

Case number: NST-E23-103431

Case Title: Australian Karting Association v Member

## Determination

### National Sports Tribunal General Division

sitting in the following composition:

Panel Member

Mr Richard Redman

in the arbitration between

**Australian Karting Association (AKA)**

*(Applicant)*

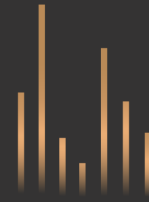
Represented by Matthew Krog, legal representative

And

**Member**

*(Respondent)*

Represented by Paul Horvath, legal representative



## PARTIES

1. The Applicant (AKA) is the National Sporting Organisation (NSO) that governs the sport of karting in Australia. It is recognised by the Federation Internationale de l'Automobile and Confederation of Australian Motor Sport Limited.
2. The Respondent is an Individual Member of AKA pursuant to clause 5.1(c) of AKA's Constitution. He is 17 years old.

## INTRODUCTION

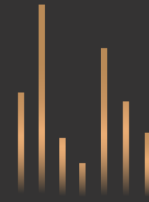
3. This matter is in relation to social media communications.
4. The Applicant alleges that the Respondent breached various policies, including its General Code of Conduct and Licence Holders Code of Conduct, and the Social Media and Acceptable Use of Social Media policy (Social Media Policy), by circulating inappropriate video(s) in a Snapchat group that included persons associated within karting.
5. The main issues involved in this matter pertain to the Respondent's role in sending the video(s); whether the sending of the video(s) amounts to a breach of any relevant AKA policies; and if so, the sanction/s (if any) that should be imposed for such conduct.

## NST JURISDICTION

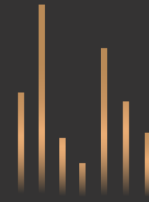
6. The jurisdiction of the NST is engaged by section 23(1)(a), 23(1)(b)(i) and 23(1)(c)(i) of the *National Sports Tribunal Act 2019* (NST Act). The dispute is an NST eligible matter under the AKA Complaints and Discipline of Members By-Law (By-Law).
7. The Parties have agreed in writing that the matter be referred to the NST to resolve the issues in dispute as an arbitration in the General Division of the NST.
8. The Parties agreed that, subject to clause 10.18 of the arbitration agreement, the NST's jurisdiction is engaged until resolution of the dispute.

## FACTUAL BACKGROUND

9. In October 2022, AKA received from a Member State of AKA an email providing copies of two videos (Relevant Videos) circulating in a group formed on the social media tool Snapchat (Snapchat Group).
10. Upon receipt of the Relevant Videos, the Member State instructed Elite Business Performance Pty Ltd (EBP) to conduct an informal investigation.
11. On 17 January 2023, AKA issued a formal Notice of Investigation to the Respondent. At the same time, it also instructed EBP to conduct a formal investigation in relation to the videos. The Notice of Investigation included notice suspending the Respondent from participating in karting pursuant to clause 7 of AKA's Constitution.
12. On 24 January 2023, the Respondent's father applied to the AKA Board to set aside the Respondent's interim suspension.



