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## B7 COMPLAINTS AND DISCIPLINE OF MEMBERS BY-LAW

Scheduled Reviewed Triennially or as required

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### 1. Purpose

KA provides an environment which protects the health, safety, and wellbeing of all members of KA, including all those who participate in the activities of KA, its Affiliated State bodies and Clubs, competitors, officials, volunteers, employees, organisers, and spectators.

If a Member is reasonably suspected to have breached our Non-sporting Rules, that Member may be subject to a Complaint and, if necessary, an Investigation conducted in accordance with this Disciplinary By-law and/or a Disciplinary Hearing and/or Disciplinary action in accordance with the procedures and powers detailed in By-law B8.

This By-law provides the mechanism and procedures for dealing with grievances, complaints, malpractice, and non-compliance with KA's Non-sporting Rules, and the application of discipline that may be required to ensure compliance with the Non-sporting Rules by our Members and their right of Appeal.

The Complaints Process should be independent, transparent, and fair for all involved in Karting, while dealing with complaints efficiently and effectively to ensure confidence that prohibited conduct will be managed via the most appropriate resolution and discipline mechanism.

### 2. Definitions

Defined terms not otherwise defined in this By-law have been defined in and have the meaning given to them, in the KA "Australian Karting Manual - National Competition Rules" (**NCR**), KA Constitution, KA Integrity Policies including, for the sake of clarity, the KA Integrity Framework (**KIF**). The following words have the corresponding meaning:

**Alleged Breach** has the meaning given in clause 3.2.

**Alternative Dispute Resolution** is a collective term for processes, such as mediation, to resolve disputes without the need for litigation that will be applied to resolve the alleged breach in accordance with clause 5.5.

**Appeals Tribunal** means the appeals tribunal established under clause 9, being either an Internal Tribunal as provided by this By-law or the National Sports Tribunal (NST).

**Arbitration** means the hearing and binding determination of a dispute conducted by a Hearings Tribunal or Appeals Tribunal.

**Complaint** means a formal notification, using a KA Complaint Form, of a complaint relating to Prohibited Conduct by a Respondent of an Eligible Policy in relation to KA's Non-sporting Rules.

**Complaints Process** means the process of handling and resolving a Complaint under this By-law from the point where the Complaint is received to the finalisation of the Resolution Process.

**Complainant** means a person who or an organisation which makes a Complaint about an Alleged Breach

by a Respondent in accordance with this By-law.

**Concern** means a preliminary advice, using a Concern Form, that a Member/s may not be complying with KA's Non-sporting Rules.

**Disciplinary Action** means disciplinary action as set out in the Resolution Process.

**Eligible Policies** means the following Karting integrity policies adopted under the KIF

- a. The Karting Australia Framework;
- b. Child Safeguarding Policy;
- c. Member Protection Policy;
- d. Improper Use of Drugs and Medicine Policy;
- e. Code of Conduct Policy;
- f. Social Media And Acceptable Use Of Social Media Policy;
- g. Competition Manipulation and Sport Wagering Policy;
- h. This Complaints and Discipline of Members By-law;
- i. KA Tribunals (By-law 8).

**Employment Matter** means a Complaint directly relating to allegations concerning an Employee acting in the course of their employment duties.

**Hearings Tribunal** means the first instance tribunal established under clause 8, being either an Internal Tribunal or the NST as provided by this By-law.

2

**KA National Complaints Officer** as defined in the 'KIF'.

**KA National Integrity Manager** as defined in the 'KIF'.

**Karting** as defined in the 'KIF'.

**Legal Practitioner** is a person holding a current practising certificate as a lawyer or barrister in any Australian jurisdiction.

**NST** means the National Sports Tribunal.

**NST Eligible Matter** means an Alleged Breach that is a kind of dispute<sup>1</sup> that falls within the jurisdiction of the NST.

**NST Excluded Matter** means an Alleged Breach that is a kind of dispute that is expressly excluded from the NST's jurisdiction.

**NST Legislation** means the National Sports Tribunal Act 2019 (Cth) (**NST Act**) and all legislative and notifiable instruments adopted under the NST Act<sup>2</sup>

**Non-sporting Rules** means KA's Constitution, By-laws, Rules (other than those that are required to be

<sup>1</sup> See NST Legislation for more information

<sup>2</sup> Such as the National Sports Tribunal Rule 2020 (Cth), National Sports Tribunal (Practice and Procedure) Determination 2020 (Cth), National Sports Tribunal Act 2019 – Principles for Allocating a Member to a Dispute 2020 (Cth), or such other legislative instruments issued under the NST Act from time to time.

dealt with by Stewards, and/or Disciplinary Tribunal's and/or Investigatory Tribunal's as specified in the National Competition Rules), Policies – including but not limited to the KA Integrity Framework, Member Protection Policy, Child Safeguarding Policy, Procedures and Regulations.

**Personal Grievance** means any form of grievance between two or more people that does not concern a breach of an Eligible Policy.

**Policy** means this Complaints, Disputes of Members By-law, including any schedules and annexures.

**Prohibited Conduct** means conduct described as such in an Eligible Policy.

**Provisional Action** has the meaning given in clause 5.6.

**Protected Disclosure** means, where a Sport Organisation is a “regulated entity”<sup>3</sup> under the whistleblower laws<sup>4</sup> in the *Corporations Act 2001* (Cth), a disclosure of information to the Sport Organisation that qualifies for protection under those laws<sup>5</sup>.

**Relevant Organisation** has the meaning given in the 'KIF'.

**Relevant Person** has the meaning given in the 'KIF'.

**Resolution Process** means the chosen process for resolving an Alleged Breach under this By-law, including a Breach Offer.

3

**Respondent** means the person/s or organisation/s against whom a Complaint has been made.

**Sanction** means a sanction imposed on a Respondent for breaching an Eligible Policy in accordance with clause 7.5.

**Vulnerable Person** means a person who is (a) under the age of 18; or (b) aged 18 or over but is or may be unable to take care of themselves or is unable to protect themselves against harm or exploitation, by reason of age, illness, trauma or disability, or any other reason.

**Whistleblower Policy** means a policy which is compliant with the requirements of section 1317AI (1) of the *Corporations Act 2001* (Cth).

### 3. Preliminary Matters

#### 3.1 What is a Complaint?

A Complaint means a complaint lodged with a KA Affiliated Club, Member State or KA National Complaints Officer in accordance with clause 4.1 of this By-law.

Any Member, the KA Board, or the KA CEO (**Complainant**) may raise a Concern or make a formal Complaint about a Member in relation to any alleged breach of our Non-sporting Rules if they reasonably believe that a person or a member organisation has breached the Non-sporting Rules.

<sup>3</sup> Refer to section 1317AAB of the Corporations Act 2001 (Cth).

<sup>4</sup> As above, Part 9.4AAA.

<sup>5</sup> As above, s 1317AA.

