

## JUDICIAL APPENDIX

### JUDICIAL PROCEDURES

Modified Article	Date of Application	Date of Publication
Part 1 – Constitution of a Tribunal	01/01/2022	01/01/2022
Part 1 – Conduct of a Tribunal	01/01/2022	01/01/2022

**Note:** Any text italicised is defined in the National Competition Rules (*NCR*)

#### PART 1 – REGULATIONS FOR A HEARING

##### INTRODUCTION

*Motorsport Australia* appoints Stewards in accordance with the *NCR* to determine a breach of the *Rules*, or a protest, or to settle a conflict of interest and if necessary impose a penalty.

Certain decisions of the Stewards or another *Court of the First Instance* are subject to appeal in accordance with the *NCR*.

*Motorsport Australia* has delegated the power of review to specialist Tribunals and AMSAC.

The procedure for an AMSAC appeal hearing is detailed in the Judicial Appendix.

##### TRIBUNAL

A Tribunal may be:

a **Disciplinary Tribunal** which is a *Court of the First Instance* convened to hear a case brought before it by *Motorsport Australia* by way of a charge against a person or group. The Tribunal will determine whether a charge is proved; and if so, may impose a penalty and make any recommendation to *Motorsport Australia* that it considers relevant; or

an **Investigatory Tribunal** which is a *Court of the First Instance* convened to enquire into any matter brought before it by *Motorsport Australia*. The Tribunal may make any recommendation to *Motorsport Australia* that it considers relevant, amend the results of a *Competition*, and if a breach of the *Rules* has occurred, may impose a penalty; or

an **Appeal Tribunal** which is convened to hear a matter appealed from a decision of a *Court of the First Instance* (including a Stewards hearing). It must confine its consideration and any decision to the matter actually appealed, and may make any recommendation to *Motorsport Australia* that it considers relevant.

##### CONSTITUTION OF A TRIBUNAL

The CEO of *Motorsport Australia* will appoint persons to act as Tribunes whose experience make them suitable for those duties.

Subject to these Regulations, any Tribunal must have at least three appointees, one of which will be nominated as the Chair by the CEO of *Motorsport Australia*.

Each appointee must be independent of and have had no prior connection with the matter being heard.

*Motorsport Australia* ~~will~~ may appoint a Respondent; whose role is to represent *Motorsport Australia*'s interests in the matter and to assist a Tribunal where possible, without having any role in the decision-making process.

*Motorsport Australia* may appoint a Secretary, to assist a Tribunal only in administrative matters.

##### CONDUCT OF A TRIBUNAL

A suitable room/s will be provided, with adequate space for the Tribunal, each party and witness.

Each hearing will be recorded in full by means of audio, video or written format.

Subject to the approval of the Chair in exceptional circumstances, media may be permitted.

## **General Procedure for any Tribunal**

At the discretion of the Chair, each Tribunal proceeds as follows:

The Chair will announce the opening of the Tribunal, stating its authority, its composition, and the purpose of its sitting. Appearances are then taken.

Each party will be asked whether they object to any Tribunal sitting and, if so, on what grounds.

If no objection is received, the hearing will proceed.

If an objection is received, the Chair will determine if it is valid which may result in a Tribunal being declared ineligible. In such instance, a minimum of two Tribunals is necessary for the hearing to proceed, otherwise, the Tribunal will be deferred until at least two eligible Tribunals can hear the matter. If an objection is determined invalid, the hearing will proceed.

To assist proceedings, each party may present certain facts or documents at the discretion of the Tribunal.

Except in the case of any new significant and previously unavailable evidence and then only with the agreement of the Chair, each party may produce evidence, have witnesses and cross-examine the other party's witnesses. Each party will then be asked to summarise their case. No new evidence may be presented during or after a summary.

The Tribunal will then adjourn to consider and determine the matter. At this stage and unless the Tribunal has both parties before it, no other person may be present or partake in any discussion with the Tribunal.

The Tribunal will reconvene to announce its decision/s and will, if applicable, hear submissions on penalty from each party.

If necessary, the Tribunal will then adjourn to determine any penalty to be imposed.

If the Tribunal adjourns, it will then reconvene.

The Tribunal will announce any penalty to each party.

If applicable, the Tribunal may then hear argument on the question of costs; and adjourn to decide whether costs are awarded.

The Tribunal will reconvene to announce its findings which will include the time and date at which the decision was given.

The Tribunal must advise each party of the right to appeal in accordance with the *NCR*.

The Chair will advise each party when a copy of the findings will be provided to them.

The Chair will then close the hearing.

## **Specific Procedure for a Disciplinary Tribunal**

The matter/s to be considered will be read either by the Secretary or by the Chair; and the accused will plead to each matter.

