outlined in paragraph 7.
12. The VPs were coached by the Applicant during 2022 when the alleged breaches occurred.
13. Pursuant to **Definitions 3** of the NIF, CDDP AIR, the Applicant was part of a **Relevant Organisation, clause (3) (r) (ii)**, Member Organisation, Sydney Wings Ice Racing Club and the VPs were **Relevant Persons, clause (3) (s) (ii)** being a participant in the sport.

Therefore under **5 Jurisdiction clause 5.1 (a)**, the NIF, CDDP AIR “**framework applies to and binds all Relevant Persons and Relevant Organisations.**” The NIF, CDDP AIR governed the mechanism of handling the complaints between the parties.
14. Further, under the same NIF CDDP AIR document that binds the parties to the mechanism for lodging, investigating, listening and determining the outcome of disputes, Prohibited Conduct is defined to include each of the other Integrity Policies, which includes the CSP.
15. **6. Prohibited Conduct**

Clause 6.1 (a) In addition to the conduct prescribed **under each of the other Integrity Policies**, a Relevant Person or a Relevant Organisation engages in Prohibited Conduct Accordingly, the CDDP and CSP need to be read in conjunction with each other to apply the relevant complaints handling mechanism and determine if any of the Prohibited Conduct was breached.



16. The procedure for relevant complaints is set out in the CDDP and was followed in relation to these lodged complaints in November 2022, although this was “allegedly an unfair process” formed part of the Applicant’s appeal to the NST. SIA independently investigated the complaints as part of its process and made findings.
17. In the 1 November 2023 SIA Integrity Complaint Investigation Outcome Report (“the SIA report”), SIA were satisfied, on the balance of probabilities, the requisite standard under clause 8.6(a) CDDP, that in 2 of the 3 complaints against the Applicant, some elements were substantiated amounting to breaches of Prohibited Conduct under the CSP.
18. The Prohibited Conduct identified in the SIA report referenced **4. Prohibited Conduct** in the CSP. For all substantiated breaches the following CSP clause applied before referencing Sub-Clauses in Annexure B of the same policy. **Prohibited Conduct Clause 4.1(b)** there is a breach of a requirement imposed under clause 3.1, or sub-clauses 3.2(a), 3.2(b) or 3.2(e)(ii). Note Child Safe Practices (Annexure B) is part of the CSP.
19. **3. Requirements of Relevant Persons and Organisations** referred to clause 3.1 Requirements of Relevant Persons to comply with the Annexures of the CSP and various other child protection obligations and requirements. **Clause 3.2 Requirement of Relevant organisations** imposes similar child protection obligations and requirements on Organisations to fulfill as per clause 3.1. The specific Annexure B sub-clauses breached are detailed in full in paragraph 21 and 23 as they relate to the specific Prohibited Conduct breached by the Applicant as stated in the SIA report.
20. In general terms, 2 substantiated breaches related to the Applicant’s Prohibited Conduct towards VP-A using language and tone that was inappropriate, Child Safe Practices (Annexure B) Sub-Clause 2.3(a) and not providing an effective and positive environment or strategies fair, respectful and appropriate to the developmental stage of children involved. Child Safe Practices (Annexure B) Sub-Clauses 2.4 (b)(i) and (c).
21. **Child Safe Practices (Annexure B), Sub-Clause 2.3 Use of language and tone of voice**
Language and tone of voice used in the presence of Children should:
 - (a) Provide clear direction, boost their confidence, encourage, or affirm them**Child Safe Practices (Annexure B) Sub-Clause 2.4 Positive guidance (Discipline)**
.....
 - (b) Relevant Persons and Relevant Organisations must use appropriate techniques and behaviour management strategies to ensure:
 - (i) An effective and positive environment
 - (c) Relevant Persons and Relevant Organisations must use strategies that are fair, respectful, and appropriate to the developmental stage of the child involved.
22. Further substantiated breaches of Prohibited Conduct, by the Applicant, identified in the SIA report related to the appropriateness of training methods; namely the “stay position” which is a crouched position to emulate the skating position. This breach refers to the extended period of time the position was held for, the 500 squats given to VP-A, a 7-year-old in one session and



the use of such techniques being excessive, age inappropriate and/or disciplinary. Child Safe Practices (Annexure B) Sub-Clauses 2.4 (c) and (e).

23. **Child Safe Practices (Annexure B) Sub-Clause 2.4 Positive guidance (Discipline)**

.....

(c) Relevant Persons and Relevant Organisations must use strategies that are fair, respectful, and appropriate to the developmental stage of the child involved.

.....

(e) Under no circumstances are Relevant Persons and Relevant Organisations to take disciplinary action involving physical punishment or any form of treatment that could reasonably be considered as degrading, cruel, frightening or humiliating

24. SIA made these findings known to the Applicant and AIR on 7 November 2023 advising that the Prohibited Conduct assessed in the Complaints be rated at **Category 2** as per the **SIA, NIF Case Categorisation and Sanctions Booklet**. (“the Booklet”). This case categorisation system during the assessment stage is based on the “level of harm and complexity”, clause 8.3(a) CDDP. The Booklet uses a traffic light system for the severity of the breach where blue is the least serious breach of Prohibited Conduct and red, Prohibited Conduct at the other end of the spectrum. The Booklet also contains possible sanctions for each level of Prohibited Conduct with mitigating and aggravating factors to consider.

25. While SIA undertakes the independent investigation, it is for AIR to consider an appropriate sanction. SIA provided guidance as to possible sanctions and referred AIR to the Booklet.

26. On 16 November 2023, AIR issued a Breach Notice to the Applicant imposing the following sanctions:

- (i) Written warning
- (ii) Requirement to do or redo online training modules regarding Child Safety
- (iii) A temporary suspension of 3 months, which is suspended and a good behaviour period to be imposed until 30 June 2024.

27. On 29 November 2023, the Applicant notified AIR she disputes the SIA report findings and the proposed imposed sanctions.

28. Accordingly, the matter was referred to the NST pursuant to clause 9.6(a)(i) of the CDDP of which the CSP is one the Integrity Policies.

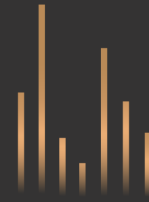
NST JURISDICTION

29. Clause 9.6 of the CDDP provides that:

(a) *If the Respondent disputes the alleged breach and/or Sanction, the AIR Complaint Manager must:*

- (i) *if an NST eligible matter, refer the breach to the NST General Division for arbitration;*

30. Clause 9.7 of the CDDP provides that:



...

