

PROTESTS and JURY of APPEAL

PROTESTS

A Protest gives Team Managers, Coaches and Competitors an opportunity to appeal a disqualification, the reason why a swimmer was debarred from competing, the result of a race or any other issue which has had a negative impact on that competitor. The process provides an opportunity for the Referee, and subsequently a Jury of Appeal, to review a decision based on any information that is provided that may lead to a different decision.

APPLICABLE RULES

Swimming NSW General Rule 23 defines the rules applicable to Protests.

“GR23.1 Protests are possible:

- a) If the rules and regulations for the conduct of the competition are not observed*
- b) If other conditions endanger the competition and (or swimmers), or*
- c) Against the decision of the Referee, however, no protests shall be allowed against a decision of fact.*

“GR23.2 Protests must be submitted;

- a) To the Referee*
- b) In writing*
- c) By the responsible team leader only*
- d) Together with a deposit of \$100.00, and*
- e) Within thirty (30) minutes following the conclusion of the respective event.*

If conditions causing a potential Protest are known before the competition, the Protest must be lodged prior to the starter's signal being given.”

“GR23.3 All protests shall be considered by the Referee. If he rejects the protest, he must state the reasons for his decision. The protestor may appeal against the rejection to the Jury of Appeal whose decision shall be final.

The Team Manager shall be considered as the “team leader”. Where there is no Team Manager, the “team leader” can be the Coach, the Swimmer or a parent / guardian or responsible adult.

A decision of fact can be considered as “an observation by an experienced (knowledgeable) person who believes that what he has seen is a true and real situation”.

Whilst rule GR23. 1 (c) states that “... *no protests shall be allowed against decisions of fact*” this does not mean that a Protest cannot be lodged against an infraction that the Referee considers to be a decision of fact.

Note that GR23.4 applies “*If a protest is rejected the deposit will be forfeited to the management body of the competition. If the protest is upheld, the deposit will be returned.*”

PROTEST BEFORE AN EVENT

Where a Protest has been lodged before an event, the Referee must always consider the potential impact to the meet of attempting to determine the outcome before the start of the event.

The Referee should gather all the Swimmers before the event starts and advise them:

- The event will be swum under Protest,
- The result will not be finalized until the Protest has been decided.

This allows the meet to continue, mitigating any time pressure to determine what might be a complex matter. The Referee must use their best endeavours to determine the Protest on the day it is received.

PROCESS OVERVIEW

Where the Referee has received notice of an infraction and has determined that disqualification is warranted the reporting official must complete and sign an infraction report detailing the event, lane number and the infraction.

The written infraction report is reviewed by the Referee, and if in order, signed by the Referee. The following actions are taken:

1. The Control Room Supervisor or Chief Recorder (as applicable) is advised of the disqualification,
2. When the Infraction Report has been completed and signed, it is passed to the Control Room Supervisor / Chief Recorder,
3. The Infraction Report is passed to the Announcer to advise the competitors of the disqualification,
4. The Announcer makes the announcement, noting the time of the announcement on the Infraction Report, and returns the notated Report to the Control Room Supervisor / Chief Recorder,
5. If an enquiry is made on the reasons for the disqualification, it may be necessary for the Referee to hand over to the alternate Referee or another qualified official, so that the Referee can engage with the party making the enquiry and then review the details and circumstances of the Infraction,

The Referee should ensure the Control Room Supervisor / Chief Recorder is advised where a protest may be pending, with a view to withholding the results until the matter is resolved.

6. If a protest is lodged, it must be made in writing within 30 minutes of the completion of the event and accompanied by a \$100.00 deposit. Note that it is not necessary for the protest to be lodged on a Protest Form, but such forms greatly assist with the process,
7. The Referee must consider the protest and if he or she rejects the protest he or she must state the reasons for his decision. In making their decision the Referee may:
 - a. Consult with all Officials who may have observed the infraction and/or
 - b. Use any and all additional information available,
before handing down a decision
8. Videos may be submitted as evidence and the Referee may consider these.

9. The Protest outcome will be either Upheld (with the deposit refunded), Dismissed or referred to the Swimming NSW Board.
10. The Appellant and the Technical Manager or Meet Director (as applicable) shall be advised by the Referee of the decision. Where a Protest is upheld the \$100.00 deposit shall be returned to the Appellant. Where a Protest is dismissed, the Appellant will be advised of the right to have the decision of the Referee considered by a Jury of Appeal and directed to the Technical Manager / Meet Director for any further action.

NOTE: No new material is permitted to be introduced by the Appellant when electing to progress a Protest that has been dismissed by the Referee, to a Jury of Appeal.

For the Referee, reviewing a decision under protest is an opportunity to reassess all relevant circumstances and evidence relating to the observed infraction, the infraction reporting process and all available information and data.

Some considerations:

- Is there a genuine reason raised in the protest that was not considered or known about originally?
- Could a different decision have been made with the review of the information and evidence available?
- Admission of an error of judgment is acceptable and an opportunity to correct any error is a positive outcome.

JURY OF APPEAL

The organisers of the meet appoint the Jury of Appeal. It should consist of three people all of whom have a good knowledge of the rules.

It is a panel which **reviews** the Referee's decision.

Evidence which has not previously been made available to the Referee should not be considered, but if the Referee had not considered or rejected some evidence that was offered to him then the Jury of Appeal may take it into account.

It must be conducted under the terms of "Natural Justice" (procedural fairness), which is basically that the appeal is conducted as an informal, round table hearing. There must not be any evidence or discussion "in camera", with the accused and accuser (protester and protestee) being in attendance at all times. It is important to note that if the appellant is a minor then he/she must be accompanied by an adult. If a parent or guardian is not available, then a suitable adult such as his/her team leader would be satisfactory.

A chairperson is appointed to conduct the hearing. Guidelines for conducting a Jury of Appeal would be.

1. The Chairperson of the Jury is advised by the Technical Manager/Meet Director of an appeal and is handed all documentation. That is the Infraction Report (where appropriate), the letter of protest from the team leader, the Referee's response and/or any other data relating to the appeal.
2. The jury convenes and reads all the documents.
3. They should consider if there are any grounds for an appeal. If not, they should advise the protestor and dismiss the appeal.
4. If they consider that there are grounds, or if they want more information they should call the appellant, his/her team leader and the officials involved into the Jury Room. The jury should check that the appellant is aware of the relevant rules and that there is no misunderstanding regarding the Referee's decision to dismiss the protest.
5. The reporting official should be asked to explain the infringement as he observed it.
6. The appellant, team leader and the Jury are allowed to ask questions if clarification is required.

NOTE: Although the members of the jury, the protestor and his/her team leader are allowed to ask questions, cross examination is not allowed.

7. If necessary, the Referee can be asked to explain the reason for the dismissal of the protest in the first place.
8. All parties should be asked to leave the Jury Room. The Jury should consider the matter in accordance with the rules and give their decision in writing, with an explanation for the decision.

9. The Referee and the appellant must be advised in writing of the decision, and the Referee should pass on the information to the Chief Recorder, who would take any necessary actions in regard to the results.
10. Advise the Technical Manager/Meet Director (or the Organising Committee's representative) of the decision so that the appropriate actions can be taken in relation to the "Deposit" and other necessary reporting.