

National Sporting Code

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Note: All text changes from the previous issue of this Schedule are **highlighted** such. Text changes for grammatical and/or formatting reasons are not highlighted.

PART X – Inquiries, Preliminary Hearings and Judicial Hearings

Note: All text changes from the previous issue of this Schedule are **highlighted** such. Text changes for grammatical and/or formatting reasons are not highlighted.

Information: For further information on the Inquiry and Judicial Hearing process and associated time lines refer to the chart at the end of Schedule G in this Manual.

118. Inquiries, Preliminary Hearings and Judicial Hearings:

(1) Definitions relevant only to this Part X: For the purposes of this Part X the following definitions shall apply:

“Board” means the Board of MotorSport NZ;

“Hearing Review Panel” means any Committee appointed by the Board for the purposes of Preliminary Hearings or to consider all issues relating to Preliminary Hearings or other matters that could be dealt with by the Hearing Review Panel under this Part X;

“Anti-Doping Judicial Committee” means an Anti-Doping Judicial Committee in accordance with Article 123 of this Code;

“Chief Executive Officer” or **“CEO”** means the Chief Executive Officer of MotorSport NZ;

“Drug/Doping Report” means a Drug/Doping Report from Drug Free Sport New Zealand or other another authorised Anti-Doping Agency as defined in Article 118(5) of this Code;

“Delegate” means a person to whom the Chief Executive Officer has, in accordance with Article 121(3)(b)(i), delegated responsibility for an Inquiry;

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“Exceptional Circumstances” means exceptional circumstances in the interests of MotorSport NZ and motorsport under the authority of MotorSport NZ;

“Judicial Hearing” means a hearing before a Judicial Committee or a MotorSport NZ Anti-Doping Judicial Committee in accordance with Article 123 of this Code;

“Inquiry” means an Inquiry in accordance with Article 121 of this Code;

“Inquiry Panel” means the panel comprising the person(s) to whom the Chief Executive Officer has, in accordance with Article 121(3)(b)(ii), delegated responsibility for an Inquiry;

“Inquiry Report” means a report in accordance with Article 121(5) of this Code;

“Judicial Committee” means a Judicial Committee in accordance with Article 123 of this Code;

“Management Committee” means the committee established by the Chief Executive Officer of MotorSport NZ under the delegation of authority of the Board of MotorSport NZ in accordance with the Constitution;

“Preliminary Hearing” means a Preliminary Hearing before the Hearing Review Panel in accordance with Article 122 of this Code, to determine if a Judicial Hearing should be held;

“Special Circumstances” means special circumstances, in the interests of MotorSport NZ and motorsport under the authority of MotorSport NZ;

“Specialist Drug or Doping Issue Hearing” means a hearing following a report is received from Drug Free Sport New Zealand or other another authorised Anti-Doping Agency, in accordance with Article 118(5);

“Supplementary Inquiry Report” means an additional report in accordance with Article 122(2)(h)(ii) of this Code.

- (2) Inquiries by MotorSport NZ:** MotorSport NZ may, in accordance with Articles 118, 119 and 121 of this Code, hold an Inquiry pursuant to Article 121 of this Code to inquire into or investigate any aspect(s) of motorsport, including regarding any Meeting or Event (or any aspect of any Meeting or Event), or any other matters which are properly raised or identified in accordance with this Part X of the Code.
- (3) Preliminary Hearings by MotorSport NZ:** MotorSport NZ may, in accordance with Articles 118, 119, and 122 of this Code, convene a Preliminary Hearing of the Hearing Review Panel pursuant to Article 122 of this Code to determine whether to hold a Judicial Hearing in relation to any matter referred to it by a MotorSport NZ Inquiry (in accordance with Article 121 of this Code), or any other matters which are properly raised or identified in accordance with this Part X of the Code.
- (4) Judicial Hearings by MotorSport NZ:** MotorSport NZ may, in accordance with any decision by the Hearing Review Panel pursuant to Article 122 of this Code, convene a Judicial Hearing in accordance with Article 123 of this Code in relation to any matter referred to it by the Hearing Review Panel at the Preliminary Hearing or any matters which are properly raised or identified in accordance with this Part X of the Code. Such Judicial Hearings will be before a Judicial Committee or an Anti-Doping Judicial Committee.
- (5) Specialist Drug or Doping Issue Hearings:** Notwithstanding all other provisions of this Part X, if a report is received from Drug Free Sport New Zealand or other another authorised Anti-Doping Agency alleging drug use or doping in relation to any event or involving any party at any motorsport event under the Authority of MotorSport NZ (a **“Drug/Doping Report”**) then:

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- (a)** the provisions of this Article 118(5) (and relevant definitions in Article 118(1)), and not the other Articles in this Part X, shall apply in relation to:
 - (i)** the matters raised in the Drug/Doping Report to the extent that it raises issues that are within the jurisdiction of The Sports Tribunal of New Zealand (or other authorised Anti-Doping tribunal or other body, other than the Anti-Doping Judicial Committee); and
 - (ii)** any request, application or complaint by any other party relating to the matters raised in the Drug/Doping Report, but only to the extent that the matters raised fall within Article 118(5)(a)(i);

but shall not apply:

- (iii)** as specified in this Article 118(5); or
 - (iv)** if that tribunal or other body determines that it will not consider the matters raised at a substantive hearing, or fails to consider those matters in accordance its usual processes;
- (b)** any hearing before The Sports Tribunal of New Zealand (or other authorised Anti-Doping tribunal or other body, other than the Anti-Doping Judicial Committee) shall be arranged by that tribunal or other body, in accordance with its rules, processes and time-frames;
- (c)** the Chief Executive Officer, MotorSport NZ staff (under the direction of the Chief Executive Officer) and the members of the Board may provide whatever assistance and take any steps The Sports Tribunal of New Zealand (or other authorised Anti-Doping tribunal or other body) reasonably requires, provided that the party providing such assistance:
 - (i)** believes in good faith that the appropriate process is being followed, and that the process is lawful, in accordance with this Code and whatever commitments MotorSport NZ has made to Drug Free Sport New Zealand or any other authorised Anti-Doping Agency;
 - (ii)** is not obliged to incur any expense that is not funded by the tribunal or other body or MotorSport NZ (at the Chief Executive Officer's direction), unless they are expressly required to do so under this this Code; and
 - (iii)** is not obliged to take any action that is in breach of or inconsistent with their obligations under the Constitution, this Code or the law;
- (d)** but this Article 118(5) will not preclude MotorSport NZ considering, under this Part X, any other drug or alcohol related issues that do not fall within Article 118(5)(a).

