

THE GLIDING FEDERATION OF AUSTRALIA INC

(ABN 82 433 264 489)

C4/1-13 The Gateway, Broadmeadows Victoria 3047

Phone: (03) 9359 1613; Fax: (03) 9359 9865



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GFA COMPLAINTS AND DISCIPLINE PROCEDURE

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GFA COMPLAINTS AND DISCIPLINE PROCEDURE

REVISION RECORD

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Terry Cubley	GFA Board	0.1A	28/06/2015
Précis of changes Separated from Member Protection Policy. Update for Legal Compliance			

GFA COMPLAINTS AND DISCIPLINE PROCEDURE

PREFACE

Important information about this Procedure

The Gliding Federation of Australia Incorporated A0046188T (GFA) undertakes a number of functions for the Australian gliding system in:

- a. Supporting,
- b. Providing services,
- c. Representing,
- d. Administering,
- e. Co-regulating and
- f. Auditing compliance

It also conducts delegated activities for CASA that involves compliance with Governmental processes, legislation and operations.

The GFA Complaints and Discipline Procedure applies to:

- a. Any person, club or organisation that is a member of or affiliated to the GFA
- b. All employees and volunteers of the GFA
- c. All individuals sitting on boards, committees and sub-committees of the GFA, Regional Associations, Clubs and any other related entity

From time-to-time GFA must expect to deal with improper conduct by a person to whom the GFA Complaints and Discipline Procedure applies and where a breach has occurred of the GFA Member Protection Policy as described in Part C of that Policy.

The GFA Complaints and Discipline Procedure complements the GFA Member Protection Policy.

NATURAL JUSTICE

The rules or principles of natural justice/procedural fairness, have developed to ensure that decision-making is fair and reasonable. Put simply, decision-makers are required to inform people of the case against them or their interests, give them a right to be heard (the 'hearing' rule), not have a personal interest in the outcome (the rule against 'bias'), and act only on the basis of logically compelling evidence (the 'no evidence' rule).

These principles are inherent in all stages of the GFA Discipline and Complaints process.

INTERPRETATION

Definitions are contained in Appendix A of the GFA Member Protection Policy.

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GFA COMPLAINTS AND DISCIPLINE PROCEDURE

1. COMPLAINTS HANDLING PROCEDURE – MATTERS NOT INVOLVING CHILD ABUSE

GFA aims to provide an easy to use, confidential and transparent procedure for complaints. Any person may make a complaint (complainant) about a person/s or organisation if they reasonably believe that a person/s or group has contravened the rules or policies of the GFA.

A member or affiliated organisation may make a complaint about specific actions or apparent unjust or abusive behaviour (see Member Protection Policy) of:

- a. Another member
- b. An officer of a club or affiliated organisation
- c. A Regional officer
- d. A GFA officer or staff member
- e. A volunteer

Direct negotiation if possible. Initially, the complaint should be made directly to the other party advising them of the behaviour or action that has caused offence and seeking clarification or retraction. [Experience shows that resolution of complaints is best done directly between the parties involved].

If the complaint is not resolved directly between the participants, then a Formal complaint may be made.

Informal complaint, if appropriate. If the complainant is not comfortable raising the matter directly with the person with whom they have a grievance about, they may make an informal complaint.

The most local level at which a matter can be dealt with shall always be preferred. Therefore, if a complaint relates to behaviour or an incident that occurred at the:

Club level or involves people operating at the club level, then the complaint should be reported to and handled by the relevant club in the first instance. (Club President, CFI, etc)

Regional Association level or involves people operating at the Regional level, then the complaint should be reported to and handled by the relevant Regional association in the first instance (Regional Association President, RTO, etc)

Matters that relate to or occur at the national level, or the cases referred from regional or club level should be handled by the GFA nationally. (Executive member, GFA Executive Officer, GFA president)

Formal complaint: The formal complaint must be made in writing to relevant officer identified in paragraph 2 above and provide details of the actions and, if appropriate, the expected outcome.

The officer so contacted may decide to escalate to the GFA Executive Officer if circumstances warrant this.

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2. MEDIATION

There will be circumstances where mediation is not appropriate as a first step and an investigation into the complaint is required first to identify any significant policy breaches. If the complaint is substantiated the appropriateness of mediation as an option should be considered based on the positions of the parties involved and any power imbalance between them.