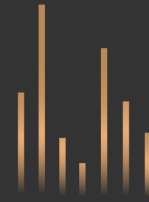
13. On 30 January 2023, the Respondent's father sent an email to AKA's Integrity Unit, stating (among other things) that: *"Member acknowledges that forwarding the video wasn't appropriate and is regretful. He is now aware of the risks associated with social media."* The email also advised that the relevant Snapchat group was constituted by adolescents.
14. On 15 February 2023, the Applicant exercised its discretion to enable the Respondent to continue in karting activities pending receipt of the investigator's report or determination of proceedings.
15. On 7 March 2023, AKA received a report from EBP (Investigator's Report). The Investigator's Report noted that, amongst other matters, the following:
  - a. In relation to the first video, the Respondent saw it in the Snapchat Group and saved it. He denied that he had sent / posted video 1 to Snapchat or any social media group;
  - b. The Respondent admitted to posting or sending Video 2 and possibly Video 1 to the Snapchat Group. He said that he thought he had sent Video 2 to the Group in two parts. He couldn't remember whether he had sent Video 1 but it was 'likely' that he had; and
  - c. The Respondent also indicated that others had also re-sent or reposted the videos to his knowledge.
16. On 27 March 2023, the Applicant issued to the Respondent a Breach Notice alleging violations as follows:
  - a. General Code of Conduct - clauses a, b, g, j, l, o, r;
  - b. Licence Holders Code of Conduct – clauses e, i, k; and
  - c. the Social Media Policy.and imposed sanctions upon the Respondent as follows:
  - a. a six (6) month suspension;
  - b. a two (2) year period of good behaviour;
  - c. a requirement to become a level 4 Graded Race Official and officiate at a minimum of four (4) race meetings; and
  - d. that the sanction would be publicly disclosed on the NSO's Disciplinary web page.
17. The Breach Notice also offered to the Respondent discounted sanctions in circumstances where the Respondent accepted the breach and did not require a hearing. Those discounted sanctions were as follows:
  - a. a three (3) month suspension;
  - b. a two (2) year period of good behaviour;
  - c. a requirement to become a level 4 Graded Race Official and officiate at a minimum of four (4) race meetings; and
  - d. that the sanction would not be publicly disclosed on the NSO's Disciplinary web page



18. On 12 April 2023, the Respondent's representative signed that the Respondent did not admit to the breach of the policies as described, and acknowledged that the matter would be referred to a hearing.
19. On 17 April 2023, the Applicant advised by letter that the matter would proceed to a hearing process, and that with immediate effect the Respondent was not permitted to participate in any karting activity pending the determination of all disciplinary proceedings "in accordance with the By-Law."

#### **PROCEEDINGS BEFORE THE NST**

20. A summary of the dates and main elements of the Applicant's and Respondent's filings is set out below. Other correspondence not included below has been considered by the Panel but omitted from this decision for the sake of brevity.
21. On 2 May 2023, the Parties attended a preliminary conference conducted by the NST CEO.
22. On 8 May, the arbitration agreement was signed by the parties.
23. On 11 May, the Applicant filed its submissions with the NST Registry. Certain material relevant to the Applicant's submissions (including the two videos and various screenshots) had previously been supplied to the NST Registry by Mr Kelvin O'Reilly, AKA CEO. The Applicant's submission attached a letter dated 11 May 2023, which constituted in effect a victim impact-type submission to the Panel.
24. On 16 May, the Respondent filed its submissions in reply. The Respondent also on 16 May requested production of certain documents and information, including the hand-written notes of the investigator, other documents or notes, and of any earlier versions of the Investigator's Report.
25. On 19 May, the Applicant filed Reply Submissions and Summary of Evidence with the NST Registry.
26. Also on 19 May, the Respondent pressed the request for the production of the additional documents.
27. On 22 May, the Applicant filed with the NST Registry a reply to the Respondent's request of 16 May, which included EBP's draft Investigator's Report (Draft Report).
28. The hearing was scheduled for, and occurred, on 23 May 2023. The hearing occurred online. Appearing for the Applicant was Mr Matt Krog of Hope Earle Lawyers, with Mr O'Reilly in attendance. Appearing for the Respondent was Mr Paul Horvath of SportsLawyer, assisted by Ms Elizabeth Seddon, with the Respondent and their father in attendance.
29. No objection was made at the outset of the hearing to the composition of the Panel and at its conclusion the parties confirmed that their procedural rights had been fully respected.
30. Subsequent to the hearing, on 23 May the Respondent filed with the NST Registry a table setting out evidence relevant to the allegations. This had been proposed during the hearing as a summary document only (Evidentiary Table). The Applicant objected to the Panel receiving the Evidentiary Table on the basis that it constituted, in effect, additional submissions rather



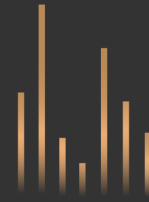
than simply being a summary of already made submissions. The Respondent thereafter also provided consideration in support.

31. The Panel informed the Registry that in light of the objection, and the relative need for the Evidentiary Table in light of the clear and thorough submissions already provided by both parties, the Panel did not require the Evidentiary Table and therefore would not accept it as part of the bundle.

