

## MOTORSPORT AUSTRALIA APPEAL TRIBUNAL

### TONY D'ALBERTO v MOTORSPORT AUSTRALIA

#### RACE 1, ROUND 2 2024 SUPERCHEAP AUTO TCR AUSTRALIA SERIES

#### Introduction

- [1] Under the provisions of the 2024 Motorsport Australia Manual of Motorsport, Judicial Appendix "Judicial Procedures", an Appeal Tribunal was convened to hear an appeal against a decision made by Stewards at Round 2 of the 2024 Supercheap Auto TCR Australia Series (**Series**) held at Symmons Plains on 15-17 March 2024 (**Event**) lodged by a Driver in the Series and in the Event, Tony D'Alberto.
- [2] On 17 March 2024 the Stewards upheld a Protest lodged by another Competitor, Garry Rogers Motorsport (**GRM**), regarding the Provisional Classifications for Race 1 at that Event (**Race 1**). The Stewards decided that because less than 50% of the scheduled distance/duration of the Race had been completed by the leader, in accordance with Article 5.12.10 of the 2024 Motorsport Australia Circuit Race Standing Regulations (**CRSR**), no points would be awarded for Race 1.
- [3] Mr D'Alberto, who won Race 1, has contended on the appeal that the decision of the Stewards was against the weight of evidence, was ultra vires and that he was denied natural justice.
- [4] The Tribunal convened to hear the appeal by audio-visual link on 9 April 2024. All of the Interested Parties agreed to an abridgment of the notice period for the hearing set out in Article 107 of the 2024 Motorsport Australia National Competition Rules (**NCR**).

#### Constitution of the Tribunal

- [5] The Tribunal to hear the matter was:

Chair: Mr Matthew Selley

Tribune: Mr Bradley Tubb

Tribune: Justice Peter Davis

Secretary: Mr Lawrie Schmitt

**Interested Parties**

- [6] Appellant: Mr Tony D'Alberto, represented with leave of the Tribunal by Mr David Fyfe (and assisted by Mr Adrian Deitz)
- [7] Motorsport Australia Respondent: Mr Steven Chopping
- [8] GRM: Mr Stefan Millard

**Tribunal's Terms of Reference**

- [9] The Tribunal's Terms of Reference required it to:
- Make determination on any grounds of appeal;
  - Decide to proceed by way of complete re-hearing or partial re-hearing or only consider evidence presented at the Stewards Hearing;
  - Determine whether the Stewards Decision is upheld;
  - Determine whether any points allocated or race results require amendment;
  - Determine whether a breach of any rule has occurred;
  - Impose penalty(ies) for any breach found to be proven; and
  - Advise Motorsport Australia generally concerning the incident and matters arising from it.

**Background**

- [10] The Event Schedule set out in Further Supplementary Regulations scheduled the commencement of the formation lap of the Race 1, the first of 3 races in the Series at the Event, at 15:15hrs on Saturday 16 March with a 30 minute duration and 30 laps or a time certain finish of 15:44hrs +1 lap.
- [11] The grid for Race 1 was set in accordance with Article S10.1 of the Series Sporting Regulations by reference to a combination of the Final Classifications of Q1 and Q2. There is no dispute regarding the correctness of the grid for Race 1.
- [12] As per the Event Schedule, the formation lap of Race 1 commenced at 15:15hrs. Race 1 started at 15:18hrs. On the first lap of Race 1 at Turn 4 there was an incident when one car collided with the wall at the exit and lost a wheel. A short time later the Race Director called for red flags to be displayed and the remaining cars returned to the grid.

