



Motorsport Australia Investigatory Tribunal

FINDINGS & DETERMINATION

“2023 PORSCHE PAYNTER DIXON CARRERA CUP AUSTRALIA CHAMPIONSHIP”

Pursuant to the provisions of the Motorsport Australia Manual of Motor Sport, “Judicial” Section, “Tribunals and Judicial Procedures”, an Investigatory Tribunal was convened to consider the correctness of the Final Classification for Race 2 (**the Race**) of the 2023 Porsche Paynter Dixon Carrera Cup Australia Championship (**the Championship**) held as part of the Boost Mobile Gold Coast 500, Gold Coast Street Circuit, Gold Coast, Queensland on 29 October 2023.

CONSTITUTION OF THE TRIBUNAL

The Tribunal was constituted by:

<i>Chairman:</i>	Mr Matthew Selley
<i>Tribune:</i>	Mr Stephen Lisk
<i>Tribune:</i>	Mr Bradley Tubb
<i>Secretary:</i>	Mr Andrew Rogers

INTERESTED PARTIES

- Motorsport Australia: Mr David Stuart
- Competitors & Drivers from the Championship, including but not limited to the Competitors and Drivers of Cars 7, 13 and 77 in the Race.

BACKGROUND

After the leader commenced Lap 23 of the Race (scheduled race distance 28 Laps) there was a red flag race suspension and subsequently the Race was not restarted.

Shortly after the Race, preliminary results were issued and a number of *Automobiles* in the Pro-Am class were classified as finishers. This included Cars 7, 13 and 77. The final results (**Final Classification**) declared by the Stewards also recorded Cars 7, 13 and 77 as “finishers” for the purposes of Article 5.12 of the Motorsport Australia Circuit Race Standing Regulations (**CRSR**) and subsequently

Championship Points were awarded by reference to the Final Classification in accordance with Article S11.2 of the 2023 Porsche Paynter Dixon Carrera Cup Australia Championship Sporting Regulations (**Sporting Regulations**).

Article 5.12.3 and 5.12.7 of the CRSR are in the following terms:

5.12.3 If a race is suspended by the use of a red flag and is not resumed, the results will be determined at the time the leader crosses the Finish Line at the commencement of the lap preceding the lap on which the red flag was displayed.

However, if the leader completed fewer than 2 laps, there will be no results.

5.12.7 To be classified as a finisher, an Automobile must have:

- crossed the Finish Line on the Track (ie. not in the Pit Lane, the Pit Entry Road nor the Pit Exit Road) under its own power;*
- completed at least 75% of the distance/duration completed by the winner; and*
- completed its last lap in less than twice the time of the winner's last lap time for that race.*

Car 7 entered the Pit Lane on Lap 16 of the Race and remained in the Pit Lane when the Race was suspended.

Car 13 entered the Pit Lane on Lap 17 of the Race and remained in the Pit Lane when the Race was suspended.

Car 77 also entered the Pit Lane on Lap 17 of the Race and remained in the Pit Lane when the Race was suspended.

On 17 November the Chief Executive Officer of Motorsport Australia (**CEO**) issued a decision purportedly exercising the CEO's power under Article 96 of the 2023 Motorsport Australia National Competition Rules (**NCR**) directing that the Final Classification for the Race be amended to remove Cars 7, 13 and 77 from the results (**CEO's Decision**).

On 21 November 2023 the Driver of Car 13, Dr Shahin, lodged a Notice of Protest against that CEO Decision (**Protest**).

On 22 November 2023 the CEO rescinded the CEO Decision as a consequence of which the proposed Protest was rendered nugatory and the protest fee paid by Dr Shahin was refunded.

TERMS OF REFERENCE

Motorsport Australia determined that the correctness of the Final Classification, insofar as it includes Cars 7, 13 and 77 as finishers in the Race, and the correctness of the award of Championship Points to those cars for the Race based on the Final Classification (**Matters**), ought to be investigated.

The Tribunal was established to enquire into the Matters and, if the Tribunal determined that the Final Classification of the Race is not in accordance with the CRSR, it may amend the results as necessary

and make such recommendation as it considers appropriate or necessary for the amendment of the pointscore for the Championship by the CEO under Article 96 of the NCR.

The Tribunal was requested to:

- consider information from various sources concerning the Matters,
- consider the Final Classification for the Race in accordance with the CRSR and, if it is determined that the Final Classification is incorrect, amend the results as necessary, and
- advise Motorsport Australia generally concerning the Matters arising from them.

THE HEARING

The Tribunal convened a hearing on Friday 24 November 2023 during the Vailo Adelaide 500 Event.

Mr David Stuart represented Motorsport Australia.

Dr Sam Shahin, the Competitor and Driver of Car 13 appeared with a team of legal representatives and made submissions.

The Competitor and Driver of Car 7 attended and told the Tribunal that they did not wish to be heard and would abide the outcome. They departed the hearing before submissions were received from the other interested parties.

The Competitor and Driver of Car 77 did not appear, nor did any other Competitor in the Championship.

PRELIMINARY ISSUES

As noted above, Dr Shahin attended the hearing accompanied by Mr CSL Abbott of Kings Counsel with two instructing solicitors from HWL Ebsworth Lawyers.

Constitution of the Tribunal

At the outset of the hearing the Chair invited the interested parties to indicate if they had any objection to the constitution of the Tribunal. Mr Abbott KC replied that his client, Dr Shahin, was concerned to ensure that NCR104 had been respected in the establishment of the Tribunal. NCR104 provides that a person may not be a member of any judicial panel *“if they have been involved in any way with the Competition or with the matter under consideration.”* Mr Abbott KC referenced a letter which his instructing solicitors had sent to the CEO of Motorsport Australia posing a number of queries, including as to the involvement of the Tribunal panel members in the rescinded Decision of the CEO referenced above. Mr Abbott told the Tribunal that his instructors had not received any response from the CEO to the queries posed as to any prior involvement of the Tribunal members.

The Chair explained that no member of the Tribunal had any involvement in the Race or the Final Classifications or in the CEO Decision which was later rescinded.

The Chair disclosed that on 22 November 2023 he had been contacted by the Director of Motorsport and Commercial Operations of Motorsport Australia to enquire if the Chair and the other members of the Tribunal would be available to hear a protest lodged by Dr Shahin. A copy of the Notice of Protest and the CEO Decision against which the protest had been lodged were provided to the Chair.

The Chair explained that he had examined the documents and expressed the view to Motorsport Australia that the protest was likely invalid because there is no right under the NCR to protest a decision of the CEO but the CEO Decision was likely invalid because the CEO has no express power under NCR 96 (the provision under which the Decision was purportedly made) to amend Final Classifications.

The Chair further explained that he had suggested to Motorsport Australia that in the circumstances the CEO might consider rescinding the CEO Decision which would render the protest redundant and refund the protest fee. The Chair had suggested that if the CEO were to remain of the view that the Final Classification is wrong, the appropriate course would be to establish an Investigatory Tribunal having regard to NCR 5, and the powers of an Investigatory Tribunal under the Judicial Appendix which include a power to amend Final Classifications. The CEO had subsequently determined to follow this course. The Chair explained that no member of the Tribunal has engaged in any discussion with Motorsport Australia as to the correctness of the Final Classification and the interpretation of CRSR 5.12, being the relevant issue before the Tribunal under the Terms of Reference.

The Chair invited Dr Shahin to indicate whether, in light of the Chair's explanation and disclosure, any objection to the constitution of the Tribunal was raised. The Tribunal adjourned briefly at Mr Abbott's request to afford Dr Shahin the opportunity to further consider his position. When the Tribunal resumed, Mr Abbott announced that his client had no application to make with respect to the constitution of the Tribunal.

Representation of Shahin parties

The Chair invited submissions from the parties as to whether Dr Shahin and his company had a right to be represented by lawyers at the hearing. Mr Stuart submitted that legal representation of parties before an Investigatory Tribunal is not typically permitted and that unless the Tribunal was satisfied that exceptional circumstances required legal representation, it should not be permitted.

Mr Abbott KC applied for leave for him and his two instructing solicitors to represent Dr Shahin and his company. He submitted that the Tribunal should grant leave for 3 reasons:

1. His clients had only received notice of the establishment of the Tribunal late on the afternoon before the hearing and during a race meeting in which Dr Shahin was competing. Dr Shahin had therefore had limited opportunity to consider the issues and prepare and confer with his legal team. Given that he had been involved in competition on the day of the hearing, he was not ready to represent himself and it would be unfair to compel him to do so;

2. The issue before the Tribunal raises a discrete point of the interpretation of CRSR 5.12 and 5.15 and the Tribunal would be assisted by submissions of a legal practitioner with respect to the same and that would enable the Tribunal to deal with the relevant issues expeditiously and efficiently thereby advancing the interests of Motorsport Australia;
3. Dr Shahin had not been afforded natural justice when the CEO made the CEO Decision. He had received no notice that 3 weeks after the Final Classification had been declared by the Stewards that any issue was taken with respect to the validity of the same. To be forced to deal with the issue now during the last race meeting of the Championship would be an unfair distraction from the current competition. The outcome of the Tribunal is of significant importance to Dr Shahin given that the Pro-Am Championship will be determined during the Adelaide 500 event and the 36 points which Dr Shahin may or may not retain from Race 2 at the Gold Coast event may be determinative of the Championship.

