

NST-E23-338383

Jonte Reynders v Joshua Green (with Motorcycling Australia)

Determination

National Sports Tribunal General Division

sitting in the following composition:

NST Member

Mr Anthony Jarvis

in the arbitration between

Jonte Reynders

(Applicant)

And

Joshua Green

(Respondent)

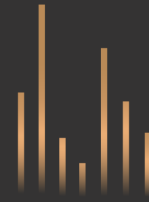
Represented by Christopher De Santana, Solicitor

With

Motorcycling Australia

(Applicant Sporting Body)

Represented by Tony Hynes, Legal & Insurance Manager



PARTIES

1. The Applicant, Mr Reynders, and the Respondent, Mr Green, are members of the National Sporting Organisation, Motorcycling Australia.

INTRODUCTION

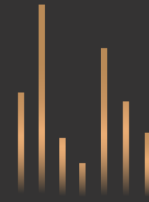
2. The Applicant placed first in a Motorcycling Australia event in May 2023, where the Respondent placed second.
3. The Respondent made posts on Facebook and Instagram on 29 June 2023, 30 June 2023 and 17 October 2023 relating to the event, claiming that Motorcycling Australia failed to penalise a rider, being the Applicant, for cutting a corner and providing him with an advantage.
4. On 25 October 2023, the Applicant lodged a complaint with Motorcycling Australia and subsequently Motorcycling Australia referred the dispute to the General Division of the National Sports Tribunal pursuant to clause 24 of the Motorcycling Australia Non-NIF Dispute and Complaint Resolution Policy.
5. The Applicant alleges that in making these posts the Respondent has breached clause 3.1(a), (b) and (c) of the Motorcycling Australia Member Protection Policy and the Motorcycling Australia Social Media Policy.

NST JURISDICTION

6. The jurisdiction of the National Sports Tribunal (NST) is engaged by Section 24(1) of the *National Sports Tribunal Act 2019* (NST Act) and clause 24 of the Motorcycling Australia Non-NIF Dispute and Complaint Resolution Policy.

FACTUAL BACKGROUND

7. While the Member has considered all the facts, allegations, legal arguments and evidence submitted by the parties he refers in his Determination only to the submissions and evidence he considers necessary to explain his reasoning.
8. The Applicant is an athlete with Motorcycling Australia and competed at the Australia 4 Day Enduro Championship (A4DE) in May 2023. The Applicant placed first and the Respondent placed second.
9. The Respondent is an athlete in the sport of motorcycling racing motorbikes for 27 years, 17 of which have been at a professional level.
10. The Applicant and the Respondent both competed at the three day A4DE.
11. On day three of the A4DE the Respondent alleges that the Applicant cut the course by taking a shorter, straighter and less complex route.
12. No penalty was awarded against the Applicant despite the Respondent's protest and appeal.
13. The first social media posts appeared on 29 and 30 June 2023.



14. The post contained a picture of the corner that the Respondent alleges the Applicant cut. The post contained a question asking if a rider should be penalised for taking the shorter route.
15. The Respondent states that “The post automatically expired after 24 hours, viewers were unable to comment on the story, and I did not name or otherwise identify anyone.”¹
16. On 21 July 2023, the Respondent contacted the NST seeking the NST’s involvement in hearing the dispute.
17. On 10 August 2023, the NST advised that it could only hear disputes relating to policies, rules and decisions that are not in the field of play.
18. The Respondent alleges further incidents of course cutting occurred on 26 and 27 August 2023 being the seventh and eighth rounds of the 2023 Australian Off Road Championship (AORC).
19. The Respondent alleges that at this event the Applicant engaged in course cutting along with a number of other competitors.
20. On 14 and 15 September 2023 the eleventh and twelfth rounds of the AORC took place. The Respondent alleges that further incidents of course cutting occurred including by the Applicant.
21. The second social media post occurred on 17 October 2023 where the Respondent states, “...after obtaining the videos from the South Australia AORC competition, I made a social media post to Facebook and Instagram with videos of myself, my team mate, another rider, and Jonte. In these videos, me, my team mate and the other rider complete the course correctly. Jonte cuts the corner. In the caption, I outline my frustration with the integrity of the sport and the lack of action taken by officials.”²
22. The Respondent states that he did not name or tag the Applicant. He states however, that “He is identifiable by people familiar with the sport through his bike and rider number.”³
23. The Respondent states, “By making this Instagram and Facebook post I wanted to expose the course cutting that has become too frequent in the sport and the inaction on the part of course official and MA.”⁴
24. The Respondent states that “I ultimately deleted the post about a week later.”⁵

