MOTORCYCLING AUSTRALIA POLICY

Title:	**Non-NIF Dispute and Complaint Resolution Policy**
Last Review Date:	4 May 2022
Next Review Date:	2025
Responsible Persons:	Motorcycling Australia Board
Authority:	This Policy is made under clause 15 of the MA Constitution. It is binding on all MA Members and volunteers, and all employees of MA and its State Controlling Bodies and is to be interpreted in accordance with the MA Constitution.

Introduction

1. MA utilises various by-laws, policies and guidelines in the administration of the Sport. These can be broadly characterised as dealing with the core activity of motorcycling (e.g. the GCRs) or with member conduct.
2. This policy deals with the administration of Disputes arising out of the core activity of motorcycling (such as under the GCRs), or alleging the breach of a Non-NIF Policy, and which are outside the ambit of the NIF.

Definitions and Interpretation

3. **Definitions**

Affiliate means an SCB and/or Fèdèration Internationale de Motocyclisme.

Alleged Breach means an allegation or information that a Respondent has acted in breach of a Non-NIF Policy.

Alternative Dispute Resolution is a collective term for processes, such as mediation, conciliation or case appraisal, to resolve disputes without the need for a more formal adjudication (such as by Tribunal) that will be applied to resolve an Alleged Breach in accordance with this Policy.

Applicant means the Member that lodges a Notice of Dispute under this Policy.

Arbitration means the hearing and binding determination of a Dispute conducted by a Tribunal.

Complaints Manager means the person appointed by MA to receive and administer Disputes under and in accordance with this Policy, or their delegate. The Complaints Manager must not be the same person as the Decision Maker for the relevant Dispute.

Constitution means the MA Constitution.

Decision Maker means the person appointed by MA to make decisions, at the direction of the Complaints Manager, determining a Dispute under this Policy, or their delegate. The Decision Maker must not be the same person as the Complaints Manager for the relevant Dispute.

Dispute means a formal notification to MA of an Alleged Breach.

GCRs means the General Competition Rules, an MA by-law.

MA means Motorcycling Australia Ltd.

MA Judiciary Panel means the panel of suitably qualified persons who are eligible for appointment by the MA Complaints Manager to:

- Chair the Tribunal convened to arbitrate a Dispute under this Policy; and/or
- Undertake an Alternative Dispute Resolution process under this Policy.

Mediation means the mediation of a Dispute under the Process in **clause 24**.

Member has the meaning given by the Constitution.

NIF means SIA's National Integrity Framework.

NIF Policy means

- NIF National Integrity Framework;
- NIF Child Safeguarding Policy, including SA Addendum;
- NIF Competition Manipulation and Sports Wagering Policy;
- NIF Complaints Disputes and Discipline Policy;
- NIF Improper Use of Drugs and Medicine Policy; and
- NIF Member Protection Policy.

Non-NIF Policy means any MA policy that is not an NIF Policy including, for the avoidance of doubt:

- MA's anti-doping policy;
- MA by-laws including the GCRs and
- Disciplinary and penalty provisions under the MA Constitution or any SCB constitution.

Notice of Dispute means the form required to commence a Dispute under this Policy.

NST means the National Sports Tribunal established under the *National Sports Tribunal Act 2019 (Cth)*.

NST Eligible Matter means a Complaint that alleges a breach of an NIF Policy.

Personal Grievance means any form of grievance between two or more people (including individuals and body corporates) that in the opinion of the Complaints Manager does not concern or allege, as the core concern of the matter, an Alleged Breach.

Process means the process chosen for the handling and resolving of a Dispute under this Policy from the point where it is received to its finalisation.

Protected Disclosure means, where MA is a "regulated entity"[1] under the whistleblower laws[2] in the *Corporations Act 2001 (Cth)*, a disclosure of information to MA that qualifies for protection under those laws[3].

Respondent means the Member that is the subject of a Dispute.

Sanction means a sanction imposed on a Respondent under **clause 53**.

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[1] Refer to section 1317AAB of the *Corporations Act 2001* (Cth).
[2] As above, Part 9.4AAA.
[3] As above, s 1317AA.

SIA means Sport Integrity Australia

SCB means a state controlling body affiliated to and recognised by MA as a Member and its delegate within that SCB's state or territory borders.

Sport means the sport of motorcycling.

Tribunal means the tribunal to which a Dispute may be referred under this Policy for arbitration in accordance with the procedure outlined in **SCHEDULE 5**.

Whistleblower Policy means the MA Whistleblower policy.

4. **Interpretation**

Headings are for convenience only and do not affect interpretation and unless the context indicates a contrary intention:

- "includes" in any form is not a word of limitation;
- a reference to "month" is to a calendar month; and
- a reference to "$" or "dollar" is to Australian currency.

Adoption and Cooperation

5. SCBs and Members must:

5.1. Adopt and implement this Policy (with the necessary incidental amendments) as their policy for managing Disputes; and

5.2. Cooperate fully and in good faith with the Process chosen to resolve the Alleged Breach. The Decision Maker, an investigator or a Tribunal may, in their absolute discretion, draw an inference adverse to any party based on that party's failure or refusal, upon being given reasonable notice, to answer questions or participate in the Process. That party must be made aware that such an inference is being made.

Standard of Proof

6. The standard of proof that applies to decisions made by the Decision Maker or a Tribunal under this Policy is "on the balance of probabilities".

7. For a Decision Maker or Tribunal to find something has been proven on the balance of probabilities, they must be satisfied that on the evidence put before them the alleged fact or matter is more probable than not. In reaching such conclusion, the Decision Maker or Tribunal must consider all relevant factors including the nature and seriousness of the allegations and the impact of the potential sanctions that may be imposed if the allegations are proven.

8. For the avoidance of doubt, the standard of proof requires greater certainty for a more serious allegation compared with a less serious allegation.

Confidentiality

9. To best promote the consistency and integrity of the dispute resolution processes established by this Policy, and to promote Member confidence in such processes:

9.1. All Tribunal decisions shall be published within the Sport unless the Tribunal directs otherwise;

9.2. All Alternative Dispute Resolution processes and resolutions shall be kept confidential other than for an Approved Purpose.

