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PART X – Inquiries and Judicial Hearings

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

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

118. **Inquiries and Judicial Hearings:**

- (1) Inquiries by MotorSport NZ:** MotorSport NZ may, in accordance with Articles 118, 119, 120 and 121 of this Code, conduct an Inquiry process pursuant to Article 121 of this Code to inquire into or investigate any aspect(s) of motorsport, including regarding any Meeting or Event (or any aspect of any Meeting or Event), or any other matters which are properly raised or identified in accordance with this Part X of the Code.
- (2) Judicial Hearings by MotorSport NZ:** MotorSport NZ may in accordance with Articles 118-121 of this Code convene a Judicial Hearing in accordance with Article 122 of this Code in relation to any matter properly raised or identified in accordance with this Part X of the Code. Such Judicial Hearings will be before a Judicial Committee.
- (3) Specialist Drug or Doping Issue Hearings:** Notwithstanding all other provisions of this Part X, if a report is received from Drug Free Sport New Zealand (or any other authorised Anti-Doping Agency recognised by MotorSport NZ) alleging drug use or doping in relation to any event or involving any party at any motorsport event under the Authority of MotorSport NZ (a “Drug/Doping Report”) then:
 - (a)** the provisions of Article 118(3)(b) and 118(3)(c) of this Code, and not the other Articles in this Part X, shall apply in relation to:
 - (i)** any hearing before the Sports Tribunal of New Zealand (or other authorised Anti-Doping tribunal or other body, other than the Judicial Committee);
 - (ii)** the matters raised in any Drug/Doping Report produced by any such tribunal or body to the extent that it raises issues that are within the jurisdiction of any such tribunal or other body (other than the Judicial Committee); and
 - (iii)** any request, application or complaint by any other party relating to the matters to be heard before the Sports Tribunal of New Zealand (or other authorised Anti-Doping tribunal or other body) in accordance with Article 118(3)(a)(i) or raised in the Drug/Doping Report, but only to the extent that the matters raised fall within Article 118(3)(a)(i);
 - (b)** any hearing before the Sports Tribunal of New Zealand (or other authorised Anti-Doping tribunal or other body, other than the Judicial Committee) shall be arranged by that tribunal or other body, in accordance with its rules, processes and time-frames;
 - (c)** the Chief Executive Officer, MotorSport NZ staff (under the direction of the Chief Executive Officer) and the members of the Board may provide whatever assistance and take any steps the Sports Tribunal of New Zealand (or other authorised Anti-Doping tribunal or other body) reasonably requires, provided that the party providing such assistance:
 - (i)** acts in good faith on the basis that the appropriate process is being followed, and that the process is lawful, in accordance with this Code and whatever commitments MotorSport NZ has made to Drug Free Sport New Zealand (or any other authorised Anti-Doping Agency recognised by MotorSport NZ);
 - (ii)** is not obliged to incur any expense that is not funded by the tribunal or other body or MotorSport NZ (unless they are expressly required to do so under this Code) or to take any action that is in breach of or inconsistent with their obligations under the Constitution, this Code or the law;

- (d) but this Article 118(3) will not preclude MotorSport NZ considering, under this Part X, any other drug or alcohol related issues that do not fall within the jurisdiction of, or which are not dealt with in substance by, any other tribunal or body that would otherwise have jurisdiction in accordance with Article 118(3)(a).

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

- (1) Without affecting in any way any existing right as to protest or appeal under this Code, the President (in accordance with a majority decision of the Board), the Chief Executive Officer, any Member Club, or any Official, Entrant or Competitor may, in writing and delivered to MotorSport NZ at its head office premises (including its physical address, email address or postal address publicised by MotorSport NZ from time to time), within the time-frame specified in Article 120, apply for or request an Inquiry in relation to the conduct of any Meeting or Event, or any part of any Meeting or Event, or any other matter to which this Part X of this Code applies.
- (2) An application, request or complaint that does not strictly comply with all of the requirements of Article 119(1) may be treated as an application or request for an Inquiry under this Part X if it is determined by the Chief Executive Officer in their sole discretion, that there are special circumstances such that there should be an Inquiry. If such a determination is made then any such otherwise non-compliant application, request or complaint shall be deemed to be and treated as a compliant application or request for the purposes of Article 119(1).

