



# **DISCIPLINARY ACTION GUIDE**

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This publication is intended for information purposes only.

The Greyhound Welfare & Integrity Commission is committed to providing procedural fairness in its administration of the *Greyhound Racing Act 2017* and is bound by legislation rather than specific details provided in this publication.

## The Commission's power to take disciplinary action

The *Greyhound Racing Act 2017* ("the Act") empowers the Commission to take disciplinary action. Section 58(1) of the Act states that the Commission may take disciplinary action against a person if they have contravened the Act, the *Greyhound Racing Regulation 2019*, the NSW Greyhound Welfare Code of Practice, or the Greyhound Racing Rules.

The Commission may take disciplinary action against a greyhound racing industry participant. A 'greyhound racing industry participant' is defined in the Act and includes:

- Owners (including Syndicate and Partnership Managers)
- Breeders
- Attendants
- Trainers
- Bookmakers
- Race officials
- Promoters
- Race officials
- Greyhound health assistants
- Trial track proprietors
- Artificial insemination technicians.

Participants are required to register with the Commission. Disciplinary action against a participant may result in a fine, suspension, disqualification, or a condition being placed on their registration.

The Commission may also take disciplinary action against people who are not registered participants, if they contravene the Act, the Greyhound Racing Regulation 2019, the Code of Practice or the Greyhound Racing Rules. Disciplinary action against an unregistered person may result in a fine or warning off.

## The disciplinary action process

This section outlines the process the Commission uses when taking disciplinary action, and what a participant can expect if they face disciplinary action.

This section includes:

- Notice of Disciplinary Action (NDA) (issued by Stewards & Inspectors)
- Prohibited Substances
- Conduct or welfare matters
- Having your say
- Penalties

### Notices of Disciplinary Action

The Act requires the Commission to give someone notice of any disciplinary action that it intends to take against them.

If a Steward or Inspector issues a fine to someone for a rule breach, they will issue a Notice of Disciplinary Action. These are usually issued by Stewards at race meetings, and relate to

rule breaches such as weight variations, or failure to produce ID card. Inspectors will usually issue these in the course of a kennel inspection.

### **Prohibited Substances**

Where a prohibited substance is detected in a sample taken from a greyhound, the participant will receive a letter notifying them that a substance has been detected in their greyhound. The notice may be served via post or email, or sometimes by an Inspector or Steward who will visit the participant's property and conduct a kennel inspection.

If the sample is confirmed by a "B sample" test (that is, a second test) and a charge is to be laid, the participant will receive another letter. This second letter will be signed by the decision makers or, in serious cases, by the Directors or Commissioners. This second letter is called a Notice of Charge and Proposed Disciplinary Action. It will outline the charge and the proposed penalty and invite the person charged to respond, sometimes in writing or more often, by attending a hearing with the decision makers.

If the sample is not confirmed by the "B sample" test, the matter will be closed and the participant will be notified that no further action will be taken. If the sample indicates that the level of the substance is detected but falls below the threshold specified in the Rules, the participant may receive a formal warning.

### **Conduct or welfare matters**

If the charge relates to a conduct or welfare matter (that is, something that the person is alleged to have done or failed to do), the person will receive a letter signed by the decision makers. Where the matter is serious, the letter will be generally signed by the Commissioners or the Directors.

This letter is called a Notice of Charge and Proposed Disciplinary Action: it will detail the charge and the proposed penalty and invite the person charged to a hearing, or ask them to make submissions in writing.

The decision makers will then consider any submissions that are received. If the charge is proven, the person charged will receive a final letter called a Notice of Disciplinary Action that outlines the penalty to be imposed and provides information on how to appeal the decision if they wish to. If the charge is not proven, they will receive a letter that explains the outcome.

### **Notice of Charge and Proposed Disciplinary Action (NCPDA)**

A notification letter about a prohibited substance or a conduct or welfare matter is called a Notice of Charge and Proposed Disciplinary Action. This letter will explain:

- the charge;
- the particulars of the charge;
- the action that the Commission proposes to take (i.e. the proposed penalty); and
- how the person charged may respond to the charges brought against them.

More information about the decision makers can be found on page 12.

