

# **DISCIPLINARY ACTION GUIDE**

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## 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 warning off.

The Commission may also take disciplinary action against people who are not registered participants, if they contravene the Act, the Greyhound Racing Regulation, 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 includes:

- Notice of Disciplinary Action and Notices of Proposed Disciplinary Action
- Prohibited Substances
- Conduct 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 that occurs at a race meeting, they will issue a Notice of Disciplinary Action. These usually apply to rule breaches such as weight variations, or failure to produce ID card.

## **Prohibited Substances**

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

If the test is confirmed by a "B sample" (that is, a second test) and a charge is to be laid, the participant will then receive another letter. This second letter will be signed by the Integrity Hearings Panel; in more serious cases the letter will be signed by one or more Commissioners.

If the test is not confirmed, 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 falls below the threshold specified in the Rules, the participant may receive a formal warning.

## **Conduct matters**

If the charge relates to a conduct 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 Integrity Hearings Panel. Where the matter is more serious, the letter will be signed by one or more Commissioners. This letter will set out charge and invite the person charged to respond.

The Integrity Hearings Panel (or the Commissioners, if the matter is very serious) will consider the response. If they decide to proceed, the person charged will receive a Notice of Proposed Disciplinary Action that sets out the disciplinary action the Commission plans to take. The person charged can make submissions – there is more information about this below.

The Panel (or the Commissioners) will then consider any submissions that are received. If the charge is proven, the person charged will receive a third letter. This letter is a Notice of Disciplinary Action.

## **Notice of Proposed Disciplinary Action (NPDA)**

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

- the charge
- the evidence that supports the charge
- the action that the Commission proposes to take and
- how the person charged may respond to the charges brought against them.

More information about the Integrity Hearings Panel can be found on page 9.

## **Having your say**

Principles of procedural fairness require the Commission to provide people with an 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 an opportunity to respond to the charge against them.

A person who is charged may make written submissions (that is, provide a written response), or request a hearing where they can speak to the charge and put their case. Hearings can also be conducted by telephone or video conferencing if the person charged requests this.

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

The interim disciplinary action will not take effect until the person charged has been provided notice in writing. The reason for this is that interim disciplinary action takes effect immediately, whereas it can take some time to arrange and hold a hearing.

## Penalties

If a charge against a person is proven, a penalty will be imposed. The penalty may be a formal warning, fine, or a suspension or disqualification. 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.

'*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. The person charged will receive a letter advising them that the charge has been proven and what penalty has been imposed.

## 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 the disciplinary action is finalised.

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

An interim suspension 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 an interim suspension may be imposed include:

- Laboratory confirmation of a Permanently Banned Prohibited Substance in a greyhound owned or trained by the participant (R 83)
- A conviction, charge or investigation relating to a serious criminal offence (including animal welfare offences)

- Evidence of serious misconduct (R 86).

Where a breach that warrants interim disciplinary action occurs, the Commission's Legal Team will arrange an urgent meeting of the Commissioners or the Integrity Hearings Panel. If the matter may result in a person being disqualified or warned off, it will be heard by the Commissioners. All other matters are heard by the Integrity Hearings Panel.

The Panel (or the Commissioners) will consider the evidence and decide whether an interim suspension should be imposed.

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

If no submission is received, the Panel (or the Commissioners) 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 Commissioners) 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)
- that the interim disciplinary applies until the disciplinary matter is decided, and
- the person's appeal rights if they disagree with the decision.

Charges for the substantive matter (that is, the original charge) will be generally issued within a month of the Interim Disciplinary Action being imposed.

The Interim Disciplinary Action will remain in place until a decision about the original charge is made. 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 11.

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 11.

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

## DISCIPLINARY ACTION PROCESS

### Prohibited substance matters



### Other matters



Appeal and internal review rights advised

Appeal (where lodged) heard by Independent Racing Appeals Tribunal (RAT)

Outcome of RAT appeal recorded and any variation to the disciplinary action taken is applied

# 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.

## Stewards and Inspectors

Commission Stewards and Inspectors can issue a Notice of Disciplinary Action ("NDA") in relation to breaches of racing rules. Stewards will generally issue fines for offences that occur at race meetings, while Inspectors may issue a fine for breaches of certain rules such as a failure to notify the Commission of required information about a greyhound, or failure to keep greyhound treatment records.

Where a Steward or Inspector detects a potential breach that is more serious, the matter is referred to the Commission for investigation and possible disciplinary action.