(b) *If arbitration is sought in either the NST General Division or an Internal Hearing, the Tribunal will:*

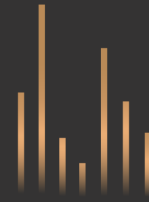
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(ii) *arbitrate the Alleged Breach and determine whether a sanction be imposed.*

31. As the dispute in this matter is between a sporting body, AIR and the Applicant, s 23 of the *National Sports Tribunal Act 2019* and the CDDP permit the matter to be arbitrated in the NST General Division.
32. An application for arbitration was submitted by the Respondent having received a request for appeal from the Applicant. An arbitration agreement between the parties was signed on 6 January 2024.

FACTUAL BACKGROUND

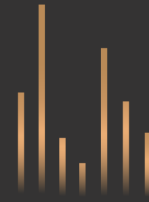
33. At the outset, it was agreed by all parties that the facts, legal arguments and evidence to arbitrate and determine the matter at the NST will relate only to the substantiated breaches of the CSP as found by SIA and consequential sanctions imposed by AIR and this is not a rehearing of all matters that were investigated by SIA.
34. A transcript from SIA investigation was submitted to the Tribunal, along with videos, photos, KAKAO Talk messages (Korean equivalent to WhatsApp) in Korean translated into English, character references and new submissions not presented to SIA. The Tribunal has read all material and will refer to what is relevant in this statement of reasons.
35. While there is some overlap between the facts presented for other alleged breaches, the Tribunal will outline the background in relation to the breaches currently contested by the Applicant.
36. The Applicant coaches the sport of ice racing in Australia and Korea. She has over 20 years experience, has been active in developing the sport and coaches a wide range of age groups including children at a wide range of ability levels.
37. The Applicant is responsible for coaching during training on the ice rink, as well as the selection of teams for competitive ice racing and attends competitions with teams.
38. At the time of the complaints, the Applicant was Vice President of Sydney Wings Ice Skating Club Incorporated.
39. A New Zealand camp and competition was arranged by the Applicant between 17 July – 26 July 2022 which both VPs attended.
40. There is discussion in the SIA report, that when VP-A's parents questioned the costs and suggested irregularities with the Applicant, in relation to the New Zealand camp on 5 August 2022, there was a noticeable change in the Applicant's behaviour towards VP-A on 7 August 2022. The SIA report noted a breakdown in relationship between VP-A's parents and the Applicant.
41. VP-A was a 7-year-old at the time the alleged breaches of the CSP occurred.



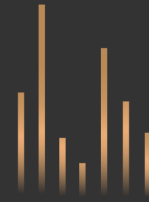
42. Most of the allegations and information investigated by SIA, related to the Applicant's behaviour and coaching practices towards VP-A. The second complaint was submitted on behalf of VP-B, largely supporting the allegations made by VP-A and an incident (f) in allegation 1 paragraph 49 below relates solely to VP-B where she alleges being treated "cold", given nasty looks, and ignored by the Applicant.
43. Both Complainants, having lodged their Complaints on behalf of their VPs in November 2022 with SIA, alleged the Applicant had not been compliant with the CSP on multiple occasions. Allegations included the Applicant ignored, abused, bullied and victimised the VPs at training and at competitions.
44. There was some discussion in the SIA report as to the scope of SIA's jurisdiction and applicable policies given the Applicant, at times, provided private speed skating coaching other than through Sydney Wings Ice Racing Club.
45. For clarity, the relevant jurisdiction/policy is outlined and affirms what was applied by SIA. The CSP refers to Relevant Persons and Relevant Organisations. (Clauses 2.1(a) and (b)) as per CDDP and explained in paragraph 13 above.
46. The ambit of the CSP to the Relevant Persons and Relevant Organisations apply "in relation to **any** dealings they have with a Child arising from the Relevant Person's, Relevant Organisation's, or the Child's involvement in any capacity with Speed Skating" (CSP clause 2.2 (a)(i)).

The broad and encompassing nature of this paragraph suggests that, with regards to the allegations against the Applicant, SIA were correct in their jurisdiction to investigate the complaints and make findings. The Tribunal also finds that the matters to be determined fall within the scope of clause 2.2(a)(i) of the CSP.

47. **Allegation 1 the SIA report**
48. From 7 August onwards, while providing Ice Racing Coaching services to VP-A and VP-B, the Applicant allegedly caused emotional and psychological harm as specified by VP-A's parents by 7 incidents of alleged Prohibited Conduct.
49. The 7 incidents alleged were (page 5, the SIA report):
 - a. Did not tie the laces for VP-A from August 7 2022, onwards
 - b. Deliberately ignored VP-A at trainings in August 2022
 - c. Deliberately left VP-A out of a relay team in favour of Children whose parents had supported Respondent A [the Applicant] at the Short Track Championships in Melbourne
 - d. Deliberately ignored VP-A and did not acknowledge their presence at the Short Track Championships in Melbourne
 - e. Invited some athletes for additional training but did not extend that invitation to VP-A
 - f. Was cold towards VP-B, including giving them nasty looks, ignoring them at the club and refusing to provide feedback to them
 - g. Shouted at VP-A during training sessions during August 2022



