

# **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.

## Introduction

As a participant in the greyhound racing industry, you have an obligation to comply with the Greyhound Racing Rules, the NSW Greyhound Welfare Code of Practice and other requirements that apply. The Commission can take disciplinary action against a participant who breaches these requirements.

For participants, the prospect of having disciplinary action taken against you can be intimidating and confusing.

The purpose of this Guide is to explain the Commission's power to take disciplinary action and the process of doing so. It also explains who makes decisions about disciplinary action, how penalties are determined, and participants' rights of appeal.

Disciplinary action can involve formal correspondence and legal terminology. A glossary that defines some of the key terms is included at the end of this Guide.

## 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
- Breeders
- Attendants/Associate Attendants
- Trainers
- Bookmakers
- Race officials
- Syndicate Managers
- Promoters
- Race Officials/Associate Race Officials
- Greyhound Health Assistants
- Trial Track Proprietors
- Artificial Insemination Technicians.

All 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 the participant's 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 (that is, a person who is not a participant) 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 provide a participant with 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 or a breach of the Code of Practice, they will issue a Notice of Disciplinary Action. NDAs issued at race meetings usually relate to minor rule breaches such as weight variations or failure to produce ID card.

Inspectors may also issue an NDA – these are usually for minor breaches of the Rules or the Code such as failing to keep greyhound treatment records – and will be issued during or after 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.

Samples collected from greyhounds are divided into two parts: the “A-sample” and the “B-sample”. If a prohibited substance is detected in an A-sample, the participant will receive a notice.

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.

Where a prohibited substance is detected in an A-sample, the B-sample will also be tested. The B-sample is tested at a different laboratory, to ensure that the testing is independent and impartial. If no prohibited substance is detected in the B-sample, the matter is closed and the participant receives a notice saying that no further action will be taken.

However, if the B-sample confirms the presence of a prohibited substance, the participant will receive a Notice of Charge and Proposed Disciplinary Action (Notice).

The Notice outlines the charge and the proposed penalty and invites the person charged to respond - usually by attending a hearing. The Notice is signed by decision makers appointed by the Commission (there is more information about decision makers on page 13).

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 participant is alleged to have done or failed to do), the participant receives a letter signed by the decision makers.

This letter is called a Notice of Charge and Proposed Disciplinary Action, if a proposed penalty is made at this time: 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 details the penalty to be imposed and provides information on how to appeal the decision if the participant wish to.

If a proposed penalty is not provided in the initial Notice of Charge, a proposed penalty notice will be issued and submissions on penalty sought before decision-makers make a final decision on penalty.

If the charge is not proven, the participant will receive a letter that explains the outcome.

## **Failure to Check-in Greyhounds**

The Commission's Greyhound Check-In Policy requires participants to check in their greyhounds at specified intervals – every 6 months for racing greyhounds, and every 12 months for pre-racing (unnamed), and retired greyhounds. The purpose of this Policy is to ensure that all registered greyhounds are accounted for.

'Checking in' a greyhound usually means having its microchip scanned at an approved check-in location, but it can also include activities such as a transfer of ownership or kennel location, a breeding application, or veterinary certificate (including vaccinations).

Participants will receive a check-in reminder 6 weeks prior to their greyhound's check-in due date. These reminders are sent by SMS and email on a weekly basis until the greyhound has been checked-in.

In instances where a participant fails to check-in their greyhound the Commission will commence disciplinary action. Decision makers will be appointed, and the participant will receive a formal Notice of Charge and Proposed Disciplinary Action. Once this occurs, the process is the same as for other forms of disciplinary action.

Disciplinary action as a result of failing to check-in greyhounds is avoidable. If you receive a check-in alert – don't ignore it. If you are experiencing exceptional circumstances preventing you from checking-in your greyhounds, or if you are unable to complete the appropriate notification about the whereabouts of the greyhound, call GWIC. The Traceability team are available to help you resolve your greyhound check-ins before the due date passes.

## **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 13.

## **Having Your Say**

Principles of procedural fairness require the Commission to provide participants with a reasonable opportunity to respond to any charge against them.

This means that whenever the Commission proposes to take disciplinary action against a participant, the participant will be given an opportunity to respond to the charge.

