

Rules Specialist Group 2017-2020 Racing Rules of Sailing

Procedure for Remote and Electronic Hearings

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Remote Protest Hearings

This paper has been prepared to assist people who may wish to adopt remote processes for protest hearings.

It is not intended to be a definitive document and Australian Sailing welcomes any feedback from competitors and officials as to their experiences, good and bad, with remote hearings. Should you have any feedback please email your comments to technical@sailing.org.au.

We do not recommend any specific platform on which to hold the hearings. You should ensure that the platform to be used allows good and clear communication throughout the hearing. Some platforms may be better than others depending on your area and internet speeds and again, we welcome your comments as to the suitability of the various platforms.

Background

The recent Covid situation has led to an increasing use of various web-based meeting systems and, together with an increased awareness to social distancing there is an increasing interest in the use of such systems to hold protest hearings. This paper has been developed to assist Organising Authorities in setting up a remote hearing system that meets the requirements of the rules.

Current Rule requirements

These are set out in Part 5 section B Hearings and Decisions (Rules 63 -67). Additional information can be found in Appendix M Recommendations for Protest Committees. If these Rules and procedures are followed the likelihood of a successful appeal are significantly reduced as many appeals are successful due to improper procedures being followed by a protest committee.

It should be noted that the rules and recommendations do not make mention of remote hearings so as such they are not precluded.

It is, however, important that any procedure used meets the requirements of the rules and that any adopted process is both acceptable to the parties and seen to be fair.

Types of Remote hearings

Any hearing where one or more of the protest committee, parties or witnesses are not 'on-site' should be considered a remote hearing. For example:

- A party to a hearing cannot be present, but the PC and other party and witnesses are physically present
- Parties and witnesses are present, but the PC is remote
- PC, parties and witnesses all remote from each other.

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The format for the remote hearing may necessarily vary in each of the above examples.

Advantages of Remote systems

1. Potential cost reduction for events as PC or Jury members need not be on site reducing accommodation and subsistence costs. (See recommendations below however)
2. Parties and witnesses can take part in a hearing from their location which makes hearing more convenient.
3. It will be easier to maintain social distancing requirements where necessary.

Difficulties that may arise

1. Unreliable and/or slow internet connections. Clearly a reliable internet connection is required by all parties
2. Parties not having access to video or audio equipped computers
3. Unfamiliarity with meeting programmes. Whilst familiarity with various meeting programmes has improved in recent times there are still many who are unfamiliar and uncomfortable working in such a medium.
4. Parties do not see the hearing as being as serious as they might when having a face to face hearing
5. Difficulties in ensuring witnesses and other advisers are not communicating directly with parties during a hearing.
6. Using models and/or boat drawing programmes is difficult due to parties' unfamiliarity with the programmes and also their relative inexperience with using models generally

Suggestions to address difficulties

1. One member of the protest committee should be delegated to set up the hearing. Detailed instructions should be sent to each party prior to the hearing as to software requirements and meeting connection details. Twenty minutes before the hearing is due to start they should ensure that all participants are connected and full communication is available with all parties.
2. Meeting instructions should advise who parties should contact prior to the hearing should they have any difficulties or concerns about the hearing methodology and technology required.
3. The procedures to be used should lead to the same 'feeling' as a formal face to face hearing. Whilst it may be possible for parties to be anywhere at the time of the hearing clearly they should be expected to be in a position to sensibly deal with the process. Using a phone from the Club bar, for example, is not likely to give a rise to a successful hearing.
4. The hearing manager should ensure that the remote meeting software has a waiting room so people cannot simply crash into a meeting when they log in. The chair or hearing manager should be able to monitor the status of people in the meeting and, also, be able to control microphones and be able to remove people from the hearing or remove them to the waiting room. It will however always be difficult to control other methods of communication between various remote parties.
 - To try to control this parties should be issued with a Code of Conduct for Remote hearings.
5. All of the difficulties mentioned above will be significantly easier to control if a hybrid type of hearing were to be adopted.
6. In such a hearing the major parties (protestor, protestee and one protest committee member would be located in the same room.

Recommendations

1. The written notice of hearing should advise the parties that this will be a remote hearing and ask for any issues with this to be notified to the PC chair.
2. It is recommended that, where possible, the protestor, protestee and one protest committee member are located in the same room – maintaining social distancing where required. This is particularly

advantageous for part 2 hearings where diagrams and models will be easier to utilise. Should this not be possible consideration should be given to supporting the parties by having a person available to manage the technology and observe the conduct of the hearing. This person need not be part of the protest committee but should have an understanding of the hearing process and be able to advise the PC of any observed irregularities.

3. A code of conduct is included in the NoR and SI's when remote hearings might be used.
4. At least ONE Jury/PC member is on site for regattas and hearings. This person would meet the requirements of recommendation 1.
5. The following clause be places in the SI's:
Persons attending a protest hearing remotely are deemed to be present where this is required by rule 63.
6. The following Code of Conduct be included in the NoR and/or Si's:

CODE OF CONDUCT FOR REMOTE HEARINGS

(via Telephone, VoIP and/or Video Conference)

To ensure a fair proceeding, the Protest Committee must rely upon the participants to abide by this 'Code of Conduct for Remote Hearings'. You will participate as either a party or a witness (if you are not a witness, you are likely a party, see RRS def: Party).

Unless the Protest Committee specifically approves otherwise, during the hearing:

- A party or witness shall not record, transmit or convey audio or video of the hearing. Individual screen-capture of scenario images is permitted for your own records only.
- A party or witness must ensure, to the best of their ability, that they are not being observed or overheard by any witness or anyone who might have an interest in the proceedings.
- A party shall not communicate or share information with anyone outside of the hearing by any means or technology.
- A party shall not communicate or share information with a witness, except when the witness is giving testimony in the presence of the Protest Committee.

At the beginning of the Remote Hearing, you will be asked if you understand and agree to abide by this Code of Conduct for Remote Hearings. Please take that opportunity to ask any questions you may have regarding what is expected of you.

A party or witness to the hearing that breaks an element of this Code, risks being found in breach of good sportsmanship or to have behaved unethically (see Rule 69.1(b)).

Should you have any feedback based on your experiences with remote hearings please email your comments to technical@sailing.org.au.

John Standley

Chair

Rules Specialist Group