### APPLICABLE RULES

32. Under the AKA constitution, clause 5.6(c) provides that Individual Members must comply with the Constitution and its policies, and clause 7.1 provides that all Members are subject to, and submit unreservedly to, the jurisdiction, procedures, penalties and appeal mechanisms of Karting Australia whether under its policies or pursuant to its Constitution.
33. No submission was made on behalf of the Respondent that he was not bound to the AKA rules or policies as alleged.
34. The Applicant alleged that on the balance of probabilities (as required pursuant to clause 3.6(a) of AKA's Complaints and Discipline of Members By-Law) the Respondent's conduct of posting the video(s) to a Snapchat Group amounted to violations of the AKA Code of Conduct, and the AKA Social Media and Acceptable use of Social Media Policy, as follows:
- a. The General Code of Conduct – clauses a, b, g, j, l, o and r;
  - b. The Licence Holders Code of Conduct (included within Code of Conduct) – clauses e, i and k; and
  - c. The Social Media and Acceptable use of Social Media Policy.
35. The relevant sections of the AKA Code of Conduct provide as follows:
- “General Code of Conduct – Relevant Persons are encouraged and expected to:*
- a. Respect the rights, dignity and worth of others;*
  - b. Conduct themselves in line with KA's values;*
  - g. Be aware of, and maintain an uncompromising adherence to KA's standards, rules, regulations and policies including this policy and the Child Safeguarding Policy;*
  - j. Show concern for the health, safety and welfare of members and participants;*
  - i. Be a positive role model, demonstrating a high degree of individual responsibility (especially when dealing with children), understanding that their words and actions are an example;*
  - o. Do not shame, humiliate, oppress, belittle, harass or degrade any person, especially children;*
  - r. Do not do anything that brings KA, a Member State or an Affiliated Club of the sport of karting into disrepute or engage in conduct that is unbecoming.”*

36. The relevant sections of the Licence Holders Code of Conduct provide as follows:



*“Licence Holders are encouraged and expected to:*

*e. Maintain high personal behaviour standards towards participants, volunteers, and officials at all times;*

*i. Not engage in conduct that is, unethical, unbecoming, or likely to cause harm to the reputation of the Participant or the Affiliated Club;*

*k. Not make or post inappropriate, offensive, or discriminatory comments in public.”*

37. The AKA Social Media Policy provides as follows:

*Relevant technologies*

*This policy includes (but is not limited to) the following specific technologies:*

- *LinkedIn*
- *Twitter*
- *Facebook*
- *Web sites*
- *Snapchat*
- *Video sites*
- *Video streaming sites*
- *Per to peer web sites*
- *Content sharing sites including Flickr (photo sharing) and YouTube (video sharing)*
- *Commenting on blogs for personal or business reasons*
- *Leaving product or service reviews on retailer sites, or customer review sites*
- *Taking part in online votes and polls*
- *Taking part in conversations on public and private web forums (message boards)*

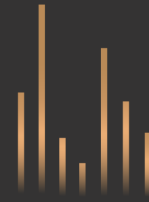
***The intent of this policy is to include anything that is posted online where information is shared that might affect members, colleagues, clients, sponsors or KA as an organisation.***

*(Bold as per original)*

38. And:

*“Policy Objective*

*The increasing ‘dark usage’ of social media to disparage, condemn, belittle, humiliate and ‘troll’ people (to “Offend” or “Offending”) is a concerning trend that should be universally condemned and that has no place in and around our sport. Anything that gets posted on Social Media including sites like Facebook, Twitter or forums goes*



*into the public domain. If such posts are meant to Offend or can be interpreted as offending then these posts could bring the sport of karting into disrepute.*

*This policy aims to provide some principles to follow when using social media so that Covered Persons do not Offend others and potentially breach this Policy.*

***This policy does not apply to the personal use of social media platforms by Covered Persons where the Covered Person makes no reference to KA or related issues.***

(Bold as per original)