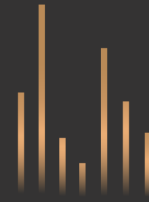
50. SIA considered the specified incidents, the relevant sections of Prohibited Conduct under the CSP in relation to each of the 7 allegations, the relevant evidence for each specific incident having spoken to complainants, respondents and viewed various submitted materials before making the following **substantiated findings** in the SIA report.
51. Child Safe Practices (Annexure B) clause 2.3(a) Use of language and tone of voice and Child Safe Practices (Annexure B) clause 2.4(b)(i) and 2.4(c) Positive Guidance (Discipline) were breached by the Applicant's behaviour amounting to Prohibited Conduct.
52. The findings were based on some of the 7 allegations but not all. In summary, on the SIA report it considered "it is likely there is conflict between the intent behind some of the Respondent's behaviour, compared to how that behaviour was perceived by VP-A." This is described in coaching techniques such as "firm but fair", "only provided feedback at the Melbourne championships to 'people who fell over or did something drastically wrong'", the manner and tone in which the Applicant responded "no" to a request to tie VP-A ice skates were considered not encouraging or affirming particularly when considering VP-A was aged 7.
53. With regards to the allegations by VP-B, inconsistent responses in relation to treating VP-B "cold" and not providing feedback, aligned with the Applicant's comments in paragraph 52 above about only providing feedback in limited circumstance, so SIA "considered that this approach did not seek to boost VP-B's confidence" nor promote a positive environment.
54. Yelling across the ice rink was also considered. While there was acknowledgement of the ice rink's size and environment, as explained by the Applicant, if yelling was a regular occurrence and again acknowledging the age of VP-A, SIA considered it reasonable for the Applicant to reconsider tone/volume when dealing with children of VP-A's age.
55. **Allegation 2 the SIA report**
56. The Applicant used "training methods towards Children, including VP-A, which caused damage to their physical or emotional wellbeing. This included making the VP hold a crouched position for an extended period of time or punishing poor performance with 500 squat jumps."
57. As per allegation 1, SIA investigated and considered all relevant materials to determine if the alleged Prohibited Conduct breached the CSP. SIA made the following findings in relation to the allegation, the Applicant's Conduct was a breach of the Child Safe Practices (Annexure B), Clauses 2.4 Positive Guidance (Discipline) (c) and (e) and hence the allegation was **substantiated**.
58. This finding was based on the Applicant ultimately admitting, at times the children were trained using the "stay" position, the name given to the crouched position in the allegation, or may be required to do 500 squats in one session "in instances where they skate incorrectly" (page 13, the SIA report).
59. Videos (VID 04) and (VID 05) were provided by the Complainant on behalf of VP-A demonstrating them in the "stay" position. The video evidence suggested that the Applicant used the "stay" position as discipline. While the SIA found this conduct did not amount to abuse, it found the Prohibited Conduct breached the Child Safe Practices Clause 2.4 Positive Guidance (Discipline) (e).



60. SIA considered that, in the circumstances of a 7-year-old, the Applicant “did not use strategies that are fair, respectful and appropriate to the development stage of the children involved.”
61. **Proposed Sanctions by AIR**
62. Following these findings in the SIA report, which were categorised as 2, AIR proposed these sanctions which accompanied the Breach Notice sent to the Applicant on 16 November 2023
- (i) Written warning
 - (ii) Requirement to do or redo online training modules regarding Child Safety
 - (iii) A temporary suspension of 3 months, which is suspended and a good behaviour period to be imposed until 30 June 2024.
63. The Authorised Representative responded to AIR seeking an appeal against the SIA findings and AIR sanctions wanting the matter heard at the NST. The outcome sought was for the Tribunal to revoke the SIA findings and hence the sanctions.
64. The Respondent is wanting the Tribunal to uphold the SIA findings and AIR sanctions.
65. While the Tribunal has considered all the facts, allegations, legal arguments and evidence submitted by the parties she refers in her Determination only to the submissions and evidence she considers necessary to explain her reasoning.

PROCEEDINGS BEFORE THE NST

66. The Respondent filed an Application with the NST after receiving notification on 29 November 2023 from the Authorised Representative, that the Applicant disputed the findings in the SIA report and proposed sanctions included in the Breach Notice dated 16 November 2023 from AIR. By an Arbitration Agreement dated 6 January 2024, the Applicant and AIR agreed to have the matter arbitrated before the NST. Both became parties to the arbitration.
67. A Preliminary conference was conducted on 12 December 2023 by the NST Deputy CEO at which procedural directions were given in relation to the filing and service of submissions and any witness statement(s), evidence and all other documents the parties may seek to rely on. Specific directions were given in relation to the conduct of the hearing.
68. As a result of the procedural directions given, both the Applicant and Respondent filed with the NST registry and served on the other party the requisite material they wished to rely upon. This included among other things, a transcript from the SIA investigation, along with policy documents, videos, photos, KAKAO Talk messages in Korean translated into English, character references and new submissions. This material was collated into an eBundle which was referred to during the hearing. The Tribunal has read all material and will refer to what is relevant in its Determination.
69. The hearing commenced on 6 February 2024 at 6pm AEDT via Video Conference.
70. The Tribunal outlined the order of proceedings, how proceedings would be conducted with the interpreter to ensure the Applicant was fully informed, ensuring that all parties understood the Applicant and she was able to contribute to proceedings. The Tribunal confirmed that the



Applicant was fully aware of what the Authorised Representative would be presenting on her behalf and did not require this information be interpreted.

71. Prior to the parties commencing to outline their respective cases, the Tribunal clarified that only the substantiated breaches were being appealed and not all the complaints made before SIA with respect to the Applicant.
72. The parties agreed this was their intention, so the complaint labelled “Alleged Breach 3” in the SIA Report relating to a trip to New Zealand was not part of these proceedings.
73. The Authorised Representative commenced with an outline of the case and submissions the Applicant was presenting, affirming the Applicant disputes the substantiated breaches of the CSP found by SIA and consequential sanctions imposed by AIR.
74. The Respondent then outlined the case indicating that the SIA substantiated breaches of the CSP and imposed sanctions by AIR should be affirmed by the Tribunal.
75. There were no witnesses heard or cross examined at the proceeding.
76. Subsequently, the Authorised Representative presented and talked to the submissions and witness statements, which essentially were character statements. The Tribunal clarified that none of the witnesses who gave statements directly observed the conduct, the subject of these complaints.
77. The Applicant also spoke on her own behalf when directly asked questions or she wanted to add to what the Authorised Representative had submitted.
78. The Respondent largely relied on the SIA findings and provided some responses and queries in relation to the Applicant’s submissions.
79. Both the Applicant and Respondent as well as the Tribunal asked questions, as appropriate during the proceedings.
80. No objection was made at the outset of the hearing to the composition of the Tribunal and at the conclusion of the oral hearing the parties confirmed that their procedural rights had been fully respected.
81. At the conclusion of the hearing, the Tribunal reserved its decision and informed the parties it will provide a written decision at the latest within 2 weeks.

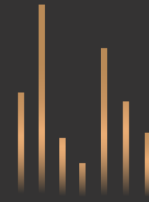
APPLICABLE RULES

82. The NIF, CDDP include Integrity Policies, the relevant Integrity Policy for this matter being the CSP.

Policy for complaint lodgement and investigation: CDDP

83. The relevant clauses of the CDDP are set out in paragraphs 9 – 17 above. These relate to how the complaint is lodged, investigated and determined.