119. Applications, Requests and Complaints that may be considered under Part X:

- (1)** Without affecting in any way any existing right as to protest or appeal under this Code, any Officer (including the Chairman of the Board, any member of the Board and the Chief Executive Officer), any Member Club, any member of the Management Committee, or any Official, Entrant or Competitor may, in writing and delivered to MotorSport NZ at its head office premises (including its physical address, email address or postal address publicised by MotorSport NZ from time to time), within the time-frame specified in Article 120, apply for or request an Inquiry in relation to the conduct of any Meeting or Event, or any part of any Meeting or Event, or any other matter to which this Part X of this Code applies.
- (2)** An application, request or complaint that does not strictly comply with all of the requirements of Article 119(1) may be treated as an application or request for an Inquiry under this Part X if it is determined by the Chief Executive Officer or (if the issue comes to their attention) the Hearing Review Panel, in each case in their sole discretion, that there are Special Circumstances such that there should be an Inquiry. (The Hearing Review Panel shall only consider whether there are Special Circumstances if the Chief Executive Officer determines there are not Special Circumstances, and shall then consider the issue de novo as it sees fit.)

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Note: Grounds which could be considered Special Circumstances for these purposes include (without limitation) if the application, request or complaint is:

- (a) made by a party that is not entitled to make an application or request in accordance with Article 119(1), but is made by a party currently actively involved in any aspect of motorsport under the authority of MotorSport NZ; and/or
- (b) not made to the proper address identified in Article 119(1), but it nevertheless came to the attention of MotorSport NZ within the required time-frame; and/or
- (c) not expressed as a request pursuant to Part X, or for an Inquiry, but otherwise could properly be considered under the processes contained in this Part X.

- (3) Any application, request or complaint in accordance with Article 119(1), having regard to any Special Circumstances determination in accordance with Article 119(2), shall be treated as an application or request for an Inquiry pursuant to Article 121.

120. Time-frames or Extending Time-frames under Part X:

- (1) Any written application or request for an Inquiry shall be made in writing to MotorSport NZ within twenty eight (28) days of the first Working Day after the conclusion of a Meeting or Event, or after the incident or issue, to which the application or request relates.

- (2) **Extending Time-frames in Special Circumstances:** The time for making or accepting an application or request may be extended to up to ninety(90) days in total by the Chief Executive Officer or the Hearing Review Panel if it is determined by the Chief Executive Officer or (if the issue comes to their attention) the Hearing Review Panel, in each case in their sole discretion, that there are Special Circumstances such that there should be an Inquiry. (The Hearing Review Panel shall only consider whether there are Special Circumstances if the Chief Executive Officer determines there are not Special Circumstances, and shall then consider the issue de novo as it sees fit.)

Note: Grounds which could be considered Special Circumstances for these purposes include (without limitation):

- (a) a reasonable explanation as to why the application or request could not be or was not made sooner, including the availability of information or evidence that was not available within the twenty eight (28) day time-frame, provided that the application or request was made promptly when it became available; and/ or
- (b) if new information, or an exceptional issue not otherwise covered by this Code, comes to the attention of the Chief Executive Officer or the Hearing Review Panel which is material to whether there should be a Judicial Hearing (having regard to the "Preliminary Hearing Criteria" Article 122(3) of this Code).

(3) Extending Time-frames in Exceptional Circumstances:

- (a) Any time-frame under this Part X that has been or may be extended in Special Circumstances in accordance with this Part X may in Exceptional Circumstances be extended (further) in accordance with this Article 120(3);
- (b) The Chief Executive Officer, or any member of the Hearing Review Panel, or an appointed Judicial Committee or Anti-Doping Judicial Committee may, in each case at their sole discretion, if they consider that the Article 120(3) requirements to extend any time-frame(s) in Exceptional Circumstances may be satisfied, request that the Hearing Review Panel considers whether there are Exceptional Circumstances such that a time-frame under this Part X should be (further) extended;
- (c) The Hearing Review Panel shall consider any such request at any meeting of that Panel (excluding any member(s) not involved in the Panel because of a conflict of interest) in person, or by teleconference or other means of audio or audio-visual conference;

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- (d) The Hearing Review Panel (excluding any member(s) not involved in the Panel because of a conflict of interest) may, in its sole discretion by unanimous decision, extend any of the time-frames under this Part X (and to the extent that) if it is satisfied that:
- (i) a request for an extension based on Exceptional Circumstances has been received from the Chief Executive Officer, or any member of the Hearing Review Panel, or an appointed Judicial Committee or Anti-Doping Judicial Committee;
 - (ii) if the Judicial Committee or Anti-Doping Judicial Committee has been appointed but did not itself request the extension, the appointed committee has agreed to the extension that is sought;
 - (iii) the Chief Executive Officer, the Hearing Review Panel, the Judicial Committee or Anti-Doping Judicial Committee (as the case may be) has determined under the relevant provision in this Part X that there are Special Circumstances such that there should be a time extension in relation to a particular time-frame, or the Hearing Review Panel is itself now satisfied that there are Special Circumstances (to the extent it is entitled to make that decision under the relevant provision in this Part X).
 - (iv) there are Exceptional Circumstances such that an extension (or further extension) is appropriate; and
 - (v) any delay will not prejudice the process under Part X;
- (e) If the Hearing Review Panel determines that there are Exceptional Circumstances in accordance with Article 120(3)(d) then, by a decision of the Hearing Review Panel in accordance with Article 120(3)(d), extend the time-frames under this Part X as (and the extent that) it sees fit provided that:
- (i) it is satisfied that the total extended time-frames (including any extensions to date) would still allow for any Judicial Committee or Anti-Doping Judicial Committee (as the case may be) to be convened and deliver its Judicial Committee Decision within a total time-frame for all of the processes currently contemplated under this Part X (without any further time extension(s)) to be completed within one(1) calendar year from the first Working Day following the Event or Meeting or the issue arising; and
 - (ii) if the Hearing Review Panel is satisfied in accordance with Article 120(e)(i) above and their decision has the unanimous support of the full Board (excluding any Board members not voting due to any conflict of interest) then it may extend those time-frames within a total time frame for all of the processes currently contemplated under this Part X (without any further time extension(s)) to be completed within two(2) calendar years; and
 - (iii) Notice of any such Exceptional Circumstances extension of any time-frame(s) shall be given on the same basis that would apply regarding any Special Circumstances extension relating to any affected time-frame pursuant to Part X, except that any notice given shall also record the Hearing Review Panel determination that there should be extension on the basis of Exceptional Circumstances.

