

B8 KARTING AUSTRALIA TRIBUNAL

Scheduled Reviewed Triennially or as required

Date of Board Approval 30 May 2016 Updated: 11 November 2019

Preamble

- A. The relationships between KA, and the affiliated State Karting Associations (Member States), the affiliated member Clubs, are regulated by the Constitution of KA, the National Competition Rules, By-laws, Policies, Procedures and Safety Standards (Rules) promulgated from time to time by KA.
- B. The relationship between the Member States and the Clubs is regulated by the constitution of the Member States and the Rules promulgated from time to time by KA.
- C. The relationship between the Clubs and their members (including the individual members) is regulated by the constitution of the Club and the Rules promulgated from time to time by KA and/or their Member State.
- D. The Code of Behaviour contains certain provisions that are designed to provide for the hearing and determination of alleged breaches of the Code of Conduct in the most cost effective and expeditious manner.
- E. The KA Member Protection Policy (MPP) contains certain disciplinary and judicial functions to ensure that the objectives of the MPP are met at all times.
- F. Certain By-laws, Regulations, Policies and Procedures require disciplinary and judicial functions to be exercised by an independent judicial, investigatory and/or disciplinary body.
- G. The KA Board has promulgated By-laws for the Discipline of Members that fall beyond the scope of the Judicial rules contained within the National Competition Rules.
- H. It is envisaged that from time to time certain matters may also arise that may not specifically fall under the scope of a Dispute under the Constitution, or an alleged breach of the Code of Conduct and/or the Member Protection Policy or any other Policy or By-law but that require investigation, hearing, determination, resolution, and discipline. These may be referred to the KA Tribunal by the Board or the CEO so as to be resolved in the most cost effective and expeditious manner.
- I. This By-law sets out the procedures for the formation of an internal dispute resolution body and provides it with its powers and the framework for the efficient resolution of any disputes or matters requiring the discipline of a member or members that may arise from time to time.

1.1 Interpretation

In addition to the definitions in the KA Manual, and the Constitution, these definitions set out the meaning of words used in this Policy and its attachments without limiting the ordinary and natural meaning of the words.

AGM means the Annual General Meeting of KA

KA means Australian Karting Association Ltd trading as Karting Australia

KA Tribunal means this Tribunal

KA Tribunal Member means any of the three (3) Independent Persons appointed to the KA Tribunal in accordance with this By-law

Board means the Board of KA

By-law means any By-law, Policy or Regulation promulgated by the Board of KA, which in their opinion are necessary or desirable for the control, administration and management of KA's affairs in accordance with the Constitution

CEO means the Chief Executive Officer of KA

Club means a club admitted as a Member of KA in accordance with the Constitution

Code of Behaviour means a code that has been ratified by the Board to regulate the conduct of Members.

Code of Conduct shall have the same meaning

Constitution means the Constitution of KA

Disciplinary Proceedings means formal disciplinary procedures instituted by KA against a Member other than a Member State

Dispute means a dispute between KA and a Member State

Grievance means a grievance between KA and a Member State

Independent Person means a person who is not affiliated in any way whatsoever with a Member.

Individual Member means a person to whom a competition licence, participant's Licence and/or an official's licence or such other Licence that has been issued in accordance with the Rules and/or any other person nominated by the Company who accordingly has been admitted to the Company as an individual member in accordance with the Constitution

KA Manual means the Australian Karting Manual (the National Competition Rules.)

Karting means the sport of sprint kart racing in Australia

Member means any of the categories of member defined by the Constitution and this By-law.

MPP means the KA Member Protection Policy

Rules of Karting means all the provisions of the Australian Karting Manual (the National Competition Rules.)

1.2 Tribunal and Members

- (a) There is a tribunal called the KA Tribunal.
- (b) One member of the KA Tribunal is to be appointed by the KA Tribunal Members as Chairperson of the KA Tribunal and the others are to be appointed as Deputy Chairpersons of the KA Tribunal.