If a plea of "guilty" is received, the hearing will move to consider any penalty.

If a plea of "not guilty" is received, the hearing will proceed.

## **Specific Procedure for an Investigatory Tribunal**

The Chair will announce and explain the Tribunal's Terms of Reference.

In accordance with its Terms of Reference, the Tribunal may impose any penalty if it determines that a breach of the *Rules* has occurred.

## **Specific Procedure for an Appeal Tribunal**

The Tribunal will decide:

to proceed by way of complete re-hearing; or

to proceed by way of partial re-hearing; or

only consider the evidence presented at any prior hearing

and make an announcement to that effect.

The Tribunal will then decide the order of appearance of the appellant and the Respondent.

## **PART 2 – GUIDELINES FOR PROCEEDINGS (NON-REGULATORY)**

Remember, “justice must not only be done but must be seen to be done”.

In order to assist Stewards and Tribunes it is recommended that the guidelines below are followed.

### **INFRINGEMENT NOTICE**

The judicial process includes an Infringement Notice which allows a licence holder to accept an alleged breach and penalty without having to appear before the Stewards.

The details of the procedure is included in the Infringement Notice.

### **SUMMONS**

Each party concerned must be summoned to the hearing and may be accompanied by any witness.

The Chair of the judicial body must ensure that the summons has been personally received by each party concerned.

### **GENERAL CONDUCT**

A *Motorsport Australia* hearing does not constitute a court of law.

The Chair will establish the conduct and format of the hearing.

The task of a judicial body is to administer the *Rules* in a fair and equitable manner.

A judicial body must avoid the temptation to apply or interpret the *Rules* in a technical or convoluted manner so as to obtain a result which they see as just and fair in sporting terms.

It is not the task of a judicial body to form opinions as to the wisdom or otherwise of a *Rule* which they may be called upon to apply.

### **WITNESSES AND EXAMINATION**

A person cannot be compelled to attend nor give evidence.

Witnesses are presumed to be speaking the truth. They may be examined by the party calling them and will give evidence directly and/or by answers to questions. They must not be "led" on examination by the party calling them, that is to say they may not be asked questions generally “which put words into their mouths”, although this may be relaxed for formal identification, other matters not in dispute etc. On cross-examination this does not apply and questioning may take the form of "leading questions" or suggestions.

Each party is entitled to test the credibility of the other party’s witnesses.

Re-examination may take the form of questioning by the witnesses' own side and must be confined to clarification of matters raised in cross-examination.

### **THE NATURE OF EVIDENCE**

As a sporting Tribunal administered by laypersons, the strict laws and rules of evidence which apply in most courts of the land do not necessarily apply. The criteria for the acceptance of evidence should be that the evidence does have a bearing on the matters for determination, and its nature and acceptance would not contradict natural justice and fairness, and that it is open to be tested by the opposing party.

Direct evidence is usually the oral evidence of a witness (though it may include documentary evidence, as below), and is given by the person who themselves saw or heard or otherwise perceived the fact or facts to which they testify.

Hearsay evidence is that the witness was told something and is not valid evidence of the thing itself and is usually inadmissible as such e.g. a witness may have been told that a car went over a fence. All they can certify to as a witness is that they were told this; it is not evidence that the car did go over the fence.

Opinion is not generally admissible. An exception may be when a person is accepted by the Tribunal as an "expert" in respect of the particular matter at issue e.g. an engineer, or a doctor, or a noted racing driver may qualify or be considered as an “expert” in a particular field. They will be subject to cross-examination and their evidence will be evaluated by the Tribunal.

Opinions expressed by witnesses other than “experts” are generally valueless as evidence of the matter at issue.

Documents may be tabled in evidence and if accepted must be proved as to their source, validity, relevance.

Items may be submitted as evidence, e.g. the component in question.

The existence of a situation, occurrence or circumstance, may be submitted as circumstantial evidence, e.g. a person seen running from the otherwise deserted scene of an alleged offence at the time it was committed.

The standard of proof to be applied is on the balance of probabilities, not proof beyond reasonable doubt.

Prior to a decision, it is not permitted to introduce any evidence relating to any other breach. Where a person is found guilty of a breach, the fact of an earlier breach of the *Rules* may be admitted in a submission as to penalty.

After a decision of guilt has been given, no new or further material can be introduced in evidence.

Failure to give evidence is not in itself an admission of guilt but it may lead to certain conclusions by reasonable persons.

Video, photographs, audio or data of an occurrence may be admitted as evidence.

A decision handed down by *AMSAC* concerning a similar issue may be considered.

The degree of proof is usually required only to be by the weight of evidence and on the balance of probability, i.e. what seems most likely from the evidence.