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

- (a) not made to the proper address identified in Article 119(1), but it nevertheless came to the attention of MotorSport NZ within the required time-frame; and/or
- (b) not expressed as a request pursuant to Part X, or for an Inquiry, but otherwise could properly be considered under the processes contained in this Part X.

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

- (1) Any written application or request for an Inquiry shall be made by or in writing to MotorSport NZ within fourteen(14) days of the first Working Day after the conclusion of a Meeting or Event, or after the incident or issue arises or comes to the attention of MotorSport NZ, to which the application or request relates.
- (2) Time-frames for other steps in this Part X process are set out in the relevant parts of this Part X.
- (3) **Extending Part X time-frames in special circumstances:** Part X time-frame(s) may be extended (before or after a step is required to be taken) if the Chief Executive Officer in each case in their sole discretion, determines that there are special circumstances such that allowing more time is in the interests of MotorSport NZ and motorsport under the authority of MotorSport NZ. In such circumstances the time for taking any step under this Part X may be extended by the Chief Executive Officer to up to double the time otherwise specified under this Part X for each step.

Note: Grounds which could be considered special circumstances for these purposes include (without limitation):

- (a) In relation to an extension of the time for making an application or request:
- (i) a reasonable explanation as to why the application or request could not be or was not made sooner, including the availability of information or evidence that was not available within the specified time-frame, provided that the application or request was made promptly when it became available; and/or
- (ii) if new information, or an exceptional issue not otherwise covered by this Code, comes to the attention of the Chief Executive Officer which is material to whether there should be a Judicial Hearing.
- (b) In relation to any time frames under this Part X if it appears that the time otherwise allowed in this Part X will not be sufficient to properly carry out the steps in the Part X process, including if any party's ability to comply with any time frame is affected by any public holiday recognised in the Holidays Act 2003.
- (4) **Extending Part X time-frames in exceptional circumstances:** Any time-frame under this Part X may be extended as the Chief Executive Officer sees fit, provided that the Chief Executive Officer is satisfied in their sole discretion that:
- (a) the requirements for extending time pursuant to Article 120(3) above are satisfied but there are

exceptional circumstances such that a more substantial extension of time is in the interests of MotorSport NZ and motorsport under the authority of MotorSport NZ; and

(b) The adjusted time frame(s) allow for a reasonable time for each step in the process, relative to the time allowed for other steps, and provide for the Part X process (including any decision of a Judicial Hearing) to be completed in:

(i) no more than one(1) calendar year; or

(ii) no more than two(2) calendar years, if the extended time-frame is approved by the President of MotorSport NZ or their delegate.

(5) **Shortening Part X time-frames in exceptional circumstances:** Any time-frames under this Part X may be shortened as the Chief Executive Officer sees fit, provided that the Chief Executive Officer is satisfied in their sole discretion that:

(a) there are exceptional circumstances such that shortening time-frames is in the interests of MotorSport NZ and motorsport under the authority of MotorSport NZ; and

(b) The adjusted time frame(s) have been agreed by the party making the application or request and any other parties directly affected by the application or request: or

(c) The Part X process will or may materially impact on the result(s) of an event, Series or Championship, and:

(i) a shortened time frame would enable the Part X process to be completed within a reasonable time (having regard to whether the Part X process could be completed before an upcoming round, particularly any final or decisive round); and

(ii) the shortened time-frame(s) allow a reasonable time for each step in the process, relative to the time allowed for the other steps and the time available (having regard to Article 120(5)(b) above) and only to the extent reasonably required.

(6) **Notice of changed time-frames:** The Chief Executive Officer shall promptly give notice of any decision to extend or shorten times to the party making the request or application, and any other party that MotorSport NZ knows is aware of and could be affected by the request or application.