The officer to whom the complaint is made will contact each person involved and explain the context and the need to resolve the issue. Where appropriate, in accordance with the GFA Articles of Association, clause 11, the officer may appoint a Mediator with the agreement of the two parties.

Mediation is intended to provide a supportive atmosphere to assist parties to come together to sort out issues, come up with acceptable solutions and make mutually satisfactory agreements.

Mediation will only be recommended if:

- a. After the complainant and respondent have had their chance to tell their version of events to the Investigation Officer on their own; and
- b. The complaint does not involve serious breach of the Member Protection Policy, relevant legislation or misconduct such that investigation is required in the first instance and possible also by an external authority investigation; and
- c. The complaint is not vexatious, or of a minor and/or purely personal nature that may not warrant a formal resolution procedure.
- d. There is no fundamental dispute as to the facts such that an agreement is not likely to be reached without investigation

Mediation will not be recommended if:

- a. The respondent has a completely different version of the events and they won't deviate from these;
- b. The complainant or respondent are unwilling to attempt mediation; or
- c. Due to the nature of the complaint, the relationship between the complainant and respondent(s) and any other relevant factors, the complaint is not suitable for mediation.

The mediator's role is to assist the complainant and respondent(s) reach an agreement on how to resolve the problem. The mediator, in consultation with the complainant and respondent(s), will choose the procedures to be followed during the mediation. At a minimum, an agenda of issues for discussion will be prepared by the mediator.

The mediation will be conducted confidentially and without prejudice to the rights of the complainant and the respondent(s) to pursue an alternative process if the complaint is not resolved.

At the end of a successful mediation the mediator will prepare a document that sets out the agreement reached between the complainant and respondent(s) and it will be signed by them as their agreement.

If the formal complaint is not resolved by mediation, the complainant may:

- a. Write to the officer to request that the complaint be formally investigated
- b. Approach an external agency such as an anti-discrimination commission

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3. INVESTIGATION

The officer to whom the complaint is made will decide whether they are the appropriate person to deal with the complaint. If they decide they are not the appropriate person, they will refer the complaint (with the consent of the complainant) to another officer.

The officer to whom the complaint is made or their nominee (the Investigator) will undertake the investigation, utilising legal professional privilege if deemed necessary.

A written brief will be provided to the investigator to ensure the terms of engagement and scope of the Investigator's role and responsibilities are clear.

The complainant will be interviewed and the complaint documented in writing.

The details of the complaint will be conveyed to the person/people complained about (respondent(s)) in full. The respondent(s) must be given sufficient information to enable them to properly respond to the complaint.

The respondent(s) will be interviewed and given the opportunity to respond. The respondent(s) response to the complaint will be documented in writing.

If there is a dispute over the facts, then statements from witnesses and other relevant evidence will be obtained to assist in a determination.

If people fail to provide the requested information then the Investigator will need to make a determination based on the information available.

The Investigator will make a finding as to whether the complaint is:

- a. substantiated - there is sufficient evidence to support the complaint;
- b. there is insufficient evidence either way to make a finding of fact;
- c. unsubstantiated (there is sufficient evidence to show that the complaint is unfounded); and/or
- d. frivolous, vexatious or knowingly untrue.

The Investigator will determine if the complaint is valid and to what extent and the appropriate consequences (where applicable). They will advise all parties to the complaint of their findings and recommendations and advise any penalties that will be applied.

A report documenting the complaint, investigation process, evidence, finding, recommendations and penalties will be given to the GFA Executive Officer and to the complainant and the respondent

Both the complainant and the respondent(s) are entitled to support throughout this process from their chosen support person/adviser

The complainant and the respondent(s) may have the right to appeal against any decision made. [See below]

If more serious issues are identified through the investigation, the Investigator may refer to the GFA Board for consideration according to Article 11.

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4. DISCIPLINE and PENALTIES:

Where a member or affiliated organisations of the GFA after a process of procedural fairness has been found to have contravened the applicable CAA, CAR, CASR, CAO, GFA Operational Regulations, GFA Manual of Standard Procedures, or local club rules or procedures, the relevant club officer (President, CFI, Chief Pilot, Airworthiness officer, Coach) may impose a penalty, which may include:

- a. A requirement to make a verbal or written apology,
- b. Suspend, cancel or vary the member's privileges, approvals or ratings
- c. Any other form of reasonable disciplinary action as deemed appropriate,

The GFA Board, where necessary, in addition to the above penalties, may also impose penalties of:

- a. payment of a fine
- b. suspension/cancellation of membership or affiliation
- c. pursuant to clause 11 of the GFA Articles of Association.