### 3.2 What is an Alleged Breach?

- a. An Alleged Breach is an allegation or information that a Relevant Person or Relevant Organisation (including KA or Karting Organisations where appropriate) has engaged in Prohibited Conduct under an Eligible Policy but does not include a Complaint that falls under clause 3.3(a).
- b. It is a breach of this By-law for any person or organisation bound by this By-law to do anything contrary to this By-law, including but not limited to:
  - i. Breach the Code of Conduct;
  - ii. Bring the sport and/or KA into disrepute, or act in a manner likely to bring the sport and/or KA into disrepute;
  - iii. Fail to follow KA Policies;
  - iv. Engage in Prohibited Conduct
  - v. Engage in misconduct or serious misconduct;
  - vi. Appoint or continue to appoint a person to a role that involves working with Children contrary to the Integrity Policies
  - vii. Discriminate against or harass or bully any person;
  - viii. Victimise another person for making or supporting a Complaint;
  - ix. Verbally or physically assault another person, intimidate another person, or create a hostile environment within the sport and/or KA;
  - x. Disclose to any unauthorised person or organisation any KA information that is of a private, confidential, or privileged nature;
  - xi. Make a Complaint they knew to be untrue, vexatious, malicious or improper;
  - xii. Fail to comply with a penalty imposed after a finding that the individual or organisation has breached this By-law;
  - xiii. Fail to comply with a direction given to the individual or organisation during the discipline process; or
  - xiv. Act in any way contrary to this By-law.

4

### 3.3 What is not an Alleged Breach?

- a. An Alleged Breach does not include an allegation or information:
  - i. that does not relate to Prohibited Conduct under an Eligible Policy;
  - ii. that constitutes a Protected Disclosure;
  - iii. that is solely a Personal Grievance;
  - iv. that is mischievous, vexatious, or knowingly untrue;
  - v. that has been the subject of a previous complaint; or
  - vi. where the Respondent is excluded by clause 3.5.
- b. A Complaint is not excluded from being an Alleged Breach by clause 3.3(a)(v) if the Complaint contains additional information and evidence that was not known at the time of the original Complaint.

### 3.4 Who can be a Complainant?

- a. A Complainant can be any Relevant Person or organisation including KA or a Relevant Organisation, who has information that an Alleged Breach of an Eligible Policy has occurred.
- b. KA aims to ensure our Complaints procedure has integrity and is free of unfair repercussions or Victimisation against any person making a complaint.
- c. If at any point in the Complaint process the CEO, or a person or persons appointed to investigate a Complaint considers that a Complainant has knowingly made an untrue Complaint or the Complaint is vexatious or malicious, the matter may be referred to the KA Internal Tribunal or

the National Sports Tribunal (NST) for appropriate action which may include disciplinary action against the complainant.

- d. KA and Member States and Affiliated Clubs should also take all necessary steps to make sure that people involved in a Complaint are not victimised by anyone for coming forward with a Complaint or for helping to resolve. Disciplinary measures will be imposed on anyone who victimises another person for making a Complaint.

### 3.5 Who can be a Respondent?

- a. A Respondent must be a Relevant Person or a Relevant Organisation who is bound by the Eligible Policy they are alleged to have breached.
- b. In accordance with clause 2.1 (e) of the KIF, a person or organisation who was bound by the Eligible Policy that they are alleged to have breached at the time they allegedly committed the breach who would otherwise cease to have been bound by that Eligible Policy may still be a Respondent if they were bound by the Framework at the time when they became aware that a complaint may be made against them.
- c. Once a Complaint has been made under this By-law, the Respondent will continue to be bound by this By-law and the relevant Eligible Policy/ies in respect of that Complaint and any related complaint until the Complaints Process has been finalised.
- d. A Respondent cannot be a person or organisation that KA or a Karting Organisation has no jurisdiction over.
- e. The Complainant and the Respondent(s) will be entitled to support throughout this process from their chosen support person or adviser. However, a support person or adviser cannot be a support person if he or she has been admitted to practice as a lawyer or worked as a trainee lawyer.

### 3.6 Standard of Proof

- a. Unless otherwise specified, this standard of proof that applies to all decisions made under this By-law (including by a Hearings Tribunal) is “balance of probabilities”.
- b. Where a Respondent has been convicted or found guilty in a criminal, disciplinary or professional proceeding of engaging in conduct which would be a breach of an Eligible Policy, the Respondent is deemed under this By-law to have committed Prohibited Conduct without requiring further investigation.

### 3.7 Confidentiality

- a. All Complaints (and all information disclosed in relation to them), including the outcomes of any Resolution Process, will be kept confidential by KA, and Karting Organisations, and will not be disclosed to any third parties, except as provided in this clause.
- b. KA may make the following disclosures:
  - i. to Karting Organisations in accordance with this By-law;
  - ii. to the parties to a Complaint (Respondent and the Complainant) to ensure a fair process;
  - iii. to any person to facilitate the proper handling of the Complaint under this By-law;
  - iv. in accordance with clause 5.1, where a Complaint is determined to not be an Alleged Breach under this By-law;
  - v. to the employer of a Respondent, where KA considers it reasonably necessary to allow the employer to take action under and in accordance with the Respondent’s employment relationship with the employer;
  - vi. to external agencies so they can deal with the alleged conduct (e.g., law enforcement agencies, government or regulatory authorities, a child protection agency);

- vii. to:
    - A. Relevant Organisations
    - B. Relevant Persons
 to inform them of relevant Sanctions or Provisional Actions imposed;
  - viii. in accordance with clause 3.8, where a sanction is to be publicly disclosed;
  - ix. to any third party, including foreign sporting bodies, law enforcement agencies and government or regulatory authorities, for the primary purpose of:
    - A. preventing or lessening a risk to the safety, health, or wellbeing of a person; or
    - B. protecting children participating in a sport, or
    - C. protecting the safety of participants in a sport;
  - x. in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia; and
  - xi. as required by law, any court or the NST.
- c. KA and Relevant Organisations may make the following disclosures:
- i. to the parties to an Alleged Breach (Respondent and the Complainant) in relation to the Resolution Process;
  - ii. to the employer of a Respondent, in accordance with clause 5.6(d) or as otherwise necessary to allow the employer to take action under and in accordance with the Respondent's employment relationship with the employer where:
    - A. one or more other employees of the Respondent's employer may be at risk of suffering harm; or
    - B. the employer may be in breach of an applicable law by failing to take action in relation to the Respondent;
  - iii. to any person to facilitate the proper handling of the Alleged Breach, including any Provisional Action under this By-law;
  - iv. to external agencies so they can deal with Alleged conduct (e.g., law enforcement agencies, government or regulatory authorities, a child protection agency);
  - v. to:
    - A. Relevant Persons; or
    - B. Relevant Organisations,
 To inform them of relevant Sanctions or Provisional Action imposed;
  - vi. in accordance with clause 3.8, where a Sanction is to be publicly disclosed;
  - vii. to any third party for the primary purpose of:
    - A. preventing or lessening a risk to the safety, health, or wellbeing of a person; or
    - B. protecting children participating in a sport; or
    - C. protecting the safety of participants in a sport; and
  - viii. as required by law, any court or the NST.

