

City of Wollongong Brass Band

Incorporated



By-Law No. 3

Dispute Resolution & Disciplining of Members



President: William Short

Secretary: Lindsay Dunstan

Date: 23 March 2018

Date: 23 March 2018

Contents

Part 1 – Introduction

Part 2 – Resolution of Disputes

Part 3 - Right of Appeal of a Disciplined Member

Part 4 - Definitions

Part 1 - Introduction

- 1.1 A complaint may be made to the Committee by any person that a member of the **BAND**:
- (a) has refused or neglected to comply with a provision or provisions of this **Constitution**, and/or,
 - (b) has conducted themselves and/or wilfully acted in a manner prejudicial to the interests of the **BAND**.
- 1.2 The Committee may refuse to deal with a complaint if it considers the complaint to be trivial and/or vexatious in nature, or, if it is a Police or Statutory Authority matter.
- 1.3 If the Committee decides to deal with the complaint, the Committee must empower an Arbitration Panel to moderate the dispute (*Constitution Rule 2.8*).

Part 2- Resolution of Disputes

- 2.1 The Arbitration panel must have no conflicts of interests (*Constitution Rule 2.7*).
- 2.2 An Arbitration Panel will consist of the Vice President, a General Committee member, an Ordinary **BAND** member, and an independent non-participating minute taker. Another Executive Committee member will replace the Vice President if the Vice President has a conflict of interest (*Constitution Rule 2.7.1*).
- 2.3 If the Arbitration Panel decides to deal with the complaint, the Arbitration Panel:
- (a) must cause notice of the complaint to be served in writing (*Constitution Rule 8.6.4*) on the Member concerned, and,
 - (b) must give the respondent Member at least fourteen (14) days from the date the notice is served to enable the Member to make submissions to the Arbitration Panel in connection with the complaint, and,
 - (c) must take into consideration any submissions made by the respondent Member in connection with the complaint.
- 2.4 The Arbitration Panel may undertake a factual investigation for consideration at arbitration.
- 2.5 The Arbitration Panel will nominate and empower a person, who must have no conflict of interest (*Constitution Rule 2.7*), to undertake a factual investigation for consideration at arbitration.
- 2.6 A factual investigation instigated under *Clause 2.4* must be presented to the Arbitration Panel together with copies to both the complainant and respondent Member at least fourteen (14) days before arbitration.

President: William Short

Secretary: Lindsay Dunstan

Date: 23 March 2018

Date: 23 March 2018

- 2.7 Arbitration will be by way of a closed meeting within thirty (30) days of the date of the initial complaint. The respondent Member must be present at all times during arbitration and may have an observer present. The observer may speak on behalf of the disputed person and can be a non-BAND member.
- 2.8 Respondent Members under the age of eighteen (18) years must have a parent/guardian present at all times in addition to the optional observer (*Clause 2.7*).
- 2.9 The Arbitration Panel must consider the complaint and any submissions made in connection with the complaint, and will make a written, unbiased, evidence-based determination for the Committee within seven (7) days of the conclusion of the arbitration.
- 2.10 The Committee, upon recommendation from the Arbitration Panel may, unless some other penalty is appropriate, suspend or expel the Member from membership of the BAND if it is satisfied that the facts alleged in the complaint have been proved, and the suspension or expulsion is warranted in the circumstances.
- 2.11 Arbitration Panel decisions and recommendations will be binding and cannot be changed and/or failed to be acted upon by the Committee.
- 2.12 If the Committee suspends or expels a Member, the Secretary must, within seven (7) days after the action is taken, give written notice (*Constitution Rule 8.6.4*) to the Member of;
- (a) the action taken, and,
 - (b) the reasons given by the Committee for having taken that action, and,
 - (c) the Member's right of appeal under *Part 3*.
- 2.13 The suspension or expulsion will not take effect until the greater of;
- (a) the expiration of the period within which the Member is entitled to appeal against the resolution concerned (*Part 3*), or,
 - (b) the date that the Arbitration Panel confirms the outcome of the appeal (*Clause 2.4*), if the Member has exercised a right of appeal under *Clause 2.1*.
- 2.14 All proceedings must be recorded and decisions may be communicated to the general BAND unless there is a likelihood of distress or harm to a Member(s).
- 2.15 Records relating to Dispute Resolution must have restricted access and must be kept safely and secured at the main premises of the BAND (*Constitution Rule 8.4*) for a minimum of five (5) years.