PROCEEDINGS BEFORE THE NST

25. On 24 November 2023 a preliminary conference was conducted by the NST Deputy CEO.
26. The Applicant filed and served on the other parties his submission and witness statement on 12 January 2024.
27. The Respondent sought an extension of time to file and serve witness statements and submissions to 5pm on Wednesday 24 January 2024. The Respondent filed and served on the other parties his submission and witness statement on 23 January 2024.

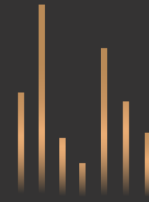
¹ Respondent Witness Statement at [24]

² Respondent Witness Statement at [47]

³ Respondent Witness Statement at [49]

⁴ Respondent Witness Statement at [51]

⁵ Respondent Witness Statement at [53]



28. The Applicant filed and served on the other parties a submission to rely on in reply on 25 January 2024.
29. A pre-hearing conference was held with the parties on 1 February 2024.
30. The hearing took place on 2 February 2024.
31. 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.

APPLICABLE RULES

32. The Applicant alleges that the Respondent's social media posts breached:
 - (i) Clause 3.1(a), (b) and (c) of the Motorcycling Australia (MA) Member Protection Policy; and
 - (ii) MA Social Media Policy.
33. Clause 3.1(a), (b) and (c) of the MA Member Protection Policy states:

MA Member Protection Policy

3. Prohibited Conduct

3.1 Prohibited Conduct

A Relevant Person or Relevant Organisation commits a breach this Policy when they, either alone or in conjunction with another or others, engage in any of the following conduct against one or more Relevant Persons or Relevant Organisations, in the circumstances outlined in clause 2:

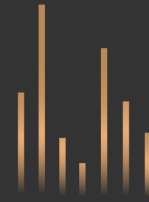
- (a) Abuse;
- (b) Bullying;
- (c) Harassment;
- (d) Sexual Misconduct;
- (e) Unlawful Discrimination;
- (f) Victimisation; or
- (g) Vilification.

SCHEDULE 1 sets out examples of what may constitute Prohibited Conduct under this Policy.

SCHEDULE 1 - Examples of Prohibited Conduct

1. Abuse must be behaviour of a nature and level of seriousness which includes, but is not limited to:

- (a) physical abuse and assault including hitting, slapping, punching, kicking, destroying property, sleep, and food deprivation, forced feeding, unreasonable physical restraint, spitting at another person or biting;
- (b) sexual abuse including rape and assault, using sexually degrading insults, forced sex or sexual acts, deliberately causing pain during sex, unwanted touching or exposure to pornography, sexual jokes, using sex to coerce compliance;
- (c) emotional abuse such as repeated and intentional embarrassment in public, preventing or excluding someone from participating in sport activities, stalking, humiliation, or intimidation;
- (d) verbal abuse such as repeated or severe insults, name calling, criticism, swearing and humiliation, attacks on someone's intelligence, body shaming, or aggressive yelling;
- (e) financial abuse such as restricting access to bank accounts, taking control of finances and money, forbidding someone from working, taking someone's pay and not allowing them to access it;
- (f) neglect of a person's needs.



2. Bullying must be behaviour of a nature and level of seriousness which includes, but is not limited to, repeatedly:

- (a) keeping someone out of a group (online or offline);
 - (b) acting in an unpleasant way near or towards someone;
 - (c) giving nasty looks, making rude gestures, calling names, being rude and impolite, constantly negative and teasing;
 - (d) spreading rumours or lies, or misrepresenting someone (i.e., using their social media account to post messages as if it were them);
 - (e) 'fooling around', 'messaging about' or other random or supposedly playful conduct that goes too far;
 - (f) harassing someone based on their race, sex, religion, gender, or a disability;
 - (g) intentionally and repeatedly hurting someone physically;
 - (h) intentionally stalking someone; and
 - (i) taking advantage of any power over someone else,
- but does not include legitimate and reasonable:
- (a) management action;
 - (b) management processes;
 - (c) disciplinary action; or
 - (d) allocation of activities in compliance with agreed systems.

