

Guideline 5 Disciplinary Complaints

Overview

This guideline provides complainants and respondents with information about the Independent Liquor & Gaming Authority's (**the Authority**) processes for making and determining disciplinary complaints. A **complainant** is someone who makes a complaint. A **respondent** is someone who a complaint has been made about.

Only a limited group of people can make disciplinary complaints to the Authority. These complaints are different from reports members of the public may make about an incident at a licensed premises or a potential breach of liquor or gaming laws. Reports from members of the public may be made to Liquor & Gaming NSW [here](#).

This guideline is divided into the following sections:

- For complainants - making a complaint to the Authority
- For respondents - a complaint has been made about me
- Disciplinary powers of the Authority
- Informal process
- Appeal rights
- Review of this guideline
- Checklist for complainants
- Flowchart of complaints process

1. For complainants - making a complaint to the Authority

Who a complaint may be made about

1.1 A complaint may be made to the Authority about:

- a licensee, approved manager or close associate of a licensee under Part 9 of the *Liquor Act 2007* (NSW) (**Liquor Act**);
- a licensee or close associate under Part 8 of the *Gaming Machines Act 2001* (NSW) (**Gaming Machines Act**); and
- a registered club or a person who is the secretary or a member of the governing body of a registered club under Part 6A of the *Registered Clubs Act 1976* (NSW) (**Registered Clubs Act**).

1.2 A complaint may also be made about a person if they were previously in one of these roles.

1.3 The Liquor Act, Gaming Machines Act and Registered Clubs Act are referred to in this guideline collectively as the Acts (**the Acts**).

Who may make a complaint and on what grounds

1.4 Only the following people may make a complaint:

- the Secretary of the Department¹;
- the Commissioner of Police; and
- the local council for complaints under the Liquor Act and Registered Clubs Act.

¹ The Department is the government department responsible at the time.

1.5 The grounds of a complaint are set out in the Acts.

1.6 Complaints must be in writing and emailed to disciplinary@ilga.nsw.gov.au.

Substance of the complaint

1.7 The complaint must set out:

- a. the legislation under which the complaint is made and any other relevant legislation;
- b. the facts and supporting evidence or material that establish the ground(s) of complaint²;
- c. any relevant history, such as whether the respondent has previously come to the attention of the complainant for similar issues;
- d. any aggravating or mitigating factors;
- e. any history of disciplinary complaints and their outcomes;
- f. submissions on why the Authority should take disciplinary action;
- g. in order to streamline the assessment of complaints, complainants should carefully consider what ground of complaint is best supported by the evidence in their investigation report. Multiple grounds of complaint based on the same facts and evidence do not add weight to the complaint.

Complaint requirements

1.8 Complaints must meet the following requirements:

- a. complaints must be concise, generally no more than 20 pages plus annexures, unless the matter is exceptionally complex;
- b. complaint material must be in digital format either via email or using a file sharing platform such as SharePoint or Kiteworks;
- c. all evidence and material must be provided as individual attachments, in accessible formats (for example video CCTV footage in MP4 format, large files are compressed if necessary), and correctly dated and numbered;
- d. an index of all evidence and material must be provided;
- e. where a complaint relies on a criminal conviction/s, evidence of that conviction/s must be included, for example, a JusticeLink extract or a transcript from sentencing proceedings. Information about whether a non-publication order was made must also be provided;
- f. lengthy CCTV footage must be accompanied by relevant stills and commentary with timestamps;
- g. raw data must be accompanied by analysis that explains its relevance;
- h. where multiple parties are the subject of complaint, for example, a corporate licensee, an approved manager and a close associate, separate complaints must be submitted for each party, with supporting evidence or material specific to each individual complaint;
- i. all identifying information not relied on as part of the complaint, other than the names of respondents or witnesses must be redacted, including names of minors³;
- j. any 'criminal intelligence'⁴ contained in a complaint under the Liquor Act that must not be disclosed, must be clearly identified; and
- k. a current instrument of delegation must be provided reflecting that the complainant is authorised to make the complaint.