CDDP to be used in conjunction with applicable Integrity Policy for this matter: CSP



84. The CSP includes, among other things, Prohibited Conduct with respect to children. The relevant clauses of the CSP are set out in paragraphs 18 – 23 above. The Child Safe Practices that were breached in this matter are referred to in Annexure B of the CSP.

Findings and Resolution Process: CDDP

85. Clause 9.1 provides:

(a) Where a Complaint is subject to an investigation, the NSO or SIA will

(i) Make findings as to whether, to the requisite Standard of Proof, the Alleged Breach is substantiated, unsubstantiated or unable to be substantiated

(ii) In cases where SIA investigates the Complaint, SIA will notify the parties of the findings, and refer to the NSO to manage the resolution process.

Clause 9.2 provides:

...

(c) The AIR is ultimately responsible for applying and administering sanctions (including the issuance of a Breach Notice to the Respondent)having regard to the Case Categorisation System and Guidance for Sanctioning.

Clause 9.4 gives guidance to AIR as to matters it may wish to consider when applying a sanction.

Dispute the Alleged Breach and/or Sanctions: CDDP

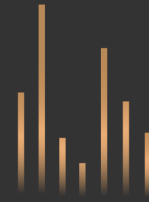
86. As per Clause 9.6(a)(i) of the CDDP, outlined in paragraph 29 above, the NST clearly has jurisdiction to determine this matter and to issue a Determination (clause 9.7 (b)(ii) of the CDDP).

MAIN SUBMISSIONS OF THE PARTIES

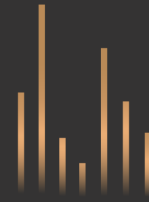
87. Each of the relevant Allegations and SIA findings will be examined in turn. Issues of credibility, context, the applicable standard of proof and other relevant issues will be discussed upon consideration of the merits.
88. In addition to the eBundle material already supplied to parties and the Tribunal prior to the hearing, the parties made the following oral submissions at hearing.

APPLICANT SUBMISSION

89. The Authorised Representative disputed and denied both substantiated breaches of the CSP as found in the SIA report.
90. At the outset, both in written submission and orally, the Authorised Representative criticized SIA's handling of the complaint, discussing the timeframe, unfairness due to delay, that over a year memory of situations fade and the delay was exacerbated by a change in case manager handling the dispute half way through with no appropriate reason given to the Applicant.



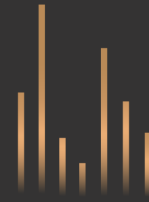
91. The Authorised Representative proposed that the allegations and consequential findings be revoked on the basis that there was an unfair hearing process by SIA and therefore these proceedings be dismissed.
92. The Applicant explained she was unable to speak on her own behalf as she was psychologically and emotionally traumatized by the circumstances of these allegations and the proceedings.
93. **SIA finding Breach 1** Language, Tone and effective positive environment:
94. The Authorised Representative disputed the evidence submitted to SIA stating that despite the allegations made, the Complainant, VP-A's guardians, remained in contact with the Applicant without expressing concerns or dissatisfaction regarding the treatment of VP-A.
95. The Authorised Representative referred to the KAKAO Talk messages as purporting to demonstrate "a character statement of the accuracy and the relationship VP-A's parents had with the Applicant." He stated there was no reference of "dissatisfaction [the Applicant] was providing to the [VP-A]". He referenced words of gratitude such as "thank you" and "love hearts" in the messages from VP-A's parent to the Applicant.
96. The Authorised Representative referenced videos where "screaming" occurred and claimed this was necessary for the children to hear what the Applicant is saying given the size of the ice rink. The Applicant, herself affirmed this explanation, adding "the skaters want help to improve with particular technique".
97. The Applicant added, "My yelling was not about punishing the children, it was a part of the training, they're helping them to improve."
98. In summary, he stated with all that has been submitted, the parents' conversations, character statements and that no formal complaint or allegation was made directly to the Applicant "that the training was too harsh or that the screaming was impactful", hence the Applicant created an effective and positive environment.
99. The Tribunal tried to address the allegations and incidents which formed the basis of the findings in the SIA report with the Authorised Representative however, other than the yelling across the ice rink, he sought to rely on the character references, KAKAO Talk messages, that no one complained directly to the Applicant, that parents were in attendance and should have spoken up at the time of any inappropriate behaviour and numerous other children have not complained.
100. **SIA finding Breach 2** "Stay position", excessive training, training used as punishment:
101. The Authorised Representative stated the "stay position" was a common form of training in the sport of ice racing to build thigh and body strength. It was not targeted solely at VP-A as a form of punishment and referred to numerous still shot photos, in submissions to the Tribunal, of groups of youth of various ages in the "stay position" including some with other clubs and coaches.
102. The Authorised Representative went on to refer to parents being in attendance and watching the training, including the "stay position" noting that if parents have a problem with training methods they could come to the Applicant and let her know. This did not occur.



103. The Tribunal referred the Authorised Representative to VID 05 submitted by the Complainant, on behalf of VP-A to SIA, which demonstrates VP-A in the “stay” position with the Applicant speaking to them while they remained in the “stay” position. The conversation went as follows: The Applicant, “Do again or No!”. VP-A responds, “No”. The Applicant asks, “Promise”. The Tribunal noted that VP-A did not make eye contact with the Applicant and remained in the “stay” position face down. The video was short not demonstrating a long period squatting.
104. The Authorised Representative stated he was well aware of this video. It is a small clip of a longer video the Applicant does not have access to. They requested the whole video off the first investigator, but this was not followed through. His explanation of the clip shown was that the conversation related to correcting a technique and the Applicant was asking if he would repeat that mistake, that other skaters were there but edited out of the clip, that is VP-A was not singled out and VP-A’s parent was taking the video so the parent could have stepped in if the Applicant’s behaviour was inappropriate. The parent also explained to the Applicant that the videos were to use for more training.
105. Witness statements were referred to in the eBundle however, the Tribunal clarified that none of the witnesses directly witnessed the events subject of the allegations and the SIA investigation.
106. The Authorised Representative said these statements referred to people around the club at the same time as the VPs, “within the same cluster” and references the Applicant’s style of coaching.

