

Approved by the Board:
October 2024



By-Laws

Disciplinary proceedings

Warringah Bowling Club Ltd
ABN 85 000 014 219
("Club" and "Company")

[If approved by the Club's Board, amongst other notifications, this By-law is intended to be placed in the Club's online 'Library' of resources and reference sources]

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By-Law : Disciplinary proceedings

1 Preliminary

Under the Club's Articles of Association ('**Constitution**'), the *Board* from time to time, may make By-laws (that are not otherwise inconsistent with the Constitution), as the *Board* may deem necessary or expedient for the proper conduct and management of the Club, and the *Board* from time to time, may also amend or repeal those By-laws.

Included in the *Board's* express By-law making powers, is that it may regulate the "conduct of *members* and guests of *members*", and the Board has made a By-law entitled "Code of Conduct". For the purposes of this By-law – "Disciplinary proceedings", the Code of Conduct is taken to be incorporated in full.

Broadly described, the Club's approach to dealing with 'disciplinary' matters will (or may) involve:

- A. the 'Code of Conduct'
- B. 'Breaches' (or reports or allegations of breaches)
- C. Proceedings (evidence-based, with 'Disciplinary Hearings' / right to be heard)
- D. 'Sanctions', including possible suspension (of privileges) or expulsion.

2 Definitions and Interpretation

2.1 Definitions

Unless the context otherwise requires or is stated, the following definitions and expressions apply, and words and expressions *italicised* that are defined in the Corporations Act, in the Registered Clubs Act or in the Regulation, or in the Constitution, have their same meaning when used in, and in connection with, this By-law.

"affected member"	means the <i>member</i> about whom an alleged Breach concerns.
"Breach"	means a "Breach" as described in Rule 3.1.
"By-law"	means a By-law of the Club.
"Code of Conduct" or "Code"	means the code set out in the Club's approved By-law - "Code of Conduct", incorporating the following extract:

"The following constitutes the Club's "Code of Conduct" that is expected of all members at all times, including in connection with a member's guests at the Club.

- (a) *Care for and respect the Club's facilities that are being made available to you as a member, and enjoy and participate in the Club and its facilities for your own benefit and enjoyment.*
- (b) *Be respectful and never rude to others while at the Club; and most especially to Club staff and*

officials. (Officials are volunteers giving up their time to provide service to benefit all members, and the Club's staff are there to help make your experiences at the Club, enjoyable.)

- (c) *While at the Club, do not misbehave; and that includes doing things that are illegal, being boorish or using profane language, making obscene gestures or offensive remarks, or exhibiting conduct that is demeaning of others.*
- (d) *Do not conduct yourself in a way that is, or may be, prejudicial to the interests of the Club, including conduct that may bring your Club into disrepute.*
- (e) *In competition or in social play, be a good sport – In your conduct, honour both the spirit and the letter of competition rules, and respect the traditions of the game that you play.”*

“Disciplinary Committee”

means a ‘Disciplinary Committee’ as described in this By-law – “Disciplinary proceedings”, properly constituted and delegated by the Board.

“Ineligible”

means “Ineligible” under any Club By-law, including that the *member*:

- (a) has been expelled or suspended from the Club (including that their *membership* has been suspended) pursuant any Rule or applicable By-Law; or
- (b) is refused admission to the Club, or has been turned out of the Club, pursuant to any law (including the Liquor Act), any Rule or applicable By-Law.

“Rule”

means a rule set out in this By-law or, as the case may require, the Constitution.

“Sanction”

means a “Sanction” as described in Rule 3.1.

2.2 Interpretation

- (a) Headings (and sub-headings) and footnotes in this document are for convenience only and do not affect interpretation; and
- (b) Unless the context requires otherwise, in this By-law:
 - (i) labels used for definitions are for convenience only and do not affect interpretation;
 - (ii) words indicating the singular include the plural and words indicating the plural include the singular;
 - (iii) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
 - (iv) a reference to any law or legislation includes regulations under it, and any consolidations, amendments, re-enactments or replacements of any of them;

- (v) a reference to regulations includes instruments of a legislative character under legislation, including regulations, rules, by-laws, codes, ordinances and proclamations;
- (vi) “including” (and like expressions) must be interpreted as if followed by “without limitation”;
- (vii) a reference to any thing (including an amount) is a reference to the whole and each part of it; and
- (viii) if a word is defined, another part of speech of that word has a corresponding meaning.

3 Disciplinary

General

This By-law – “Disciplinary proceedings” is made subject to exceptions, permissions and rights set out in the Constitution¹, the Liquor Act (in particular, s.77 Liquor Act), the Registered Clubs Act and the (Clubs) Regulation.

