

Disciplinary Complaints Against Registered Clubs under Section 57F of the *Registered Clubs Act 1976*



This guideline provides information about the Authority's processes for making and determining disciplinary complaints made against registered clubs and associated individuals under the *Registered Clubs Act 1976* ("Act").

Background

1. Part 6A of the Act confers on the Authority the power to take disciplinary action against certain regulated participants in the NSW registered clubs industry. The Authority has the discretion to take a variety of disciplinary actions if it is satisfied that one or more grounds specified by the Act have been established.
2. The purpose of the Authority's power to take disciplinary action under Part 6A is the protection of the public.
3. The Secretary of the Department of Customer Service ("Secretary"), the Commissioner of Police or the general manager of a local council may make a disciplinary complaint ("Complaint") in relation to a registered club or a person who is the secretary or a member of the governing body of a registered club to the Authority (Act, section 57F(1), Registered Clubs Regulation 2015 ("Regulation"), clause 35).
4. A Complaint must be in writing and specify the grounds on which it is made.
5. In specifying the grounds of the Complaint, a Complainant must identify the relevant Club or person/s against whom disciplinary action is proposed to be taken. This may include: current or former club secretaries; current or former members of the club governing body; or other persons against whom a Complainant seeks a declaration of ineligibility to stand for, be appointed to, or otherwise hold the office of club secretary or member of a governing body.

Making a Complaint to the Authority

6. Complaints should be made via Form AM0222 ("Form"), which is available on the Liquor & Gaming NSW website at liquorandgaming.nsw.gov.au. Complaints should be emailed to ilga.secretariat@liquorandgaming.nsw.gov.au.
7. The Complaint letter should be signed and dated by the Complainant and any supporting documents should be submitted as PDF file(s) when lodged electronically. The Complaint letter must:
 - a. state that this is a complaint made under Part 6A of the Act in relation to the [named] club or person ("the Respondent Club or person");
 - b. state the grounds of Complaint under the Act that are advanced and name the individuals against whom such grounds relate;
 - c. provide, under each ground specified, a concise statement of the particulars for each ground identifying the key facts and contentions that, if found by the Authority, will establish that ground;
 - d. be accompanied by supporting evidence or other material upon which the Complainant relies with regard to each ground of Complaint, (if any ground of Complaint relies on the contentions in another ground, or a common set of facts, this should be clearly stated in the ground);
 - e. make a recommendation as to what action, if any, the Authority should take under section 57H(2) of the Act, should each ground of Complaint be established;
 - f. identify any relevant antecedents - for example, whether issues similar to those raised in the Complaint have been the subject of past formal or informal compliance action in relation to the Respondent Club or person, and if so, to what end;

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- g. indicate whether any information submitted by the Complainant should not be disclosed to the Respondent Club or any other party, should be disclosed in part or should only be disclosed on a confidential basis and, if so, why (for example, to protect the identity of an undercover police officer or a third party witness in cases where the Complainant has reasonable grounds to believe that disclosure may cause harm to the third party);
 - h. if any material is not to be disclosed to the Respondent Club or any interested party named in the Complaint, provide a separate, “non-confidential” version of the Complaint with sufficient detail to enable the Respondent Club or other interested person to respond to the facts alleged by the Complainant in relation to them;
 - i. provide an index of all material submitted in support of the Complaint; and
 - j. advise the name, office held, place of work and contact details of the Complainant or his or her representative and confirmation (if the Complainant is an officer exercising delegated power) that the Complainant is delegated with the authority to make a Complaint under Part 6A of the Act, noting the relevant instrument of delegation.
8. When specifying the grounds on which a Complaint is made and providing particulars, the Complainant is required to do more than simply identify the paragraph in section 57F(3) which is being relied on. The Complainant must relate the broad statutory ground that is available under section 57F(3) to the circumstances of the case, so that the factual allegation being made against the Respondent is clear. For example, it would not be enough to simply allege that requirements specified in section 10(1) of the Act were not being met by the Club or person – a Complaint should also identify which provision within section 10(1) was not being met and briefly state the facts which, if found by the Authority, will establish this proposition. Similarly, an allegation that the secretary of the Club is not a fit and proper person to act as such should specify the factual basis for this allegation - briefly stating those acts, omissions and/or offences attributed to the secretary that, if found by the Authority, would support this conclusion. The substance of the allegation(s) which the Club or person is called upon to meet should be apparent from the grounds specified in the Complaint document, so that the Club or person is able to respond effectively.
9. The Authority will not determine whether any disciplinary action is appropriate until it has decided whether the grounds of Complaint are established. However, in the interests of efficiency and giving advance notice of the Complainant’s position on disciplinary action to the Respondent, the Complaint should include specific contingent submissions on the question of what, if any, disciplinary action is recommended should one or more of the grounds of Complaint be established.
 10. The Complaint should specify whether (and if so why) any circumstances of aggravation are alleged, the quantum of any monetary penalty, and the period of any suspension or disqualification if that is recommended.
 11. If the Secretary seeks an order for payment of its costs on an investigation, the Complaint should provide a concise breakdown of those costs.
 12. The evidence or other material in support of a Complaint may include, without limitation: third party witness statements; letters or emails; maps; diagrams; photographs; video surveillance footage; and extracts from databases or other business records.
 13. Each individual document should be provided separately, so that it may be readily extracted from the rest of the Complaint material. In the case of a statement of evidence that refers to annexures or exhibits, each annexure or exhibit should be provided as a separate document.
 14. When the Complaint is made in electronic form and the material cannot be sent by email or other electronic file transfer means due to the size of the documents, the material should be delivered to the Authority Secretariat, Liquor & Gaming NSW on a USB drive with an additional copy of the USB drive for the Respondent Club and each individual party against whom action may be taken should the Complaint be established. Any audio-visual material must be provided in a format that is viewable with commonly used media player software.