The Tribunal adjourned to consider these submissions. Upon resuming the Chair delivered a ruling refusing the application for legal representation but permitting Dr Shahin and his company to rely on written submissions which might be prepared by his legal team and, if Dr Shahin required more time to prepare such submissions, the Tribunal would adjourn to afford Dr Shahin that opportunity and would at a later point in time over the weekend hear any oral submissions Dr Shahin might wish to make to supplement those written submissions. The Chair announced that the Tribunal would deliver reasons for its ruling in due course. Those reasons are set out below.

The Motorsport Australia Judicial Procedures are silent as to whether an interested party in a matter before an Investigatory Tribunal has a right to be represented by an advocate.

This is in contrast to, on the one hand, Article 100 of the National Competition Rules which expressly prohibits a party to a hearing before the stewards to be represented by a third party and, on the other, clause 12 of the Judicial Appendix with respect to the Australian Motor Sport Appeal Court which expressly permits a party to an appeal heard by that Court being represented by an advocate.

While not of direct application, we have also noted that the rules with respect to appeals before the Supercars National Court of Appeal, which is the highest court for appeals in the context of Australia's premier professional motorsport category, permit representation of an Appellant only where that Court is satisfied that undue hardship would result from personal representation alone.

The Guidelines for proceedings before a Tribunal such as this say no more than that the Tribunal is not a court of law and that the Chair will establish the conduct and format of the hearing. They go further and say, importantly, that the task of the Tribunal is to administer the Rules in a fair and equitable manner.

In our view, this Tribunal is to conduct hearings with as little formality and legal technicality as a proper consideration of the matter permits and give primacy to the sporting nature of the Rules over any strict legal requirements of procedure.

We also bear in mind that the current Tribunal is a consensual rather than statutory tribunal – consensual in the sense that it only has jurisdiction over persons who voluntarily submit to its

jurisdiction by choosing to participate in a Motorsport Australia sanctioned competition – such that the measure and requirements of natural justice differ accordingly¹.

The Tribunal considers that in the absence of any express right to legal representation, it is a matter for this Tribunal to decide if legal representation should be permitted. That position is consistent with the view of the leaned author of “Justice in Tribunals”, Chapter 11 “Does Natural Justice Imply a Right to Counsel?”².

In *Sweeney v Committee of the South East Racing Association*³, Gallop J considered an appeal by a licensed jockey suspended by the steward for careless riding who had been refused legal representation before an appeal committee and who contended that the refusal of legal representation had been a denial of natural justice. At p196, his Honour concluded:

“Having considered all the circumstances as disclosed on the evidence, I am satisfied that the conduct of the appellant’s appeal before the domestic tribunal is very much within the ordinary run of such hearings. The issues could not be regarded as complex. Further, the form and nature of the proceedings are familiar territory to the plaintiff. Applying the above principles, in my view, it would not be unfair, nor contrary to natural justice, to deny the plaintiff legal representation before the Committee. No ground has been made out for interfering with the exercise of the Committee’s discretion.”

The Tribunal took into account the following:

1. The Chair is a legal practitioner which might to some minds suggest that an unrepresented party may be at a disadvantage, albeit that it is commonplace, indeed usual, for the Chair of any Motorsport Australia Tribunal to be a legal practitioner. The other members of the Tribunal are not legally qualified;
2. Dr Shahin and his entity have come before this Tribunal by invitation. They are interested parties no doubt, but they are not accused of having committed any breach of any relevant rule;
3. An outcome of this Tribunal, if contrary to a position Dr Shahin might submit we should take, will not affect Dr Shahin’s livelihood or have a materially adverse effect on his company;
4. Before this Tribunal Dr Shahin and his company are not exposed to any sanction or punishment of any kind;
5. The terms of reference for this Tribunal are confined. There is no reason for the Tribunal to perceive there to be any reasonable possibility of a significant factual contest. No witnesses are to be called. There is no need for any cross-examination. The issues call for no assessment of credit;
6. The limited issue before the Tribunal is simply whether on the proper construction of one Article in the CRSR, 3 cars which were classified as finishers ought to have been so classified. The issue is not legally complex. It is not factually complex;

¹ *Maloney v National Coursing Association Ltd* (1978) 1 NSWLR 161 at 171 per Glass JA.

² Justice in Tribunals, JRS Forbes, 5th Edition Federation Press at p155-170.

³ (1985) 75 FLR 191.

7. Dr Shahin is a very experienced businessman. He is also an experienced competitor and is familiar with the rules of motorsport. He does not suffer from any handicap or disability which affects his ability to represent himself;
8. This is an Investigatory Tribunal, not a Disciplinary Tribunal;
9. It is not customary for a party before an Investigatory Tribunal to be represented by an advocate. We do not exclude the possibility that in different circumstances an Investigatory Tribunal might permit a party to be legally represented before the Tribunal if that were necessary to ensure that persons affected or potentially affected by the Investigation might not otherwise be afforded natural justice (to be assessed by reference to the relevant rules and statutes) or would suffer undue hardship.

In view of the facts we have set out, we were not persuaded that in this case Dr Shahin and his company would be prejudiced or disadvantaged in the absence of legal representation.

Nor were we satisfied that there are any exceptional circumstances which would justify the application for legal representation in this case.

However, it is an accepted principle that a party before a domestic tribunal has every right to take legal advice and to have material prepared by a lawyer outside the hearing⁴.

We accepted Mr Abbott's submission that Dr Shahin had received short notice of the hearing and had limited opportunity to prepare to make submissions himself. It was for this reason that we offered Dr Shahin further time, if he required it, to have written submissions prepared by his legal team.

After delivering the Chair's ruling, Mr Stuart offered to table written submissions he had prepared. He also spoke briefly to them. We address those submissions below.

Mr Abbott informed the Tribunal that he had written submissions already prepared but he sought an opportunity to consider Mr Stuart's submissions before finalising his own.

With the concurrence of the parties, the Tribunal adjourned briefly to allow Dr Shahin and his legal team to confer and consider Mr Stuart's submissions. A short time later the Tribunal was informed that Dr Shahin's legal team was ready to table their clients' written submissions and they were emailed to the Chair.

The Tribunal adjourned to consider the parties' written submissions reserving the right to re-convene the hearing should that be necessary.

EVIDENCE RECEIVED

The Tribunal considered the following evidence:

1. Broadcast footage of the Race;
2. The preliminary classification and the Final Classification for the Race;
3. Surfers Paradise Street Circuit Map;
4. Surfers Paradise Street Circuit Pit Lane Diagram;

⁴ *Franklin v Burleigh Town Village Pty Ltd* [2014] QCATA 183 at [104].

5. Timing reports for the Race;
6. Various annexures to written submissions.

The Tribunal also received:

1. A letter on behalf of Dr Shahin and his company from HWL Ebsworth Lawyers addressed to the CEO of Motorsport Australia dated 23 November 2023;
2. Written submissions of Mr Stuart on behalf of Motorsport Australia (**Annexure A**);
3. Written submissions of Dr Shahin prepared by his legal team with annexed chronology (**Annexure B**);
4. Supplementary written submissions of Dr Shahin from his solicitors with annexures in response to queries from the Tribunal (**Annexure C**).

OBSERVATIONS ON THE EVIDENCE

The Race started at 08:33:41hrs. Broadcast footage of the Race revealed that on Lap 16 of the Race, the Driver of Car 13, Dr Shahin, who was then in 20th position, lost control of his car and the rear of the car collided with the concrete barrier on the exit of turn 11. No other car was involved. His car was prone with the nose in the racing line, albeit that there was racing room in front of Car 13 for approaching cars. A single yellow flag was displayed at the marshal post at the entry to turn 11.

Having stopped momentarily, the Driver of Car 13 then drove forward to resume racing but he did so when another car was approaching turn 11. That car, Car 77, had no line of sight of Car 13 and, as it exited turn 11, Car 77 had no opportunity to avoid contact with Car 13 which was now in the middle of the racing line. A collision occurred between Car 77 and Car 13 with Car 77 sustaining damage to its right front. Car 13 also sustained damage to the driver's side. A following car, Car 14, was unable to avoid contact with Car 77 which was now stranded on the racing line just after the blind apex of turn 11. The front of Car 14 sustained damage and its radiator was punctured. It spun after the contact and was prone across the *Track*. A following car, Car 7, was unable to avoid contact with Car 14 and collided with the driver's side door of Car 14. Car 7 sustained damage as a result.

For the purposes of these Findings we define the collective sequence of events outline above as “**the Incident**”.

The Stewards did not impose any penalty on any Car in connection with the Incident.

Cars 77, 13 and 7 were able to drive away from the Incident but as Car 14 was blocking the circuit, the Race Director invoked the Safety Car procedure. According to timing data, 3 of the affected cars – Cars 13, 77 and 7 – entered the Pit Lane. Car 13 crossed a timing line at Pit Entry at 08:59:31. Car 14 was retrieved.

Cars 13, 77 and 7 remained in the Pit Lane when a subsequent incident occurred, again at turn 11, on Lap 22 of the Race at approximately 09:06:00, the Race Director having announced over the Race Management Channel on the preceding lap that the Race would be “time certain” (meaning that the full race distance of 28 laps would not be achieved). The subsequent incident arose after Car 222 attempted to overtake Car 38 and a collision occurred. Numerous following cars were unable to avoid colliding with the cars ahead. The Race Director deployed the Safety Car and then, after the leader commenced Lap 23 and multiple damaged cars remained stranded at the exit of turn 11 blocking the *Track*, the Race Director suspended the Race by deploying the red flag at 09:06:37. The Race remained suspended and the Race Director subsequently declared the Race and it did not restart.

