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NATIONAL SPORTING CODE – PART X – INQUIRIES AND JUDICIAL HEARINGS

118. Inquiries and Judicial Hearings:

- (1) Inquiries by MotorSport NZ:** MotorSport NZ may, in accordance with Articles 118, 119, 120 and 121 of this Code, conduct an Inquiry process 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. Such Inquiries will be before an Inquiry Panel.
- (2) Judicial Hearings by MotorSport NZ:** MotorSport NZ may in accordance with Articles 118-121 of this Code convene a Judicial Hearing in accordance with Article 122 of this Code in relation to any matter properly raised or identified in accordance with this Part X of the Code. Such Judicial Hearings will be before a Judicial Committee.
- (3) 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 any other authorised Anti-Doping Agency recognised by MotorSport NZ) 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:
 - (a)** the provisions of Article 118(3)(i) and 118(3)(ii) of this Code, and not the other Articles in this Part X, shall apply in relation to:
 - (i)** any hearing before the Sports Tribunal of New Zealand (or other authorised Anti-Doping tribunal or other body, other than the Judicial Committee) shall be arranged by that tribunal or other body, in accordance with its rules, processes and time-frames;
 - (ii)** MotorSport New Zealand 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.
 - (b)** but this Article 118(3) will not preclude MotorSport NZ considering, under this Part X, any other drug or alcohol related issues that do not fall within the jurisdiction of, or which are not dealt with in substance by, any other tribunal or body that would otherwise have jurisdiction in accordance with Article 118(3).

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, the President (in accordance with a majority decision of the Board), the Chief Executive Officer, any Member Club, any member of a Member Club, or any Official, Entrant, Promotor, Venue owner or Competitor may, in writing and delivered to MotorSport NZ, 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 Inquiry Review Panel that there are circumstances such that there should be an Inquiry in relation to the application.

120. Time-frames, and extended or shortened time-frames under Part X:

- (1) Any application or request for an Inquiry shall be made in writing to MotorSport NZ within fourteen (14) days of; the conclusion of a Meeting or Event, or the date the incident or issue arises or comes to the attention of the applicant.
- (2) Time-frames for other steps in this Part X process are set out in the relevant parts of this Part X.
- (3) **Extending or reducing time-frames in special circumstances:** Part X time-frame(s) may be extended or reduced (before or after a step is required to be taken) if the Inquiry Review Panel determines that there are special circumstances such that allowing a different timeframe is in the interests of MotorSport NZ and motorsport under the authority of MotorSport NZ. Any reduction of a timeframe will be conditional on the written agreement of all affected parties.
- (4) **Notice of changed time-frames:** Notice of any decision to extend or shorten time frames under Part X shall be given to the party making the request or application, and any other party that could be affected by the request or application.

121. Inquiries and decisions as to whether to convene an Inquiry or Judicial Hearing:

- (1) Following receipt of an application or request in accordance with Article 119 of this Code, and subject to Article 121(2) and (4) of this Code, MotorSport New Zealand through its Inquiry Review Panel shall in accordance with this Article 121 of this Code consider whether the request or application meets the criteria for an Inquiry or Judicial Hearing.
- (2) **Inquiry Criteria:** the following shall be the minimum criteria that shall be considered when assessing whether to convene an Inquiry ("Inquiry Criteria"):
 - (a) Has the application, request or complaint been made in accordance with Article 119.
 - (b) Is the issue, matter or complaint one which could have been dealt with under the usual processes available to an official or competitor under the Sporting Code at a Meeting or Event and if so, are there any special circumstances such that the issue should be considered further despite those options not having been pursued; or

- (c) does the issue, matter or complaint affect MotorSport NZ Inc or the conduct or administration of motorsport in general in New Zealand.
 - (d) has a miscarriage of justice occurred.
- (3) The inquiry review process shall be undertaken by an Inquiry Review Panel which will be made up of the CEO and a Motorsport New Zealand Department Head or appointed member of the Judicial Committee. For the purpose of this clause Department Head refers to the incumbent Chief Clerk of the Course, Chief Steward, and Chief Competitor Relations Officer.
- (4) **Judicial Hearing Criteria:** For the purposes of this Article 121 the following shall be the criteria that shall be considered when assessing whether to convene a Judicial Hearing (the “Judicial Hearing Criteria”):
 - (a) Has the applicant, request or complaint been made in accordance with Article 119.
 - (b) Has 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? Alternatively, if they have not, are there Special Circumstances such that the issue or issues should be considered further despite those options not being pursued?
 - (c) Has there been misconduct such that a breach of this Code may have occurred or a miscarriage of justice resulted.
- (5) If the Inquiry Review Panel considers that an application or request that has been referred to it is outside the provisions of Article 121 (2) or (4) of this Code, or is frivolous or vexatious, or that is otherwise wholly without merit, then the Inquiry or Judicial Hearing shall not proceed and the inquirer and any other parties shall be advised, by the CEO, accordingly.
- (6) If the Inquiry Review Panel decides not to proceed with an Inquiry or Judicial hearing, then the party which made the request shall be advised of the right to request a review of this decision pursuant to subsection 121(7).
- (7) **Request for Review:**
 - (a) Any request for a review of the decision must be made within two (2) working days of receiving the advice that the Inquiry or Judicial hearing will not proceed.
 - (b) Should the Inquirer choose to request a review, then a Request Review shall be undertaken within 7 days with the sole purpose of reviewing the decision of the Inquiry Review Panel.
 - (c) The Request Review shall be undertaken by a two (2) person panel selected by the Chief Executive Officer from a list approved by the Board for the purpose.
 - (d) The Request Review Panel shall report its findings to the Chief Executive Officer, who shall immediately advise the Inquirer of its decision.