RESPONDENT SUBMISSION

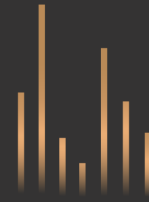
107. The Respondent submitted that AIR had adopted the NIF and therefore engaged SIA to perform the independent investigation.
108. AIR acknowledged the timeline was less than ideal however, stated that the impact would be on both parties. AIR trusted the SIA process, that they investigated diligently, examined all the evidence provided and considered interviews before making a finding.
109. **SIA finding Breach 1** Language, Tone and effective positive environment:
110. The Respondent relied predominantly on the SIA reports and findings and added the following in response to the Applicant’s submissions to the Tribunal and oral submissions.
111. The Respondent stated that the KAKAO Talk messages relied upon predated the lodging of the complaint in November 2022. There was discussion during the hearing regarding undated messages and videos relied upon by the Applicant and the Authorised Representative agreed it was less than ideal that some messages submitted were not dated. Nevertheless, it was agreed the last message was dated in September 2022.
112. With respect to the witness statements the Applicant wanted to rely on and submitted to the Tribunal, the Respondent had searched the AIR membership list to check where these witnesses were members.
113. The Respondent stated that Witness statement 1, does not contain the skater’s name so could not be checked, Witness statement 2, is not registered with Sydney Wings Ice Racing Club, Witness statement 5 does not contain the name of the witness nor the children’s names and therefore could not be checked.



114. The Authorised Representative's response was they were essentially character references, he was not aware he needed to provide such detail as he was protecting them from the dispute, and that 2 of the younger children were in the witness statements to demonstrate they were not harmed by the same training techniques used on VP-A.
115. **SIA finding Breach 2** "Stay position", excessive training, training used as punishment:
116. The Respondent agreed that the "Stay position" was a recognised training technique used by a lot of coaches in the sport of ice racing. However, the evidence of snapshot photos of children and young people in this position does not demonstrate the degree of intensity or repetition used at the time. The question is not whether the "stay position" was used but whether "500 squats" for a 7-year-old is excessive or not. The Respondent went on to state, "I am not aware of any other clubs including clubs that are training adults that do 500 squats in 1 session".
117. The Respondent raised the issue of perhaps a cultural component to the training methods and stated the question of excessive training is a judgment call based on Australian standards, not what is acceptable in other countries. She reiterated it is not common practice for 500 squats to be done in one session by a 7-year-old.
118. The Respondent addressed the issue of getting parental approval or consent, as proposed by the Applicant, for what has been determined to be excessive training, does not mean the training was not excessive for that child.
119. AIR is not questioning whether, in general, the Applicant is a good coach or not. That is not relevant to whether the allegations made to SIA are substantiated or not and whether consequential sanctions are imposed or not.

Clarifying questions regarding SIA report and findings

120. The SIA report, relies and places some weight in its findings on comments made by the Applicant such as being "firm, but fair". The Tribunal wanted to clarify what the Applicant meant by this comment.
121. The Authorised Representative explained that different aged children are developmentally different so individualised coaching is necessary "but in Australia either you are a beginner level or advanced level, all come to the same coaching session. So, I treat them fairly equally, differentiating coaching styles according to the skater's level."
122. The Applicant then explained if a 7-year-old was "really good" they would train with an older crew. "So that's when the firm might come in where they would need to still train at a higher level and they choose to want to be at that level."
123. SIA referred also to a comment made by the Authorised Representative at page 13 of the SIA report, "They come because she [the Applicant] knows how to train Koreans and the Korean way of training". The Tribunal asked for clarification of this phrase.
124. The Applicant stated that in Korea, training was more "hands on". She and the Authorised Representative clarified this to mean there was more touching of participants being coached in Korea to correct technique than in Australia. The Applicant modified her technique in Australia by asking the participants including children she is coaching if it is ok to touch them but only in appropriate places to correct positions and style. She did state she used verbal communication

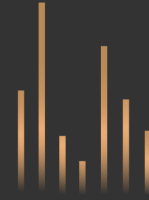


in Australia more than in Korea. The Authorised Representative emphasised the purpose was to correct form and with the parents' and skaters' consent.

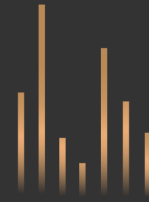
125. The SIA report at page 10, "considers it likely there is conflict between the intent behind some of the Respondent's behaviour, compared to how that behaviour was perceived by VP-A."
126. Many of the submissions and discussions at the hearing concerned the Applicant's reputation and the impact these complaints had on her.
127. The Tribunal asked the Applicant to consider that she is an adult, as a coach in a position of power, who understands why she is yelling, (the ice rink is large and she needs to convey technical instructions to skaters) but how does a 7-year-old perceive her yelling, the potential impact on them and whether there was communication and explanation with VP-A about why it was necessary to yell and use that tone of voice. No direct response was given to this question.
128. Further, given that there is mixed evidence regarding feedback, at times the Applicant stated feedback is generally only given when correction of technique is necessary as stated in the SIA report but at hearing, she denied this saying she gave hugs to the skaters who performed well and talked to parents about how good skaters were. Later in the hearing, the Applicant went on to say, "I mainly focus on giving feedback on the aspect of technique" noting the time constraints of the training limited her ability to engage much more.
129. The Tribunal clarified that the Applicant was currently an accredited coach with AIR, that there is an ongoing education program, and the Applicant was reaccredited on 18 May 2021 having completed a child protection, harassment and discrimination education module. She has a current Working with Childrens Check.

MERITS

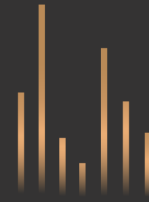
130. The Tribunal has considered carefully the evidence and the submissions made by the respective parties and the relevant findings of the SIA report with consequential sanctions by the Respondent being the main subject of the Applicant's appeal to the NST.
131. The CDDP outlines the complaints handling process for the sport; namely that the investigation and findings be determined by SIA. One of the contained Integrity Policies in the CDDP is the CSP that clearly outlines obligations, responsibilities and standards of behaviour that are required to be met by anyone associated with the sport of ice racing in Australia including coaches. "The continual refinement of these Policies over the years reflects the increased knowledge and experience gained by sporting administrators of the need to ensure standards of behaviour that meet society's expectations as to the protection of those involved in sport" *Liddick v Gymnastics Australia and Sport Integrity Australia, NST page 40*, in particular the physical, emotional and psychological needs of developing children. Consequentially, pursuant to the current policies, should the Tribunal, make findings that the Applicant breached the policies set out in the Applicable Rules section of this decision, thereby upholding some or all the SIA findings, the Tribunal will determine appropriate sanctions having regard to relevant factors and guidelines.



