



# REVIEW OF TASMANIAN RACING APPEAL BOARD

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## **REPORT**

by

**Tony Murray, Director of Racing, Racing Services Tasmania**

**17 September 2009**

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## EXECUTIVE SUMMARY

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Following the 'Review of the Tasmanian Racing Industry's Governance Structure' in late 2008, a number of minor changes were made to the racing appeal provisions of the *Racing Regulation Act 2004*. However, at that time it was determined that a more substantive consideration to further areas for improvement in the racing appeals processes was required.

The Minister for Racing, Hon Michael Aird MLC, subsequently requested that, in my capacity as Director of Racing, I undertake a review and provide a recommendation to the Government on how to improve the current Tasmanian appeals structure and processes in order to achieve a contemporary 'best practice' model.

Submissions to the Tasmanian Racing Appeals Board (TRAB) Review were invited from interested stakeholders. Fifteen submissions were received, which generally concentrated on issues relating to the Board's structure, processes and procedure, and penalty decisions.

In terms of reviewing the current model of the TRAB, I evaluated these submissions, and took into consideration the standards and benchmarks in place in other jurisdictions.

I have identified certain areas within the current appeals system which should be changed. The proposed changes have focused on the manner in which appeals are heard, the timeliness of appeals and the information available to the Board. I am confident that implementation of the proposals will result in a more effective, efficient and contemporary appeals system in Tasmania.

I recommend that all necessary organisational, legislative and regulatory amendments be made to achieve the following:

### ***Recommendation 1 – TRAB composition***

The composition of the Board to be changed from eight members to six members, inclusive of a Chairperson and two Deputy Chairpersons.

### ***Recommendation 2 – Panel composition***

- a) Minor appeals may be conducted by the Chairperson or one of the Deputy Chairpersons on their own; and
- b) For all other appeals, the Chairperson or a Deputy Chairperson must be selected as one of the panel members.

### ***Recommendation 3 – Hearings***

All appeals to be heard upon the evidence of the original stewards' inquiry, with the Chairperson able to admit proper, expert or other evidence.

#### ***Recommendation 4 – Timeframe for hearing of appeals***

- a) Minor appeals, wherever practicable, should be heard within seven days of lodgement; and
- b) All other appeals, wherever practicable, should be heard within 21 days of lodgement.

#### ***Recommendation 5 – Access to stewards' evidence***

The race patrol film (if applicable) and transcript (or recording if timeframes necessitate) of the original stewards' inquiry are to be made available to all parties as soon as is practicable after an appeal is lodged.

#### ***Recommendation 6 – Stay of proceedings***

A stay of proceedings shall not be granted in the following circumstances:

- a) where the appeal is against penalty only;
- b) where the appeal is intended to be heard within seven days of lodgement (except if the Chairperson considers that extenuating circumstances require otherwise);
- c) where the Chairperson considers that the primary reason for the request is to enable a racing activity (eg riding, driving) to be undertaken in the period before the matter is heard.

#### ***Recommendation 7 – Commencement of penalty***

A decision of the Board is to be effective immediately, unless welfare matters necessitate a transitional period to care for racing animals.

#### ***Recommendation 8 – Consultation process***

The Chairperson and Deputy Chairpersons of the Board are to meet with the Chairpersons of industry associations and race clubs, the Director of Racing and Chairmen of Stewards at least biannually.

# INTRODUCTION

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## PURPOSE OF REVIEW

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This Review was initiated by the Minister for Racing, Hon Michael Aird MLC, in response to a recommendation by the Director of Racing, Tony Murray, and the Chief Executive Officer of TOTE Tasmania, Craig Coleman, following their 'Review of the Tasmanian Racing Industry's Governance Structure' in late 2008.

As a consequence of concerns expressed by industry stakeholders during the 2008 Review, Messrs Murray and Coleman considered that a thorough examination of the racing industry appeals process needed to be undertaken separate to that Review process (refer Appendix A). Although a number of minor changes were made to the racing appeal provisions of the *Racing Regulation Act 2004* as a result of that initial Review, a more substantive consideration to further areas for improvement in the racing appeals processes was foreshadowed by the Minister during his Second Reading Speech to the Parliament in November 2008 (Appendix B).

The Minister subsequently requested that, in my capacity as Director of Racing, I undertake a review and provide a recommendation to the Government on how to improve the current Tasmanian appeals structure and processes in order to achieve a contemporary 'best practice' model.