- [13] The Race Director did not follow the suspended race procedure set out in Article 5.15 of the CRSR (which applied to Race 1 (and every race in the Series) by virtue of Article S1.2.1 of the Series Sporting Regulations (see also Article 2 of the Event Supplementary Regulations). Rather, after the damaged car was recovered, the Race Director “restarted” Race 1. That is, he directed that the timekeeping system be stopped and reset and that the remaining cars which were capable of participating in the race form up on the grid in the positions the original starting grid required them to occupy.
- [14] At 15:31hrs the timekeeping system commenced afresh to record time and the field commenced another formation lap and stopped, occupying their original grid positions, at the completion of that lap.
- [15] At 15:34hrs, Race 1 was restarted. After the leader completed 9 laps, at 15:45hrs the Race Director announced that the leader, Car 2 (the Appellant), had commenced the last lap. Car 2 was shown the chequered flag at the end of that lap.
- [16] No Competitor lodged any protest against the decision of the Race Director to “restart” the Race.
- [17] The Preliminary Classifications for Race 1 recorded that:
- the scheduled start time was 15:15hrs;
  - the actual start time was 15:33hrs;
  - the elapsed time of the race was 11 minutes and 45 seconds;
  - the winner, Car 2, completed 10 laps and crossed the control line for the last time at approximately 15:46hrs.
- [18] After Race 1, the Race Director informed the Competitors that he was proposing that full points be awarded for Race 1. He called a meeting of Competitors for the following morning (Sunday) to discuss that decision. Not all Competitors agreed with the decision. The Tribunal did not hear evidence as to what precisely was discussed at the meeting, only of the fact that it took place and that there was disagreement. It is not necessary for the Tribunal to resolve what occurred at the meeting.

- [19] At 08:30hrs on Sunday 17 March 2024, the Race Director approved the Provisional Classifications for Race 1 which accorded with the Preliminary Classifications except that they included a Series Points Report which included accrued points for Race1 calculated by reference to Article S12.2 of the Series Sporting Regulations with no deduction under Article 5.12.10 of the CRSR (to which provision we will return below).
- [20] At 11:04hrs on 17 March 2024, GRM lodged with the Stewards of the Event a Notice of Protest (**GRM Protest**):
- “Against the full points being awarded for TCR Race 1. Scheduled duration of 30mins according to Supplementary Regulation 7.1 After the red flag the race was fully restarted with a start time of 15:33 and a completed duration of 11 min 45 sec, as detailed in the timing report. 50% of the scheduled duration was not completed and therefore no points should be awarded.”* (citing Article 5.12.10 of the CRSR).
- [21] At 12:25hrs on Sunday 17 March, the formation lap for Race 2 of the Series at the Event commenced. In accordance with Article S10.1 of the Series Sporting Regulations, the grid for Race 2 had been set by reference to the finishing positions from Race 1 (with the top 10 grid positions reversed), albeit that the Final Classifications had not been declared by the Stewards given the pending GRM Protest. There is no dispute regarding the grid for Race 2.
- [22] After Race 2 but before Race 3 (the formation lap for which was scheduled to commence at 15:15hrs), the Stewards heard the GRM Protest and later issued a written decision (Document D07/Decision 09) time stamped at 14:04hrs on 17 March 2024 (**GRM Protest Decision**).
- [23] It appears that the time of 14:04hrs which appears on the GRM Protest Decision corresponds to the time at which the Stewards verbally informed GRM and the Race Director of their decision, which was to uphold the GRM Protest and to deem that “no points will be awarded to Race 1”.
- [24] It was not until later that afternoon that the written GRM Protest Decision was issued. There is no dispute that it was not seen by the Appellant or the representatives of his team (Wall Racing) until 17:38hrs on 17 March 2024.
- [25] However, they were well aware of the fact of the decision and its effect before Race 3 because Article S10.1 of the Series Sporting Regulations provides that the grid for the third

race in a "Round Format 1" of the Series (of which type this Event was by virtue of Article S7 of the Series Sporting Regulations) is to be determined "*by the total number of points awarded to each Driver for Qualifying, Race 1 and Race 2 with the Driver with the greatest number of points on pole position and the remainder in the order of their total number of points*" [emphasis added]. The points calculation by reference to which the grid for Race 3 was determined omitted any points for Race 1. Thus, the fact that the Stewards had upheld the GRM Protest was by then known to all Competitors, even if they had not yet sighted the written GRM Protest Decision. The Appellant had been allocated a grid position for Race 3 on the basis that, like all other cars which had participated in Race 1, no points had been accrued for that race. The Appellant reportedly refused to compete in Race 3.

[26] At 17:37hrs on 17 March 2024, a representative of Wall Racing emailed the Stewards to notify them that the Appellant intended to appeal from the GRM Protest Decision and intended to protest the results of Race 3.

[27] Subsequently a formal Notice of Intention to Appeal the GRM Protest Decision was lodged by the Appellant and the appeal fee paid. At or about the same time, a Notice of Protest was lodged by the Appellant and the applicable protest fee paid. That Notice of Protest was not, in the event, against the results of Race 3 but rather in relation to the compilation of the pointscore for the Round of the Series at the Event. The Appellant's Protest was subsequently heard by and dismissed by the Stewards. The Appellant did not seek to appeal from that decision and hence the only issue before this Tribunal was the Appellant's appeal from the GRM Protest Decision.

