



# COMPLAINTS AND DISCIPLINARY POLICY

<b>Policy Name:</b>	<b>Complaints and Disciplinary Policy</b>
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# Making a Complaint or Report

## 1. What is a Complaint?

- (a) A Complaint is a formal written submission of an allegation:
  - (i) made by a Complainant;
  - (ii) relating to a potential Breach under the Code; and
  - (iii) against a Respondent.

## 2. Who is a Complainant?

- (a) A Complainant is a Relevant Person who is directly affected by the alleged Breach and makes a Complaint about a Respondent in accordance with this Policy.
- (b) Where the Relevant Person directly affected by the conduct is a Person at Risk, a Complaint may be submitted on their behalf by a parent or carer. The Person at Risk will still be considered to be the Complainant when a Complaint is submitted on their behalf.
- (c) A Complainant cannot remain anonymous.

## 3. Who is a Respondent?

A Respondent is a Relevant Person about whom a Complaint or Report has been made and who or which was bound by the Code at the time the alleged Breach occurred.

## 4. What is a Report?

- (a) A Report is a formal written submission of an allegation:
  - (i) made by a Reporter;
  - (ii) relating to a potential Breach under the Code; and
  - (iii) against a Respondent.

## 5. Who is a Reporter?

- (a) A Reporter is any Relevant Person who has reason to believe that a Breach of the Code has occurred and has made a Report.
- (b) A Reporter may choose to remain anonymous.



## 6. **Submitting a Complaint or Report**

- (a) A Complaint or Report must be made in writing (including electronically) and sent to the Complaints Manager by emailing to [integrity@kiroiacademy.com.au](mailto:integrity@kiroiacademy.com.au)
- (b) A Complaint or Report may be submitted by a parent or guardian on behalf of a Person at Risk.
- (c) The Complaints Manager may refuse to deal with a Complaint or Report if they consider it to be trivial or vexatious.
- (d) Informal Complaints must be submitted in accordance with Kiroi Academy's OFP.
- (e) The Complaints Manager must deal with Complaints and Reports under the Complaints and Reports Process.

## 7. **Escalation of Informal Complaints**

- (a) The General Manager may escalate an Informal Complaint from the processes of the OFP to be heard under the Complaints and Reports Process of this Policy.
- (b) For an Informal Complaint to be escalated, the General Manager must consider:
  - (i) the nature and seriousness of the allegations made in the Informal Complaint;
  - (ii) any harm or perceived harm suffered by the Complainant as a result of the matters mentioned in the Informal Complaint; and
  - (iii) any other factors the General Manager considers relevant.

## 8. **Confidentiality**

- (a) All Complaints and Reports will be kept confidential as between the Complainant, the Reporter, the Respondent, and/or any other relevant party.
- (b) Any Relevant Persons may disclose information as required or authorised by law.

# Complaints and Reports Process

## 9. **Evaluation of a Complaint or Report**

- (a) Upon receipt of a Complaint or Report, the Complaints Manager will determine whether the matter falls within the scope of the Code and this Policy. In making this determination, the Complaints Manager will consider whether the conduct alleged in the Complaint or Report would, if proven to the requisite standard, constitute a Breach of the Code.



- (b) A Complaint or Report that has been previously managed through the Complaints Process will not be reconsidered or reinvestigated unless there are compelling reasons to do so, such as relevant new information becoming available.
- (c) If the Complaints Manager determines that the Complaint or Report falls out of scope of the Code and this Policy, the Complaints Manager will notify the Complainant or Reporter, and no further action will be taken under this Policy.
- (d) The Complaints Manager may refer a Complaint or Report to Sport Integrity Australia where it relates to alleged Prohibited Conduct under Gymnastics Australia's Safeguarding Children and Young People Policy or allegations of Discrimination under Gymnastics Australia's Member Protection Policy.
- (e) The Complaints Manager may refer a Complaint or Report that relates to breaches of NIF Policies to Gymnastics Australia or Gymnastics Victoria.
- (f) The Complaints Manager may need refer the Complaint or Report to Victoria Police or other relevant government authorities to fulfill its legal obligations.

#### 10. **Management of a Complaint**

- (a) Once the Complaint or Report has been deemed to be in-scope of the Code and this Policy, the Complaints Manager will determine an appropriate means of dealing with the Complaint or Report, and will undertake the relevant actions in accordance with the processes outlined in clause 9(b).
- (b) Any one or a combination of the following actions may be undertaken by the Complaints Manager:
  - (i) Provisional Measures;
  - (ii) collating a Brief of Evidence; and
  - (iii) case closure.

