

Case number: NST-E22-288741

Case Title: Member v Coach (with AWF)

Determination

National Sports Tribunal General Division

sitting in the following composition:

Panel Member

Mr Jon Erbacher

in the arbitration between

Member

(Applicant)

And

Coach

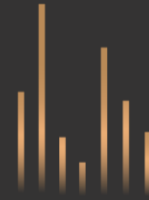
(Respondent)

And

Australian Weightlifting Federation Limited

(Applicant – Sporting Body)

Represented by Ian Moir, CEO



PARTIES

1. Member is the Applicant (**Applicant**). The Applicant is a member of a Weightlifting Club (**Club B**) which is an affiliated club of NSW Weightlifting Association (**NSWWA**).
2. The Applicant made a complaint to the Applicant Sporting Body, Australian Weightlifting Federation Limited (**AWF**) on 30 October 2022 regarding occurrences at the Quaycentre gymnasium at Sydney Olympic Park (**Quaycentre gym**) on 22 January 2022 and 25 January 2022.
3. Coache is the Respondent (**Respondent**). The Respondent is an officer of NSWWA¹, an AWF accredited coach, and the head coach of another Weightlifting Club (**Club A**).
4. AWF is the National Sporting Organisation in accordance with the definition set out in section 5 of the *National Sports Tribunal Act 2019* (Cth) (**NST Act**).
5. With the agreement of the Applicant and the Respondent, AWF applied to the National Sports Tribunal (**Tribunal**) for resolution of the dispute by application dated 4 November 2022 (**Application**).

INTRODUCTION

6. The Applicant complains that the conduct of the Respondent, which occurred at the Quaycentre gym on 22 January 2022 and 25 January 2022, constituted bullying, harassment and discrimination against her, in breach of AWF's Member Protection Policy² (**MPP**).
7. The Respondent denies that he bullied, harassed or discriminated against the Applicant, or that he breached the MPP.
8. The Parties entered into an arbitration agreement (**Arbitration Agreement**) wherein the issues for determination by the Tribunal were defined as follows:
 - a. whether the Respondent bullied and discriminated against the Applicant, contrary to the MPP; and
 - b. if the Respondent is found to have breached the MPP, the sanction to be imposed.

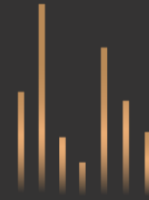
NST JURISDICTION

9. The allegations the subject of the Applicant's complaint concern conduct that pre-dates AWF's adopting of the National Integrity Framework (which occurred on 31 October 2022).
10. Notwithstanding, AWF and the parties to the dispute agreed³ that:
 - a. the dispute will be determined by the Tribunal; and

¹ The Respondent is listed on the NSWWA's website as the Treasurer of NSWWA.

² Version 9, dated November 2017.

³ See the Arbitration Agreement.



- b. the constituent documents of AWF which are relevant to the determination of the dispute are:
 - i. the MPP; and
 - ii. the AWF Grievance, Discipline and Appeals By-Law⁴ (**By-Law**);
 - c. the dispute will be governed by the NST Act, the *National Sports Tribunal Rule 2020 (NST Rule)* and the *National Sports Tribunal (Practice and Procedure) Determination 2021 (NST (Practice and Procedure) Determination)*.
11. Accordingly, the jurisdiction of the Tribunal is engaged by sections 24(1)(a) and 24(1)(b)(ii) of the NST Act.
12. The parties have agreed that, subject to any applicable rights of appeal, the Tribunal's determination will be final and binding on them.⁵

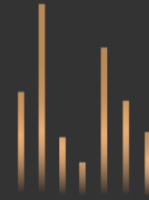
FACTUAL BACKGROUND

13. The Respondent acts in the role of "CEO" for NSWWA. As part of that role, he is responsible for coordination and monitoring of the operation of the Quaycentre gym.
14. Club B and Club A share the Quaycentre gym facilities for training purposes.
15. Club B holds its training sessions at the Quaycentre gym, generally at the following times:
 - a. from about 4.30pm to 9.00pm on Monday, Tuesday and Wednesday; and
 - b. from about 11am to 1pm on Saturday.⁶
16. On Saturday, 22 January 2022, the Applicant attended the Quaycentre gym for the purpose of participating in a training session with other members of Club B. The Applicant states that, shortly after taking up a position on a weightlifting platform in order to commence her training session, the Respondent approached her and said "You don't lift much weight, you need to finish training by 12pm."
17. On Tuesday, 25 January 2022, the Applicant was training with her Club B teammates at the Quaycentre gym. The Applicant states that the Respondent arrived at the gym and berated the Applicant's teammate for playing "loud music", and then focussed his attention on her, shouting "Did you leave the gym at 12pm on Saturday as I told you?", "Do you understand English? Do you need a translator?" and proceeded to berate her as he left the gym, threatening her again that she must finish her training within one hour and that he might ban her from the gym if she did not do so.
18. The Respondent denies the Applicant's account of the abovementioned incidents or that he conducted himself in a way that was threatening, bullying or discriminatory.

⁴ As approved by the AWF Board on 12 June 2014 and amended by the AWF Board on 15 February 2018.

⁵ Clause 10.15 of the Arbitration Agreement.

⁶ The precise training times is disputed between the parties.



19. While the Tribunal has considered all the facts, allegations, submissions and evidence submitted by the parties, these reasons refer only to the evidence and submissions that the Tribunal considers necessary to explain its reasoning in arriving at the determination contained herein.

PROCEEDINGS BEFORE THE NST

20. The Arbitration Agreement sets out a timeline for the filing of documentation by the parties prior to the hearing. Pursuant to the Arbitration Agreement:
- a. the Applicant was to file and serve any witness statements, evidence and all other documents she wished to rely upon by 5.00pm on 30 November 2022;
 - b. the Respondent was to file and serve any witness statements, evidence and all other documents he wished to rely upon by 5.00pm on 9 December 2022;
 - c. the Applicant was to file and serve any further witness statements, evidence and other documents she wished to rely upon by 5.00pm on 14 December 2022;
 - d. AWF was to file and serve any further witness statements, evidence and all other documents it wished to rely upon by 5.00pm on 14 December 2022.
21. Although the parties did not strictly comply with the timeframes for the delivery of material in accordance with those directions, there were no objections by any party in relation to the delivery of any material filed prior to the hearing.
22. An interlocutory matter arose in relation to the attendance of the Respondent's support person at the hearing, in circumstances where that person was said to be legally qualified (Note: while the By-Law provides that the Respondent may have a support person attend the hearing⁷, legal representation at the hearing is not allowed⁸). The Tribunal considered the submissions of the parties in that regard and determined that the Respondent was entitled to have a support person attend the hearing, provided that they did not take part in the Tribunal proceedings in any way and only the Respondent engaged with the Tribunal or witnesses.
23. The hearing of the Application occurred by videoconference on Wednesday, 21 December 2022 at 4.00pm (Australian Eastern Daylight Time). The hearing was conducted substantially in accordance with the procedure for disciplinary hearings set out in the By-Law⁹, allowing for an inquisitorial approach by the Tribunal as contemplated by the By-Law¹⁰ and a level of informality consistent with the general principles relating to arbitrations before the Tribunal as set out in the NST Act¹¹, as follows:
- a. the procedure of the Tribunal is, subject to the NST Act, within the discretion of the Tribunal;

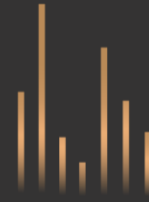
⁷ Clause 15.2.13 of the By-Law.