3.1 Disciplinary powers (of the Board)

If in the reasonable opinion of the Board, a *member*:

- (a) has wilfully refused to comply with any of the provisions of the Constitution or any By-Law; or
- (b) has engaged in conduct prejudicial to the interests of the Club; or
- (c) conducted themselves in any way or in any manner that is contrary to the Code of Conduct, entitling the *Board* to reasonably form the opinion that the *member* is unfit for membership of the Club,

(in each instance, a “**Breach**”), in connection with the Breach, the Board may determine an appropriate sanction or sanctions, including any one or more of the following (in each case, a “**Sanction**”):

- (d) reprimand the *member* or make a determination that the *member* is “Ineligible” under this or any other By-law; or
- (e) for any period that the Board considers fit, suspend the *member* from some or all rights and privileges of membership; or
- (f) accept the resignation of the *member* or expel the *member* from the Club.

3.2 Disciplinary proceedings

- (a) To the extent reasonably practicable in all the circumstances, ‘disciplinary proceedings’ of the Club in connection with an alleged Breach are to be conducted in accordance with the procedures set out in this By-law.

Strict procedural compliance not necessary

- (b) Despite anything to the contrary, provided there is not substantive injustice for the affected *member*, the outcome of disciplinary proceedings (in connection with an alleged Breach) will not be invalidated nor voided if the procedures set out in this By-law have not strictly been complied with.

¹ Article 17 of the current Constitution.

To be considered by Board (or a “Disciplinary Committee” of the Board)

- (c) Breaches and allegations of Breaches are to be considered and determined by the Board or by a duly appointed and delegated “Disciplinary Committee” (of the Board).
- (d) In this By-law – “Disciplinary proceedings”, references to “Board” are to be taken to be read as being to “the Board or to a Board-appointed and delegated Disciplinary Committee for the purpose (being either a standing “Disciplinary Committee”, or one appointed for the specific purpose, including for any Disciplinary Hearing)”.
- (e) The Board may authorise the *Secretary* and other persons to attend any Disciplinary Hearing (meeting) to assist the Board in considering and dealing with an alleged Breach, but only members of the Board may vote at a relevant meeting.

3.3 Disciplinary procedures

Disciplinary Hearing

- (a) At a meeting convened by the Board for the purpose, or as part of a regularly scheduled Board meeting, (each, a “**Disciplinary Hearing**”), Breaches and allegations of a Breach by a *member* are to be heard, considered, and decided, together with Sanctions (if any) to be determined in connection with that.
- (b) The Board, for any period it considers fit and for any reason, may adjourn a Disciplinary Hearing.

Notify the member

- (c) At least seven (7) days before a Disciplinary Hearing, the affected *member* must be notified in writing of the proposed holding of the Disciplinary Hearing, and:
 - (i) the date, time and place of the Disciplinary Hearing at which the alleged Breach is to be heard and considered; and
 - (ii) short particulars of the Breach that is alleged, with sufficient alleged facts and circumstances provided to inform the affected *member* of what is alleged; and
 - (iii) without limiting Sanctions that may finally be determined, the most likely Sanction(s); and
 - (iv) asking the affected *member* be present (at the Disciplinary Hearing).

Member may attend

- (d) For a Disciplinary Hearing, an affected *member* may:
 - (i) attend the meeting to answer the Breach allegations (as the case may be, that with any witness the affected *member* might reasonably ask to call to be heard at the meeting); and
 - (ii) submit to the meeting written representations (from the *member* or witnesses) in answer to the Breach allegations; and
 - (iii) address the meeting on any likely (or possible) Sanction(s).

Member conduct at a Disciplinary Hearing

- (e) At a Disciplinary Hearing, the Club's Code of Conduct continues to apply. Accordingly, the affected *member* (and any witness called by the affected *member*) must act in an appropriate manner at the meeting (including in accordance with the Code of Conduct), and in particular, must not act in any offensive or disruptive manner.

Chairperson at the Disciplinary Hearing

- (f) If the chairperson of the Disciplinary Hearing considers (in their absolute discretion) that the affected *member* (or witness) attending is not acting in an appropriate manner at the meeting, the chairperson may issue a warning about the *member's* (or witnesses') conduct and inform the *member* that if the *member* (or *member's* witness) does not comply with the warning, and conduct themselves in an appropriate manner, the *member* (and witness) may be asked to leave the meeting, and the Disciplinary Hearing will continue to consider and deal with the alleged Breach in the absence of the *member*.
- (g) If, despite a chairperson's warning under paragraph (f), the chairperson of the Disciplinary Hearing determines (in their absolute discretion) that the affected *member* (or witness) still does not comply, the chairperson (in their absolute discretion) may exclude the *member* (and witnesses) from the Disciplinary Hearing, and, in the absence of the *member*, the meeting may continue to consider and deal with the alleged Breach.