39. The AKA Social Media policy provides that “Offending Conduct” is cyber bullying, harassment or offensive conduct on-line.
40. The policy sets out that cyber-bullying or stalking occurs “*when someone engages in offensive, menacing or harassing behaviour through the use of technology. It can happen to people at any age, any time, and often anonymously.*” The Social Media policy then provides a non-exhaustive list of examples, and concludes that such behaviour constitutes a breach of AKA’s National Competition Rules and Policies.
41. The relevant sections of the Social Media Policy alleged to have been breached are set out as follows:

*“When using social media, Covered Persons should ensure that you:*

- *Do not use or republish abusive language and do not harass or threaten others;*
- *Do not use or republish insulting, provocative, hurtful or hateful language;*
- *Do not belittle any person;*
- *Do not use or republish obscene or offensive language;*
- *Do not do anything that potentially contravenes any of KA’s Policies.”*

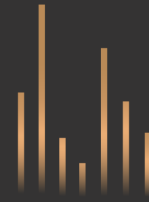
42. The Social Media also relevantly provides the following warning:

*“Under no circumstance should offensive comments be made about Covered Persons or the sport of karting online.*

*Cyber bullying and breaching this Social media Policy are offences under KA Rules and Policies that could if proven lead to lengthy suspensions from the sport. See the KA Member Protection Policy and the KA Anti-Discrimination, Harassment and Bullying Policy for information on cyber bullying.”*

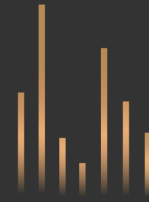
## MAIN SUBMISSIONS OF THE PARTIES

43. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties, it refers in this Determination only to the submissions and evidence considered necessary to explain its reasoning.
44. The Applicant submits that the Respondent posted or sent both videos, and that the distribution of the videos was “*very serious.*”



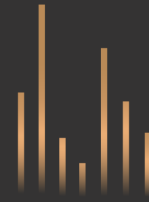
45. The Applicant submits, in short, that the videos were vile, racist, obscene, violent and otherwise deeply offensive, and by posting or uploading the videos, the Respondent was actively involved in their distribution, which was seen by the subject and caused him harm.
46. Part 9 of the AKA Rules provides for Recommended Minimum Penalty associated with a breach of the Social Media Policy. In relation to an offence committed away from a meeting, the Recommended Minimum Penalty is a 3 month suspension. Moreover, Rule 13(b) of the AKA Rules provides that Other Penalties listed in the Rules (Rule 6) may be imposed in place of, or in addition to, the Recommended Minimum Penalties outlined in the tables below.
47. The Applicant submits that the appropriate penalty in this matter exceeds the recommended minimum, and should be as per the Breach Notice of 27 March 2023, without discount, namely:
- a six (6) month suspension (with time under provisional suspension taken as served);
  - a two (2) year period of good behaviour;
  - a requirement to become a level 4 Graded Race Official and officiate at a minimum of four (4) race meetings; and
  - that the sanction would be publicly disclosed on the AKA Disciplinary web page.
48. The Respondent denies breaching the relevant AKA policies as alleged. He denies sending Video 1 at any time, but accepts that he resent Video 2 (after another person initially posted it). However, he has clarified that he did not share or send Video 2 outside of the Snapchat group.
49. In the Respondent's view as Video 2 was resent to a private group it was not being resent in the public domain and therefore not a breach of the AKA Social Media Policy. Moreover, the sending of Video 2 should be characterised as "letting off steam" and having a lighter moment about karting, with no ill intent.
50. The Respondent contends that the policy objective of the AKA Social Media Policy must be considered, and relevantly that it includes the following provision:
- "Anything that gets posted on Social Media including sites like Facebook, Twitter or forums goes into the public domain. If such posts are meant to Offend or can be interpreted as offending then these posts could bring the sport of karting into disrepute. ...*
- This policy does not apply to the personal use of social media platforms by Covered Persons where the Covered Person makes no reference to KA or related issues."*
51. As such, it is the Respondent's contention that under the AKA Social Media policy, in order to establish a breach AKA needs to establish that:
- the video(s) were put into the public domain by the Respondent; and
  - the video(s) caused the sport of karting to be brought into disrepute
52. The Respondent submits that the Applicant has failed to establish either of these two limbs, and therefore no breach of the Social Media policy has occurred.
53. The Respondent also submits that in November 2022, after the incidents the subject of this hearing occurred, the AKA changed the terms of its Social Media Policy to provide as follows:





