

PROVISIONAL ACTION FRAMEWORK

Title:	Rowing Australia Provisional Action Framework
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Contents

1. Background	3
2. Policy Position	3
3. Precedent.....	4
4. Framework for Provisional Action	5
5. Procedure.....	6

1. Background

Provisional Action is the process undertaken, under the National Integrity Framework (NIF) [Complaints, Disputes and Discipline Policy \(CDDP\)](#), to impose a temporary measure on a Respondent while they are subject to a Complaints Process, or an investigation by law enforcement.

2. Policy Position

Clause 7.4 of the CDDP states:

(a) Where an allegation suggests a risk of harm to a Participant which justifies imposing Provisional Action, Rowing Australia will determine whether any Provisional Action will be taken to mitigate any potential harm to any person and/or interference in an investigation.

(b) Provisional Action may only be taken by Relevant Organisations and not by Sport Integrity Australia. For matters managed by Sport Integrity Australia, Sport Integrity Australia will advise Rowing Australia as soon as practicable of any possible risk of harm to Participants identified, including sufficient details of the matter to enable Rowing Australia to determine whether to impose any Provisional Action.

(c) Provisional Action may include suspension, supervision, restriction of duties or temporary redeployment, or suspension or restriction of rights, privileges or benefits.

(d) If a decision is made to impose Provisional Action, a Respondent may seek to have that decision reviewed by a Hearing Tribunal. The Hearing Tribunal will only consider whether the decision to impose the Provisional Action is proportionate to the perceived risk of harm and will not consider the merits of the Complaint except as is necessary to assess proportionality.

The Sport Integrity Australia (SIA) [Case Categorisation and Guidance for Sanctions \(SIA Guide\)](#) relevantly states:

The following principles should be considered when determining what type of Provisional Action may be appropriate:

- The type of Provisional Action recommended should be sufficient to mitigate the potential risk posed by the Respondent but should not be punitive; and
- The type of Provisional Action should not be more significant than a possible sanction may be, should the alleged Prohibited Conduct be Substantiated.

Provisional Action should be determined on a case-by-case basis. The categorisation of a matter within the Case Categorisation System and the sanctioning principles provide guidance as to the types of Provisional Action that may be suitable.

Within the range of potential sanctions referred to in the SIA Guide, the following may be relevant to Provisional Action:

- Role change / restricted duties or access.
- Supervision and mandatory oversight.
- Temporary suspension from relevant event / entity / club.
- Withdrawal of accreditation from the relevant sporting event.

3. Precedent

Provisional Action has previously been taken under the CDDP by:

- Rowing Australia to provisionally suspend coaching accreditation pending criminal inquiries into an alleged relationship with a 17-year-old athlete, which was subsequently revoked upon confirmation from police that it was not investigating the matter and no charges would be laid.
- Rowing Queensland to provisionally stand down a club committee member pending arbitration in the National Sports Tribunal (**NST**) with respect to alleged bullying of other committee members.

In neither case did the individual seek review of the Provisional Action taken. In another NIF sport, a coach sought review of SIA-imposed supervision orders pending investigation of a complaint that he used inappropriate language in the presence of children. The NST determined that this action was proportionate in the circumstances (and did not consider the merits of the complaint). On the basis of evidence that SIA had balanced the risk of harm to others (particularly children) against the impact on the coach's reputation and income, the NST was satisfied that SIA had appropriately mitigated potential harm to the coach. In this case, it was considered relevant that the supervision requirement did not go much beyond existing policy requirements or best practice, in any event.

Rugby League

The National Rugby League (**NRL**) introduced a 'No-Fault Stand Down' Policy in 2019 which provides that a player charged with a serious criminal offence (ie with a maximum punishment of 11 years imprisonment or more) will be automatically stood down until the charge is determined or withdrawn – with no avenue of review or appeal. There is discretion for lesser charges, where the NRL CEO or COO may stand a player down if they form the opinion that the player is bringing the game into disrepute (it is presumed that a player be stood down if the criminal offence involves an allegation that the player has acted violently towards a female or a child). The CEO or COO is not required to provide reasons and the player is not entitled to make submissions or lead evidence, however, they may seek review of an adverse decision. While stood down, a player may not play or participate in promotional or community activities, but may train and be paid.

The rule was the subject of a legal claim in *De Belin v Australian Rugby League Commission Limited* [2019] FCA 688. The Court rejected a player's argument that the automatic stand down was an unreasonable restraint of trade, instead holding that it was objectively reasonable to protect the interests of the NRL, without being more than adequate protection to its interests. The Court regarded as legitimate the NRL's interests in maintaining the financial viability of the clubs and league (there was evidence of potential sponsors withdrawing from negotiations due to off-field indiscretions of players) and avoiding a potential decline in female participation and interest. The player was stood down for two seasons before charges were ultimately dropped.

Australian Rules

In October 2021, Australian Football League (**AFL**) club Collingwood stood down player Jordan De Goey after he was charged with assault in the US (originally due to face trial in December 2021). The suspension was lifted in January 2022 after the player accepted a plea deal for a lesser charge.

In 2010, AFL club St Kilda stood down player Andrew Lovett indefinitely pending a police investigation into sexual assault allegations. The club subsequently terminated the player's contract after he was charged with rape.