#### 11. **Brief of Evidence**

- (a) The Complaints Manager shall contact the Complainant or Reporter requesting any further evidence in relation to the Complaint or Report. This may include, but is not limited to:
  - (i) documentary evidence;
  - (ii) witness statements; and
  - (iii) a summary of the evidence the Complainant's or Reporter's witnesses will provide in the Tribunal.



- (b) The Complaints Manager will communicate as appropriate with the Complainant or Reporter the next steps involved in the matter, including the date, time, and location of the proposed Tribunal hearing.
- (c) Upon receipt of the Complainant's or Reporter's further information, the Complaints Manager must issue the Respondent with a Letter of Allegations.
- (d) The Letter of Allegations will:
  - (i) notify the Respondent of the allegations made against them, including the Breach of the Code they have alleged to have committed;
  - (ii) state that the matter will be heard in the Tribunal;
  - (iii) notify the Respondent of the proposed date, time, and location of the Tribunal hearing;
  - (iv) state the Respondent has a right to respond to the allegations made against them, including by providing witness statements and other documentary evidence; and
  - (v) state that if the Respondent does not respond within 14 days of the Letter of Allegations, they will have deemed to have accepted responsibility for the alleged Breach of the Code and have waived their right to a hearing before the Tribunal.
- (e) Prior to the Tribunal hearing, the Complaints Manager must compile and provide the Tribunal with a Brief of Evidence consisting of all information provided by the Complainant and/or Reporter, and the Respondent.
- (f) Kiroi Academy has a preference to avoid using Persons at Risk as witnesses unless it is absolutely necessary to do so.

## Provisional Measures

### 12. **Provisional Measures**

- (a) Where an allegation suggests a risk of harm to a Relevant Person or Kiroi Academy which justifies imposing Provisional Measures, the Complaints Manager will determine whether any Provisional Measures will be taken to mitigate any potential harm to any person and/or interference in an investigation.
- (b) Provisional Measures may include:
  - (i) suspension;
  - (ii) supervision at rhythmic gymnastics-related activities;



- (iii) restriction of duties;
- (iv) and restriction of privileges or benefits.

## Tribunal Process

### 13. Referral to the Tribunal

The Complaints Manager will refer the matter directly to the Tribunal after issuing the Letter of Allegations to the Respondent.

### 14. Composition of the Tribunal

The Tribunal must consist of a panel of three independent decision makers.

### 15. Tribunal Process

- (a) The Tribunal will decide on the allegations set out in the Letter of Allegations and impose a Sanction it deems appropriate.
- (b) In making their decision, Tribunal may consider:
  - (i) copies of all Complaints or Reports made against the Respondent; and
  - (ii) the Brief of Evidence provided by the Complaints Manager under clause 11.
- (c) The Tribunal will notify the parties of the decision at the completion of the hearing.

### 16. Appealing the Tribunal's decision

- (a) A Respondent may appeal a decision made by the Tribunal by lodging a Notice of Appeal by emailing Complaints Manager at [integrity@kiroiacademy.com.au](mailto:integrity@kiroiacademy.com.au) within 7 days of the Tribunal's decision.
- (b) The Respondent may include, with the Notice of Appeal, written submissions on why their appeal should succeed which they intend to rely on during the Appeal Tribunal hearing.

### 17. Composition of the Appeal Tribunal

The Appeal Tribunal must consist of a panel of three independent decision-makers who were not on the Tribunal in the same matter.

### 18. Appeal Tribunal Process

- (a) If notified that a Notice of Appeal has been received, Kiroi Academy must provide the panel of the Appeal Tribunal:
  - (i) all documents described in clause 15(b);
  - (ii) the Respondent's Notice of Appeal; and
  - (iii) the Respondent's written submissions under clause 16(b).



- (b) The Appeal Tribunal must consider all documentation provided to them and determine on the balance of probabilities whether the grounds of appeal are proven.
- (c) The Appeal Tribunal shall consider the Complaint or Report without taking into account the decision of the Tribunal.

#### 19. **Decision of the Appeal Tribunal**

- (a) The Appeal Tribunal may:
  - (i) dismiss the appeal;
  - (ii) uphold or partially uphold the appeal;
  - (iii) impose any Sanctions under clause 21; or
  - (iv) reduce, increase or vary any Sanction imposed by the Tribunal.
- (b) Kiroi Academy shall adhere to the Appeal Tribunal's decision and will implement it in a prompt manner.
- (c) The Appeal Tribunal decision is final and binding and no further appeal can be made under this Policy.

#### 20. **Standard of Proof**

The requisite standard of proof that applies to all substantive decisions made (including by the Tribunal or Appeal Tribunal) under this Policy in respect of the allegations of a Breach of the Code is on the "balance of probabilities". This means the Complaints Manager must be satisfied that it is more likely than not that there has been a breach of the Code.