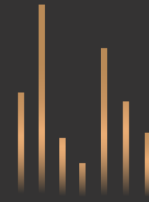
132. At the outset, the Authorised Representative wanted the Tribunal to consider revoking the SIA report on the basis that there was an “unfair hearing process” by SIA thereby dismissing these proceedings.
133. Both the Applicant and Respondent agreed the delays during the SIA investigation were less than ideal. The Complainants lodged their complaints in November 2022 and the SIA made their findings known to the Applicant and AIR in November 2023. During this time, the Applicant, like the Complainants had equivalent opportunities to present material and respond to material during the SIA investigation. The fact this took longer than anticipated, there was a change of case manager, and recollection of events may have faded with time, would have impacted on all parties and any witnesses, largely to the same extent.
134. The Tribunal finds that SIA, in the circumstances, fulfilled their requirement to investigate the complaints, interview relevant witnesses, ask for further information when required, made relevant findings and did so fairly to all involved. The facts presented do not substantiate an “unfair hearing process” by SIA towards the Applicant as she was afforded the opportunity to be heard, responded to questions and was actively involved in the process. The Tribunal dismisses the Applicant’s request to revoke the findings made by the SIA in their report dated 1 November 2023 on this ground.
135. The Tribunal will now consider the relevant evidence, submissions and adverse findings, that is the breaches against the Applicant, in the SIA report being the subject of the Applicant’s appeal to the NST.
136. The Tribunal found all parties to be co-operative with the proceedings and although the Applicant had an Authorised Representative, she participated well in the proceeding with the independent interpreter.
137. The Tribunal took into account the cultural and language difficulties in this matter as well as the fact, the Applicant has been coaching for a significant period of time, and to the best of the Tribunal’s knowledge these complaints were the first against the Applicant under the CSP.
138. The Tribunal recognised that this complaint process has had a challenging impact on the Applicant and, as explained to the Applicant, any outcome will consider many factors including her reputation.
139. That said, the Tribunal found it troubling that the Applicant was unable to reflect on the impact some of the allegations and purported behaviours may have had or may have been perceived by VP-A, a 7-year-old child. The Tribunal explained to the Applicant in SIA’s findings page 10, “SIA considers it likely there is conflict between the intent behind some of [the Applicant’s] behaviour, compared to how that behaviour was perceived by VP-A”; that this suggested a mismatch likely existed between the Applicant’s intentions and how this may have been perceived by a 7-year-old. The Tribunal asked the Applicant to consider VP-A’s perspective of, for example, yelling. There was no response to this or any indication that the Applicant understood that a child’s perception (VP-A) of the Applicant’s behaviour is likely to have been different to an adult’s, despite what an adult intended.
140. When asked about whether the Applicant tried to explain her intentions (i.e. that yelling was necessary because of the size of the rink and it was not personal) to VP-A again there was no response.



141. Fundamentally, the failure of adequate communication and explanation directly with the children and parents, unless it was for corrective technique purposes, likely exacerbates why these complaints came about.
142. The regular reference to parents being present, watching the training and able to speak up for their child, in this matter VP-A, if they thought any training was inappropriate, indicates the Applicant, clearly views the parents as mostly responsible for overseeing her training and policing it.
143. In oral submissions, the Authorised Representative stated that parents, including VP-A's parents, oversee their children at the Applicant's training session, no direct complaints were made to the Applicant and that there were messages of support saying "thank you" and "love heart" for the Applicant therefore the climate must have been positive.
144. As has been stated earlier, the Applicant is recognised as a coach with considerable experience. This hearing addresses specific individual complaints which were lodged on behalf of VP-A and VP-B. It is not about the silence or consensus of other parents who cannot attest to what occurred in the particular circumstances of the allegations of these complaints and whether any Prohibited Conduct under CSP occurred with respect to 2 individual VPs.
145. Further, the Tribunal finds this approach of predominant reliance on parents to provide feedback of inappropriate behaviour on the part of the Applicant to be inconsistent with current child protection policies and demonstrates a lack of understanding of such policies. The CSP is an Integrity Policy under the CDDP and as explained in this decision, the Applicant belongs to a Relevant Organisation and therefore the CDDP applies to her under 5. Jurisdiction and CSP under 3 Requirements of Relevant Persons and Organisations. The onus is on the Applicant to be cognisant of Prohibited Conduct and policy requirements and for her to be self-aware to avoid breaching policies ensuring a child safe environment.
146. While there is no doubt there is an important role for parents in supporting their children, in providing consent in certain circumstances, and consent pursuant to Child Safe Practices Annexure B Sub-Clause 2.12, it would be again inconsistent with the current social and legislative changes strengthening protection and safeguarding children, for parents to be able to consent to Prohibited Conduct and that the Applicant therefore not be bound by the CDDP. The Policy clearly states and expects the Applicant to be aware of her responsibilities and obligations under the policies and for her to abide by them.
147. Parents mostly will have the best interests of their children at heart when attending sports with their children, but they may not always have the knowledge to challenge a coach, feel empowered to do so (acknowledging there is a power imbalance between coaches and parents) or have other motives for not speaking up. As in this matter, VP-A's parents had challenged the Applicant regarding the New Zealand competition costs, among other things, which led to a dispute between the Applicant and VP-A's parents. There was a perception thereafter, that VP-A was treated differently as a result of the dispute. This is an example of circumstances why it is likely VP-A's parents did not raise concerns directly with the Applicant. As for VP-A directly raising concerns with the Applicant, the power imbalance between coach and child, and the difficulty of a child to provide appropriate feedback in the circumstances is self-evident.

