



Gymnastics
Australia

BY-LAW 3

GRIEVANCE BY-LAW

This By-law is made by the Gymnastics Australia (GA) Board under Clause 11.2(b) of the GA Constitution. It is binding on GA and all members of GA.

Approved by the GA Board on 29 April 2007

1. This By-law is made by GA pursuant to rule 11 of the GA constitution.

2. In this By-law unless the context otherwise requires the following terms shall mean:

Association Member	shall have the same meaning as set out in the GA Constitution
Board	means the Board of GA as constituted from time to time
Grievance	means a grievance or dispute as defined in clause 11.2 of the GA Constitution to which this By-law applies (not being a matter that is capable of being dealt with under either the GA Disciplinary By-law or any other By-law or Policy of GA and which By-law or Policy has its own process for the determination of disputes).
GA	means Gymnastics Australia Limited
Member	means a member of GA within the meaning set out in the GA Constitution other than an Association Member
Notice of Grievance	means a notice in writing which sets out all relevant acts facts matters and things relevant to a Grievance

3. The grievance procedure set out in this By-law applies to a Grievance between –
 - (a) An Association Member and another Association Member; or
 - (b) An Association Member and GA
 - (c) An Association Member and any other Member
 - (d) Two or more Members who are members of the same Association Member
 - (e) Two or more Members not being Association Members and some of whom are members of different Association Members
 - (f) Any Grievance referred to GA pursuant to any Policy or By-law of GA provided the person raising the Grievance has first exhausted all avenues of resolving the Grievance.

A grievance that involves an Association Member and its members will only be dealt with by GA if there has been a failure to follow due process and/or provide natural justice.

4. No party to a Grievance may commence any proceedings in a court of law or any tribunal unless the procedures set out in this By-law have been followed.

Grievance within the meaning of clause 3(a)

5. An Association Member may give to the Chief Executive Officer of GA and to the Chief Executive Officer of any Association Member, which is a party to a Grievance which falls within the meaning of clause 3(a) a Notice of Grievance,
6. Gymnastics Australia has no jurisdiction to deal with a Grievance referred to in clause 5 unless:
 - 6.1 the substance of the Grievance is that a party to such Grievance has failed to properly follow or implement any rules, regulations or other requirements for dealing with such Grievance and;
 - 6.2 GA has determined in writing that such Grievance is not frivolous or vexatious.
7. To avoid doubt clause 5 does not apply to a Grievance which concerns the exercise of discretion by a party to the Grievance unless clauses 6.1 and 6.2 are satisfied.
8. The parties to the Grievance must meet and discuss the matter and, if possible, resolve the Grievance within 28 days of the date of the Notice of Grievance.
9. If the parties are unable to resolve the Grievance within that time or such other time as may be agreed by them, or if a party fails to meet with the other party as required by clause 8 without reasonable excuse, then the parties must, within 10 days, hold a meeting in the presence of a Mediator.
10. The Mediator must be –
 - (a) a person chosen by agreement between the parties; or
 - (b) in the absence of agreement –
 - (i) in the case of a Grievance between an Association Member and another Association Member, a person appointed by the Board save that if a member of the Board is directly connected or involved with a party to the Grievance that person shall not participate in the appointment of the Mediator; or
 - (ii) in any case a person who is not so connected with one or more parties to the Grievance such that the Mediator may be or may reasonably be considered to be impartial

11. Subject to clause 10 an individual who is a Member of the Association Member or a member of the Board can be a Mediator.
12. The parties to the Grievance must, in good faith, attempt to settle the Grievance by mediation.
13. The Mediator, in conducting the mediation, must –
 - (a) give the Parties to the mediation process every opportunity to be heard; and
 - (b) allow due consideration by all parties of any written statement submitted by any party.
14. The parties to a mediation shall be permitted to be legally represented.
15. The Mediator must not determine the Grievance.
16. If the mediation process does not result in the Grievance being resolved, either party may within 28 days after the mediation appoint an arbitrator in accordance with this By-law. The arbitrator shall have power to resolve the Grievance or, in the case of a determination to suspend or otherwise affect an Association Member's membership of GA only, to make a recommendation to a general meeting of GA.
17. The arbitrator shall be an independent person who is appointed by the GA Board and who is not an employee of GA according to such terms of reference as shall be provided by the GA Board but shall not be a person who is so connected with one or more parties to the Grievance such that the arbitrator may be or may reasonably be considered to be other than impartial.
18. Subject to clause 17 the arbitration shall be conducted in accordance with and subject to, the Institute of Arbitrators and Mediators Australia Rules for the Conduct of Commercial Arbitrations and in the case of an urgent matter the Institute of Arbitrators and Mediators Australia Expedited Rules for the Conduct of Commercial Arbitrations.

19. The parties shall rely on the documents submitted for the purposes of mediation, save that the arbitrator may, upon application, allow further written material to be admitted by one or more parties.
20. The parties to an arbitration shall be entitled to be legally represented in any proceeding before the Arbitrator.
21. Other than in the case of a determination by the arbitrator to recommend to GA in general meeting that an Association Member's membership of GA be suspended or otherwise affected the decision of the arbitrator shall be final and binding on all of the parties to the Grievance.
22. Notwithstanding the existence of a Grievance each party shall continue to be bound by their respective obligations under the GA Constitution.

Disputes within the meaning of clause 3(b)

23. An Association Member or GA shall give to the other party or parties to a Grievance which falls within the definition in clause 3(b) a Notice of Grievance.
24. In such case the provisions of clauses 8-22 inclusive shall apply with the following exceptions:
 - (a) The Mediator shall be a person who is appointed by the Registrar for the time being of the National Sports Disputes Centre P/L but shall not be a person who is so connected with one or more parties to the Grievance such that the Mediator may be or may reasonably be considered to be other than impartial.
 - (b) A member of the Board shall not be the Mediator

Disputes within the meaning of clauses 3(c) and 3(d)

25. Subject to clause 26 an Association Member or other Member may give to the other party or parties to a Grievance which falls within clauses 3(c) or 3(d) a Notice of Grievance provided the person raising the Grievance has exhausted all avenues of resolving the Grievance within the relevant Association Member prior to serving the Notice of Grievance.
26. GA shall not have jurisdiction to deal with a Grievance referred to in clause 25 unless:

- (a) the substance of the Grievance is that a party to such Grievance has failed to properly follow or implement any rules, regulations or other requirements for dealing with such Grievance and;
- (b) GA has determined in writing in its complete discretion that such Grievance is not frivolous or vexatious.

27. In the case of a Grievance to which clause 25 applies the provisions of clauses 7-20 of this By-law shall apply.

Disputes within the meaning of clause 3(e)

28. An Association Member or other Member may give to the other party or parties to a Grievance which falls within the definition in clause 3(e) a Notice of Grievance.
29. In the case of a Grievance under clause 28 the provisions of clauses 7-22 and 26 shall apply with the necessary changes.

Disputes within the meaning of clause 3(f)

30. An Association Member or other Member may give to the other party or parties to a Grievance which falls within the definition in clause 3(b) a Notice of Grievance.
31. In the case of a Grievance under clause 30 the provisions of clauses 7-22 and 26 shall apply with the necessary changes.

Clauses relating to all Disputes

32. A parent or legal guardian of a Member other than an Association Member may not raise a Grievance under this By-law unless such member is under 18 years of age at the time when a Notice of Grievance is given under this By-law