1.3 Tribunal Objectives

The objectives of the KA Tribunal are to as expeditiously as possible and at minimal cost:

- (a) resolve any Grievance and/or Dispute/s; and
 - (b) exercise the authority given to it by the MPP, the Code of Conduct, By-laws, Policy and Regulations,
- and in exercising its power, have regard to the welfare, needs and interests of Karting generally, KA, Members States and Members of KA.

1.4 Appointment of Members

Subject to 1.5(c), all KA Tribunal Members must be approved by the Member States present and entitled to vote at the AGM with a majority of those present and entitled to vote approving the appointment.

1.5 Term of Appointment

- (a) At the AGM the Board will recommend a list of no more than 5 Independent Persons to fill positions on the KA Tribunal.
- (b) Each KA Tribunal member shall be appointed for a two (2) year term by the Member States at an AGM.
- (c) In the event the Members States of KA are unable, for whatever reason, to appoint the minimum quota of three (3) KA Tribunal Members, the KA Board will appoint as many Independent Persons as KA Tribunal Members as required to fill the three (3) person quota.

- (d) In the event a proceeding in the KA Tribunal has not been completed prior to the end of the year of appointment, the KA Tribunal Members will continue to take part in the proceeding until the proceeding has been concluded. A proceeding will not be concluded unless a publication of the decision has occurred pursuant to clause 1.13.

1.6 Resignation of a KA Tribunal Member

- (a) Upon the resignation of a KA Tribunal Member the Board shall appoint a replacement pursuant to clause 1.6(b).
- (b) Should the number of KA Tribunal Members fall below three (3), the KA Board will appoint an Independent Person as a KA Tribunal Member until the next AGM of the members of KA, where upon the members of KA will appoint a new KA Tribunal Member pursuant to clause 1.4

1.7 Jurisdiction and powers of the KA Tribunal

The KA Tribunal has jurisdiction to investigate, hear, determine, rule on and declare judgement on any matters referred to it in relation to:

- (a) all disputes arising between KA and any Member State;
- (b) any Disciplinary Proceedings referred to it by either the KA Board or the CEO;
- (c) any matter arising out of the Code of Conduct; and
- (d) any matter referred to it in accordance with the KA Member Protection Policy
- (e) any matter requiring investigation referred to it by either the KA Board or the CEO
- (f) any other matter referred to it by either the KA Board or the CEO.

1.8 Impose and recommend penalties

At the conclusion of any Investigatory or Disciplinary Proceedings referred to it, the KA Tribunal may impose and/or recommend to the KA Board the imposition of such penalties as it feels are appropriate which may include one or more of the following forms of discipline:

- (a) a direction that the individual make a verbal and/or written apology;
- (b) a written warning;
- (c) a direction that the individual attend counselling to address their behaviour;
- (d) withdrawal of any awards, prizes, trophies, placings, records, achievements bestowed in any Competitions, activities or events held or sanctioned by KA;
- (e) demotion or transfer of the individual to another location, role or activity;
- (f) suspension of the individual's membership or participation or engagement in a role or activity;
- (g) termination of the individual's membership, appointment or engagement;
- (h) a recommendation that KA terminate the individual's membership, appointment or engagement;
- (i) in the case of an official or person who holds a KA issued credential of any kind, a direction that KA or the Member State de-register the accreditation of the official or accredited person for a period of time or permanently;
- (j) a fine;
- (k) any other form of discipline that the Tribunal considers appropriate.

1.9 Decisions

The KA Tribunal's decisions in a proceeding is by way of a majority decision of the KA Tribunal Members in the proceedings.

1.10 Procedures of KA Tribunal

In the exercise of its jurisdiction the KA Tribunal:

- (a) must observe natural justice; and
- (b) must proceed expeditiously with as little formality and technicality as is consistent with a fair and proper consideration of the matter before it; and
- (c) is not bound by rules of practice as to evidence and may inform itself on any matter as it considers appropriate which includes engaging external experts to investigate and provide reports on any matter; and
- (d) may regulate its procedures as it considers appropriate in the circumstances.