121. Inquiries by or under the authority of the Chief Executive Officer:

- (1) **Commencing an Inquiry:** Following receipt of an application or request in accordance with Article 119 of this Code, provided that the application or request satisfies the requirements of Article 119 (because Article 119(1) applies, or following a Special Circumstances determination pursuant to Article 119(2) or Article 120, or following an Exceptional Circumstances determination pursuant to Article 120), MotorSport NZ shall conduct an Inquiry in accordance with this Article 121 of Part X of this Code.
- (2) **The Chief Executive Officer is responsible for Inquiries:** Every Inquiry shall be held by or under the delegation and direction of the Chief Executive Officer, subject to the terms of this Part X, but otherwise at their sole discretion.
- (3) **Conduct of an Inquiry:** The Chief Executive Officer:
 - (a) may carry out an Inquiry personally;

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- (b) may, in writing, delegate responsibility for carrying out an Inquiry to:
 - (i) a person who is a MotorSport NZ staff member with suitable qualifications, experience and/or expertise (a “**Delegate**”); or
 - (ii) a panel appointed by the Chief Executive Officer comprising three(3) persons with suitable qualifications, experience and/or expertise, which must include the Chief Executive Officer or a MotorSport NZ staff member, and which may include Management Committee members, Officials, or others (particularly in relation to any issues involving Drugs or Alcohol) with relevant qualification, experience or expertise (an “**Inquiry Panel**”);
 - (c) may arrange for individuals in any of the categories identified in Article 121(3)(b)(ii) above who have not been delegated responsibility for an Inquiry to provide additional assistance to an Inquiry;
 - (d) shall provide written terms of reference in whatever form they consider appropriate to any Delegate or Inquiry Panel regarding every Inquiry, and further written or verbal directions as they see fit as the Inquiry progresses and to ensure the process is completed to their satisfaction;
 - (e) may direct a short form Inquiry, or a more or less comprehensive or intensive Inquiry, as they consider appropriate given the circumstances;
 - (f) shall seek to ensure that an Inquiry is not carried out by any person who:
 - (i) is or was in any way interested in or concerned with any matter which the Inquiry is or may be required to consider so as to give rise to a conflict of interest; or
 - (ii) they consider could be appointed to any Judicial Committee or Anti-Doping Judicial Committee which might be formed to hold a Judicial Hearing as a result of the Inquiry.
 - (g) may, if they consider that Article 121(3)(f) precludes them from personally being involved in an Inquiry, delegate to an appropriate MotorSport NZ staff member the Chief Executive Officer’s role in terms of providing terms of reference or further directions to an Inquiry.
- (4) Inquiry Procedure:** Every Inquiry shall:
- (a) proceed in accordance with this Part X and Article 121, the Inquiry’s terms of reference, any directions from the Chief Executive Officer and any request from the Hearing Review Panel for a Supplementary Inquiry Report;
 - (b) assess and where appropriate investigate the matters raised in the application, request or complaint;
 - (c) otherwise follow whatever process it considers appropriate in order to efficiently complete the Inquiry provided that it shall:
 - (i) not conduct any formal hearing, and is not required to give any party an opportunity to make submissions or give evidence in person;
 - (ii) consider, as it considers appropriate, the information provided by the party making the application or request, and any other written or other information or material emerging during the Inquiry (including without limitation any statements or other accounts it acquires in writing or otherwise from any possible witness(es), and including any available physical, video, photographic image, audio recording or other evidence);
 - (iii) form its own independent assessment; and
 - (iv) reach decisions by consensus where possible, or failing that by majority.
- (5) The Inquiry Report:** An Inquiry shall provide to the Chief Executive Officer a written report (the “**Inquiry Report**”) comprising:
- (a) a summary (which may be brief in appropriate cases) of:
 - (i) the application or request, and supporting documents, information or material (including copies/material as appropriate);