[28] In accordance with the NCR, subsequent to the lodgement of his Notice of Intention to Appeal the Appellant lodged a Notice of Appeal proper by which he gave notice of the following unparticularised grounds of appeal:

- The decision was against the weight of evidence;
- There was a denial of natural justice; and
- The decision was ultra vires.

[29] Prior to the hearing, the Appellant lodged written submissions in support of those grounds. The Tribunal also received written submissions from Mr Chopping as the Respondent

representing Motorsport Australia and written submissions from Mr Millard on behalf of GRM.

### **The Tribunal Hearing**

- [30] None of the interested parties raised any objection to the composition of the Tribunal.
- [31] Without objection from any of the interested parties, the Tribunal determined to conduct the appeal by way of re-hearing by reference to the same evidence that had been before the Stewards when they made the GRM Protest Decision.

### **The Appellant's contentions on the appeal**

- [32] By his written submissions and oral submissions made by Mr Fyfe at the hearing, the Appellant contended that the Race Director, by purporting to restart Race1 rather than resuming it, contravened the CRSR because, it was argued, there is no power under the CRSR to restart a race which has commenced but been suspended by a red flag – the Race Director could only resume Race 1 by following the detailed procedure for resumption set out in Article 15.5 of the CRSR.
- [33] The Appellant submitted further that the Race Director erred in stopping and restarting the timekeeping system. He submitted that because the Race Director had no power to restart the race, it should be deemed to have resumed such that, even though the leader did not complete the scheduled 30 laps, the race had a time certain finish when the leader was shown the chequered flag at the end of 1 lap after 15:45hrs and the scheduled “duration” of 30 minutes (from the original formation lap commencement time of 15:15hrs) plus 1 lap had been completed. He submitted that it made no difference that the timekeeping system had been stopped and restarted – the duration of what should be deemed one race interrupted by a suspension and “resumed” is, he argued, known from the timing records.
- [34] He contended that he was denied natural justice because he participated in Race 2 believing that he had accrued points for Race 1 and made a strategic decision not to take any risks in Race 2 because his points from Q1, Q2 and Race 1 would be sufficient to get him pole for Race 3 even if he only finished 8<sup>th</sup> in Race 2. He argued that by the time he learned of the GRM Protest Decision (when the grid for Race 3 was published), it was too late for him to protest or appeal or do anything else to remedy the disadvantage he argued the GRM Stewards Decision had caused him.

- [35] He argued that the Stewards' decision not to award any points for Race 1 compounded the Race Director's error in restarting Race 1 rather than resuming it.
- [36] He sought not just a full reinstatement of points for Race 1 but also a review into the awarding of points for Race 3 for reason that if points were reinstated for Race 1 then it meant that the grid for Race 3 had been wrong.

#### **GRM's contentions on the appeal**

- [37] GRM submitted that while the Race Director had erred in stopping and re-setting the timekeeping system and restarting Race 1, GRM had not protested that decision, only the awarding of points for Race 1. As a consequence of the decisions of the Race Director, the Race 1 start corresponded with the restart time such that less than 50% of the scheduled distance/duration were completed by the leader and, hence, in accordance with Article 5.12.10 of the CRSR, no points could be awarded for Race 1. Mr Millard argued that the Stewards' decision was therefore correct.
- [38] GRM also submitted that Race 1 could not be considered to have resumed because the resumption procedure set out in Article 5.15 of the CRSR was not followed. Instead, a full restart was performed with cars re-set into their original grid positions, the timing system was reset and a fresh formation lap completed such that the original formation lap commencement time of 15:15hrs has to be ignored.

#### **Motorsport Australia's contentions on the appeal**

- [39] Mr Chopping submitted that the Race Director's decision to restart Race 1 rather than resuming it was justified in the difficult circumstances which he confronted – a tight schedule, the red flag having been deployed before any car completed one lap and by restarting the race it maximised possible competition time. He pointed out that prior to 2022 the then Race Meeting Standing Regulations (the predecessor to the CRSR) had expressly allowed the Race Director to elect to restart a race if it had been interrupted. He accepted, however, that no reference to such a power now appears in the CRSR.
- [40] In answer to the Appellant's contention regarding the prejudicial effect on him of the delay in him becoming aware of the GRM Protest Decision and his inability to do anything when he learned of the decision when the grid for Race 3 was published, Mr Chopping submitted that the Appellant could have lodged a Notice of Intention to Appeal before Race 3

commenced and, by virtue of NCR 84, the lodgement of that Notice would have suspended the operation of the GRM Protest Decision such that the grid for Race 3 would have been required to have be re-set including the points for Race 1.