### 3.8 Public disclosure of Sanctions

- a. Where an Alleged Breach is found to have been substantiated and Sanctions are imposed, the Internal Tribunal or Sport Integrity Australia may give recommendation to KA that the Sanctions imposed are to be publicly disclosed where the Internal Tribunal or Sport Integrity Australia reasonably considers that this is necessary to give full effect to the Sanctions. The direction will include the period for which the Sanction is to remain on the public register. Where the Sanctions are imposed by the NST the public disclosure of the Sanctions will be in accordance with the NST legislation.

- b. Sanctions that may be subject to a direction of public disclosure include, but are not limited to:
  - i. Suspension of membership or from certain activities;
  - ii. Removal of accreditation; and
  - iii. Expulsion.
- c. KA will maintain a register of persons subject to publicly disclosable Sanctions on its website. The public register will include the name of the individual or organisation being sanctioned, the Sanction imposed, and the period of the Sanction. KA will remove Sanctions from the public register when the period of disclosure determined by KA in accordance with clause 3.8(a) has expired.
- d. Details of Breaches will not be published on KA’s website, but where appropriate, may be disclosed to third parties (such as to the National Sport Organisation for another sport that the individual who committed the Breach is a member of) in accordance with clauses 3.7 (c)(vi) and 3.7 (c)(vii) (as applicable).
- e. Sanctions will not be publicly disclosed until the Complaint has been finalised in accordance with clause 10.

### 3.9 Failure to cooperate

- a. Subject to clause 3.9(c), persons bound by this By-law must cooperate fully with a Complaints Process they are involved in, including any Resolution Process chosen to resolve an Alleged Breach.
- b. Subject to clause 3.9(c), a Hearing Tribunal or an Appeals tribunal may draw an inference adverse to the Respondent based on a Respondent’s failure or refusal, after a request has been made in a reasonable time in a reasonable time in advance, to answer any relevant question, provide relevant documentation, and/or participate in the Complaints Process. The Respondent must be made aware of such an inference being drawn in relation to any particular allegation forming part of an Alleged Breach.
- c. No individual or organisation bound by this By-law is required to answer a question or provide information where to do so would be a breach of any applicable law, and no adverse inference (such as those in clause 3.9(b)) may be drawn where that individual or organisation discloses the relevant law.

### 3.10 Vulnerable Persons

- a. Where a Complainant or Respondent is a Vulnerable Person, the parent or guardian of the Vulnerable Person may act on behalf of the Vulnerable Person and accompany them throughout the Complaints Process, including any interview, Alternative Dispute Resolution process, or Hearings Tribunal or Appeals Tribunal.
- b. KA and Relevant Organisations will have regard to the guide entitled “Complaint Handling Guide: Upholding the rights of children and young people” issued by the National Office for Child Safety in managing Complaints made on behalf of or involving Vulnerable Persons, currently available at [Complaint Handling Guide: Upholding the rights of children and young people \(pmc.gov.au\)](http://Complaint Handling Guide: Upholding the rights of children and young people (pmc.gov.au)), or such other guide that may replace it.
- c. This clause is at all times subject to clause 8.1(b) and 8.2(b) of this By-law and Karting Australia By-law 8.

### 3.11 Appointment of KA National Complaints Officer

KA will appoint a person to be the KA National Complaints Officer, who will be the person within KA with primary responsibility for managing KA’s obligations under this By-law.

### 3.12 Time Limits

Where there is a time limit imposed by this By-law (other than a time limit relating to a Hearing Tribunal or Appeals Tribunal before the NST) and a person requests an extension to that time limit, KA may at its discretion grant the extension, having regard to any relevant circumstances.

## 4. How to Make a Complaint

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### 4.1 Submitting a Complaint

- a. A Relevant Person, Relevant Organisation, or KA may submit a Concern by completing the KA Concern Form or a Complaint by completing the KA Complaint Form and submitting it to the relevant authority (Affiliated Club, Member State and/or KA National Complaints Officer). If a Concern or Complaint relates to behaviour or an incident that occurred at the:
  - i. **Club level**, or involves people operating at the Club level, then the KA Concern/Complaint should be reported to and handled by the relevant Club in the first instance.
    1. Note: The Club upon receiving a properly completed KA Concern/KA Complaint Form must provide a copy of the KA Concern/KA Complaint Form to their Member State for their information.
  - ii. **State level**, or involves people operating at the state level, then the Concern/Complaint should be reported to and handled by the relevant Member State in the first instance.
    1. Note: The Member State upon receiving a properly completed KA Concern/Complaint Form must provide a copy of the KA Concern/Complaint to KA for their information.
  - iii. Only matters that relate to, or which occurred at, the **National level**, as well as serious cases referred from the Member State and club level, should be referred using the appropriate KA Concern/Complaint Form to the KA Complaint Officer and dealt with by KA.
- b. A KA Concern/KA Complaint Form may only be submitted on behalf of KA or a Karting Organisation by the CEO or equivalent of the organisation.
- c. A KA Concern/KA Complaint Form may be submitted by a parent or guardian on behalf of a Vulnerable Person.
- d. A KA Concern/KA Complaint Form cannot be submitted anonymously.
- e. KA Complaints Officer or equivalent at an Affiliated Club and/or Member State will acknowledge receipt of the KA Complaint Form.

### 4.2 Withdrawing a Complaint

- a. A Complainant may withdraw their Complaint at any time before KA makes a finding under clause 6.1.
- b. Withdrawing a Complaint must be done by writing to Affiliated Club/Member State/KA, to which it was submitted unless the Complaint was referred to KA in accordance with Clause 4.1(a)(iii) above, in which case, the withdrawal notice, must be sent to the KA Complaints Officer.
- c. Withdrawing a Complaint must be done by writing from the same contact address used in the KA Complaints Form, or another contact address that has been previously notified to KA during the Complaints Process.



## 5. Complaint Assessment

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### 5.1 Initial Threshold Questions/Determining whether the Complaint is in-scope