⁸ Clauses 15.2.15 and 17.11 of the By-Law.

⁹ Clauses 16, 17 and 19 of the By-Law.

¹⁰ Clause 17.6 of the By-Law.

¹¹ Section 40(1) of the NST Act.



- b. the arbitration must be conducted with as little formality and technicality, with as much expedition and at the least cost to the parties as a proper consideration of the matters before the Tribunal permit; and
 - c. the Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate.
24. The Applicant appeared in person. The Respondent appeared in person, together with his support person. Mr Moir, CEO of AWF, appeared on behalf of AWF.
25. The Applicant and the Respondent each made oral submissions, gave oral evidence in addition to their written statements in response to questions by the Tribunal and (in the case of the Applicant) under cross-examination.
26. No objection was made at the outset of the hearing to the composition of the Tribunal and at its conclusion the parties confirmed that their procedural rights had been fully respected.

APPLICABLE RULES

27. It is uncontroversial that the MPP and the By-Law apply to both the Applicant and the Respondent, in circumstances where they are individual members of NSWWA who have agreed to be bound by the statutes and regulations of AWF.¹²
28. The By-Law:
- a. works in accordance with and supports the MPP¹³;
 - b. seeks to ensure the proper and orderly management of the sport of weightlifting in Australia, including by providing a clear and fair grievance, discipline and appeals process by which issues requiring investigation and sanction or penalty can be resolved¹⁴;
 - c. governs the conduct and process of all grievances, discipline, appeal matters and other issues within the jurisdiction of AWF¹⁵.
29. The key provisions of the By-Law which are relevant to the substance of the dispute are as follows:

“11.1. Offences

The following Offences are established by GDABL:

11.1.1. Breach of the GDABL or an AWF Rule¹⁶;

...

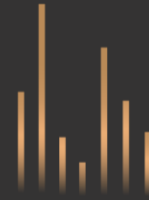
¹² See clause 5.2(a)(i) of the Constitution of NSWWA, as published on NSWWA’s website.

¹³ Clause 1.1 of the By-Law.

¹⁴ Clause 1.1 of the By-Law.

¹⁵ Clause 1.2 of the By-Law.

¹⁶ The reference to “AWF Rule” (which is not a defined term in the By-Law) is interpreted to mean a “Rule” as referred to in clause 11.7 of the By-Law.



11.2. Rule

A Rule¹⁷ includes, but is not limited to, the following Rules and Codes as amended from time to time. A lack of knowledge of the existence of a Rule is not a Defence to its breach. These Rules include:

11.2.1. General Code of Behaviour;

...

11.3. Breach of the GDABL or AWF Rule

A person will be guilty of this offence where:

11.3.1. the GDABL or AWF Rule asserted to have been breached was in effect as at the time the offence occurred;

11.3.2. the Person's conduct breached the relevant section of the GDABL or AWF Rule; and

11.3.3. there was no reasonable excuse for the breaching of the GDABL section or AWF Rule.

30. The MPP:

- a. was developed and adopted as a policy of AWF¹⁸;
- b. seeks to prevent physical, emotional, psychological and sexual abuse or harassment, all forms of discrimination and abuse of or by AWF members, and seeks to promote positive behaviour and values¹⁹;
- c. provides that AWF will ensure that disciplinary action will be taken against individuals if there is a breach of the policy²⁰;
- d. provides that AWF, its State Members²¹ and their affiliated clubs must, *inter alia*, adopt, implement and comply with the MPP, deal with any breaches of or complaints made under the MPP in an appropriate manner and recognise and enforce any penalty imposed under the MPP²²;
- e. provides that individuals bound by the MPP must, *inter alia*, make themselves aware of the contents of the MPP, comply with all relevant provisions of the MPP and comply with any decision and/or disciplinary measures imposed under the MPP²³.

¹⁷ The definition of "Rule" in the By-Law refers to paragraph 77 of the By-Law, which does not exist. Accordingly, "Rule" is interpreted as taking its definition from clause 11.2 of the By-Law.

¹⁸ Preface to the MPP.

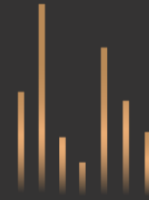
¹⁹ Preface to the MPP.

²⁰ Preface to the MPP.

²¹ Including NSWWA.

²² Clause 5 of the MPP.

²³ Clause 6 of the MPP.



31. The key provisions of the MPP which are relevant to the substance of the dispute are as follows:

“7.3.1 Discrimination

Unlawful discrimination involves the less favourable treatment of a person on the basis of one or more of the personal characteristics protected by state or federal anti-discrimination laws.

The personal characteristics protected by anti-discrimination laws include attributes such as race, age, disability, gender and race. The full list of protected personal characteristics is in the “Definitions” set out in the Dictionary of Terms.

Discrimination can be either direct or indirect.

- Direct discrimination occurs if a person treats, or proposes to treat, a person with a protected personal characteristic unfavourably because of that personal characteristic.*
- Indirect discrimination occurs if a person imposes, or proposes to impose, a requirement, condition or practice that will disadvantage a person with a protected personal characteristic and that requirement, condition or practice is not reasonable.*

For the purposes of determining discrimination, the offender’s awareness and motive are irrelevant.

7.3.2 Harassment

Harassment is any unwelcome conduct, verbal or physical, that intimidates, offends or humiliates another person and which happens because a person has a certain personal characteristic protected by State or Federal anti-discrimination legislation.

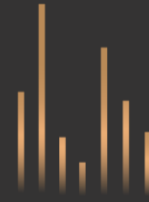
The offensive behaviour does not have to take place a number of times, a single incident can constitute harassment.

...

7.3.3 Prohibition against discrimination and harassment

We prohibit all forms of harassment, discrimination and bullying based on personal characteristics listed in the Dictionary (see clause 11).

Discrimination and harassment are extremely distressing, offensive, humiliating and/or threatening and create an uncomfortable and unpleasant environment. In most circumstances discrimination and harassment are against the law.



Descriptions of some of the types of behaviour which could be regarded as harassment or discrimination are provided in the Dictionary at clause 11.

Any person who feels they are being, or have been, harassed or discriminated against by another person or organisation bound by this policy, is encouraged to raise their concerns with us. A person may make an internal grievance, and in some circumstances, they may also be able to make a complaint to an external organisation.

Refer to our grievance procedure outlined in the AWF Grievance, Discipline, Appeals By-Law found at www.awf.com.au. This will explain what to do about the behaviour and how the AWF will deal with the problem.

...

7.9 Bullying

The AWF is committed to providing an environment that is free from bullying. We understand that bullying has the potential to result in significant negative consequences for an individual's health and wellbeing, and we regard bullying in all forms as unacceptable in our sport.

