NSWKA Policy: Managing Disciplinary Concerns

1. **Introduction**

1.1 This policy seeks to provide clarity around the process for implementing disciplinary action in response to concerns raised. This policy expands on the process detailed in the NSWKA Constitution.

1.2 When attending events all competitors, spectators, coached and officials are expected to adhere to the NSWKA Codes of Behaviour. Individual clubs are expected to proactively manage the behaviour of their members, in some circumstances a penalty may be applied to a whole club or team or the Coach/Sensei even if some individuals had no direct involvement in the incident. (A Club Mentor – assigned to NSWKA Clubs without a registered Sensei of their own- is available to the club for advice and support but is not involved in the day to day running of the Club, unless directly involved bears no responsibility for any behaviours of Club members)

1.3 For disciplinary concerns occurring within NSW the Shinpan-Cho at competitions, the Technical Committee Chair (or delegate) at gradings or the Senior Sensei leading a seminar or training will take responsibility for taking action as detailed in Clause 2 of this policy. After the day of the event the responsibility of overseeing the management of a disciplinary concern will pass to the NSWKA President as detailed in Clause 3 of this policy.

Reference: NSWKA Constitution *Clause 2.8 Disciplining of members* **on the day of an incident**
Reference: NSWKA Constitution *Clause 2.9 Right of appeal of disciplined member*

2. **Managing disciplinary concerns raised on the day of an incident**

2.1 During an event any person may approach an event organiser or NSWKA committee member (i.e. NSWKA Executive Committee, or NSWKA Technical Committee) with any concerns they have over the actions of an individual or group (competitors, spectators, coaches or officials).

2.2 The Shinpan-Cho (or equivalent for other activities) will be approached to manage the concern, if the Shinpan-Cho is the subject of the complaint, the (next) most senior sensei(s) in the room shall be requested to manage the concern.

2.3 The Shinpan-Cho must decide on an appropriate action to address the concern;

Reference: Appendix 1 Penalty Descriptions
Reference: Appendix 2 Determining Severity and Penalties

2.3.1 **Resolves the concern:** Usually due to a misunderstanding or simple mistake, Shinpan-Cho to provide education and make a ruling if necessary. The person(s) raising the concern are to be advised that if they wish to take their concern further they can inform the NSWKA President in writing.

2.3.2 **No concern:** The Shinpan-Cho decides that there is no merit to the concern and takes no further action. The person(s) raising the concern are to be advised that if they wish to take their concern further they can inform the NSWKA President in writing.

2.3.3 **Mild or moderate concern:** Immediate action such as a warning or reprimand to the individual or group, in some cases the Shinpan-Cho may deem it necessary to remove an individual from further participation in the event. Further investigation and possible disciplinary action will take place after the event.

2.3.4 **Severe concern:** The Shinpan-Cho applies actions immediately; removing an individual from further participation or requesting they leave the venue or calling the police. Further investigation and possible disciplinary action will take place after the event.

NSWKA Policy: Managing Disciplinary Concerns

3. Managing disciplinary concerns raised after the day of an incident

3.1 Details of mild to severe concerns dealt with on the day on an event are to be sent in writing to the NSWKA President within three days of the event. If necessary the NSWKA President will follow up with the Shinpan-Cho to ensure written details of the situation are received in a timely manner.

3.2 New issues raised or issues a member feels were unsatisfactorily dealt with on the day of an event must be forwarded to the NSWKA President in writing, no action will be taken until details are received in writing from the person raising the concern.

3.3 The NSWKA Executive shall review the written submissions and decide to deal with compliant if they agree that a member or group refused or neglected to comply with a provision of the NSWKA Constitution or NSWKA policies or wilfully acted in a manner prejudicial to the objects of the NSWKA.

3.4 The NSWKA Executive may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature, this will be communicated back to the person raising the concern in writing.

3.5 If the NSWKA Executive decides to deal with the complaint, the NSWKA Executive must cause notice of the complaint to be served on the member or club concerned and must give the member or club at least 14 days from the time the notice is served within which to make submissions to the NSWKA Executive in connection with the complaint.

3.6 The NSWKA President may choose to appoint an investigating team, usually the relevant Technical Committee, to investigate the concern raised and report in writing back to the NSWKA President within three weeks, with their findings and recommendation for further action.

3.7 To assist with any investigation, the resource: '**PART A – AUSTRALIAN KENDO RENMEI MEMBER PROTECTION POLICY**' may be of help, particularly the position statements;

1. Child protection
2. Taking of images of children
3. Anti-discrimination and harassment
4. Sexual relationships
5. Pregnancy
6. Gender identity
7. Cyber bullying
8. Social networking sites

3.8 The NSWKA President shall consult with the NSWKA Executive, taking into account the written reports of the concern from the day of the event, the submission from the member or club and the recommendations from the investigating team, if appointed, before making a final decision.
The decision may be;

3.8.1 **No Action:** The Executive Committee team determines that the concerns raised do not merit further action.