121. **Inquiries , and Inquiry Review Decisions as to whether to Convene a Judicial Hearing:**

(1) **Commencing an Inquiry:** Following receipt of an application or request in accordance with Article 119 of this Code, and subject to Article 121(3) of this Code, MotorSport NZ through its Chief Executive Officer shall in accordance with this Article 121 of this Code:

(a) arrange for an Inquiry, which shall produce a Written Inquiry Report that shall be provided to an appointed Inquiry Review Panel; and

(b) appoint an Inquiry Review Panel, which shall carry out an Inquiry Review and decide whether or not to convene a Judicial Hearing.

(2) **Judicial Hearing Criteria:** For the purposes of this Article 121 the following shall be the criteria that shall be considered by any Inquiry and any Inquiry Review when assessing whether to convene a Judicial Hearing (the "Judicial Hearing Criteria"):

(a) Has the applicant, request or complaint been made in accordance with Article 119, having regard to any decision by the Chief Executive Officer that there are Special Circumstances satisfying the requirements of Article 119(2)?

(b) Has the Entrant or Competitor availed themselves of all options to raise the issue or issues in accordance with the processes in this Code that could have been pursued at the Meeting or Event? Alternatively, if they have not, are there Special Circumstances such that the issue or issues should be considered further despite those options not being pursued?

(3) If the Chief Executive Officer considers that an application or request that has been referred to it is frivolous or vexatious, or clearly does not raise any issue that could properly be considered under this Part X or at any Judicial Hearing or that is otherwise wholly without merit, then the Chief Executive Officer shall not proceed with the inquiry and shall advise the inquirer and any other parties accordingly.

(4) **Release of the Inquiry Report:** The Chief Executive Officer shall provide copies of the Inquiry Report to each

member of an Inquiry Review Panel appointed by the Chief Executive Officer.

(5) Inquiry Review Panel:

- (a)** The Inquiry Review Panel shall consider the Inquiry Report in accordance with Article 119, provided that the application or request satisfies the requirements of Article 119 to decide (in accordance with this Article 121) whether to hold a Judicial Hearing in accordance with Article 122.
- (b)** The Inquiry Review Panel, must consider, but is not bound by, any Inquiry Report in accordance with Article 121, and its assessment(s) and recommendation(s).
- (c) The Decision Whether to Hold a Judicial Hearing:** The decision of the Inquiry Review Panel shall be recorded in a written decision to the Chief Executive Officer, following the Inquiry Review, which shall include a summary of the Decision with any issues raised as appropriate.

(6) Time-frames regarding Judicial Hearing: Within twenty eight (28) days of the completion of the Inquiry Review at which the Inquiry Review Panel made its decision to convene a Judicial Hearing the Chief Executive Officer shall:

- (a)** arrange and confirm the date, time and venue for a Judicial Hearing of the Judicial Committee;
- (b)** appoint the Judicial Committee members; and
- (c)** give Notice of the Judicial Hearing to be held by the Judicial Committee, giving not less than seven(7) days written notice of the hearing date(s) provided that the hearing may be held sooner if all parties consent.

(7) Notice of the Decision Whether to Hold a Judicial Hearing: The Chief Executive Officer shall give notice of the Inquiry Review Panel's Decision Whether to hold a Judicial Hearing (once finalised in writing and approved) as follows:

- (a)** If the Inquiry Review Panel has decided not to hold a Judicial Hearing the Chief Executive Officer shall advise the party that made the application or request, and all parties that the Chief Executive Officer considers would be concerned in or materially affected by the Decision or any Judicial Hearing that are named or clearly identified in the Decision Whether to Hold a Judicial Hearing, by giving each of those parties notice in writing that the Inquiry Review Panel has considered an application or request for a Judicial Hearing, briefly identifying the issues raised, and recording that the Inquiry Review Panel has decided not to convene a Judicial Hearing;
- (b)** If the Inquiry Review Panel has decided to hold a Judicial Hearing the Chief Executive Officer shall advise the party that made the application or request, and all parties that the Chief Executive Officer considers would be concerned in or materially affected by the Decision or any Judicial Hearing that are named or clearly identified in the Decision Whether to Hold a Judicial Hearing and who are subject to MotorSport NZ's disciplinary processes under this Code, by giving each of those parties and any other party who is not subject to MotorSport NZ's disciplinary processes under this Code but who would otherwise satisfy Article 121(6) notice in writing that the Inquiry Review Panel has considered an application or request for a Judicial Hearing, briefly identifying the issues raised, recording that the Inquiry Review Panel has decided to convene a Judicial Hearing, and indicating that further details regarding the Judicial Hearing will follow in due course.
- (c)** Notice for the purposes of Article 121(6) shall be sufficiently given if it is given to the current email or facsimile contact address held by MotorSport NZ for any party to whom notice is to be given, or to any email or facsimile address specified by any such party, or if MotorSport NZ does not hold any current email or facsimile contact address for any party, provided that MotorSport NZ takes reasonable steps to identify a current email or facsimile address and gives notice to that email or facsimile address.
- (d)** If the Inquiry Review Panel considers that there are special circumstances such that it is not in the interests of MotorSport NZ or motorsport under the authority of MotorSport NZ to give notice in accordance with Article 121(6) it may give directions as to which other parties shall be given notice and in what manner, provided that notice shall in all cases be given to the party that made the application or request, and to any party that would be entitled to challenge or appeal the Inquiry Review Panel's Decision Whether to Hold a Judicial Hearing under this Code.