[41] Mr Chopping submitted that it is not sufficient for the Appellant to contend that the GRM Protest Decision could have been decided differently – to succeed on his appeal the Appellant must show that the Stewards were required to arrive at a different decision and that the decision is infected by error. He submitted that no error in the Stewards’ decision had been established and the Stewards did not fail to afford the Appellant natural justice or otherwise act unfairly.

[42] He submitted that the net effect of what the Appellant was seeking is to in some way artificially reconstruct the grid and notionally allocate points on the basis of what may have been Race 3 and overall for the Round. He submitted that the Stewards have no authority, power or jurisdiction to benefit or improve a victim of a breach.

[43] He also submitted that Article 5.15.4 of the CRSR which provides “Any decision made in respect of this race suspension procedure is not subject to protest” means that the Race Director’s decision to restart the suspended Race rather than resuming it is immune from challenge on the appeal.

### **Tribunal’s Findings**

#### ***On the admissibility of the appeal***

[44] The Tribunal finds that the appeal is admissible. The Appellant has standing to appeal as a Driver in the competition, the appeal was not lodged out of time and the decision of the Stewards is open to challenge by appeal.

#### ***On the merits of the appeal***

[45] Presumably for pragmatic reasons and/or because he had in mind earlier regulations and mistakenly believed that he retained the discretion to do so, the Race Director made the decision to restart Race 1, given that not even one racing lap had been completed before the incident at Turn 4 occurred. In the fluid and dynamic atmosphere of any motor race, a Race Director will be called upon to act quickly. However, here, the wrong procedure was



adopted. The restarting of the Race was not permitted by the CRSR or any other regulation and it was therefore irregular and ultra vires.

- [46] Having suspended the Race by the red flag, the only course open to the Race Director was to have followed and applied the race suspension and resumption procedure set out in Article 15.5 of the CRSR which is in the following terms (relevantly):

**“5.15 SUSPENDING AND RESUMING A RACE**

5.15.1 Suspending a race

5.15.1.1 If it becomes necessary to suspend a race in which the *Track* is blocked or because weather or another situation make it unsafe to continue, the Clerk of the Course will order a waved red flag to be displayed at each flag post.

5.15.1.2 When the red flag is displayed:

overtaking is prohibited;

the exit of the *Pit Lane* will be closed;

each *Automobile* must proceed slowly to the grid; however, any Driver may choose to enter the *Pit Lane*;

the first *Automobile* to arrive on the grid will occupy pole position and others will form up in a single line behind it in the order they arrive; ...

5.15.1.3 ...

5.15.1.4 ....

5.15.1.5 ...

5.15.1.6 The Safety Car will be positioned at the front of the grid.

5.15.1.7 Whilst the race is suspended:

the timekeeping system will continue;

for a race to be determined by time, the length of the suspension or part thereof may be added to the scheduled time for the end of the race with the approval of the Stewards;

...5.15.1.8 ....

5.15.1.9 ....

5.15.2 Resuming a race

5.15.2.1 A signal board will be displayed and a warning will be sounded by the Starter before the resumption when:

5 minutes remain;

3 minutes remain;

2 minutes remain;

At which time, any *Automobile* between the Safety Car and the leader will be directed to complete a further lap, without overtaking, and join the line of *Automobiles* on the grid or behind the Safety Car if it has moved off. When leaving the grid each such *Automobile* must maintain the *Pit Lane* speed limit until passing the Safety Car at the front of the grid.

1 minute remains;

At which time, the grid will be cleared of all personnel and equipment.

30 seconds remain

5.15.2.2 When the green flag is displayed by the Starter:

the Safety Car will leave the grid;

an "SC" board and a waved yellow flag will be displayed at each flag post;

each *Automobile* will follow in single file and a maximum of 5 *Automobile* lengths from the *Automobile* immediately ahead (including the Safety Car);

....

5.15.2.3 ....

5.15.2.4 The end of Safety Car deployment procedures will then apply.

5.15.2.5 ....

5.15.3 ....