If the member is not present

- (h) Despite anything to the contrary, if the affected *member* fails to attend, or for any reason otherwise, is not present at, the Disciplinary Hearing:
 - (i) the alleged Breach may be considered and decided on the evidence before the meeting, taking into account any written representations already then submitted by the affected *member*, and
 - (ii) in connection with that decision, Sanctions (if any) may be determined.

Decisions on alleged Breach and Sanctions (if any)

- (i) After considering evidence put before it in connection with an alleged Breach, at the Disciplinary Hearing, the Board may:
 - (i) decide that the Breach, as alleged, has been made out; or
 - (ii) otherwise form an opinion that the conduct of the affected *member* in connection with the alleged Breach, is conduct that is prejudicial to the interests of the Club or renders the *member* unfit for membership (of the Club), and therefore subject to Sanctions; or
 - (iii) advise the affected *member* that the Board requires additional time to consider the evidence put before it in order to decide or determine the alleged Breach and outcomes.
- (j) At the Disciplinary Hearing, after the Board has come to a decision about the alleged Breach or determination on proposed Sanctions (if any), the Board must:

- (i) promptly inform the affected *member* of the Board's decision or determination; and
 - (ii) if the affected *member* is present at the Disciplinary Hearing, provide an opportunity for the affected *member* to address the meeting on Sanctions (if any) to be imposed; and
 - (iii) determine the Sanctions (if any) to be applied to the affected *member*.
- (k) Within seven (7) days after the date of the Board's decision or determination, the Board must inform the affected *member* in writing of the Board's decision or determination

Majority decisions

- (l) Motions by the Board under this By-law – “Disciplinary proceedings”, including to decide an alleged Breach or determine Sanctions for an affected *member*, are to be resolved by secret ballot passed by at least a 2/3rds majority of those members of the Board present in person (and entitled to vote).

Decisions final

- (m) Despite anything to the contrary, a decision or determination of the Board on the outcome of a Disciplinary Hearing, will be final, and no reasons, grounds nor opinions, need be given for the decision or determination.

4 Temporary suspension

If a notice is given to an affected *member* under Rule 3.3(c) of this By-law (informing them of an upcoming Disciplinary Hearing), until the alleged Breach is heard and determined:

- (a) the Board; or
- (b) the *Secretary* (independently of the Board),

by notice promptly given, may temporarily suspend the affected *member* from some or all of their rights and privileges as a *member* of the Club.²

5 “Disciplinary Committee”

Constitution of Disciplinary Committee

- (a) By resolution, the Board may delegate all of its powers and functions under this By-law – “Disciplinary proceedings” to a “Disciplinary Committee” comprising at least **three (3) directors** of the Club selected by the Board, be that as a standing committee, or separately for the purpose, to hear and determine an allegation of a particular Breach.

² Subject to the terms of their suspension, an affected *member* whose *membership* is suspended, even temporarily, during the period of a suspension, without the prior permission of the Board, is not be entitled to:

- (a) attend at the Club's premises nor use any of the Club's facilities for any purpose; nor
- (b) participate in any of the recreational, social or sporting activities of the Club, nor of any Sub club; nor
- (c) attend or vote at any meeting of the Club, nor of any Sub club; nor
- (d) nominate or be elected or appointed to the Board nor to any committee of a Sub club; nor
- (e) vote in the election of the Board nor or any committee of a Sub club; nor
- (f) propose, second or nominate any eligible member for any office of the Club or any Sub club; nor
- (g) propose, second or nominate any eligible member for Life membership.

- (b) At any time and for any reason, the Board may revoke a delegation to the Disciplinary Committee to hear and determine a Breach allegation, and instead, may itself, hear and determine the Breach allegation against an affected *member*.

Quorum of Disciplinary Committee

- (c) The quorum of a Disciplinary Committee for the purposes of this By-law, will be **three (3) directors** of the Club.

Disciplinary Committee to act per procedures in this By-law

- (d) To the extent reasonably practicable, a Disciplinary Committee constituted for Disciplinary Hearings, is to conduct its activities in accordance with the procedures described in this By-law – “Disciplinary proceedings”.

Board can review Disciplinary Committee

- (e) Despite anything to the contrary, in connection with an alleged Breach, the Board may review a decision of the Disciplinary Committee, or as it sees fit, order a fresh hearing of any matter determined by the Disciplinary Committee.
- (f) Within forty-two (42) days after the date on which a relevant Disciplinary Committee meeting was held, in substitution for any decision made by the Disciplinary Committee in connection with an alleged Breach, the Board may determine any Sanction on the affected *member* that is permitted by this By-law or lawfully otherwise.

By-Law: “Disciplinary proceedings”

Approved by the Board, October 2024

[Leo MacPherson – Chairperson]