

# AUSTRALIAN SAILING

## Australian Sailing Appeal Decision



### 2024-01 Crosshair, Papillion and Nerana v RSAYS

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Appeal By: Crosshair, Papillion and Nerana

Arising from: Request for redress following the inshore race held on Saturday 6<sup>th</sup> January 2024.

The following people have been appointed to the Appeal Panel for this appeal by Australian Sailing:

- John Standley (IJ) Chair
- David Brookes (IRO)
- Philippe Mazard (IJ)
- Erica Kirby (NJ)
- Glen Stanaway (NJ)

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### Background to the Request for Redress:

An inshore race series is run by two organising authorities, the Royal South Australian Yacht Squadron (RSAYS) and the Cruising Yacht Club of South Australia (CYCSA). Each Club takes turns to run the racing on the water but each Club scores its own series separately so effectively there are two different races running on the same course simultaneously. The start boat for the race held on 6<sup>th</sup> January 2024 was provided and operated by the CYCSA.

Due to the potential for storms and lightning in the area the RSAYS race committee (RC) displayed AP over A at approximately 11.30hrs. which is the time boats would have had to depart for the racecourse.

The signal was correctly displayed on the club's flagpole and the starter was advised that the RSAYS race had been postponed. The CYCSA race committee, making a later decision after conditions had improved, decided to proceed with their race.

Three RSAYS boats that were moored away from the club failed to see the postponement signal and proceeded to the race area and sailed the course. Returning to the RSAYS later that day they became aware of the AP over A.

The RSAYS published updated results sheets at 18.47 on Saturday 6<sup>th</sup> January which indicated the race had been abandoned.

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### The Request for Redress:

Crosshair, Papillion and Nerana submitted requests for redress on Monday 8<sup>th</sup> January 2024.

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### The Hearing:

A hearing was called for Wednesday 15<sup>th</sup> January and was attended by representatives from Crosshair and Nerana. Papillion could not be represented directly but agreed that they could be represented at the hearing by Crosshair as the requests were identical.

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At the beginning of the hearing Crosshair expressed concern that three of the four members of the protest committee (PC) may have had a conflict of interest as they sailed on other boats that were entered in the series and, whilst those boats did not sail on the 6<sup>th</sup> January, the outcome of the hearing could affect the series scores.

The PC discussed the matter and one member of the PC, who was not the subject of the concern, left the panel and took no further part in proceedings.

The PC then went on to discuss the request and found the following facts relating to validity:

The 3 competitors returned to the RSAYs at approx 5pm + noted by post-race signals still flying on the Club flagpole. No other competitors or Race Officials were on site. The 3 competitors also noted that no other RSAYs boats were at the starting line.

The official Results were posted at 18:49 on Sat 6<sup>th</sup> Jan.

The Boating Officer had spoken with P. Boyd at 17:04 + informed him of the instructions by Racing Committee decision.

Protest Forms are available either on line or outside the boating office + can be handed to or mailed.

The requests should have been able to be delivered on the 7<sup>th</sup> January.

**The Protest Committee concluded:**

CONCLUSIONS AND RULES THAT APPLY ☐ Committee diagram is attached ☐  
RRS 62.2 - request was not delivered as soon as reasonably possible after learning of the reasons for making the request.  
DECISION

**And decided:**

The request for redress is invalid.

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**The Appeal Summary:**

The appellant's stated the following grounds for appeal:

1. It is our position that three of the panel members had a clear Conflict of Interest under clause 63.4 Conflict of Interest in the RRS and all three should have recused themselves from the panel.
2. Accordingly, given the unique circumstances we were dealing with we contend that the requests for redress were lodged within a reasonable time as required under RRS 62.2

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## Appeal Panel discussion and conclusions:

### Validity of Appeal

The appeal was lodged with Australian Sailing 11 days after receipt of a written copy of the protest decision from the protest committee. This application therefore complies with the requirements of RRS R2.1(a). RRS R2.2 was also satisfied and therefore the submission is a valid appeal request.

