



# **SKATE AUSTRALIA**

## **DISCIPLINARY PROCEDURES *INTERNATIONAL TEAM MEMBERS***

### ***BYLAW 18***

***Effective from June 2006***

## **PREFACE**

The safety and well being of every member of Skate Australia (SA) is integral to the future of our sport. Unfortunately as no sporting organisation can deny the unfortunate prospect of encountering misconduct by a international team member, Skate Australia's Board adopted this **Disciplinary Procedures** to deal with various types of misconduct and conflicts with the best interests of the sport.

The purpose of this policy is to provide guidelines for team managers in the conduct of any disciplinary hearing for international team members, ensuring that natural justice is afford to any team members so charged.

The SA Board believes members of international teams have the right to be treated with respect and dignity. They also have the right to have any complaints dealt with in a fair manner and to be given the opportunity to be heard before any penalties are imposed.

Matt Helmers  
Chief Executive Officer

## **Acknowledgment**

1. All international team members and team managers acknowledge the power vested in Skate Australia ('SA') pursuant to its constitution to initiate disciplinary action and submit unreservedly to the jurisdiction, procedures, penalties and appeal mechanisms of SA as set out in this Bylaw to be administered by the Board and the Chief Executive Officer, collectively known in this Bylaw as 'SA'.
2. All international team members and team officials further acknowledge that this Bylaw may be amended from time to time by SA in accordance with SA's constitution.

## **Power to discipline**

3. All international team athletes and team officials who infringe this Bylaw are liable to be penalised according to the seriousness of the infringement.

## **Categories of offending**

4. This Bylaw recognises two categories of offences: minor offences and serious offences.
5. An offence is categorised solely at the discretion of SA and its nominated officials with the power to determine into which category an alleged offence falls vested in one of the following persons:
  - (i) the Team Manager, if the alleged offence occurs whilst on tour;
  - (ii) the Chief Executive Officer in consultation with the Board, if required.
6. The Team Manager or the Chief Executive Officer may be guided in the categorisation of an offence/s by one or more of the following non-exhaustive list of factors:
  - the impact or damage caused by the offending conduct upon the sport and/or the victim;
  - the intent of the defendant;
  - the need for a penalty to be imposed;
  - the appropriate level of penalty proportionate to the offending conduct;
  - the need for general and specific deterrence; and
  - parity and consistency of approach.
7. This Bylaw sets out the disciplinary procedures for hearing both minor and serious offences and the penalties applicable to each category of offence.
8. In the event that the alleged offending conduct consists of both types of offences, SA may elect to deal with each category of offence separately according to the procedures provided for in this Bylaw, or alternatively, consolidate the matters into the one disciplinary procedure to be dealt with according to the procedures set out in this Bylaw for dealing with serious offences.

## **Minor offences**

9. Minor offences are less serious offences that attract penalties reflecting this fact.
10. The philosophy of this Bylaw is that minor offences will be dealt with expeditiously as possible but always adhering to the procedures set out in this By Law.
11. Minor offences must be dealt with as soon as is practically possible but no later than 24 hours after the alleged offending has been brought to the attention of the Team Manager unless this is not possible.
12. The Defendant shall be notified in writing of the following:
  - the alleged offence/s with which s/he is being charged;
  - a brief description of the offending conduct;
  - the time and place of the hearing;
  - confirmation that the applicable disciplinary procedure is that relevant to minor offences; and
  - the penalty range applicable to minor offences.
13. The defendant will be provided with a copy of this Bylaw at the same time they are notified in writing of the charge.
14. Subject to whether the alleged offence is committed on tour or not, the Team Manager will appoint a panel of three who, where possible, have no involvement with the accused, to hear and determine the matter. The Team Manager will appoint one person to be the Tribunal Chairman.
15. In the event that the Team Manager is a potential witness or anyway involved in any incident the Chief Executive Officer will appoint the panel.
16. The disciplinary hearing will be conducted in an informal environment to be determined at the sole discretion of the Tribunal always subject to procedures set down in this Bylaw.
17. Both the party presenting the charge/s (the prosecuting party) and the defendant will be provided with the opportunity to make submissions to the Tribunal and may wish to call evidence in support of their case.
18. Evidence and/or submissions will be oral only. The prosecuting party will proceed first.
19. Representation on behalf of the defendant in the form of an advocate is not allowed with the only exception being that where the defendant is under the age of 18 a representative is allowed. One observer may, at the discretion of the Tribunal, attend on behalf of the defendant and be present in the hearing room provided that the observer plays no role whatsoever in the proceedings.
20. Witnesses may be called to give evidence but only upon the Tribunal being satisfied that the evidence that the witness can give is material to the charge/s. A witness may give evidence by telephone link-up. There is a general right to cross examine a witness but only in relation to relevant matters. Witnesses will only be allowed to be recalled to give further evidence in the event that relevant new evidence is presented.