Bullying is characterised by repeated, unreasonable behaviour directed at a person, or group of persons, that creates a risk to health and safety. Bullying behaviour is that which a reasonable person in the circumstances would expect to victimise, humiliate, undermine, threaten, degrade, offend or intimidate a person. Bullying behaviour can include actions of an individual or a group.

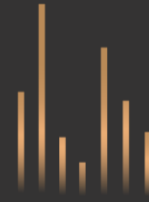
Whilst generally characterised by repeated behaviours, one-off instances can amount to bullying.

The following types of behaviour, where repeated or occurring as part of a pattern of behaviour, would be considered bullying:

- *verbal abuse including shouting, swearing, teasing, making belittling remarks or persistent unjustified criticism;*
- *excluding or isolating a group or person;*
- *spreading malicious rumours; or*
- *psychological harassment such as intimidation.*

...

If any person believes they are being, or have been, bullied by another person or organisation bound by this policy, he or she may make a



grievance. Refer to AWF Grievance, Discipline, Appeals By-Law found at www.awf.com.au.

11. Dictionary

...

Discrimination occurs when someone is treated unfairly or less favourably than another person in the same or similar circumstances because of a particular characteristic. This is known as direct discrimination. Indirect discrimination occurs when a rule, policy, or practice disadvantages one group of people in comparison with others, even though it appears to treat all people the same.

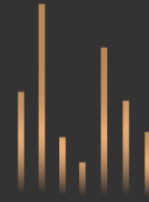
In Australia it is against the law to discriminate against someone because of their:

- *age;*
- *disability;*
- *family/carer responsibilities;*
- *gender identity/transgender status;*
- *homosexuality and sexual orientation;*
- *irrelevant medical record;*
- *irrelevant criminal record;*
- *political belief/activity;*
- *pregnancy and breastfeeding;*
- *race;*
- *religious belief/activity;*
- *sex or gender;*
- *social origin;*
- *trade union membership/activity.*

Some states and territories include additional protected characteristics such as physical features or association with a person with one or more of the characteristics listed above.

Examples of discrimination are available on the *Play by the Rules* website:

www.playbytherules.net.au/legal-stuff/discrimination.



Some exceptions to state and federal anti-discrimination law apply. Examples include:

- *holding a competitive sporting activity for females only who are 12 years of age or over where strength, stamina or physique is relevant or*
- *not selecting a participant if the person's disability means he or she is not reasonably capable of performing the actions reasonably required for that sporting activity.*

...

Harassment *is any type of behaviour that the other person does not want and is likely to make the person feel intimidated, insulted, or humiliated. Unlawful harassment can target a person because of their race, sex, pregnancy, marital status, sexual orientation or some other personal characteristic protected by law (see the list under discrimination).*

Public acts of racial hatred which are reasonably likely to offend, insult, humiliate or intimidate are also prohibited. This applies to spectators, participants or any other person who engages in such an act in public. Some states and territories also prohibit public acts that vilify on other grounds such as homosexuality, gender identity, HIV/AIDS, religion and disability (see "Vilification")."

32. The General Code of Behaviour is set out in Part D1 of the MPP and relevantly provides that:

"As a member of the AWF a member association or an affiliated club or a person required to comply with the AWF's member protection policy, you must meet the following requirements in regard to your conduct during any activity held or sanctioned by the AWF, a member association or an affiliated club and in any role you hold within the AWF, a member association or an affiliated club:

1. Respect the rights, dignity and worth of others.

...

9. Refrain from any form of abuse towards others.

10. Refrain from any form of harassment toward others.

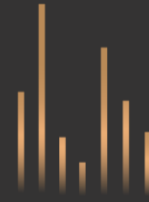
11. Refrain from any form of discrimination toward others..."

33. Clause 9 of the MPP provides that it is a breach of the MPP for any person or organisation bound by the MPP to do anything contrary to the MPP, including but not limited to:

- a. breaching the General Code of Behaviour²⁴;
- b. discriminating against, harassing or bullying any person²⁵;

²⁴ Clause 9.1 of the MPP.

²⁵ Clause 9.4 of the MPP.



- c. verbally assaulting another person, intimidating another person or creating a hostile environment within the sport²⁶.
34. As to sanction or penalty for breach of the MPP, clause 10 provides that the AWF disciplinary measures are outlined in the By-Law. The relevant provisions of the By-Law are as follows:

“17.10. Sanction and Penalty

If there is a finding of guilt as to a Complaint the Respondent(s) will have the opportunity to make submissions to the Tribunal in relation to any sanctions that may be imposed. This may include the provision of material as to character or other issues in mitigation. The Tribunal Secretary will inform the Tribunal of any other issues such as first offence etc.

...

19. PENALTY

19.1. Previous Discipline History

In determining the penalty to be awarded the Tribunal may take notice of any previous findings against the Respondent, of a similar nature, as that substantiated by the Tribunal.

19.2. Mitigation and Character

The Respondent is able to address the Tribunal as to any issues of mitigation that they consider ought to be taken into account in relation to the penalty to be awarded. This may include the person’s age, their involvement with the sport, the previous discipline history, issues of character including witness statements and related matters.

19.3. Other Factors

In awarding any Penalty the Tribunal must ensure that it:

19.3.1. observes any contractual and employment rules and requirements;

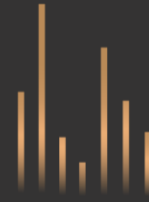
19.3.2. conforms to the principles of natural justice;

19.3.3. be fair and reasonable;

19.3.4. be based on the evidence and information presented; and

19.3.5. be within the powers of the Tribunal to impose the disciplinary measure.

²⁶ Clause 9.8 of the MPP.



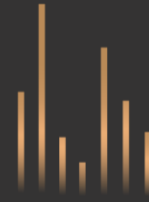
The form of discipline to be imposed on an individual or organisation will depend on factors such as:

- 19.3.6. the nature and seriousness of the behavior [sic] or incidents;*
- 19.3.7. the ability to enforce disciplinary measures if the individual is a parent and/or spectator;*
- 19.3.8. if the individual knew or should have known that the behavior [sic] was a breach of the AWF By-Law, Policy, or Rule;*
- 19.3.9. the wishes of the Complainant;*
- 19.3.10. level of contrition of the Respondent(s);*
- 19.3.11. the effect of the proposed disciplinary measures on the person, including any personal, professional or financial consequences;*
- 19.3.12. if there have been relevant prior warnings or disciplinary action;*
- 19.3.13. if there are any mitigating factors.*

19.4. Individual Penalties

Subject to contractual and employment requirements, one or more of the following forms of discipline may be imposed by the Tribunal:

- 19.4.1. a direction that the individual make a verbal and/or written apology;*
- 19.4.2. a written warning;*
- 19.4.3. a direction that the individual attend counselling to address their behaviour;*
- 19.4.4. a withdrawal of any awards, scholarships, placings, records, achievements bestowed in any competitions, activities or events held or sanctioned by AWF;*
- 19.4.5. a demotion or transfer of the individual to another location, role or activity;*
- 19.4.6. a suspension of the individual's membership or participation or engagement in a role or activity;*
- 19.4.7. termination of the individual's membership, appointment or engagement;*
- 19.4.8. recommend that AWF terminate the individual's membership, appointment or engagement;*



19.4.9. *In the case of a coach or official, a direction that the relevant Organisation de-register the accreditation of the coach or official for a period of time or permanently;*

19.4.10. *Any other form of discipline that the Tribunal considers appropriate. When imposing any form of discipline, it will be accompanied by a warning that a similar breach of this By-Law or the Member Protection By-Law or any AWF Rules or Policies, (including the Codes of Conduct), by that individual in the future may result in the imposition of a more serious form of discipline.*

...