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- (ii) its investigation (if any) into the matters raised, and any other relevant documents, information or material (including copies/material as appropriate);
 - (iii) its assessment as to whether the application or request has been made in accordance with Article 119, including identifying any determinations by the Chief Executive Officer or the Hearing Review Panel as to whether there are relevant Special Circumstances;
 - (iv) any relevant Inquiry findings;
 - (v) any matters the Inquiry considers are relevant to whether there should be a Judicial Hearing (having regard to the "Preliminary Hearing Criteria" in Article 122(3));
 - (vi) any other issues it considers a Judicial Hearing should consider (having regard to the provisions of this Part X); and
 - (b) its assessment for the Board regarding whether the Preliminary Hearing Criteria in Article 122(3) are satisfied, in relation to any of the issues considered in the Inquiry; and
 - (c) its recommendations (if any) as to whether it is appropriate in all the circumstances to convene a Judicial Hearing, and if so regarding which issues.
- (6) **Short Form Inquiry Reports in particular circumstances:** Notwithstanding Article 121(5), if the Chief Executive Officer, or their Delegate, or an Inquiry Panel considers that an application or request that has been referred to it is frivolous or vexatious, or clearly does not raise any issue that could properly be considered under this Part X or at any Judicial Inquiry (having regard to the Preliminary Inquiry Criteria), or that is otherwise wholly without merit, then (subject to any further direction from the Chief Executive Officer) it may deliver an abbreviated Inquiry Report that identifies the issues raised in the application or request, its assessment and (if it considers it necessary or would assist the Hearing Review Panel) briefly setting out its reasons.
- (7) **Release of the Inquiry Report to the Board:** The Chief Executive Officer shall provide copies of the Inquiry Report (and any Supplementary Inquiry Report) to each member of the Hearing Review Panel, except for any member of the Hearing Review Panel the Chief Executive Officer considers might face a conflict of interest given the subject matter of the Inquiry Report (having regard to Article 121(3)(f)).
- (8) **Time-frames for an Inquiry:**
- (a) An Inquiry shall begin within seven(7) days of receipt of the application or request.
 - (b) The Inquiry shall be completed and the Inquiry Report delivered to the Chief Executive Officer within twenty eight (28) days of receipt of the application or request.
 - (c) The Inquiry Report shall be delivered by the Chief Executive Officer to the Hearing Review Panel within in two(2) Working Days after receipt of the Inquiry Report.
 - (d) If the date by which a step or steps regarding an Inquiry should otherwise be taken falls on a Weekend or Public Holiday then that step shall be taken by the next Working Day.
 - (e) The specified time-frame for any particular step in relation to an Inquiry may be extended, to up to twice the specified time-frame, by:
 - (i) the Chief Executive Officer if it is determined by the Chief Executive Officer or (if the issue comes to their attention) the Hearing Review Panel, in each case in their sole discretion, that there are Special Circumstances such that the time-frame should be extended; or
 - (ii) the Hearing Review Panel if it gives a direction, in accordance with Article 122(2)(i), for the Inquiry to provide a Supplementary Inquiry Report.

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(The Hearing Review Panel shall only consider whether there are Special Circumstances if the Chief Executive Officer determines there are not Special Circumstances, and shall then consider the issue de novo as it sees fit.)

- (f) If the time frame for an Inquiry is extended in accordance with Article 121(8)(e) then the Chief Executive Officer shall give notice of the extension of time, and the revised and extended timetable that applies, to the party that made the application or request

122. Preliminary Hearings held by the Hearing Review Panel to assess whether to convene a Judicial Hearing:

(1) Preliminary Hearings generally:

- (a) The Hearing Review Panel shall consider every application or request in accordance with Article 119, provided that the application or request satisfies the requirements of Article 119 (either because Article 119(1) applies or following a Special Circumstances determination pursuant to Article 119(2)), at a Preliminary Hearing to decide (in accordance with this Article 122(1)) whether to hold a Judicial Hearing in accordance with Article 123.
- (b) The Hearing Review Panel, must consider, but is not bound by, any Inquiry Report (or Supplementary Inquiry Report) in accordance with Article 121, and its assessment(s) and recommendation(s).

(2) The Preliminary Hearing process:

- (a) The Chief Executive Officer shall, in respect of every application or request in accordance with Article 119, provided that it satisfies the requirements of Article 119 (in accordance with Article 122(1)(a) above), deliver copies of the Inquiry Report to the members of the Hearing Review Panel to enable a Preliminary Hearing to be convened.
- (b) The Chief Executive Officer, in consultation with the Chairman of the Hearing Review Panel, shall seek to ensure that the Hearing Review Panel considering matters raised at a Preliminary Hearing excludes any member who is or was in any way interested in or concerned with any matter which the Inquiry is or may be required to consider so as to give rise to a conflict of interest.
- (c) The Preliminary Hearing will proceed on the basis of the submission comprising the application or request and any supporting documents, information or material, any Inquiry Report, and any other available relevant documents, information, material or other evidence of any kind that is available as a result of any Inquiry.
- (d) Parties, their representatives, witness(es) and/or prospective witness(es) will not be present.
- (e) Except for any such information comprised in the information identified in Article 122(2)(c) there will be no submissions of any kind from any party or from the representatives of any party.
- (f) The Hearing Review Panel shall endeavour to reach its decisions by consensus if possible, but otherwise by majority decision.
- (g) Whenever possible the Hearing Review Panel shall determine whether to convene a Judicial Hearing based on the information made available to it when the Preliminary Hearing is first convened. It may (without limitation) consider:
 - (i) any information available to it in accordance with this Part X, including any Inquiry Report or Supplementary Inquiry Report, including in particular any Inquiry recommendations;
 - (ii) the requirements of this Code, and in particular this Part X and Article 122; and

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- (iii) the interests of MotorSport NZ and motorsport under the authority of MotorSport NZ.
 - (h) If the Hearing Review Panel requires further information it may:
 - (i) request clarification of particular issues through the Chief Executive Officer (and through them, the Delegate or Inquiry Panel) during the Preliminary Hearing; or
 - (ii) direct that further inquiries are made to prepare a Supplementary Inquiry Report to address particular issue(s) (in accordance with Article 121, save that the extended time-frame(s) apply in accordance with Article 121(8)(e)), provided that the Hearing Review Panel is satisfied, in its sole discretion, that there are Exceptional Circumstances requiring the requested information.
 - (i) If the Hearing Review Panel directs that a Supplementary Inquiry Report is to be prepared it will be prepared by the same Delegate or Inquiry Panel that carried out the original Inquiry, unless the Chief Executive Officer directs otherwise, and the Preliminary Hearing will be reconvened for the next available date after the Supplementary Report is due.
- (3) Preliminary Hearing Criteria:** At a Preliminary Hearing the Hearing Review Panel must consider the following criteria, and be satisfied based on the information available to it that:
 - (a) The request or application has been made in accordance with Article 119, having regard to any decision by the Chief Executive Officer or the Hearing Review Panel that there are Special Circumstances satisfying any of the requirements of Article 119.
 - (b) In respect of any application, the request or other complaint by or on behalf of an Entrant or competitor that raises any issue or issues that could have been raised in accordance with this Code at a Meeting or Event:
 - (i) the Entrant or competitor availed themselves of all options to raise the issue or issues in accordance with the processes in this Code that could have been pursued at the Meeting or Event; or
 - (ii) the Hearing Review Panel is satisfied, in its sole discretion, that there are Special Circumstances such that the issue raised should be considered despite those options not being pursued.
 - Note:** *Grounds which could be considered Special Circumstances for the purposes of Article 122(3)(b)(ii) include (without limitation) that:*