10. **Approved Purpose** means disclosures:

    10.1. to ensure a fair process;

    10.2. by NST or SIA to MA;

    10.3. to any person to facilitate the proper handling of the Notice of Dispute under this Policy;

    10.4. to external agencies (e.g. law enforcement agencies, government or regulatory authorities, a child protection agency);

    10.5. to Members and Affiliates to alert them to the identity of, and information directly concerning any Sanction imposed on, the Respondent; and

    10.6. as required by law or to any court or the NST.

Sending and Receipt of Documents

11. Any notice or other material required to be provided by one party to one or more other parties under this Policy (**document**) may be given by:

    11.1. sending it to an email or other electronic address nominated by the recipient party; or

    11.2. post or hand delivering it to that party's registered office.

12. A document is taken to have been received under this Policy if sent by email or other electronic transmission, on the date of the document's transmission, or if hand delivered, on the date of delivery or if sent by post, 3 business days after it was sent.

Lodging a Dispute with MA

13. A Dispute may only be made by:

    13.1. the Applicant, or by a parent or guardian of an Applicant who is under the age of 18 years;

    13.2. completing the Notice of Dispute;

    13.3. submitting it to MA at mail@ma.org.au; and

    13.4. if the Dispute is or relates to an appeal from a steward's determination under the GCRs, the payment of an application fee of $1,000 to MA. For the sake of clarity, no application fee is payable

14. A Dispute cannot be submitted anonymously.

15. A Notice of Dispute that is not fully and properly completed when submitted may not, at MA's discretion, be accepted or acted upon by MA.

Initial assessment of Dispute

16. Upon receipt of a Dispute, the Complaints Manager must initially determine whether:

    16.1. It is an NST-Eligible Matter, in which case the Dispute will be referred to SIA under the NIF Complaints Disputes and Disciplinary Policy, and the Applicant notified. The Applicant will be responsible for paying all or any application fee charged by SIA;

    16.2. It is due to a failure to follow or fulfil procedures laid out in any MA or SCB by-law or policy, whereupon it should be referred to the level of the Sport at which such failure occurred;

16.3. It is a Protected Disclosure, in which case it must be dealt with under MA's Whistleblower Policy and any Process under this Policy will be permanently discontinued, and the Applicant notified;

16.4. It requires mandatory reporting to occur under child protection or other laws, in which case the Complaints Manager must do so and the Process under this Policy suspended unless and until the matter is referred back for resolution under this Policy, and the Applicant notified; and/or

16.5. It relates to child abuse, child welfare or the safety of a child, in which case it must be dealt with under the NIF Child Safeguarding Policy and the Process under this Policy suspended unless and until the matter is referred back for resolution under this Policy, and the Applicant notified; or

16.6. It is a Personal Grievance whereupon, provided that in the opinion of the Complaints Manager it is directly related to the Sport:

16.6.1. The Personal Grievance will be referred back to the level of the Sport at which it arose (such as the management of the club or to the SCB), and the Applicant notified;

16.6.2. If the Personal Grievance involves a member of the administration of the level of the Sport at which it occurred, it will be elevated to the management of the next level of the Sport to seek a resolution with the parties' agreement or failing which by imposition of an outcome, and the Applicant notified; and

16.6.3. If a Personal Grievance is elevated to the MA level of the Sport, it will be referred to the Decision Maker for determination. The Decision Maker has absolute discretion to determine the Personal Grievance, and any decision is final and binding, and the Applicant notified. In exercising that discretion, the Decision Maker may (but has no obligation to) seek any further information, or make such further enquiries, as necessary.

16.7. It includes allegations or information that are not made in good faith or are mischievous, vexatious or knowingly untrue, and/or where the Respondent is not a Member and/or MA has no legal jurisdiction over them, and/or where the Personal Grievance is not directly related to the Sport, whereupon the Dispute will be rejected, and the Applicant notified; or

16.8. It has been properly submitted under this policy in which case the Complaints Manager must proceed to deal with the Dispute under this Policy.

17. The Complaints Manager has absolute discretion to determine the matters in clause 16, and any decision is final and binding. In exercising that discretion, the Complaints Manager may (but has no obligation to) seek any further information, or make such further enquiries, as necessary.

Provisional Action

18. Where an Applicant alleges conduct against a person that in the Complaint Manager's opinion:

18.1. may result in, or cause, criminal charges to be laid against the Respondent; and/or

18.2. suggests there is a further or ongoing risk of harm being suffered by one or more Members; and/or

18.3. suggests there is a further or ongoing risk of harm, disrepute or prejudice being suffered by MA; and/or

18.4. is not in the best interests of the parties involved, MA or the Sport;

the Complaints Manager may refer the Dispute to the Decision Maker to determine, in the Decision Maker's absolute discretion, whether any provisional action(s) will be undertaken by MA.

19. Provisional actions may include imposition of conditions, suspension, restriction of duties or temporary redeployment of the Respondent, or any other action(s) at the discretion of the Decision Maker.

PROCESS

Determination of Process

20. If, after consideration of the matters in **clause 16**, the Complaints Manager determines that the Dispute can properly be dealt with under this Policy, and MA having received the application fee (if applicable), the Complaints Manager must determine which of the following Processes will initially be used to attempt to resolve the Dispute: Conciliation, Minor Breach Procedure, Breach Offer, Investigation & Decision or Tribunal, as well as whether referral to an external agency under **clause 47** is appropriate.
21. The Complaints Manager has sole and absolute discretion to determine the chosen Process.
22. The Complaints Manager may at any stage refer the Dispute to the NST for determination in accordance its processes. Any fees associated with having the Dispute brought to or determined by the NST will be the responsibility of the Applicant and the Respondent in such proportions as the NST determines in its absolute discretion.
23. The Complaints Manager may, at their absolute discretion, seek further information from the Applicant, Respondent or any third party to assist them to decide the chosen Process. The Complaints Manager may utilise a 'show cause' notice to the Respondent for this purpose.
24. The Complaints Manager must notify the Applicant and Respondent of the Process as soon as practicable.