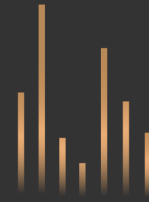


148. The submission that parents, including VP-A's parents, oversee their children at the Applicant's training session, no direct complaints were made to the Applicant and that there were messages of support for the Applicant therefore the climate must have been positive is rejected by the Tribunal for the reasons given above. The Applicant cannot abdicate her own judgment and duty owed to children, in this matter VP-A, to coach them appropriately for their developmental age under current child safeguarding policies and a positive environment cannot be assumed for all children based on this submission. Each child's experience is individual and needs to be considered as such.
149. **SIA finding Breach 1** Language, Tone and effective positive environment:
150. The Applicant does not deny she yells instructions on the skating rink.
- The question the Tribunal needs to consider and determine is whether the language and tone used by the Applicant towards VP-A, on the balance of probabilities, was in breach of Child Safe Practices (Annexure B), Sub-Clause 2.3 (a) Use of language and tone of voice.
151. The explanation given by the Applicant for yelling instructions is that the ice rink is large and requires her to yell to be heard. Her contention was the instructions were to correct the skater's, in this matter VP-A's, technique.
152. The SIA report also addresses the allegation about the Applicant not tying VP-A's shoe laces after August 2022, when conflict arose between VP-A's parents and the Applicant. There were no further submissions regarding this aspect of the allegation and breach by the Applicant at this hearing. SIA found it likely that the Applicant had said, "No" to VP-A's parent's request to tie the skater's laces even though the Applicant had done so prior to August 2022. While the Applicant did not recall this incident and explained the difficulties of tying many young skaters' shoe laces when time does not permit, the SIA report page 10 found, "it likely that the way [the Applicant] communicated this to VP-A was by using language and/or tone that did not seek to boost VP-A's confidence, encourage, or affirm them, particularly when considering the age of the VP-A (7 years old)".
153. The Tribunal finds, on the balance of probability that the language and tone used in the presence of VP-A does not provide clear direction, boost confidence, encourage or affirm them and therefore affirms the breach of Child Safe Practices (Annexure B) Clause 2.3 (a) Use of Language and tone of voice found by SIA. While the Tribunal accepts that the Applicant needs to project her voice to give instructions, communication with the child skaters, in this matter VP-A, about what is occurring during training and why, encourages an environment where both the Applicant and the young skater understands why a projected voice is necessary to deliver timely instructions on the ice. Without this information, a child is left wondering, like VP-A in the shoe lace incident, where "they felt embarrassed and was upset as they thought they'd done something wrong" (page 6 the SIA report).
154. The Applicant's account of her level and type of communication with the skaters is unreliable. In the SIA report page 10, the Applicant stated she provided feedback to "people who fell over or did something drastically wrong". At hearing, she stated she gave hugs to children and affirmation of positive results to parents. However, later went on to clarify the time constraints of training and her focus on correcting technique. Add to this the explanation of "firm but fair" also in the SIA report where the Authorised Representative initially explains all ages and skill

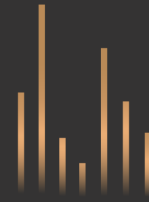


levels are trained together but she individualises training to the development needs of the child. The Applicant then explained “firm” referred to when a young child had skills beyond their age level, they would train with older children, “so that’s when the firm might come in where they would still need to train at a higher level.” This suggests that the Applicant, while recognising a child has the skills beyond their years is treating the child developmentally, in terms of communication, and hence potentially psychologically and emotionally at the developmental age of the older children with which they train.

155. The Tribunal finds, on the balance of probability, that the Applicant’s communication style, limited feedback given and “firm but fair” approach unlikely provided a positive environment, and did not use strategies that are fair, respectful and appropriate to the developmental stage of the child and it therefore affirms the breach of Child Safe Practice (Annexure B) 2.4 Positive Guidance (Discipline), sub-clauses (b)(i) and (c) found by SIA. The lack of communication of positive and encouraging engagement with VP-A and in this incident VP-B, in favour of a focus on training and feedback to correct performance, is unlikely consistent with a positive and encouraging environment as required by Child Safe Practice (Annexure B) sub-clause 2.4 (b)(i). This finding, in the SIA report, was made in relation to VP-B who alleged the Applicant was “cold” towards her (see paragraph 49 for the Incidents investigated by SIA under Allegation 1 f)). At the hearing, this incident was raised but no further information was provided other than repeating what was in the SIA findings.
156. **SIA finding Breach 2** Harsh training methods towards children, including prolonged “stay position” and punishing poor performance with 500 squat jumps:
157. The question the Tribunal needs to consider and determine is whether the training methods used by the Applicant were excessive, appropriate for the child’s developmental stage and whether the training was used as a form of punishment towards VP-A, on the balance of probabilities, in breach of Child Safe Practices (Annexure B) 2.4 Positive guidance (Discipline)
158. Child Safe Practices (Annexure B) 2.4 Positive guidance (Discipline) Provides:
- ...
- (c) *Relevant Persons and Relevant Organisations must use strategies that are fair, respectful, and appropriate to the developmental stage of the child involved.*
- ...
- (e) *Under no circumstances are Relevant Persons and Relevant Organisations to take disciplinary action involving physical punishment or any form of treatment that could reasonably be considered as degrading, cruel, frightening or humiliating.*
159. This substantiated breach by SIA relates to the coaching method used by the Applicant referred to as the “Stay position”, the use of 500 squat jumps being excessive relative to the VP-A’s developmental age being 7 years old and coaching methods being used as punishment.
160. SIA found that while the above was not child abuse, given the child’s age, requiring 500 squats was excessive exercise and inconsistent with “use of strategies that are fair, respectful and appropriate to the developmental stage of the Children involved.”