 - (1) *there is a sufficient explanation as to why other options were not pursued at the Meeting or Event; and/or*
 - (2) *information is available that was not available at the Meeting or Event, or when other options were available.*
 - (c) It appears (without prejudice to the consideration of the issue(s) by the Judicial Hearing) that:
 - (i) one(1) or more of the Judicial Committee Grounds in Article 123(2)(a) are satisfied; or
 - (ii) both of the Anti-Doping Judicial Committee Grounds in Article 123(2)(b) are satisfied.
 - (d) It appears (without prejudice to the consideration of the issue(s) by the Judicial Hearing) that there is a prima facie case to be heard if there is a Judicial Hearing.
- (4) Preliminary Hearing Decision:**
 - (a) **The Decision:** If the Hearing Review Panel determines that the Preliminary Hearing Criteria are satisfied it may, having regard to the interests of MotorSport NZ and motorsport under the authority of MotorSport NZ, decide to convene a Judicial Hearing. The Hearing Review Panel shall, at the Preliminary Hearing or any reconvened Preliminary Hearing, decide:

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- (i) whether to convene a Judicial Hearing; and
 - (ii) which issues, by reference to the Hearing Grounds identified as Judicial Committee Grounds and the Anti-Doping Judicial Committee Grounds in Article 123(2), are to be considered at a Judicial Hearing.
 - (b) **Convening a Judicial Hearing:** A Judicial Hearing is “convened” for the purposes of this Code when the Hearing Review Panel, at a Preliminary Hearing, decides to convene a Judicial Hearing.
 - (c) **The Decision Whether to Hold a Judicial Hearing, in writing:** The decision of the Hearing Review Panel shall be recorded in a written decision, following the Preliminary Hearing, which shall include a summary of the Decision in accordance with Article 122(4)(a) and its reasons.
 - (i) The Hearing Review Panel may prepare the written record of the Decision itself, or it may give directions to the Chief Executive Officer to prepare a draft written record of the decision at the Preliminary Hearing.
 - (ii) The written record of the decision shall be approved by the Chairman of the Hearing Review Panel, unless the Hearing Review Panel directs that it shall be approved by all members of the Hearing Review Panel involved in the decision.
 - (iii) The written decision that is approved in accordance with Article 122(4)(c)(ii) is the Decision Whether to Hold a Judicial Hearing.
- (5) **Notice of the Decision Whether to Hold a Judicial Hearing:** The Chief Executive Officer shall give notice of the Hearing Review Panel’s Decision Whether to hold a Judicial Hearing (once finalised in writing and approved) as follows:
- (a) If the Hearing Review Panel has decided not to hold a Judicial Hearing the Chief Executive Officer shall advise the party that made the application or request, and all parties that the Chief Executive Officer considers would be concerned in or materially affected by the Decision or any Judicial Hearing that are named or clearly identified in the Decision Whether to Hold a Judicial Hearing, by giving each of those parties notice in writing that the Hearing Review Panel has considered an application or request for a Judicial Hearing, briefly identifying the issues raised, and recording that the Hearing Review Panel has decided not to convene a Judicial Hearing;
 - (b) If the Hearing Review Panel has decided to hold a Judicial Hearing the Chief Executive Officer shall advise the party that made the application or request, and all parties that the Chief Executive Officer considers would be concerned in or materially affected by the Decision or any Judicial Hearing that are named or clearly identified in the Decision Whether to Hold a Judicial Hearing and who are subject to MotorSport NZ’s disciplinary processes under this Code, by giving each of those parties and any other party who is not subject to MotorSport NZ’s disciplinary processes under this Code but who would otherwise satisfy Article 122(5)(b) notice in writing that the Hearing Review Panel has considered an application or request for a Judicial Hearing, briefly identifying the issues raised, recording that the Hearing Review Panel has decided to convene a Judicial Hearing, and indicating that further details regarding the Judicial Hearing will follow in due course.
 - (c) Notice for the purposes of Articles 122(5) (a) or (b) shall be sufficiently given if it is given to the current email or facsimile contact address held by MotorSport NZ for any party to whom notice is to be given, or to any email or facsimile address specified by any such party, or if MotorSport NZ does not hold any current email or facsimile contact address for any party, provided that MotorSport NZ takes reasonable steps to identify a current email or facsimile address and gives notice to that email or facsimile address.

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(d) If the Hearing Review Panel considers that there are Special Circumstances such that it is not in the interests of MotorSport NZ or motorsport under the authority of MotorSport NZ to give notice in accordance with Article 122(5) (a) – (c) it may give directions as to which other parties shall be given notice and in what manner, provided that notice shall in all cases be given to the party that made the application or request, and to any party that would be entitled to challenge or appeal the Hearing Review Panel's Decision Whether to Hold a Judicial Hearing under this Code.

(6) Time-frames for a Preliminary Hearing and associated Notices:

(a) A Preliminary Hearing date, venue and/or other arrangements for a teleconference (or other mode of hearing) shall be arranged by the Chief Executive Officer within twenty eight (28) days of the delivery of the Inquiry Report to the Chief Executive Officer.

(b) If the Hearing Review Panel requires a Supplementary Inquiry Report then:

(i) that report shall be provided within a time-frame specified by the Hearing Review Panel that is not more than seven(7) days after the Preliminary Hearing date; and

(ii) the Preliminary Hearing shall reconvene within a time-frame specified by the Hearing Review Panel that is not more than seven(7) days after that report is due.

(c) If the date by which a step or steps should otherwise be taken falls on a Weekend or Public Holiday then the step(s) should be taken by the next Working Day.