At some point before or during the red flag race suspension, Car 13 drove down Pit Lane and stopped at Pit Exit. The Pit Exit was closed or at least Car 13 was not permitted by officials to enter the Track. Broadcast commentators are heard to say that *“The other crazy thing that happened in Pit Lane was that Sam Shahin never got out of his car and when the crash happened they sent him down pit road to try and get him back out to join the field knowing that they would get the time certain finish but the red flag came out just as he got to Pit Exit, never made it out of Pit Lane, will probably not get classified in this one but they were going to send that car with a busted radiator just to get the points. Red flag caught him out.”*

The preliminary classification and the Final Classification do not reveal that Cars 13, 7 and 77 were in the Pit Lane when the Race was suspended. They record those Cars as having completed 17 laps in the case of Cars 13 and 77, and 16 laps in the case of Car 7 compared to the winner’s 21 laps. The three cars were classified in the Final Classification in finishing positions 20, 21 and 22 respectively. Car 14, which was damaged in the Incident but unable to return to Pit Lane under its own motive power, was recorded as “DNF” and not classified accordingly.

However, the timing records confirm that Cars 13, 7 and 77 were in the Pit Lane when the red flag suspension commenced.

THE ISSUE

The question for the Tribunal is whether, on the proper construction of CRSR 5.12, Cars 7, 13 and 77 were “finishers” in the Race such that they ought to have been classified in the results. If they were not “finishers”, the Final Classifications are incorrect and require amendment and any pointscore in the Championship which allocated points for those Cars in that Race also requires amendment because, if these cars were not entitled to be classified, no points ought to have been awarded to their drivers for the Race.

SUBMISSIONS

Mr Stuart for Motorsport Australia tabled written submissions which he spoke to.

In short, Mr Stuart submitted that because Cars 7, 13 and 77 did not cross the Finish Line on the Track, they ought not to have been classified having regard to the terms of CRSR 5.12.7.

Dr Shahin tabled detailed written submissions. In summary, he submitted that:

1. the Final Classification is correct having regard to the requirements of CRSR 5.12.3 and 5.15.3 and CRSR 5.12.7 has no application where a race is suspended and not restarted; or
2. alternatively, if the Final Classification is not correct, it should not be disturbed (presumably only for Car 13) because Car 13 had attempted to rejoin the Race from the Pit Lane before the red flag suspension but was improperly prevented from doing so by an official at Pit Exit.

DISCUSSION AND FINDINGS

Proper construction of CRSR 5.12

We reject Dr Shahin’s submissions as to the proper construction of CRSR 15.12. In our view, there is no reason why CRSR 15.12.7 does not apply to a race which is suspended and is not restarted.

Indeed, were CRSR 15.12.7 not to apply in these circumstances there is no mechanism for determining the “finishers” in such a race.

We agree with Dr Shahin that CRSR 5.12.3 operates so as to provide a reference point in time for the determination of the results in a suspended race which is not restarted. That is the only function of that article. To determine the order of results, recourse must be had to CRSR 5.12.4 which speaks of “finishers” and CRSR 5.12.7 defines who is a “finisher”.

We accept that it is possible that in exceptional circumstances a competitor might be disadvantaged by CRSR 5.12.7 were they to be in the Pit Lane when a race is suspended and not restarted. However, those circumstances are substantially mitigated and reduced by the operation of CRSR 5.12.3 which effectively reverses the clock to determine the results as at the point in time when the leader crossed the Finish Line at the commencement of the lap preceding the lap on which the red flag was displayed. Any car which was involved in the incident which caused the race suspension or co-incidentally entered the Pit Lane at any point in time after the leader commenced the lap preceding the lap on which the red flag was displayed and was unable to leave the Pit Lane due to Pit Exit being closed cannot be adversely affected by the operation of CRSR 5.12.7.

That some competitors are sometimes adversely affected by the operation of rules, particularly rules designed to respond to a complex set of circumstances is, in any event, a feature of Competition, in the same way that some competitors can gain an unexpected windfall from the operation of such rules.

We also reject the submission that CRSR 5.12.7 can only have application to a race which finishes under chequered flag because it uses the word “winner” in contrast to CRSR 5.12.3 which uses the word “leader”. The reason why CRSR 5.12.3 uses the word “leader” rather than “winner” is obvious – CRSR 5.12.3 is directed to a point in time before the race has finished but which at a later point in time is deemed retrospectively to have been the finishing time. In a race which is suspended and not resumed, the “winner” is the car which was the “leader” when it commenced the lap preceding the lap on which the red flag was displayed. On Dr Shahin’s reasoning there would never be a “winner” of a race which is suspended but not restarted. Therefore, there would never be any results of such a race because the results are determined under CRSR 5.12.4 which starts as the first reference point with the “winner”.

Dr Shahin also made reference to CRSR 5.15 which sets out the procedure to be followed for suspending and resuming a race. He submitted that CRSR 5.15.3 is silent as to where a car must be if a suspended race is not restarted to be classified in the results. In our view, there is no inconsistency between CRSR 5.15.3 and CRSR 5.12.3. There is nothing in CRSR 5.15 which overrides CRSR 5.12.7.

CRSR 5.12.7 unequivocally provides that to be classified as a finisher, an Automobile must have crossed the *Finish Line* on the *Track* (not in the Pit Lane). The *Finish Line* is defined in NCR 113 as “the final *Control Line*, with or without timing”. “*Control Line*” is defined as “A line at the crossing of which by an *Automobile*, timing or other performance criteria are determined.” The key word for present purposes in the definition of *Finish Line* is “final”. The *Control Line* is crossed at the start and at the end of every lap of a race. The *Control Line* becomes the *Finish Line* at the point in time when the race ends either by the display of the chequered flag or, in the case of a suspended race which is not restarted, when the leader crossed it at the commencement of the lap preceding the lap on which the red flag was displayed.

Dr Shahin cited two previous incidents where CRSR 5.12.7 (or its equivalent) was deemed non-applicable in the case of a red flag and subsequent non-restart.

One was said to relate to Sandown Race 3 in the *2018 Toyota 86 Racing Series*. The Tribunal was told that in that race one car which did not complete the final lap and/or cross the *Finish Line* on the

Track as per CRSR 5.12.7 was initially not classified but this was subsequently amended to include the car as a finisher in the final results. We were told that this amendment was made because the shortening of the race was an unexpected circumstance. We requested Dr Shahin to provide evidence of that decision but none was produced. Without the benefit of sighting the Sporting Regulations for the series concerned, nor the event Supplementary Regulations nor any decision of the Stewards, the unsubstantiated reference to this event as a precedent or an analogous set of circumstances is of no assistance to the Tribunal. Dr Shahin acknowledged in any event that, whatever the decision and the circumstances of that case, the decision is not binding on this Tribunal. That concession was correctly made.

The second claimed to be analogous case was said to have arisen out of the *Queensland 500 V8 Supercars* race at Queensland Raceway on 26 August 2001. Radisich/Johnson famously won that race after it was red-flagged when 2 cars, one of which was Radisich/Johnson's car, became beached in a gravel trap near the end of the scheduled race distance in very wet conditions. Dr Shahin tendered the broadcast footage from that race. It records the controversy when the Radisich/Johnson car was declared the winner notwithstanding that it was beached and had caused the red flag because the race results were determined by reference to the order of cars on the previous lap. That outcome is of no assistance to Dr Shahin because the Radisich/Johnson car had crossed the *Finish Line* on the *Track*. Dr Shahin told the Tribunal that Cars 6 and 29 in that race were classified as finishers in the results notwithstanding that they were in the Pit Lane when the race was suspended. He tendered Lap Charts from that race and a page of results which list Cars 6 and 29 as classified. We have no other evidence regarding those cars in that event. The results page is not signed or marked as final. More importantly, that race occurred over 20 years ago. The Tribunal does not know the terms of the regulations which applied to that race at that time and the fact that it was an endurance race of itself suggests that it may be distinguishable. The Tribunal was not assisted by the reference to that race.

In the instant case, Car 13 did not cross the *Finish Line* on the *Track*. It had earlier crossed the *Control Line* when it entered the Pit Lane on Lap 17 but it did not cross the *Control Line* thereafter and because it never crossed the *Finish Line* on the *Track* it was not a finisher. Cars 7 and 77 are in the same position. The Final Classification is wrong insofar as it includes Cars 7, 13 and 77 as classified finishers. The Final Classification ought to have denoted those 3 cars as "NC" (not classified).

Car 13 was wrongly prevented from leaving the Pit Lane

Dr Shahin's alternative submission is that, even if CRSR 5.12.7 means that Car 13 was not a finisher in the Race, nonetheless the Tribunal should not amend the Final Classification to remove his Car as a classified finisher because, he says, but for an incorrect instruction from a marshal at Pit Exit, he would have been able to leave the Pit Lane before Pit Exit was closed by the operation of the red flag under CRSR 5.15.1.2 and he would have got around the circuit and crossed the *Finish Line* on the *Track*.

Dr Shahin, in effect, urged the Tribunal to allow the Final Classification to continue to incorrectly record Car 13 as a finisher even though it wasn't because, he suggests, it would have been a finisher had it been allowed to leave Pit Exit.