19.6. Further Matters

Where a person is suspended by the Tribunal under this Grievance, Discipline, Appeals By-Law, all privileges in AWF shall be forfeited during the period of the suspension. Notice of any penalty, suspension or disqualification imposed shall be given by the AWF CEO to all State Members, and shall be recognised by all State Members immediately upon receipt of such notice. For the avoidance of doubt all persons bound by this By-Law or the Member Protection By-Law or any AWF Rules or Policies - consent to such notice being given pursuant to this paragraph.”

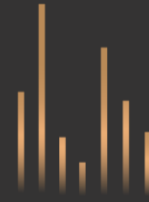
MAIN SUBMISSIONS OF THE PARTIES

Applicant submissions

35. The Applicant made written and oral submissions to the effect that:

- a. the Respondent’s conduct the subject of the dispute was of a very serious nature and constitutes bullying (as contemplated by clause 7.9 of the MPP), harassment (as contemplated by clause 7.3.2 of the MPP) and discrimination (as contemplated by clauses 7.3.1 of the MPP);
- b. as to discrimination:
 - i. the Respondent discriminated against her on the basis of both age and race;
 - ii. the Respondent’s awareness and motive were irrelevant – the relevant fact being that the Applicant felt that she had been discriminated against;
- c. the Respondent’s conduct was in breach of the provisions of the MPP²⁷;
- d. the Respondent should be sanctioned by the Tribunal accordingly;
- e. she denies the Respondent’s submission that she made the complaint for an ulterior purpose and explains that the reason for her delay in doing so was due to her concern to remain involved in the sport of weightlifting and lack of knowledge of the grievance processes available to her.

²⁷ While the Applicant did not identify the specific clause of the MPP, it is understood that she relies upon clause 9.



Respondent submissions

36. The Respondent made written and oral submissions to the effect that:
- a. the Applicant's complaint against him is not *bona fide* for reasons which include that "the [Applicant's] own biased views about people who speak good English meriting different treatment to those who do not speak good English" and "the complaint being motivated by a retaliatory impulse given that the [Club B] has been the subject of complaints by Quaycentre administration to NSWAA"²⁸. The Respondent further submitted that the fact that the Applicant has delayed some 9 months in making her complaint supports his submission that it was made for an ulterior purpose;
 - b. he denies the allegations of "racism, bullying and intimidatory behaviour";
 - c. he denies that he breached the MPP;
 - d. the Application should be dismissed.

AWF submissions

37. Mr Moir did not make any submissions on behalf of AWF in relation to the merits of the Applicant's complaint the subject of the Application.

MERITS

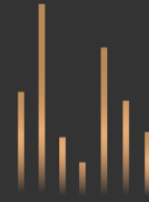
Evidence

38. The Applicant gave evidence by a written complaint which was initially submitted to AWF and subsequently filed in the Tribunal, as well as a written reply to the Respondent's responsive evidence. She gave further evidence orally at the hearing in response to questions posed by the Tribunal, and under cross-examination by the Respondent.
39. The Respondent gave evidence by a written response to the Applicant's complaint. He gave further evidence orally at the hearing in response to questions posed by the Tribunal. The Respondent was not cross-examined by the Applicant.
40. It is convenient to separate the dispute into two incidents, being (1) that which is alleged to have occurred on 22 January 2022 (**22 January incident**) and (2) that which is alleged to have occurred on 25 January 2022 (**25 January incident**).

22 January incident

41. The Applicant gave evidence in relation to the 22 January incident as follows:
- a. She arrived at the Quaycentre gym at around 10.45am for training;
 - b. It was Club B's awards day and the Club was planning to have a team meeting at 1.00pm after the completion of training;

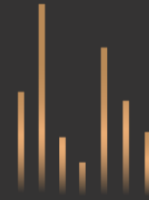
²⁸ The complaints against Club B to which the Respondent referred relate to noise pollution, failure to observe COVID protocols and dealings with Quaycentre staff.



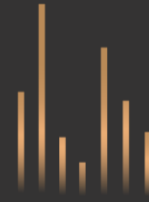
- c. When she arrived at the Quaycentre gym, there was only one platform (of about 12 in total within the gym) which was vacant. She put her bags on the platform and started to warm up;
 - d. The Respondent was still at the Quaycentre gym as some of his club members (from Club A) hadn't finished their training session;
 - e. When the Respondent saw her at the platform, he approached her and said *"You don't lift much weight, you need to finish training by 12pm."* The Applicant further stated in oral evidence that the Respondent told her to *"leave the gym"* by 12pm. The Respondent did not tell any other weightlifter to finish their training or leave the gym, by 12pm.
 - f. She felt that the Respondent's above statement to her was *"...intimidating and discriminatory to me as a Masters/older lifter who competes in the lightest women's bodyweight category"* and that *"I felt it was not fair because everyone needs to warm up and cool down and do all the sets of exercises on the training programs in their own time. In my opinion, one hour is definitely not enough for safe training. Especially for people who are older and need more time to warm up."*
 - g. She did not respond or argue with the Respondent because she had previously witnessed him threatening and intimidating others in the gym, and she was aware that he had suspended other members of Club B from attending the Quaycentre gym in the past.²⁹
 - h. At some time prior to finishing her training session, the Respondent asked her to share her platform with another lifter from Club A, known as *"Dimi"*.³⁰ The Applicant shared her platform with Dimi, who left prior to the Applicant completing her training session.
 - i. She continued her training until around 1.00pm, after which she attended the Club B team meeting and awards day.
42. The Respondent cross-examined the Applicant in respect of a number of matters, the relevance of which was not entirely clear, save that in part it appeared to be an attempt to discredit the Applicant. In response to matters put to her in cross-examination by the Respondent, the Applicant stated that:
- a. the gym was full and there were about 12 or 13 weightlifters training, at the time of the incident;
 - b. she does not remember whether any Club A members or Leo Manning and his brother (members of Club B) were waiting to train on a platform;

²⁹ The Applicant gave evidence of two prior suspensions that the Respondent had imposed against Mr Jonathan Miu – the first for 8 weeks for not wearing a shirt (which was admitted by the Respondent) and the second for 6 weeks for not having a towel (which was denied by the Respondent). The Respondent gave evidence that he had the power to impose suspensions by virtue of his role as director and CEO of NSWWA, by which he has sole responsibility for the operation of the Quaycentre gym.

³⁰ The person referred to as 'Dimi' did not give evidence before the Tribunal.