(d) The Hearing Review Panel's Decision whether to hold a Judicial Hearing shall be finalised (in writing and approved) by the Hearing Review Panel and made available to the Chief Executive Officer within two(2) working days of the Decision;

(e) Notice of the Hearing Review Panel's Decision Whether to Hold a Judicial Hearing (once finalised in writing and approved) shall be given to those parties identified in Article 122(5) within two(2) working days after the Decision Whether to Hold a Judicial Hearing is finalised in writing and approved. Where the decision is to convene a Judicial Hearing, such notice shall comprise of a preliminary notice that a Judicial Hearing has been convened before the Judicial Committee or the Anti-Doping Judicial Committee (as the case may be).

(f) The time-frame for any appeal against the decision of the Hearing Review Panel's Decision Whether to Hold a Judicial Hearing in accordance with Article 126 of Part XI of this Code, runs from the date on which notice is given by the Chief Executive Officer in accordance with Article 122(5).

(g) The time-frame for any step or steps relating to the Preliminary Hearing and/or any decision of the Preliminary Hearing may be extended by the Chief Executive Officer or the Hearing Review Panel to up to twice the time-frame specified in this Part X if the Chief Executive Officer or the Hearing Review Panel is satisfied, in each case at their sole discretion, that there are Special Circumstances such that it is appropriate to extend the time-frame(s).

(h) MotorSport NZ shall (where time permits and where reasonably possible) give notice of any decision to extend any time-frame, subject to any direction from the party that made that decision, to the party that made the application or request, and all other persons, firms and bodies corporate the Chief Executive Officer considers would be concerned in or materially affected by the Decision or any Judicial Hearing that are named or clearly identified in any Inquiry Report, and on the basis that such notice shall be sufficiently given by the means identified in Article 122(5)(c).

123. Judicial Hearings:**(1) Convening a Judicial Hearing:**

- (a)** If the Hearing Review Panel decides to convene a Judicial Hearing to inquire into the conduct of a Meeting or Event pursuant to this Article 123, MotorSport NZ by and through its Chief Executive Officer shall arrange the Judicial Hearing before:
- (i)** the Judicial Committee of MotorSport NZ established under and by virtue of Clause 18.4 of the Constitution, if the Judicial Hearing is to consider Judicial Committee Grounds; or
 - (ii)** the Anti-Doping Judicial Committee of MotorSport NZ established under and by virtue of Clause 18.4 of the Constitution and in accordance with the requirements of this Code, if the Judicial Hearing is to consider Judicial Committee Anti-Doping Grounds; or
 - (iii)** in an exceptional case where the Judicial Hearing is to consider both Judicial Committee Grounds and Judicial Committee Anti-Doping Grounds, at a Judicial Hearing of a single combined Judicial Committee/Anti-Doping Judicial Committee.
- (b)** A Judicial Committee will comprise a Chairperson and not less than two(2) other persons appointed by the Chief Executive Officer at their sole discretion in accordance with this Article 123(1):
- (i)** from any current Judicial Committee Hearing panel or list, comprising individuals selected or identified by MotorSport NZ or the Board as persons who may be appointed to a Judicial Committee;
 - (ii)** having regard to:
 - (1)** the nature of the issues to be considered by the Judicial Hearing;
 - (2)** the availability of suitable panel members;
 - (3)** any recommendations by the Hearing Review Panel in the Decision Whether to Hold a Judicial Hearing;
 - (4)** the availability of the party that made the application or request, and the availability of any other parties that are or might be affected and any known prospective witnesses, but only to the extent that these matters can reasonably be accommodated;
 - (5)** the desirability of proceeding within the time-frames provided for in this Code, without variation, wherever reasonably possible; and
 - (6)** any other matters the Chief Executive Officer considers to be relevant; and
 - (iii)** provided that no person shall be appointed who is or was in any way personally or professionally interested in or concerned with any matter in respect of which the Judicial Hearing is to be held so that they have or may potentially have a conflict of interest.
- (c)** An Anti-Doping Judicial Committee will comprise a Chairperson and not less than two(2) other persons appointed by the Chief Executive Officer in accordance with Article 123(1)(b), except that:
- (i)** at least one(1) of the persons appointed shall be selected from any current Anti-Doping Hearing panel or list, comprising individuals with particular expertise in relation to drug or alcohol issues, selected or identified by MotorSport NZ or the Board as persons who may be appointed to a Judicial Committee; and
 - (ii)** the Anti-Doping Judicial Committee appointed shall satisfy the requirements of Appendix One Schedule D, Part One Article 2.1, of the Code.

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- (d) Judicial Hearings of the Judicial Committee or an Anti-Doping Judicial Committee will commence on a date, and be heard on a date or dates, to be specified by the Chief Executive Officer, in consultation with the person(s) or body appointed (or to be appointed) to hold the Judicial Hearing and in light of the factors identified in Article 123(1)(b) and/or 123(1)(c) (as the case may be). The Chief Executive Officer will use reasonable endeavours to arrange the Judicial Hearing on a date or date(s) that is (are) not inconvenient for the party that raised the issue, other affected parties or witnesses, subject to complying with the requirements and time-frames in this Part X, and the availability of the person(s) or body to be appointed to hold the Judicial Hearing.
- (e) MotorSport NZ shall give all persons, firms and bodies corporate (including all Member Clubs) concerned or interested in the Judicial Hearing (including but not limited to the party that made any application or request):
 - (i) notice that a Judicial Hearing has been convened before the Judicial Committee or the Anti-Doping Judicial Committee (as the case may be); and
 - (ii) notice of the appointed date(s) and venue.
- (f) The notice of Judicial Hearing must contain sufficient details of the conduct of the Meeting or Event into which it is intended to inquire, so as to fully and fairly inform each person, firm and body corporate concerned or interested in the Judicial Hearing, as to the purpose of the Judicial Hearing.