122. Judicial Hearings:

(1) Convening a Judicial Hearing:

- (a)** If it is decided to convene a Judicial Hearing to inquire into the conduct of a Meeting or Event pursuant to

this Article 122, MotorSport NZ by and through its Chief Executive Officer shall arrange the Judicial Hearing before the Judicial Committee of MotorSport NZ established under and by virtue of Clause 18.4 of the constitution.

- (b) A Judicial Committee will comprise a Chairperson and not less than two(2) other persons appointed by the Chief Executive Officer at their sole discretion in accordance with this Article 122(1):
- (i) from any current Judicial Committee Hearing panel or list, comprising individuals selected or identified by MotorSport NZ or the Board as persons who may be appointed to a Judicial Committee;
 - (ii) having regard to:
 - (1) the nature of the issues to be considered by the Judicial Hearing;
 - (2) the availability of suitable panel members;
 - (3) the desirability of proceeding within the time-frames provided for in this Code, without variation, wherever reasonably possible; and
 - (4) any other matters the Chief Executive Officer considers to be relevant; and
 - (iii) provided that no person shall be appointed who is or was in any way personally or professionally interested in or concerned with any matter in respect of which the Judicial Hearing is to be held so that they have or may potentially have a conflict of interest.
- (c) A Judicial Committee appointed to hear an anti-doping matter will comprise a Chairperson and not less than two(2) other persons appointed by the Chief Executive Officer in accordance with Article 122(1)(b), except that:
- (i) at least one(1) of the persons appointed shall have particular expertise in relation to drug or alcohol issues, selected or identified by MotorSport NZ or the Board as persons who may be appointed to a Judicial Committee; and
 - (ii) a Judicial Committee appointed to consider an anti-doping matter shall satisfy the requirements of Appendix One Schedule D, Part One Article 2.2, of the Code.
- (d) Judicial Hearings of the Judicial Committee will commence on a date, and be heard on a date or dates, to be specified by the Chief Executive Officer, in consultation with the person(s) or body appointed (or to be appointed) to hold the Judicial Hearing and in light of the factors identified in Article 122(1)(b) and/or 122(1)(c) (as the case may be). The Chief Executive Officer will use reasonable endeavours to arrange the Judicial Hearing on a date or date(s) that is (are) not inconvenient for the party that raised the issue, other affected parties or witnesses, subject to complying with the requirements and time-frames in this Part X, and the availability of the person(s) or body to be appointed to hold the Judicial Hearing.
- (e) MotorSport NZ shall give all persons, firms and bodies corporate concerned or interested in the Judicial Hearing (including but not limited to the party that made any application or request):
- (i) notice that a Judicial Hearing has been convened before the Judicial Committee; and
 - (ii) notice of the appointed date(s) and venue.
- (f) The notice of Judicial Hearing must contain sufficient details of the conduct of the Meeting or Event into which it is intended to inquire, so as to fully and fairly inform each person, firm and body corporate concerned or interested in the Judicial Hearing, as to the purpose of the Judicial Hearing.