3. Harassment must be behaviour of a nature and level of seriousness which includes, but is not limited to:

- (a) telling insulting jokes about racial groups;
- (b) sending explicit or sexually suggestive emails or text messages;
- (c) displaying racially offensive or pornographic images or screen savers;
- (d) making derogatory comments or taunts about someone's race;
- (e) asking intrusive questions about someone's personal life, including his or her sex life;
- (f) sexual harassment or any of the above conduct in the workplace by employers, co-workers, and other workplace participants;
- (g) any of the above conduct in the workplace, based on or linked to a person's disability or the disability of an associate; and
- (h) offensive behaviour based on race or racial hatred, such as something done in public that offends, insults, or humiliates a person or group of people because of their race, colour or nationality or ethnicity.

34. The MA Social Media Policy states:

MA Social Media Policy

This policy applies to everyone involved with the activities of MA, its members, partners and affiliates including affiliated clubs and members thereof whether they are in a paid or unpaid/voluntary capacity when using social media as:

- I. an officially designated individual representing MA on social media; and/or
- II. if you are posting content on social media in relation to MA that might affect MA's business, products, services, events, sponsors, members or reputation.

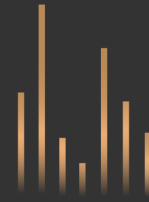
Guidelines

You must adhere to the following guidelines when using social media related to MA or its business, products, competitions, teams, participants, services, events, sponsors, members or reputation.

Use common sense

Whenever you are unsure as to whether or not the content you wish to share is appropriate, get advice or refrain from sharing the content to be on the safe side. As a quick checklist, you should:

- a. Not criticise MA, sponsors, athletes, other organisations and their employees, volunteers or supporters, MA or its State Centres, Branches or Clubs;



- b. Not harass, bully or intimidate or display any other form of inappropriate behaviour contrary to the MA Member Protection Policy;
- c. Not post content that is obscene, defamatory, threatening, harassing, bullying, discriminatory, hateful, racist, pornographic, sexist, that infringes on copyright, constitutes a contempt of court, breaches a Court suppression order, or is otherwise unlawful;
- d. Not defame any other person or entity;
- e. Not do anything that breaches your terms of employment or membership;
- f. Respond to others' opinions respectfully;
- g. Not use any MA intellectual property or imagery without permission;
- h. Acknowledge and correct mistakes promptly;
- i. Take steps to ensure that all information is accurate, not misleading and complies with all relevant laws, policies and terms of use;
- j. Only disclose and discuss approved and publicly available information and content (including videos, audio and images);
- k. Adhere to the terms for use of the relevant social media platform/website;
- l. Adhere to MA policies;
- m. Not post content that might otherwise cause damage to MA's reputation or bring it or the sport of motorcycling into disrepute;
- n. Disclose your conflicts of interest; and
- o. Not express a political affiliation in association with MA activities.

Respect confidentiality and sensitivity

When using social media you should be considerate to others and should not post information when you have been asked not to, or where consent has not been sought and given. You must also remove information about another person if that person asks you to do so. Permission should always be sought if the use or publication of information is not incidental, but directly related to an individual. This is particularly relevant to publishing any information regarding minors. In such circumstances, parental or guardian consent is mandatory.

Gaining permission when publishing a person's identifiable image

You must obtain express permission from an individual to use a direct, clearly identifiable image of that person. You should also refrain from posting any information or photos of a sensitive nature. This could include accidents, incidents or controversial behaviour. In every instance, you need to have consent of the owner of copyright in the image.

Discrimination, sexual harassment and bullying

You must not post any material that is offensive, harassing, discriminatory, embarrassing, intimidating, sexually explicit, bullying, hateful, racist, sexist or otherwise inappropriate. When using social media you may also be bound by MA's Member Protection Policy.

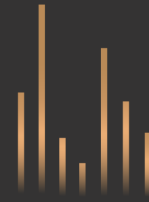
Dealing with mistakes

If you make an error while posting on social media, be up front about the mistake and address it quickly. If you choose to modify an earlier post, make it clear that you have done so. If someone accuses you of posting something improper (such as their copyrighted material or a defamatory comment about them), address it promptly and appropriately and if necessary, seek legal advice.