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Process

15. The Authority is an independent administrative body, not a court. The Authority administers its disciplinary powers in a manner that is as efficient and informal as appropriate, with a view to minimising time and costs to all stakeholders. Part 6A of the Act imposes certain specific procedural requirements in relation to the Authority's handling of disciplinary complaints, while section 36B of the *Gaming and Liquor Administration Act 2007* applies to matters arising under the gaming and liquor legislation generally.
16. A conference will only be convened in absolute discretion of the Authority, where in the opinion of the Authority it would assist the Authority's decision making.
17. If a Conference is convened, it will not be in the mode of an adversarial hearing whereby the parties are able to cross examine each other's witnesses. Parties may be legally represented, but this is not necessary. Parties can expect that the Authority has read all written submissions prior to any Conference. As a general rule, parties have less than one hour to deliver an oral submission and will be guided by the convener of the Conference as to the key issues for discussion. Parties should be prepared to answer questions from the Authority.
18. The Authority is not bound by rules of evidence when considering a Complaint but it is required to comply with relevant provisions of the Act and the rules of natural justice or procedural fairness. While material submitted to the Authority need not be presented in "admissible" form, parties may nonetheless receive some guidance from the rules of evidence when preparing a Complaint.
20. This will require that the evidence or other material before the Authority enables it to reach a comfortable level of satisfaction that is commensurate with the gravity of the allegation, reached fairly and properly in accordance with the kind of processes that are appropriate to a statutory authority, not a Court of law.
21. When a Complainant asserts that a Respondent Club or other party has been convicted of a past criminal or other offence, the Complainant should have regard to the operation of spent convictions legislation and provide appropriate formal evidence of the conviction(s). Wherever practicable, certificates of conviction should be furnished from the relevant jurisdiction.
22. Section 57I(5) of the Act provides that the Authority is not prevented from taking disciplinary action merely because the Respondent Club or a secretary or member of that Club is subject to criminal or civil proceedings that relate to same matters or incidents to which the Complaint relates. While it is open to the Authority to proceed with and determine a Complaint that is, in whole or part, founded upon unproven allegations of criminal conduct, a Complainant may wish to carefully consider the timing of regulatory action if a related prosecution is underway and not completed, including any appeal.
23. When a Complainant asserts that a Penalty Notice was issued against a Respondent Club or other party with regard to an alleged offence, the Complainant should provide details of that Penalty Notice and a copy of written advice from the Revenue NSW as to the current payment status of the Penalty Notice.

Standard of Proof

19. Fact finding in disciplinary proceedings is made in accordance with the civil standard of proof. However, to the extent that a Complaint is based upon allegations that the Respondent has engaged in criminal conduct, fraud, moral wrongdoing or other matters that may, if established, lead to serious adverse consequences for a Respondent, the Authority will apply the approach to fact finding that was discussed by the High Court of Australia in *Briginshaw v Briginshaw* (1938) 60 CLR 336.

Making a submission about a Complaint

24. Consistently with the principles of procedural fairness, sections 57G(2) and 57J of the Act require the Authority to write to a Respondent Club or person/s concerned inviting them to show cause why disciplinary action should not be taken against them ("Show Cause Notice").
25. The Authority will send a copy of the Show Cause Notice to any other party named in the Complaint against whom disciplinary action may be taken.