A participant 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 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 participant is to be immediately suspended, disqualified or warned off pending the outcome of an investigation), the participant charged will usually be invited to make submissions within 3 days, or even less if the circumstances are particularly urgent.

A decision will be made on the interim disciplinary action after the person 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, and 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 participant may be declared a 'defaulter'. A person who is declared a defaulter cannot participate in the industry, so the effect is similar to being disqualified.

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 similar offences during the specified period.

Penalties are determined on a case-by-case basis. Decision makers will consider the Commission's Penalty Guidelines, the subjective factors relating to the person charged, and any precedents or principles that may apply.

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

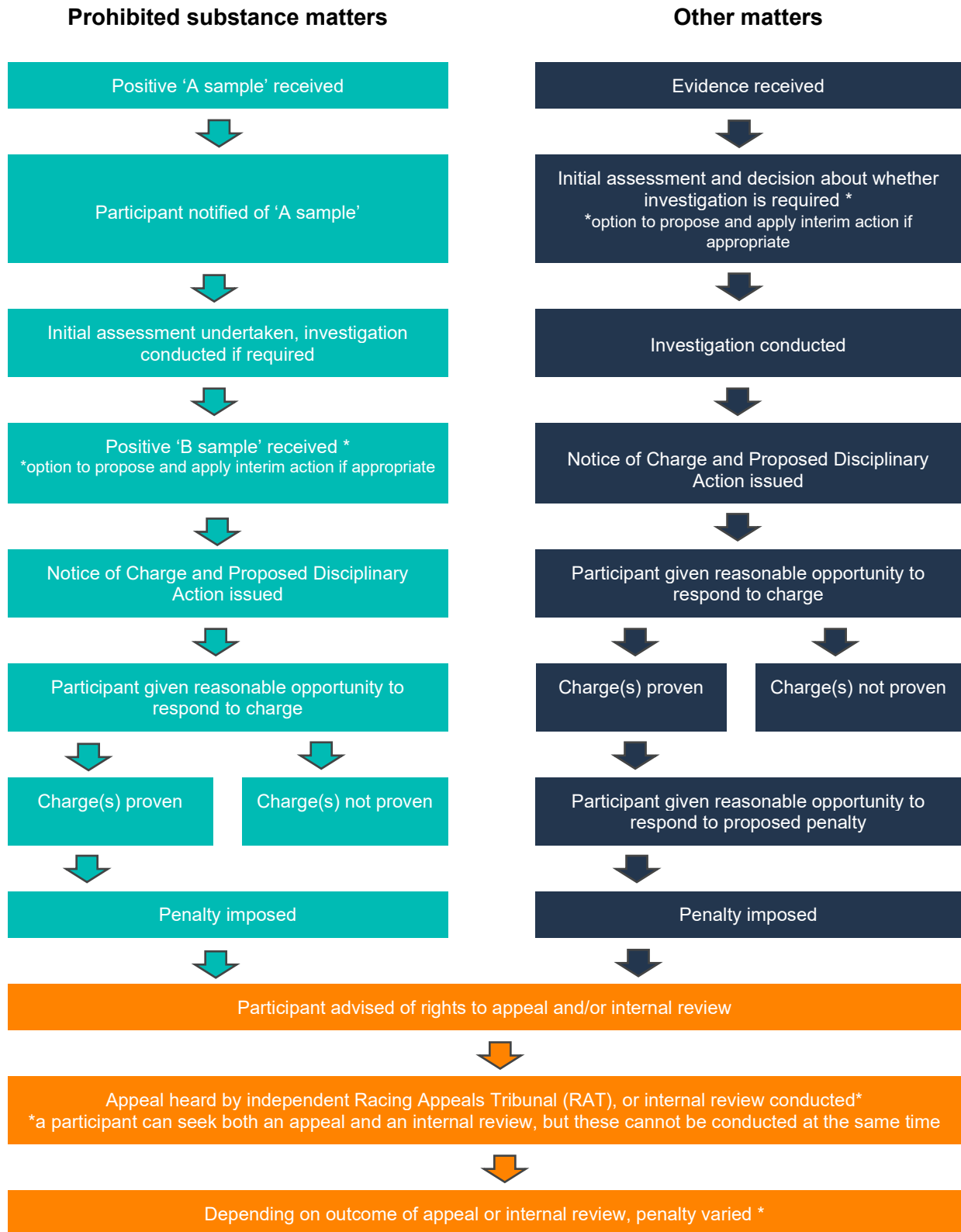
*'Proportionality'* refers to the principle that the penalty should be in proportion to the offence. There are a number of factors to consider in this regard, such as the person's reasons for committing the offence and their disciplinary history. Because the circumstances surrounding each offence differ,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

