



# CONCILIATION AGREEMENT

## Australian Underwater Federation and Underwater Hockey Australia

NST-E23-382418

**NST Division:** General – Conciliation (s25 *National Sports Tribunal Act 2019*)

### 1. Participants

This agreement is made between:

**Australian Underwater Federation (AUF)** (represented by Mr Graham Henderson, President, and Cathy Johnson, Federal Memberships Officer)

[president@auf.com.au](mailto:president@auf.com.au)

[cathy@auf.org.au](mailto:cathy@auf.org.au)

(Applicant)

and

**Underwater Hockey Australia (UHA)** (represented by Mr Chris Wright, Executive Director, and Stewart Parkinson, authorised representative)

[director@underwaterhockeyaustralia.org.au](mailto:director@underwaterhockeyaustralia.org.au)

[parkostew@gmail.com](mailto:parkostew@gmail.com)

(Respondent)

Together, 'the **Participants**'.

### 2. National Sports Tribunal

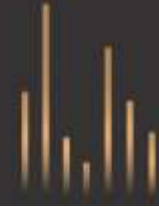
2.1 Where relevant, the terms, provisions, and agreements that are contained in this agreement shall also apply to and be binding upon the National Sports Tribunal (NST).

### 3. The NST's jurisdiction to deal with the dispute

3.1 The jurisdiction of the NST is engaged through the agreement of the Participants.

3.2 The dispute will proceed under section 25 of the *National Sports Tribunal Act 2019* (NST Act).

3.3 In accordance with section 25(1)(b) of the NST Act, the Participants have provided written agreement to refer the matter to the NST.



#### **4. Member appointed to deal with the dispute.**

- 4.1 The Participants accept the appointment of Ms Danielle Lorkin (nee Huntersmith) to conduct this conciliation (the Conciliator).

#### **5. Description of dispute**

- 5.1 The AUF and UHA fell into a dispute around the sacking of a coach appointed by UHA. Each organisation had a different viewpoint around how the issue was subsequently handled.
- 5.2 The AUF identified systemic problems with UHA dating back several years. The AUF response to this was to remove UHA as a commission of the AUF. The AUF is aware that some UHA executive members may or may not have been aware of this.
- 5.3 AUF believes that UHA seeks to be the National Sporting Organisation (NSO) for underwater hockey, in place of AUF. AUF does not see that as feasible and can see this causing a split in a small sport.
- 5.4 UHA is seeking to re-join AUF if there is independent conciliation to determine a way forward for the sport, each participant, and their members.
- 5.5 AUF claims that UHA has not responded to its request for details about UHA's concerns with being a commission of AUF.
- 5.6 AUF and UHA have made attempts to resolve their issues, but there is now an impasse on how the two parties can work together moving forward.

#### **6. Principal outcomes identified and agreed by the Participants.**

- 6.1 AUF and UHA are seeking conciliation to:
- a) resolve the various issues between them.
  - b) determine if UHA agrees to be reinstated as a commission of AUF, and
  - c) resolve any policy and constitution issues.

#### **7. Proposed Evidence to be presented by the Participants.**

- 7.1 The Participants are to lodge submissions, including an outline of their issues and desired outcomes, along with any evidence they seek to rely on to provide background for the conciliation in accordance with clause 8.

#### **8. Procedural Directions**

##### Pre-Conciliation:

- 8.1 The **Participants** to file with the NST Registry and serve on the other Participant their written submissions and any witness statement(s), evidence, and all other documents they wish to rely on by **5pm (AEDT) 5 January 2024**.



- 8.2 The **Participants** to file with the NST Registry and serve on the other Participants any written submissions and any witness statement(s), evidence, and all other documents they wish to rely on in reply by **5pm (AEDT) 12 January 2024**.

#### Conciliation

- 8.3 Independent and separate pre-conciliation conferences, if any, will take place during the week commencing Monday 15 January 2024, at a time suitable to the NST Member and the relevant participant.
- 8.4 The conciliation will take place at **2:00pm AEDT on Thursday 18 January 2024**, unless confirmed otherwise with the NST Member and the Participants.
- 8.5 The conciliation will be conducted by video conference, and where this is not possible, by teleconference. If the Participants agree, the conciliation can also be conducted in person.

#### **9. Costs of the process**

- 9.1 AUF and UHA have agreed to share the costs of the conciliation.
- 9.2 AUF has paid the \$500 Application Fee.
- 9.3 It is estimated, with a single NST Member sitting for one day, the total cost of the conciliation will be in the realm of \$800; this includes the Application Fee.
- 9.4 Accordingly, the Service Fee is estimated to be \$300. Subject to clause 9.5, at the conclusion of the matter, AUF and UHA have agreed that UHA will pay the remaining \$300 towards the Service Fee.
- 9.5 If the matter becomes more complex, the Chief Executive Officer of the NST may redetermine the total cost of the conciliation in accordance with Part 7 of the National Sports Tribunal Rule 2020 (NST Rule).

