

APPENDIX A: PROCEDURES

To ensure due process, consistency and that the principles of natural justice are followed in all aspects of handling or conducting complaints, allegations, investigations, and disciplinary measures, AGDA will follow and implement the following procedures:

- A1** Complaints Procedure
- A2** Mediation Procedure
- A3** Investigation Procedure
- A4** Appeals Procedure
- A6** Disciplinary Considerations

Attachment A1: COMPLAINTS PROCEDURE

A complaint can be about an act, behaviour, omission, situation or decision that someone thinks is unfair, unjustified, unlawful and/or a breach of this policy. Complaints will always vary. They may be about individual or group behaviour; they may be extremely serious or relatively minor; they may be about a single incident or a series of incidents; and the person about who the allegation is made may admit to the allegations or emphatically deny them.

Given all of the variables that can arise, AGDA (Australasian Gymnastics and Dance Academy) provides a step-by-step complaint procedure that people may use/enter at any stage. Individuals and organisations to which this policy applies may also pursue their complaint externally under the relevant legislation.

If at any point in the complaint process the Director of AGDA considers that a complainant has **knowingly** made an untrue complaint or the complaint is vexatious or malicious, the matter will be referred to AGDA's legal team for appropriate action. All complaints will be kept confidential and will not be disclosed to another person without the complainant's consent except if law requires disclosure or if disclosure is necessary to effectively deal with the complaint.

Step 1

As a first step you (the complainant) should try to sort out the problem with the person or people involved if you feel able to do so.

Step 2

If:

- the first step is not possible/reasonable; or
- you are not sure how to handle the problem by yourself; or
- you just want to talk confidentially about the problem with someone and get some more information about what you can do; or
- the problem continues after you tried to approach the person or people involved; then
- talk with AGDA's Department Leader (DL)

Ph: 07 32932355

Email: info@agynda.com.au

The DL will:

- take notes about your complaint (which the DL will keep in a secure and confidential place);
- try to sort out the facts of the problem;
- ask what outcome/how you want the problem resolved and if you need support;
- provide possible options for you to resolve the problem;
- explain how our complaints procedure works;
- act as a support person if you so wish;
- refer you to an appropriate person to help you resolve the problem, if necessary;
- inform the relevant government authorities and/or police if required by law to do so; and
- maintain strict confidentiality.

Step 3

After talking with the DL, you may decide:

- there is no problem;
- the problem is minor and you do not wish to take the matter forward;
- to try and work out your own resolution (with or without a support person); or
- to seek an informal mediated resolution with the help of a third person (such as a mediator or the Director).

If you wish to remain anonymous, AGDA can't assist you to resolve your complaint. We have to follow the principles of natural justice and be fair to both sides. This means that AGDA or you may be required to provide the person/people you have complained about with full details of the complaint so they have a fair chance to respond to all the allegations.

Step 4

If your complaint is not resolved to your satisfaction, you may:

- make a formal written complaint in writing to the Director of AGDA; or
- approach a relevant external agency, for advice.

Step 5

If you decide to make a formal complaint in writing under Step 4, the Director of AGDA will, on receiving the formal written complaint and based on the material you have provided, decide whether:

- they are the most appropriate person to receive and handle the complaint;
- the nature and seriousness of the complaint warrants a formal resolution procedure. Some complaints may be of a minor and/or purely personal nature with no connection to the activities of AGDA. In these cases, the Director may determine that the complaint does not warrant a formal resolution procedure;
- to appoint a person to investigate the complaint;
- to refer the complaint to an informal or formal mediation session;
- to refer the complaint to a hearings tribunal;
- to refer the matter to the police or other appropriate authority; and/or
- to implement any interim administrative or other arrangements that will apply until the complaint process set out in these Procedures is completed.