*“Anything that gets posted on Social Media including sites like Facebook, Twitter or forums goes into the public domain **and/or shared to other social media sites or group chats** (emphasis added).”*

54. The Respondent’s contention is that these changes reflect the recognition by AKA that as originally drafted, the policy could not be read as applying to private Snapchat group communications and was altered accordingly. Accordingly, no breach of the Social Media policy as it was to be understood as at the time of the incident, has occurred.
55. Next, the Respondent submits that the General Code of Conduct provisions, as well as the Licence Holder Code of Conduct provisions, are not mandatory and are not expressed in mandatory terms.
56. On that basis, the Respondent submits that these terms are not enforceable as they are not mandatory requirements, but rather behaviours that Relevant Persons are merely “encouraged and expected to behave in accordance with.”
57. Next, the Respondent argues that, in effect, all he did was reshare a video previously viewed by the private Snapchat Group, and indeed, that had been previously widely viewed within the broader karting community. In short – the submission is that the Respondent’s actions didn’t cause hurt or upset; any such result was caused by others. Notwithstanding this, the Respondent states that he is the only member of karting being issued with a breach notice.
58. The Respondent argues that all members of the Snapchat Group should have been interviewed, and the failure to do so leads to any findings against the Respondent as being unsafe. It was put in the Respondent’s written submissions that the Investigator was selective about who he interviewed in a way that helped establish a case against the Respondent, in circumstances where other members may have given evidence that was exculpatory.
59. This submission is supported by the differences between the Draft Investigator Report, and the Final Version. In short, on page 8 of the Draft Report, the Respondent’s denial of posting Video 1 is noted by the drafter. This denial is omitted from the Final Version.
60. Other differences between the Draft and Final were highlighted, including a reference to notes being provided to AKA - which were sought by the Respondent but not provided on the basis that they were not received by AKA. Further the Respondent submits that the Final Report contains inadmissible material.
61. The Respondent has also supplied a number of references attesting to his good character, and witness statement references attesting to the fact that Video 2 was widely circulating amongst the karting community in a fashion unrelated to the Respondent’s alleged conduct.
62. As to penalty, the Respondent provides in short:
  - a. that he should be found not to have breached the relevant AKA policies;
  - b. in circumstances where he is found to have breached relevant AKA Policies, that his period of provisional suspension should be taken into consideration. This is agreed by the Applicant’s submission.
  - c. there is no evidence as to when Video 2 was resent by the Respondent (whether 2nd or 3rd of October, 2022). If it was 2nd October 2022, then that is during the race

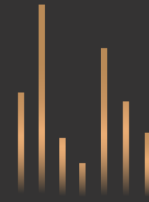


meeting, and the appropriate penalty under the Karting Manual is a loss of results from that meeting. The three-month recommended penalty applies to social media breaches committed outside of race meetings. The Respondent submits that the penalty may be the loss of results from the 1-2 October State Championships.

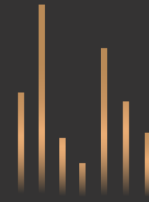
63. An important consideration of the Respondent has been the flow-on effect to other competitions, including races in Europe, that the provisional suspension has had and continues to have on his career.
64. To this end, the Respondent sought a direction from the Panel to the effect that AKA be required to accept a late entry to Round Three (3) of the Australian Karting Championships on June 2-4 (as entries closed as of 15 May) 2023.
65. The Respondent also submits matters pertaining to child safeguarding in the overall conduct of the matter, which have been considered by the Panel.