The appeal process for the affected member in this case is the Club's Committee, Training panel or Airworthiness panel, following the principles of Natural Justice.

In the case where a member continues to operate in contravention of any of the above actions, or where contraventions are particularly serious in nature or number, the appropriate Regional Officer (Regional President, Regional Manager Operations (RMO), Regional Technical Officer (RTO)) may take action to suspend, cancel or vary whichever of the member's privileges, approvals or ratings are considered appropriate.

The Regional Officer must advise the member of the intention to impose a penalty and the reason for this decision, asking the member to show just cause why the penalty should not be applied. Notification to the member under these provisions shall be served in writing, except under clause 4 below where verbal notice given to the member prior to the service of written notification shall be of the same effect and shall be effective immediately.

Following consideration of the statement from the member, the GFA/Regional officer will determine possibly in consultation with other GFA officials if the penalty should be applied, and advise the member of these decision and the penalty conditions.

The member shall have the right to appeal in writing to the GFA Department head/Executive within 14 days of the decision being notified to the member and shall have the right of access to all evidence upon which the decision was based.

In the interests of Natural Justice, if an appeal is lodged within the 14 day period, any penalty which may be considered appropriate shall not take effect until the appeal has been heard. If the appeal is upheld, the proposed penalty may be altered or rejected. If the appeal is dismissed, the penalty shall take immediate effect.

Where a Regional Officer has evidence that there is an immediate risk of a member intending to act so as to compromise operational safety or in contravention of the CAA, CAR, CASR, CAO, GFA Operational Regulations, the Regional Officer may immediately suspend the member's privileges for a period not to exceed twenty eight days for the purpose of the prevention of commission of such an act and shall fully report such suspension to the appropriate Executive member as soon as possible.

The form of discipline to be imposed on an individual or organisation will depend on factors such as:

- a. Nature and seriousness of the breach;

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- b. If the person or affiliated organisation knew or should have known that the behaviour was a breach;
- c. If there have been relevant prior warnings or disciplinary action;
- d. Level of contrition;
- e. The effect of the proposed disciplinary measures on the person including any personal, professional or financial consequences;
- f. Any other mitigating circumstances
- g. Penalties imposed by the GFA board.

See GFA Articles of Association, clause 11 for details of this process.

The GFA Board may, to the fullest extent permitted by law and the powers of the Board, also impose penalties of

- a. Payment of a fine,
- b. Suspension/cancellation of membership or affiliation

Any disciplinary measure imposed under this policy must:

- a. Observe any contractual and employment rules and requirements;
- b. Conform to the principles of Natural Justice;
- c. Be fair and reasonable;
- d. Be based on the evidence and information presented;
- e. Be within the powers of the Board to impose the disciplinary measure.

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5. APPEALS PROCESS

A complainant or a respondent(s) who is not satisfied with a decision of the Complaints Procedures can lodge an appeal to the GFA on one or more of the following bases:

That a denial of Natural Justice has occurred; or

That the disciplinary measure(s) imposed is unjust and/or unreasonable

A person wanting to appeal must lodge a letter stating their intention and the basis for their appeal with the GFA Executive Officer within 7 days of the relevant decision. If the letter of appeal is not received by the GFA Executive Officer within the relevant time period the right of appeal will lapse.

Upon receipt of the letter of appeal, the GFA Executive Officer must appoint an appeals panel, comprising a minimum of 3 people and arrange for a hearing of the appeals group as soon as possible after the date of receipt of the appeal. The appeals panel will comprise a minimum of three GFA or Regional officers or experienced members with no direct involvement in the case under appeal.

At such a meeting:

- a. no business other than the appeal can be conducted
- b. the appeals panel shall receive all relevant information on the matter from the Investigator, providing full details of items identified and the grounds for the decision
- c. the Member(s) making the appeal must provide their case for having the decision overturned
- d. the decision is confirmed if at least two thirds of the votes returned are in favour of the decision. In any other case the decision is overturned.
- e. the appeals panel advises the GFA Executive Officer of their decision as to whether the decision of the Investigator should be overturned.