*'Deterrence'* means that a penalty should act as a deterrent. There are two types of deterrence: "specific" deterrence refers to the notion that a penalty should be imposed in order to discourage the person from committing the offence again, while "general" deterrence means a penalty should be imposed to discourage other people from committing it.

The decision makers will consider all of these different factors together when they decide to impose a penalty.

A person charged will usually be advised of the outcome at the hearing they attend and then will also receive a letter afterwards, advising them that the charge has been proven and what penalty has been imposed. If the participant has not attended the hearing, or a decision is not made at the hearing, the participant will be advised in writing afterwards.

# DISCIPLINARY ACTION PROCESS



It is also possible for the Commission or a participant to seek a review of a decision by the RAT. This involves applying to the Supreme Court for a judicial review. Judicial review is only possible for decisions of the RAT, not for internal reviews. A participant who is interested in seeking a judicial review should seek legal advice.

## 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.

Interim disciplinary action will also be taken if a person is charged with criminal offences that are of sufficient seriousness to render that person unfit to continue participating in the greyhound industry.

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 an alleged breach that warrants interim disciplinary action occurs, the Commission's Chief Operating Officer will allocate and arrange an urgent meeting of the decision makers - usually stewards. The decision makers will consider the evidence and decide whether interim disciplinary action should be proposed.

If interim disciplinary action is proposed, the Commission will issue a Notice of Charge and Proposed Disciplinary Action by email in most cases.

This email will explain the reasons for proposing the interim disciplinary action and invite the participant to make submissions as to why the interim disciplinary action should not be imposed.

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

If the person charged makes a submission, the decision makers will consider what the submissions 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, the decision makers 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.

The 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/internal review rights.

Charges relating to the substantive matter will be issued as soon as practicable after the interim disciplinary action is imposed. This may take some time, depending on the nature of the charge and the complexity of the investigation required.