Conciliation

25. If the Complaints Manager considers the Dispute may appropriately be resolved through Conciliation, and both the Applicant and Respondent consent in writing to such process, the Complaints Manager will refer the Notice of Dispute to a conciliator appointed by MA from the MA judiciary panel, which will be undertaken in accordance with the rules prescribed by such conciliator.
26. The Complaints Manager may ask the Applicant and the Respondent to pay some or all of any conciliation fees.
27. If the Dispute is resolved through Conciliation under this clause, the Complaints Manager must give notice to the parties in accordance with **clause 64**.
28. For the avoidance of doubt, if either the Applicant or Respondent does not consent to Conciliation or Conciliation does not resolve the Dispute, the Complaints Manager must choose another Process to resolve the Notice of Dispute under this Policy.

Minor Breach Procedure

29. The Minor Breach Procedure may only be chosen where the:

    29.1. Dispute alleges a Minor Breach of a Non-NIF Policy; or

29.2. the Complaints Manager considers the breach the subject of the Dispute to be a Minor Breach of a Non-NIF Policy.

A **Minor Breach** means a breach of a Non-NIF Policy that, if proven, would only result in a warning or reprimand (whether informal or formal) being imposed on the Respondent as the applicable Sanction.

30. The Complaints Manager must notify the Respondent of the alleged breach, in writing, using the letter set out in **SCHEDULE 2**. The letter must contain the following information:

30.1. details of the breach alleged, including the alleged conduct and the section(s) of the Non-NIF Policy allegedly breached; and

30.2. that, without the breach being proven, the Respondent is warned that the allegations would constitute a breach of the Eligible Policy, if proven.

31. MA must then give notice to the parties in accordance with **clause 64**.

Breach Offer

32. If the Complaints Manager has determined Breach Offer is the most appropriate Process, the Complaints Manager must refer the Dispute to the Decision Maker to determine:

32.1. the applicable Sanction that may in the Decision Maker's opinion be likely to apply if the Dispute (or an application of a similar nature) was fully proven; and

32.2. a Sanction that equates to an approximate 25% reduction in the above Sanction.

33. The Complaints Manager must notify the Respondent of the Alleged Breach, in writing, using the letter set out in **SCHEDULE 3**. The letter must contain:

33.1. details of the Alleged Breach alleged, including the alleged conduct and the section(s) of the Non-NIF Policy allegedly breached;

33.2. the Sanction that may in the Decision Maker's opinion be likely to be imposed if the Dispute was fully proven;

33.3. the reduced Sanction available to the Respondent if they accept the Alleged Breach and Sanction without a hearing;

33.4. that the Respondent may accept the reduced Sanction, or dispute the Alleged Breach and/or Sanction, in which case the Dispute will be referred for arbitration to the Tribunal convened under this Policy; and

33.5. that the Respondent has 14 days, from the date of the letter, to advise MA of their choice under **clause 33.4**, by submitting the 'Acknowledgement' section of the letter to the Complaints Manager.

34. If the Respondent accepts the breach, MA must give notice to the parties in accordance with **clause 64**. If the Respondent disputes the Alleged Breach, the Complaints Manager must refer the Dispute for arbitration to the Tribunal convened under this Policy.

Investigation & Decision

35. If the Complaints Manager has determined that Investigation and Decision is the most appropriate Process, the Complaints Manager may choose to conduct, or instruct MA's external legal counsel to conduct or co-ordinate, an:

35.1. **Internal Investigation**, in which case an appointed representative within the Sport[4] will be chosen by the Complaints Manager to investigate under clause 36; or an

35.2. **External Investigation**, in which case the Complaints Manager must appoint a party, external to the Sport, to investigate, using the Terms of Reference outlined in **SCHEDULE 4**.

36. If appointed, an investigator (whether internal or external) will, in accordance with the Investigation Procedure in **SCHEDULE 4**, investigate the Notice of Dispute and make findings as to whether the allegations are proven to the Standard of Proof.

37. Upon receipt of the investigator's findings, the Complaints Manager must refer the Dispute and investigator's findings to the Decision Maker.

38. The Decision Maker must decide based on the investigator's findings, the applicable Sanctions to be imposed.

39. When undertaking their functions, the Decision Maker is, for the purposes of the NST legislation, making a decision of a sporting tribunal administered by MA.

40. The Applicant and Respondent will subsequently be notified of the outcome of the Dispute in accordance with **clause 64**.

41. Where an Applicant or Respondent is dissatisfied with the decision of the Decision Maker under **clause 38**, the dissatisfied party must, within 7 days of being notified of the decision under **clause 40:**

41.1. Give notice thereof, together with the grounds for such dissatisfaction, in writing to the Complaints Manager; and

41.2. Pay a fee of $500 to MA.

42. Upon receipt of a notice under **clause 41,** the Complaints Manager must refer the Dispute, including the investigator's findings and the Decision Maker's decision, to the Tribunal for arbitration.

Tribunal

43. If the Complaints Manager chooses the Tribunal Process, or a Respondent chooses to reject a Breach Offer, the Complaints Manager must refer the Dispute to the Tribunal for arbitration in accordance with the procedure outlined in **SCHEDULE 5**.

44. The Complaints Manager may require the Applicant and/or the Respondent to pay some or all of any fees associated with bringing the dispute before the Tribunal.

45. The Tribunal will arbitrate the Dispute and may, if applicable, impose a Sanction in accordance with **clause 53**.

46. The Applicant and Respondent will subsequently be notified of the outcome of the Dispute in accordance with **clause 64**.

External Referral

47. The Complaints Manager may, at any time before or while dealing with an Dispute, refer the Dispute to an external agency (such as the Police, a child welfare department, State/Territory fair trading authority, the Australian Securities & Investments Commission).

[4] For the avoidance of doubt, the Complaints Manager may themselves undertake an Internal Investigation.

48. If an external referral is made, the Complaints Manager must suspend the chosen Process pending external resolution and notify the Applicant and Respondent in writing of any such decision.