## MERITS

66. The main issues in this matter revolve around the Respondent's actions in regards to sending the video(s), and whether such actions amount to a breach of any relevant AKA policies.
67. The Respondent admits to resending Video 2 within the Snapchat group, but denies sending Video 1.
68. The EBP report itself concluded that it was not possible to determine which member of the Snapchat Group first uploaded Video 1 and Video 2, but that on the balance of probabilities:  
*“Both of the videos were posted by [the Respondent] to the Snapchat Group. [the Respondent] admits to posting Video 2 and said it was “likely” that he posted Video 1. Both ### and ### stated that [the Respondent] posted both videos to the Snapchat Group.”*  
(Names redacted in report)
69. This finding in the investigator's report is on the “balance of probabilities”, and relies on information provided to him by two witnesses, both of whom have had their names redacted from the Final Report, and on a comment said to be made by the Respondent.
70. Little explanation was submitted on behalf of the Applicant as to the inclusion of the Investigators finding in relation to Video 1 in his Final Report as opposed to the finding being omitted in the draft report. The panel makes no adverse finding in relation to this in and of itself; documents change as drafts evolve, and it is not uncommon for final documents to alter from prior drafts, sometimes considerably.
71. It is well established that in matters determined “on the balance of probabilities”, the “reasonable satisfaction” standard of proof is relevant. Such reasonable satisfaction should not be produced by “inexact proofs, indefinite testimony, or indirect inferences” *Briginshaw v Briginshaw* [1938] HCA 34.
72. In *Briginshaw*, the High Court provides that, in short, the more serious an allegation, the more substantial proof is required in order to meet the balance of probabilities standard.

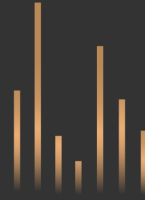


73. In this case, the Applicant's own submission provides that AKA deems the matter "very serious". Accordingly, applying *Briginshaw* principles requires one to consider substantial proof to the requisite standard. In circumstances where the plinth of the Applicant's case (in relation to Video 1) relies entirely upon the Investigator's Report, I am not satisfied that the evidence in the redacted Final Report meets this required standard alone, particularly in circumstances where a significantly different draft exists.
74. It was submitted by the Applicant that the Respondent had changed his story regarding Video 1 under questioning, and that this should be considered unfavourably toward him. However, I also note the email dated 30 January 2023 from the Respondent's father that provided: "[Respondent] acknowledges that forwarding the video..." that is, video in singular not plural, which provides context to support the Respondent's contention that to him, the matter was always mainly about one video; namely the one he always admitted to sending.
75. As such, I am not satisfied to the required standard that the Respondent posted or sent Video 1, but I am satisfied that he did send Video 2 as admitted.
76. The next question is therefore whether the sending of Video 2 is a breach of the AKA Social Media Policy, or General or Licence Holder Code of Conduct.
77. I disagree with the Respondent's submission that in order to establish a breach of the Social Media Policy, AKA needs to establish that (relevantly) Video 2 was put into the public domain by the Respondent, and that it caused the sport of karting to be brought into disrepute. This is a reference to the Policy Objective wording in the Social Media policy.
78. Rather, I favour the Applicant's submission to the effect that this wording merely explains general risks associated with the use of social media and does not limit the scope of the policy.
79. The Applicant's example to this point is persuasive: to consider the Policy Objective as limiting the policy would cast doubt on its effectiveness to deal with matters such as the sending of abusive texts and emails, which is conduct that does not occur in the public domain but which is expressly noted as an example of cyber-bullying, harassment or offensive conduct online.
80. The Respondent also claims that November 2022 changes to the Social Media Policy (which inserted a specific reference to "group chats") reflects recognition by AKA that as originally drafted, the policy could not be read as applying to private Snapchat groups. Again, this Policy Objective reference is general guidance and does not limit the (non-exhaustive) list of Relevant Technologies said to be applicable.
81. The Social Media Policy applies to "Relevant Technologies", which includes Snapchat, and I do not agree with the Respondent's submission that a private Snapchat group should be differentiated from a wider or more open Snapchat forum when reading-in the terms of the Policy.
82. A leading Australian case involving social media concepts is *Nationwide News v Voller* (2021) HCA 27. Although distinguishable on its facts, certain of its underlying principles are helpful for present purposes. One such broad principle was the court's openness to consider those who facilitated or encouraged the posting of comments by others (in that case, Facebook) as having a level of responsibility for those comments. In short, each comment posted aides further publication. This underlying principle remains analogous: the nature of social media activity, be



it Facebook or Snapchat, is that posting or sending messages invites further activity, and thereby facilitates spread.