## CONSULTATION PROCESS

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To facilitate the Tasmanian Racing Appeal Board (TRAB) Review, submissions were formally invited from key stakeholders, including racing clubs and industry associations. In addition, submissions were invited through notifications placed on the Racing Services Tasmania (RST) website and in industry publications (Appendix C).

In total, fifteen submissions were received from the following individuals and organisations:

- Tasmanian Pacing Club
- Tasmanian Jockeys' Association
- Mr Philip Wright
- Mrs Glenda Attenborrow
- Light Harness Tasmania
- Devonport Harness Racing Club
- Breeders Owners Trainers Reinspersons' Association (BOTRA)
- Ms Mary Fahy
- Greyhound Owners Trainers & Breeders' Association (GOTBA)
- Mr Robert Pearce
- Tasmanian Racehorse Owners Association (TROA)
- St Marys Pacing Club
- Mr Geoff Lucas
- Tasracing Pty Ltd
- Tasmanian Turf Club

## SUMMARY OF SUBMISSIONS

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In general, the submissions concentrated on three specific issues: namely, Board structure; processes and procedure; and penalty decisions.

A recurrent theme of many submissions related to perceived, unacceptable delays in the hearing and resolution of appeals. Suggested remedies to this issue were varied, including restrictions to stays of proceedings and defined timeframes in which appeals must be heard.

### **Cross Section of Specific Comments Received**

#### **TRAB Structure**

- All Board members should have an understanding of racing related matters.
- Consultation with other jurisdictions, particularly Victoria and Western Australia, should occur to gain benefit from the experiences of other areas.
- Appointment of an impartial Racing Advisor to provide assistance to the Board on racing matters.
- A panel of three Board members to hear all appeals.
- The Chairman of the Board should delegate the hearing of minor appeals to other Board members.

#### **Processes and Procedure**

- Abolish de novo<sup>1</sup> hearings -
  - The Board should adopt a more “review of evidence” approach.
  - Western Australian model should be adopted – appeal is heard on the basis of transcript evidence from the stewards’ inquiry, with all parties involved in the inquiry able to appear. Further application can be made to introduce fresh evidence at the discretion of the Board.
- Appeal must be lodged within 48 hours and heard within seven days.
- Limited right of appeal -
  - No right to appeal if the penalty incurred is three race meetings or less.
  - No right to appeal if the fine imposed is \$100 or less.
- Limited stay of proceedings –
  - amendment to Section 33 of the Act to provide for the suspension of penalties pending an appeal for an initial period of three months, and thereafter, on the basis that good cause is shown, for a further three months.

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<sup>1</sup> **De novo** is a Latin phrase, meaning “from the new”, anew, from scratch, or from the beginning

- legislated restriction to the length of time an appellant is permitted to train and/or drive/ride under a stay of proceedings.
- review timeframes to restrict the amount of time between the lodgment of appeal and time of hearing.
- in the case of a positive swab the appeal should be heard promptly.
- Money won during a stay of proceedings should be withheld and forfeited if the appeal is dismissed.
- Provision of transcripts -
  - to be provided for all appeals.
  - to be provided to the appellant upon request.
  - to be made easily available at a non-prohibitive cost.
  - to be provided to the appellant upon lodgment of the appeal.
- Video evidence to be provided to the appellant upon request.
- Appeals relating to racing incidents should require the attendance of witnesses in person.
- Review of deposit and forfeited amounts to ensure participants are not discouraged from lodging an appeal on the basis of financial concerns.

### **Penalty decisions**

- Set penalties, and a cumulative 'points' system similar to that adopted by the Australian Football League.
- Minor appeal penalties to be expressed as race dates not days.
- Penalties for careless riding offences should be enforced immediately upon the dismissal of the appeal.
- Harsher penalties should be adopted for prohibited substance offences – six month disqualification for first offence and life ban for a subsequent offence.

## **CURRENT POSITION**

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The TRAB is established pursuant to Part 5 and Schedule 3B of the *Racing Regulation Act 2004* (refer Appendices D-E) to hear appeals against certain decisions of Tasracing, racing clubs and stipendiary stewards, for all three codes of racing in Tasmania. The TRAB's former function to adjudicate appeals arising from the statutory decisions of the Director of Racing was transferred to the newly established Integrity Assurance Board following the implementation of the new governance model for the Tasmanian Racing Industry on 1 January 2009.

## COMPARISON OF AUSTRALIAN JURISDICTIONS

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In terms of reviewing the current model of the TRAB, it was essential to carefully consider the standards and benchmarks in place in other jurisdictions to ensure that a best practice approach is adopted.