49. If the Process is suspended due to an external referral, the Complaints Manager must refer the Dispute to the Decision Maker to determine whether, in the meantime, any provisional action should be taken against the Respondent under **clause 18**.

50. When deciding whether to impose provisional action under the preceding clause, the Decision Maker:

    50.1. if there are circumstances as described in **clause 18**, there is an automatic presumption that provisional action should be taken unless exceptional circumstances exist; and

    50.2. in any other circumstances, there is an automatic presumption that provisional action should not be taken unless exceptional circumstances exist.

51. Exceptional circumstances will be determined in the sole and absolute discretion of the Decision Maker.

52. There is no appeal against any decision made under this Process.

Sanctions

53. The Decision Maker or Tribunal (as the case may be) has absolute discretion to determine the sanction imposed on a Member found to have committed a breach of a Non-NIF Policy.

54. Without limiting the discretion in the preceding clause, the Sanctions that may be imposed on a Member include:

    54.1. a reprimand or warning;

    54.2. exclusion or disqualification from an event or events;

    54.3. forfeiture of series or championship points;

    54.4. suspension from activities or events held by or under the auspices of MA, on such terms and for such period as the person imposing the sanction thinks fit;

    54.5. the imposition of conditions and/or restrictions on the Respondent's Membership or accreditation;

    54.6. a monetary penalty;

    54.7. expulsion from MA and consequent termination of the Member's membership;

    54.8. any other such sanction as the person imposing the sanction considers appropriate; and/or

    54.9. a penalty prescribed under the MA Constitution or a SCB constitution.

55. Without limiting the discretion afforded in **clause 53**, in deciding as to the applicable Sanction (if any) under the Policy, the person imposing the sanction may, but is not required to, consider, or if considered apply any weighting to, the following factors:

    55.1. the nature and seriousness of the behaviour or incidents the subject of the Dispute;

    55.2. if the Member knew or should have known that the behaviour was a breach of the Non-NIF Policy;

    55.3. level of contrition of the Member;

55.4. the effect of the proposed Sanction on the Member including any personal, professional or financial consequences;

55.5. if there have been relevant prior warnings or disciplinary action against the Member; and/or

55.6. if there are any mitigating circumstances such that the Member should not have a Sanction imposed, or not such a serious Sanction imposed.

56. A Sanction handed down under this Policy shall commence from the date of the decision, unless otherwise expressly directed by the person imposing the sanction, or otherwise provided for in this Policy.

57. Where the person imposing the sanction finds that more than one breach of a Non-NIF Policy has been proven, they will hand down a single Sanction in respect of the totality of all breaches that have been found proven.

58. The Sanction imposed will be determined by the person imposing the sanction in their sole discretion having regard to the seriousness of the overall conduct in question, rather than by a mathematical addition of Sanctions that would otherwise be applicable to each individual breach.

Right of Review

59. There is no right of review from any decision made by a person imposing a Sanction under this Policy except under the following **Grounds of Review***:*

59.1. one or more of the Complaints Manager, Decision Maker (if applicable) or Tribunal (if applicable) demonstrated actual bias in arriving at the relevant decision; and/or

59.2. the decision was contrary to law; and/or

59.3. no reasonable decision maker in the position of the person imposing a sanction, based on the material before them, could reasonably make such a decision.

60. A person or entity with a material interest in the Dispute may, within 7 days of the date of receipt of the decision made under this Policy:

60.1. lodge an 'Application for an Appeal' with SIA, which must state in full their Grounds of Review; and

60.2. pay SIA's application fee for hearing an appeal in the NST's Appeals Division; and

60.3. serve on MA a copy of the 'Application for an Appeal',

61. If the Appellant fails to lodge an Application for an Appeal with SIA in compliance with clause 60, including complying with each of the requirements in that clause within the required time period, the Appellant's right of review is extinguished, and the NST has no jurisdiction to hear the matter.

62. The NST's arbitration of the review in its Appeals Division:

62.1. must determine, to the Standard of Proof, whether any Ground of Review (as applicable) is available and proven, and must not rehear the matter or the merits or facts of the Notice of Dispute;

62.2. may result in the NST removing or changing a Sanction imposed on a Respondent, or alternatively imposing a Sanction on a Respondent in accordance with **clause 53**; and

62.3. will otherwise be undertaken in accordance with the NST legislation.

63. After a decision is reached by the NST and conveyed to MA, MA will notify the Applicant and Respondent of the outcome of the review in accordance with **clause 64**.

Outcome and finalisation

Notification of outcome

64. Unless otherwise provided for under a Process, the Complaints Manager must notify the Applicant and Respondent of the outcome of an Dispute (including any review), in writing, once a Process has concluded.

65. MA may, as required, disclose the matters referred to in **clause 10**.

66. Once the applicable Process (including any review) under this Policy has concluded, the decision is final and binding on all parties involved and there is no further right of appeal to any external body or tribunal.

Recording Notices of Disputes

67. MA shall keep records of all Disputes in keeping with the template register provided in ANNEXURE B, for a minimum of 3 years from resolution of the Notice of Dispute under this Policy.

68. Records must be maintained in a secure and confidential place, which may be electronically.

NOTICE OF DISPUTE
MA Dispute and Complaint Resolution Policy 2022

SCHEDULE 1

Applicant to Complete and send to legal@ma.org.au and pay application fee of $1,000 to MA (Call MA Accounts 03 9684 0513 for payment details)		
Applicant's Name		
Address		
Email Address		
Phone Number		
Age Group	☐ Under 18	☐ 18 or over
Applicant's role/position within motorcycling	☐ MA / SCB ☐ Club Office Holder ☐ Parent ☐ Rider / Entrant ☐ Coach	☐ Employee (paid) ☐ Support Personnel ☐ Official ☐ Other (specify):
Respondent's Name		
Address		
Email		
Phone Number		
Age Group	☐ Under 18	☐ 18 or over
Respondent's role/position within motorcycling	☐ MA / SCB ☐ Club Office Holder ☐ Parent ☐ Rider / Entrant ☐ Coach	☐ Employee (paid) ☐ Support Personnel ☐ Official ☐ Other (specify):
Where and when alleged breach(es) took place		

NOTICE OF DISPUTE
MA Dispute and Complaint Resolution Policy 2022

Description of alleged breaches *Please provide as much information as possible (attach supporting documents)*		
Level of the sport at which alleged breach occurred	☐ MA level	e.g. at a national event;
	☐ SCB level	e.g. at a state event; or
	☐ Club level	e.g. at a club event.
MA policy or rules that Respondent has allegedly breached Sections allegedly breached		
Does Applicant consent to Mediation?	☐ Yes ☐ No	
Signed by Applicant	Signature: Date:	
Where Applicant is under 18yo, name and relationship of person who signed on Applicant's behalf	Name: Relationship (e.g. parent/guardian):	
Internal Use Only		
Complaint Manager		Date Notice of Dispute Received: / /
How was the Notice of Dispute received?		