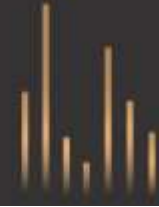
#### **10. Terms of the Conciliation**

##### Applicable law

- 10.1 The conciliation will be governed by the NST Act, the NST Rule, and the *National Sports Tribunal (Practice and Procedure) Determination 2021* (the NST Determination) as provided for by section 29 of the NST Act.
- 10.2 The law applicable to the merits of conciliation will be the law of the Australian Capital Territory.
- 10.3 The language of the conciliation will be in English.

##### Good faith and commitment to conciliation

- 10.4 The Participants agree to act in good faith in relation to the conduct of the conciliation.
- 10.5 The Participants each agree to cooperate with the Conciliator and with the other Participants with a commitment to negotiating towards a resolution of the dispute.
- 10.6 The Participants acknowledge each other's right to be heard and agree to behave courteously and appropriately during the conciliation.



- 10.7 Each of the Participants will comply with all reasonable requests made by the Conciliator that are intended to promote the efficient and expeditious resolution of the dispute.
- 10.8 The Participants acknowledge that the Conciliator may meet with each of the Participants independently and separately prior to and during the conciliation.

Appointment, conduct and replacement of Conciliator.

- 10.9 The Participants agree to the allocation of the NST Member by the CEO of the NST.
- 10.10 The allocated NST Member will only be replaced in exceptional circumstance upon direct application to the CEO of the NST.
- 10.11 The Parties acknowledge that the NST Member, as conciliator, will take an active and advisory role throughout the conciliation, advising Parties on the factual and legal issues in dispute, providing opinions as to the strengths and weaknesses of the Participants' positions, and offering advice regarding possible outcomes.

Confidentiality and inadmissibility

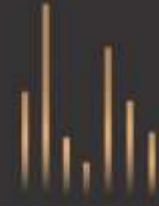
- 10.12 Pursuant to section 79(1) of the NST Determination, the conciliation is to be held in private.
- 10.13 The Conciliator and the Participants agree to keep confidential all information and documents concerning the dispute which are disclosed during the course of the conciliation. Any disclosures, exchanges and all aspects of any communication occurring within the conciliation shall be "without prejudice".
- 10.14 Any information disclosed or provided by a Participant to the Conciliator on a confidential basis will be kept confidential by the Conciliator and will not be disclosed by the Conciliator to any of the other Participants except by consent of the Participant disclosing or providing the information.
- 10.15 The Participants acknowledge that nothing said, or done, or provided by way of submissions in the conciliation will be admissible in any other process in the NST, or in any court.
- 10.16 Except to the extent necessary to prepare a Settlement Agreement, neither the Conciliator, nor a Participant in the conciliation, is to make a record or transcript of the conciliation (Section 79(2) of the NST Determination).

Settlement Agreement

- 10.17 In the event that the dispute is settled during the conciliation, the terms of the settlement shall be reduced to writing and signed by the Participants, or their authorised representatives, and the Conciliator prior to the end of the conciliation (Settlement Agreement).

Termination and agreement to proceed to arbitration.

- 10.18 The execution of a Settlement Agreement by the Participants and the Conciliator shall be deemed to terminate this conciliation with immediate effect.
- 10.19 The Conciliator may terminate the Conciliator's involvement in the conciliation if, after consultation with the Participants, the Conciliator draws the conclusion that the Conciliator is unable to assist the Participants to achieve resolution of the dispute. Upon the termination of the Conciliator's involvement in the conciliation, this conciliation shall be terminated with immediate effect.



10.20 Any Participant may terminate the conciliation at any time, after due and proper consultation with the Conciliator.

10.21 If the dispute is not resolved, the Participants may agree to proceed to arbitration in the NST.

10.22 The Conciliator shall report the outcome of the conciliation to the CEO of the NST.

Intention to be bound.

10.23 The Participants intend by their signing of this agreement to be bound by these terms, and to resolve or otherwise the matter under the jurisdiction of the NST.

10.24 Where a Participant notifies the NST that they seek to terminate the conciliation pursuant to clause 10.20, that Participant accepts that, at the NST CEO's discretion, they may be liable for the costs of the conciliation (as referred to in clause 9) and that such costs are recoverable as a debt by the NST.

10.25 By signing this agreement, you confirm that you are authorised to negotiate and enter into a binding Settlement Agreement on behalf of a Participant to the dispute and for that Participant to be bound by the outcome of a Settlement Agreement.

Participant: Australian Underwater Federation

Name: Graham Henderson

Signature:



Date: 20 December 2023

Participant: Underwater Hockey Australia

Name: Chris Wright

Signature:



Date: 23 January 2024