Accordingly, questionnaires were sent to the TRAB and the equivalent bodies of all other States and Territories requesting information on the processes and structures in place in the respective jurisdictions.

Responses were received from:

- New South Wales
- Victoria
- Queensland
- South Australia
- Western Australia
- Northern Territory
- Tasmania

The information received has been collated and a comparative table is provided in Appendix F.

## KEY ISSUES & RECOMMENDATIONS

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Having evaluated the submissions to the TRAB Review (and the information provided by the various States and Territories' appellate bodies), the key issues are addressed in more detail below:

### 1. TRAB COMPOSITION

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#### **Current position**

The TRAB is established as an independent, statutory body. Membership comprises a Chairperson and Deputy Chairperson (both required to be Australian legal practitioners of at least five years' standing) and six other members.

A number of restrictions apply to the eligibility of person to be a member. Some occupations and affiliations which preclude membership of the Board include that of a licensed trainer, owner, lessee, rider or driver of a racing animal, or member of a racing club or association committee. Although this may be seen to restrict the number of potential candidates for membership, a critical component of the Board is the independence of its members.

Members are appointed by the Governor, on the recommendation of the Minister for Racing. In the past, when a position became vacant on the Board, the names

of potential candidates were submitted to the Minister by either the Chairperson of the Board or the Director of Racing.

### **Stakeholder comments**

“It is important for the integrity of the system and faith of the participants in the Board that persons with appropriate experience be appointed”.

“The inability of the TRAB to properly resolve the outcome of appeals”.

“Appointment of an impartial Racing Advisor to provide assistance to the Board on racing matters”.

#### ***Recommendation 1***

*That -*

***The composition of the Board to be changed from eight members to six members, inclusive of a Chairperson and two Deputy Chairpersons.***

The addition of another Deputy Chairperson will provide additional expertise to the Board and, therefore, result in more flexibility for the conduct of minor appeals which should in turn enhance current timeframes for resolution of appeals.

For future appointment of members of the TRAB, it is proposed that the selection process will be informed by Treasury’s ‘Guidelines for Tasmanian Government Businesses’. Candidates will be interviewed by a panel and a shortlist provided to the Minister for his consideration and recommendation to the Governor. This should ensure that persons recommended for appointment to the TRAB are well qualified to objectively consider the merits of an appeal.

In terms of a racing advisor, section 30(10) of the *Racing Regulation Act 2004* provides that the TRAB may appoint an Australian legal practitioner or other person to help it conduct an appeal.

## **2. PANEL COMPOSITION**

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### **Current position**

An appeal panel is properly constituted by one, two or three members for a minor<sup>2</sup> appeal (one of which must be the chairperson or deputy chairperson) and three or more members for any other appeal. As a rule, the Chairperson deals with minor appeals on his own. For a major appeal, the panel normally comprises a maximum of three members.

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<sup>2</sup> “minor appeal” means an appeal against a fine not exceeding \$500 and/or a suspension for a period not exceeding 30 days

## Stakeholder comments

“A panel of three Board members to hear all appeals”.

“The Chairman of the Board should delegate the hearing of minor appeals to other Board members”.

### **Recommendation 2**

That -

- a) Minor appeals may be conducted by the Chairperson or one of the Deputy Chairpersons on their own; and**
- b) For all other appeals, the Chairperson or a Deputy Chairperson must be selected as one of the panel members.**

Current legislation does not mandate that the Chairperson or Deputy Chairperson must sit on major appeals, only ‘as often as is practicable’. This recommendation addresses that anomaly.

## 3. HEARINGS

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### **Current position**

The Board conducts its hearings ‘*de novo*’, a Latin term which, in the legal context, means ‘starting afresh’. Tasmania is one of only a few jurisdictions that conduct hearings *de novo*.

### **Stakeholder comment**

“Abolish *de novo* hearings”.

### **Recommendation 3**

That -

**All appeals to be heard upon the evidence of the original stewards’ inquiry, with the Chairperson able to admit proper, expert or other evidence.**

This is a significant change from the current *de novo* hearings. It is the system that has operated successfully in Western Australia (WA) for a considerable period of time and has strong support from key stakeholders in that jurisdiction. Advantages of the WA model include the timeliness of appeals, the fact that evidence taken at the stewards’ inquiry is generally regarded as the most pertinent, expert witnesses (eg laboratory analysts) would not be required to provide their lengthy, often complex evidence twice. In addition, the Board can still allow fresh evidence if it is of a mind to do so.