- a. Upon receipt of a KA Complaint Form, the complaint receiver organisation must initially determine whether:
  - i. the Complaint is a Protected Disclosure, in which case it must be dealt with under the KA Whistleblower Policy;
  - ii. the Complaint is solely a Personal Grievance;
  - iii. the Complaint is not an Alleged Breach of an Eligible Policy;
  - iv. the Complaint is mischievous, vexatious, or unknowingly untrue;
  - v. the Respondent is not an eligible Respondent as outlined in clause 3.5;
  - vi. the Complaint is primarily an Employment Matter;
  - vii. the Complaint relates to Prohibited Conduct under an Eligible Policy which also falls under another KA policy; or
  - viii. the Complaint requires mandatory reporting to occur under Australian Child Protection Legislation or other laws, in which case KA and/or Karting Organisation must do so in accordance with the KA Child Safeguarding Policy<sup>6</sup>.
- b. Subject to clause 5.1(e), if the Complaint falls within any of the circumstances set out in clause 5.1(a)(i) to (v), the process under this By-law is permanently discontinued.
- c. If a Complaint falls within the circumstances set out in clause 5.1(a)(viii), it will be handled in accordance with clause 5.4.
- d. Complaints that fall under clauses 5.1.(a)(i) to (v) should be dealt with by KA or a KA Organisation<sup>9</sup> under the appropriate processes.
- e. In assessing a Complaint that falls under clauses 5.1 (a)(vi) or (a)(vii), KA and/or a KA Organisation will undertake a risk assessment which considers the following:
  - i. the overall risk to Karting; and
  - ii. whether the Respondent is engaged or accredited by KA or a Member Organisation in any capacity other than as an employee.
- f. After undertaking the assessment in clause 5.1(e), Complaints that fall under clause 5.1(a)(vi) or (vii) may be referred to KA or a Karting Organisation to be dealt with under the appropriate process, which for Employment Matters includes the human resources policies of the Respondent's employer, in which case the process under this By-law is permanently discontinued, or they may be deemed to be Alleged Breaches within the scope of this By-law and assessed in accordance with this By-law.
- g. A determination by KA or a Karting Organisation under clause 5.1(f) to deem an Employment Matter to be an Alleged Breach within the scope of this By-law does not preclude the employer of the Respondent from taking its own separate action under and in accordance with the Respondent's employment relationship with the employer. Any such action may be taken in addition to any action taken by KA or a Karting Organisation under this By-law.

### 5.2 Notification to Parties

- a. KA and/or a Karting Organisation will communicate with the Complainant and the Respondent at appropriate intervals throughout the Complaints Process to keep them informed about the process until a Resolution Process has been chosen or the Complaints Process is otherwise

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<sup>6</sup> Refer to the "Responding to Child Abuse Allegations" Annexure A in the KA Child Safeguarding Policy.

discontinued, including

- i. notifying the Complainant of whether the Complaint satisfies the Initial Threshold Questions, including whether it has been referred to KA or a Karting Organisation or to an external referral organisation;
  - ii. after a Complaint is determined to have satisfied the Initial Threshold Questions and when KA or a Karting Organisation considers that it is appropriate to do so, notifying the Respondent that a Compliant has been made against them;
  - iii. notifying the Respondent of any Provisional Actions to be put in place;
  - iv. notifying both the Complainant and the Respondent if the Complaint is referred to Alternative Dispute Resolution under clause 5.5;
  - v. notifying both the Complainant and the Respondent of the Resolution Process chosen; and
  - vi. providing a Breach Notice to the Respondent.
- b. The Respondent will not be entitled to a copy of the Complaint Form as submitted by the Complainant but will be provided with a summary of the Alleged Breach(es) and sufficient details of the Complaint to allow them to respond. Both the Complainant and the Respondent will be informed of any relevant additional information that becomes known as part of the assessment process and provided with a reasonable opportunity to respond.
- c. KA and/or Karting Organisation will be responsible for communicating with the Respondent throughout the Resolution Process and will notify both the Complainant and the Respondent of the outcome of the Complaints Process when it has been finalised in accordance with clause 10.

### 5.3 Assessment

- a. If a Complaint is found to have met the Initial Threshold Question and is not permanently discontinued, KA and/or Karting Organisation will undertake an assessment and may collect 10 further information to determine:
  - i. if the Complaint is an Alleged Breach; and
  - ii. if so, the most appropriate Resolution Process to deal with the Complaint.
- b. Subject to 5.3(d), an assessment may be conducted in such a manner as determined by KA and/or Karting Organisation in its absolute discretion. KA and/or Karting Organisation may, on the basis of the assessment, make findings as to whether the Standard of Proof has been met in respect of the Alleged Breach.
- c. This assessment may or may not involve formal interviews and collection of additional evidence at KA's and/or Karting Organisation's discretion.
- d. In conducting assessments, KA and/or KA Organisations will comply with the rules of procedural fairness and will provide both the Complainant and the Respondent a reasonable opportunity to be heard.
- e. During and assessment, investigatory or disciplinary proceedings under this By-law, the CEO may determine at their discretion, that a respondent may not participate in Karting, and/or attend a Karting Facility, pending the determination of such proceedings (including any available appeal).

### 5.4 External Referral

- a. KA and/or Karting Organisation may, at any time before or while dealing with a Complaint under this By-law, refer the Complaint to a relevant external organisation (this may include law enforcement agency, government or regulatory authority or child protection agency).
- b. If an external referral is made, KA and/or Karting Organisation may suspend the Complaints Process pending external resolution. KA and/or Karting Organisation shall inform the Complainant of any such decision unless directed not to do so by the external referral

organisation.

- c. If the Resolution Process is suspended due to an external referral, KA and/or Karting Organisation must determine whether any Provisional Action should be taken against the Respondent under clause 5.6.
- d. If the Complaint is not resolved by the external referral organisation and is referred back to KA and/or Karting Organisation, KA and/or Karting Organisation may resume the Complaints Process.

## 5.5 Referral to Alternative Dispute Resolution

- a. At any time after determining that the Complaint satisfies the Initial Threshold Questions but before making a finding in accordance with clause 6.1, KA and/or Karting Organisation may, where it considers it appropriate to do so, refer the Complainant and the respondent to Alternative Dispute Resolution and direct the KA National Complaints Officer to coordinate the process.
- b. KA and/or Karting Organisation, the Respondent or the Complainant may, at any time before a finding is made under clause 6.1, request that KA and/or Karting Organisation refer a matter to Alternative Dispute Resolution under clause 5.5.(a).
- c. An Alternative Dispute Resolution process may include:
  - i. Mediation;
  - ii. Conciliation; or
  - iii. Case Appraisal (only at the NST).
- d. In accordance with clause 5.5(e), the Alternate Dispute Resolution process will be facilitated by:
  - i. The NST if the Alternative Dispute Resolution process can be facilitated by the NST;
  - ii. Where the Alternative Dispute Resolution process cannot be facilitated by the NST, by:
    - A. KA
    - B. Karting Organisation; or
    - C. An independent third-party provider.
- e. In order to implement the Alternative Dispute Resolution process, the KA National Complaints Officer will:
  - i. if the matter is an NST Eligible Matter, make an application to the NST for mediation, conciliation, or case appraisal of the Alleged Breach;
  - ii. if the matter is neither an NST Eligible or NST Excluded Matter, apply to the NST CEO for approval of the dispute to be referred to the NST for Alternative Dispute Resolution, failing which it will be dealt with under (iii); or
  - iii. refer the Complaint to Alternative Dispute Resolution facilitated by KA, a Karting Organisation or a third-party provider.
- f. The parties to an Alternative Dispute Resolution process will be the Complainant, the Respondent, and KA or a Karting Organisation (the Parties). Additional persons may participate in exceptional circumstances and only if the facilitator of the Alternative Dispute Resolution process deems it appropriate.
- g. The Parties are required to participate in the Alternative Dispute Resolution process in good faith.
- h. Where the Alternative Dispute Resolution process is facilitated by the NST:
  - i. KA and/or Karting Organisation is responsible for making the application and paying the application fee; and
  - ii. The procedure will be in accordance with the NST Legislation.
- i. Where the Alternative Dispute Resolution process is facilitated by KA, a Karting Organisation, or a third-party provider:
  - i. KA and/or Karting Organisation is responsible for paying the appointed facilitator's fee, if any; and

- ii. The procedure will be in accordance with the rules prescribed by those bodies, as the case may be.
- j. An Alleged Breach will be finalised through Alternative Dispute Resolution where KA, the Complainant and the Respondent execute a written agreement to an outcome.
- k. If the Complaint of an Alleged Breach is resolved through Alternative Dispute Resolution, the KA National Complaints Officer must proceed to finalising the complaint in accordance with clause 10.
- l. If:
  - i. Either the Complainant or the Respondent fails and/or refuses to participate in the Alternative Dispute Resolution Process; or
  - ii. Alternative Dispute Resolution does not resolve the Complaint, the KA National Complaints Officer must refer the Alleged Breach back to KA and/or the Karting Organisation, who will resume the Complaints Process.