The decision of the appeal panel is final and binding on the people involved to the appeal. The GFA will recognise and enforce any decision made, and form of discipline imposed, by an appeals panel under this policy.

Appeals against a penalty imposed by the GFA board

As per GFA Articles of Association clause 11, the final appeal group shall consist of not less than five Members with no involvement in the matter, selected by agreement between the President and the appealing party, with the President as a non-voting member, shall hear and decide on any appeal under Article 11.6 after which the decision becomes final.

5.1 Conflict of interest

As much as is possible, people with any direct or personal involvement with the case or the parties concerned should be excluded from the Appeals process. It may be acceptable for a person to declare a potential conflict of interest but then continue on the appeals panel if their specific expertise is important for a reasoned outcome, if consented to by the parties.

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6. DOCUMENTATION

The GFA Executive Officer will document the complaint, the process followed and the outcome. This document will be stored in a confidential and secure place.

7. COMPLAINTS PROCEDURE – MATTERS INVOLVING CHILD ABUSE

An allegation of child abuse is a very serious matter and must be handled with a high degree of sensitivity. The initial response to a complaint that a child has allegedly been abused should be immediate.

The following is a basic outline of the key processes to follow. More information can be obtained from your relevant State or Territory government agency.

7.1 Step 1 - Clarify basic details of the allegation

Any complaints, concerns or allegations of child abuse must be referred to GFA Executive Officer .

The initial response of the person that receives the complaint from the child (or person on behalf of the child) is crucial to the well-being of the child. It is important for the person receiving the information to:

- a. Listen to, be supportive and do not dispute what the child says;
- b. Reassure the child that what has occurred is not the fault of the child;
- c. Ensure the child is safe;
- d. Explain that other people may need to be told in order to stop what is happening;
- e. Do not elicit detailed information about the abuse.
- f. Act promptly to accurately record the discussion in writing;
- g. Do NOT discuss the details with any other person other than those detailed in these procedures; and
- h. DO NOT CONTACT the alleged offender.

The person receiving the complaint should obtain and clarify basic details (if possible) such as:

- a. Child's name, age and address;
- b. Person's reason for suspecting abuse (observation, injury or other); and
- c. Names and contact details of all people involved, including witnesses.

7.2 Step 2 – Report allegations of a serious or criminal nature

Any individual or organisation to which this policy applies, who has reasonable grounds to suspect that a child or young person is at risk of significant harm or witnessed an incident must make a report to the police and other appropriate authority.

If the allegation involves a child at risk of harm, the incident must immediately be reported to the police or other appropriate government agency. You may need to report to both the police and the relevant government agency.

The relevant State or Territory authority must be contacted for advice if there is any doubt about whether the complaint should be reported.

If the child's parent/s are suspected of committing the abuse, report the allegation to the relevant government agency.

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7.3 Step 3 – Protect the child

GFA Executive Officer or delegate should assess the risks and take interim action to ensure the child's/children's safety.

The GFA Executive Officer or delegate should also address the support needs of the person against whom the complaint is made.

7.4 Step 4 – Provide support to external agencies as required

Seek advice from the police and relevant government agency as to any actions that GFA should carry out.

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8. EXTERNAL COMPLAINTS PROCEDURE

[GFA will not fund any part of an external complaints process]

There may be a range of external options available to you depending on the nature of your complaint, such as with criminal matters by referral to the Police and relevant authorities.

You may wish to raise your case with the Administrative Appeals Tribunal if it relates to legislative decisions.

If you feel that you have been harassed or discriminated against, you can seek advice from your State or Territory equal opportunity commission or Anti-Discrimination Tribunal and may choose to pursue a formal complaint.

Once a complaint is received by an anti-discrimination commission, an investigation will be conducted. If it appears that unlawful harassment or discrimination has occurred, there will usually be an attempt to conciliate the complaint confidentially first. If this fails, or is inappropriate, the complaint may go to a formal hearing where a finding will be made as to whether unlawful harassment or discrimination occurred. The tribunal will decide upon what action, if any, will be taken.

Work health and safety complaints may be referred to the relevant regulators in each State or Territory.