Breach Offer Letter

SCHEDULE 2

[insert name]
[address line 1]
[address line 2]

By email: [insert email address]

MA Minor Breach Procedure

MA has received a Notice of Dispute under its Disputes and Complaints Resolution Policy (**Policy**) alleging that by the conduct described below you have breached an MA rule, by-law or policy. A copy of the Policy is available at Policies - Motorcycling Australia (ma.org.au).

As the MA Complaints Manager, I have referred the Dispute for resolution under the Minor Breach Procedure in the Policy.

Allegations

1. The Notice of Dispute was lodged by [insert name] and received by MA on [insert date].
2. It is alleged that you:
   (a) [insert alleged conduct]; and
   (b) [++++++].
3. As a result of the above allegations, it is alleged that you have breached the following rule, bi-law or policy of MA:
   (a) [insert specific sections of GCRs or policy allegedly breached]; and
   (b) [++++++].

Warning

Without determining whether the allegations are correct or proven, you are formally warned that the allegations, if proven, would constitute the breach outlined at paragraph 3.

MA reserves its rights in relation to any separate or future allegations against you that may subsequently come to light.

If you have any questions in relation to this letter, you can contact me as set out below.

Yours faithfully

Tony Hynes
Manager Legal and Insurance
Motorcycling Australia Ltd / MA Insurance Ltd
e: legal@ma.org.au
t: +61 419 014 995
www.ma.org.au

Ride. Race. Enjoy.

Breach Offer Letter

SCHEDULE 3

[insert name]
[address line 1]
[address line 2]

By email: [insert email address]

MA Breach Offer Procedure

MA has received a Notice of Dispute under its Dispute and Complaint Resolution Policy (**Policy**) alleging that by the conduct described below you have breached an MA rule, by-law or policy. A copy of the Policy is available at Policies - Motorcycling Australia (ma.org.au).

As the MA Complaints Manager, I have referred the Dispute for resolution under the Breach Offer Procedure in the Policy.

Allegations

1. The Notice of Dispute was lodged by [insert name] and received by MA on [insert date].
2. It is alleged that you:
   (a) [insert alleged conduct]; and
   (b) [++++++].
3. As a result of the above allegations, it is alleged that you have breached the following rule, by-law or policy of MA:
   (a) [insert specific sections of GCRs or policy allegedly breached]; and
   (b) [++++++].

Sanction

4. If a breach of the type outlined above was proven, MA would ordinarily impose the following sanction:
   (a) [insert applicable sanction]; and
   (b) [++++++].
5. But if you accept the alleged breach occurred without sending this matter to a hearing, MA will offer you a reduced sanction as follows:
   (a) [insert applicable sanction]; and
   (b) [++++++].

Decision

You are entitled to decide either to accept that your alleged breach occurred, and the reduced sanction that will be imposed by MA as set out above, or alternatively dispute the alleged breach and/or reduced sanction.

This is not a negotiation.

If you dispute the alleged breach and/or reduced sanction, the Notice of Dispute will be referred to the Tribunal for determination under the Policy.

Notification

Breach Offer Letter

Please complete the below Acknowledgement and return it to me (at the email address below) to advise of your decision within 7 days of the date of this letter, failing which you will be deemed to have accepted the breach occurred. The reduced sanction will then automatically commence on the earlier of the date you notify the Complaints Manager of your acceptance, or the end of the date 14 days from the date of this letter.

There is no appeal once this has occurred.

If you have any questions in relation to this letter, you can contact me as set out below.

Yours faithfully

Tony Hynes
Manager Legal and Insurance
Motorcycling Australia Ltd / MA Insurance Ltd
e: legal@ma.org.au
t: +61 419 014 995
www.ma.org.au

Ride. Race. Enjoy.

Office 38, 1 International Drive WEST MEADOWS Vic 3043
PO Box 2162 GLADSTONE PARK Vic 3043

We acknowledge the traditional Aboriginal owners of country throughout Australia, their ongoing connection to this land and we pay our respects to their culture and their Elders past, present and future.

ACKNOWLEDGEMENT

I,……..……,
confirm to Motorcycling Australia, that in response to this Breach Offer I (tick one):

☐ Accept that the breach occurred and accept the reduced sanction offered.

OR

☐ Dispute that the breach occurred and/or dispute the reduced sanction offered and wish the matter to be heard by the MA Judicial Tribunal.

Signed: ……..

Dated: ……..

Investigation Procedure

SCHEDULE 4

Interpretation

1. In this Schedule:

   Investigator means the person (whether internal or external) appointed by the Complaints Manager to conduct the Investigation under **clause 36** of the Policy.

   Investigation means the investigation undertaken by the Investigator in accordance with this Schedule.

2. Defined terms not otherwise defined in this Schedule have the meaning given to them in the Policy.

Terms of Reference

3. The Complaints Manager will provide a written brief to the Investigator to ensure that the terms of engagement and scope of the Investigator's role and responsibilities are clear.

4. The written brief may be in a form similar or identical to that contained in this Schedule but must provide for the matters referred to in paragraphs 6 to 15 below.

5. For the avoidance of doubt, if the Complaints Manager is the Investigator for an Internal Investigation, no written brief is required under this Schedule.