#### 4. TIMEFRAME FOR HEARING APPEALS

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##### **Current position**

One of the main issues raised with respect to the TRAB is the length of time it takes to conduct appeals.

A number of changes to the racing appeal provisions were implemented as a result of the 2008 Review of the TRI's Governance Structure, including a reduction in the time within which appellants must lodge an appeal for a minor offence (reduced from 14 to seven days); the forfeiture, in full or part, of the appeal deposit in circumstances where an appeal is dismissed; and an increase in the appeal deposit for major offences (from \$200 to \$500). The changes were aimed at reducing the number of ambit appeals and enhancing the timeliness of the hearing of appeals.

While those changes did impact of the number of ambit appeals, there has been little if any improvement in the timeframe within which appeals are heard and resolved.

Minor appeals are usually heard within 14-21 days of receipt of the appeal documentation by the Secretary. All other appeals are scheduled for hearing at the earliest opportunity, however, where the issues are complex, matters may take longer to be heard.

##### **Stakeholder comments**

"Review timeframes to restrict the amount of time between the lodgment of appeal and time of hearing, ie appeal to be lodged within 48 hours and heard within seven days".

"Appeals in respect of prohibited substances should be heard promptly".

##### ***Recommendation 4***

*That -*

- a) Minor appeals, wherever practicable, should be heard within 7 days of lodgement; and*
- b) All other appeals, wherever practicable, should be heard within 21 days of lodgement.*

This places particular timeframes on the Board, obviously with some flexibility when required.

## 5. ACCESS TO STEWARDS' EVIDENCE

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### Current position

**Race Patrol Film** - In the past, and in keeping with advice from the Solicitor General (SG), the Director of Racing's policy in relation to access by appellants to race patrol films only permitted the person to view the film at the offices of RST with a steward in attendance, unless individual circumstances warranted a different approach. This was, in the SG's opinion, sufficient to satisfy the requirements of procedural fairness in relation to appellants.

However, in response to representations by the industry, a new policy has been instituted which allows for film (DVD or video tape) to be provided to an appellant for the purpose of his or her appeal, subject to a number of restrictions: film must not be copied; it can only be shown to persons in connection with the appeal; and it must be returned to RST within seven days of the conclusion of the appeal.

**Transcript of Inquiry** – A transcript may be made available on the request of the appellant. However, the Chairperson of the appeal panel may, at his discretion and depending on the nature of the appeal, determine to hear the matter without the benefit of a transcript. This usually occurs when timing is critical and/or the matter on appeal is of a straight forward nature, ie a minor riding or driving offence.

The preparation time associated with the transcribing of inquiry proceedings can cause unnecessary delays in the hearing of appeals. Depending on the availability of resources, transcripts are generally typed and proofread by RST staff. However, this is not always possible for operational reasons and, in such cases, the work must be outsourced to the private sector. This can prove to be a costly exercise. Generally, the stewards and the appellant are required to each pay 50 percent of the costs incurred in the preparation of the transcript.

### Stakeholder comments

"Video evidence to be provided to the appellant upon request".

"Transcripts of inquiry to be provided for all appeals and made available to the appellant on request and at a non-prohibitive cost".

### **Recommendation 5**

*That -*

***The race patrol film (if applicable) and transcript (or recording if timeframes necessitate) of the original stewards' inquiry are to be made available to all parties as soon as is practicable after an appeal is lodged.***

This recommendation ensures that all parties to the appeal have access to the relevant material.

### **Current position**

When an appeal is lodged, the Secretary informs the stewards. At this stage, if a stay of proceedings has been requested, stewards are asked if they have any objection to a stay being granted and, if so, to provide in writing the grounds for that objection. Generally, the appellant is then afforded the opportunity to respond to that objection.

The Secretary then contacts the Chairperson to notify him of the appeal and any stay of proceedings that has been requested. In deciding whether or not to grant a stay, the Chairperson takes into consideration submissions made by the stewards and the appellant and may choose to conduct a 'determinations hearing' via teleconference with the parties to the appeal to help determine if a stay is to be granted or declined. The Chairperson may, unconditionally or on such conditions as he or she thinks fit, suspend the operation of a penalty pending the hearing and determination of an appeal.

On average over the past five racing seasons, nearly 80 percent of applications for a stay of proceedings have been granted (refer Appendix G) by the Chairperson of the TRAB.