## Prohibited substances and other serious matters

Positive swab matters and other more serious breaches are referred to the Integrity Hearings Panel or the Commissioners, depending on whether the matter is classified as 'standard' or 'major'.

'Standard' disciplinary matters include:

- positive swab (prohibited substance) matters that, if proved, are likely to result in a penalty of less than 12 months' suspension or disqualification
- conduct matters that, if proved, are likely to result in a penalty of less than 12 months' suspension or disqualification
- defaults on payment of fines
- proposed interim suspensions.

Major matters are referred directly to the Commissioners. These include:

- positive swab (permanently banned prohibited substance) matters where the proposed penalty is likely to be a suspension of 12 months or more, or disqualification
- conduct matters where the proposed penalty is likely to be a suspension of 12 months or more, warning off, or a disqualification
- complex or sensitive investigations
- a proposed interim disqualification or warning off.

The difference between a 'standard' and 'major' matter is 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 Proposed Disciplinary Action – Positive swab matters – where the penalty proposed is not likely exceed 12 months' suspension or disqualification</li></ul>	Integrity Hearings Panel



<ul style="list-style-type: none"> <li>• Notice of Proposed Disciplinary Action – conduct matters – where the penalty proposed is not likely exceed 12 months’ suspension or disqualification</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 Proposed Disciplinary Action – Major matters – where the proposed penalty is likely to be 12 months’ or more suspension, warning off, or disqualification</li> <li>• Notice of Proposed Disciplinary Action – Matters that have been referred from the IHP because of their complexity, novelty or other sensitivity</li> <li>• Proposed interim disqualification or warning off</li> </ul>	Commissioner(s)

### **Integrity Hearings Panel (IHP)**

The Integrity Hearings Panel is responsible for determining most disciplinary decisions made by the Commission. The Panel is comprised of three members of the Commission’s staff from different teams: the Commission’s Legal Services team, Inspectors and Stewards.

The Panel that determines a matter will usually comprise the Senior Legal Officer, the Deputy Chief Inspector and a Senior Steward. However, if one of these people is not available, or they have a conflict relating to a particular matter, someone else from the list of eligible officers will take their place.

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

There are six staff positions who are eligible to participate in the Integrity Hearings Panel. These are:

1. Manager, Race Day Operations (Chief Steward)
2. A Senior Steward
3. Director, Compliance & Legal Services
4. Senior Legal Officer
5. Chief Inspector
6. Deputy Chief Inspector

### **The Commissioners**

The Commission is headed by a Chief Commissioner and two other part-time Commissioners, who are appointed by the Government. The Commissioners oversee the work of the Commission, and also determine serious disciplinary matters.

Commissioners cannot be participants in the greyhound racing industry, a member or official of a greyhound racing club, or an employee or Board member of GRNSW. The purpose of these restrictions is to ensure that the Commissioners are independent and not influenced by their involvement in the industry.

Major or complex disciplinary matters are considered by the Commissioners. A 'major' matter is an offence that is likely to result in a 12-month suspension or disqualification or more for the person charged. The Panel may decide that a matter is likely to be 'major' and refer it to the Commissioners. Matters that are particularly complicated may also be referred to the Commissioners, who have more experience and expertise in complex decision-making.

The process that the Commissioners use to make decisions about disciplinary matters is similar to that used by the Integrity Hearings Panel.

Usually, two Commissioners will consider disciplinary matters referred to them. They may request more information or arrange a hearing if the person charged requests this. Where the Commissioners decide that a charge has been proven, they will then determine a penalty.

The person charged will be notified of the outcome. If the charge is proven and a penalty imposed, the person charged will receive a letter from the Commissioners.

## Appealing against 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 requesting 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 Regulation 2015* allows the RAT to hear appeals against a decision to suspend or disqualify a participant, or fine them more than \$200. 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 also 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 determine 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'. A stay means that the penalty will not be enforced until the outcome of the appeal is finalised. Applying for a stay is a separate process, and a separate application form to request a stay must be completed.

### Internal review

An internal review is conducted by the Commission. The process of conducting an internal review is similar to the RAT in the sense that the reviewer will consider all the evidence and consider whether the decision should be upheld, or changed or overturned.

An internal review is conducted by one or more of the Commissioners, or a senior member of staff who was not involved in the original decision. The purpose of this is to ensure that the

review is independent of the original decision. Anyone who applies for an internal review can also request a stay of penalty, and this is included in the same 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.

### **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

Version	Published	Date of Review
Original version		