Dr Shahin's evidence was that his team dropped his Car and he headed to Pit Exit before the red flag was displayed intending to rejoin the Race but he was stopped by a marshal who refused to let him

past Pit Exit. He said that Pit Exit ought not to have been closed at that point in time and he was therefore improperly deprived of the opportunity to cross the *Finish Line* on the *Track*.

Dr Shahin annexed to his written submissions a chronology which records "SAM TO PIT EXIT" at 09:06:05, 6 seconds after the second incident at turn 11 which caused the red flag, 5 seconds before the Safety Car intervention which initially followed the incident and 22 seconds before the red flag was called. The Tribunal invited Dr Shahin to provide evidence to corroborate the claim in that chronology that Car 13 was on its way to Pit Exit and had arrived there before the Race was suspended. The Tribunal received a response that Dr Shahin was unable in the time available to produce any further evidence and he requested the Tribunal to finalise its determination without it.

During the hearing the Chair referenced the remarks by the commentator heard on the broadcast footage quoted above which referred to Car 13 as having a "busted radiator" and the team having sent the Car to Pit Exit immediately after the second incident and when they knew the Race would be time certain in an attempt to get points and that the red flag caused Pit Exit to close just before Car 13 arrived there. The Tribunal was urged to disregard that commentary as rank speculation by the commentator. Dr Shahin said that Car 13 was in a safe condition to rejoin the Race and it should have been released at Pit Exit.

The written submissions of Dr Shahin refer to a "radiator issue" on Car 13 having caused him to enter the Pit Lane on Lap 17 and it having been "fixed" before the Car was sent to Pit Exit several laps later. The Tribunal asked Dr Shahin what the issue with radiator had been and how it had been fixed. He said that he did not know and his legal representatives told the Tribunal that the written submission was not intended for testimonial purposes and was prepared with limited reference to Dr Shahin given his commitments at the Adelaide 500 event.

The Tribunal invited Dr Shahin to provide a statement from his engineer explaining the state of Car 13 when it was dropped to head to Pit Exit. The Tribunal subsequently received a short statement from the engineer which relevantly included the following:

"We called Sam into the pits after the incident as we saw on the TV coverage that car 13 was hit around the driver's door after a spin. When the car arrived in pit lane, we noticed some coolant dripping from the right front.

The leak soon stopped and no leak was observed when Sam restarted the engine. Under the circumstances, I deemed the car safe enough to send back racing on track for the remainder laps."

The Tribunal had also asked if Motec data could be made available which recorded coolant temperature, coolant pressure and engine temperature when it came into its Pit Bay and when it was at Pit Exit and which also recorded the point in time when Car 13 was restarted and dropped off its air jacks. We were told that Dr Shahin was not able to provide any further evidence in light of his race commitments at the Adelaide 500 but he urged the Tribunal to deliver its determination nonetheless.

The Tribunal also asked if incar footage from Car 13 was available showing it heading to and arriving at Pit Exit or if broadcast or CCTV footage of it in Pit Lane was available. Dr Shahin told the Tribunal the only incar footage retained from the Race was of the Car on the *Track*, not when it was in the Pit Lane. Neither party could produce external video evidence of Car 13 in the Pit Lane.

Dr Shahin submitted that the Tribunal could either accept his evidence that the Car was in a safe condition to rejoin the Race and that it was at Pit Exit before the Race was suspended or reject it.

The Tribunal is sympathetic to Dr Shahin's submission that he has been put in an unenviable position being called upon to produce evidence 3 weeks after the event and at short notice and when he has other commitments.

Other than the commentator's remarks which we accept are hearsay at best or speculation at worst, there is no evidence that Car 13 was not in a safe condition to rejoin the Race. We have no basis to reject Dr Shahin's evidence on this topic or that of his engineer.

We take a different view on the question of the time Car 13 left its Pit Bay and whether the Race had been suspended before Car 13 arrived at Pit Exit. Dr Shahin has asked the Tribunal to find that he was unfairly deprived of an opportunity rejoin the Race and he has invited the Tribunal to exercise a discretion to not amend the Final Classification even if the Tribunal determines that the Final Classification is wrong. In our view Dr Shahin bears the onus of persuading the Tribunal that any discretion ought to be exercised in his favour. The Tribunal is left wondering how Dr Shahin's lawyers could attach a chronology to their submissions quoting a very specific time when it is said that Car 13 was dropped and left for Pit Exit but, when asked to produce the evidence by reference to which that time was quoted, Dr Shahin cannot or has chosen not to do so.

It does not follow that the Tribunal has rejected Dr Shahin's oral testimony on this issue, only that the Tribunal is not satisfied that his oral testimony alone (which did not mention a specific time mark) is sufficient to establish on the balance of probabilities that Car 13 left its Pit Bay before the Race was suspended. Further, the Tribunal has insufficient evidence which establishes that Car 13 was at Pit Exit before the Race was suspended.

In any event, even if Car 13 had been at Pit Exit before the Race was suspended, it does not follow that Car 13 was improperly prevented from passing Pit Exit by an official. The timing data records that the Race suspension was preceded by a Safety Car intervention. Under CRSR 5.13.10 Pit Exit is closed during a Safety Car intervention when the Safety Car and the line of *Automobiles* behind it are about to pass or are passing Pit Exit. It is in the discretion of the Clerk of the Course to close Pit Exit during a Safety Car intervention. Even if Car 13 arrived at Pit Exit before the Race was suspended, the Pit Exit may have been closed and the official who directed Car 13 to halt was complying with the direction of the Clerk of the Course. There is no evidence upon which the Tribunal can find that Car 13 was improperly baulked from rejoining the Race.

Moreover, the Tribunal is not persuaded that even if an official incorrectly stopped Car 13 from rejoining the *Track*, that could justify Car 13 being classified as a finisher when it wasn't a finisher.

Dr Shahin submitted that the Tribunal has a discretion and it should exercise that discretion in this case to not amend the Final Classification. The Tribunal accepts that in some circumstances a Tribunal of this nature may exercise a discretion. For example, in a case where an Investigatory Tribunal is considering the question of a penalty to be imposed for a breach of the rules, such a Tribunal has a discretion as to the penalty to be imposed or even not to impose any penalty in an exceptional case or one with significant mitigating circumstances. However, the Tribunal is not persuaded that it has a discretion to classify a non-finisher as a finisher or a discretion to allow results which do not conform to the rules to stand.

Moreover, while Dr Shahin has offered a reason why the Tribunal might not amend the Final Classification insofar as it concerns Car 13, no reason is offered as to why the Tribunal would not amend the Final Classification to de-classify Cars 7 and 77. The Tribunal is not persuaded that it would be an appropriate exercise of any relevant discretion vested in the Tribunal to not amend incorrect results for one Car but amend incorrect results for two other Cars.

If in fact an official incorrectly stopped Car 13 from exiting the Pit Lane, the Tribunal has no power to “right that wrong” now by giving Car 13 the benefit of having crossed the *Finish Line* when that didn’t happen. As observed above, for the Tribunal to do so would also create an incongruous position whereby Cars 7 and 77 would not be classified as finishers but Car 13 would be.

Further, on the view of CRSR 5.12 the Tribunal has reached, it is unclear how it would have assisted Car 13 had it been permitted to rejoin the *Track* because the operation of CRSR 5.12.3 is to render redundant anything that has occurred after the point in time when the leader crossed the *Finish Line* at the commencement of the lap preceding the red flag (excepting only the order in which following cars crossed the *Finish Line* behind it on the *Track*). In this case the earliest Car 13 could have rejoined the *Track* was Lap 22 but the Final Classification is based on the positions of the cars on the *Track* at the end of Lap 21. Therefore, any lap which Dr Shahin completed after the Race was suspended would be discounted for all purposes.

DETERMINATION

For the above reasons the Tribunal determines that the Final Classification for the Race do not comply with the CRSR and are therefore incorrect.

Exercising its powers under the Terms of Reference and the Judicial Appendix, the Tribunal amends the Final Classification to delete each of Cars 7, 13 and 77 as classified finishers and in lieu of the place positions attributed to them in the Final Classification, to note them as NC (not classified).

It follows that the pointscore for the Championship, insofar as it attributes points to Cars 7, 13 and 77 in the Race, is incorrect and requires amendment.

It is not customary for the Stewards or Motorsport Australia to declare the pointscore for a Championship administered by an independent Category Manager. The pointscore is administered by the Category Manager by reference to the Final Classification for each race in the Championship in accordance with the Sporting Regulations for the Championship.

The pointscore for the Championship is determined by Article S11.2 of the *Porsche Paynter Dixon Carrera Cup Australia Sporting Regulations*. The pointscore will not conform with that Article were it to continue to reflect the Final Classification before amendment by this determination. If the Category Manager for the Championship does not amend the pointscore, the CEO of Motorsport Australia has power under NCR96 to do so and, in the view of the Tribunal, the CEO ought to do so given that the pointscore without amendment reflect are computed erroneously.

Competitors are reminded of their right of appeal under NCR101.

Dated 26 November 2023



Matthew Selley



Stephen Lisk



Bradley Tubb



MOTORSPORT AUSTRALIA RESPONDANT SUBMISSION – INVESTAGATORY TRIBUNAL ROUND 7 PORSCHE PAYNTER DIXON CARRERA CUP AUSTRALIA RACE 2 CLASSIFICATION

Round 7 of the Porsche Paynter Dixon Carrera Cup Australia Championship was conducted as part of the Boost Mobile Gold Coast 500 Supercars event, hosted on the Surfers Paradise Circuit.