Policy breaches

MA continually monitors online activity relating to its activities and its members. Breaches of this policy include but are not limited to:

- Using MA's name, motto, crest and/or logo in a way that would result in a negative impact for the organisation, clubs and/or its members.
- Posting or sharing any content that is abusive, harassing, threatening, demeaning, defamatory or libellous.



- Posting or sharing any content that includes insulting, obscene, offensive, provocative or hateful language.
- Posting or sharing any content, which if said in person during competition would result in a breach of the competition rules.
- Posting or sharing any content in breach of MA 's Member Protection Policy or other similar policy.
- Posting or sharing any content that is a breach of any state or Commonwealth law.
- Posting or sharing any material to MA's social media channels that infringes the intellectual property rights of others.
- Posting or sharing material that brings, or risks bringing MA , its affiliates, its sport, its officials, members or sponsors into disrepute. In this context, bringing a person or organisation into disrepute is to lower the reputation of that person or organisation in the eyes of the ordinary members of the public.

Disciplinary process, consequences and appeals

Depending on the circumstances breaches of this policy may be dealt with in accordance with the disciplinary procedure contained in MA 's Member Protection Policy. Disciplinary action may include:

- A warning or caution
- A suspended penalty
- A fine of up to \$5,000
- A suspension of membership
- A suspension of an MA licence of up to 5 years
- A combination of any of the above.

35. Penalties and sanctions are listed at paragraphs 56 to 61 of the Non-NIF Dispute and Complaint Resolution Policy which state:

Non-NIF Dispute and Complaint Resolution Policy

Sanctions

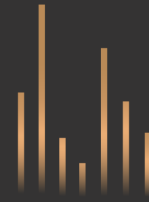
56. The Decision Maker or Tribunal (as the case may be) has absolute discretion to determine the sanction imposed on a Member found to have committed a breach of a Non-NIF Policy.

57. Without limiting the discretion in the preceding clause, the Sanctions that may be imposed on a Member include:

- 57.1. a reprimand or warning;
- 57.2. exclusion or disqualification from an event or events;
- 57.3. forfeiture of series or championship points;
- 57.4. suspension from activities or events held by or under the auspices of MA, on such terms and for such period as the person imposing the sanction thinks fit;
- 57.5. the imposition of conditions and/or restrictions on the Respondent's Membership or accreditation;
- 57.6. a monetary penalty;
- 57.7. expulsion from MA and consequent termination of the Member's membership;
- 57.8. any other such sanction as the person imposing the sanction considers appropriate; and/or
- 57.9. a penalty prescribed under the MA Constitution or a SCB constitution.

58. Without limiting the discretion afforded in **clause 56**, in deciding as to the applicable Sanction (if any) under the Policy, the person imposing the sanction may, but is not required to, consider, or if considered apply any weighting to, the following factors:

- 58.1. the nature and seriousness of the behaviour or incidents the subject of the Dispute;
- 58.2. if the Member knew or should have known that the behaviour was a breach of the Non-NIF Policy;
- 58.3. level of contrition of the Member;



58.4. the effect of the proposed Sanction on the Member including any personal, professional or financial consequences;

58.5. if there have been relevant prior warnings or disciplinary action against the Member; and/or

58.6. if there are any mitigating circumstances such that the Member should not have a Sanction imposed, or not such a serious Sanction imposed.

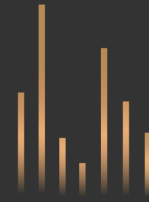
59. A Sanction handed down under this Policy shall commence from the date of the decision, unless otherwise expressly directed by the person imposing the sanction, or otherwise provided for in this Policy.

60. Where the person imposing the sanction finds that more than one breach of a Non-NIF Policy has been proven, they will hand down a single Sanction in respect of the totality of all breaches that have been found proven.

61. The Sanction imposed will be determined by the person imposing the sanction in their sole discretion having regard to the seriousness of the overall conduct in question, rather than by a mathematical addition of Sanctions that would otherwise be applicable to each individual breach.