## 5.6 Provisional Action

- a. Where the Alleged Breach involves behaviour that:
  - i. may be “Prohibited Conduct” under the Child Safeguarding Policy; and/or
  - ii. has or may result in, serious criminal charges<sup>7</sup> being laid against the Respondent; and/or
  - iii. suggests there is a further or ongoing risk of harm being suffered by one or more persons involved in the Sport,
 KA and/or Karting Organisations will determine, in its absolute discretion, whether any Provisional Action(s) will be taken.
- b. Provisional Action includes, but is not limited to, suspension, restriction of duties or temporary <sup>12</sup> redeployment, suspension or restriction of rights, privileges and benefits, or any other action(s) at the discretion of KA and/or Karting Organisations, including seeking advice from KA.
- c. In the event that Provisional Action is imposed a respondent may seek to have that decision reviewed only by an expedited hearing convened in accordance with clause 8. An expedited hearing convened under this clause shall only consider the decision to impose the Provisional Action and will not consider the merits of the Complaint.
- d. Where KA and/or Karting Organisation determines that Provisional Action will be taken in relation to an Employment Matter deemed to be an Alleged Breach within the scope of this By-law in accordance with clause 5.1(f) KA and/or Karting Organisation will provide the KA National Complaints Officer with all necessary information relating to that Employment Matter, which will be provided to the Respondent’s employer within a timely manner, to allow that employer to:
  - i. implement the Provisional Action in accordance with its obligations to the Respondent;
  - ii. determine whether separate action will be taken under the respondent’s employment with the employer; and
  - iii. if deemed necessary by the employer, take all relevant action in relation to the Employment Matter under the Respondent’s employment with the employer.

## 5.7 Unreasonable demands/behaviours

- a. Where a Complainant makes unreasonable demands or exhibits unreasonable behaviour, such as:
  - i. raising the same issues, which have previously been reported, without presenting new evidence;

<sup>7</sup> A “serious criminal charge” is a charge under the Commonwealth or State/Territory criminal law that is punishable by imprisonment for a maximum period of five years or more. Such offences include (but are not limited to) recklessly, negligently, or intentionally causing injury, indecent assault, theft, possession of child pornography, manslaughter, rape, sexual penetration of a child, sexual assault, drug trafficking.

- ii. unreasonable persistence regarding outcomes;
- iii. unreasonable demands relating time timeframes for resolutions;
- iv. being rude, aggressive, or abusive towards KA and/or Karting Organisations staff or volunteers.

Complaints may not be acknowledged, and KA and Karting Organisations may exercise discretion to minimise or control its dealings with the Complainant. The Complainant will be given clear advice and reasons why.

## 6. Assessment Findings and Determination

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### 6.1 Findings and Determination of KA and/or Karting Organisations

- a. After conducting its Assessment of a Complaint under clause 5.3, KA and/or a Karting Organisation will determine if the Complaint is within scope of this By-law to:
  - i. make findings as to whether, to the requisite Standard of Proof, the Alleged Breach is:
    - A. substantiated;
    - B. unsubstantiated; or
    - C. unable to be substantiated.
  - ii. make a determination as to the Resolution Process to be applied, which will be:
    - A. No Further Action; or
    - B. Breach Notice.
- b. KA and/or Karting Organisation will notify the Complainant and the Respondent of its findings and determination under this clause.
- c. If we decide that a complaint should be investigated, we will follow the steps outlined below:
  - i. We will provide a written brief to the investigator that sets out the terms of engagement and his or her roles and responsibilities.
  - ii. Any Member that is to be the subject of an investigation under this By-law will be provided with full details of the complaint by way of an Investigation Notice that is completed by the CEO.
- d. The investigator will:
  - (i) Interview the Complainant, record the interview and document it in writing;
  - (ii) Interview the Respondent(s) to allow them to answer the complaint, record the interview and document it in writing;
  - (iii) Obtain statements from witnesses and collect other relevant evidence (if any);
  - (iv) Make a finding as to whether the complaint is:
    - 1) **substantiated** (there is sufficient evidence to support the complaint)
    - 2) **inconclusive** (there is insufficient evidence either way);
    - 3) **unsubstantiated** (there is sufficient evidence to show that the complaint is unfounded);
    - 4) **mischievous, vexatious, or knowingly untrue.**
  - (v) Provide a written Investigation Report to the CEO documenting the complaint, the investigation process, the evidence, and, if requested, any findings and recommendations.
    - 1) The investigation report should substantially replicate the template Investigation Report provided by Karting Australia.

### 6.2 KA to Manage Resolution Process

- a. Relevant Organisations must implement the Resolution Process as determined by KA and/or a Member State and/or a Club.
- b. KA and/or a Member State, at its discretion may delegate the management of the Resolution

Process to another Karting Organisation. When determining if the Resolution Process should be delegated, KA and/or the Member State must consider:

- i. any conflict of interest that may arise if the Resolution Process were to be managed at the Karting Organisation level;
  - ii. the nature and seriousness of the Alleged Breach;
  - iii. whether the matter would best be resolved through the NST, which would require KA to remain party to the proceedings; and
  - iv. the capacity of the Karting Organisation to manage the Resolution Process.
- c. The KA National Complaints Officer is responsible for communicating with the Complainant, Respondent, KA and/or Karting Organisations (where applicable) and for ensuring that the Resolution Process is implemented.

## 7. Resolution Process

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### 7.1 No Further Action

- a. Where KA and/or a Karting Organisation has made a determination of No Further Action and has notified the parties of this determination under clause 6.1(a)(ii)(A), the KA National Complaints Officer:
- i. is not required to also notify the Parties of this outcome under clause 5.2; and
  - ii. shall keep a record of the Complaint as per clause 10.3.