### **Stakeholder comments**

"Limited stay of proceedings –

- amendment to section 33 of the Act to provide for the suspension of penalties pending an appeal for an initial period of three months, and thereafter, on the basis that good cause is shown, for a further three months; and
- legislated restriction to the length of time an appellant is permitted to train and/or drive/ride under a stay of proceedings".

"Prize money won during a stay of proceedings should be withheld and forfeited if the appeal is dismissed".

### ***Recommendation 6***

*That -*

***A stay of proceedings shall not be granted in the following circumstances:***

- a) where the appeal is against penalty only;***
- b) where the appeal is intended to be heard within seven days of lodgement (except if the Chairperson considers that extenuating circumstances require otherwise);***
- c) where the Chairperson considers that the primary reason for the request is to enable a racing activity (eg riding, driving) to be undertaken in the period before the matter is heard.***

This recommendation puts in place some conditions in relation to the granting of a stay. The industry has expressed concern previously that stays are granted as a matter of course, with the system being used to enable participation in feature events.

Whilst the concept of forfeiture of monies won during a stay of proceedings has, on face value, merit, it would effectively result in the appellant being penalised twice. That is, if the appeal is dismissed, the appellant would not only forfeit monies earned during the period of the stay, he or she would also forfeit the opportunity to earn monies whilst serving any subsequent period of suspension or disqualification as determined by the TRAB.

## 7. COMMENCEMENT OF PENALTY

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### **Current position**

The rules of racing provide that the commencement of penalties can be deferred for a particular number of days, although the rules across the three codes differ. There has been some inconsistency in the application of these particular rules by the Board.

### **Stakeholder comment**

“When careless riding appeals are dismissed and the penalty confirmed, the penalty should take place immediately, with no extension to complete engagements”.

### ***Recommendation 7***

*That -*

***A decision of the Board is to be effective immediately, unless welfare matters necessitate a transitional period to care for racing animals.***

This recommendation provides certainty, whilst at the same time having regard to the welfare of the animals.

There will be an obligation placed on the appellant to inform any person wishing to engage their services that they have a matter currently before the Board and, if unsuccessful, they will not be able to fulfill the commitment.

## 8. CONSULTATION PROCESS

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### **Current position**

There is currently no formal process in place which requires the TRAB to consult with industry.

However, each year or two, the Australasian Racing Appeals Tribunal Conference convenes. The conferences present an opportunity to the members of the tribunals from the various States and Territories of Australia and New Zealand to discuss issues which are faced in the day to day operation of the various boards and tribunals.

### **Stakeholder comments**

“Consultation with other jurisdictions should occur to gain benefit from the experiences of other areas”.

“All Board members should have an understanding of racing related matters”.

“Appointment of an impartial Racing Advisor to provide assistance to the Board on racing matters”.

### ***Recommendation 8***

*That -*

***The Chairperson and Deputy Chairpersons of the Board are to meet with the Chairpersons of industry associations and race clubs, the Director of Racing and Chairmen of Stewards at least biannually.***

There has been general concern expressed that the Board is out of touch with current issues affecting each code and there is no mechanism in place for this to be addressed. Mandatory consultation will ensure that the Board is fully informed in its decision making.

## CONCLUSION

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In undertaking the review process, it has been apparent that there is considerable disenchantment within the racing industry with respect to the time that appeals take to reach finalisation. This view has been exacerbated and perhaps unduly slanted by way of a few appeals which have taken an inordinate amount of time to be resolved. However, any review, whilst taking into account such matters, should generally focus on what occurs in the normal course of operations rather than exceptional circumstances.

The industry is of the view that appeals should be conducted as promptly as is possible. This of course is highly desirable, but must be weighed against the

absolute need to ensure procedural fairness is afforded to the appellant. It is therefore relevant to carefully examine the current system and formulate changes which will provide enhancements, yet at the same not compromise the legality of the process.

The concept of *de novo* hearings, as is currently utilised, must be questioned. A *de novo* hearing is a hearing afresh, that is, all evidence is taken again. Whilst the transcript of the original stewards' inquiry can be tendered to the hearing, all evidence is reheard. This, by its very nature, will generally increase the time it takes to hear appeals, as well as providing the appellant and witnesses the opportunity to alter or amend evidence provided to the original inquiry. The general view in any inquiry situation, whether it is racing or any other regulatory field, is that the evidence given at the time closest to the matter being investigated is the most accurate.