(2) **Judicial Hearing Grounds:** Subject to the balance of this Article 122:

- (a) The grounds that may be considered by the Judicial Committee at any Judicial Hearing (the "**Judicial Committee Grounds**") are as follows:
- (i) the results of a competition have been improperly or incorrectly made out; or
 - (ii) the conduct of a promotion or part thereof, or the conduct of any participant therein, or the eligibility of any competing vehicles involved a breach of the Code that is considered fundamental to the interests of motorsport (under the authority of MotorSport NZ) and the administration thereof by MotorSport NZ; or
 - (iii) any penalty imposed was clearly excessive or clearly inadequate, or that for special reasons such penalty was inappropriate; or
 - (iv) in respect of any competition, there has been either a gross miscarriage of justice or other breach of the Code that is considered fundamental to the interests of motorsport; or
 - (v) any Official, Promoter, Organiser or any other person or Organisation has committed any breach of this Code, its Appendices and Schedules, or International Sporting Code; or
 - (vi) any Official, Promoter, Organiser or any person or Organisation has been guilty of any act or

omission prejudicial to the interest of MotorSport NZ, or any competition or of motorsport generally, or that brings MotorSport NZ or motorsport under the authority of MotorSport NZ into disrepute;

- (vii) there has been a breach of any of the provisions of this Code relating to use of drugs or alcohol (other than a matter to which the process comprised in Article 118(3) applies), including but not limited to Article 38.

(3) The Judicial Hearing procedure/process:

- (a) Each Judicial Committee will, subject to the requirements in Part X and in particular Article 122 of this Code (including as to the time-frames for particular steps to be taken), determine its own procedures, processes and rules, which may include taking whatever steps it considers necessary and appropriate in the interests of properly and efficiently dealing with the matters it is to consider.
- (b) The appointed Judicial Committee may delay the allocated date for commencing a Judicial Hearing if it considers that special circumstances arise such that a delay is in the interest of properly and efficiently dealing with the matters it is appointed to consider.
- (c) The Judicial Committee will wherever reasonably possible deal with any Judicial Hearing on the day (or days) allocated in accordance with Article 122(1). But in Exceptional Circumstances if it considers it is necessary and appropriate in the interests of properly and efficiently considering the matters it is to consider it may continue a Judicial Hearing on a further day or days if more time is required or to enable particular evidence to be heard.
- (d) The Judicial Committee holding the Judicial Hearing shall reach decisions by consensus whenever it can, but otherwise by majority decision.
- (e) The Judicial Hearing may proceed and a decision be reached notwithstanding the failure of any such person to appear.
- (f) Save for any Hearing before the Sports Tribunal of New Zealand neither MotorSport NZ nor any party to or person attending the Judicial Hearing shall be entitled to be represented at by legal counsel at any Judicial Hearing and the parties must instead appear either on their own behalf or be represented by such person (not being legal counsel) as they may nominate for the purpose.
- (g) Any party to or person attending the Judicial Hearing may produce any witness and may seek to produce such other evidence, which the Judicial Committee holding the Judicial Hearing shall consider if it determines it is relevant or helpful.
- (h) If the matter into which the Judicial Hearing inquires is or becomes of a disciplinary nature, or a matter in respect of which the Judicial Committee considers a sanction or penalty under this Code may apply:
- (i) then the Judicial Hearing shall proceed as follows
- (1) any case made against an accused person, firm or body corporate must be made by a person on behalf of MotorSport NZ as directed by the Chief Executive Officer as they see fit (generally, but not limited to, either an MotorSport NZ employee or an Official), and they shall proceed first;
- (2) they shall be followed by the respondent; and
- (3) the respondent shall in any event have the last right of reply in submissions; and
- (ii) those parties may seek an opportunity to be heard, during the Judicial Hearing but after all evidence and submissions on other matters, as to what is or would be an appropriate sanction or penalty.
- (i) The Judicial Committee holding the Judicial Hearing and each party to or person attending the Judicial Hearing shall have the right of cross-examination of any other party to or person attending the Judicial Hearing, except that the committee may impose reasonable limits on the scope or extent of cross-examination as it considers necessary and appropriate in the interests of properly and efficiently considering the issues.