## Having your say

Principles of procedural fairness require the Commission to provide people with a reasonable opportunity to respond to any charge against them. This means that whenever the Commission proposes to take disciplinary action against someone, the person will be given a reasonable opportunity to respond to the charge against them.

A person who is charged may make written submissions (that is, provide a written response), or attend a hearing where they can speak to the charge and put their case. Hearings are usually conducted by telephone or video conferencing but in certain circumstances can be conducted in person, if the person charged requests this or the decision makers think that it is appropriate.

Where interim disciplinary action is to be imposed (that is, it is proposed that the person is to be immediately suspended, disqualified or warned off pending the outcome of an investigation), the person charged will usually be invited to make submissions within 3 days, or less if the circumstances require.

A decision will be made on the interim disciplinary action after the person charged has been provided notice in writing and given an opportunity to respond. Hearings are not usually conducted for interim matters because interim disciplinary action requires very prompt decisions, whereas it can take some time to arrange a hearing.

## Penalties

If a charge against a person is proven, a penalty will be imposed. The penalty may be a formal warning, fine, a suspension, disqualification, warning off or a condition imposed on a person's registration. If a fine is not paid, the person may be declared a 'defaulter'. A person who is declared a defaulter cannot participate in the industry.

In some cases, penalties may be suspended. A suspended penalty is like a bond – the penalty will not be enforced as long as the person does not commit any further relevant offences (that is, similar offences) during the specified time period.

Penalties are determined on a case-by-case basis. The penalty to be applied in each case is determined by consideration of the subjective factors relevant to the person charged, precedent and established principles of sentencing such as proportionality and deterrence, as well as reference to the Commission's Penalty Guidelines.

*'Precedent'* means that the Commission will consider the penalties that have been applied previously for similar offences. The purpose of using precedents is to ensure that similar offences result in similar penalties.

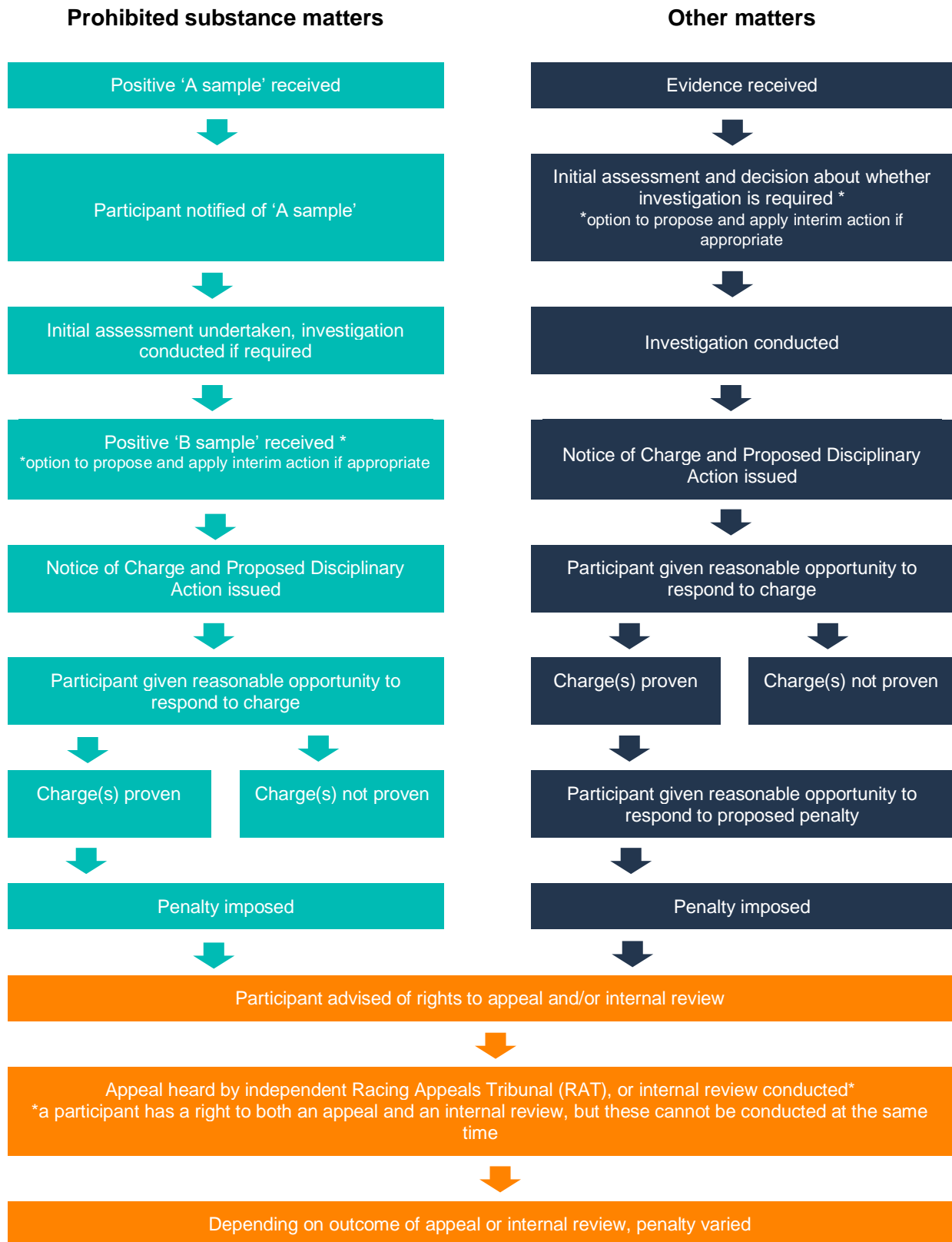
*'Proportionality'* means that the penalty should be in proportion to the offence. There are a number of factors to consider in this, such as the person's reasons for committing the offence and their disciplinary history. Because the circumstances surrounding each offence differ, a different penalty may be imposed.