(2) **Judicial Hearing Grounds:** Subject to the balance of this Article 123:

- (a) The grounds that may be considered by the Judicial Committee at any Judicial Hearing (the “**Judicial Committee Grounds**”) are as follows:
 - (i) the results of a competition have been improperly or incorrectly made out; or
 - (ii) the conduct of a promotion or part thereof, or the conduct of any participant therein, or the eligibility of any competing vehicles involved a breach of the Code that is considered fundamental to the interests of motorsport (under the authority of MotorSport NZ) and the administration thereof by MotorSport NZ; or
 - (iii) any penalty imposed was clearly excessive or clearly inadequate, or that for special reasons such penalty was inappropriate; or
 - (iv) in respect of any competition, there has been either a gross miscarriage of justice or other breach of the Code that is considered fundamental to the interests of motorsport; or
 - (v) any Official, Promoter, Organiser or any other person or Organisation has committed any breach of this Code, its Appendices and Schedules, or International Sporting Code; or
 - (vi) any Official, Promoter, Organiser or any person or Organisation has been guilty of any act or omission prejudicial to the interest of MotorSport NZ, or any competition or of motorsport generally, or that brings MotorSport NZ or motorsport under the authority of MotorSport NZ into disrepute;
- (b) The grounds that may be considered by the Anti-Doping Judicial Committee at any Hearing (the “**Anti-Doping Judicial Committee Grounds**”) are as follows:
 - (i) there has been a breach of any of the provisions of this Code relating to use of drugs or alcohol (other than a matter to which the process comprised in Article 118(5) applies), including but not limited to Article 38; and
 - (ii) the breach has not yet been dealt with (at all or in full) under the Code, or any penalty imposed was clearly excessive or clearly inadequate, or was for special reasons inappropriate, or a further penalty under the Code is appropriate.

(3) The Judicial Hearing procedure/process:

- (a)** Each Judicial Committee or Anti-Doping Judicial Committee will, subject to the requirements in Part X and in particular Article 123 of this Code (including as to the time-frames for particular steps to be taken), determine its own procedures, processes and rules, which may include taking whatever steps it considers necessary and appropriate in the interests of properly and efficiently dealing with the matters it is to consider.
- (b)** The appointed Judicial Committee or Anti-Doping Judicial Committee may delay the allocated date for commencing a Judicial Hearing if it considers that Special Circumstances arise such that a delay is in the interest of properly and efficiently dealing with the matters it is consider. But the Judicial Committee or Anti-Doping Judicial Committee (as the case may be) must seek and obtain prior approval of any extension resulting in a delay exceeding two(2) full working days (or any delay to a time-frame that has already been extended) from:

 - (i)** the Chief Executive Officer or the Hearing Review Panel in accordance with the Special Circumstances provisions in Article 123(7)(f), if the contemplated extension falls within the time-frames covered by Article 123(7)(f); or
 - (ii)** the Hearing Review Panel in accordance with the Exceptional Circumstances provisions in Article 120(3), if an extension for a longer period is sought.
- (c)** The Judicial Committee or Anti-Doping Judicial Committee will wherever reasonably possible deal with any Judicial Hearing on the day (or days) allocated in accordance with Article 123(1). But in Exceptional Circumstances if it considers it is necessary and appropriate in the interests of properly and efficiently considering the matters it is to consider it may continue a Judicial Hearing on a further day or days if more time is required or to enable particular evidence to be heard.
- (d)** The Judicial Committee or Anti-Doping Judicial Committee holding the Judicial Hearing shall reach decisions by consensus whenever it can, but otherwise by majority decision.
- (e)** The Judicial Hearing may proceed and a decision be reached notwithstanding the failure of any such person to appear.
- (f)** Save for any Hearing before the Sports Tribunal of New Zealand neither MotorSport NZ nor any party to or person attending the Judicial Hearing shall be entitled to be represented at by legal counsel at any Judicial Hearing and the parties must instead appear either on their own behalf or be represented by such person (not being legal counsel) as they may nominate for the purpose.
- (g)** Any party to or person attending the Judicial Hearing may produce any witness and may seek to produce such other evidence, which the Judicial Committee or Anti-Doping Judicial Committee holding the Judicial Hearing shall consider if it determines it is relevant or helpful.
- (h)** If the matter into which the Judicial Hearing inquires is or becomes of a disciplinary nature, or a matter in respect of which the Judicial Committee or the Anti-Doping Judicial Committee considers a sanction or penalty under this Code may apply:

 - (i)** then the Judicial Hearing shall proceed as follows

 - (1)** any case made against an accused person, firm or body corporate must be made by a person on behalf of MotorSport NZ as directed by the Chief Executive Officer as they see fit (generally, but not limited to, either an MotorSport NZ employee or an Official), other than a member of the committee holding the Judicial Hearing, and they shall proceed first;
 - (2)** they shall be followed by the respondent; and

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- (3) the respondent shall in any event have the last right of reply in submissions; and
 - (ii) those parties may seek an opportunity to be heard, during the Judicial Hearing but after all evidence and submissions on other matters, as to what is or would be an appropriate sanction or Judicial Hearing.
 - (i) The Judicial Committee or Anti-Doping Judicial Committee holding the Judicial Hearing and each party to or person attending the Judicial Hearing shall have the right of cross-examination of any other party to or person attending the Judicial Hearing, except that the committee may impose reasonable limits on the scope or extent of cross-examination as it considers necessary and appropriate in the interests of properly and efficiently considering the issues.
- (4) **The Decision at the Judicial Hearing:** The Judicial Committee or the Anti-Doping Judicial Committee shall reach a decision at the Judicial Hearing in relation to:
 - (a) those matters referred to a Judicial Hearing in the Notice of Hearing, including in particular:
 - (i) in the case of the Judicial Committee, any matters relating to any of the Judicial Committee Grounds contained in Article 123(2)(a) that have been referred for a Judicial Hearing; and
 - (ii) in the case of the Anti-Doping Judicial Committee, any matters relating to any of the Anti-Doping Judicial Committee Grounds contained in Article 123(2)(b) that have been referred for a Judicial Hearing;
 - (b) any matters raised before the Judicial Hearing as to whether the Preliminary Hearing Criteria comprised in Articles 122(3) (a) and (b) were satisfied;
 - (c) any other matters arising during the course of the Judicial Hearing which the Judicial Committee or the Anti-Doping Judicial Committee considers it is appropriate to consider arising within its jurisdiction under the Code; and
 - (d) any matters of a disciplinary nature to which Article 123(3)(h) applies;
 - (e) whether there has been a breach under this Code or its Appendices or Schedules, which falls within its jurisdiction, in which case it may:
 - (i) impose a Penalty or further Penalty under the authority of Article 90, 91 or 92, or vary or substitute any Penalty, or take any step under the authority of any applicable provision of this Code, but in no case shall the committee have the right to order that a Competition or Event shall be re-run; and/or
 - (ii) order that any party to the Judicial Hearing shall pay or contribute to the committee's costs, and/or administrative costs and/or MotorSport NZ costs associated with the Judicial Hearing, and/or the costs of any other party attending the Judicial Hearing.
- (5) **The Decision(s) of the Judicial Committee or the Anti-Doping Judicial Committee, in writing:** The decision(s) shall be recorded in writing, including a brief summary of its decision(s) and its reasons.
 - (a) The Judicial Committee or Anti-Doping Judicial Committee may prepare the written Decision itself, or it may give directions for the Chief Executive Officer (or MotorSport NZ staff under the direction of the Chief Executive Officer) to prepare a draft written record of the Decision at the Hearing.
 - (b) The written record of the Decision shall be approved by the Chairperson of the Judicial Committee or Anti-Doping Judicial Committee, unless it specifies that a particular member, or members, or the full committee should approve the written Decision, in which case the written record should be approved as specified.
 - (c) The approved written decision is the Judicial Committee Decision or the Anti-Doping Judicial Committee Decision, as the case may be.