### 7.2 Breach Notice

- a. In determining a Breach Notice,
- i. Where a Club has made a determination of Breach Notice and before it notified the parties of this determination under clause 6.1(a)(ii)(B), it will notify the relevant Member State of its recommendation which may be adjusted or confirmed by the Member State and then notified to the parties by the Club;
  - ii. Where a Member State has made a determination of Breach Notice and before it notifies the parties of this determination under clause 6.1(a)(ii)(B), it will notify KA of its recommendation which may be adjusted or confirmed by KA and then notified to the parties by the Member State;
  - iii. Where KA has made a determination of Breach Notice it will notify the parties of this determination under clause 6.1(a)(ii)(B),

Recommendations must include:

- 1) the Alleged Breach
  - 2) whether or not a Sanction is to be imposed on the Respondent and if so, the Sanction;
  - 3) whether or not a reduced Sanction should be offered to the Respondent, and if so, the reduced Sanction; and
  - 4) whether or not the Sanction is to be publicly disclosed in accordance with clause 3.8.
- b. KA or a Karting Organisation will then issue the Respondent with a Breach Notice. The Breach Notice will:
- i. notify the Respondent of the Alleged Breach, including the alleged conduct and relevant section(s) of the Eligible Policy;
  - ii. state the proposed Sanction for the Alleged Breach, and if applicable, any proposed discounted Sanction;
  - iii. state that the Sanction is to be publicly disclosed (if applicable);
  - iv. state that the Respondent has a right to a hearing in relation to the Alleged Breach and/or the proposed Sanction;
  - v. state that the Respondent may admit the Alleged Breach, waive their right to a hearing

- vi. and accept the proposed Sanction or the proposed discounted Sanction (if applicable); state that if the Respondent does not respond within 14 days of receipt of the Breach Notice, they will be deemed to have admitted the Alleged Breach, waived their right to a hearing and accepted the proposed Sanction;
  - vii. state that any response to the Breach Notice must be made to KA and/or the issuing Karting Organisation, and provide the Respondent with the contact details of the KA National Complaints Officer; and
  - viii. be provided to the Respondent, KA, and (if applicable) Karting Organisation (if applicable).
- c. In response to a Breach Notice, a Respondent may:
- i. admit the Alleged Breach, waive their right to a hearing and accept the proposed Sanction or proposed reduced Sanction (if applicable);
  - ii. dispute the Alleged Breach and/or the proposed Sanction, in which case the Alleged Breach will be referred to a hearing Tribunal under this By-law; or
  - iii. not respond, in which case they will be deemed to have admitted the Alleged Breach, waived their right to a hearing and accepted the proposed Sanction.
  - iv. A respondent has 14 days from receipt of the Breach Notice to notify the KA National Complaints Officer of their decision.

### 7.3 Resolution without a hearing

Where a Respondent admits the Alleged Breach (thereafter, a Breach), waives their right to a hearing and accepts the Sanction, or is deemed to have done so, the KA National Complaints Officer must take all necessary steps to impose and implement the Sanction (if applicable), and proceed to finalising the Complaint in accordance with clause 10.

### 7.4 Referral to a hearing

15

- a. If the Respondent disputes the Alleged Breach and/or Sanction, the KA National Complaints Officer must:
- i. refer the Alleged Breach to an Internal Hearing tribunal, either at the KA level or Karting Organisation level.
  - ii. if an NST Eligible Matter, refer the Alleged Breach to the NST General Division for arbitration;
  - iii. if neither an NST Eligible or NST Excluded Matter, apply to the NST CEO for approval for the matter to be arbitrated in the NST General Division, failing which it must be dealt with under (iii); or
- b. In accordance with By-law B7, a KA Tribunal may be formed to hear a proceeding:
- (i) referred to it by the CEO; or
  - (ii) referred to it or escalated by a Member State either
    - 1) because of the serious nature of the complaint,
    - 2) because it was unable to be resolved at the state level or
    - 3) because the policy of the Member State directs it to be
 for an alleged breach of this By-law.
- c. The KA Tribunal procedure is outlined in By-law B8
- d. Disciplinary matters may alternatively be referred by the CEO to the NST for mediation or hearing in accordance with NST legislation.
- e. A Respondent may lodge an appeal to the Appeal Tribunal in respect of a KA Tribunal decision. The decision of the Appeal Tribunal is final and binding on the people involved.
- f. An appeal may also be lodged to the NST Appeals Division in circumstances outlined in clause 9 of this By-law.

- g. Every organisation bound by the By-law will recognise and enforce any decision made, and form of discipline imposed, by the KA Tribunal or NST under the By-law.
- h. If a Karting Organisation and/or KA is a Respondent, the KA National Complaints Officer will in the first instance apply to the NST General Division for arbitration either under (i) or (ii), failing which an Internal Hearing tribunal at the KA level will be convened.
- i. Where an application to the NST for arbitration is made, KA is responsible for making the application and paying any application and service fees to the NST, even if the matter has been delegated under clause 6.2 (b). The charges may be apportioned in accordance with the NST Legislation.

## 7.5 Sanctions

- a. Where a Respondent is found to have committed a Breach of an Eligible Policy, KA or a Karting Organisation, or a Hearing Tribunal (if applicable) may subject to clause 7.5(b), determine to impose a Sanction on that Respondent.
- b. KA, a Karting Organisation, or a Hearing Tribunal (as applicable) is not permitted to issue a Sanction in relation to the Respondent's employment that may only lawfully be imposed by the Respondent's employer (including, but not limited to, termination or suspension of the Respondent's employment with their employer, demotion of the Respondent and a verbal or written warning regarding the Respondent's breach of their employment agreement).
- c. Subject to clause 7.5(b), the Sanction may include any of the following measures (but is not limited to these measures), or any combination of such:
  - i. a reprimand or warning;
  - ii. verbal or written apology;
  - iii. direction to attend counselling or training to address their behaviour;
  - iv. suspended Sanction and/or good behaviour period;
  - v. removal of accreditation;
  - vi. removal or withdrawal of awards, prizes, trophies, placings, records or achievements (such a life membership) or achievements bestowed in any Competitions, activities or events held or sanctioned by KA;
  - vii. banning from a particular event or events, competition, or activity;
  - viii. suspension of membership from KA and/or a Karting Organisation and any other members or affiliates;
  - ix. suspension from such activities or events held by or under the auspices of KA or a Karting Organisation;
  - x. suspension and/or termination of any rights, privileges and benefits provided by KA or a Karting Organisation;
  - xi. expulsion from KA or a Karting Organisation;
  - xii. fine; and
  - xiii. any other form of discipline that is considered appropriate.
- d. KA, a Karting Organisation, or a Hearing Tribunal (if applicable) have absolute discretion to determine the appropriate Sanction, including as to whether a combination of measures to be imposed, and the terms and the period of any measures, subject to clauses 7.5(b) and (e).
- e. A financial penalty may only be imposed as or as part of a Sanction where the Respondent is an incorporated entity.
- f. The following factors will be considered when determining the appropriate Sanction:
  - i. the nature and seriousness of the behaviour or incidents;
  - ii. the considerations (if any) of the Complainant;
  - iii. the contrition, or lack thereof, of the Respondent;



- iv. any Provisional Action taken in relation to the Breach;
  - v. the effect of the Sanction on a Respondent including any personal, professional, or financial consequences;
  - vi. if there have been relevant prior warnings or disciplinary action against the Respondent; and
  - vii. if there are any mitigating circumstances.
- g. If there is more than one Breach of an Eligible Policy, where appropriate, the Sanction may be imposed having regard to all the Breaches considered together, and the seriousness of the overall conduct in question.
- h. Sanctions imposed under this By-law shall commence from the date of the decision, unless otherwise directed.