- (e) There shall be no further right of review or Appeal.
- (8) If the Inquiry Review Panel, considers that an Inquiry or Judicial Hearing is warranted, (or if a Review Panel determines, following a Request Review that an Inquiry or Judicial Review should be held), then within fourteen(14) days of its decision the Chief Executive Officer shall:
- (a) arrange and confirm the date, time and venue for an Inquiry or Judicial Hearing of the Judicial Committee;
 - (b) appoint the Panel or Judicial Committee members; and
 - (c) give Notice of the Hearing to be held by the Inquiry Panel or Judicial Committee, giving not less than seven (7) days written notice of the hearing date(s) provided that the hearing may be held sooner if all parties consent.
 - (d) Notice for the purposes of Article 121(8) 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.

122. Hearings:

(1) Convening a Hearing:

- (a) If it is decided to convene an Inquiry or Judicial Hearing to inquire into the matters outlined in 121(2) or (4), MotorSport NZ by and through its Chief Executive Officer shall arrange the Hearing before an Inquiry Panel or the Judicial Committee of MotorSport NZ established under and by virtue of Clause 18.4 of the Constitution.
- (b) An Inquiry Panel shall have as its Chairman a member of the Judicial Committee and two other members (appointed by MotorSport New Zealand), with experience to deal with the matters being inquired into.
- (c) A Judicial Committee will comprise a Chairperson and not less than two (2) other persons appointed by MotorSport NZ in accordance with this Article 122(1):
 - (i) from any current Judicial Committee Hearing panel or list, comprising individuals approved by 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 Hearing;
 - (2) the availability of suitable panel members;
 - (3) the desirability of proceeding within the time-frames provided for in this Code, without variation, wherever reasonably possible; and

- (4) any other matters MotorSport NZ 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.
- (d) A Judicial Committee appointed to hear an anti-doping matter will comprise a Chairperson and not less than two (2) other persons appointed by the Chief Executive Officer in accordance with Article 122(1)(b), except that:
- (i) at least one (1) of the persons appointed shall have 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) a Judicial Committee appointed to consider an anti-doping matter shall satisfy the requirements of Appendix One Schedule D, Part One Article 2.2, of the Code.
- (e) The notice of Hearing must contain sufficient details of the matters or conduct into which it is intended to inquire.
- (f) The Chief Executive Officer will use reasonable endeavours to arrange the 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 Hearing.
- (2) **Inquiry Hearing Grounds:** Subject to the balance of this Article 122:
- (a) The grounds that may be considered by the Inquiry Panel at any Inquiry Panel Hearing (the “**Inquiry Panel Grounds**”) are:
 - (i) That it appears on the basis of the issue, matter or complaint that has been raised that it is in the best interests of MotorSport New Zealand Inc or for the conduct or administration of motorsport in general in New Zealand that the matter is reviewed and determined by the Panel; or
 - (ii) That in the interests of fairness and/or safety the inquiry should be held; or
 - (iii) As a matter of public policy the matters raised require determination; or
 - (iv) Such other matters as in the circumstances warrant the conducting of the Inquiry.
- (3) **Judicial Hearing Grounds:** Subject to the balance of this Article 122:
- (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;
- (vii) 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(3) applies), including but not limited to Article 38.

(4) The Hearing procedure/process:

- (a) Each Inquiry Panel and every Judicial Committee will, subject to the requirements in Part X and in particular Article 122 of this Code (including as to the timeframes 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 Panel or Committee may delay the allocated date for commencing a 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 appointed to consider.
- (c) The members of the Panel or Committee Hearing shall reach decisions by consensus whenever it can, but otherwise by majority decision.
- (d) Any properly constituted Hearing may proceed, and a decision be reached notwithstanding the failure of any person to appear.
- (e) 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.(

- (5) **The Decision at an Inquiry Hearing:** The Inquiry Panel shall reach a finding/decision or make recommendations at the Inquiry Hearing in relation to:
- (a) those matters referred to the Inquiry Panel in the Notice of Inquiry and in particular those matters referred to it contained in Article 122(2)(a).
 - (b) any other matters arising during the course of the Inquiry which the Panel consider it is appropriate to consider arising within its jurisdiction under the Code; and
 - (c) where the Panel determines that there has been a potential for a breach of this code to have occurred, to refer those matters for further determination by a Judicial Committee; and
 - (d) order that any party to the Hearing shall pay or contribute to the Inquiry's costs, and/or administrative costs and/or MotorSport NZ costs associated with the Hearing, and/or the costs of any other party attending the Hearing.
- (6) **The Decision at the Judicial Hearing:** The 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 any matters relating to any of the Judicial Committee Grounds contained in Article 122(3)(a) that have been referred for a Judicial Hearing.
 - (b) any other matters arising during the course of the Judicial Hearing which the Judicial Committee considers it is appropriate to consider arising within its jurisdiction under the Code; and
 - (c) 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.
- (7) **Decisions and Findings to be in writing:** All decision(s) and Findings shall be recorded in writing, including a brief summary of its decision(s) and its reasons. The written record of the Decision shall be approved by the Chairperson of the Panel or Judicial Committee.
- (8) **Notice of the Findings/Decision shall be given:**
- (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 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; and
- (iv) by MotorSport NZ publishing notice of the Decision on its website.

(9) Time-frames regarding Hearing Decision:

The Findings/Decision (the approved written findings or decision) may be delivered directly to the parties at the conclusion of the Hearing, otherwise it shall be provided to the Chief Executive Officer within five(5) working days of the Hearing. If the Decision is delivered to the parties at the conclusion of the Hearing it shall be considered published on that day for the purposes of Article 125 of Part XI of this Code, Procedure for Appeals.