- c. she does not remember what time Mr Robert Mitchell (the head coach of Club B) attended the Quaycentre gym on 22 January 2022;
 - d. she is not aware of Club B attending a “*Christmas party*” at a restaurant, after the training session on 22 January 2022.
43. The Applicant also relied on:
 - a. three signed witness statements which were filed in the Tribunal prior to the hearing, from Mr Jonathan Miu, Mr Thomas Shannon and Mr Ricky Huang, each of whom are members of Club B;
 - b. an unsigned witness statement contained in an email from Mr Keanu Crous, who is also a member of Club B.
44. The Respondent did not require any of the Applicant’s witnesses to attend before the Tribunal to be cross-examined and the Tribunal accepted their witness statements into evidence.
45. The statements of Mr Crous and Mr Miu do not address the 22 January incident.
46. Mr Shannon states that he has “...*observed multiple occurrences where [the Applicant] was reprimanded and specifically targeted by [the Respondent]*”, including when “*I witnessed [the Respondent] pressuring/demanding [the Applicant] to leave the gym early as in his words stated ‘you do not lift a lot’...*”. Mr Huang states that “*I have witnessed multiple events where [the Applicant] was disfavored [sic]...*” including on 22 January 2022 when he observed the Respondent tell the Applicant “...*‘You must leave before 12pm’, ‘you do not lift a lot’...*”
47. The Respondent gave evidence in relation to the 22 January incident as follows:
 - a. While Club B and Club A share the use of the Quaycentre gym for training purposes, there are no set times for each club to use the gym. However, somewhat inconsistently, the Respondent states, in relation to the team meeting which took place on 22 January 2022, that “*[Club B] should have had their team meeting in their allotted time. On that occasions [sic] 1pm was roughly the finish time...*”.
 - b. On the morning of 22 January 2022, the gym was very full and other weightlifters were waiting to train. He recalls seeing Mr Huang at the gym, but does not recall seeing the Applicant’s other witnesses. There were several Club A weightlifters training at the gym at the time of the incident. He was notified by Leo Manning and Mr Manning’s brother (both members of Club B) that they needed to use the platform that was being occupied by the Applicant (being “*competition platform number 1*”, which the Respondent stated was the better platform for lifting heavy weights). Neither Mr Manning nor Mr Manning’s brother gave evidence before the Tribunal.
 - c. As to the allegation that he said “*You don’t lift too much weight*”, the Respondent admits that “*something similar may have been said as a conversational gambit...*”. He further stated at the hearing that he would have made such a statement in the context of suggesting that the Applicant needed to move to another platform to join other weightlifters who were not lifting heavy weights. He states “*I recall saying that*

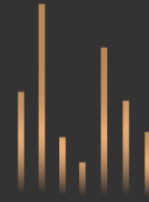


[the Applicant] needed to train on one platform with another lifter because more lifters were coming in and there would shortly be more lifters than platforms” and that this is something which he frequently says to lifters as it is a frequent occurrence and lifters who lift similar weights need to train together on one platform. The Respondent explained at the hearing that this requirement is for health and safety reasons.

- d. As to the allegation that he told the Applicant to the effect that she must *“finish training by 12pm”* or *“leave the gym by 12pm”*, the Respondent states that he *“may have said that the gym closed at 1pm on that occasion as there may have been a special event for [Club B] or other entity at 1pm or later”* but he denies that he said anything to the Applicant about finishing her training or leaving the gym by a certain time, or that she was asked to finish her training any earlier than her teammates.
 - e. He denies that he asked the Applicant to share her platform with Dimi.
 - f. He denies that anything that he said was in an intimidatory manner or that he discriminated against the Applicant in any way.
48. The Applicant gave evidence in relation to the 22 January incident which was clear and concise. She was resolute and consistent in her evidence that the Respondent stated to her words to the effect of *“You don’t lift much weight, you need to finish training by 12pm.”* The statements of Mr Shannon and Mr Huang corroborate the Applicant’s recollection of events in that regard.
49. By contrast, the Respondent was less certain and sometimes inconsistent in his evidence. His recollection of events was not corroborated by independent witness evidence.
50. In the circumstances, the Tribunal prefers the Applicant’s recollection of events, which is supported by the evidence of Mr Shannon and Mr Huang.
51. The standard of proof and method of establishing facts and presumptions are to be as set out in the constituent documents of the sporting body, or in the separate agreement between the parties to the dispute referring the dispute to the Tribunal.³¹ The By-Law provides that the relevant standard of proof for a disciplinary matter is the civil standard, being the balance of probabilities and that the Tribunal need only be satisfied to its reasonable satisfaction on the balance of probabilities, to establish a fact.³²
52. Accordingly, the Tribunal finds on the balance of probabilities that, on 22 January 2022:
- a. the Respondent approached the Applicant as she was setting up on a platform to commence her training session;
 - b. the Respondent said to the Applicant words to the effect that *“You don’t lift too much weight”*;
 - c. the Respondent told the Applicant that she must *“finish training”* or *“leave the gym”* by 12.00pm;

³¹ Section 55 of the NST (Practice and Procedure) Determination.

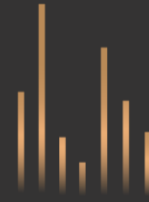
³² Clause 12.1 of the By-Law.



- d. Club B's usual training time on Saturdays (including on the day in question) did not conclude until 1.00pm;
- e. the Respondent did not tell any other weightlifter to finish training or leave the gym by 12.00pm;
- f. the Respondent did not have any justifiable reason for making the statements to the Applicant;
- g. the statements were offensive, belittling, and intimidating to the Applicant.

The 25 January incident

53. The Applicant gave evidence in relation to the 25 January incident as follows:
- a. In the late afternoon of Tuesday, 25 January 2022, she was training with her Club B teammates at the Quaycentre gym.
 - b. The Respondent suddenly rushed into the gym and berated her teammate, Mr Miu, for playing *"loud music"*, before taking away Mr Miu's portable speaker.
 - c. The Respondent then focussed his attention on the Applicant, shouting *"Did you leave the gym at 12pm on Saturday as I told you?"*, to which she responded *"No, I didn't. I needed to have enough time to warm up and train and all my teammates were still training"*.
 - d. The Respondent then shouted at her loudly *"Do you understand English? Do you need a translator?"*.
 - e. The Respondent proceeded to berate the Applicant as he left the gym, threatening her again that she must *"finish [her] training within one hour"* because *"you don't lift much weight so don't need longer than one hour"* and that he could ban her from the gym if she did not do so.
 - f. The Applicant felt *"very sad, bullied, intimidated, threatened and discriminated against"* by the Respondent's words. She felt that, by asking her whether she spoke English and whether she needed a translator, the Respondent racially discriminated against her based on her Chinese heritage.
 - g. She felt very distressed and couldn't focus on or finish her training session. When she arrived at the carpark she sat in her car and cried for nearly half an hour, whereupon one of her teammates saw her and came to talk to her.
54. The Respondent cross-examined the Applicant as to whether she recalled what the Respondent was wearing on 25 January 2022 when he attended the Quaycentre gym. The Applicant stated that she did not recall what he was wearing. The Respondent submitted that this was significant because he was wearing shorts and thongs, which he *"never"* wore to the Quaycentre gym.
55. The Applicant also relied on the following evidence from other witnesses:
- a. Mr Miu states that he had witnessed *"on multiple occasions, [the Respondent] acting in discriminatory and harmful ways towards [the Applicant]. This includes [the*

