



Gymnastics
Australia

BY-LAW 4

DISCIPLINE & APPEALS BY-LAW

This By-law is made by the Gymnastics Australia (GA) Board under Clause 11.2(b) of the GA Constitution. It is binding on GA and all members of GA.

Approved by the GA Board on 29 April 2007

This By-law is made by Gymnastics Australia (GA) pursuant to clause 11 of the Gymnastics Australia Constitution

1. DEFINITIONS AND INTERPRETATION

In this By-law, unless the context otherwise requires, the following terms and expressions shall have the following meanings:

Board	means the Board of GA as constituted from time to time
Discipline Committee	means the committee constituted pursuant to this By-law
Member	means a member for the time being under clause 5 of the GA Constitution.
Gymsport	means any one or more of the gymnastic disciplines for which GA is the national peak body.
Team Official	means any person appointed to assist a team or squad which is subject to the authority of GA whether paid or unpaid including but not limited to coaches, managers, trainers, physiotherapists and medical staff.

All other defined terms and expressions shall have the same meaning as in the GA Constitution. In the event of any conflict, the definition in the GA Constitution shall prevail.

2. APPLICATION OF BY - LAW

This By-law will apply to the following parties:

- (a) to any Association Member which has no disciplinary provisions in place;
- (b) to Gymnasts and Team Officials participating or assisting in events, teams or squads who are not immediately subject to the authority of GA, subject to the relevant Gymnast or Team Official having exhausted all disciplinary and appeal procedures available via his/her Association Member;
- (c) in respect of any disciplinary matter which is referred from an Honorary or Association Member and which in the opinion of the President of GA or his nominee is an appropriate matter for GA to determine.

3. DISCIPLINE OF MEMBERS

3.1 The following matters may be referred for determination by a Discipline Committee:

- (a) An allegation in writing (not being vexatious, trifling or frivolous as determined by GA in its complete discretion) by a Complainant (who need not be a Member) that a Member has:
 - (i) breached, failed, refused or neglected to comply with:
 - (x) a provision of any Agreement, By-law of GA other than a Policy or By-law referred to in paragraph 3.1(b), or
 - (y) any resolution or determination of the Board or other entity exercising delegated authority of GA;
 - (ii) acted in a manner unbecoming of a Member or prejudicial to the objects and interests of Gymnastics Australia, an Association Member and/or a Gymsport; or
 - (iii) brought GA, an Association Member or a Gymsport into disrepute;
- (b)
 - (i) The Discipline Committee shall not have any jurisdiction in respect of a breach of a Policy or By-law which has its own process for the determination of alleged breaches of that Policy or By-law or in any other case until the person making such an allegation has exhausted all avenues of complaint and appeal available under the policies and By-laws of the relevant Association Member.
 - (ii) A determination of a Disciplinary Committee of an Association Member shall not be appealable to Gymnastics Australia pursuant to this By-Law unless the Association Member has failed to comply with its own rules with a consequent denial of natural justice to a party or parties.
- (c) Any Member against whom such an allegation is made ("the **Defendant**") will be subject to the procedures, penalties and appeal mechanisms set out in this Disciplinary and Appeals By-law.

3.2 Referral to Discipline Committee

- (a) The GA Board on its own motion or upon the recommendation of the CEO, shall determine whether disciplinary proceedings ("**Proceedings**") are to be commenced and if the Board shall so determine the allegations will be referred to the GA Discipline Committee ("**Committee**").+

- (b) Subject to this By-law, and unless the Board in its complete discretion considers it appropriate the Discipline Committee shall be comprised of 3 persons, being:
 - (i) a person with legal training and experience in dispute resolution or suitable experience in the process of determining disciplinary matters within a sport who will act as Chair of the Committee
 - (ii) a person with experience and understanding of the particular gymnastics discipline with which the Defendant is connected and with suitable skills to be a member of the Committee; and
 - (iii) A technical member or a former elite gymnast.
- (c) The Discipline Committee shall be appointed by the GA Board for such time and for such purposes as is required under this By-law.
- (d) Any such referral to a Discipline Committee shall be in writing and accompanied by any documentary or other evidence that is available to the Board at the time of the referral. The referral shall be clear and unambiguous, stating precisely the matter to be determined.
- (e) A person who is so connected with any of the parties such that he or she is or may be seen to be other than impartial shall not participate in the determination of the proceedings in any way.
- (f) On receipt of the referral, the Chair of the Discipline Committee shall, in consultation with the remaining members of the Discipline Committee, determine an appropriate date, time and place for a hearing by the Discipline Committee. The hearing shall be no less than 14 days and no more than 21 days from the receipt of the referral, unless the matter is deemed to require urgent attention, in which case the Discipline Committee may in its discretion nominate an earlier date, having regard to matters such as the availability of key witnesses and timing of relevant competitions, amongst other things.
- (g) The Chair of the Discipline Committee shall notify the Defendant of the details of the allegations made against the Defendant and shall notify all parties of the date, time and place of the hearing and, in addition, shall advise that each party to the proceedings has the right:
 - (i) to make written submissions not less than 5 days prior to the date of the hearing; and
 - (ii) to appear at the hearing and be represented by a person who is not legally qualified (as determined in the Discipline Committee's discretion).
 - (iii) to be represented by a person who is legally qualified at the discretion of the Discipline Committee upon submissions.