Race 2 of the Porsche Paynter Dixon Carrera Cup Australia Championship at this event was punctuated by several Safety Car interventions leading to a suspension of the race by the use of the red flag and ultimately the race was not resumed.

The race distance was 28 laps in duration or 1 lap after 0908hrs.

During the race an incident occurred, and a number of *Automobiles* suffered damage and entered *Pit Lane*. Among these were Cars #7, #13 and #77 all of which suffered damage and entered *Pit Lane* on lap 16 for #7 and lap 17 for #13 and #77. None of these *Automobiles* re-entered the track to continue the race and remained in *Pit Lane* when the race was suspended.

The race suspension occurred on lap 22 of the race and in accordance the *Motorsport Australia* Circuit Race Standing Regulations (CRSR) – Article 5.12.3 “*If a race is suspended by the use of a red flag and is not resumed, the results will be determined at the time the leader crossed the Finish Line at the commencement of the lap preceding the lap on which the red flag was displayed.*”

Post race, preliminary results were issued, and a number of *Automobiles* in the Pro-AM class were classified as finishers. This included cars #7, #13 and #77. The final results (*Final Classification*) declared by the Stewards also recorded #7, #13 and #77 as “finishers” for the purposes of Article 5.12 and subsequently Championship Points were awarded by reference to the *Final Classification* in accordance with Article S11.2 of the 2023 Porsche Paynter Dixon Carrera Cup Australia Championship Sporting Regulations (Sporting Regulations). *Classifications* of the race were produced as of lap 21.



The classification of cars #7, #13 and #77 as finishers in the preliminary, provisional and Final Classifications was not in accordance with CRSR – Article 5.12.7 *“To be classified as a finisher, an Automobile must have:*

crossed the Finish Line on the Track (i.e. not in the Pit Lane, the Pit Entry Road nor the Pit Exit Road) under its own power;

completed at least 75% of the distance/duration completed by the winner; and

completed its last lap in less than twice the time of the winner’s last fastest lap time for that race.”

Automobiles (#7, #13 and #77) did not fulfil the requirements of CRSR Article 5.12.7 and as such the classification of such *Automobiles* as finishers by the Stewards, has been improperly or incorrectly recorded.

[Gold Coast chaos! Champions tear up at Surfers - YouTube](#)

In accordance with the provisions of the *Motorsport Australia* National Competition Rules (NCR) – Article 5, *Motorsport Australia* has referred the matter to this Investigatory Tribunal to investigate and determine if an error in the classification of these *Automobiles* has been made.

Annexure B

Motorsport Australia Investigatory Tribunal **Inquiry into Race 2 of the 'Porsche Paynter Dixon Carrera Cup Australia Championship'** **Boost Mobile Gold Coast 500 - 29 October 2023.**

Submissions of Sam Shahin (Car 13) **24 November 2023**

A. INTRODUCTION

1. Mr Sam Shahin (**Shahin**) was the driver of Car 13 in Race 2 (**the Race**) of the 'Porsche Paynter Dixon Carrera Cup Australia Championship' (**Championship**) held as part of the 'Boost Mobile Gold Coast on 29 October 2023.
2. Terms of Reference dated 23 November 2023 (**ToR**) have been issued by Motorsport Australia which purport to convene an Investigatory Tribunal to investigate:
 - 2.1 the correctness of the Final Classification for the Race, insofar as it includes Cars 7, 13 and 77 as 'finishers' in the Race; and
 - 2.2 the correctness of the award of Championship Points to Cars 7, 13 and 77 for the Race based on that Final Classification.
3. These submissions are made on behalf of Shahin and the owners of Car 13 in relation to the matter before the tribunal.
4. For reasons that are set out in greater detail in Section C below, Mr Shahin submits that in the circumstances and for a number of reasons set out below, the Tribunal should not amend the Final Classification or make any recommendation that the current point score for the Championship be amended.

B. BACKGROUND

5. On Lap 17 of the Race, Car 13 entered the Pit Lane with a radiator issue. This was an issue that could be fixed.
6. On Lap 22 of the Race, an incident occurred at Turn 11 (at 32:18 elapsed race time; 9:05:59 time of day) (**Incident**).
7. Data collected by Car 13's engineer shows that, once the radiator issue was fixed and shortly after the Incident, Car 13 proceeded to the Pit Lane Exit (at 32:24 elapsed race time; 9:06:05 time of day) for the purpose of re-entering the Race. Car 13 was then prevented from re-entering the race prior to the red flag coming out.
8. The red flag was displayed (at 32:56 elapsed race time; 9:06:37 time of day) and the Race was suspended on Lap 22 of the Race.
9. At the time the red flag was displayed:
 - 9.1 Car 13 was stopped at the Pit Lane Exit and waiting to re-enter the track; and
 - 9.2 the leader of the Race had already commenced Lap 23.

10. Following the red flag, the safety car led the field back to the grid and stopped them behind the finish line. The Race was not resumed and considered to end at the end of Lap 21/the commencement of Lap 22.
11. Shortly after the Race, preliminary results were issued and several Automobiles in the Pro-AM class were classified as finishers. This included Car 13.
12. The final results of the Race (**Final Classification**) declared by the Stewards recorded Car 13 as having finished in 5th position in the Pro-Am classification.¹
13. On that basis, 36 Championship Points were subsequently awarded to Car in accordance with Article S11.2.1 of the 2023 Porsche Paynter Dixon Carrera Cup Australia Championship Sporting Regulations (**Sporting Regulation**).

C. SUBMISSIONS

14. Mr Shahin submits that the Final Classification is correct.
15. In the alternative, he submits that, for a number of reasons set out below, the Final Classification should not be disturbed.
16. Substantively, Mr Shahin submits that:
 - 16.1 the Final Classification is correct having regard to the requirements of Articles 5.12.3 and 5.15.3 of the CRSR; and
 - 16.2 on proper construction, the requirements of Article 5.12.7 are inapplicable to the circumstances of the Race.

CRSR

17. Article 5.15.1 of the CRSR states that a race will be suspended by the waving of a red flag. Art 5.15.1.2 states that the exit to pit lane will be closed 'when the red flag is displayed' (and not before).
18. Article 5.12.3 of the CRSR states that if a suspended race is not resumed, the results will be determined at the time the leader crosses the Finish Line at the commencement of the lap preceding the lap on which the red flag was displayed. Importantly, the article does not require the other vehicles to race on – by use of the words 'at the time', the rules take the moment the leader crosses the line and allocates positions of all the other cars based on where they are coming at that moment.
19. Article 5.15.3 is consistent with that: "the results will show the race order as at the commencement of the lap before the lap in which the red flag was displayed. The 'commencement' must be the moment, consistently with 5.12.3, that the leader crossed the finish line on the preceding lap.
20. It follows that when the leader crosses the Finish Line, it simply acts as a specific time marker that is used by Stewards to assist their assessment of the race order (and therefore

¹ 21st overall

results) at that prescribed time. In effect, in a red flagged, subsequently abandoned race, that race is deemed to be over at the moment the leader crossed the finish line on the lap before the red flag event. In this case that would have been at the *start* of lap 21.

21. Article 5.12.3 is explicitly inconsistent with a concept that results will be determined as at the point in time when all other (non-leading) automobiles cross the finish line.
22. Similarly, Article 5.15.3 is not subject to any express pre-conditions to the effect that:
 - 22.1 all automobiles in a race must be on the race track at the time the leader crossed the finish line on the penultimate lap in order to be placed in race order; or
 - 22.2 all other automobiles in the race must continue a race already finished (by virtue of Art 5.12.3) and cross the finish line to be placed in the race order.
23. In the absence of any pre-conditions to this effect, it naturally follows that the Stewards must take account of all competitors, including those in the Pit Lane, Pit Entry Road or Pit Exit, when determining race order.
24. Pit lane is an intrinsic part of the course. Automobiles in Pit lane are not deemed to be out of the race. The treatment of competitors in the Pit Lane as active competitors in a race is supported by Article 5.15.1.8 of the CRSR, which states that an *automobile* in the *Pit Lane* will be permitted to resume the race in the order it arrived at the exit of the *Pit Lane* in accordance with the procedure for 'Resuming a race.'
25. The ToR refer to Article 5.12.7 of the CRSR for the purpose of defining the term 'finisher'.
26. On a proper construction, taking into account the way the articles referred to above must be construed, Article 5.12.7 of the CRSR does not apply to a race that is suspended and not resumed (including the Race).
 - 26.1 The term crossing the finish line does not stipulate when that is to occur. In a non-abandoned race, this is clear. It is not clear in a form of the race that concludes at the instant the lead car crosses the line.
 - 26.2 Given the operation of Art 5.12.3, it would create arbitrary and unfair results if 5.12.7 were to apply to abandoned races, because no competitor could predict when the red flag is coming out and those unfortunate enough to be in the pits when this occurs will, through no fault of their own, be DNF'd. That could in theory apply to a car that is leading the race by 3 laps!
 - 26.3 Art 5.12.8 would create further injustice if 5.12.7 were to apply to abandoned races. The crossing of the finish line in 5.12.8 cannot apply to abandoned races as that 'crossing' will have occurred previously.
 - 26.4 Whether a competitor is classified as a 'finisher' for the purpose of Article 5.12.7 is largely done by reference to the 'winner' of a race. That is, in order to be classified as a finisher, an automobile must meet certain the performance thresholds that are based on the performance of the winner of the race, including:
 - 26.4.1 the distance/duration completed by the winner in a particular race; and

26.4.2 the time of the winner's last lap time.