*'Deterrence'* means that a penalty should be imposed in order to discourage the person from committing the offence again, and other people from committing it.

These different factors are considered together, and an appropriate penalty is decided. A person charged will usually be advised of the outcome at the hearing they attend and then will also receive a letter advising them that the charge has been proven and what penalty

has been imposed. Sometimes, matters will be finalised in writing only - usually if the person charged has asked for this.

## DISCIPLINARY ACTION PROCESS



## Interim disciplinary action

The Commission also has powers to impose interim disciplinary action – this means that the person is suspended, disqualified or warned off while an investigation or inquiry is undertaken and the disciplinary action is finalised.

This section explains why the Commission may take interim disciplinary action, and how this process works.

Interim disciplinary action may be imposed where the alleged breach presents a serious or imminent risk to animal welfare, racing integrity or the reputation of the greyhound racing industry, and the risk may be mitigated (that is, reduced) by interim disciplinary action.

Typical situations where interim disciplinary action may be taken include:

- Laboratory confirmation of a Permanently Banned Prohibited Substance in a greyhound owned or trained by a participant;
- A conviction, charge or investigation relating to a serious criminal offence;
- Evidence of serious misconduct or animal welfare breaches.

Where a breach that warrants interim disciplinary action occurs, an urgent meeting of the decision makers will be arranged. The decision makers will consider the evidence and decide whether interim disciplinary action should be proposed.

If interim disciplinary action is recommended, the Commission will issue a Notice of Charge and Proposed Disciplinary Action by email. This email will explain the reasons for proposing the interim disciplinary action and invite the person to make submissions (that is, explain) as to why the interim disciplinary action should not be imposed.

If no submission is received, the Panel will consider whether the interim disciplinary action should proceed based on the material available.

If the person charged makes a submission, the Panel (or the Directors) will consider what the person says and decide whether the proposed interim disciplinary action should be imposed. They may request further information to help them make a decision – if this happens, they will allow a reasonable time for the person charged to provide the information.

Once a decision has been made, the person charged will be notified within 2 business days. If interim disciplinary action is imposed, they will receive a Notice of Disciplinary Action.

A Notice of Disciplinary Action will explain:

- that the Commission has imposed interim disciplinary action;
- the date that the disciplinary action starts;
- the conditions of the disciplinary action (if there are any);
- how long the interim disciplinary applies for, usually until the substantive disciplinary matter is finalised; and
- the person's appeal rights if they disagree with the decision.