MAIN SUBMISSIONS OF THE PARTIES

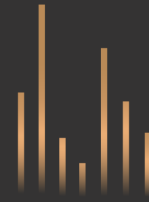
36. The Applicant submitted that the social media posts of the Respondent breached the Social Media Policy by failing to comply with the paragraph headed “Respect Confidentiality and Sensitivity”. The Applicant also alleges that the social media posts brought Motorcycling Australia, other competitors and sponsors into disrepute.
37. The Applicant submits that an appropriate penalty is that a number of the sanctions available should be used including fine and member suspension.
38. The Applicant also seeks a public retraction and apology from the Respondent to the Applicant and other athletes.
39. The Applicant refers to the Social Media Policy breaches which are listed, specifically:
 - (i) Posting or sharing any content that is abusive, harassing, threatening, demeaning, defamatory or libellous.
 - (ii) Posting or sharing any content that includes insulting, obscene, offensive, provocative or hateful language.
 - (iii) Posting or sharing any content, which if said in person during competition would result in a breach of the competition rules.
 - (iv) Posting or sharing any material to MA’s social media channels that infringes the intellectual property rights of others.
 - (v) Posting or sharing material that brings, or risks bringing MA, its affiliates, its sport, its officials, members or sponsors into disrepute. In this context, bringing a person or organisation into disrepute is to lower the reputation of that person or organisation in the eyes of the ordinary members of the public.
40. In his submissions in response the Applicant also refers to the Member Protection Policy definitions of abuse and bullying and harassment. The Applicant submits that the social media posts constitute abuse, bullying and harassment.



41. The Respondent submits that the Social Media Policy and Member Protection Policy, insofar as they relate to the actions of the Respondent, do not have effect as they were not validly adopted by the Board of Motorcycling Australia.
42. In the event that the Social Media Policy and Member Protection Policy are effective then the Respondent submitted that he had not breached these policies because:
 - (a) In relation to the First Social Media Post, permission for publication was not required from the Applicant;
 - (b) Posting on social media about a genuine concern regarding a professional athlete not following the rules of the sport does not amount to bullying, abuse or harassment;
 - (c) The Respondent did not have the requisite intention to cause distress or embarrassment nor did his actions rise to the required level of seriousness;
 - (d) Under the Social Media Policy and Member Protection Policy, the Respondent is only responsible for his actions and not those by others who have commented on any social media posts or have themselves posted on social media about the Applicant;
 - (e) The Applicant has not particularised what exactly the Respondent has done or said that amounts to bullying, harassment or abuse. Instead, the Applicant's submissions are vague, unarticulated and poorly particularised; and
 - (f) The Respondent otherwise followed the Social Media Policy in relation to errors made while posting on social media.
43. The Respondent submits that should the Tribunal determine that the policies have been breached, it is not appropriate to order any punishment against the Respondent.

MERITS

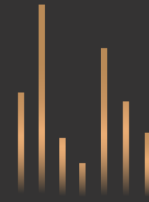
44. The breaches alleged relate to the social media posts of 29 June 2023, 30 June 2023 and 17 October 2023 (Social Media Posts).
45. The Respondent's submissions focused on the incidents which occurred in the field of play, specifically, the allegations of "course cutting".
46. The jurisdiction of the NST does not extend to "in-field" incidents. The Tribunal will be considering only the alleged breaches of the Member Protection Policy and Social Media Policy arising from the Social Media Posts.
47. The social media posts of 29 and 30 June 2023 include photos with arrows drawn on the photographs indicating where the Applicant is alleged to have cut the course. The question posed by the Respondent in the social media posts query whether the rider should be penalised.
48. The social media post of 17 October 2023 was a story and post, including video, appearing on Facebook and Instagram. This post makes a number of comments including that:
 - "the integrity of this sport is diminishing"
 - "riders have lost the integrity of this sport!"