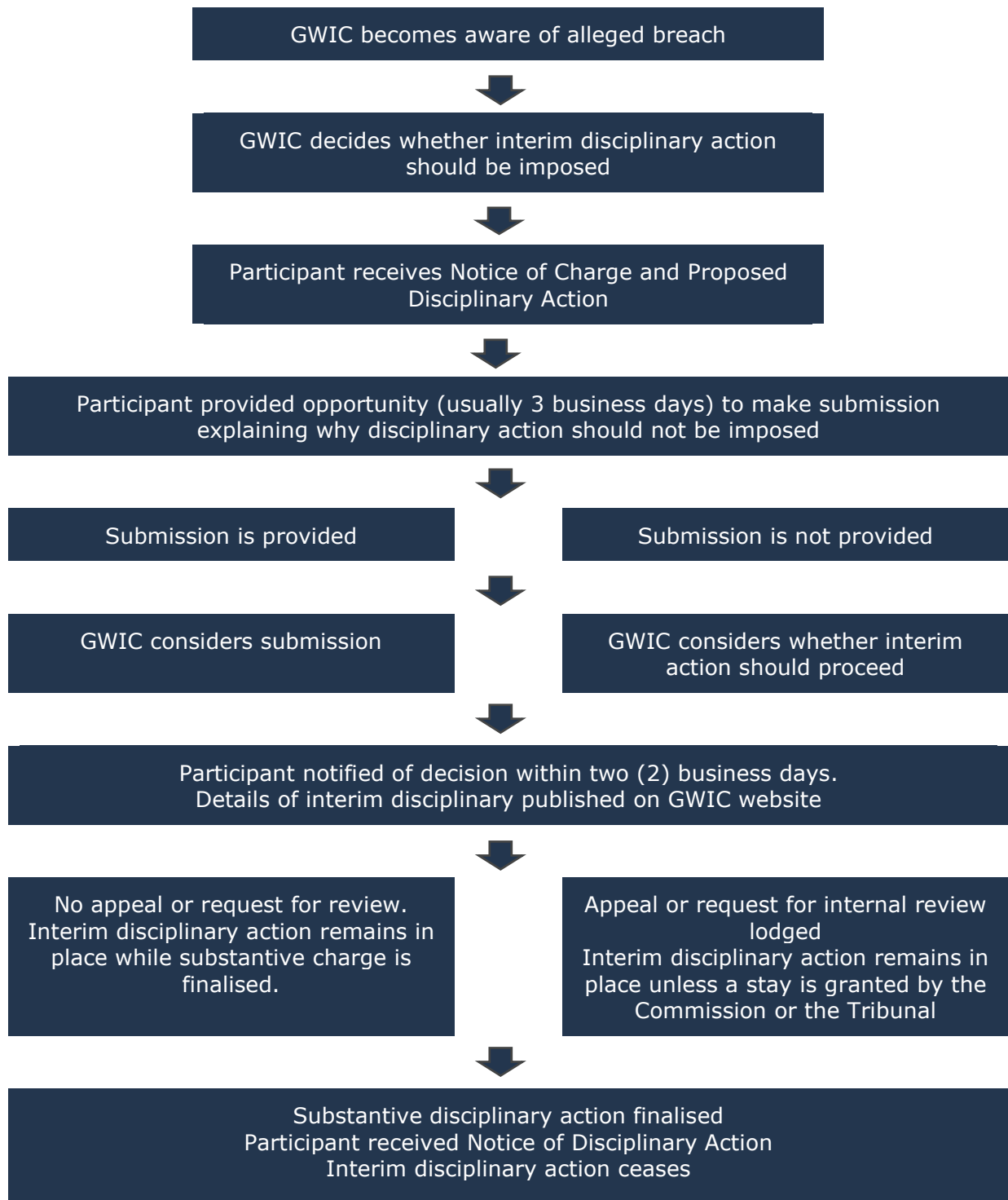
The interim disciplinary action will remain in place until a decision about the original charge is made, or the Commission's decision is altered on appeal. When this decision is made, any interim disciplinary action will cease to have effect. For example, if a participant is suspended on an interim basis but appeals against the interim suspension, and that appeal is successful, they will be allowed to continue racing while the substantive matter is being finalised.

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 15.

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 16.

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

## INTERIM DISCIPLINARY ACTION PROCESS



## Being Declared a “Defaulter”

A “defaulter” is person who doesn’t pay their debts – usually fines - to the Commission. Being declared a “defaulter” under the Greyhound Racing Rules is a form of disciplinary action.