Basketball

The National Basketball Association (**NBA**) Commissioner may stand a player down with pay for a reasonable period of time. The Commissioner considers the individual circumstances of each case, with regard to the following factors:

- the nature and severity of the allegations;
- the evidence of the allegations;
- the relationship between the player and the accuser;
- prior history;
- the player's reputation within the NBA community; and
- the risk of reputational damage to the NBA.

4. Framework for Provisional Action

In accordance with the CDDP, Provisional Action must be considered on a case-by-case basis and may only be taken for protective purposes, ie to mitigate the potential risk of harm. Relevant factors are discussed below. Ultimately, Provisional Action is only likely necessary in rare cases and will be used sparingly.

Allegations

A key consideration is the nature, severity and evidence of the allegations, to be considered through a lens of risk of harm to others within the sport.

Allegations of physical or sexual abuse or improper conduct in respect of children (under 18 years old) are therefore more likely to warrant immediate intervention, especially if the alleged conduct occurred within or in connection with the sport. The more severe the alleged conduct, especially where it may meet the threshold for criminality, the more compelling the case for Provisional Action. Likewise, there may be a stronger basis for Provisional Action where the alleged misconduct is repeated or ongoing (compared, for example, to a discrete incident).

The case for Provisional Action may be intensified by strong evidence to support the allegations. For example, where RA holds direct evidence of wrongdoing, such as a video/audio recording or an admission from the Respondent. However, the case for Provisional Action should not rely on the strength of evidence at hand. By definition, Provisional Action is an interim measure to mitigate risk during the period of time required for the allegations to be properly investigated. Provisional Action may therefore be appropriate even if there is only indirect (eg hearsay) evidence available as the Respondent remains entitled to the presumption of innocence. Provisional Action is not concerned with the Respondent's guilt and should not prejudice the outcome of any judicial process.

External action

Provisional Action is more likely appropriate where law enforcement and/or regulatory are also investigating or acting in parallel to the disciplinary process under the NIF. External action of this kind

will usually indicate that the matter is serious enough to consider Provisional Action. Further, as criminal investigations and court proceedings tend to move relatively slowly, the risk of harm may be unacceptable if the disciplinary process is on hold for an extended period. It is standard practice for the disciplinary process, whether managed by SIA or the sport, to be paused pending external action. Accordingly, Provisional Action will be considered where police are investigating or have laid criminal charges against the Respondent.

Where issues arise at the sub-national level, the relevant Club or State Association may also consider and take Provisional Action. For example, the Respondent's employment may be terminated, or they may be stood down, by the organisation pursuant to the terms of the employment relationship. RA's determination on Provisional Action should align, where appropriate, with that taken at the lower level(s).

The Respondent's circumstances

Provisional Action is more likely appropriate where the Respondent has a poor disciplinary record, particularly if they have previously engaged in misconduct similar to that alleged. This not only goes to the likelihood of the alleged conduct having occurred, but may suggest a higher risk of it re-occurring.

The Respondent's involvement in the sport is a critical factor which influences the levers available to RA. For example, where the Respondent is a coach, RA's jurisdiction is likely limited to their registration under the National Rowing Coaching Accreditation Scheme – unless they are directly employed or otherwise engaged by RA, in which case RA may exercise options under the relevant agreement. Similarly, where the Respondent is an athlete, the opportunities for RA to take Provisional Action are very limited unless the athlete participates at the national level, in which case it may be open to RA to withdraw, suspend or limit access to facilities or eligibility for competitive events and/or training programs.

The Respondent's position vis-à-vis others within the sport is necessarily relevant to the risk of harm to others. Provisional Action may therefore be more appropriate where the Respondent holds a leadership position or has ongoing contact with the Complainant(s) or other vulnerable groups based on age (ie children) or gender. The Respondent's entitlement to confidentiality in the Complaints process, which is critical to procedural fairness, is potentially a double-edged sword heightening the vulnerability of such people as they will often not be aware of the allegation and unlikely to take independent measures to protect themselves. This is relevant to the duty of care which may be owed by RA.

The Respondent's profile within and/or outside the sport may also be relevant, noting a risk that their conduct may be (unfairly) sheeted home to RA as a matter of perception. Action may be required from a reputational perspective, to give confidence to the rowing community that they will be protected from harm and to ensure that RA is not seen to be condoning the alleged misconduct.

On the other hand, having regard to the fundamental principle of proportionality, the risk of harm must be balanced against the potential impact of Provisional Action on the Respondent, including from a financial, wellbeing and reputational perspective. Where the Respondent stands to lose income as a result, the least restrictive form of Provisional Action should be preferred, to the extent it remains effective at mitigating risk.

5. Procedure

RA will co-ordinate with relevant stakeholders, as soon as possible, including the applicable Club and State Association – and SIA where it is responsible for managing the subject Complaint.



While a show cause process may mitigate the risk of legal challenge on the basis that the Respondent was not afforded natural justice, there is no explicit requirement under the CDDP to do so prior to taking Provisional Action.

In accordance with the CDDP, the Respondent is entitled to independent and expedited review of any Provisional Action. The NST would review Provisional Action taken by RA but would necessarily be limited to considering whether it is proportionate (excluding the merits of the Complaint).