21. Upon hearing from both sides, the Tribunal may choose to retire from the hearing room to consider the matter. During this time the Tribunal will not discuss the matter with either party involved in the action or any other party.
22. A majority decision will determine the matter. The standard of proof upon which the Tribunal will determine the matter is the balance of probabilities meaning it is more likely than not the offending conduct occurred.
23. The findings of the Tribunal will be delivered orally and there is no obligation on the Tribunal to publish reasons for its decision.
24. The Tribunal has the power to adjourn a matter part-heard if the circumstances warrant an adjournment.

### **Penalty**

25. If the charge is proven the defendant will be given an opportunity to present material in mitigation relevant to penalty only. This is not an opportunity for the defendant to re-argue his/her case and any attempt to do so will be immediately halted.
26. The prosecuting party will also be afforded the opportunity to make submissions to the Tribunal on the appropriate penalty to be imposed in the circumstances. If the defendant makes submissions on penalty then any submissions made by the prosecuting party shall be made in response to the defendant's submissions and no further reply by the defendant will be allowed.
27. Prior convictions may be disclosed to the Tribunal but only after a conviction is secured. When imposing a penalty, the Tribunal may give greater weight to prior convictions of a similar nature.
28. When imposing a penalty for a minor offence, the Tribunal may choose from one or more of the following range of penalties:
  - a reprimand; and/or
  - removal of privileges; and/or
  - exclusion from SA activities for a period not exceeding one month.
29. Upon conclusion of the matter, the Tribunal must submit a written report of the Tribunal findings to the National Executive Officer within 7 days of the determination of the matter, or in the event of the matter being dealt with whilst on tour, within seven (7) days of return.
30. There is no right of appeal against conviction or penalty for minor offences.

### **Serious offences**

31. Conduct considered to be a serious offence, whether the occurrence happened on tour or not, must be reported to the Chief Executive Officer as soon as possible. A brief report setting out the circumstances surrounding the offence as well as identifying material witnesses and a summary of the evidence those material witnesses can give must be submitted with the report.
32. The Chief Executive Officer, with the assistance of the Board if required, will determine whether the matter should be dealt with under this Bylaw as a serious offence. In

determining whether a matter is serious or not, the Chief Executive Officer will be guided by the circumstances surrounding the commission of the alleged offence including, but not limited to, those factors detailed in paragraph 6.

33. If the Chief Executive Officer and/or the Board determine that a matter is not a serious offence, the matter will be referred back to the Team Manager or who will then conduct a hearing in accordance with this Bylaw and the procedures for determining minor offences. The fact that more than 24 hours has elapsed since the commission of the alleged offence does not preclude the matter from being heard.
34. If the Chief Executive Officer and/or the Board determine that a matter is a serious offence, the Chief Executive Officer and/or the Board will appoint a Tribunal consisting of three members to hear and determine the matter. The Chief Executive Officer and/or the Board will appoint one Tribunal member as Chairman.
35. The time and place of the Tribunal hearing will be determined at the discretion of the Chief Executive Officer and/or the Board Subject to receiving reasonable notification under paragraph 12, and in the absence of a significant reason showing cause why the Tribunal should not proceed, the Tribunal may elect to hear the matter in the absence of the defendant.
36. The Tribunal will be conducted according to those procedures for the dealing with minor offences as set out in paragraphs 12, 13, 15, 16, 19, 20, 21, 22 and 23 of this By Law.
37. Evidence may be given orally or in writing. Where evidence is given in writing and there is no opportunity to cross-examine the witness, the Tribunal has the discretion to attach less weight to this evidence.
38. Both parties have the right for an advocate to appear on their behalf. Paid legal representatives are precluded from both representing and any Tribunal hearing. One observer may be present with the defendant in the hearing room however this person may not involve themselves in the hearing in any manner.
39. In imposing a penalty for a serious offence, the Tribunal may choose from the following range of penalties which may be amended by SA from time to time:
  - Forfeiture of membership of SA; or
  - Suspension from all competition and/or Skate Australia activities for a period not exceeding one year; and/or
  - Suspension from competition at international level only for a period not exceeding one year; or
  - Suspension from competition at national level only for a period not exceeding one year; or
  - Suspension from competition at state level only for a period not exceeding one year;
39. If a hearing is convened to determine both serious and minor offences as provided for under clause 8 of this Bylaw, the Tribunal is limited in the scope of penalties it may impose in relation to those minor offences to those provided for in paragraph 27. Those serious offences will be penalised in accordance with paragraph 38.
40. The Chief Executive Officer will confirm in writing with the defendant any penalty imposed and will notify the defendant's club and branch who will immediately recognise the penalty imposed upon the defendant.