1.9 If these requirements are not met, the Authority will generally not accept the complaint.

² The evidence or material in support of a complaint may include, but is not limited to, records of criminal convictions, Police Fact Sheets, video CCTV or other footage, photographs, third party witness statements, file notes, extracts from databases, business records, emails, letters, maps, diagrams.

³ Complainants must ensure compliance with obligations under *the Privacy and Personal Information Protection Act 1998* (NSW) and *Health Records and Information Privacy Act 2002* (NSW). Examples of identifying information that must be redacted includes but is not limited to, personal contact details, health information, date of birth, gender.

⁴ 'Criminal intelligence' is defined in section 4 of the Liquor Act as information classified by the Commissioner of Police as criminal intelligence within the meaning of the *Crimes (Criminal Organisations Control) Act 2012* or declared by the Supreme Court to be criminal intelligence.

Procedural fairness

1.10 The Authority must accord procedural fairness to respondents. This means that respondents must understand and be given a chance to respond to the complaint. To enable this, the evidence and material forming the complaint must be given to the respondent so that they can make meaningful submissions. The only exception is for 'criminal intelligence' which must not be disclosed. Complainants should therefore carefully consider the need to include sensitive material to establish the basis for a complaint.

How the Authority deals with complaints

1.11 Complaints are established on the balance of probabilities. This standard of proof means that the Authority is satisfied the alleged facts are more likely than not to have occurred. The Authority is not required to follow the rules of evidence, which relate to the admissibility of evidence in a court, when considering a complaint.

Timing of complaints

1.12 Complainants may wish to consider delaying making a complaint if a related criminal prosecution or appeal is in progress.

Powers under Part 4 Division 1A of the Liquor Act

1.13 Prospective complainants should consider whether the public interest is better served by lodging a complaint resulting in disciplinary action, or whether the conduct could be more appropriately dealt with through a decision or application by the Secretary or Commissioner of Police under Part 4 Division 1A of the Liquor Act to impose conditions on the licence. The imposition of conditions provisions are directed towards the good management of licensed premises and may be more effective than taking disciplinary action.

2. For respondents - a complaint has been made about me

Notice of complaint

2.1 When a complaint is received and accepted by the Authority, the Authority will notify you, providing a copy of the complaint material and informing you of the complaint and the alleged facts and evidence which form the complaint.

2.2 The notice will invite you to show cause, by way of a written submission, as to why the Authority should not take disciplinary action. You will usually be given 28 days to make a submission.

2.3 The Authority must also notify any other party, such as the lessor of the licensed premises, who may have a financial interest in the licence and invite them also to make a submission.

Making written submissions

2.4 You are entitled to be heard in response to the complaint and any allegations made by the complainant. The following paragraphs explain your opportunities to make your views heard.

2.5 If you make a submission, the complainant will be given an opportunity to make a submission in reply (usually 14 days), addressing any submissions you have made.

2.6 If the complainant has responded to your submission, you will be given a further opportunity (usually 14 days) to make a final submission, addressing any additional submissions from the complainant.

2.7 You should ensure that your submission addresses the complaint, the allegations and the evidence as concisely and comprehensively as possible and is generally no more than 20 pages, unless the matter is exceptionally complex. Any supporting evidence should also be provided as attachments. You may choose to engage a legal representative to prepare submissions on their behalf.

Directors of corporate licensees

2.8 The Authority expects close associates of a licensee subject to a complaint, for example a person who is a director of a corporate licensee, to demonstrate in their written submissions or supporting evidence their personal commitment to establishing and maintaining a culture of compliance and care for their customers. This includes, but is not limited to, staff training and application of that training in the operation of the licensed premises. Accordingly, directors of corporate licensees may be the subject of disciplinary complaints.

3. Disciplinary powers of the Authority

3.1 The Authority will decide whether disciplinary action is appropriate only after determining if the allegations forming the grounds of complaint are established.