Charges relating to the substantive matter (that is, the original charge) will be issued as soon as practicable after the interim disciplinary action is imposed.

The interim disciplinary action will remain in place until a decision about the original charge is made, or the Commission's decision is altered on appeal. When this decision is made, any interim disciplinary action will be stopped.

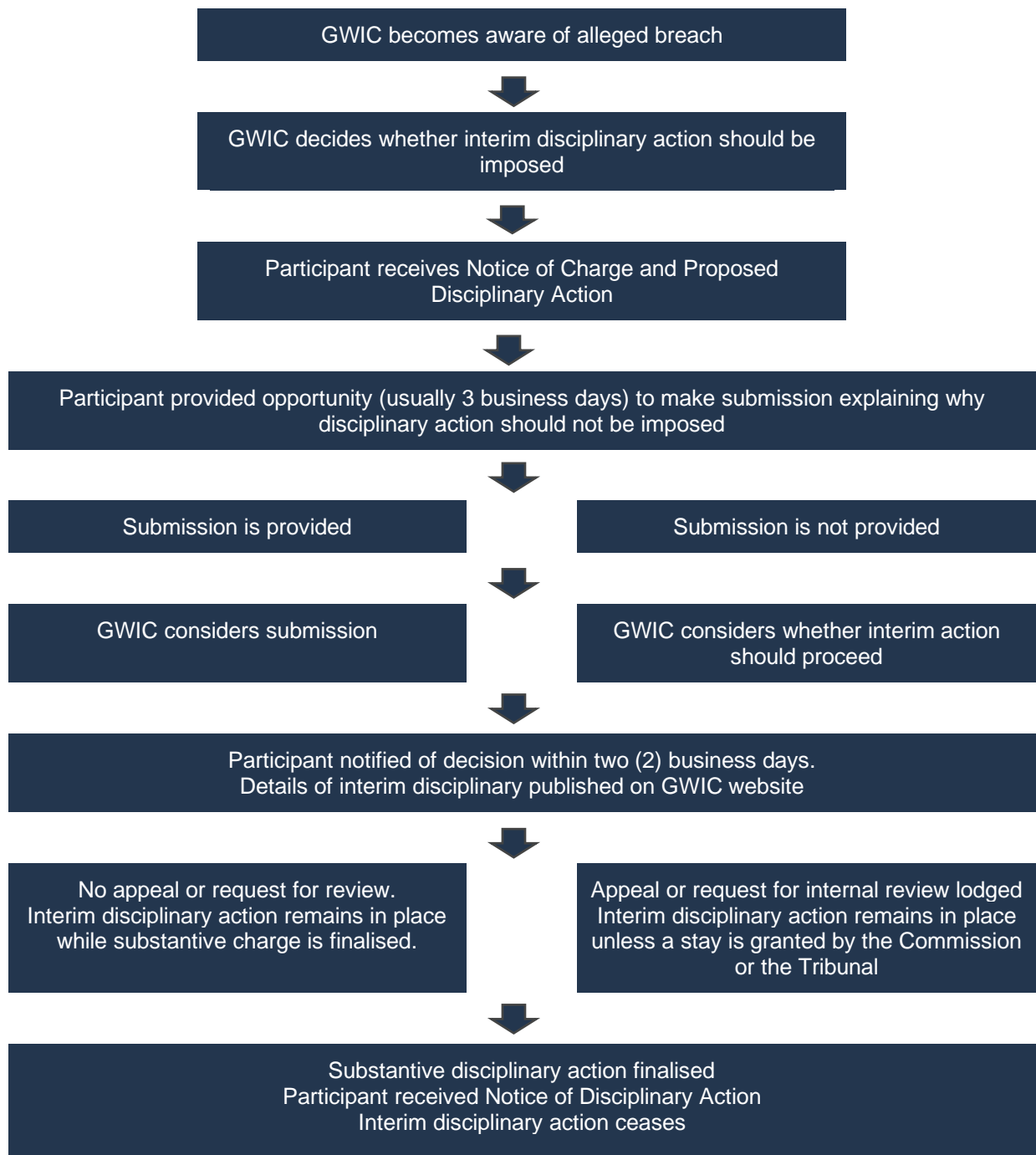
Anyone who is suspended, disqualified or warned off on an interim basis can request an internal review, or lodge an appeal with the Racing Appeals Tribunal. More information about appealing against a decision is available on page 13.