Therefore, it can well be argued that, on the basis the original inquiry is conducted in a proper manner, the appeal should be heard by utilising evidence presented at that inquiry. In this regard, the expertise of stewards has progressed markedly in recent times, with formal training delivered by Racing Victoria Ltd and on-the-job training delivered by such persons as the Solicitor General. It can be reasonably argued that RST stewards are now much better equipped to gather evidence, conduct inquiries and ensure that participants are provided procedural fairness.

Paramount to an appeal system which operates on the evidence of the original inquiry is the ability of the Chairperson to admit proper, expert or other evidence. The Chairperson should, quite rightly, be able to allow new evidence if he or she is of a mind to do so.

The WA appeals system operates in this manner. This system, which was referred to in some of the received submissions, has been in operation for close to 20 years. The general view of stakeholders in that jurisdiction is that the system operates well. It is also relevant that the WA appeals system deals with the three codes of racing, as is the case in Tasmania.

Having considered all factors, I am of the view that a change to the appeal hearings being conducted on the evidence of the original inquiry will result in enhanced effectiveness and greater efficiencies, whilst not compromising the procedural fairness afforded to the appellant.

In terms of the concerns regarding the timeliness of appeals, once again it is important to ensure that the appellant is afforded procedural fairness. There is also a need, however, for the expectations of stewards and the industry in general to be carefully considered. There is a general perception that some appellants "use the system" to prolong appeals, particularly at key times during the racing year.

Any proposed changes must therefore balance the desire of the racing industry for appeals to be held in a timely manner against the need to ensure that appellants are provided every reasonable opportunity to present their case.

In this regard, it is proposed that all parties to an appeal be provided a copy of the transcript (or voice recording) of the inquiry, and the race patrol film if the matter relates to a racing incident. The provision of this material should be made as soon as possible once an appeal is lodged.

On the basis that this information is provided in a timely manner, it is proposed to implement a requirement that, wherever possible, minor appeals are to be conducted within seven days and all other appeals within 21 days of lodgement. This is not considered to be an unreasonable expectation, given that the appeals will be conducted on the basis of evidence provided to the original inquiry.

To further facilitate adherence to these timeframes, it is proposed that an additional Deputy Chairperson be appointed to the TRAB. This will result in one of three persons (the Chairperson or one of the two Deputy Chairpersons) being available to conduct minor appeals, which represent approximately 70 percent of all appeals conducted.

With respect to stays of proceedings, it is proposed to place certain restrictions on the granting of such. On the basis that appeals are conducted in a timely manner, it is proposed that a stay of proceedings will not be granted where an appeal is lodged against penalty only. Similarly, if the appeal is to be heard within seven days of lodgment, a stay will only be granted if the Chairperson considers there are extenuating circumstances. In both these situations, it is considered that there will be minimal impact on the appellant.

Further, to address the perception that some appellants “use the system”, it is proposed that the Chairperson be able to reject an application for a stay of proceedings if he or she is of the view that the primary reason for the appeal is to delay the commencement of the penalty to enable participation in upcoming events.

Another concern that is constantly raised is that participants delay lodging an appeal until such time as fields are concluded, inclusive of riding or driving engagements, for upcoming events. In the event that their appeal is dismissed, it is common practice for appellants to argue that they have obligations in the immediate future and that their penalty should only commence once those obligations are fulfilled. The Board, quite rightly, considers each case on its individual merits; however, this has resulted in variances in decisions in respect to cases which, at least on face value, appear to be extremely similar.

To provide for consistency of decisions, it is proposed that any determination of the Board will take effect immediately. There will, therefore, be an obligation placed on the appellant to inform any person wishing to engage their services that they have a matter currently before the Board and, if unsuccessful, they will not be able to fulfill the commitment.

The one proviso to this proposal is that the Board should have discretion with respect to welfare matters. This would generally refer to a situation where a person has an appeal dismissed (or the penalty reduced) with respect to a disqualification. The general provisions of a disqualification are that the person cannot undertake any activities with respect to any code of racing. Quite often in this situation the person will need to make alternative arrangements for racing animals under their control, and a period of grace is usually afforded by the Board to enable the continued care and well being of the animals.

The other matter which I consider to be a high priority is consultation between the Board and the racing industry. By its very nature, the Board must act independently. However, its decision making would be enhanced by ensuring that it is well informed

on key industry matters. Currently there is no formal process where the Board acquires such information, other than a national Racing Appeals Tribunal Conference which is convened every one to two years.

