

Annexure C

About Protest Mediation

Protests can be a disruption. They can be difficult to organise, a cause of ill-feeling, and hearings lasting long into the night can spoil an otherwise enjoyable event.

In many cases, competitors will not lodge protests because they prefer not to go through a full protest hearing. But protests should not be discouraged. Protests are a means of sorting out differences, giving people a better understanding of the rules, and ensuring that all competitors play by the rules.

Many clubs & events now use “protest mediation”, which reduces protest time dramatically.

Protest mediation is a quick preliminary hearing conducted in a quiet place as soon as possible after the race.

Mediation can reduce the need for full protest hearings, as:

- It gives a protestor the opportunity to withdraw the protest before a full protest hearing; and
- It gives a protestee the chance to avoid a full protest hearing by accepting a lesser penalty than may be received at a protest hearing.

Protest mediation is not a 100% cure. It will be used only for the “right-of-way” and other sailing rules contained in Parts 2 and 4 of the Rule Book. Protests involving more technical arguments, requests for redress, class matters, etc. will be handled in the normal way.

After a protest form has been completed and lodged, the protestor and the protestee and the mediator(s) meet to discuss the incident in a friendly way.

Mediation hearings last for just a few minutes, and are attended by only the skippers involved and the mediator(s). No witnesses will be called or heard.

A mediator has the authority to:

- Conclude the protest is invalid (the usual protest form must first be completed by the protesting skipper), or

- Conclude the protest is not a right-of-way matter and refer the protest to a full hearing, or
- Conclude no rule was broken, and allow the protesting skipper to either withdraw the protest or continue to a full hearing, or
- Conclude a rule was broken, and allow the protested skipper to either accept a prescribed penalty (which will be less than a protest room penalty) or continue to a full hearing (where the result could be either protest dismissal or disqualification).

All that is said to the mediator(s) will be kept private. If the matter proceeds to a full protest hearing, then the mediator(s) may be part of the protest committee. But anything that he has been told at the mediation hearing can be repeated to the protest committee only while the competitors are present.

The mediator will try to settle the matter. If he believes a rule has been broken then that boat can accept half the penalty it would receive if it was disqualified at a full protest hearing.

A mediation hearing cannot “force” a competitor into any course of action, because:

- Even if the mediator believes no rule was broken, the protesting boat may still have the matter taken to a full protest hearing.
- Even if the mediator believes a rule was broken by a boat, that boat can still have the matter taken to a full protest hearing.

So there are no disadvantages in the system - only advantages.



Protest Mediation

Should all parties agree, a mediation hearing may be conducted for protests lodged in accordance with RRS61 that allege an infringement of a rule of Part 2 or 4.

Such hearings will be held prior to the protest hearing, as soon as reasonably possible after the protest is delivered and prior to the scheduling of the protest hearing. The time and place of the mediation hearing will be decided by the mediator(s) and such advice may be given verbally.

The mediator(s) will be appointed by the Protest Chairman and may be a member of the Protest Committee. One representative of each boat shall attend or be available for the mediation hearing and no witnesses, except the mediator(s), shall be allowed. The mediator(s) shall decide the manner in which testimony is given.

After taking testimony at a mediation hearing the mediator(s) shall make one of the following conclusions:

- **The protest does not comply** with Rule 61 and the protestor may withdraw the protest.
- **No rule was broken** and the protestor may withdraw the protest.
- **The matter shall proceed to a protest hearing:** this may be because rules other than those of Part 2 or 4 are or may be involved, or because evidence is too complex or divergent to reach a reasonable and timely conclusion, or due to the apparent severity of the alleged infringement, or for any other reason decided by the mediator(s).
- **A rule was broken by one or more of the boats involved:** the infringing boat(s) may accept a penalty, being scoring points equal to a finishing place mid-way between the boat's actual finishing place and a disqualification. If so accepted the protestor shall withdraw the protest. Half points shall be disregarded and the points of other boats shall not be adjusted. If the penalty is accepted the matter is closed and cannot be resubmitted to a hearing, be reopened, appealed or submitted for redress.

If the Mediator(s) concludes the protest is not a right-of-way matter, it will refer the matter to a full hearing.

Should the protest proceed to a full protest hearing then:

- The mediator may be present throughout the hearing (changes RRS 63.3 (a)) and may be called to give evidence and may be questioned by the Protest Committee or any of the parties to the hearing, but s/he shall not question any person who gives evidence and shall not be present while the Committee is discussing and deciding the protest, unless the mediator is a member of the protest committee.
- The mediator(s) may be a member(s) of the protest committee. Any evidence given by the mediator(s) during a protest hearing shall be given only in the presence of the parties to the hearing.

A mediation hearing shall not be re-opened. No conclusion from mediation shall be subject to appeal or be grounds for redress. RRS 63.1 is changed by adding, "The mediator may allow a protest to be withdrawn without the approval of the protest committee".