(4) The Decision at the Judicial Hearing: The Judicial Committee shall reach a decision at the Judicial Hearing in relation to:

- (a) those matters referred to a Judicial Hearing in the Notice of Hearing, including in particular any matters relating to any of the Judicial Committee Grounds contained in Article 122(2)(a) that have been referred for a Judicial Hearing.

- (b)** any other matters arising during the course of the Judicial Hearing which the Judicial Committee considers it is appropriate to consider arising within its jurisdiction under the Code; and
- (c)** any matters of a disciplinary nature to which Article 122(3)(h) applies;
- (d)** whether there has been a breach under this Code or its Appendices or Schedules, which falls within its jurisdiction, in which case it may:
 - (i)** impose a Penalty or further Penalty under the authority of Article 90, 91 or 92, or vary or substitute any Penalty, or take any step under the authority of any applicable provision of this Code, but in no case shall the committee have the right to order that a Competition or Event shall be re-run; and/or
 - (ii)** order that any party to the Judicial Hearing shall pay or contribute to the committee's costs, and/or administrative costs and/or MotorSport NZ costs associated with the Judicial Hearing, and/or the costs of any other party attending the Judicial Hearing.
- (e)** The decision(s) shall be recorded in writing, including a brief summary of its decision(s) and its reasons. The written record of the Decision shall be approved by the Chairperson of the Judicial Committee unless it specifies that a particular member, or members, or the full committee should approve the written Decision, in which case the written record should be approved as specified.
- (f)** Notice of the Judicial Committee Decision shall be given:
 - (i)** to the party that made the application or request; and
 - (ii)** to any person(s), firm(s) or bodies corporate directly affected by any Judicial Committee Decision as to whether they should face a penalty or sanction; and
 - (iii)** to all persons, firms and bodies corporate the Chief Executive Officer considers would be directly concerned in or affected by the decision.
 - (iv)** by MotorSport NZ publishing notice of the Decision on its website.
- (g)** Notice of the Judicial Committee Decision in accordance with Article 122(4)(f) shall be sufficiently given if it is given to the current email or facsimile contact address held by MotorSport NZ for any party to whom notice is to be given, or to any email or facsimile address specified by any such party, or if MotorSport NZ does not hold any current email or facsimile contact address for any party, provided that MotorSport NZ takes reasonable steps to identify a current email or facsimile address, or gives notice on its website in accordance with Article 122(4)(f).
- (h)** If the Judicial Committee considers that there are special circumstances such that it is not appropriate to give notice in accordance with Article 122(4)(f) then it may give directions as to which other parties shall be given notice and in what manner, provided that notice must be given to any party that has any right to challenge or appeal the Judicial Hearing decision under this Code.

(5) Time-frames regarding Judicial Hearing Decision:

- (a)** The Judicial Committee Decision (the approved written decision) may be delivered directly to the parties at the conclusion of the Judicial Hearing, otherwise it shall be provided to the Chief Executive Officer by the committee within five(5) working days of the Judicial Hearing. If the Judicial Committee Decision is delivered to the parties at the conclusion of the Judicial Hearing it shall be considered published on that day for the purposes of Article 122(5)(c).
- (b)** Notice of the Judicial Committee Decision shall be given within two(2) working days from when the finalised written and approved decision is given to the Chief Executive Officer.
- (c)** The time-frame for any appeal against the Decision of the Judicial Committee in accordance with Article 125 of Part XI of this Code, runs from the date of the Notice of the Judicial Decision being published in accordance with Article 122(5).
- (d)** The specified time-frames for any particular step in relation to a Judicial Hearing can be extended in special circumstances by the Chief Executive Officer at any time until the Judicial Committee has been appointed, but thereafter by the Chief Executive Officer only on request from, or with the agreement of the appointed Judicial Committee. Such an extension may allow up to twice the usual total time-frame specified in this Part X if and to the extent that the Chief Executive Officer is satisfied, in each case at his/her sole discretion, that there are special circumstances such that it is appropriate to extend the time-frame.
- (e)** MotorSport NZ shall give notice of any such decision to extend any time-frame, in accordance with the requirements of Article 122(4), as if Article 122(4) specifically applied to the decision to extend time.