If an internal review is requested or an appeal is lodged, the interim disciplinary action will remain in place until the review or appeal is finalised, unless a stay is granted. More information about applying for a stay is available on page 13.

If the person is suspended, disqualified or warned off following the final hearing, the Commission will take any interim disciplinary action into account as 'time served' when deciding the final penalty.



# INTERIM DISCIPLINARY ACTION PROCESS



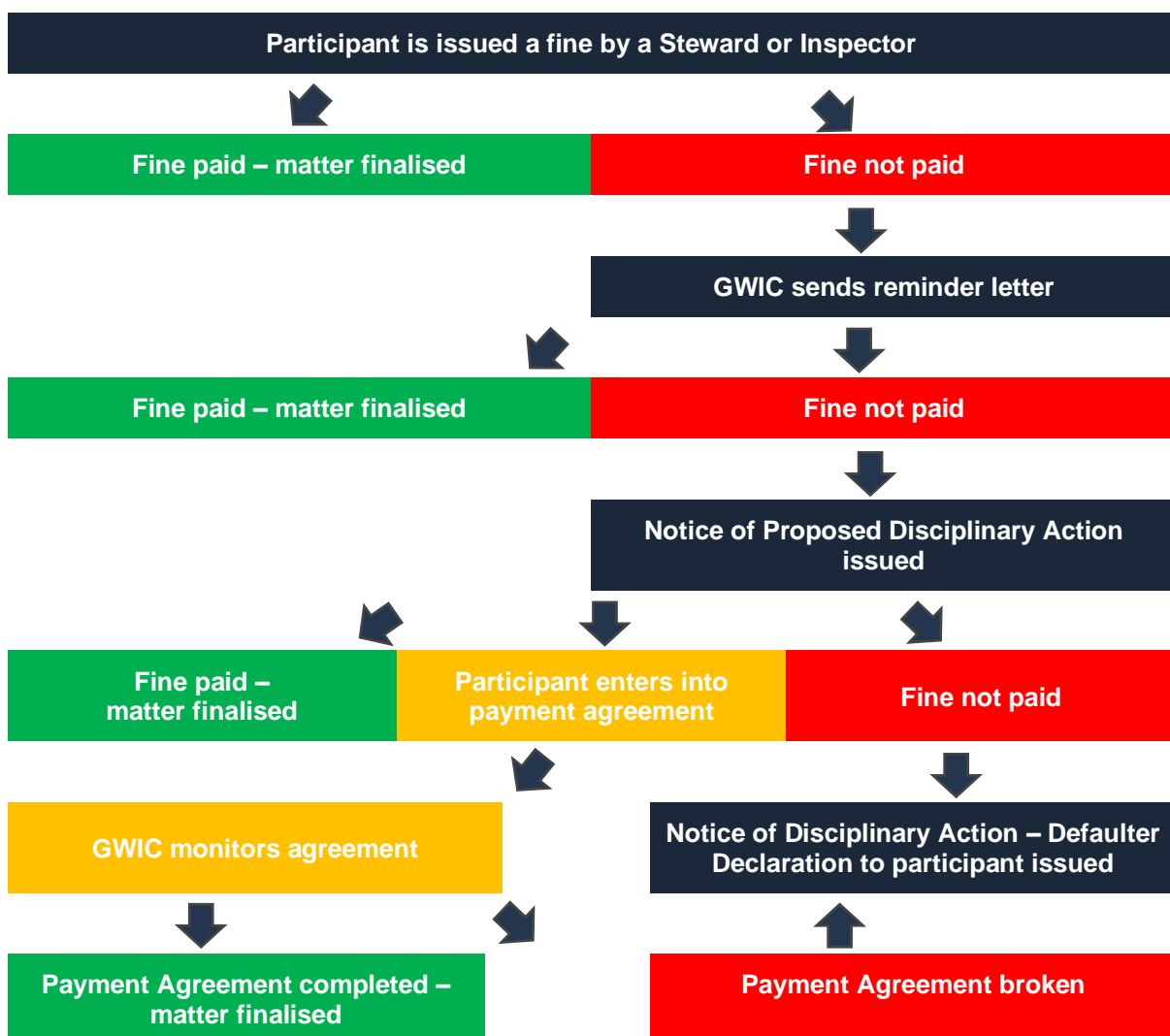
## Being declared a “defaulter”