Investigation

6. The Applicant should be interviewed by the Investigator (either by telephone, video conference or in person), and the allegation(s) and any key information arising from the interview(s) documented in writing by the Investigator. The Applicant is entitled to have a support person present during any interview that takes place, subject to the support person being someone who has never been admitted to practise as a lawyer or barrister. If the Applicant refuses to be interviewed, the Investigator must afford the Applicant the opportunity to provide submissions and supporting evidence to the Investigator.

7. The key details of the Notice of Dispute should be conveyed to the Respondent(s). The Respondent(s) must be given sufficient information to enable them to properly respond.

8. The Respondent(s) should be interviewed by the Investigator (either by telephone, video conference or in person) and given the opportunity by the Investigator to:

   (a) respond to the allegations; and

   (b) provide submissions on Sanction in the event the Decision Maker determines the allegations are proven.

9. If the Respondent refuses to be interviewed, the Investigator must afford the Respondent the opportunity to provide submissions and supporting evidence to the Investigator.

10. The Respondent(s) response should be documented in writing by the Investigator. The Respondent is entitled to have a support person present during any interview, subject to the support person being someone who has never been admitted to practise as a lawyer or barrister.

11. If, in the process of the Investigation, there continues to be a dispute regarding the facts, then statements from witnesses and other relevant evidence should be obtained by the Investigator to assist in reaching conclusions and preparation of a report.

12. The Investigator must make a finding, on the Standard of Proof, as to whether the Notice of Dispute, or each of the allegations in the Notice of Dispute (as appropriate) is:

    (a) substantiated (there is sufficient evidence to support the Notice of Dispute on the Standard of Proof);

    (b) inconclusive (there is insufficient evidence either way);

    (c) unsubstantiated (there is sufficient evidence to show that the Notice of Dispute is unfounded, or not enough evidence to substantiate the Notice of Dispute, on the Standard of Proof); or

    (d) mischievous, vexatious or knowingly untrue.

13. The Investigator must prepare a draft report documenting the allegations, the investigation process, evidence and finding(s) (**Draft Report**). The Investigator must:

    (a) provide the Respondent with a copy of the Draft Report; and

    (b) afford the Respondent the opportunity to provide further submissions in response to, or arising from, the Draft Report,

    prior to completing paragraph 15.

14. The Investigator may amend the Draft Report after considering any further submissions by the Respondent under the preceding paragraph.

15. A final report documenting the allegations, the investigation process, evidence and finding(s), should then be given to the Complaints Manager, who will refer the Notice of Dispute and the information outlined in this paragraph to the Decision Maker under **clause 37** of the Policy.

16. No decision, act or omission of the Investigator shall be invalid merely because of a failure to comply with the procedure in this schedule or any other irregularity in procedure in this schedule unless a person suffers substantial prejudice because of that failure to comply or other irregularity in procedure.

SCHEDULE 5

Interpretation

1. In this Schedule:

   Chair means the chair of the Tribunal convened pursuant to the Policy to which this Schedule attaches.

   Legal Practitioner includes both a person holding a current practising certificate as a lawyer or barrister in any Australian jurisdiction, or a person who has held such a certificate at any time within the three years immediately prior to their date of appointment to the Tribunal.

   Sports Administrator means a person who currently, or within the previous five years, is or has been, engaged in the field of sports administration.

   Tribunal Member means an individual person sitting on the Tribunal.

2. Defined terms not otherwise defined in this Schedule have the meaning given to them in the Policy.

3. All clause references refer to this Schedule unless otherwise provided.

Convening Tribunal

4. A Tribunal established under **clause 43** of the Policy will convene as soon as reasonably practicable after and, where possible, within two weeks of referral by the Complaints Manager.

Composition of Tribunal

5. A Tribunal shall:

   (a) comprise at least one and up to three Tribunal Members selected by the Complaints Manager;

   (b) if comprised of more than one Tribunal Member, include at least one Legal Practitioner and one Sports Administrator;

   (c) be chaired by the Chair, who shall be appointed by the Complaints Manager and shall be:

      (i) a Legal Practitioner; and

      (ii) a person of experience and skills suitable to the function of chairing a tribunal.

6. The Complaints Manager shall use reasonable endeavours to ensure that the Tribunal Members selected for any particular Tribunal:

   (a) do not have an actual or perceived conflict of interest in relation to the Notice of Dispute that might reasonably call into question the impartiality of the Tribunal; and

   (b) do not have any close personal connection to the parties before, or the matters being considered by, the Tribunal.

7. Should a Tribunal Member become unable to sit on a Tribunal following the convening of the Tribunal for whatever reason, the Complaints Manager shall appoint a replacement Tribunal Member having regard to the requirements of **clause 6**.

8. Should a Respondent challenge the impartiality of any one or more Tribunal Member, the challenge will be determined by the Chair sitting alone, unless that challenge relates to the Chair in which case it will be determined by:

   (a) the Complaints Manager; or

   (b) if the Complaints Manager is unavailable or unable to act, the Decision Maker.

9. There is no right of appeal from a decision made under **clause 8**.

10. No Tribunal decision shall be invalidated by any irregularity in the appointment of a Tribunal Member.

Responsibilities of Chair

11. Without limiting any other duties of the Chair set out under this Schedule, the person appointed as Chair of the Tribunal shall:

   (a) chair hearings of the Tribunal;

   (b) ensure accurate records are kept of all of the Tribunal's proceedings and decisions, including at a minimum:

      (i) particulars of the hearing, including date, time and location;

      (ii) the names of each Tribunal Member, Applicant, Respondent, witnesses called, and any other parties permitted to attend by the Tribunal;

      (iii) the decision of the Tribunal, including any Sanction imposed, whether given to the parties orally, in writing or a combination of both, and the date(s) of communication; and

   (c) communicate to all parties of a Tribunal the results of such Tribunal and provide a copy of the record of result to the Complaints Manager within seven days of the hearing.

Attendance at Tribunal

12. The following persons must attend the Tribunal hearing conducted under this Schedule:

   (a) the Respondent; and

   (b) the Applicant.