3.8.2 **Apply a penalty:** The Executive Committee determines that the concern raised is significant enough to warrant an individual and/or group receive a penalty.

Reference: Appendix 1 Penalty Descriptions
Reference: Appendix 2 Determining Severity and Penalties

3.8.3 **Other action:** The Executive Committee determines that the concern was due to an accident, misunderstanding or miscommunication and that penalising an individual or group is not warranted. The Executive Committee may decide to take actions such as; member education, improvements to policy and procedures or changes to the timing or structure of a NSWKA event.

3.9 Before any penalty is communicated to an individual or group, the Executive Committee shall inform the relevant Technical Committee of the decision.

3.10 If the decision is to suspend or expel, as per the NSWKA Constitution Clause 2.8.4 a majority in both the Executive Committee and relevant Technical Committee is required to agree on that penalty.

3.11 All written notifications of concern, Shinpan-Cho report and records of recommendations and decisions made are to be forwarded by the NSWKA President to the NSWKA Secretary for archiving.

4. Appealing the decision of the NSWKA Executive

4.1 The NSWKA Secretary must, within 7 days after the action is taken, write to the member or group of the action taken, detailing the reasons given by the Executive Committee for having taken that action and of the member's right of appeal under clause 2.9 of the **NSWKA Constitution**.

4.2 As per the **NSWKA Constitution** *Clause 2.9* Right of appeal of disciplined member, the individual or group may appeal the decision of the Executive Committee by notifying the NSWKA Secretary within seven days after notice of the decision is served. The NSWKA Secretary must then notify the Executive Committee which is to convene a special general meeting of the association to vote on a resolution.

4.3 Any NSWKA member may choose to appeal a decision of the Executive Committee by contacting the NSWKA President in writing. The NSWKA President may decide to convene a special general meeting of the association to vote on a resolution. If the NSWKA President declines to convene a special general meeting, under clause 3.14.2 of the **NSWKA Constitution** the member may force a special general meeting on the requisition of at least 5% of the total number of NSWKA members i.e. names, AKR numbers and signatures.

Reference: NSWKA Constitution Clause 3.14 Special general meetings - calling of

4.4 Any penalty applied does not take effect until the expiration of the period within which the member or group is entitled to appeal against the decision (seven days) or if within that period the member exercises the right of appeal, unless and until the association confirms the decision under clause 2.9 Right *of appeal of disciplined member* of the **NSWKA Constitution** whichever is the later.

4.5 All written notifications of concern and managing member documentation, member or club submissions, recommendations from the investigating team, outcome notification and special annual general meeting minutes are to be provided to the NSWKA Secretary for archiving.

4.6 Any member has the right to approach the Australian Kendo Renmei (AKR) for their advice or support if they feel that the resolution resulting from the special general meeting is in breach of AKR policy.

NSWKA Policy: Managing Disciplinary Concerns

Appendix 1 Penalty Descriptions

Penalties that may be applied;

a. **Expulsion from the NSWKA**
    a. Permanent removal from membership of the NSWKA.
b. **Suspension from the NSWKA**
    a. A minimum period of three months up to a maximum of one year.
    b. Not allowed to attend any events (shiai, seminars and gradings) or club training.
c. **Suspension from entering events**
    a. A minimum period of three months up to a maximum of one year.
    b. Not allowed to attend any events (shiai, seminars and gradings).
    c. Allowed to attend club training.
    d. For incidents during an event an individual may be directed to leave an event and not return that day.*
d. **Suspension from entering Shiai**
    a. Within NSW or as a representative of NSW in interstate or intentional events.
    b. Measured in NSWKA Competition Season shiai on the calendar and the Australian Championships.
    c. Minimum of one shiai up to a maximum of six shiai.
    d. For incidents during an event an individual may be may be removed from further participating that day.*
e. **Formal warning**
    a. Delivered in writing by the NSWKA President and face to face by the NSWKA President or member appointed by the NSWKA President.
    b. A member who has received two formal warnings within the previous 12 months cannot receive a third formal warning and must receive a higher penalty.
f. **Removal of NSWKA Life Membership**
    a. Any member holding a NSWKA Life Membership who has received a suspension or expulsion penalty will in addition have their life membership revoked.
g. **Reporting to the Police**
    a. Instances of a breach of criminal law*

* These penalties may be applied by the Shinpan-Cho on the day of the event. Clause 2.3 of this policy.

NSWKA Policy: Managing Disciplinary Concerns

Appendix 2 Determining Severity and Penalties

To assist in determining an appropriate penalty behaviours are categorised as Mild, Moderate or Severe.