1.11 Constitution of the KA Tribunal

- (a) The KA Tribunal shall consist of up to three (3) KA Tribunal Members; however, a quorum of the Tribunal shall be two (2) members.
- (b) For the purpose of exercising its jurisdiction pursuant to clause 1.11, the KA Tribunal is properly constituted by the KA Tribunal chairperson, or the delegate of the chairperson who must be a KA Tribunal Member.

1.12 Preparing For Hearing

- (a) The Tribunal panel members will be provided with a copy of all the relevant correspondence, reports or information received and sent by the CEO relating to the complaint/allegations.
- (b) The Tribunal hearing will be held as soon as practicable. However, adequate time must be provided for the respondent(s) to prepare for the hearing.

Directions

- (c) The KA Tribunal may hold a conference for considering, or giving directions at or after the conference, about any matter or proceeding in its jurisdiction.
 - (i) on the application of a Member or on the KA Tribunal's own initiative; and
 - (ii) before a matter or proceeding commences or at any time during the matter or proceedings.
- (d) A direction given by the KA Tribunal under this clause is binding on the parties.
- (e) Without limiting subsection (c) and having regard to clause 1.9, the KA Tribunal may consider or give directions about the following as it considers appropriate: –
 - (i) the conduct of the matter or proceeding;
 - (ii) the requirement for the parties to give discovery or allow inspections of evidentiary material;
 - (iii) the requirement for the parties to file pleadings;
 - (iv) striking out the matter or proceeding on the ground that it is vexatious or frivolous.

Organising The Hearing

- (f) The CEO will inform the respondent(s) and the complainant(s) in writing that a Tribunal hearing will take place. The notice will outline:
 - (i) that the respondent has a right to appear at the Tribunal hearing to defend the complaint/allegations;
 - (ii) the details of the complaint and of all allegations, as well as the provision or clause of any policy, rule or regulation that has allegedly been breached;
 - (iii) the date, time and venue of the Tribunal hearing;
 - (iv) that verbal and/or written submissions can be presented at the Tribunal hearing;
 - (v) that witnesses may attend the Tribunal hearing to support the position of the respondent/s;

- (vi) an outline of any possible sanctions that may be imposed if the complaint is found to be true;
- (vii) That legal representation will not be allowed. [The respondent may be assisted by a support person at a Tribunal hearing. For example, where the respondent is a minor, he or she should have a parent or guardian present. However, a person cannot be a support person if he or she has been admitted to practice as a lawyer or worked as a trainee lawyer.] A copy of any investigation report findings will be provided to the respondent(s).
- (g) The CEO will notify the complainant in writing that a Tribunal hearing will take place. The notice will outline:
 - (i) that the person has a right to appear at the Tribunal hearing to support their complaint;
 - (ii) the details of the complaint, including any relevant rules or regulations the respondent is accused of breaching;
 - (iii) the date, time and venue of the Tribunal hearing;
 - (iv) that verbal and/or written submissions can be presented at the Tribunal hearing;
 - (v) that witnesses may attend the Tribunal hearing to support the complainant's position;
 - (vi) that legal representation will not be allowed.

A copy of any investigation report findings will be provided to the complainant.
- (h) If the complainant believes the details of the complaint are incorrect or insufficient, he or she should inform the CEO as soon as possible so that the respondent(s) and members of the Tribunal panel can be properly informed of the complaint.
- (i) If possible, the Tribunal panel should include at least one person with knowledge or experience of the relevant laws/rules (e.g. anti-discrimination).

1.13 Tribunal Hearing Procedure

- (a) The following people will be allowed to attend the Tribunal hearing:
 - (i) Tribunal panel members;
 - (ii) The respondent(s);
 - (iii) The complainant(s);
 - (iv) Any witnesses called by the respondent(s);
 - (v) Any witnesses called by the complainant(s);
 - (vi) any parent/guardian or support person required to support the respondent or the complainant.
- (b) If the respondent(s) is not present at the set hearing time and the Tribunal chairperson considers that no valid reason has been presented for this absence, the Tribunal hearing will continue subject to the chairperson being satisfied that all Tribunal notification requirements have been met.
- (c) If the Tribunal chairperson considers that there is a valid reason for the non-attendance of the respondent(s), or the chairperson does not believe the Tribunal notification requirements have been met, then the Tribunal hearing will be rescheduled to a later date.
- (d) If the Tribunal chairperson wishes to reschedule the Tribunal hearing date, the Tribunal chairperson will inform the CEO of the need to reschedule the hearing and the CEO will arrange for the Tribunal to be reconvened.
- (e) The Tribunal chairperson will read out the complaint, ask each respondent if he or she understands the complaint and if he or she agrees or disagrees with the complaint.