13. The following persons must attend a Tribunal hearing if required by the Tribunal or the Applicant, or the Respondent:

   (a) witnesses called to give evidence by a Respondent;

   (b) witnesses called to give evidence by the Applicant;

   (c) any person that the Chair in their absolute discretion believes will assist the Tribunal and invites to attend the Tribunal for that purpose; and

(d) where the Respondent, the Applicant or a witness is under the age of 18 years, an adult adviser, which will in the absence of unavailability or other extraordinary circumstance be expected to be such person's parent or guardian.

14. Legal Practitioners are not permitted to appear before, or represent a party at, the Tribunal unless they are an Applicant or Respondent. This clause does not prohibit a party seeking legal advice in relation to an Notice of Dispute or engaging a Legal Practitioner to prepare materials to be used by that party at the Tribunal.

15. Each party to the Tribunal shall bear their own costs.

Non-attendance

16. If any party (or representative of a party which is an organisation) fails to attend the Tribunal hearing without reasonable cause:

(a) the hearing may proceed; and

(b) a determination may be made by the Tribunal in the absence of the Respondent, provided the Tribunal is satisfied that this Schedule has been complied with.

17. A Respondent or Applicant may apply to the Chair to have a Tribunal hearing:

(a) adjourned; or

(b) convened in another way (e.g. teleconference),

if there are compelling circumstances that warrant such steps being taken to avoid costs, hardship or significant inconvenience to one or more parties. The Tribunal has sole discretion on whether or not to grant the application.

Procedure of Tribunal

18. The rules of evidence do not apply to any hearing conducted under this Schedule. The Tribunal shall conduct the hearing in such manner as it sees fit and may in its absolute discretion:

(a) consider any evidence, and in any form that it deems relevant;

(b) question any person giving evidence;

(c) limit the number of witnesses presented to those who provide any new evidence; and

(d) act in an inquisitorial manner in order to establish the truth of the issue/case before it.

19. Without limiting the Tribunal's power to regulate its own procedure as it sees fit, the Tribunal shall ordinarily proceed in accordance with the following steps:

(a) If a body corporate is a party to a Tribunal hearing, such entity shall appoint one person to act as its spokesperson at the Tribunal.

(b) At the commencement of a hearing, the Chair will identify the Tribunal Members and determine whether the Respondent is present to answer the allegation(s) in the Notice of Dispute.

(c) The Respondent and the Applicant will be notified of their right to remain in the hearing until all evidence is presented but not to be present while the Tribunal considers its findings and determines an appropriate Sanction (if any).

(d) The Chair shall advise all those persons present of the method of recording the hearing (if any).

(e) The allegation(s) as contained in the Notice of Dispute shall be read out in the presence of all persons eligible to be present.

(f) The Respondent shall be asked whether or not they intend to contest the allegation(s).

(g) If the Respondent does not contest the allegation(s), the Chair will provide the Applicant and the Respondent with an opportunity to make submissions as to the appropriate Sanction (if any) to be imposed. In such circumstances, the Applicant and/or the Respondent may, if they wish, call witnesses to give evidence regarding the seriousness or otherwise of the breach, and any other mitigating or aggravating factors.

(h) If the Respondent contests the allegation(s), then the Chair will ask all witnesses except the Applicant and the Respondent (and their advisers, if appointed in accordance with this Schedule) to leave the room and to wait to be called to give their evidence.

(i) The Applicant shall give evidence and the witnesses (if any) called by the Applicant shall be called upon to give their evidence in turn, subject to the approval of the number of witnesses to be called by the Tribunal in its discretion. The Respondent (or, if they are a minor his/her adviser) may ask questions of the Applicant or any witness called.

(j) Each witness shall be entitled to leave the Tribunal hearing after giving evidence unless otherwise directed by the Tribunal. Witnesses shall be entitled to remain in the hearing room after giving evidence with the permission of the Tribunal.

(k) The Respondent shall then present their defence. Witnesses may be called subject to the approval of the number of witnesses to be called by the Tribunal in its discretion. The Applicant (or their adviser if the Applicant is a minor) may ask questions of the Respondent or any witness called.

(l) Where a person under the age of 18 exercises his/her right to have an adult observer or adviser present in accordance with this Schedule, a reasonable opportunity for consultation between the minor and the adviser shall be provided by the Tribunal.

(m) Where the Respondent makes video evidence available to the Tribunal, it may, at the discretion of the Tribunal, be presented to the Tribunal and may be viewed by the Tribunal. The onus of providing suitable viewing equipment shall lie with the person requesting that the evidence be presented.

(n) The Tribunal may, so as to limit inconvenience to witnesses, allow evidence to be given by telephone or videoconference.

20. At the conclusion of all of the evidence and submissions the Chair shall ask the Respondent, the Applicant and all other persons present to leave the hearing room while the Tribunal considers its findings.

21. If the Tribunal is satisfied that a breach of an Eligible Policy has been proven applying the Standard of Proof, it shall find the breach proven. Otherwise the alleged breach and therefore Notice of Dispute shall be dismissed.

22. If the Tribunal is not satisfied that the particular alleged breach has been proven but is satisfied that a lesser or some other breach of a Non-NIF Policy has been proven, then the Tribunal may find such lesser breach proved.

23. Where it appears to the Tribunal that the Applicant has made an error in making the wrong alleged breach of a Non-NIF Policy, or omitted alleged breaches that should have been made, the Tribunal may amend the allegation(s), subject always to the requirement that the Respondent must be informed of the new allegations and given an opportunity to respond to such allegations.

24. The decision of the Tribunal shall be given by the Chair in the presence of both the Respondent and Applicant, unless one or both choose not to remain. If:

    (a) one of the Respondent or Applicant are not present, the Chair may give the decision with reasons orally, and must communicate the decision with reasons to the non-attending party in writing as soon as practicable; or

    (b) neither the Respondent nor Applicant are present, the Chair must communicate the decision with reasons to each of the Respondent and Applicant in writing as soon as practicable.