Mild: *Behaviour of a mild nature is **unlikely to** cause any long term injury, physical or psychological, to self or others, minor property damage.*

Penalties that may apply;

a. Formal warning.
b. Suspension from entering competition (1-2 competitions).
c. Suspension from entering events (1-2 months).
d. Removal of NSWKA Life Membership.

Behaviours that may justify these penalties include;

- Reckless behaviour leading to unintentional or near miss injury.
- Using offensive or obscene language with no specific person or group as a target.
- Showing disrespect towards the decision of shinpan and/or officials.
- Intimidating behaviour (as a person or a group) with no specific person or group as a target.
- Other breaches of the NSWKA Codes of Behaviour.

Moderate: *Behaviour of a moderate nature has the **potential to** cause long term injury, physical or psychological, to self or others, significant property damage.*

Penalties that may apply;

a. Removed from further participation in the event.*
b. Suspension from entering competition (3-6 competitions).
c. Suspension from entering events (3-5 months).
d. Removal of NSWKA Life Membership.

Behaviours that may justify these penalties include;

- Repeated offending of a mild nature (two times or more over 12 months).
- Dangerous behaviour leading to injury or near miss.
- Using offensive or obscene language targeting a specific person or group.
- Creating conflict over the decision of shinpan and/or officials.
- Intimidating behaviour (as a person or a group) targeting a specific person or group.
- Incidental use of performance enhancing or recreational drugs.
- Other breaches of the NSWKA Codes of Behaviour.

Severe: *Behaviour of a severe nature is **likely to** cause long term and sometimes permanent injury, physical or psychological, to self or others, extreme property damage.*

Penalties that may apply;

a. Removed from further participation in the event.*
b. Directed to leave the event and not return that day.*
c. Reporting to the Police.*
d. Suspension from entering events (6-12 months).
e. Suspension from the NSWKA (3-12 months).
f. Expulsion from the NSWKA.
g. Removal of NSWKA Life Membership.

Behaviours that may justify these penalties include;

- Repeated offending of a moderate nature (two times or more over 12 months).
- Physical altercations, not within a training or shiai situation.
- Extremely rough play which has or could have led to serious injury during training or competition.
- Impacting on the safety or wellbeing of a junior.
- Systemic use of performance enhancing or recreational drugs.
- Any other breaches of criminal law.

* These penalties may be applied by the Shinpan-Cho on the day of the event. Clause 2.3 of this policy.

NSWKA Disciplinary Procedures

1. Introduction

A. These procedures are intended for use at any competition, seminar, grading or social event, run or endorsed by the NSWKA within NSW, or in any situation where NSWKA members are representing NSW at an interstate or international event.

B. This Procedure is to be read alongside the **NSWKA Constitution**, (Clause 2.8 Disciplining of members, Clause 2.9 Right of appeal of disciplined member and Clause 2.10 Resolution of disputes).

C. The **NSWKA Codes of Behaviours**, which are encouraged to be on display at every NSWKA run and endorsed event, provides information directly to competitors, spectators, coaches and officials about the expectations of everybody at a NSWKA event.

D. During shiai hansoku is used to manage instances of poor behaviour. However, there may be instance where additional action is required, regardless if hansoku was applied or not.

2. Raising Concerns

A. Any NSWKA member may approach a NSWKA committee member (i.e. NSWKA Technical Committee, or NSWKA Executive Committee) with any concerns they have over the actions of an individual or group (competitors, spectators, coaches or officials).

B. A NSWKA member may request their own Club Sensei or another trusted person to support them when presenting their concern.

C. The complaint will be forwarded as soon as possible to the most senior executive member present that day to manage the complaint i.e. NSWKA President followed by NSWKA Vice President, Technical Committee Chair, other members of the Technical Committee. If none of these members are present the most senior sensei(s) in the room shall be informed.

3. Taking immediate action

A. The member managing the complaint must decide if the concerns are severe enough to warrant immediate action and apply appropriate measures.

B. **Appendix 1 Severe Concerns and Appropriate Actions** (pg. 3) lists severe concerns and actions

C. Within a week of this incident the person raising the concern must in writing detail the concern and email it to the NSWKA President. The member managing the concern on the day must also detail their understanding of the concern and their reasoning for the immediate action they chose to apply.

D. The NSWKA President will follow up any individuals who have not provided details in writing within the week.

E. If the member managing the complaint decide that the concern raised does not warrant immediate action, they should recommend the member raising the concern approach the NSWKA President if they wish to take it further.

4. Concerns raised that do not require immediate action

A. For situations the most senior executive member present assesses as not severe enough to warrant action on the day; within a week of this incident the person raising the concern must in writing detail the concern and email it to the NSWKA President.