5.15.4 Any decision made in respect of this race suspension procedure is not subject to protest. [emphasis added]

[47] In accordance with Article 4.4 of the Circuit Race Appendix – Track Control and Flag Signalling, the red flag may only be waved on instruction of the Clerk of the Course (or in this case, the Race Director) when it is necessary to stop a practice session or a race other than by the chequered flag. That provision mandates that “when the red flag is waved, the *Pit Lane* exit will be closed, overtaking is prohibited and each *Automobile* must reduce speed and proceed with caution .... During a race, to the location specified in the *Rules*”.

[48] Article 5.15 of the CRSR applies when a red flag is displayed during a race (Article 5.15.1.1)<sup>1</sup>.

[49] Displaying a red flag, if it occurs during a race, is a step taken “to suspend a race” (Article 5.15.1.1).

[50] The effect of suspending a race is (relevantly here):

1. The cars must proceed to the grid (although a driver may choose to enter the pit lane) (Article 5.15.1.2).
2. As overtaking is prohibited while a red flag is displayed (Article 5.15.1.2).
3. When the vehicles line up on the grid, the first to arrive will occupy pole position and the others will form a line behind it in the order they arrive which will correspond to the order that they were on the track (subject to any cars entering the pits) when the red flag was displayed.
4. The Safety Car will be positioned at the front of the grid (Article 5.15.1.6).
5. The timekeeping system will continue (save that for a race to be determined by time, the length of the suspension or part thereof may be added to the scheduled time for the end of the race with the approval of the Stewards) (Article 5.15.1.7).
6. Before a race is resumed, various time warnings are given (Article 5.15.2.1).

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<sup>1</sup> No party has suggested that the Race Director’s decision to direct that red flags be displayed was wrong.

7. To restart the race, the green flag is displayed by the starter and the cars follow in single file behind the Safety Car (Article 5.15.2.2) until the Safety Car's deployment is ended (Article 5.15.2.4).

[51] In the present case, Race 1 was stopped and restarted, not suspended. Instead of cars forming up in a line behind the leader after establishing precisely the order they were in when the red flag was first displayed, the Race Director directed that the cars take grid positions. The field commenced racing from their side by side grid positions in contrast to a race resumption where the cars would follow the Safety Car in single file (with no overtaking) and only resume racing at the end of the Safety Car deployment.

[52] The grid for the restart of Race 1 was the same as it had been for the original start (save that positions which would have been occupied by cars which had been recovered or were in the Pit Lane were left vacant). The timing was stopped and then recommenced when the Race was restarted. Instead of a start from a single queue behind the Safety Car, a further formation lap was completed, the grid was reformed and the race was restarted by standing start in accordance with Article 5.3 of the CRSR. All these things were contrary to Article 5.15 of the CRSR.

[53] Indeed, what occurred was fundamentally different from what ought to have occurred in a race resumption. The characterisation of what occurred at 15:33hrs by the Race Director as a "restart" cannot be seen to have been anything else. It was not a "resumption" because, by stopping the timekeeping system and re-ordering the field back to the order of the original starting grid the Race Director abandoned everything that had occurred up to that point in time.

[54] For these reasons the Tribunal rejects the Appellant's submission that what occurred should be deemed a resumption of a race which started at 15:18hrs. It was not and cannot be considered to be the same continuous albeit interrupted race. In addition to all the observations made above, it had an additional lap inserted by the additional formation lap (which by definition is not counted as an elapsed lap in a race).

[55] The Tribunal finds that what was a race which started at 15:18hrs was (wrongly) aborted and Race 1 started at 15:33hrs with a time certain finish of 15:45hrs plus 1 lap. The elapsed time of Race 1 was 11 minutes and 45 seconds (of the scheduled duration of 30 minutes) and 10 laps were completed (of the scheduled 30 laps). Therefore, as a matter of fact, the cars did

not complete 50% of the scheduled duration or distance of Race 1. Therefore, by force of Article 5.12.10 the CRSR, no points could be awarded.

[56] The Appellant argues that the Stewards erred by failing to deem Race 1 as having been resumed. We reject that submission. As discussed above, on any view Race 1 was not resumed. The Stewards had no power to correct an error made by the Race Director after the fact or to amend the results of the race to reflect events which did not occur. This Tribunal has no power to do so either.