- (f) If the respondent agrees with the complaint, he or she will be asked to provide any evidence or witnesses that should be considered by the Tribunal when determining any sanctions.
- (g) If the respondent disagrees with the complaint, the complainant(s) will be asked to describe the circumstances that lead to the complaint being made.
 - (i) Reference may be made to brief notes.
 - (ii) The complainant(s) may call witnesses.
 - (iii) The respondent(s) may question the complainant(s) and any witnesses.
- (h) The respondent will then be asked to respond to the complaint.
 - (i) Reference may be made to brief notes.
 - (ii) The respondent(s) may call witnesses.
 - (iii) The complainant(s) may ask questions of the respondent and any witnesses.
- (i) The complainant(s) and respondent(s) may be present when evidence is presented to the Tribunal hearing. Witnesses may be asked to wait outside the hearing until they are required.
- (j) The Tribunal may:
 - (i) consider any evidence, and in any form, that it deems relevant;
 - (ii) ask questions of any person giving evidence;
 - (iii) limit the number of witnesses (including limiting witnesses to those persons who only provide new evidence);
 - (iv) require (to the extent it has power to do so) the attendance of any witness it deems relevant; and
 - (v) act in an inquisitorial manner in order to establish the truth of the issue/complaint before it.
- (k) Video evidence, if available, may be presented. Arrangements for the viewing of this evidence must be made entirely by the person(s) wishing to offer this type of evidence.
- (l) If the Tribunal panel considers that at any time during the hearing there is any unreasonable or intimidatory behaviour from anyone, the Tribunal chairperson may deny further involvement of that person in the hearing.
- (m) After all the evidence has been presented, the Tribunal will make its decision in private.
 - (i) The Tribunal must decide whether the complaint has, on the balance of probabilities, been substantiated.
 - (ii) All Tribunal decisions will be by majority vote.
- (n) The Tribunal chairperson may announce the decision of the Tribunal at the conclusion of the hearing. Alternatively, he or she may reserve the decision of the Tribunal at the conclusion of the hearing and deliver the decision at a later time.
- (o) The respondent(s) will have the opportunity to make submissions to the Tribunal in relation to any sanctions that may be imposed.
- (p) Within 48 hours of the Tribunal delivering its decision, the Tribunal chairperson will:
 - (i) Forward a notice of the Tribunal's decision to the CEO, including details of any sanction imposed or recommended to be imposed by the Board.
 - (ii) Forward a letter reconfirming the Tribunal's decision to the respondent(s), including any sanction imposed. The letter should also outline the process and grounds for an appeal, if allowed.



1.14 Publication of Decisions

Decisions made by the KA Tribunal are to be distributed in writing and/or email to the Complainants(s) and Member States within thirty (30) days of the conclusion of the KA Tribunal proceeding, unless special circumstances exist.

1.15 Decisions Binding

- (a) The parties agree that any decision of the KA Tribunal is binding;
- (b) A participant in a proceeding before the KA Tribunal, who is dissatisfied with the KA Tribunal’s decision may seek Leave to Appeal in accordance with By-law B7.

1.16 Reasonable Costs

Any reasonable costs including legal costs incurred by the KA Tribunal or its members in defending its findings or decisions will be paid for in full by KA.

1.17 Proper Exercise of Power

It is a proper exercise of power for the KA Tribunal (if it so wishes) to rely on previous findings where it has previously considered an issue.

2 KA Tribunal remedies to be exhausted

The parties to the MOU agree that they will not become a party to any suit at law or in equity against the other parties until the remedies provided by the KA Tribunal have been exhausted.