B. No action will be taken until the concern is received in writing from the member raising the concern.

C. The member receiving the concern on the day must also detail their understanding of the concern and email it to the NSWKA President within a week of the incident.

D. The NSWKA President shall appoint an individual or small group, usually the Technical Committee to investigate the concern raised and make an initial recommendation of a penalty. **Appendix 2 Penalty Descriptions** (pg3) and **Appendix 3 Determining Severity and Penalties** (pg4) will assist the investigation group make their recommendation.

E. The process for applying penalties are detailed in the **NSWKA Constitution**, (Clause 2.8 Disciplining of members, Clause 2.9 Right of appeal of disciplined member and Clause 2.10 Resolution of disputes).

5. Penalties for Clubs, Teams, Coaches and Sensei

A. When attending events the whole club or team lead by their Sensei/Coach is expected to adhere to Codes of Behaviour and pull individuals into line if they overstep. So in some circumstances a penalty may be applied to a whole club or team or the Coach/Sensei even if some individuals had no direct involvement in the incident.

Appendix 1 Severe Concerns and Appropriate Actions

To be applied immediately on the day of the incident.

Severe concerns include;

a. Physical altercations which have or could have led to serious injury
b. Significant verbal abuse or harassment
c. Any concerns relating to the safety or wellbeing of a junior
d. Use of performance enhancing or recreational drugs
e. Any other breaches of criminal law

Immediate action options are;

a. Calling the police
b. Requesting that the person leave the venue and not return to the event
c. Withdrawal from further participation but allowed to remain at the event

Appendix 2 Penalty Descriptions

Penalties that may be applied after investigation of the incident;

a. Expulsion from the NSWKA
    a. Permanent removal from membership of the NSWKA.

b. Suspension from the NSWKA
    a. A minimum period of three months up to a maximum of one year.
    b. Not allowed to attend any events (shiai, seminars and gradings) or club training.

c. Suspension from entering events
    a. A minimum period of three months up to a maximum of one year.
    b. Not allowed to attend any events (shiai, seminars and gradings).
    c. Allowed to attend club training.

d. Suspension from entering Shiai
    a. Within NSW or as a representative of NSW in interstate or intentional events.
    b. Measured in NSWKA Competition season shiai on the calendar and the Australian Kendo Championships.
    c. Minimum of one shiai up to a maximum of six shiai.

e. Formal warning
    a. Delivered both face to face and in writing by the NSWKA President or member appointed by the NSWKA President.
    b. A member who has received two formal warnings within the previous 12 months cannot receive a third formal warning and must receive a higher penalty.

f. Removal of NSWKA Life Membership
    a. Any member holding a NSWKA Life Membership who has received a suspension or expulsion penalty will in addition have their life membership revoked.

Appendix 3 Determining Severity and Penalties

To assist in determining an appropriate penalty behaviours are categorised as Mild, Moderate or Severe.

Mild: *Behaviour of a mild nature is unlikely to cause any long term injury, physical or psychological, to self or others.*

Penalties that may apply;

a. Formal warning
b. Suspension from entering Shiai (1-2 Shiai)
c. Removal of NSWKA Life Membership

Behaviours that may justify these penalties include;

- Reckless behaviour leading to unintentional or near miss injury
- Using offensive or obscene language with no specific person or group as a target
- Not respecting the decision of shinpan and/or officials
- Intimidating behaviour (as a person or a group) with no specific person or group as a target
- Other breaches of the NSWKA Codes of Behaviour

Moderate: *Behaviour of a moderate nature has the potential to cause long term injury, physical or psychological, to self or others.*

Penalties that may apply;

a. Suspension from entering Shiai (3-6 Shiai)
b. Suspension from entering events (3-5 months)
c. Removal of NSWKA Life Membership

Behaviours that may justify these penalties include;

- Repeated offending of a mild nature (more than two times over 12 months).
- Dangerous behaviour leading to injury or near miss.
- Using offensive or obscene language targeting a specific person or group.
- Intimidating behaviour (as a person or a group) targeting a specific person or group.
- Incidental use of performance enhancing or recreational drugs.
- Other breaches of the NSWKA Codes of Behaviour

Severe: *Behaviour of a severe nature is likely to cause long term and sometimes permanent injury, physical or psychological, to self or others.*

Penalties that may apply;

a. Suspension from entering events (6-12 months)
b. Suspension from the NSWKA (3-12 months)
c. Expulsion from the NSWKA
d. Removal of NSWKA Life Membership

Behaviours that may justify these penalties include;

- Repeated behaviour of a moderate nature (more than two times over 12 months).
- Physical altercations, not within a training or shiai situation.
- Extremely rough play which has or could have led to serious injury during training or shiai.
- Impacting on the safety or wellbeing of a junior.
- Systemic use of performance enhancing or recreational drugs.
- Any other breaches of criminal law.