26.5 Unlike the term 'leader' (which is used in the Article 5.12.3 and 5.15.3), the term 'winner' is specifically defined by Article 5.12.1 of the CRSR. However this article must be read subject to Art 5.12.3 because in the situation of a red flagged non-resumed race, the leader/winner does not reach 'the Finish Line' of the race because the final laps are not completed. (S)he only relevantly *crosses* the finish line of the preceding lap. Accordingly:

26.5.1 5.12.1 does not apply to the Race; and

26.5.2 5.12.7 does not apply where there is no 'winner'.

26.6 If Article 5.12.7 is applied to a suspended race that did not resume, it gives rise to an absurd result having regard to the application of Articles 5.12.3 and 5.15.3 of the CRSR. That is, the results of a race are determined at a fixed point in time by reference to the race order at that time, when the *leader* crossed the finish line in Lap 21, then the race order is naturally determined by starting at the finish line and then working one's way backwards down the track. Accordingly, only one automobile (being the leader's) will have actually crossed the finish line at the relevant point in time when the places in the race are to be determined. Accordingly, if all automobiles during a suspended race were required to satisfy the definition of 'finisher' in Article 5.12.7 of the CRSR, then every automobile on the track (except for the leader's) would fail to satisfy that definition and should technically be treated as a non-finisher.

The Race

27. Here, on Lap 17 of the Race, Shahin entered the Pit Lane with a radiator issue. Once the radiator issue was fixed, Car 13 drove to the Pit Lane Exit to re-enter the Race.
28. He was precluded from leaving pit lane at a time *prior* to the red flag.
29. At the time the Race was suspended, Car 13 was ready and waiting to re-enter the Race. However, Car 13 was unable to re-enter the Race via the Pit Lane Exit because the Pit Lane Exit had been closed pursuant to Article 5.15.1.2 when the red flag was displayed.
30. Ultimately, even though Car 13 was in the Pit Lane when the Race was suspended, it nonetheless remained an active participant in the Race, had a track position at the time the leader crossed the finish line in Lap 21 and was therefore eligible to be considered as part of the race order for the purpose of determining the results of the Race and allocating Championship Points.
31. Accordingly, the Final Classification is correct having regard to the requirements of Articles 5.12.3 and 5.15.3 of the CRSR.

Precedents

32. There are (at least) two historical, analogous incidents where Article 5.12.7 (or an equivalent) has been deemed non-applicable in the case of a red flag and subsequent non-restart race. Those incidents are described below.

Sandown Race 3 - '2018 Toyota 86 Racing Series'

33. The first incident stems from Sandown Race 3 during the '2018 Toyota 86 Racing Series'. During this race:
- 33.1 11 laps were scheduled;
 - 33.2 the driver of Car 34, Tim Brooks, was 2 laps down and undertaking repairs in the Pit Lane, having been involved in an earlier incident resulting in vehicle damage;
 - 33.3 mid-way through lap 10, a crash at turn 4 resulted in the early termination of the race;
 - 33.4 Car 34 had completed less laps than those involved in the Turn 4 incident and did not complete the final lap and/or cross the *Finish Line* on the Track as per Article 5.12.7;
 - 33.5 Car 34 was classified as a DNF in the provisional classification. This was then amended to be set as a finisher in the final classification. It was deemed Article 5.12.7 did not apply given the extenuating circumstances of the race distance being shortened without sufficient notice, which prevented Car #34 from completing a lap and crossing the *Finish Line*.
34. The scenario faced by Car 34 in Sandown Race 3 is analogous to that faced by Car 13 in the Race. Accordingly, for the sake of fairness and consistency, the approach to classification adopted in Sandown Race 3 should also be adopted in these circumstances.

Queensland 500 V8 Supercars race at Queensland Raceway on 26 August 2001

35. The second incident stems from the Queensland 500 V8 Supercars race at Queensland Raceway on 26 August 2001. Whilst Article 5.12.7 did not exist at the time, there was an equivalent rule, as well as equivalent rules to Article 5.12.3 and Article 15.5.3, that were in place at the time. Those equivalents appear in Articles 6.13 and 6.14 of the Confederation of Australian Motorsport Circuit Race Standing Regulations 2001 (**2001 CRSR**). In particular:
- 35.1 Article 6.13(iii) of the 2001 CRSR provided that:
 - (i) "if the race is stopped by the use of a red flag and is declared a race (or part race), the results will be calculated from the time the leader crossed the finish line at the start of the lap before the lap on which the red flag was shown" (equivalent to 5.12.3 of the CRSR); and
 - (ii) to be classified as a finisher, a vehicle must have been credited with having completed at least 75 percent of the distance completed by the winner of the event and must have crossed the finish no later than three minutes (six minutes for circuits longer than 3km) after the winner has done so (equivalent to 5.12.7 of the CRSR);
 - 35.2 Article 6.14(i) of the 2001 CRSR provided that "the race classification will be that at the end of the penultimate lap before the lap in which the signal to stop the race was given (Equivalent to 5.15.3 of the CRSR)
36. During this race:

- 36.1 161 Laps were scheduled;
 - 36.2 on Lap 158 there was a red flag race suspension and the race was not restarted;
 - 36.3 the Final Classification declared by the recorded Cars 6 and 29 as “finishers” in that race notwithstanding that:
 - 36.4 the Final Classification, together with lap charts and live broadcast footage all record Cars 6 and 29 in the pit lane at the end of the leader’s lap 156 and commencement of the leader's lap 157;
 - 36.5 in this instance, neither Car 6 nor Car 29 crossed the *Finish Line* as defined in the NCRs of the time. Rather, both Car 6 and 29 were multiple laps down at the time of transiting the pitlane (which is also reflected in the Final Classification); and
 - 36.6 Cars 6 and 29 were classified in the Final Classification ahead of cars who completed a greater number of laps but were involved in on-track incidents prior to the suspension of the race.
37. The circumstances of the Race are directly comparable to those in the Queensland 500 V8 Supercars race and that the approach taken to Final Classification in that scenario reflects the approach that should be taken here.

Conclusion

38. Having regard to all of the matters from paragraph 25 onwards above, Mr Shahin submits that the Tribunal should make a finding that:
- 38.1 Article 5.12.7 of CRSR does not apply to a suspended race that does not resume for the purpose of determining the correctness of the Final Classification (per paragraph 26 above); or
 - 38.2 even if the Tribunal considers that Article 5.12.7 of the CRSR should apply, there are precedents which support a finding that Article 5.12.7 should not be applied in the case of red flag; and
 - 38.3 in light of the above, the Final Classification should be upheld as correct (and the relevant Championship Points retained).

Discretion

39. Mr Shahin further submits that the Tribunal has a discretion as to whether to take any action in this case. It is submitted that the discretion to interfere with the Final Classification should not be exercised. The following are factors that will be expanded upon in the hearing:
- 39.1 the matter of precedent referred to above;
 - 39.2 Shahin was prevented from re-entering the course before the red flag was deployed;
 - 39.3 the Final Classification was finalised and signed off;

- 39.4 Race 3 grid positions were allocated on the basis of the Final Classification. If the Race results are to be changed the results of Race 3 are compromised;
- 39.5 no protest was lodged in respect of the Final Classification;
- 39.6 Mr Shahin was only provided with the ToR, and notified about the hearing, at 4:30pm on 23 November 2023 (just over 24 hours before the hearing was scheduled);
- 39.7 the issue was being raised for the first time over three weeks after the Race and only a day before the last race of the season in Adelaide;
- 39.8 subsequent race results and the tactics and decisions made by drivers in those races are also compromised. This impacts not only Mr Shahin but all other competitors in the Championship;
- 39.9 the delay and last minute dealing with this matter poses a reputational risk to Motorsport Australia in that it has the potential to bring the sport into disrepute and undermine the confidence that drivers and sponsors and fans have in the sport.

D. CONCLUSION

- 40. Having regard to all of the matters set out in the submissions, Mr Shahin submits that:
 - 40.1 the Final Classification is correct having regard to the requirements of Articles 5.12.3 and 5.15.3 of the CRSR;
 - 40.2 the requirements of Article 5.12.7 are inapplicable to the circumstances of the Race and should have no bearing on the Final Classification of Car 13.;
 - 40.3 there is clear precedent that the position submitted on behalf of Mr Shahin is correct.
- 41. In the circumstances, the Tribunal should:
 - 41.1 allow the original Final Classification of the Race to stand; and
 - 41.2 refrain from recommending that any amendment be made to the award of the original Championship Points.