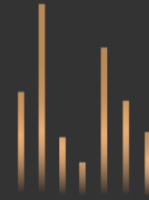


Respondent] yelling at [the Applicant], and obvious racial aggressing such as by asking is she understands English, in a condescending manner”;

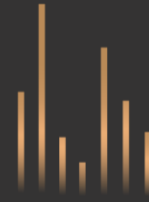
- b. Mr Shannon states that he had witnessed “...[the Respondent] making racially discriminatory comments to [the Applicant] such as; ‘do you need a translator’ and ‘do you understand English”;
- c. Mr Huang states that “...on the Tuesday 25th of January, [the Respondent] was called into quay centre by the management team for ‘loud music’, afterwards he would focus his attention on [the Applicant] asking about her leaving the training venue on the 22nd. As she replied, ‘no didn’t’, [the Respondent]’s attitude became apparent with anger and started to berate [the Applicant] ‘Did you not understand me’, ‘Do you need a translator’, Do you understand English”.
- d. Mr Crous states that after training on an undisclosed date he saw the Applicant (who he thought had left an hour earlier) in her car looking “very upset and in tears”. When he asked her what was wrong, the Applicant told him that she had “felt left out of the group, referring to the collective group of weightlifters, and notably, she had been the subject of racially based insults and mockery by [the Respondent].”

56. The Respondent gave evidence in relation to the 25 January incident as follows:

- a. He received a phone call from the Quaycentre administration asking him to investigate a noise complaint in relation to the Quaycentre gym.
- b. He was angry as he arrived at the Quaycentre gym, as he found loud music playing – which he described as “like a discotheque”, and he had told Club B members many times previously that no speakers were allowed to be played in the Quaycentre gym.
- c. He said to everyone in the gym, in a loud voice, “Stop training”.
- d. He approached Mr Miu and said “Give me the speaker” before proceeding to take it from him.
- e. He then turned to Mr Huang and asked (referring to the playing of loud music) “Why are you allowing this to happen?” to which Mr Huang did not respond.
- f. He did not speak directly to the Applicant at all.
- g. He denies “that I would have said ‘do you need a translator’. I cannot remember asking if [the Applicant] understood English. It is unlikely as it would not have been material to me. I can always communicate irrespective of language barriers. I would not have used the word ‘translator’. If my recollection is incorrect and I did ask “Do you need a translator”, it is denied that this is racist and alternatively denied that it commutes disrespect in any way.”
- h. He denies shouting. However, he states that he is a tall person and has a loud voice, and is used to having to speak over the noise of dropping weights.
- i. Before he left the Quaycentre gym, he may have said something to the effect of “If this continues, I may have to report it to the Board [of NSWWA]”.



- j. He comes from a family where the first language is foreign. He did not speak English until he was 5 years old.
 - k. He does not discriminate against people based on their race. By way of example, he states that he trains a Chinese athlete, has a close and mutually respectful relationship with him, and has negotiated a small loan from NSWWA to assist him to make a permanent residency application.
 - l. He does not threaten people, but simply communicates the rules.
57. Again, the Applicant gave evidence in relation to the 25 January incident which was clear and concise. Her evidence was consistent and corroborated by the statements of Mr Miu, Mr Shannon and Huang (as to the statements made by the Respondent to the Applicant) as well as the statement of Mr Crous (as to the immediate effect that the statement had on her).
58. The Respondent gave evidence that was sometimes inconsistent and argumentative in certain respects. For example, in his written statement, the Respondent gave evidence that he *“cannot remember asking if [the Applicant] understood English”* but that it was *“unlikely”* for reasons which he articulated. He further stated that *“if my recollection is incorrect”* he denies that the alleged statements are racist or commute disrespect. However, the Respondent’s recollection improved when asked by the Tribunal during the hearing whether he spoke to the Applicant directly at all (to which the Respondent stated that he did not), whether he asked the Applicant whether she spoke English (to which the Respondent stated that he did not) and whether he said anything to the Applicant about needing a translator (to which the Respondent replied *“definitely not”*). His recollection of events was also not corroborated by independent witness evidence.
59. In the circumstances, the Tribunal prefers the Applicant’s recollection of events, which is supported by the evidence of Mr Miu, Mr Shannon, Mr Huang and Mr Crous.
60. Accordingly, the Tribunal finds on the balance of probabilities that, on 25 January 2022:
- a. the Respondent attended the Quaycentre gym in response to a noise complaint;
 - b. the Respondent shouted at the Applicant *“Did you leave the gym at 12pm on Saturday as I told you?”*, to which she responded *“No, I didn’t. I needed to have enough time to warm up and train and all my teammates were still training”*.
 - c. the Respondent then shouted at her loudly *“Do you understand English? Do you need a translator?”*
 - d. the Respondent said to the Applicant as he left the gym that she must *“finish [her] training within one hour”* because *“you don’t lift much weight so don’t need longer than one hour”* and threatened to ban her from the gym if she did not do so;
 - e. the Respondent did not ask any other person whether they understood English, whether they needed a translator, and did not tell any other person that they needed to finish their training within one hour and could be banned if they did not do so;
 - f. the Respondent did not have any justifiable reason for asking the questions of, and making the statements to, the Applicant;



- g. the questions and statements were offensive, belittling and intimidating to the Applicant.

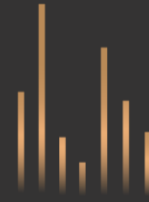
The genesis of the complaint

61. As to the Applicant's motives for making the complaint, the Respondent gave evidence that the allegations the subject of the complaint were initially reported to the Board of NSWWA at a Board meeting on 4 October 2022, which resulted in some discussion by the Respondent at the Board meeting about unrelated correspondence from the Quaycentre administration regarding unsatisfactory conduct by members of Club B and, following that Board meeting, the Applicant made her complaint with AWF on 30 October 2022. On that basis the Respondent submitted that the Applicant's complaint was made for an ulterior purpose.
62. The Applicant denied that any events which transpired at the Board meeting of NSWWA on 4 October 2022 influenced her decision to make the complaint against the Respondent. The Applicant explained the delay in making the complaint by reference to having been informed by her teammates that the Respondent was "very powerful" and that he had previously banned weightlifters from competing in NSWWA. She states that she was "scared that [the Respondent] would do something to my membership and I would not be able to train at Quaycentre or compete in any future competitions". Moreover, the Applicant states that, as the Respondent is the CEO of NSWWA, she did not feel confident making a complaint to NSWWA or talking to anyone from the Board of NSWWA about the matter. She states that, in late October 2022, as she was preparing to work as a technical official for the AWF senior National championship, she reviewed the AWF website and found out that the AWF has a grievance policy and a member protection policy, and following that discovery she took steps to submit her complaint to AWF. The Applicant submitted that her concerns were justified in circumstances where the Respondent initially sought to have the president of NSWWA, Ms Mary Macken, attend the Tribunal hearing as his support person, and relies upon a character reference from the member protection officer, Ms Eades.
63. The evidence adduced by the Respondent to support the submission that the complaint was made for an ulterior purpose is weak, at best, whereas the Applicant's evidence as to the reasons for her delay in making the complaint appears reasonable in the circumstances. The Tribunal is not persuaded by the Respondent's submission that the Applicant made the complaint for an ulterior purpose.