In making the decision(s) outlined above, the Director will take into account:

- whether they have had any personal involvement in the circumstances giving rise to the complaint and, if so, whether their ability to impartially manage the complaint is compromised or may appear to be compromised;
- whether, due to the nature of the complaint, specific expertise or experience may be required to manage the complaint;
- your wishes, and the wishes of the respondent, regarding the manner in which the complaint should be handled;
- whether, due to the nature of the complaint, the relationship between you and the respondent and any other relevant factors, the complaint should be referred (or should not be referred) to informal or formal mediation or to a hearings tribunal. Relevant factors may include an actual or perceived power imbalance between you and the respondent, the nature of any ongoing working relationship between you and the respondent, and the personal attributes of you and the respondent (for example, if one party does not speak English fluently, some of the possible complaints resolution mechanisms may not be appropriate);
- the nature and sensitivity of any information or other material that must be provided by you, the respondent, and any of the other people involved in the complaint;
- whether the facts of the complaint are in dispute; and
- the urgency of the complaint, including the likelihood and the consequences (if the complaint is ultimately proven) that you will be subject to further unacceptable behaviour while the complaint process set out in these Procedures is being conducted.

If the Director is the appropriate person to handle the complaint they will, to the extent that these steps are necessary:

- get full information from you (the complainant) about your complaint and how you want it resolved (if this information has not already been obtained through earlier steps);
- put the information they've received from you to the person/people you're complaining about and ask them to provide their side of the story;
- decide whether they have enough information to determine whether the matter alleged in your complaint did or didn't happen; and/or
- determine what, if any, further action to take. This action may include disciplinary action in accordance with Attachment A6, appointing a person to investigate the complaint, referring the complaint to an informal or a formal mediation session and/or referring the complaint to the police or other appropriate authority.

Step 6

If:

- a person is appointed to investigate the complaint under **Step 5**, the investigator will conduct the investigation and provide a written report to the Director who will determine what, if any, further action to take. This action may include a direction to the investigator to make further enquiries and obtain additional information, disciplinary action in accordance with Attachment A6, and referring the complaint to an informal or a formal mediation session, and/or the police or other appropriate authority;
- the complaint is referred to an informal or a formal mediation session under **Step 5**, the mediation session will be conducted in accordance with Attachment A2 or as otherwise agreed by you and the respondent;
- the complaint is referred to the police or other appropriate authority under **Step 5**, AGDA will use its best endeavours to provide all reasonable assistance lawfully required by the police or other appropriate authority; and
- interim administrative or other arrangements are implemented under **Step 5**, AGDA will periodically review these arrangements to ensure that they are effective.

Step 7

If, under **Step 6**, an informal or formal mediation session is conducted, and you and the respondent(s) can not reach a mutually acceptable mediated solution to the complaint, you may request that the Director reconsider the complaint in accordance with **Step 5**.

You or the respondent(s) may be entitled to appeal where:

- under **Step 5**, a decision was made by the Director:
 - not to take any action; or
 - to take disciplinary action; or
- under **Step 6**, a decision was made by the Director:
 - not to take any action; or
 - to take disciplinary action.

The grounds for appeal and the process for appeals under this Policy are set out in Attachment A5.

If the internal complaints processes set out in this Policy do not achieve a satisfactory resolution/outcome for you, or if you believe it would be impossible to get an impartial resolution within AGDA, you may choose to approach an external agency such as an equal opportunity commission to assist with a resolution.

Step 8

The Director will document the complaint, the process followed and the outcome. This document will be stored in a confidential and secure place. If the complaint was dealt with Academy level, the information will be stored in the Academy office. If the matter is of a serious nature, or if the matter was escalated to and/or dealt with at the state/national level, the original document will be stored at the Academy office with a copy stored at the state/national office (Gymnastics Queensland and Gymnastics Australia) and to AGDA's legal team.

External procedure

There may be a range of external options available to you depending on the nature of your complaint.

Workplace Health and Safety Queensland (WHSQ) can only respond to complaints in certain situations that fall within the scope of the *Workplace Health and Safety Act 1995*:

- The complaint must (on face value) fall within the definition of workplace harassment.
- The complaint must be in writing.
- The complainant must contact Workplace Health and Safety Infoline on 1300 369 915 for an information package, which will include the address to send the complaint and a checklist which must be attached to the written complaint.
- The complaint should have been raised at the workplace and an attempt made to resolve the complaint internally. Information regarding the outcome of this step should be included in the written complaint.

Attachment A2: MEDIATION

Mediation is a process by which people who are in conflict can be helped to communicate with each other about what is important for them and how to make decisions about resolving their dispute. Mediators provide a supportive atmosphere and method of talking to one another, to assist in sorting out the issues, coming up with acceptable solutions and making mutually satisfactory agreements.

This attachment outlines the general procedure of mediation that will be followed by AGDA.