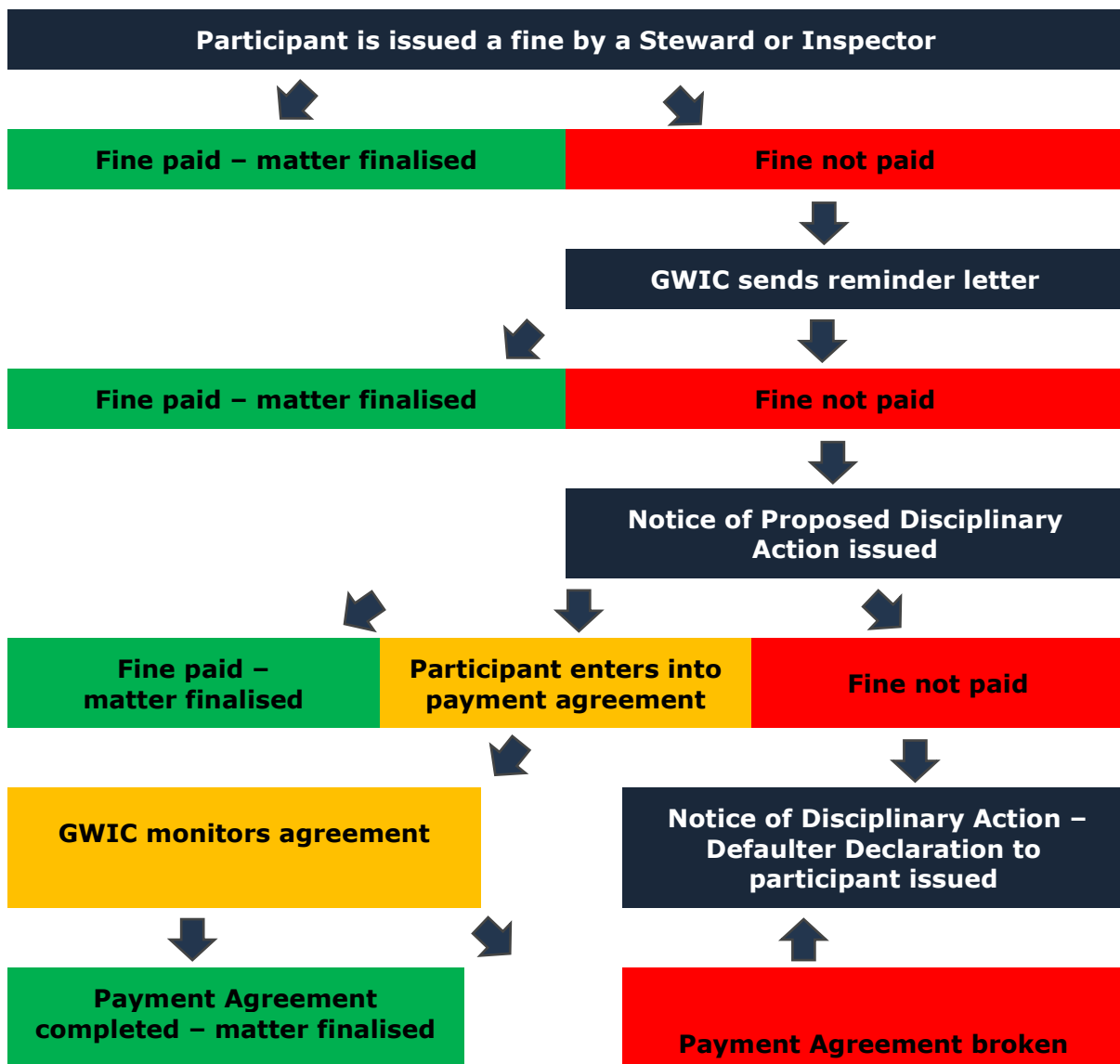
If a participant fails to pay fines imposed by the Commission, they will receive a reminder letter.

Anyone who is unable to pay a fine is encouraged to enter into a payment agreement with the Commission, to pay the fine off over time. However, it is important to be aware that if you enter into a payment agreement and then default on the payment agreement, the agreement will lapse and the whole amount will become payable.

If the participant fails to pay a fine after being reminded, or defaults on a payment agreement, they will be declared a defaulter and will receive a Notice of Proposed Disciplinary Action.

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 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 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:

- prohibited substance matters conduct or animal welfare matters
- defaults on payment of fines
- proposed interim suspensions/disqualifications.

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) - issued by stewards primarily on race day</li> <li>• Notice of Disciplinary Action (Specific Rule breaches) – issued by inspectors primarily in the field</li> </ul>	<p>Stewards</p> <p>Inspectors</p>
<ul style="list-style-type: none"> <li>• Notice of Charge and Proposed Disciplinary Action – Positive swab matters – where the inquiry is usually required and penalty will be proposed (including suspensions and disqualifications)</li> <li>• People who default on payment of fines imposed by the Commission</li> <li>• Proposed interim suspension or interim disqualification</li> </ul>	<p>Decision-making Panel</p>

## **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. In some cases, there may be just one decision maker.

In particularly serious cases, where a significant penalty may be imposed if charges are found proven, the Commissioners may act as decision makers.

## **Conflict of Interest**

A conflict of interest may arise where a member of the Panel has some form of relationship with the person charged, or the Panel Member themselves is a witness in the matter.

If a conflict occurs, the decision maker will recuse themselves and withdraw from involvement in that particular matter. Another staff member will be appointed as a decision maker in their place. The purpose of this is to protect the integrity, fairness and legality of the decision-making process.

## **Likely penalty**

The “likely penalty” if a charge is proven is a recommendation about the appropriate penalty, based on the nature of the rule or standard that the participant is alleged to have breached.