Application of the By-Laws and the MPP

64. A person to which the By-Law applies will commit an offence under the By-Law if they breach the By-Law or a Rule, without reasonable excuse for doing so.³³
65. The General Code of Behaviour as contained in Part D1 of the MPP is a Rule for the purposes of clause 11.2 of the By-Law. The General Code of Behaviour requires that a person required to comply with the MPP must:
- a. respect the rights, dignity and worth of others; and

³³ Clause 11.3 of the By-Law.

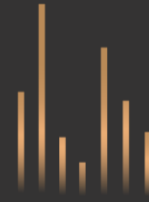


- b. refrain from any form of abuse, harassment or discrimination towards others.
66. The MPP is also taken to be a Rule for the purposes of clause 11.2 of the By-Law, taking into account the non-exclusive list of Rules which are outlined in clause 11.2 of the By-Law, together with the objects and provisions of the By-Law as a whole.³⁴ Clause 9 of the MPP provides that it is a breach of the MPP to do anything contrary to the MPP including but not limited to – and relevantly:
- a. breaching, *inter alia*, the General Code of Behaviour;
 - b. discriminating against, harassing or bullying any person;
 - c. verbally or physically assaulting another person, intimidating another person or creating a hostile environment within the sport.
67. There is likely to be some overlap between breaches which fall within the above categories.
68. Harassment is defined under the MPP as, relevantly, “*any type of behaviour that the other person does not want and is likely to make the person feel intimidated, insulted, or humiliated.*” A single incident can constitute harassment.³⁵
69. Bullying is characterised under the MPP as, relevantly, “*repeated, unreasonable behaviour directed at a person...that creates a risk to health and safety...[and]...is that which a reasonable person in the circumstances would expect to victimise, humiliate, undermine, threaten, degrade, offend or intimidate a person.*” Specific examples of types of behaviour, where repeated or occurring as a part of a pattern of behaviour, include (relevantly) “*verbal abuse including shouting...making belittling remarks or persistent unjustified criticism... and psychological harassment such as intimidation*”. The MPP provides that, whilst generally characterised by repeated behaviours, a one-off instance can amount to bullying.³⁶
70. Discrimination is defined under the MPP as, relevantly, “*when someone is treated unfairly or less favourably than another person in the same or similar circumstances because of a particular characteristic.*” The characteristics which are protected by anti-discrimination laws in Australia include, but are not limited to, race and age.
71. As to the 22 January incident, in the circumstances set out in paragraph 52 above, the Tribunal finds that the Respondent’s conduct constituted harassment and bullying, as well as a failure to respect the rights, dignity and worth of the Applicant, in breach of the MPP (including the General Code of Behaviour contained therein). However, there is insufficient evidence to support a finding that the statements made by the Respondent on 22 January 2022 were made on the basis of one or more of the personal characteristics protected by the anti-discrimination laws, so as to amount to discrimination for the purposes of the MPP.
72. As to the 25 January incident, in the circumstances set out in paragraph 60 above, the Tribunal finds that the Respondent’s conduct constituted harassment, bullying and discrimination on the basis of race, as well as a failure to respect the rights, dignity and worth of the Applicant, in

³⁴ See clause 1.1 of the By-Law which states that “*This policy works in accordance with and supports the AWF Member Protection Policy*”. See also clause 19.4.10 which refers to sanctions being imposed for breach of the “*Member Protection By-Law*” (which is interpreted to mean the MPP).

³⁵ Clause 7.3.2 of the MPP.

³⁶ Clause 7.9 of the MPP.



breach of the MPP (including the General Code of Behaviour contained therein). As to the offence of discrimination, the Tribunal specifically relies on the following reasoning:

- a. the questions as to whether the Applicant spoke English and needed a translator were asked of the Applicant after she had provided an answer and explanation in response to the Respondent's initial question as to whether she had left the gym at 12pm on the Saturday, so that it stands to reason that the Respondent knew that the Applicant did in fact speak English and did not require a translator in order to communicate with him;
- b. the questions were not genuine and were asked in a derogatory and intimidating sense, in conjunction with belittling statements about the Applicant and threats to ban her from the gym if she did not acquiesce to his demands;
- c. it can be inferred from the above that the Respondent asked the questions on the basis that she is of Asian descent.

SANCTION

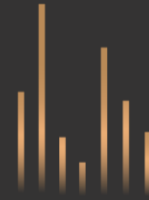
73. At the conclusion of the hearing, the parties were invited to make submissions as to sanction, in the event that the Respondent's conduct the subject of the complaint was found to have breached the MPP. In circumstances where the Respondent had obtained and filed written character references in advance of the hearing, the parties agreed to address the issue of sanction, and any relevant mitigating factors, at the conclusion of the hearing, notwithstanding that the Tribunal's decision as to breach of the MPP was reserved. The hearing was adjourned for a short period to enable the parties an opportunity to consider the provisions of the By-Law in relation to sanction³⁷.

Applicant's submissions

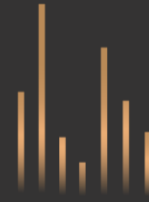
74. The Applicant made oral submissions to the effect that:
- a. the complaint raised serious matters;
 - b. the Respondent's conduct has hurt and affected her;
 - c. the Respondent's prior history is not relevant (although this submission is not accepted by the Tribunal)³⁸.
75. Mr Moir made oral submissions on behalf of AWF to the effect that:
- a. he had been involved in the sport of weightlifting for 35 years, and has been the CEO of AWF for the last 4 years;
 - b. no previous complaint has been made to AWF in relation to the Respondent's conduct within the last 4 years;
 - c. he is not aware of any previous complaint being made in relation to the Respondent's conduct;

³⁷ In particular, clause 19 of the By-Law.

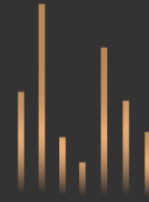
³⁸ Clause 19.2 of the By-Law specifically notes that a person's previous discipline history is a relevant factor to the determination of any sanction.