- “unfortunately we are know [sic] longer in an honest racing industry because this shit happens every race weekend!”
 - “the lack of honest competition is appalling, with a field full of selfish opportunists who don’t see the damage they are causing to this sport”
 - “your [sic] no longer just disrespecting your opponents, your [sic] disrespecting this sport to”.
 - “this isn’t just frustrating for me as a rider who is trying to fairly compete against dishonest people, this is also frustrating for The Clubs, track marking crew and @motorcyclingaustralia”
49. The Respondent also tagged a number of sponsors, individuals and associations on his post on Instagram as described in the Applicant’s submission.
50. The Respondent made a number of comments on his own social media post including a comment “@mitchell.sutcliffe is it really winning if you aren’t on the same track though”.
51. The Respondent also makes a number of comments justifying the posts on social media.
52. A post on social media, by its nature, invites comments and reactions from viewers to the post. Whilst the author of a social media post cannot then control the content of those who comment on the post, the author is cognisant that the original post induces comments. The author of the original post is not responsible for the comments of others however, it must be recognised that by releasing a post with inflammatory content it attracts critical comments.
53. When examining the intent of the Respondent in making these posts the Respondent in both his own submissions and comments he has made on the Social Media Posts indicates that he felt justified in making the post due to the alleged inaction of Motorcycling Australia in responding to his claims of course cutting.
54. Motorcycling Australia heard the complaints of the Respondent in a number of forums of protest and appeal. Motorcycling Australia’s decision to not award a penalty or sanction against the Applicant exhausted all avenues available to the Respondent under Motorcycling Australia rules and policies. The continuation of the complaints on social media was not justified.
55. The consideration of legal issues arising from social media in this matter has similarities to the law of defamation. In a defamation context, a relevant question is, if posts “procure, provoke or conduce the making of defamatory responses”, should the page owner be considered to have published any defamatory responses.⁶ In the context of this matter, if a post procures, provokes or conduces the making of defamatory comments on the post, should the author of the original post bear responsibility for the subsequent comments?
56. Whilst defamation law may not be wholly applied to these proceedings, the broad principle relating to responsibility for third party comments applies here.⁷ The Respondent by making the Social Media Posts knowingly provoked and conduced responses to his original post.

⁶ *Fairfax Media Publications Pty Ltd v Voller* [2021] HCA 27

⁷ See further at Douglas, Michael, Publication of Defamation by Encouraging Third Party Comments on Social Media (June 13, 2022). ‘138(Jul) *Law Quarterly Review* 362



57. In relation to the Respondent's submission that the Applicant was not identified, as the Applicant contends in his submission in reply the video published "contained direct and clearly identifiable video footage of me riding...". The Respondent further submits that "along with this footage, Joshua wrote a public post undeniably aimed at me as I was the one in the footage."⁸
58. The Respondent states that "the post automatically expired after 24 hours, viewers are unable to comment on the story, and I did not name or otherwise identify anyone. I did not name anyone because I did not want to create any issues for Jonte or the other riders who had cut the course..."⁹
59. The Applicant submits it is obvious to social media participants who are following the event and are familiar with the individuals as to the identity of the rider.¹⁰
60. It is clear that the Social Media Posts contained sufficient identifying information to enable identification of the Applicant as the individual the subject of the Social Media Posts.
61. The relevant policies of Motorcycling Australia are referenced at paragraphs 32 to 35 above. Both the Member Protection Policy and the Social Media Policy reference abuse, bullying and harassment.

Member Protection Policy

62. "Abuse", "Bullying" and "Harassment" are defined at clause 1.1 of the Member Protection Policy with examples provided at Schedule 1 of the Member Protection Policy.
63. The actions complained of by the Social Media Posts and the comments made by the Respondent to the Social Media Posts come within the scope of Abuse and Harassment as per the definitions of the Member Protection Policy at clause 1.1 and the examples provided at Schedule 1 and are accordingly a breach of the Member protection Policy pursuant to clause 3.1(a).
64. The Abuse is proven based on the allegation of cheating by course cutting that is likely to cause harm to a person. The allegation is made despite the Respondent knowing that the allegation had not been upheld in the appropriate forums of Motorcycling Australia.
65. Harassment is also proven due to the element of Harassment including abusive behaviour.
66. Bullying is not proven due to the absence of repetition and insufficient evidence demonstrating "distress".

Social Media Policy

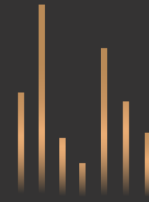
67. The Social Media Policy refers at sub-paragraph (c) to not posting content that is "...harassing, bullying..."¹¹

⁸ Applicant Submission in Response at page 3

⁹ Respondent Witness Statement at [24]

¹⁰ Applicant Submission in Response at page 2

¹¹ Social Media Policy page 2



68. The Social Media Policy further states that “you must not post any material that is offensive, harassing, discriminatory, embarrassing, intimidating, sexually explicit, bullying, hateful, racist, sexist or otherwise inappropriate.”¹²
69. The Social Media Policy also references and describes policy breaches of the social media policy including “posting or sharing any content that is abusive, harassing, threatening, demeaning, defamatory or libelous.”
70. The Social Media Posts are harassing and abusive as described above for the Member Protection Policy. The two social media posts also meet the following requirements of stipulated breaches of the Social Media Policy:
 - (i) Posting or sharing content that is insulting and provocative
 - (ii) Posting or sharing any content in breach of MA’s Member Protection Policy or other similar policy.
71. In relation to the “disrepute” element of a breach of the Social Media Policy, this is dealt with in further detail below.