The views and expectations of industry stakeholders can change at a rapid pace. One only has to consider the movement in animal welfare issues and occupational health and safety across the three codes in recent times to understand the importance of such in today's racing environment. There is also significant movement in other areas, for example the use of prohibited substances.

To ensure that the Board is fully informed on such matters, whilst not compromising its independence, it is proposed that formal meetings be conducted with key stakeholders on a biannual basis. This will value add to the decision making of the Board by ensuring it has up-to-date knowledge of all key industry issues.

In summary, this Review has identified certain areas within the current appeals system which should be changed. The proposed changes have focused on the manner in which appeals are heard, the timeliness of appeals and the information available to the Board. I am confident that implementation of the proposals will result in a more effective, efficient and contemporary appeals system in Tasmania.

## ACKNOWLEDGEMENTS

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I wish to place on record the excellent support and assistance I was provided in the compilation of this Review report by the following persons:

- Julie Hannon Barclay (Racing Policy Officer, Office of the Secretary)
- Glenda Attenborrow (Executive Officer, RST)
- Rachel Coulson (Executive Assistant, RST)

## APPENDICES

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- A Extract from Report entitled, 'Review of the Tasmanian Racing Industry's Governance Structure' (31 October 2008)
- B Extract from Hansard - 2<sup>nd</sup> Reading Speech *Racing Regulation Amendment (Governance Reform) Bill 2008*, Minister for Racing, Legislative Council, 12 November 2008
- C Website Notice – Review of Tasmanian Racing Appeal System
- D Part 5 of the *Racing Regulation Act 2004* — TRAB
- E Schedule 3B of the *Racing Regulation Act 2004* – Further provisions relating to membership of TRAB
- F Comparison of Australian Jurisdictions
- G Tasmanian Appeal Statistics

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**Extract from Report entitled, 'Review of the Tasmanian Racing Industry's Governance Structure' (31 October 2008)**

Pages 7 and 8.....

**4.4 Changes to the Initial Model**

Following the consultation process, the Review carefully considered all issues that had been identified by industry. A number of changes were then made to the initial model. These were:

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Tasmanian Racing Appeal Board (TRAB)

Whilst the initial proposal did not detail specific changes to the TRAB, during the consultation process the industry expressed some concerns in relation to the manner in which appeals are conducted. Specific issues identified included the time in which it takes for appeals to be heard and the hearing of appeals de novo.

Having considered the views of industry, the Review considers that a thorough examination of the Appeals process needs to be undertaken, albeit separate to this process.

However, in view of the concerns raised, the Review considers that some minor, but important changes should be made.

It was identified that under the current system there is little or no deterrent for people lodging appeals, which leads to a number of ambit appeals, which in turn impacts on the timelines of appeal hearings. As such, it has been determined to implement modifications to the current system which are commensurate with modern legal processes, whereby a person who fails in whole or part with their appeal must meet some of the costs associated with its conduct.

There should also be a reduction in the time allowed to appeal minor offences.

## **5. PROPOSED STRUCTURE & OPERATION**

Having considered the current structure, emerging issues, and matters raised during the consultation process, the Review now provides a proposed new structure, as detailed hereunder.

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### **5.7 Tasmanian Racing Appeal Board**

It is proposed that the Tasmanian Racing Appeals Board, in its current structure, be retained.

However, a number of minor changes to the existing racing appeal provisions are proposed, including a reduction in the time within which appellants must lodge minor appeals and the forfeiture, in full or part, of the appeal deposit in circumstances where an appeal is dismissed, withdrawn or the penalty varied. These changes are aimed at reducing the number of ambit appeals and meeting the rising costs of administering the appeals process.

In response to feedback from industry during the consultation, the Review is of the opinion that there needs to be a more substantive consideration of further areas of improvement in the racing appeals process. This would be best addressed in the new year, once the new governance structure has been established.

## **Extract from Hansard of Second Reading Speech - *Racing Regulation Amendment (Governance Reform) Bill 2008***

Second Reading

Wednesday 12 November 2008 Part 1 - Pages 1 - 9

[12.29 p.m.]

**Mr AIRD** (Derwent - Minister for Racing - 2R) - Madam President, I move -

That the bill now be read the second time.

Madam President, the Tasmanian racing industry today faces a future full of both exciting possibilities and complex challenges. The racing industry, both nationally and internationally, has changed dramatically in recent years. New developments continue to emerge at a rapid pace. Wagering products have grown in both complexity and sophistication, and new competitors continue to enter the market.