## 8. Hearing Tribunals

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### 8.1 Arbitration in the NST

- a. If arbitration is sought in the NST General Division, the NST will:
  - i. determine whether the Provisional Action imposed is disproportionate; or
  - ii. arbitrate the Alleged Breach and determine whether a Sanction be imposed, and if so, what Sanction, in accordance with clause 7.5.
- b. The procedure for an arbitration in the NST will be in accordance with the NST Legislation.

### 8.2 Internal Hearing Tribunal

- a. If an Internal Hearing Tribunal is required under clause 7.4(a)(i), the KA National Complaints Officer must convene a Hearing Tribunal to:
  - i. determine whether the provisional Action imposed is disproportionate; or
  - ii. arbitrate the Alleged Breach and determine whether a Sanction be imposed, and if so, what Sanction in accordance with clause 7.5.
- b. An Internal Hearing tribunal convened under this clause will comply with By-law 8 Karting Australia Tribunal.

17

### 8.3 Parties and right to attend hearings

- a. The parties to a proceeding will be:
  - i. KA, or where KA has delegated the management of the Resolution Process to the Karting Organisation, the Karting Organisation; and
  - ii. the Respondent.
- b. If the Hearing Tribunal is the NST:
  - i. notwithstanding clause 8.3(a)(i), KA must be a party to the proceeding; and
  - ii. the NST Member may, at their discretion, allow any person who may have a relevant interest in the dispute to participate in the proceeding;

### 8.4 Notification of Hearing Tribunal decision

- a. The Hearing Tribunal will notify the parties to the proceeding of the decision in accordance with its relevant procedures, after which the KA National Complaints Officer will:
  - i. notify and provide a copy of the decision to Karting Organisation if required; and
  - ii. subject to any appeal under clause 9, proceed with finalising the Complaint in accordance with clause 10.

## 9. Appeals

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### 9.1 Right of Appeal

- a. An appeal from a decision of the KA Tribunal can be lodged with either the KA Appeal Tribunal or the NST Appeals Division at the discretion of the CEO.
- b. An appeal from a decision of the NST must be lodged with the NST Appeals Division.

### 9.2 Decisions subject to appeal

- a. A decision of a Hearing Tribunal under clauses 8.1(a)(ii) or 8.2(a)(ii) may be appealed as set out in this clause 9.
- b. A decision of a Hearing Tribunal under clauses 8.1(a)(i) or 8.2(a)(i) is not subject to appeal.

### 9.3 Persons entitled to appeal

- a. The following persons are entitled to appeal a decision of a Hearing Tribunal under clauses 8.1(a)(ii) and 8.2(a)(ii) of this By-law:
  - i. KA;
  - ii. where KA has delegated the management of the Resolution Process to the Karting Organisation, the Karting Organisation; and
  - iii. the Respondent,  
(each an Appellant).

### 9.4 Grounds of appeal

- a. The decision of a Hearing Tribunal can only be appealed on the following Grounds of Appeal:
  - i. the Hearing Tribunal failed to abide by this By-law or to properly apply the relevant Eligible Policy and such failure resulted in a denial of natural justice; and/or
  - ii. no reasonable decision maker in the position of the Hearing Tribunal, based on the <sup>18</sup> material before them, could reasonable make such a decision.

### 9.5 Notice of appeal

- a. To submit a valid Notice of Appeal, an Appellant must, within 14 days of the date of receipt of the decision made by the Hearing Tribunal:
  - i. if the Hearing Tribunal was an Internal Hearing Tribunal:
    - A. if the Alleged Breach is an NST Excluded Matter:
      1. lodge with the KA National Complaints Officer the Notice of Appeal stating they wish to appeal, which states in full their Grounds of Appeal, including any relevant documents as annexures;
      2. pay the appeal fee as set from time to time by KA using either of the payment methods listed below;
        - ❖ Credit Card or Debit Card (Visa or Mastercard) by supplying the following information:
          - Name of card holder;
          - Card number;
          - Card expiry date;
          - CSV number.
        - ❖ Direct Deposit payable to:
          - Account name: AKA Ltd
          - BSB: 062589
          - Account Number: 10923638

Note: Please use your KA Licence Number as the payment reference

3. serve, by email, by post, or physically, on the other party to the appeal a copy of the Notice of Appeal on the other parties; or
  - B. If the Alleged Breach is at the KA level and is either an NST Eligible Matter, or neither an NST Eligible Matter or NST Excluded Matter:
    1. lodge and 'Application for an Appeal' form with the NST, which must state in full their 'Grounds of Appeal';
    2. pay the requisite application fee; and
    3. serve, by email, by post, or physically, on the other party to the appeal a copy of the 'Application for an Appeal', (together, a Notice of Appeal); or
  - ii. if the Hearing Tribunal was the NST General Division:
    - A. lodge an 'Application for an Appeal' form with the NST, which must state in full their Grounds of Appeal;
    - B. pay the requisite application fee; and
    - C. serve, by email, by post, or physically, on the other party to the appeal a copy of the 'Application for an Appeal'.
- b. If an appeal is lodged under:
- i. clause 9.5(a)(i)(A), the matter must be dealt with by an Internal Appeals Tribunal; or
  - ii. clause 9.5(a)(ii)(B) and it is neither an NST Eligible or NST Excluded Matter, KA may apply to the NST CEO for approval, and if the NST CEO does not approve the matter, it must be dealt with by an Internal Appeals Tribunal; or
  - iii. clause 9.5(a)(ii)(B) and it is an NST Eligible Matter, it must be dealt with by the NST 19 Appeals Division.

## 9.6 Appeals in the NST Appeals Division

- a. If an Appellant lodges a valid Notice of Appeal in the NST Appeals Division, the NST will determine the matter.
- b. The procedure for an appeal in the NST Appeals Divisions will be in accordance with clause 9.5 and the NST legislation.

## 9.7 Internal Appeals Tribunal

- a. If an Appellant lodges a valid Notice of Appeal to be dealt with by an Internal Appeals Tribunal, the Internal Appeals Tribunal will determine the matter.
- b. The procedure for an appeal is in Schedule 1

## 9.8 Determination for Appeal Tribunal

- a. The Appeals Tribunal's arbitration of the appeal:
  - i. must determine, to the Standard of Proof, whether one or both Grounds of Appeal (as applicable) are proven, and must not rehear the matter of the facts of the Alleged Breach; and
  - ii. may result in the Appeals Tribunal removing, or altering the Sanction imposed on a Respondent, in accordance with clause 7.5.

## 9.9 Notification of Appeal Tribunal decision

- a. The Appeal Tribunal will notify the parties to the proceeding of the decision in accordance with its relevant procedures, after which the KA National Complaints Officer will:

- i. Notify and provide a copy of the decision to KA and/or Karting Organisation; and
- ii. Proceed to finalising the Complaint in accordance with clause 10.