However, the actual penalty will be decided once the charge is proven (and it is important to note that 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 provide 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, changed or overturned.

An internal review must consider any relevant material submitted by the applicant. It will usually be conducted “on the papers”, meaning 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. Participants 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. A RAT appeal is conducted ‘*de novo*’, which means that the Tribunal considers the matter afresh and is not influenced by the Commission’s decision.

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 relates to a Permanently Banned Prohibited Substance, animal welfare, or may result 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 its decision about 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, the Commission recommends that an internal review be conducted first. If an appeal is lodged at the same time that an internal review is requested, the Commission will defer consideration of an internal review until the appeal is finalised.

## Definitions and Abbreviations

Act	means the <i>Greyhound Racing Act 2017</i> (NSW)
A-sample	means the first portion of a sample collected from a greyhound and analysed by an accredited laboratory to detect any prohibited substance, metabolite or marker. It provides the initial analytical result and may give rise to an adverse analytical finding. An A-sample result alone does not establish a breach of the Rules.
B-sample	means the second portion of a sample collected from a greyhound. A B-sample is collected at the same time as an A-sample but remains unopened unless the A-sample produces an adverse analytical finding. The B-sample is analysed independently to confirm or refute the presence of a prohibited substance. This safeguard ensures reliability, protects participants from laboratory or handling error, and prevents disciplinary action from proceeding unless the result is verified.
Check-in	occurs when the greyhound has an approved form of contact with the Commission. Approved forms of contact include: starting in a race, being scanned at an approved check-in location, being scanned during an inspection, notification that the greyhound has been transferred, vaccinated, participated in breeding activities, or retired.
Commissioner	means the Chief Commissioner and other Commissioners appointed under section 5 of the <i>Greyhound Racing Act 2017</i> , who collectively constitute the Greyhound Welfare and Integrity Commission.
Decision Maker/s	means an officer or officers of the Commission who are lawfully authorised to exercise the Commission’s statutory powers, either because the Act gives those powers directly to them, for example, the Commissioners, or because the Commissioners have delegated those powers to specific roles under the Commission’s Regulatory Delegations Manual.
Defaulter	means a person, usually a participant, who is declared a ‘defaulter’ under the Greyhound Racing Rules. A person may be declared a defaulter because they have failed to pay their debts to the Commission.
Greyhound Racing Industry Participant “Participant”	in accordance with the <i>Greyhound Racing Act 2017</i> , means a person who owns, breed, keeps, trains or handles a greyhound, acts as a bookmaker or bookmaker’s clerk in connection with greyhound racing, provides health services to greyhounds as prescribed by the <i>Greyhound Regulation 2019</i> , or other persons prescribed by the Regulation (i.e. Race Officials and Artificial Insemination Technicians).
Interim Disciplinary Action	Means an action taken by the Commission to suspend, disqualify or warn off a person while an investigation or inquiry is undertaken and any related disciplinary action is finalised.

Internal Review	Means a review of a decision of the Commission undertaken by an officer of the Commissioner not involved in the making of the original decision.
Notice of Charge and Proposed Disciplinary Action	means a letter which outlines the charge/s and any proposed penalties and invites the person charged to respond in writing or by attending a hearing.
Prohibited Substance	means a substance defined as a prohibited substance under R137 of the Greyhound Racing Rules.
Racing Appeals Tribunal	means the independent body established under the <i>Racing Appeals Tribunal Act 1983</i> to hear appeals against decisions made by control bodies of thoroughbred, harness and greyhound racing in NSW.
Reviewer	means a person appointed by the Commission to conduct an internal review. The <i>Greyhound Racing Act 2017</i> requires that a reviewer must be someone who was not involved in the original decision.
Stay	means a formal direction that temporarily pauses the operation of a decision or penalty so that it does not take effect until a review or appeal is completed.
Time Served	means the period a person has already spent under a suspension, disqualification, or other penalty, and which is counted toward the total length of a penalty (for example, if a participant has been suspended on an interim basis, the period of their interim suspension may be counted as 'time served').
Warn Off	means the Commission's power to exclude an unregistered person. A person who is formally warned off cannot participate in any activity related to greyhound racing, such as owning, keeping or training greyhounds, or attending race or trial tracks.

## Review of Disciplinary Action Guide

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