161. The Respondent agreed with the Applicant that the “stay position” was a recognised and widely used training technique for all ages in the sport of ice racing, however not for the length of time and 500 squats at one training session. There is no reason to doubt the Respondent when she said it does not happen at any age level in the sport.
162. The Applicant did not deny that VP-A was made to train for this length of time but denied it was excessive, putting forward that VP-A was not a beginner, children may be stretched to the limits of older children if assessed capable and their parents were present and could have objected or removed the child if they thought the training was inappropriate for VP-A.
163. The Tribunal was concerned about whether the Applicant understood her obligations under the CSP, which was discussed earlier in the Merits section of this decision. She made contradictory statements at times saying parents wanted her to push their children further, train them harder but she understood her obligation and did what was correct for the children.
164. On the other hand, there were repeated statements by the Applicant and the Authorised Representative about the presence of the parents being at training with the implication that if they did not say anything about the coaching technique, there was consent, therefore the coach was doing nothing without the parents’ consent.
165. The Tribunal has already made a finding with respect to the argument that parents’ being present, observing coaching and giving what amounts to implied consent to the Applicant’s behaviour, according to the Applicant and the Authorised Representative submissions, does not abdicate the Applicant’s obligation to adhere to child protection policies and other relevant policies and legislation in her own judgment and initiative.
165. The Applicant is a coach in the sport bringing 20 years of expertise. Parents entrust their children to the coach for training purposes hence the onus is on the coach to provide such training consistent with the relevant CSP policies as they evolve, to ensure children are receiving age and developmentally appropriate training in a safe, protected, positive and inclusive environment, protected from all forms of abuse, harm and neglect so they may thrive and be devoid of physical, psychological and emotional harm as a result of involvement in the sport of ice racing.
166. While I acknowledge there may be cultural elements, language difficulties impacting training techniques and proceedings, and underlying conflict with VP-A’s parents, the fact that the Applicant does not dispute 500 squats given to the VP in one session, or using the “stay” position sometimes repeatedly in one session, the Tribunal finds that, on the balance of probabilities, VP-A, while not a beginner, was only aged 7 at the time they held the “stay position” and was asked to squat 500 times. This amounts to excessive training for his developmental age and the fact that the parents were present and filmed the incident does not abdicate the Applicant’s responsibility to comply with CSP. If the Applicant is coaching, it is for her to determine if her coaching methods are current, age and developmentally appropriate and comply with child safeguarding policies. The Tribunal therefore affirms the breach of Child Safe Practices (Annexure B) 2.4 Positive Guidance (Discipline) (c) found by SIA.
167. With respect to using training techniques as discipline, the Authorised Representative does not deny the video evidence VID 05 and the conversation suggesting the “stay” position being used

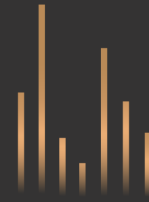


as punishment. He explained the conversation as a correction of technique where the Applicant asks will he make the same error in technique again and VP-A responding “No”.

168. However, the Authorised Representative stated the clip was too short, there were more people around and if the whole clip was shown there would be different context.
169. While the Tribunal acknowledges this is an extract of a longer video, the video demonstrates not only the language used but also the power dynamics at play between the Applicant and VP-A. VP-A is in the “stay” position when the questions are asked of them while the Applicant is standing up. VP-A does not attempt to look up at the Applicant when responding to questions. The visual along with the questions are suggestive, on the balance of probabilities, that the “stay” position was being used as punishment for incorrect technique/performance, taking the Authorised Representatives explanation into account.
170. The Tribunal therefore affirms the finding of SIA that, on this occasion, with respect to VP-A, the Applicant is in breach of Child Safe Practices (Appendix B) Sub-Clause 2.4 Positive Guidance (Discipline)(e). It is imperative the Applicant understands that training methods are used for training and if used as a form of punishment (punishment is not permitted under this clause in any instance), a positive environment is then not associated with the Applicant or the sport. Further, the power imbalance is obvious in this video such that to communicate effectively with VP-A’s developmental age, to correct an error/technique is highly unlikely to be achieved constructively when the Applicant is looking down on a squatted child. The Applicant needs to employ communication skills with VP-A and other (young) children that fosters openness, encouragement and a positive experience in the sport of ice racing.

SANCTIONS:

171. After considering the affirmed breaches, taking into account the mitigating and aggravating factors as well as the guidance from the Booklet and CDDP, the Applicant’s reputation and that these are her first complaints having coached for 20 years, any relevant material in the submissions, the need to ensure emerging child safeguarding policies are adhered to so children experience safety and enjoyment in sport; the Tribunal considers the sanctions imposed by AIR accommodated these factors and therefore affirms the sanctions imposed by AIR. The timelines have been adjusted to reflect the NST proceedings.



THE TRIBUNAL THEREFORE DETERMINES:

1. The Tribunal dismisses the appeal by the Applicant.
2. The Tribunal upholds the findings of the Sport Integrity Australia investigation dated 1 November 2023; namely that,

The Applicant breached the National Integrity Framework, Australian Ice Racing, Child Safeguarding Policy 1 July 2022 by engaging in Prohibited Conduct under the following Clauses and Sub-Clauses:

- i. **4. Prohibited Conduct** in the CSP. For all substantiated breaches specified in (Annexure B) of the CSP the following clause applies: **Prohibited Conduct Clause 4.1(b)** *there is a breach of a requirement imposed under clause 3.1, or sub-clauses 3.2(a), 3.2(b) or 3.2(e)(ii).*

- ii. **Child Safe Practices (Annexure B), Sub-Clause 2.3 Use of language and tone of voice**

Language and tone of voice used in the presence of Children should:

- (a) *Provide clear direction, boost their confidence, encourage, or affirm them*

- iii. **Child Safe Practices (Annexure B) Sub-Clause 2.4 Positive guidance (Discipline)**

...

- (b) *Relevant Persons and Relevant Organisations must use appropriate techniques and behaviour management strategies to ensure:*

- (i) *An effective and positive environment*

- (c) *Relevant Persons and Relevant Organisations must use strategies that are fair, respectful, and appropriate to the developmental stage of the child involved.*

...

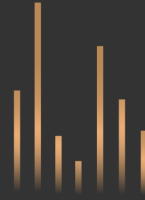
- (e) *Under no circumstances are Relevant Persons and Relevant Organisations to take disciplinary action involving physical punishment or any form of treatment that could reasonably be considered as degrading, cruel, frightening or humiliating.*

3. The Tribunal uphold the sanctions imposed by the relevant National Sporting Organisation, Australian Ice Racing but are modified in 4. below to alter dates impacted by the NST proceedings.

4. The sanctions imposed on Jessica Jung (Ryu) shall be as follows:

- a) *A written warning that a breach of the National Integrity Framework has occurred. These findings of Breaches shall be sufficient notice as a written warning.*

- b) *Directions to complete (or redo if previously completed) the following online modules on the Sport Integrity Australia eLearning portal within 3 months of the date of this determination.*



- i. *Child Safeguarding in Sport Induction*
 - ii. *PBTR – Child Protection and Safeguarding*
 - iii. *PBTR – Inclusive Coaching*
- c) *A temporary suspension for 3 months from the date of this determination, of which is suspended and a good behaviour period imposed for 6 months from the date of this determination.*

Date: 20 February 2024



Dr Maria Dudycz