83. Equally, the wording of the policy objective “as meant to offend” does not impose a requirement of intent in order for it to be a violation of the Policy.
84. The Respondent’s intent when sending the video is not determinative as to whether the Social Media policy has been breached. The Respondent provided that he *“resent Video 2, he believed that as he was resending the video to a private Group, he was not breaching the KA Social Media Policy, for numerous reasons including that it was not being resent in the public domain, and it was ‘letting off steam’ and having a lighter moment about karting, with no ill intent.”*
85. The Respondent submitted that the sending of Video 2 was merely behaving like an engaged member of the Snapchat group; seeing the humour of [person]’s angry and “hot headed” reaction about a common karting occurrence. Accordingly, the submission is that the video is of the nature of satire, rather than an attack, as it pokes fun at [person] for overreacting.
86. I am not convinced by this submission. It is difficult to reconcile Video 2 with being a humorous take on [person]’s behaviour. Especially considering the name of the Snapchat group is clearly a reference to the subject, and the video itself introduces the subject to the viewer before the edited footage of violence is inserted.
87. Similarly, I am not swayed by [person]’s statement, nor any of the other witness statements included in the Respondent’s submission “Attachment 2”, in which it is stated by each relevant author that the videos are “not harmful or malicious”. The subject found them so. And so did Mr O’Reilly.
88. In any event, it is not for the Panel to weigh-up those that found such content harmful against those that did not, and decide whether or not Video 2 is in fact harmful. The Policy itself provides guidance by noting that the intent is to include anything posted online that might affect members.
89. it is enough that some members of the community did, let alone might, have found it harmful irrespective that others did not.
90. Under the AKA Social Media Policy, “Offending Conduct” is cyber bullying, harassment or offensive conduct on-line. In my view this is established, and the Respondent as a covered person under the Social Media Policy, by sending Video 2 engaged in an action that could reasonably be seen as harassing and/or belittling action.
91. Accordingly, I find that the sending of Video 2 to the Snapchat Group, as admitted by the Respondent, to be “offending conduct” pursuant to the AKA Social Media Policy.
92. As I have determined that the conduct amounts to a breach of the Social Media policy, which constitutes a breach of AKA’s National Competition Rules and Policies, it is not necessary in addition to consider whether the conduct also amounts to breaches of other policies as alleged.
93. As to sanction, the Respondent submits that there exists a race day and non-race day sanctioning regime under the AKA Karting Manual. In short, race day penalties invoke loss of results from the corresponding race, non-race day penalties involve suspension periods.



94. The Respondent submits that, as there is no clear evidence as to when Video 2 was resent by the Respondent (whether 2<sup>nd</sup> or 3<sup>rd</sup> of October 2022, with 2<sup>nd</sup> October being Day 2 of the State Championships), it should be read in his favour that it occurred on race day and as such the appropriate penalty is a loss of results from that meeting.
95. I disagree. The intention of such a regime is to help maintain the integrity of a race day event. In my view, such provisions are not intended to be a catch-all for conduct that happens to fall on race day, but that is otherwise not associated with it.
96. The Respondent's provisional suspension was in place from 17 January 2023 until 15 February 2023. It was then lifted by the Applicant, until being reimposed on 17 April 2023 to date. As such, the Respondent has served 81 days provisional suspension as at 6 June 2023.

**THE TRIBUNAL THEREFORE DETERMINES:**

1. *A sanction of 3 months (90 days) suspension of the Respondent's licence is imposed.*
2. *The Respondent's period of provisional suspension (81 days) is considered as time served.*
3. *As such, the Respondent is free to resume karting activity and competition as from 15 June 2023.*

Date: 6 June 2023



Richard Redman