Disrepute

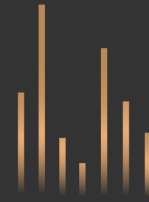
72. The Social Media Policy differs between pages 2 and 4 in addressing “disrepute”. Page 2 is restricted to disrepute of Motorcycling Australia and the sport of motorcycling under the subheading “Use common sense”. Page 4 under the subheading “Policy breaches” has a wider application to “bringing MA, its affiliates, its sport, its officials, members or sponsors into disrepute.” The broader description under “Policy Breaches” is used by the Tribunal.
73. The act complained of must show that the action has caused damage to the sport of motorcycling and/or Motorcycling Australia rather than the individual. The public opinion of the sport must be shown to have been diminished.¹³
74. Where matters are 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.”¹⁴
75. The Social Media Policy provides that bringing a person or organisation into disrepute is to “lower the reputation of that person or organisation in the eyes of the ordinary members of the public.”¹⁵ This provision is not a question of if the act complained of is known to the public and instead sets out a test of objectivity.
76. Insufficient material is provided that evidences disrepute to Motorcycling Australia or the sport of motorcycling to the extent of the sport or the organisation being diminished in the eyes of the public.
77. Sufficient evidence is adduced of disrepute caused to the Applicant in the form of third-party comments to the social media posts.

¹² Social Media Policy, page 3

¹³ *Zubkov v FINA* [2007] CAS 2007/A/129 at [60]

¹⁴ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361–362.

¹⁵ Social Media Policy, page 4

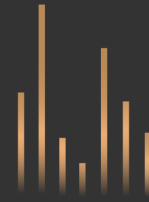


78. While there is duplication between the Member Protection Policy and Social Media Policy, the Social Media Posts do constitute a breach of both the Social Media Policy and the Member Protection Policy in respect to the content being considered abuse and harassment.

Invalid Policies

79. The Respondent makes a number of submissions regarding the invalidity of the policies of Motorcycling Australia. The Respondent submitted that the policies were “not validly adopted by the Board of MA.”¹⁶
80. The Submission of the Respondent is that the Board of Motorcycling Australia may only adopt policies which are consistent with the Motorcycling Australia principles and Motorcycling Australia objectives. The Respondent submits that the policies have “a practical effect of extinguishing the right to seek change” and that this is not consistent with the MA principles and objectives as contained in the MA Constitution.”
81. Every sport and association must have governing rules. It is entirely reasonable for Motorcycling Australia and indeed necessary, for Motorcycling Australia to have policies for the protection of members and to ensure that everyone involved in motorcycling is treated with respect and dignity. It follows from the Member Protection Policy that a Social Media Policy compliments the Member Protection Policy and again is entirely appropriate. Both policies are entirely effective and within the principles and objectives of Motorcycling Australia.

¹⁶ Respondent Submission at [2]



THE TRIBUNAL THEREFORE DETERMINES:

1. *The Respondent has breached the Motorcycling Australia Member Protection Policy as specified at 3.1(a) and 3.1(c).*
2. *The Respondent has breached the Motorcycling Australia Social Media Policy by:*
 - (i) *posting or sharing content that is abusive, harassing, threatening, demeaning, defamatory or libelous;*
 - (ii) *posting or sharing any content in breach of MA's Member Protection Policy or other similar policy; and*
 - (iii) *posting or sharing material that brings or risks bringing MA, its affiliates, its sport, its officials, members or sponsors into disrepute. In this context, bringing a person or organisation into disrepute is to lower the reputation of that person or organisation in the eyes of the ordinary members of the public.*
3. *Pursuant to clause 57 of the Motorcycling Australia Non-NIF Dispute and Complaint Resolution Policy, a sanction is therefore applied for a monetary penalty of \$2,000.00.*
4. *Pursuant to clause 60 of the Non-NIF Dispute and Complaint Resolution Policy while there is found to be more than one breach of a Non-NIF policy, this sanction applies to the totality of all breaches.*

Date: 13 February 2024



Mr Anthony Jarvis