## 10 Finalising Complaints

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### 10.1 Finalisation of Resolution Process

- a. A Resolution Process will be finalised, and an outcome reached when:
  - i. No Further Action – when KA and/or Karting Organisation notifies the relevant parties of its determination under clause 6.1;
  - ii. Breach Notice – where the Respondent admits the Alleged Breach, waives their right to a hearing and accepts the Sanction, or is deemed to have done so under clause 7.2(c);
  - iii. Hearing Tribunal – where the parties to the proceeding are notified of the decision and no appeal has been filed; or
  - iv. Appeal Tribunal – where the parties to the proceeding are notified of the decision.
- b. Once the applicable Resolution Process (including any appeal) under this By-law 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.

### 10.2 Notification of outcome and implementation of Sanction

- a. When a Resolution Process is finalised, the KA National Complaints Officer will:
  - i. notify KA, Karting Organisation (if applicable), the Complainant and Respondent of the outcome in writing, unless otherwise provided for in this By-law;
  - ii. take all necessary steps to implement any Sanction imposed (if applicable); and
  - iii. ensure KA publicly discloses the matters referred to in clause 3.8(c) (if applicable).

20

### 10.3 Recording Decisions and Outcomes

- a. KA and/or Karting Organisations shall keep all records of all Complaints and Concerns for a minimum of 7 years from the date the Resolution Process is finalised, which will include at a minimum a record (including dates, where relevant) of:
  - i. the Alleged Breach;
  - ii. the Complainant;
  - iii. the Respondent;
  - iv. the Resolution Process;
  - v. the Outcome;
  - vi. any Sanctions and/or Provisional Action imposed.
- b. Records must be maintained in a secure and confidential place, which may be electronically.

## 11.0 Interpretation & Other Information

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### 11.1 Commencement

This By-law commences on the date printed on the front cover known as the date of Board Approval (Commencement Date).

### 11.2 Prior complaints

Complaints relating to conduct which occurred prior to the Commencement Date:

- a. must be dealt with under the policies and processes of KA or relevant Karting Organisation existing at the time the complaint was made, regardless of where that Complaint is at in that

process;

- b. cannot be resubmitted to KA or Karting Organisation under this By-law; and
- c. are not subject to any appeal under this By-law.

### 11.3 Requirements for Karting Organisations

Karting Organisations must adopt and implement this By-law as their complaints management policy for complaints arising under all Eligible Policies.

### 11.4 Interpretation

- a. Any document required to be provided under this By-law may be given by:
  - i. sending it to an email or other electronic address, or to a postal address, nominated by the recipient party; or
  - ii. Email, post, or hand delivering it to that party's registered office.
- b. A document is taken to have been received under this By-law if sent by email or other electronic transmission, on the date of transmission, or if hand delivered, on the date of delivery or if sent by post, 5 business days after it was sent.
- c. Relevant Persons are responsible for keeping their contact details up to date with KA or the Relevant Organisation they are associated with, as appropriate. Delivery to the last known address is sufficient in circumstances where the current whereabouts of a Relevant Person are not known.

### 11.5 Amendment

- a. KA may amend this By-law from time to time. KA and Karting Organisations must make the new version available on its website as soon as possible including the date on which any amendment/s take effect.
- b. Any Complaint under this By-law which is not finalised at the time of an amendment to this By-law will continue to be processed under the substantive provisions of this By-law in force at the time KA and/or a Karting Organisation received the KA Complaint Form unless KA and/or the Hearing Tribunal determines the principle of "lex mitior" appropriately applies in the circumstances.



## SCHEDULE 1 – INTERNAL APPEALS TRIBUNAL PROCEDURE

### Interpretation

1. **In this Schedule:**  
**Appeal Chair** means the chair of a particular Appeals Tribunal in accordance with Schedule 1.  
**Tribunal Member** means an individual person sitting on an Appeals Tribunal.
2. Defined terms not otherwise defined in this Schedule have meaning given to them in the By-law or KIF.
3. All clause references refer to this Schedule unless otherwise provided.

### Convening Internal Appeals Tribunal

4. As required under clause 9.7 of the By-law, the KA National Complaints Officer will convene an Appeals Tribunal in accordance with this Schedule.
5. The Appeals Tribunal shall be convened as soon as reasonably practicable after a referral under clause 9.7 of the By-law and shall endeavour to convene no later than two weeks after notification by the KA Integrity Unit.

### Composition of Internal Appeals Tribunal

6. Subject to Clause 7 of this Schedule, each Appeals Tribunal shall:
  - a. comprise three (3) Tribunal Members selected by the KA National Complaints Officer;
  - b. comprise at least one Legal Practitioner and one Sports Administrator; and
  - c. be chaired by the Appeal Chair who shall be appointed by the KA National Complaints Officer and shall be:
    - i. a Legal Practitioner; and
    - ii. a person of experience and skills suitable to the function of chairing an Appeals Tribunal, none of whom sat on or was involved in the original Hearings Tribunal for the Alleged Breach subject of the appeal.
7. Should a Tribunal Member become unable to sit on a Tribunal following the convening of the Tribunal for whatever reason, the KA National Complaints Manager shall appoint a replacement Tribunal Member.
8. Should a party challenge the impartiality of a 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 KA National Complaints Officer; or
  - b. if the KA National Complaints Officer is unavailable or unable to act, the other members of the Tribunal.
9. There should be no right of appeal from a decision made under clause 9.

### Procedure of Internal Appeals Tribunal

10. Subject to this Schedule, the Appeals Tribunal and persons appearing before it are bound by the same procedures under this By-law as if the Appeals Tribunal was the Tribunal hearing a matter at first instance.
11. The Appeals Tribunal must limit its hearing to consideration of the Ground(s) of Appeal relied upon by the Appellant under clause 9.4(a) of this By-law, in accordance with 9.6 of the By-law.

12. The Respondent to an Appeals Tribunal will be given the opportunity to file a written submission in response to the Notice of Appeal.
13. The parties to an Appeal Tribunal may not call witnesses unless given leave to do so by the Appeals tribunal. The Appeals Tribunal will not allow a party to call a witness to give evidence in relation to any matter outside of the Ground(s) of Appeal relied upon by the Appellant.
14. An Appeals Tribunal has the power to:
  - a. dismiss the appeal;
  - b. uphold the appeal;
  - c. impose any of the Sanctions set out in the By-law; or
  - d. reduce, increase, or otherwise vary any Sanction imposed by the Hearing Tribunal under the By-law, in accordance with clause 9.8 of the By-law but otherwise in such a manner as it thinks fit.
15. At the conclusion of the appeal, the Appeal Chair shall ensure that the Appellant, Respondent and KA are informed of the determination of the Appeals Tribunal. The Appeal Chair shall also notify the KA National Complaints Officer of the decision of the Internal Appeals Tribunal.
16. The Appeals Tribunal will give oral and/or written reasons for its decision.
17. The Appeals Tribunal has discretion to order the refund of the appeal fee and shall do so where the appeal results in the breach being dismissed or the Sanction reduced.