Being declared a “defaulter” is a form of disciplinary action. A “defaulter” is a person who defaults on (i.e. doesn’t pay) their debts to the Commission.

If a participant fails to pay fines imposed by the Commission, they will receive a reminder letter. Anyone who is not able to pay a fine is encouraged to enter into a payment agreement to pay the fine off over time. But where a participant persistently fails to pay a fine, or defaults on a payment agreement, the Commission may take action. Where this occurs, the participant will receive a Notice of Proposed Disciplinary Action – Defaulter.

If the participant still does not pay the fines or enter into a payment agreement, they will be declared a defaulter. Defaulters are subject to restrictions similar to those that apply to participants who are disqualified, in that they cannot keep, train or race greyhounds.

The process followed when someone is declared a defaulter is set out below.



## Who makes the decisions about disciplinary action?

Decisions about disciplinary action are made by different officers within the Commission, depending on the nature and seriousness of the offence. The Commission’s Regulatory Delegations Manual sets out which decisions officers can make as part of their role.

### Fines issued by Stewards and Inspectors

Commission Stewards and Inspectors can issue a Notice of Disciplinary Action (“NDA”) in relation to breaches of particular racing rules. These are usually in the form of a fine. Stewards may issue a fine for certain offences that occur at race meetings (such as marring or weight variations), while Inspectors may issue a fine for breaches such as a failure to notify the Commission of required information about a greyhound, or failure to keep greyhound treatment records.

### Prohibited substances and other serious matters

Positive swab matters and other more serious breaches are dealt with by a panel of decision makers, depending on the level of penalty that is likely to be imposed if the charge is proven.

The following matters are usually dealt with by a panel of decision makers:

- positive swab (prohibited substance) where the penalty is likely to be less than 18 months’ suspension, disqualification or warning off
- conduct matters where the penalty is likely to be less than 18 months’ suspension disqualification or warning off
- defaults on payment of fines
- proposed interim suspensions.

The Commissioners usually act as decision makers in these matters:

- positive swab (permanently banned prohibited substance) matters where the proposed penalty is likely to be a suspension, disqualification or warning off of 18 months or more
- conduct matters where the proposed penalty is likely to be a suspension, disqualification or warning off of 18 months or more
- complex or sensitive investigations

The difference in who decides different kinds of matters is also outlined below:

Type of Disciplinary Action	Decision-maker
<ul style="list-style-type: none"> <li>• Notice of Disciplinary Action (Specific race-day Rule breaches)</li> </ul>	Stewards
<ul style="list-style-type: none"> <li>• Notice of Disciplinary Action (Specific Rule breaches)</li> </ul>	Inspectors
<ul style="list-style-type: none"> <li>• Notice of Charge and Proposed Disciplinary Action – Positive swab matters – where the penalty proposed is not likely exceed 18 months’ suspension, disqualification or warning off</li> </ul>	Decision-making Panel

<ul style="list-style-type: none"> <li>• Notice of Charge and Proposed Disciplinary Action – conduct matters – where the penalty proposed is not likely exceed 18 months’ suspension, disqualification or warning off</li> <li>• People who default on payment of fines imposed by the Commission</li> <li>• Proposed interim suspension</li> </ul>	
<ul style="list-style-type: none"> <li>• Notice of Charge and Proposed Disciplinary Action – Major matters – where the proposed penalty is likely to be 18 months’ or more suspension, warning off, or disqualification</li> <li>• Notice of Charge and Proposed Disciplinary Action – Matters that have been referred from the Regional Panel because of their complexity, novelty or other sensitivity</li> <li>• Proposed interim disqualification or warning off</li> </ul>	Commissioners

### Decision-making Panel

Decision-making Panels are responsible for determining most disciplinary decisions made by the Commission. A Panel will usually include a Senior Steward, a Steward and/or an Inspector, but the make-up of a Panel may vary according to the nature of the rule breach and the region in which it occurs.

