

2 June 2008

Yachting New South Wales  
6A Figtree Drive  
Sydney Olympic Park  
HOMEBUSH NSW 2127

Yachting Australia Inc.  
ABN 34 573 037 987

Level 1  
22 Atchison Street  
St Leonards NSW 2065

Locked Bag 806  
Milsons Point NSW 2061  
Australia

T 612 8424 7400  
F 612 9906 2366

office@yachting.org.au  
www.yachting.org.au

## **APPLICATION FOR REVIEW OF AN APPEAL DECISION OF YACHTING NEW SOUTH WALES**

**Protest hearing 30 Jan & 4 Feb 2008: *Obsession* and *Tempnet***

I refer to an application to review a decision of the Appeal Committee of Yachting New South Wales (undated, reference No 02/08) in the matter of the protest hearing *Enticer vs Obsession* and *Tempnet* heard on 30 January and 4 February, and advise that the Yachting Australia Appeal Review Panel has considered the application.

### **Overview of the Appeal**

The appellant *Obsession* submitted five grounds to YNSW contending the protest committee's decision or its procedures were improper. The appeal committee of YNSW addressed each of the five grounds in detail, providing detailed reasons for its denial of all grounds.

One of those grounds was that subsequent to the adjournment of the hearing (30 January) the protest committee had erred in failing to give proper notice to the parties of the time the hearing was to resume (4 February), which resulted in *Obsession* failing to come to the hearing resumption and the protest being decided in her absence.

### **Overview of the Application for Review**

The applicant requested a review of that one appeal decision claiming that the appeal committee's finding that the notice of resumption was adequate was a misinterpretation of rule 63.2, and as this misinterpretation endorsed the hearing being resumed in her absence, significant unfairness to the applicant resulted.

### **Review of the Appeal Decision**

The sailing instructions required that a protest notice would be posted on the official notice board and this was complied with in regard to the opening of the hearing. The appeal committee found that written notices were not required for subsequent continuations of that hearing, and this finding is confirmed.

The requirement of rule 63.2 that all parties be notified of the time of a hearing must apply to any resumption of an adjourned hearing, and information presented to the appeal committee on this matter is divergent. The protest committee has advised that

Affiliated with  
Australian Olympic Committee  
International Sailing Federation

Principal Partner



**Australian Government**  
Australian Sports Commission

Youth Development  
Major Sponsor



Australian Sailing Team  
Major Co-Sponsors



adequate notice was given; *Obsession* disputes this claim. The appeal committee accepted the advice of the protest committee.

There is evidence pointing to the fact that *Obsession* took various steps to ascertain the time of the hearing resumption, indicating that at best *Obsession* was confused as to the time. It seems clear that *Obsession* has been desirous at all times to present her evidence, which places some doubt over whether she would have known of the time of the resumption yet chosen not to attend.

Considering the existence of such doubt it would be an unsafe acceptance by the appeal committee that parties were adequately notified, without confusion or misunderstanding, of the time of the hearing resumption.

In view of the doubt over notification, the apparent seriousness of the incident, and the fact that two boats were disqualified without having given any evidence, the decision of the appeal committee is varied such that rule 63.2 has not been satisfied and the hearing is to be reopened.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'B. Chapman', written in a cursive style.

Bob Chapman,  
on behalf of G.M. Owens,  
Chairman, National Racing Rules Committee