## **Appeals procedures**

41. Appeals may only be lodged regarding serious offences. Where a matter for determination involves both minor and serious offences, an appeal can only be lodged in relation to those offences categorised and dealt with by the Tribunal as serious.
42. An appeal notice in the prescribed form (Schedule 1) must be lodged with the Chief Executive Officer within seven (7) days of the handing down of the Tribunal's decision. The appeal notice must be accompanied by an appeal application fee of \$1,000 refundable only at the discretion of the Tribunal and in circumstances where the defendant is successful in overturning the Tribunal's finding of guilt and/or reduces the penalty imposed. The Tribunal may withhold part of the amount to cover the costs of the Tribunal hearing or refund if the appeal is upheld.
43. An appeal against the findings of the Tribunal and/or the imposition of a penalty in relation to a serious offence shall be conducted within 21 days of receipt of the notice of appeal. The Chief Executive Officer has a discretion to convene an appeal hearing outside of the 21 day period but only after it has been established that it would be impracticable to hear the appeal any earlier.
44. The Appeal Tribunal shall consist of three members appointed by the Chief Executive Officer, none of which has had a prior involvement in the matter. The matter will be determined by the Appeal Tribunal on a date to be determined by the President or delegate at his/her sole discretion and the defendant shall be notified of this date in writing. An Appeal Tribunal Chairman shall be appointed by the Chief Executive Officer. The Appeal Tribunal Chairman will have the discretion to conduct proceedings at his/her discretion subject always to the procedures set out in this By Law. A majority decision will determine the matter.
45. In order for a matter to proceed to an appeal, the defendant must establish on the balance of probabilities that it is more likely than not that s/he has an arguable case. This shall be done by written submissions only, lodged with the Chief Executive Officer no less than ten (10) days before the Appeal Tribunal is to convene to determine the appeal. The prosecuting party will have the final right of reply to any submissions lodged by the defendant. The prosecuting party's submissions in reply must be lodged with the Chief Executive Officer and served upon the defendant no less than seven (7) days before the Appeal Tribunal is to be convened. The Appeal Tribunal Chairman alone shall determine whether the defendant has sufficiently made out one or more ground/s of appeal no less than four (4) days before the matter is scheduled to proceed. There is no right to appeal against this decision. The Appeal Tribunal Chairman's decision will be conveyed to the parties by the Chief Executive Officer.
46. If it is determined on the balance of probabilities that the defendant has an arguable case and the appeal is in relation to penalty only, the matter will proceed by way of written submissions only.
47. Each party will be required to submit in writing their arguments with the party making the appeal obliged to lodge their written arguments no less than two (2) days before the matter is scheduled to proceed. A copy of the submissions of the party making the appeal will be provided to the non-appealing party who will then have twenty four (24) hours from the time of receipt of the appealing party's submissions to submit their own reasons.
48. If the appeal is against both conviction and penalty, the appeal will proceed according to the procedures set out in paragraphs 16, 19, 20, 23, 34, 36 and 37 of this By Law.

49. A majority decision will determine the matter.
50. The findings of the Appeal Tribunal will be delivered orally and there is no obligation on the Appeal Tribunal to publish reasons for its decision.
51. An appeal against conviction is a re-hearing of the matter and the parties will be obliged to recall any earlier relevant witnesses and may call fresh evidence, provided that the Appeal Tribunal is satisfied that the new evidence is relevant to the matter. The Appeal Tribunal has the power to impose a new penalty as provided for in paragraph 38 of this By Law. The new penalty may be greater than the penalty handed down by the original Tribunal provided the penalty falls within the range of penalties provided for in paragraph 38 of this By Law.
52. The Appeal Tribunal Chairman will notify the Chief Executive Officer in writing of the findings of the Tribunal. The Chief Executive Officer will confirm in writing with the defendant any penalty imposed upon the defendant and will notify the defendant's club and branch who will immediately recognise the penalty imposed upon the defendant.
53. The determination by the Appeal Tribunal will be final and binding on all parties. No further right of appeal exists within SA, or to an external tribunal or any civil court of law.
54. The Chief Executive Officer will keep a register of all penalties imposed for serious offences.
55. If the member, athlete or official is suspended, this suspension shall remain in force pending the determination of the matter by way of appeal.

**Schedule 1**

**Notice of Intention to Appeal**

I, ..... [insert name]

of.....[insert address]

wish to lodge an appeal against my conviction only / penalty only / conviction and penalty [strike out inapplicable portion] in accordance with *paragraph 42* of the Skate Australia Disciplinary Procedures Bylaw.

In lodging an appeal I acknowledge that:

1. An appeal may only be lodged in relation to a serious offence (para. 41).
2. This Notice must be lodged with the Chief Executive Office within seven (7) days of the Tribunal's decision (para 42).
3. The Notice will not be considered unless it is accompanied by an appeal application fee of \$1,000 refundable only at the discretion of the Appeals Tribunal (para 42).
4. An appeal hearing is not automatic. The applicant must establish by written submission lodged with the Chief Executive Officer no less than 10 days before the Appeal hearing date the reason why the applicant has an arguable case. This issue will be determined by the Appeal Tribunal Chairman (para 45).
5. An appeal against penalty only will be dealt with by way of written submissions lodged with the Appeal Tribunal two (2) days before the matter is scheduled to proceed (para 46).
6. An appeal is a rehearing of the matter and the Appeals Tribunal has the power to increase the penalty (para 51).
7. The finding of the Appeals Tribunal will be binding on all parties and no further right of appeal exists within SA or to an external tribunal or any civil court of law (para 53).
8. My suspension (if any) remains in place until the Appeal Tribunal reaches its finding (para 55).

.....  
Applicant's signature acknowledging the above

.....  
Date

Send to The Chief Executive Officer  
Skate Australia

By post PO Box 721, Beenleigh, QLD 4207

By fax (07) 33826399