

Rules Specialist Group 2017-2020 Racing Rules of Sailing

Appeals

Issued 8 November 2019

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Response from the Rules Specialist Group to a series of questions from Australian Sailing (Glen Stanaway) about the appeal procedure.

The following was received from Glen and the RSG comments are shown in red within the text of the document.

The RSG has also determined, as a result of these questions to make some further suggestions and recommendations and these are included after the initial questions.

Principal Partner



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1. Appendix R Procedures for Appeals and Requests

- R2 requires the appellant to submit various documents.
- R3 requires the national authority to send to the *parties* and protest committee copies of the appeal (R2.1) and any other relevant documents (R2.3).
- R4.1 allows the *parties* and protest committee may make comments on the appeal (R2.1) and documents and any other relevant documents (R2.2). **R4.1 allows comments on the appeal and on any documents listed in 2.2.**
- R4.3 requires the national authority to send copies of comments and clarifications received to the *parties* and protest committee as appropriate. **See comments on 'as appropriate' later in this response.**
- R4.4 allows comments on any document received from the national authority. **This is incorrect. See answers below.**

2. Australian Sailing's Internal Procedures

- Acknowledge receipt of the appeal
- Send the *parties* and protest committee copies of the appeal (R2.1) and any other relevant documents (R2.2) and invite their comments (R4.1)
- Appoint a panel to consider the appeal
- Send the panel copies of the appeal (2.1) and any other relevant documents (R2.2)
- Comments received under R4.1 are sent to the panel
- The panel's decision is circulated to *parties* and protest committee, and published on the website

We understand these procedures are under review. See further comments later in this response

3. Questions for the RSG

R3 requires the national authority to send to the *parties* and protest committee copies of the appeal received under R2.1 and any other relevant documents under R2.2, and then 4.1 explicitly limits comment from parties and the protest committee to those documents distributed under R3.

- Does R4.3 require the national authority to send comments received under 4.1 to the other *parties* and protest committee? **Yes. These are appropriate comments that the appeal is decided on. It allows the parties to see the same information the appeal committee sees and on which the appeal is adjudged.**



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- b) If the answer to 3(a) is yes, does R4.4 allow *parties* and the protest committee to make a second round of comments on the comments submitted under R4.1?
No. Rule 4.1 limits the comments only to the appeal itself or to the documents listed in R2.2. The comments and clarifications received from the parties are not listed in R2.2.
- c) If the answer to 3(a) is yes but only if appropriate, what are some examples of appropriate circumstances to circulate the comments submitted under R4.1, and may *parties* and the protest committee then make a second round of comments on the comments? **The default position should be that all documents are shared, and we believe a very broad interpretation should be placed on 'as appropriate'. An example of something that may not be appropriate to send out might be highly offensive comments or something that is simply not relevant to the appeal itself.**
- d) If the answer to 3(a) is no, does the principle of procedural fairness reasonably require the appeal process to allow the appellant to see comments received from the *parties* and protest committee, and respond? **NA**
- e) If the answer to 3(d) is yes, would it be a breach of Appendix R to circulate comments received under R4.1 to the appellant, and allow them to comment?
NA. Comments on comments should not be sought, however, if further comment is received this should be forwarded to the appeal panel to decide what action, if any, should be taken.
- f) If the answer to 3(e) is yes, what rule change would be needed to enable this, and what test rule or national prescription could be developed in the interim?
NA
- g) Is there conflict between R3 and R4.3, and between R4.1 and R4.4? **No.**
- h) If the answer 3(g) is yes in either case, what rule change would be needed to correct this, and what test rule or national prescription could be developed in the interim? **NA**

Comments on Australian Sailing's Internal Procedures

We recommend that a change is made so that comments from the parties should be sent to the other parties. It is not necessary to send them back to the originating party. If there are any concerns as to the appropriateness of comments this should be discussed with the appeal panel who should make the decision as to whether it is appropriate to send them out.

We also note that if a rejoinder included any comment or information which was not included in previously circulated documents, and which might influence the outcome of the appeal, then the appeal panel may choose to see that as a significant comment that may be worthy of further comment from the other parties.

Should the appeal panel decide to request further comments from the parties then a 15-day response period, as set out in R4.4, should be allowed for comment.

Should the above raise any further questions please do not hesitate to get back to us.

John Standley

**RSG Chair
8th November 2019**

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