A conflict may occur where a member of the Panel or has some relationship with the person charged, or is a witness in the matter. If a conflict occurs, the Panel member will recuse themselves (that is, withdraw) from involvement in that particular matter and another staff member will take their place. The purpose of this is to ensure that the decision-making process remains fair.

### Likely penalty

The “likely penalty” if a charge is proven is an estimate based on the nature of the rule or standard that the participant is alleged to have breached – the actual penalty will be decided once the charge is proven (and not all charges are proven). The decision makers will consider many different factors when determining an actual penalty. One aspect of this is the Commission’s Penalty Guidelines, which provides a guide for decision-making in relation to penalties.

## Appealing or reviewing a decision

Once a penalty has been imposed, people who have been penalised can appeal against the decision if they wish. This can be done in two ways: by lodging an appeal with the Racing Appeals Tribunal, or by requesting that the Commission undertake an internal review.

### Internal review

An internal review is conducted by the Commission. The Commission will appoint a reviewer who was not involved in making the original decision. The purpose of this is to ensure that the review is independent of the original decision.

An internal review is usually conducted by the Commissioners, but if the Commissioners are not available, a Director may be appointed to conduct the review. The reviewers will consider all the evidence and decide whether the decision should be upheld, or changed or overturned.

An internal review will usually be conducted “on the papers” and can include any relevant material submitted by the applicant. This means that the reviewers will consider all of the documentation relating to the matter but will not conduct a face to face or virtual hearing unless there are exceptional circumstances that require one.

“Exceptional circumstances” would only include situations where a person cannot make submissions in writing due to an impairment, disability or language barrier.

Anyone who applies for an internal review can also request a stay of penalty. A ‘stay’ means that the penalty will not be enforced until the outcome of the appeal is finalised. If a participant requesting an internal review wishes to apply for a stay, they can indicate this on the internal review application form.

More information about the kinds of decisions that can be reviewed, and the application form for an internal review can be found [here](#). There is no fee for an internal review.

### The Racing Appeals Tribunal (RAT)

The RAT is an independent body that hears appeals against decisions of controlling bodies in thoroughbred and harness racing, as well as greyhound racing.

The *Racing Appeals Tribunal Act 1983* allows the RAT to hear appeals against a decision to suspend, disqualify or warn off a participant, or fine them more than \$200, among other things. More information about the kinds of decisions that can be appealed to the RAT can be found [here](#).

The RAT operates like a court, with a Tribunal member presiding. A Legal Officer from the Commission will attend to explain why the Commission considers that its decision was correct. People who appeal can get a solicitor to represent them at the Tribunal, or they can represent themselves if they wish.

The Tribunal member will consider all the evidence and decide whether the Commission’s decision should be upheld, or changed, or overturned.

More information about lodging an appeal with the RAT and the application form are available [here](#). There is a \$250 fee for lodging an appeal.

## Stay of penalty

If someone lodges an appeal with the RAT, they can also apply for a stay. Applying for a stay from the RAT is a separate process, and the applicant must complete a different form and provide it to the RAT with their application for an appeal.

When the Tribunal receives an application for a stay, it will consider whether there are adequate grounds (reasons) to grant a stay and make a decision. The RAT will hold a hearing and both the participant and the Commission are invited to attend and make submissions.

The Commission will oppose an application for a stay where the disciplinary matter related to a Permanently Banned Prohibited Substance, animal welfare, or resulted in a disqualification.

The RAT will consider reasons for and against a stay and make a decision. If a stay is granted, no penalty will be imposed until the RAT makes a decision about the outcome of the appeal.

## Applying for both an appeal and an internal review

Appeals and internal reviews are different options for people who are unhappy with disciplinary action taken by the Commission. Because they are separate processes, a person can apply for both an internal review and an appeal if they wish. However, if an appeal has been lodged, the Commission will wait until the appeal is finalised before conducting the internal review.

## Review of Disciplinary Action Guide

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