25. The Tribunal may reserve its decision but if it does so, it must provide its decision within 14 days of the hearing.

26. The Tribunal must give written reasons for any decision made by it under this Schedule.

27. Where the Tribunal finds that one or more alleged breaches of a Non-NIF Policy have been proven, it shall inform the parties of its decision and provide the Applicant and the Respondent with an opportunity to make submissions as to any aggravating or mitigating factors, before the Tribunal decides on Sanction. The Tribunal may, in its absolute discretion, decide that it is appropriate to:

    (a) receive oral submissions as to Sanction immediately after delivering its decision on liability; or

    (b) adjourn the hearing to allow the parties to make Sanction submissions on some later date, in which case, the Tribunal shall direct whether submissions on penalty should be made orally or in writing.

28. After considering the parties' submissions as to Sanction, the Tribunal shall determine the Sanction to be imposed (if any) in accordance with **clause 52** of the Policy, and shall advise the Respondent of the Sanction. The Chair shall also notify the Complaints Manager of the decision of the Tribunal.

ANNEXURE A

External Investigation - Terms of Reference

[insert name]
[address line 1]
[address line 2]

By email: [insert email address]

Background

I write on behalf of Motorcycling Australia Ltd (**MA**), the peak body for the administration of motorcycling in Australia.

MA's constitution contractually binds all MA members to comply with the bi-laws, rules and policies established by MA in the administration of Motorcycling. One such policy is our Complaints Resolution Policy (**Policy**) which sets out the process for resolving disputes alleging members have breached one or more rules or policies. A copy of the Policy is available at Policies - Motorcycling Australia (ma.org.au).

Allegations

A Notice of Dispute was recently made by [insert Applicant's name] and received by MA on [insert date] under the Policy alleging that [insert Respondent's name] (**Respondent**):

(a) [insert alleged conduct]; and

(b) **[++++++]**,

(together, the **Allegations**).

Instructions

In accordance with the 'Investigation & Decision' process under the Policy, as MA complaints manager I have elected to refer the Allegations to external investigation.

You are instructed to investigate the Allegations, including by:

1. conducting an interview with the Applicant (either by telephone, video conference or in person), or affording them an opportunity to provide submissions and supporting evidence if they refuse to be interviewed;
2. conducting an interview (either by telephone, video conference or in person) with the Respondent, or affording them an opportunity to provide submissions and supporting evidence if they refuse to be interviewed, and beforehand providing them with full details of the Notice of Dispute so they can respond;
3. providing an opportunity for the Respondent to make submissions as to the applicable sanction that should be imposed if the allegations are true;
4. where you consider relevant, obtaining statements from witnesses; and
5. complying with Schedule 4 of the Policy in relation to the investigation, including in relation to provision to the Respondent of a draft report, and allowing additional submissions by the Respondent prior to preparing a final report as outlined below.

While the way you structure your investigation is a matter for you (subject to paragraph 8), the investigation should make a finding as to whether each allegation in the Notice of Dispute is:

1. substantiated (there is enough evidence to support the allegations, on the standard of proof outlined in the Policy);
2. inconclusive (there is insufficient evidence either way);
3. unsubstantiated (there is enough evidence to show that the allegations are unfounded, or not enough evidence to substantiate the allegations, on the standard of proof outlined in the Policy); and/or
4. mischievous, vexatious or knowingly untrue.

You should prepare a draft report addressing the above questions, which documents the Notice of Dispute, the investigation process, evidence and the findings (**Draft Report**). You should provide the Respondent with a copy of the Draft Report and afford the Respondent the opportunity to provide further submissions in response to, or arising from, your Draft Report. You may subsequently, but are not obliged to, amend the Draft Report as or if required.

After you have completed your investigations, we request that you please prepare and provide to us a final written report addressing the above questions, together with any other relevant matters.

Purpose of the Report

The Allegations relate to matters that, if substantiated, may warrant sanctions being imposed on the Respondent.

Your report is therefore requested for the purpose of enabling MA to determine, under the Policy, whether the Respondent has breached our rules or policies, and if so, the appropriate sanction to impose.

Many of the matters proposed to be covered by the report are of a sensitive nature. We request that you maintain confidentiality and exercise appropriate discretion when conducting your investigation to protect the interests and reputations of the Applicant and Respondent.

We look forward to receiving your report as soon as possible. Please contact me if you have any queries.

Yours faithfully

Tony Hynes
Manager Legal and Insurance
Motorcycling Australia Ltd / MA Insurance Ltd
e: legal@ma.org.au
t: +61 419 014 995
www.ma.org.au

RECORD OF DISPUTE
MA Dispute and Complaint Resolution Policy 2022

ANNEXURE B

Parties	v		
Notice of Dispute attached	☐ Yes ☐ No	Process chosen to resolve Dispute:	
Was Provisional Action taken?	☐ Yes ☐ No If yes, detail action taken:		
Date Notice of Dispute received			
Date Process undertaken			
If ADR	Date of referral to, and type of ADR:		
	Date of Mediation:		
	Resolved at Mediation:	☐ Yes ☐ No	
	If no, alternative Process chosen:		
	If Yes, please detail:		
If Minor Breach Procedure	Date letter sent to Respondent:		
	Any further comments:		
If Breach Offer	Sanction offered to Respondent:		
	Date letter sent to Respondent:		
	Date Respondent provided response:		
	Did Respondent accept breach and reduced sanction?	☐ Yes ☐ No	
	If No, date Notice of Dispute referred to Tribunal:		
	If No, also complete 'Tribunal' section		

RECORD OF DISPUTE
MA Dispute and Complaint Resolution Policy 2022

If Investigation & Decision	Type of Investigation:		☐ Internal ☐ External	
	Name of investigator and date appointed:			
	Date investigator's report received:			
	Date Notice of Dispute and investigator's findings referred to Decision Maker:			
	Decision and (if applicable) Sanction imposed:			
	Date of letter outlining decision to Respondent:			
If Tribunal	Date Notice of Dispute referred to Tribunal:			
	Date of Tribunal hearing:			
	Decision of Tribunal:			
	Date parties notified:			
Completed by	Name:	Tony Hynes	Position:	Complaints Manager
	Signed:		Date:	