[57] Had the race been resumed in accordance with the procedure set out in Article 5.15 of the CRSR then it might have had the same time certain finish at 15:45hrs plus 1 lap. It might have ended with the cars finishing in the same order as they finished in the restarted race notwithstanding that the restart was a standing start from the grid (2 x 2) rather than being resumed by following the end of Safety Car deployment procedure (no overlapping or overtaking before the *Control Line*). Had that occurred, then the full scheduled race duration (but not distance) would have been completed and therefore full points would be awarded to the finishers in accordance with Article 5.12.10 of the CRSR. However, that required the Stewards and requires this Tribunal to speculate about the outcome of events which never occurred.

[58] Neither the Stewards nor the Tribunal can proceed on an assumption that had the race been suspended, then resumed with cars starting behind the Safety Car in the order they were in when the red flag was displayed, the results would have been identical to the race results declared. We agree with the thrust of Mr Chopping's submissions in this regard. The circumstances are no doubt unfortunate but the Final Classifications of Race 1 and the GRM Protest Decision accord with what in fact occurred.

[59] We reject the Appellant's contention that he was denied natural justice. The Appellant was not a party to the GRM Protest. His Team had not lodged a protest against the Race Director's decision to restart rather than resume Race 1. He did not seek to be heard on the GRM Protest. No Penalty or other sanction was imposed on him by the Stewards.

[60] The Appellant argued that he was prejudiced by the GRM Protest Decision because it affected his approach to Race 2 and then the grid for Race 3. These arguments do not touch on the correctness of the Stewards' decision on appeal. However, they are not tenable in any event. First, even if he did not know of the fact of the GRM Protest, the Appellant must

have known when he commenced Race 2 that Final Classifications for Race 1 had not been issued and therefore no points had yet been (finally) awarded for that race. It was his decision to drive conservatively in Race 2 when there was a risk that the grid for Race 3 might not take into account any points for Race 1. Secondly, the Stewards' duty is to construe and apply the rules and make decisions in accordance with them. They did so.

[61] We also reject the implicit suggestion that the Stewards were in some way dilatory in arriving at their decision. The Stewards were not seized of the Classifications and therefore the question of award of points until the Race Director approved the Provisional Classifications on the morning after Race 1. They received the GRM Protest later that morning and after a meeting of Competitors (to which the Stewards were not parties) had been held. Under NCR 100 they had an obligation to hear the protest as soon as practicable after the protest was lodged. The Event Schedule reveals that there were 4 races in various categories for which the Stewards had responsibility between the receipt of the GRM Protest and the hearing of it. It is obvious that they were occupied with multiple other responsibilities. There is no basis to suggest that they did not hear the protest as soon as practicable. Although there was a delay in the publication of the Stewards' reasons for their decision (which is unsurprising given their other continuing commitments, including Race 3 of this Series), it is obvious that all Competitors knew of the fact and effect of the GRM Protest Decision before Race 3 commenced.

[62] As noted above, the Respondent submitted, in response to the Appellant's submission that he was prejudiced by not knowing that no points were to be awarded for Race 1 until the grid was issued for Race 3, that the Appellant could have, by lodging a Notice of Intention to Appeal before the start of Race 3, suspended the effect of the GRM Protest Decision and thereby caused the grid for Race 3 to be re-issued on the basis of a notional full points allocation for Race 1. He argued that NCR 84 provides for the suspensive effect resulting from the commencement an appeal. We respectfully disagree with this submission. Under NCR 84 the suspensive effect of the commencement of an appeal only applies to a "penalty" issued by the Stewards and then only limited types of penalties and in limited circumstances. Because the GRM Protest Decision did not impose any penalty on any Competitor, the suspensive effect of an appeal under NCR 84 could have no application.

[63] In any event, as we have decided, the fact that the Appellant was aggrieved by the decision of the Stewards to award no points for Race 1 (no doubt like other Competitors who lost the

benefit of points they might have been awarded for Race 1 had circumstances been different) cannot be a basis to uphold his appeal. The Stewards' decision was correct.

[64] For these reasons we dismiss the appeal.

[65] It follows that the appeal fee paid by the Appellant is forfeited in accordance with NCR 105.

[66] **The Competitors are reminded of their rights of appeal under the NCR.**

**Further matters**

[67] The Tribunal's Terms of Reference require it advise Motorsport Australia generally concerning the incident and matters arising from it.

[68] The Tribunal has nothing to add to the reasons set out above.

**Mr Matthew Selley**

**Mr Bradley Tubb**

**Justice Peter Davis**

**Dated 11 April 2024**