- d. he is aware that the Respondent is an influential figure in weightlifting for both his state and nationally.
76. The Respondent made oral submissions to the effect that:
- a. he is 61 years of age;
 - b. he has been involved in the sport of weightlifting, in various capacities including as an athlete, coach and official, since 1974;
 - c. he was formerly the head coach of the Australian weightlifting team;
 - d. in a coaching capacity, he has attended Olympic Games, Commonwealth Games and World Championships or other international events;
 - e. he has never had a previous complaint made against him to AWF or NSWWA;
 - f. he is self-employed, making a living as a “*day trader*” (trading shares);
 - g. he earns a small amount of income through his role as CEO of NSWWA, as well as a small amount through private coaching arrangements (including with rugby league players);
 - h. he does not earn any income through his role as head coach of Club A;
 - i. he is generally aware of the contents of the MPP and the By-Law, having been involved in preparation of similar policies relating to bullying, harassment and discrimination in his role as CEO of NSWWA.
77. The Respondent further relied upon the following character references:
- a. a signed letter from Ms Jing “Linda” Liu and Haiyang “Kenn” Zhang dated 28 November 2022, by which Ms Liu and Mr Zhang (both of whom are of Chinese descent) provide their support for the Respondent, stating that the Respondent is an “*honourable, honest, polite, upright and kind-hearted gentleman*”, whose friendship they greatly value and that Mr Zhang has been coached by the Respondent for some time and has never experienced any discrimination or discomfort from him;
 - b. a signed letter from Ms Eades dated 9 February 2022, by which Ms Eades provides her personal support for the Respondent, stating that she has known him since 2007 in various capacities (including as a coach, administrator and technical official), has developed great respect for him and has observed him to always be fair and considerate, and to engage with a great diversity of people within the sport of weightlifting with integrity.
78. After the conclusion of the hearing, the Applicant made further written submissions as to the Respondent’s prior disciplinary history, stating that she had become aware that the Respondent was involved in an incident during the 1980s which resulted in “*possibly*” a two or more year period of suspension by AWF. No evidence to support that assertion was provided to the Tribunal. The Respondent denied that he had ever received a two year suspension from AWF. AWF does not hold records which date back to the 1980s. Accordingly, there is insufficient evidence to place any weight on the Applicant’s further submission as to the Respondent’s prior disciplinary history.



79. The Tribunal takes into account the relevant submissions by the parties, and the strong character references that were submitted by the Respondent.
80. The Tribunal further takes into account the following mitigating factors:
- a. the Respondent's involvement in, and contribution to, the sport of weightlifting, in various capacities over a period of some 48 years;
 - b. the Respondent's standing within the weightlifting community, at local, state, national and international levels, and the fact that any sanction may affect his reputation within that community;
 - c. the fact that the Respondent has no relevant prior history of complaints or offences relating to his conduct in carrying out his various roles in the sport of weightlifting;
 - d. as to the nature and seriousness of the offending conduct, it is at the lower end of the scale and was confined to two occasions, with the more serious offending occurring on only one occasion (on 25 January 2022);
 - e. the fact that the Respondent's conduct on 25 January 2022 occurred in aggravated circumstances arising from his frustration and anger with a noise complaint in respect of premises for which he was responsible.
81. However the Tribunal also considers the following factors to be relevant in determining the appropriate sanction:
- a. the fact that the Respondent contested the allegations at the hearing, denying that the conduct occurred, and has not demonstrated any level of contrition for his conduct;
 - b. the fact that, in light of the Respondent's role as director and CEO of NSWWA, and given his extensive experience in the sport of weightlifting, he should have known that his conduct was in breach of the MPP and should be held to a higher standard of conduct;
 - c. the fact that the Respondent does not solely rely upon his involvement in the sport of weightlifting as a means of earning a living.
82. The By-Law does not prescribe sanctions for specific offences. The By-Law provides that, subject to contractual and employment requirements, one or more of the following forms of discipline may be imposed by the Tribunal:
- a. a direction that the individual make a verbal and/or written apology;
 - b. a written warning;
 - c. a direction that the individual attend counselling to address their behaviour;
 - d. a withdrawal of any awards, scholarships, placings, records, achievements bestowed in any competitions, activities or events held or sanctioned by AWF;
 - e. a demotion or transfer of the individual to another location, role or activity;
 - f. a suspension of the individual's membership or participation or engagement in a role or activity;

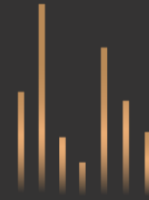


- g. termination of the individual's membership, appointment or engagement;
 - h. recommend that AWF terminate the individual's membership, appointment or engagement;
 - i. in the case of a coach or official, a direction that the relevant organisation de-register the accreditation of the coach or official for a period of time or permanently;
 - j. any other form of discipline that the Tribunal considers appropriate.
83. The By-Law further provides that, when imposing any form of discipline, it will be accompanied by a warning that a similar breach of this By-Law or the Member Protection By-Law or any AWF Rules or Policies, (including the Codes of Conduct), by that individual in the future may result in the imposition of a more serious form of discipline.³⁹
84. Finally, the By-Law provides that, where a person is suspended by the Tribunal under the By-Law, all privileges in AWF shall be forfeited during the period of the suspension, and notice of any penalty, suspension or disqualification imposed shall be given by the AWF CEO to all State Members, and shall be recognised by all State Members immediately upon receipt of such notice.⁴⁰
85. Taking into account all of the above matters, together with a consideration of the sanctions imposed in previous decisions of the National Sports Tribunal⁴¹, the Tribunal finds that the appropriate sanction, being an aggregate sanction in relation to all of the breaches of the MPP referred to above, is as follows:
- a. a two month suspension of the Respondent's membership with AWF, NSWWA and any affiliated club (precluding his participation in the sport of weightlifting at a national, state and local level in any capacity), which is to be wholly suspended for 12 months. If, within that 12 month period, there is a breach by the Respondent of the MPP (or any other by-law, policy, rule or regulation of AWF or of any State Member or any affiliated club to which the Respondent is bound), regardless of when such breach is proved, he will be subject to two months' suspension of his membership with AWF, NSWWA and any affiliated club (precluding his participation in the sport of weightlifting at a national, state and local level in any capacity) together with any further sanction that may be imposed in respect of the further breach. In accordance with clause 19.4.10 of the By-Law, the Respondent is warned that any similar breach of the By-Law, the MPP or any AWF Rules or policies (including the Codes of Conduct) in the future may result in the imposition of a more serious form of discipline;
 - b. the Respondent is to provide a written apology to the Applicant acknowledging that he engaged in conduct which constitutes bullying, harassment and discrimination of the Applicant, and a failure to respect her rights, dignity and worth, in breach of the MPP;

³⁹ Clause 19.4.10 of the By-Law.

⁴⁰ Clause 16.6 of the By-Law.

⁴¹ Including *Stephen Culley v Nick Petz (with AusCycling)* and *Liddick v Gymnastics Australia and Sport Integrity Australia*.



- c. the Respondent is to undertake education and refreshment on the MPP and the various Codes of Behaviour to which the Respondent is bound, with evidence of the completion of same to be provided to the CEO of AWF.

THE TRIBUNAL THEREFORE DETERMINES:

1. **That the Respondent's conduct on 22 January 2022 constitutes bullying and harassment, and a failure to respect the Applicant's rights, dignity and worth, in breach of the MPP.**
2. **That the Respondent's conduct on 25 January 2022 constitutes bullying, harassment and discrimination, and a failure to respect the Applicant's rights, dignity and worth, in breach of the MPP.**
3. **That the Respondent's membership with AWF, NSWWA or any affiliated club, be suspended for two months, which period of suspension is to be wholly suspended for a period of 12 months. Notice of this suspension is to be provided by the AWF CEO to all State Members of AWF (including NSWWA).**
4. **That the Respondent provide a written apology to the Applicant acknowledging that he engaged in conduct which constituted bullying, harassment and discrimination of the Applicant, and a failure to respect her rights, dignity and worth, in breach of the MPP.**
5. **That the Respondent undertake education and refreshment on the MPP and the Codes of Behaviour to which the Respondent is bound, with evidence as to the completion of same to be provided to the CEO of AWF.**

Date: 6 January 2023



Jon Erbacher, Member