Part 3 - Right of Appeal of a Disciplined Member

- 3.1 A Member may appeal to the BAND against a resolution of the Committee under *Constitution Rule 2.9* and *Clauses 2.9 & 2.10 of this By-Law*, within seven (7) days after Notice of the resolution is served (*Constitution Rule 8.6*) on the Member, by lodging a written or electronic notice to that effect with the Secretary.
- 3.2 The Notice may, but need not, be accompanied by a statement of the grounds on which the Member intends to rely for the purposes of the appeal.

President: William Short

Secretary: Lindsay Dunstan

Date: 23 March 2018

Date: 23 March 2018

- 3.3 On receipt of a Notice from a Member under **Constitution Rule 2.9**, the Secretary must notify the Arbitration Panel (**Clauses 2.3 & 2.2**) which must convene a meeting which is to be held within twenty eight (28) days after the date on which the Secretary received the notice.
- 3.4 At the meeting of the Arbitration Panel convened under **Clause 2.3**:
- (a) no business other than the question of the appeal is to be transacted, and,
 - (b) the Committee and the Member will be given the opportunity to state their respective cases orally or in writing, or both, and,
 - (c) the Arbitration Panel will, by a simple majority of secret votes, determine whether the appeal should be confirmed or revoked.
- 3.5 If a dispute is not resolved by mediation within three (3) months by the Arbitration Panel (**Clause 2.9**), the dispute shall be referred to external arbitration by a Community Justice Centre.
- 3.6 A dispute between a member and another member (in their capacity as Members) of the **BAND**, or a dispute between a member or members and the **BAND**, may be referred to a Community Justice Centre for mediation under the Community Justice Centres Act 1983.
- 3.7 The Commercial Arbitration Act 1984 applies to any such dispute referred to arbitration under **Clause 2.6**.
- 3.8 Federal and state legislation relating to bullying, discrimination and harassment may apply (**Constitution Rule 8.1**).

Part 4 - Definitions

| | |
|-------------|---|
| BAND | City of Wollongong Brass Band Incorporated which is the registered association in accordance with the Associations Act, 2009. |
| Association | Is a definition from the Associations Act, 2009, and means an association registered under the Associations Act, 2009. There is no reference to the Band Association of NSW. |
| Bullying | Bullying may not be unlawful under federal or state anti-discrimination laws unless it is linked to, or based on, one of the characteristics covered by these laws such as the person's age, sex, race or disability. Legislation has defined bullying as "repeated unreasonable behavior by an individual towards another individual which creates a risk to health and safety." One essential prerequisite is that there is a <u>perception of bullying</u> . |
| Clause | A particular and separate paragraph, point, rule, subsection. |

President: William Short

Secretary: Lindsay Dunstan

Date: 23 March 2018

Date: 23 March 2018

| | |
|--------------------------|--|
| Committee | In relation to an association, means the governing body of the association, however described. |
| Committee Member | A member of the Committee. |
| Constitution | The Constitution of the City of Wollongong Brass Band, Inc. |
| Discrimination | Discrimination occurs when a person, or a group of people, is treated less favorably than another person or group because of their background, certain personal characteristics and/or abilities. |
| Harassment | Harassment covers a wide range of behaviors of an offensive nature. It is commonly understood as behavior which disturbs or upsets, and it is characteristically repetitive. In the legal sense, it is behavior which appears to be disturbing or threatening. |
| <u>Sexual Harassment</u> | <u>Sexual harassment</u> refers to persistent and unwanted sexual advances where the consequences of refusing are potentially very disadvantageous to the victim. |

President: William Short

Secretary: Lindsay Dunstan

Date: 23 March 2018

Date: 23 March 2018