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26. In responding to a Show Cause Notice, the Respondent and any other parties invited to make a written submission should:
 - a. address all grounds of the Complaint, including the particulars for each ground; and
 - b. make contingent submissions on the question of what, if any, disciplinary action should be taken by the Authority should one or more of the grounds for the Complaint be established.
27. The Authority's discretion to take disciplinary action, and the actions it may take, are set out in section 57H(2) of the Act and at the end of this Guideline. Sections 131(3) and (5) of the Act set out some further provisions on the consequences of failure to pay a monetary penalty, and circumstances of aggravation which may apply.
28. If a party wishes to be heard again on the question of penalty in the event that any one or more of the grounds of the Complaint are established, they should make this request when responding to the Show Cause Notice. In an appropriate case the Authority will issue a decision with reasons detailing its findings on the grounds of Complaint, together with any orders with respect to disciplinary action.
29. The Show Cause Notice will specify a reasonable period of time (usually 28 days) within which written submissions may be made to the Authority addressing the Complaint. If submissions are received within time, the Authority will consider those submissions prior to making any decision. If no submissions are received within time, the Authority may promptly determine the matter on the material before it.
30. Statements of evidence in response to a Show Cause Notice should take the form of a sworn statement (such as a Statutory Declaration).
31. If a matter is complex and/or involves numerous parties, the Authority may give the Complainant an opportunity (usually within 14 days) to make further written submissions in reply to a party's response to the Complaint, followed by a second round of written submissions from the Respondents (usually within 14 days). The Authority may elect to convene a Conference.
32. Parties should not assume there will be two rounds of written submissions or a conference. A conference will only be convened in the absolute discretion of the Authority, where in the opinion of the Authority it would assist the Authority's decision making. To the full extent practicable, Complainants should present their entire case upon lodging the Complaint with the Authority, and the Respondent and any other interested party should provide a comprehensive response to the alleged facts and contentions relating to the Complaint and the disciplinary action which may be taken on the grounds of the Complaint.
33. The Authority expects written submissions to be articulated in clear and explicit terms. In the event that the Authority is minded to convene a conference, this will ensure that the Authority may use Conference time productively, and no party is "taken by surprise" by matters raised at a Conference.
34. It is a matter for the Respondent Club or other party whether they wish to participate in a Conference convened by the Authority. Should a party decline or fail to respond to the offer of an oral hearing, the matter will be determined on the papers.
35. If a party attends a Conference they should be prepared to discuss the grounds of the Complaint that concern them and Parties should also be prepared to discuss what, if any, order should be made if a ground of Complaint is established.
36. The Authority notes its power under section 57H(2) (i) of the Act to order a Respondent Club or person to pay certain costs incurred by the Secretary or the Authority in relation to a Complaint. The Authority will, in the usual case, contemplate making an order to recover costs, subject to consideration of any submissions received on this issue.
37. Whenever written submissions are made by a party, they should be provided to the Authority in electronic form and, wherever practicable, by email to ilga.secretariat@liquorandgaming.nsw.gov.au.

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Disciplinary Powers of the Authority

38. If a Complaint is established, the Authority may, under section 57H(2) of the Act, decide not to take any action or may:

- a. order the club to pay a monetary penalty not exceeding 2,500 penalty units within such time as is specified in the order,
- a1. order the person to pay monetary penalty not exceeding 100 penalty units within such time as is specified in the order,
- b. suspend the club's licence for such period as the Authority thinks fit,
- c. cancel the club's licence,
- d. suspend or cancel any authorisation held by the registered club under the Act,
- e. impose a condition on the club's licence or on any authorisation held by the club under the Act,
- f. remove the person from office as the secretary of the club or a member of the governing body of the club,
- g. declare that the person or any other specified person is, for such period as is specified by the Authority, ineligible to stand for election or to be appointed to, or to hold office in, the position of secretary or member of the governing body (or both of those positions) of:
 - i. the club, and
 - ii. if the Authority so determines - all other registered clubs or such other registered clubs as are specified (or as are of a class specified) by the Authority,
- h. appoint a person to administer the affairs of the club who, on appointment and until the Authority orders otherwise, has, to the exclusion of any other person or body of persons, the functions of the governing body of the club,
- i. order the registered club or person to pay the amount of any costs incurred by:
 - i. the Secretary in carrying out any investigation or inquiry under section 35A in relation to the club or person, or
 - ii. by the Authority in connection with the taking of disciplinary action against the club or person under this section.

39. The Authority notes that for the purposes of Part 6A of the Act a reference to a secretary of a club includes a person who was the secretary of the club, and a reference to a member of the governing body of a club includes a person who was a member of the governing body of any registered club (Act, section 57E).

Determination

40. The Authority may orally advise the parties of its determination, in whole or part, at the conclusion of a Conference, or reserve its decision. If the Authority decides to take disciplinary action against a Respondent Club or the secretary or member of the governing body of a registered club, the Authority is required by section 57I(2) of the Act to notify the relevant party and provide reasons for its decision.
41. A copy of the Authority's decision letter will be sent to the Respondent Club or person and any other interested parties who were consulted. The decision letter will usually be published on the Liquor & Gaming NSW website at liquorandgaming.nsw.gov.au.
42. The time spent by the Authority processing a Complaint will depend upon the complexity of a matter, the material submitted by the parties and the scheduling of a Conference date.
43. The Authority may expedite the processing of a Complaint if it is in the public interest to do so.

Appeal Rights

44. Under section 57L of the Act, a decision made by the Authority in relation to a Complaint may be subject to review by the New South Wales Civil and Administrative Tribunal ("NCAT"). An application for review may be made by either the Complainant, the Respondent Club or a person against whom disciplinary action has been taken by the Authority. An application for review may be filed with the NCAT within 28 days of the Authority's decision. For more information, visit NCAT's website at www.ncat.nsw.gov.au.

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Review of this Guideline

The Authority may review the operation of this Guideline from time to time and may update the Guideline as and when considered appropriate.

APPROVED by the Independent Liquor & Gaming Authority

10 November 2020



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Chairperson