(6) Notice of the Judicial Committee Decision or Anti-Doping Judicial Committee Decision:

- (a)** Notice of the (finalised in writing and approved) Judicial Committee Decision or Anti-Doping Judicial Committee Decision shall be given by the Chief Executive Officer:
- (i)** to the party that made the application or request; and
 - (ii)** to any person(s), firm(s) or bodies corporate directly affected by any Judicial Committee Decision or Anti-Doping Judicial Committee Decision as to whether they should face a penalty or sanction; and
 - (iii)** to all persons, firms and bodies corporate the Chief Executive Officer considers would be directly concerned in or affected by the decision or any Judicial Hearing, including any such persons or entities:
 - (1)** who are named or clearly identified in the Notice of Judicial Hearing or the Judicial Committee Decision or the Anti-Doping Judicial Committee Decision who are subject to MotorSport NZ's disciplinary process
 - (2)** that participate in the Judicial Hearing or that request that they are given notice of the outcome of the Judicial Hearing;
 - (3)** by MotorSport NZ publishing notice of the Decision on its website.
- (b)** Notice of the Judicial Committee Decision or Anti-Doping Judicial Committee Decision in accordance with Article 123(6)(a) shall be sufficiently given if it is given to the current email or facsimile contact address held by MotorSport NZ for any party to whom notice is to be given, or to any email or facsimile address specified by any such party, or if MotorSport NZ does not hold any current email or facsimile contact address for any party, provided that MotorSport NZ takes reasonable steps to identify a current email or facsimile address, or gives notice on its website in accordance with Article 123(6)(a)(iii)(3).
- (c)** If the Judicial Committee or Anti-Doping Judicial Committee considers that there are Special Circumstances such that it is not appropriate to give notice in accordance with Article 123(6)(a) then it may give directions as to which other parties shall be given notice and in what manner, provided that notice must be given to any party that has any right to challenge or appeal the Judicial Hearing decision under this Code.

(7) Time-frames regarding Judicial Hearing:

- (a)** Within twenty eight (28) days of the completion of the Preliminary Hearing at which the Hearing Review Panel made its decision to convene a Judicial Hearing the Chief Executive Officer shall:
- (i)** arrange and confirm the date, time and venue for a Judicial Hearing of the Judicial Committee or the Anti-Doping Committee;
 - (ii)** appoint the Judicial Committee or Anti-Doping Committee members; and
 - (iii)** give Notice of the Judicial Hearing to be held by the Judicial Committee or Anti-Doping Judicial Committee, giving not less than twenty eight (28) days and not more than fifty six (56) days written notice of the hearing date(s) provided that the hearing may be held sooner if all parties consent.
- Note:** *For the avoidance of doubt this provision does not apply to any decision by the Judicial Committee or the Anti-Doping Committee to hold further Judicial Hearing days.*
- (b)** If the date by which a step or steps should otherwise be taken falls on a Weekend or Public Holiday then the step or steps shall be taken by the next Working Day.
- (c)** The Judicial Committee Decision or Anti-Doping Judicial Committee Decision (the approved written decision) shall be provided to the Chief Executive Officer by the committee within two(2) working days of the Judicial Hearing or the final day of the Judicial Hearing (if there is more than one(1) day).

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- (d)** Notice of the Judicial Committee Decision or the Anti-Doping Judicial Committee Decision shall be given within two(2) working days from when the finalised written and approved decision is given to the Chief Executive Officer.
- (e)** The time-frame for any appeal against the Decision of the Judicial Committee or the Anti-Doping Judicial Committee, in accordance with Article 126 of Part XI of this Code, runs from the date of the Notice of the Judicial Decision being published in accordance with Article 123(6).
- (f)** The specified time-frames for any particular step in relation to a Judicial Hearing can be extended in Special Circumstances by the Chief Executive Officer or the Hearing Review Panel at any time until the Judicial Committee or Anti-Doping Judicial Committee has been appointed, but thereafter by the Chief Executive Officer or the Hearing Review Panel only on request from, or with the agreement of the appointed Judicial Committee or Anti-Doping Judicial Committee. Such an extension may allow up to twice the usual total time-frame specified in this Part X (to a maximum of an additional twenty eight (28) days) for each step identified in this Article 123 if and to the extent that the Chief Executive Officer or the Hearing Review Panel is satisfied, in each case at their sole discretion, that there are Special Circumstances such it is appropriate to extend the time-frame.
- (g)** MotorSport NZ shall give notice of any such decision to extend any time-frame, in accordance with the requirements of Article 123(6), as if Article 123(6) specifically applied to the decision to extend time.