1. The people involved in a formal complaint (complainant and respondent(s)) may work out their own resolution of the complaint or seek the assistance of a neutral third person or a mediator. Mediation may occur either before or after an investigation of the complaint.
2. Mediation (getting those involved to come to a joint agreement about how the complaint should be resolved) will only be recommended:
 - a. After the complainant and respondent have had their chance to tell their version of events to Director on their own; and
 - b. Director does not believe that any of the allegations warrant any form of disciplinary action - proven serious allegations will not be mediated, no matter what the complainant desires; and
 - c. Mediation looks like it will work (i.e. the versions given by the complainant and respondent tally or almost tally and/or at the very least, it looks as though it will be possible for each party to understand the other party's point of view).
3. 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 you and the respondent(s) and any other relevant factors, the complaint is not suitable for mediation.
4. If mediation is chosen to try and resolve the complaint, the Director of AGDA and in consultation with the complainant and the respondent(s), arrange for a mediator to mediate the complaint.
5. The Director will notify the respondent(s) that a formal complaint has been made, provide them with details of the complaint, and notify them AGDA has decided to refer the matter to mediation to resolve the complaint.
6. 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.
7. 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.
8. 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. Refer to Attachment C4: Record of Mediation.
9. If the formal complaint is not resolved by mediation, the complainant may:
 - a. Write to the Director to request that the Director reconsider the complaint in accordance with **Step 5**; or
 - b. Approach an external agency such as an anti-discrimination commission.

Attachment A3: INVESTIGATION PROCESS

If an investigation needs to be conducted the following steps are to be followed:

1. 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.
2. The complainant will be interviewed and the complaint documented in writing.
3. 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.
4. The respondent(s) will be interviewed and given the opportunity to respond. The respondent(s) response to the complaint will be documented in writing.
5. If there is a dispute over the facts, then statements from witnesses and other relevant evidence will be obtained to assist in a determination.
6. The investigator will make a finding as to whether the complaint is:
 - substantiated (there is sufficient evidence to support the complaint);
 - inconclusive (there is insufficient evidence either way);
 - unsubstantiated (there is sufficient evidence to show that the complaint is unfounded); and/or
 - mischievous, vexatious or knowingly untrue.
7. A report documenting the complaint, investigation process, evidence, finding, and if requested, recommendations, will be given to the Director.
8. A report documenting the complaint and summarising the investigation process and key points that were found to be substantiated, inconclusive, unsubstantiated and/or mischievous will be provided to the complainant and the respondent(s).
9. Both the complainant and the respondent(s) are entitled to support throughout this process from their chosen support person/adviser.
10. The complainant and the respondent(s) may have the right to appeal against any decision based on the investigation. Information on our appeals process is in Attachment A5.

Attachment A5: APPEALS PROCEDURE

Appeals Procedure

It is considered good and fair practice to provide a process to appeal against decisions or disciplinary actions imposed.

1. A complainant or a respondent(s) who is not satisfied with a decision described in **Step 7** of the Complaints Procedures can lodge one appeal to AGDA on one or more of the following bases:
 - 1.1 That a denial of natural justice has occurred; or
 - 1.2 That the disciplinary measure(s) imposed is unjust and/or unreasonable.
2. A person wanting to appeal in accordance with paragraph 1 must lodge a letter stating their intention and the basis for their appeal in accordance with the AGDA Appeal & Grievance Regulations.

Attachment A6: DISCIPLINARY CONSIDERATIONS

Any disciplinary measure imposed by the Director under this policy must:

- Observe any contractual and employment rules and requirements;
- Conform to the principles of natural justice;
- Be fair and reasonable;
- Be based on the evidence and information presented;
- Be within the powers to impose the disciplinary measure.

Factors to consider when imposing discipline

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

- If the individual is a parent and/or spectator (ability to enforce a penalty may be difficult);
- Nature and seriousness of the behaviour or incidents;
- In a case where action is taken concurrently with or in lieu of a resolution of a formal complaint, the wishes of the complainant;
- If the individual concerned knew or should have known that the behaviour was a breach of the policy;
- Level of contrition of the respondent(s);
- The effect of the proposed disciplinary measures on the respondent(s) including any personal, professional or financial consequences;
- If there have been relevant prior warnings or disciplinary action; and/or
- If there are any mitigating circumstances such that the respondent(s) shouldn't be disciplined at all or not disciplined so seriously.