### Appeal ground 1

Information provided to the appeal panel advised that the three remaining members of the protest panel were crew members of boats that were entered in the series.

The panel notes that Papillon and Crosshair sail in division 1 and Nerana in division 2

One member was a regular crew on a Div 2 boat which had decided not to sail before AP over A was displayed. A second member was the owner of a Div 2 boat entered in the series but who also did not intend to sail, and the third member was a designated member of the Race Committee against which the request for redress was being raised.

The RRS definition of Conflict of interest reads, in part,

*A person has a conflict of interest if he*

*(a) May gain or lose as a result of a decision to which he contributes,*

Crew members of other boats entered in the race or series therefore clearly have a conflict of interest and this should have been recognised at the hearing. The PC member who was a RC member clearly has a conflict as she was effectively judging the RC actions.

In addition, it is a PC members duty to advise of any potential conflict of interest as required by RRS 63.4(a), and attention is also drawn to Appendix M2.3 and the World Sailing Judges manual

Extract from Appendix M 2.3 Recommendations for Protest Committees

*Ensure that all protest committee members declare any possible conflicts of interest.*

*Ask parties if they consent to the members.*

*If a party objects the remainder of the committee members need to assess whether the conflict of interest is significant.*

Extract from World Sailing Judges Manual

*F 1.2 Conflict of Interest*

*After the preliminary topics are checked, and before the hearing, the members of the protest panel should be introduced to the parties to the hearing. Any members of the protest panel with a conflict of interest shall declare it to the parties at this time. Nationality, club membership or past protest hearing results do not fit within the definition of C of I.*

No members of the protest committee indicated they might have a conflict of interest even though it should have been clear to them that such a conflict may exist.

One of the protest decision forms does indicate that an objection was made about the panel chair but no facts have been provided to indicate that the PC properly addressed the complaint.

Bearing in mind that there were objections to three members of the PC and the fact that the only member not objected to stood down from the hearing it is hard to see how the remaining members could objectively have reached any decision on conflict of interest.

Information given to the appeal panel indicates sufficient concern that all members of the PC had a conflict of interest and should have recused themselves.

On this ground the appeal is upheld.

## **Appeal ground 2**

From the information supplied to the appeal panel from the appellant and the rejoinders from the RC and PC the appeal panel has established the following timeline:

**At approximately 16.30 on Saturday 6<sup>th</sup> January** the appellants became aware that AP over A was displayed from the club flagpole.

**At 16.42** they called the boating administrator.

**At 17.04** the boating administrator returned the call and confirmed that the race had been postponed by display of AP over A at 11.30 hrs. on the instructions of the race committee.

**At 18.17** they contacted a previous PRO of the club:

*'He said he believed the persons responsible for the decision to fly AP over A had acted inappropriately and did not have that authority. He suggested we seek redress and cautioned about time limits'*

**At 18.49** updated series scores were posted which confirmed the race had not been scored.

The appellants were therefore aware of the need to make any requests for redress in a timely manner.

The appellants stated that the race office was closed but the appeal panel has been made aware that the necessary forms were available from a box adjacent to the race office and therefore could have been completed that evening.

**On Monday 8<sup>th</sup> January at 11.30** the first request was received by the boating office and other requests were received considerably later.

The appeal panel considers the appellants had ample opportunity either on Saturday evening or on Sunday morning to be able to submit a request for redress which, if such a timescale had been adhered to may have resulted in a valid request.

By delaying until 11.30 on Monday 8<sup>th</sup> January for the first request to be received, and considerably later for other requests, the appeal panel supports the conclusion of the protest

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committee that the requests had not been made in accordance with the time limits specified in RRS 62.2

The appellants have not submitted sufficient evidence to the appeal panel to suggest that there was good reason for the time limit to be extended.

The PC has not made an error in finding the requests invalid due to being submitted out of time.

On this ground the appeal is denied.

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## **Appeal Panel decision:**

The protest committee did not make an error in finding the request invalid.  
For that reason, the appeal is denied.

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