RACE SUMMARY	TOD	TIME FROM START		
START	08:33:41			
SC	08:35:51	02:10.0		
GREEN	08:38:15	04:34.0		
SC	08:39:58	06:17.0		
GREEN	08:45:38	11:57.0		
SC	08:56:58	23:17.0		
GREEN	09:02:33	28:52.0		
SC	09:06:10	32:29.0		
RED	09:06:37	32:56.0		
SAM PIT IN DETAILS	TOD	TIME FROM START	TIME BETWEEN	
SAM INCIDENT DURING LAP 15	08:56:40	22:59.0		
STAYS OUT LAP 16 SC B&F	08:56:58	23:17.0	00:18.0	
SAM PIT END LAP 17	08:59:20	25:39.0	02:22.0	
GREEN END LAP 19	09:02:33	28:52.0	03:13.0	
END LAP 20 SS - 3L	09:04:03	30:22.0	01:30.0	
END LAP 21 SS -4L	09:05:17	31:36.0	01:14.0	
INCIDENT ON LAP 22	09:05:59	32:18.0	00:42.0	
SAM TO PIT EXIT	09:06:05	32:24.0	00:06.0	
SC B&F DURING LAP 22	09:06:10	32:29.0	00:11.0	
END LAP 22 - SS -5L	09:06:30	32:49.0	00:20.0	
RED FLAG DURING LAP 22	09:06:37	32:56.0	00:07.0	



Matt Selley

From: (addresses redacted)
Sent:
To:
Cc:

Subject: RE: Investigatory Tribunal - Porsche Race 2 Gold Coast
Attachments: Fwd: Gold Coast - PCCA Race 2; 2001_QLD500_LapChart.pdf; 2001_QLD500_FinalClassification.pdf

Dear Mr Selley and Tribunal Members,

We refer to our correspondence this morning.

We confirm that our client's submissions have been put before the Tribunal on an open basis.

Other matters have been raised by you. We note this being done on the Saturday morning of the Vailo 500 event at which Dr Shahin and his team are racing on both the Saturday and the Sunday, in respect of an investigation which was suggested to the CEO by the tribunal presiding member some 4 days ago, be carried out into an incident that occurred almost four weeks ago.

We repeat our client's significant concern that this ongoing issue has on the races yet to come both for Dr Shahin and other competitors and that the tribunal was asked to resolve this issue last night.

The refusal of the CEO to publish the cancellation of his decision, in marked contrast to the full press release that was given in respect of his initial, now revoked decision that had been made without power is also of significant concern. The fact that the revocation of the CEO's decision has not been made public is confirmed by the fact that the event's own website has not changed the competition's own points standings:

<https://www.carreracup.com.au/standings/> despite Dr Shahin asking repeatedly that this to occur.

We are not even sure that all competitors have been informed of the revocation of the decision and the adjusted points standing. Given you are 'inquiring' into this issue, Dr Shahin asks why this unsavoury and wholly unreasonable aspect to the issue could not also have been the subject of your consideration.

We now respond on behalf of Dr Shahin to matters you have raised on this race day:

1. As requested, we **attach** an email from Dr Shahin's engineer.
2. In relation to your request for information in respect of the two precedents referred to in Dr Shahin's written submissions, we confirm that:
 - 2.1. the two scenarios referred to in our submissions were included as examples of analogous scenarios rather than legal precedents. We are also instructed that, in the case of the 2018 example, the decision was made in favour of the driver/car before the final results were issued. It was not referred to an investigatory tribunal.
 - 2.2. We understand this was also the case for the 2001 example. Accordingly, we do not have copies of any formal decisions that we can provide you.
3. Notwithstanding the above, in respect of the 2001 example, we attach the following documents that may be of further assistance to you:
 - 3.1. lap chart for that race;
 - 3.2. the final classification; and
 - 3.3. broadcast footage of the race: <https://www.youtube.com/watch?v=x1UU4ZAKuME>
4. These are the only materials in our possession. Given Motorsport Australia is a participant in this hearing and given that it has reserved to itself the right to respond to our submissions, we would have thought that it, as the body who would possess or have the power to obtain any of this information, should be the one asked to obtain it. They also have far more staff and ability to obtain this information.

5. As foreshadowed in our submissions, these records show that the factual circumstances that form the basis for the 2001 example can be considered analogous to this scenario on the basis that:
 - 5.1. cars 6 and 29 were in the pit lane at the end of the leader's lap 156 / commencement of lap 157;
 - 5.2. car 6 and 29 were multiple laps down at the time of transiting the pitlane; and
 - 5.3. despite the above, cars 6 and 29 were nonetheless classified as finishers in that race under the CRSR in place at the time.
6. We do not contend that the results 'bind' you like legal precedent. But their existence is a further matter to take into account in the exercise of your discretion whether to take any action. An inconsistent application of the rule, especially one that is done so late, would lead to a justifiable sense of grievance as to inequality of application.
7. In respect of the balance of your requests for further information (per your email at 10:35am), we have been instructed that Dr Shahin is not in a position to provide the further information over the weekend given his race commitments. He is aware of no footage that could assist.
8. Further, Dr Shahin does not wish to delay the Tribunal's decision given its impact on other competitors, and so he respectfully requests that the Tribunal proceeds to make its decision having regard to the information that has already been provided to it (being the submissions provided to you yesterday, as well as the documents attached to this email).
9. The import of whether Car 13 was stopped from leaving pit lane is one that goes to your discretion. There is no dispute that, at the time of calculation of places as is required and provided for by art 5.12.3, car 13 was in the pits. So it has no effect on the substantive point but only on the discretion. The actual state of the car when it left is not relevant to the discretion. As Dr Shahin said to the Tribunal yesterday, you can either believe him or not that he was stopped before the red flag came out.
10. He wishes the issue resolved on the current state of the information he has put before the tribunal in this most unsatisfactory of timeframes. The season ends in 24 hours. To be asked to obtain all this information at this time is unfair and unreasonable. The information has no bearing on the interpretation of the articles. The reason this has come on so late is not his fault in any way.
11. We repeat what Mr Abbott said to you yesterday that the submissions were prepared by the legal team during the day and that Dr Shahin had no vision of or contribution to their wording. To the extent that they suggested that the car had been 'repaired' (which you chose to repeat and rely upon in your 10:35 email), that was something that was inserted on an erroneous assumption (as the engineer's email bears out) and we have asked you already not to treat submissions done 'on the run' and under the most severe of time limits without recourse to any witnesses at all, testimonially.
12. You have queried *in arguendo* whether the Investigation Tribunal has any discretion. It surely must have. It is an investigation tribunal and is not dealing with charges under a disciplinary structure. There is nowhere in the entire set of rules, articles and regulations that sets out or confines the powers of this Tribunal. The NCRs assume its existence but do not create it. CRSRs don't even mention it. Although the tribunal is referred to and assumed to exist in the judicial procedures, in fact there is no provision that provides for the creation of such a body. The judicial procedures state:

A Tribunal may be:

...

*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***

So there is no provision confining its powers or taking away from it a full discretion 'to inquire'. It is not confined by charges. The words quoted above (enquire into any matter) therefore are words of the widest possible application. There could be no reasonable contention that such wide powers do not import a discretion to act in accordance with fairness, equity and good conscience and in the interests of motorsport. Further the ToR only states that the tribunal "may" alter the results. We maintain the submission that the tribunal must have a discretion to act.

Dr Shahin wishes to reiterate his desire to minimise any disruption to his competitors and looks forward to the Tribunal's decision.

Kind regards,

Caitlin Surman
Special Counsel



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From: Matt Selley
Sent: Saturday, November 25, 2023 10:35 AM
To: (addresses redacted)
Subject: Investigatory Tribunal - Porsche Race 2 Gold Coast

CAUTION: EXTERNAL EMAIL.

Dear Parties

In light of the submission of Dr Shahin that an official incorrectly prevented him from rejoining the Race by stopping him at Pit Exit before the red flag race suspension and that Car 13 had been repaired and was capable of continuing safely in the Race had it not been suspended and not restarted, the Tribunal would be assisted by the following:

1. Any evidence which proves the entry in the log annexed to Dr Shahin's written submissions which asserts that Car 13 was dropped and started to move to Pit Exit at 09:06:05;
2. If available from Porsche or Car 13, Motec traces as follows:
 - Recording coolant pressure, coolant temperature and engine temperature at the point in time when Car 13 stopped in its Pit Bay on Lap 17;
 - Recording the time when the engine of Car 13 was re-started before it was dropped to go to Pit Exit;
 - Recording coolant pressure, coolant temperature, engine temperature and engine revs throughout the period from the point in time when Car 13 was dropped to go to Pit Exit and the time shown in the broadcast footage when an official is observed to speak with Dr Shahin at Pit Exit.
3. If available, CCTV or Pit boom camera footage of Car 13 throughout the period it was in its Pit Bay.

We would also be assisted if the parties can agree the point in time during the Race (approximately) when the Race Director is heard on the broadcast footage to announce over RMC that the race would be "time certain".

Kind regards

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Matt Selley

From: Sam Shahin
Sent: Saturday, 25 November 2023 10:53 AM Cristal
To: Opacic
Subject: Fwd: Gold Coast - PCCA Race 2

Regards

Sam Shahin
Executive Director, Peregrine Corporation
Managing Director, The Bend

From: Paul Ceprnich
Sent: Saturday, November 25, 2023 10:47 am
To: Sam Shahin
Subject: Gold Coast - PCCA Race 2

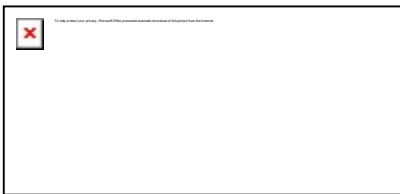
Hi Sam

As requested, below is my statement :

I am the engineer for Dr Sam Shahin and Car 13 in the Porsche Carrera Cup motor racing series. I was the engineer on the team at the Gold Coast race meeting. During Gold Coast Race 2, there was a significant multiple car collision at turn 11 involving Car 13. We called Sam into the pits after the incident as we saw on the TV coverage that car 13 was hit around the driver's door after a spin. When the car arrived in pit lane, we noticed some coolant dripping from the right front. The leak soon stopped and no leak was observed when Sam restarted the engine. Under the circumstances, I deemed the car safe enough to send back racing on track for the remainder laps.