## Sanctions and Penalties

#### 21. **Sanctions**

- (a) Where the panel of the Tribunal or Appeal Tribunal find that the Respondent has committed a Breach of the Code, the Tribunal and/or Appeal Tribunal have absolute discretion to determine the appropriate Sanction to be imposed on a Respondent, including as to whether a combination of measures is to be imposed, and the terms and the period of any measures.
- (b) Sanctions that may be imposed on a Respondent include, but are not limited to:
  - (i) a reprimand;
  - (ii) verbal or written apology;
  - (iii) direction to attend counselling or training to address their behaviour;
  - (iv) removal of Kiroi Academy awards (such as life membership);
  - (v) exclusion from a particular event or events, competition or activity;



- (vi) suspension for a specified period and/or termination of any rights, privileges and benefits provided by Kiroi Academy;
  - (vii) expulsion from Kiroi Academy; and/or
  - (viii) any other form of discipline that is considered appropriate.
- (c) Without limiting the discretion afforded in clause 17(b), the following factors must be considered when determining the appropriate Sanction:
- (i) the nature and seriousness of the behaviour or incident;
  - (ii) whether it was a one-off incident or part of an overall pattern of behaviour;
  - (iii) whether it was an honest and reasonable mistake;
  - (iv) the potential impact on public confidence in the integrity of rhythmic gymnastics;
  - (v) the views and opinions of the Complainant;
  - (vi) the contrition, or lack thereof, of the Respondent;
  - (vii) any Provisional Measures taken in relation to the Respondent;
  - (viii) the potential impact of the proposed Sanction on the Respondent including any personal, professional or financial consequences;
  - (ix) any relevant prior warnings or disciplinary action against the Respondent; and
  - (x) any other aggravating or mitigating factors.
- (d) If there is more than one Breach of the Code, where appropriate, the Sanction may be imposed having regard to all of the breaches considered together, and the seriousness of the overall conduct in question.
- (e) Sanctions imposed under this Policy shall commence from the date of the decision, unless otherwise directed.

## Definitions

**Appeal Tribunal** means the Tribunal described in clause 17.

**Breach** means contravention of the Code.

**Brief of Evidence** is given meaning at clause 11

**Code** means Kiroi Academy's Code of Conduct.

**Complainant** has the meaning given in clause 2.

**Complaints Manager** means the person appointed to manage Complaints under this Policy.

**Complaint** has the meaning given in clause 1.



**Complaints and Reports Process** means the process given in clause 9.

**General Manager** means the person in the employ of Kiroi Academy that deals with the Informal Complaints under the OFP.

**Informal Complaint** is a Complaint that is submitted under Kiroi Academy's OFP.

**NIF Policies** means the suite of policies that both Gymnastics Australia has adopted as part of the National Integrity Framework.

**Notice of Appeal** means the document provided to Kiroi Academy regarding a Respondent's appeal, as exhibited at Schedule 1 of this Policy.

**OFP** means the Kiroi Academy's Open Feedback Policy.

**Policy** means this Conduct and Disciplinary Policy, including any schedules.

**Report** is given meaning in clause 4.

**Relevant Person** means any of the following persons:

- (a) Athletes of Kiroi Academy;
- (b) Parents of Athletes of Kiroi Academy;
- (c) Spectators in attendance at any competitions or events which the Kiroi Academy hosts or participates in;
- (d) Employees of Kiroi Academy; and
- (e) Volunteers of Kiroi Academy.

**Respondent** has the meaning given in Clause 3.

**Sanction** means the disciplinary action(s) taken against a Respondent for breaching the Code.

**Tribunal** means the Tribunal described at clause 14.

**Person at Risk** means a person who is:

- (a) under the age of 18;
- (b) aged 18 or over but is or may be unable to take care of themselves or is unable to protect themselves against harm or exploitation, by reason of age, illness, trauma or disability, or any other reason; or
- (c) aged 18 or over but has experienced or is experiencing poor mental health outcomes, either as a result of the incident in question, due to their life experiences, or as a result of societal factors, including but not limited to individuals from diverse backgrounds facing disproportionate mental health impacts, such as people with diverse sexualities or gender.



**Schedule 1****Kiroi Academy  
Notice of Appeal Form**

Full Name:

Who are you?  Athlete  Coach  Judge  Spectator  Official  Parent

Date of Tribunal Hearing:

What do you want to appeal against?

Sanction

Decision

Why do you want to appeal? Provide detailed reasons with supporting evidence/documents.