- (h) In the case of a minor it is a requirement that the minor attend the Discipline Committee hearing with parent, guardian or prior nominated other adult.
- (i) All persons appearing up before the Discipline Committee shall be entitled to legal representation and shall bear his/her/its own costs of same.
- (j) Subject to this By-law, the Discipline Committee shall conduct the hearing as it sees fit, and in particular shall not be bound by rules of evidence, or unnecessary formality but must observe the principles of natural justice at all times.
- (k) The parties must be advised of the hearing procedure determined by the Discipline Committee at or before the commencement of the proceedings and such hearing may be conducted in person, by teleconference or by video conference or as the parties agree with Discipline Committee.
- (l) The Discipline Committee may hear such evidence as it thinks fit, and all persons subject to this By-law shall be compelled to provide such evidence as they are able. The Discipline Committee may adjourn the hearing for a reasonable time if this is considered necessary.
- (m) If the Discipline Committee, having taken into account the written and verbal submissions and other evidence of the parties, considers the allegations sustained, the Discipline Committee may impose such penalty as it considers appropriate in accordance with paragraph 3.4; otherwise the proceedings shall be dismissed.
- (n) If a decision cannot be given immediately after the hearing, the parties must be advised of the time and place at which the decision will be given. The decision, any penalty, the reasons for the decision and notice of the Complainant's appeal rights shall be given in writing and signed by the Discipline Committee Chair, as soon as practicable following the determination of the Discipline Committee.

3.3 Penalties

Penalties which may be imposed, subject to sub paragraphs (g) and (h) hereof include but are not limited to:

- (a) a reprimand;
- (b) a fine, payable on such terms as the Discipline Committee sees fit save that no fine shall be levied against athletes and the maximum fine for any other person or an Association Member shall be no more than three times the Association Member affiliation fee with GA as at the date of the Grievance hearing.

- (c) suspension of membership of GA or such activities, on such terms and for such period (up to 24 months) as the Discipline Committee see fit;
- (d) exclusion from a particular activity, event or events;
- (e) disqualification for such period as is considered fit; or
- (f) any other penalty considered appropriate in the circumstances;
- (g) in the case of an Association Member the Discipline Committee may only make a recommendation to GA in general meeting that the Association Member's membership of GA be suspended or otherwise affected,
- (h) When considering the question of any penalty to be imposed, the Discipline Committee shall consider whether the conduct of the Defendant which has led to the allegations against the Defendant was intentional, reckless or inadvertent.

3.4 Effect of Penalty

- (a) The Defendant may continue to participate in the Gymsports (whether as an athlete, administrator, official or administering body) until and unless there has been an adverse determination of the Discipline Committee which precludes the Defendant from doing so.
- (b) Where a person is suspended by the Discipline Committee under this By-law, all privileges in GA shall be forfeited during the period of the suspension.
- (c) Notice of any penalty, suspension or disqualification imposed shall be given by the Chief Executive Officer of GA to all Association Members, and shall be recognised by all Association Members immediately upon receipt of such notice. For the avoidance of doubt all persons bound by this By-law consent to such notice being given pursuant to this paragraph.

3.5 Appeals

- (a) An appeal from a decision of the Discipline Committee shall only be made on the grounds that:
 - (i) there has been a breach of the rules of natural justice; or
 - (ii) the Discipline Committee has failed to properly comply with its obligations under this By-law
 - (iii) the penalty imposed is unreasonable.

- (b) An appeal shall be determined by the GA Appeals Commissioner, who shall be a person who has legal qualifications in dispute resolution or suitable experience in the process of determining disciplinary matters within a sport, acting alone and who shall not have been a member of the Discipline Committee which made the decision appealed against.
- (c) A person who wishes to appeal a decision of the Discipline Committee shall at the time of lodging a written Notice of Appeal lodge with the Chief Executive Officer the sum of \$500.00 in clear funds which may be refunded in the discretion of the Appeals Commissioner at the conclusion of the appeal.
- (d) The decision of the Appeals Commissioner shall be final and not subject to further appeal.
- (e) Subject to this By-law, the proceedings of the Appeals Commissioner in determining the appeal shall be the same as or similar to those in respect of the Discipline Committee set out above, with such variations as are appropriate or necessary to give full effect to this By-law.
- (f) The hearing by the Appeals Commissioner is not a rehearing of the matter, but a hearing of the issue under appeal only. Legal representation shall be available to any party to the appeal. Any dispute as to the application of this By-law shall be determined by the Appeals Commissioner in his or her complete discretion.
- (g) The Appeals Commissioner may confirm the penalty or adverse finding of the Discipline Committee, or may decide not to confirm such penalty but instead impose an alternate penalty available under paragraph 3.4 (with such incidental variations as are necessary or appropriate to give full effect to this By-law), or may revoke the penalty or adverse finding of the Discipline Committee.
- (h) The effect of the penalty imposed by the Appeals Commissioner shall be the same as set down in paragraph 3.5 above, with such incidental variations as are necessary or appropriate to give full effect to this By-law.
 - (i) If the Appeals Commissioner revokes the penalty or adverse finding of the Discipline Committee the Bond shall be refunded in full to the person appealing within 14 days of the determination by the Appeals Commissioner.
 - (ii) In all other appeals the Appeals Commissioner may in his or her complete discretion determine what, if any, portion of the Bond shall be refunded to the person appealing within 14 days of the decision of the Appeals Commissioner provided the Appeals Commissioner is satisfied that the appeal was not frivolous in which case the Bond will be forfeited in full.