--

Kind Regards,
Paul Ceprnich



Pace Innovations Pty Ltd
Website: www.paceinnovations.com.au
Facebook: facebook.com/PACE.Innovations

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QUEENSLAND 500
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VIP PETFOODS QUEENSLAND 500

LAP CHART

Event R11 156 Laps
Scheduled Start 13:00
Track FINE/WET

Page# 1 Issue# 1
Start Sun Aug 26 13:03
Elapsed Time 03:17:41

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Clerk of Course:Ian Mayberry Chief Timekeeper:Bob Wilkinson

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VIP PETFOODS QUEENSLAND 500

LAP CHART

Event R11 156 Laps
Scheduled Start 13:00
Track FINE/WET

Page# 2 Issue# 1
Start Sun Aug 26 13:03
Elapsed Time 03:17:41

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LAP CHART

Event R11 156 Laps
Scheduled Start 13:00
Track FINE/WET

Page# 4 Issue# 1
Start Sun Aug 26 13:03
Elapsed Time 03:17:41

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Scheduled Start 13:00
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Page# 5 Issue# 1
Start Sun Aug 26 13:03
Elapsed Time 03:17:41

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12	29	29	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	
13	9	9	16	16	16	16	16	16	16	24	24	24	24	24	24	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	
14	16	16	24	24	24	24	24	24	24	16	16	16	16	16	16	35	35	35	35	35	35	35	35	35	35	35	35	35	35	35	
15	24	24	35	35	35	35	35	35	35	35	35	35	35	35	35	021	021	021	021	021	021	021	021	021	021	021	021	021	021	021	
16	35	35	50	50	50	50	50	50	50	50	021	021	021	021	9	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	
17	4	4	021	021	021	021	021	021	021	021	50	50	50	50	50	34	34	34	34	34	34	34	34	34	34	34	34	34	34	34	
18	50	50	34	34	34	34	34	34	34	34	34	34	34	34	34	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	
19	021	021	10	10	10	10	10	10	10	10	10	10	10	10	10	10	75	75	75	75	75	75	75	75	75	75	75	75	75	75	
20	34	34	54	54	54	54	54	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	
21	10	10	75	75	75	75	75	54	54	54	54	54	54	54	54	54	54	54	54	54	54	54	54	54	54	54	54	54	54	54	
22	54	54	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	
23	75	75	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	
24	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	
25	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	
26																															
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Issue# 1 - Printed Sun Aug 26 16:48:45 2001 Timing System By NATSOFT (03)63342353 www.natsoft.com.au/results & Dorian DATA-1
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QUEENSLAND 500
QUEENSLAND RACEWAY IPSWICH
VIP PETFOODS QUEENSLAND 500
LAP CHART

Event R11 156 Laps
Scheduled Start 13:00
Track FINE/WET

Page# 6 Issue# 1
Start Sun Aug 26 13:03
Elapsed Time 03:17:41

	151	152	153	154	155	156
1	11	11	11	15	17	17
2	17	17	17	17	11	11
3	15	15	15	11	600	15
4	600	600	600	600	15	1
5	31	31	1	1	1	2
6	1	1	2	2	2	

7	2	2	<u>31</u>	31	31
8	43	43	43	<u>43</u>	43
9	6	6	6	<u>6</u>	
10	29	29	24		
11	16	24	<u>29</u>		
12	<u>24</u>	16	16		
13	35	35	35		
14	021	021			
15	50				
16					
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34					

underline=pit stop

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QUEENSLAND 500
QUEENSLAND RACEWAY IPSWICH

VIP PETFOODS QUEENSLAND 500

Event R11 156 Laps
Scheduled Start 13:00
Track FINE/WET

Page# 1 Issue# 1
Start Sun Aug 26 13:03
Elapsed Time 03:17:41

Pos	Car	Entrant	Driver	Vehicle	Cap	CL	Laps	Race.Time	Fastest...Lap
1	17	Shell Helix Racing	S.Johnson/P.Radisich	Ford Falcon AU	5000		156	03:17:41.1244	128 1:11.9111
2	11	Perkins Motorsport	L.Perkins/R.Ingall	Holden Commodore VX	5000		156	03:17:42.0666	65 1:11.6269
3	15	K-Mart Racing Team	G.Murphy/T.Kelly	Holden Commodore VX	5000		156	03:18:04.4116	123 1:11.8785
4	1	Holden Racing Team	M.Skaife/J.Bright	Holden Commodore VX	5000		156	03:18:29.2576	128 1:11.5990*
5	2	Holden Racing Team	T.Mezera/T.Longhurst	Holden Commodore VX	5000		156	03:19:02.4652	133 1:11.8966
6	31	Super Cheap Auto Racing	S.Ellery/G.Brabham	Ford Falcon AU	5000		155	03:17:45.3750	125 1:12.0269
7	43	K&J Thermal Products	P.Weel/T.Leahey	Ford Falcon AU	5000		155	03:19:06.8873	141 1:12.2927
8	6	Ford Tickford Racing	J.Richards/D.Canto	Ford Falcon AU	5000		154	03:18:56.1966	130 1:12.8482
9	24	Holden Racing Team	P.Romano/O.Kelly	Holden Commodore VX	5000		153	03:18:16.1394	37 1:12.9969
10	29	Big Kev Racer	P.Morris/M.Neal	Holden Commodore VX	5000		153	03:18:18.7189	29 1:12.5591
11	16	Pepsi-Cola	D.McDougal/A.Miedecke	Holden Commodore VX	5000		153	03:18:22.7283	138 1:12.9244
12	35	Valvoline Cummins Repco Team	L.Ferrier/P.Dumbrell	Holden Commodore VX	5000		153	03:18:59.3854	121 1:12.7751
13	021	NZ Business	J.Richards/A.Fogg	Holden Commodore VT	5000		152	03:18:07.8408	125 1:12.7344
14	50	Ultra Tune Racing	M.Donaher/L.Crambrook	Holden Commodore VT	5000		151	03:18:54.6336	63 1:12.6854
15	34	Valvoline Cummins Repco Team	G.Tander/J.Bargwanna	Holden Commodore VX	5000		147	03:18:59.0551	81 1:12.4562
16	10	Larkham Motorsport	M.Larkham/W.Gardner	Ford Falcon AU	5000		142	03:18:11.3118	95 1:11.9757
17	75	Toll Racing	A.Tratt/A.Jones	Ford Falcon AU	5000		138	03:18:46.1635	121 1:13.3469
18	54	Rod Nash Racing	R.Nash/T.Ricciardello	Holden Commodore VX	5000		133	03:18:43.0664	118 1:13.4297
19	3	Lansvale Smash Repairs	C.McConville/R.Bates	Holden Commodore VX	5000		130	03:18:52.2640	109 1:12.1425
20	14	Delta Europcar - IMS	J.Brock/S.Owen	Holden Commodore VX	5000		125	03:18:52.2344	113 1:13.3899
DNF	600	CAT Racing	J.Bowe/S.Wills	Ford Falcon AU	5000		155	03:16:26.9564	133 1:12.1636
DNF	8	Perkins Motorsport	A.Macrow/L.Youlden	Holden Commodore VX	5000		146	03:07:16.6314	49 1:12.4667
DNF	9	Caltex Havoline Race Team	D.Besnard/M.White	Ford Falcon AU	5000		135	02:56:16.6525	129 1:12.1744
DNF	18	Shell Helix Racing	G.Ritter/P.Stokell	Ford Falcon AU	5000		122	02:36:51.0809	43 1:12.4912
DNF	4	Pirtek Racing	M.Ambrose/G.Crick	Ford Falcon AU	5000		122	02:39:06.5778	103 1:12.0505
DNF	46	John Faulkner Racing	J.Faulkner/C.Baird	Holden Commodore VT	5000		106	02:18:02.6412	105 1:12.7517
DNF	88	Castrol Harris Racing	C.Harris/D.Brede	Ford Falcon AU	5000		101	02:13:20.2963	88 1:13.2493
DNF	21	OzEmail	B.Jones/J.Cleland	Ford Falcon AU	5000		94	02:05:14.0256	35 1:12.8691
DNF	45	RPM International Racing	P.Scifleet/A.McGill	Ford Falcon AU	5000		65	01:27:28.4393	30 1:14.3501
DNF	5	Ford Tickford Racing	G.Seton/S.Richards	Ford Falcon AU	5000		40	52:40.4208	9 1:12.4772
DNF	25	Terry Wyhoon Racing	T.Wyhoon/R.Salmon	Ford Falcon AU	5000		24	37:05.7959	13 1:14.1912
DNF	00	Gibson Motorsport	C.Lowndes/N.Crompton	Ford Falcon AU	5000		15	20:00.7132	15 1:13.4737
DNF	7	Rodney Forbes Racing	R.Forbes/D.Parsons	Ford Falcon AU			5	6:37.9364	2 1:16.4561
DNF	51	K-Mart Racing Team	N.Pretty/R.Kelly	Holden Commodore VX	5000		1	30:46.2174	1 *:*:*.****

Fastest Lap Av.Speed Is 157kph, Race Av.Speed Is 148kph

Current Race Lap Record Is 1:11.0033 Set On 11/07/1999 By Garth Tander In A Holden Commodore VS

R=under lap record by greatest margin, r=under lap record, *=fastest lap time

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