3.2 If the Authority is satisfied that the complaint is established, it may take a broad range of disciplinary actions. It may take more than one action or no action at all.

4. Informal process

4.1 The Authority is an independent administrative body. It complies with the relevant Acts and is committed to according all parties procedural fairness.

4.2 The Authority uses its disciplinary powers in the public interest and aims to be as efficient and informal as possible, while minimising time and costs to all parties. Most complaints will be determined on the written material before the Authority. The Authority may, at its discretion, decide to conduct an interview, convene a conference or receive submissions orally if it is of the view that doing so will aid in its decision making.

4.3 The [Ministerial Statement of Expectations](#) issued to the Authority on 21 February 2024 provides timeframes for the determination of complaints and publication of decisions at Annexure A. The determination of a complaint may be paused in certain circumstances, such as:

- a. waiting for related court proceedings to be finalised;
- b. a request from a respondent or complainant for an extension of time to prepare written submissions;
- c. one complaint is reliant on the finalisation of another complaint;
- d. rectification of minor defects such as file formats not working or misnumbered or missing exhibits.

4.4 The Authority will take into consideration all submissions received within time before making a decision. If no submissions are received within time, the Authority may make a decision on the material before it.

4.5 The Authority will notify the respondent, complainant and other required parties of its decision once made and provide reasons. The decision will usually be published on the Authority's website at www.ilga.nsw.gov.au.

5. Appeal rights

5.1 A decision made by the Authority in relation to a disciplinary complaint may be reviewed by the New South Wales Civil and Administrative Tribunal (**NCAT**). An application for review may be made by the complainant or respondent and is required to be filed with NCAT within 28 days of the Authority's decision.

6. Review of this guideline

6.1 The Authority will review and update this guideline from time to time.

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Chairperson

Checklist for complainants

Identify the respondent

- Identify who the complaint is against under the relevant legislation – i.e. a licensee, approved manager, close associate, registered club or person in a governing body role

Authorisation

- Check your office's instrument of delegation to ensure you are authorised to make the complaint. Ensure you include this delegation with your complaint material

Substance of the complaint

- Set out the ground(s) of complaint under the relevant legislation. A single ground of complaint should be made, where possible, supported by the best evidence and material
- Provide supporting evidence or material that establish the ground(s) of complaint
- Include any relevant history, such as whether the respondent has previously come to the attention of the complainant for similar issues, any aggravating and mitigating factors, and any comparable disciplinary complaints and their outcomes
- Include reasons as to why the Authority should take disciplinary action and a recommendation on the type of action

Complaint requirements

- Ensure the complaint is concise, generally no more than 20 pages plus attachments, unless the matter is exceptionally complex
- Provide all material: in digital format via email or file sharing platforms, as individual attachments, in accessible formats, correctly dated and numbered, and with an index
- Where the complaint relies on criminal convictions, provide evidence of those convictions and information about whether a non-publication order was made
- Provide stills and commentary with timestamps of CCTV footage where the footage is lengthy
- Accompany raw data with an analysis explaining its relevance
- Where more than one party is the subject of complaint, submit separate complaints for each party, with supporting evidence or material specific to each individual complaint
- Ensure all identifying information not relied on as part of the complaint, other than the names of respondents or witnesses is redacted, including names of minors
- Where a complaint under the Liquor Act includes 'criminal intelligence' that should not be disclosed to the respondent, ensure that information is clearly identified
- Consider the need to include any sensitive information or material in the complaint as it will be disclosed to the respondent

Other considerations

- Consider delaying the complaint if a related criminal prosecution or appeal is underway
- Consider whether the conduct could be more appropriately dealt with through a decision or application by the Secretary or Commissioner of Police under Part 4 Division 1A of the Liquor Act to impose conditions on the licence

Lodging the complaint

- Lodge the complaint and all supporting evidence and material via email to disciplinary@ilga.nsw.gov.au

Complaints process