The industry has moved beyond the traditional format of race day meetings attended by racegoers to one where racing products are broadcast to customers both interstate and overseas. It is clear that the Tasmanian industry's future viability hinges on its ability to tap into this off-track customer base. Tasmania's racing product must be attractive to consumers in both existing and emerging markets if we are to grow a prosperous and sustainable industry.

It is crucial that Tasmanian racing is properly positioned to operate in this fast-changing and increasingly global market. Retaining exposure for the Tasmanian racing product will be an increasing challenge. Madam President, to remain static in the global market is to be left behind. Over the past year, this Government has listened as the industry has told us that from both a commercial and integrity perspective, the industry must adapt and evolve in order to grow.

Going forward, the industry wants a commercial structure with the necessary industry expertise and business acumen to efficiently and effectively represent the interests of the industry, and develop a vision and plan to sell Tasmanian racing to new and emerging markets. Secondly, the industry also wants in place a best practice integrity model to enhance the reputation of the industry, and provide the impetus to maintain market competitiveness at the local, national and international levels.

Madam President, it was in this context that earlier this year, I asked the Director of Racing, Mr Tony Murray, and the CEO of TOTE Tasmania, Mr Craig Coleman, to review and provide advice to the Government on the governance structure of the industry. Following wide and extensive consultation, and having regard to recent developments in other jurisdictions, Mr Murray and Mr Coleman recently presented to the Government a report recommending a number of key changes to the governance structure of the industry. These recommendations form the basis of the legislation I am tabling today. I now table that review.

The legislative package for the reform of the industry comprises two bills: the Racing Regulation Amendment (Governance Reform) Bill 2008 and the Racing Regulation Amendment (Governance Reform) (Transitional and Consequential Provisions) Bill 2008. I am confident that this legislation will establish a governance structure that delivers fundamental improvements to both the commercial and integrity sides of the industry.

The new governance model being put forward today will put in place the necessary conditions to grow the industry and deliver a cohesive and clearly discernible Tasmanian brand, which will be critical in penetrating key emerging markets. For commercial operations, the new governance model will enable the industry to respond with greater flexibility and creativity in meeting the market challenges it is currently facing.

From 1 January 2009, the mandated powers and functions of TOTE Tasmania in relation to the governance and administration of the industry will be removed from TOTE and vested in a new commercial board, the Tasmanian Racing Board - TRB. TOTE will continue to exist as a State-owned company but will focus on its wagering operations into the future.

While TOTE has been very successful in making the most of emerging business opportunities, its flexibility and responsiveness in the market has nonetheless been constrained by its operational and administrative obligations to the industry. By freeing TOTE of these roles and functions, it will be in a position to concentrate all its efforts on business generation and delivery.

The new TRB will be a fully independent, skills-based commercial board, comprising seven members with the necessary business and financial skills to grow the industry. The TRB will allow the racing industry to take control of its own destiny. It will operate separately and independently from both the Government and TOTE.

The TRB's key roles and functions will see it acting as the guardian of Tasmanian racing, being responsible for corporate governance, strategic direction and funding, ratification of national rules and the making of local rules, and the setting of licence standards and criteria. In particular, it will develop a vision and plan to sell Tasmanian racing to new and emerging markets.

In order to comply with national governance requirements for the thoroughbred code of racing, the Tasmanian Racing Board will also be responsible for thoroughbred handicapping. This function is currently being undertaken by Racing Victoria, on behalf of the Tasmanian Thoroughbred Racing Council. It is intended that TRB will continue the delegation of this function. The handicapping of harness racing and greyhound racing will continue to be the responsibility of the Director of Racing.

I would like to assure the industry that the situation as it currently stands for all three codes of racing in relation to handicapping and grading will continue under the new structure with no additional impost on the Tasmanian racing industry. Day-to-day operational matters of a commercial nature within the industry will be undertaken by the TRB's own management structure. Revenue generated from the operations of TOTE and Betfair, as well as any future revenue generated from race fields, publication fees and other sources, will fund the costs associated with the establishment and ongoing operations of the TRB and its management structure. The TRB will be established in the first instance as a statutory authority directly responsible to me as the Minister for Racing. However, the industry has identified that a State-owned company may be a more appropriate model for the TRB in the longer term, given its strong commercial focus.

Madam President, key industry stakeholders have indicated that, notwithstanding a desire to transition the TRB from a statutory authority to a State-owned company as soon as practicable, the proposed governance model before the Council today should be progressed in its current form without delay. There is currently a strong appetite for reform in the industry and a clear expectation that the Government will deliver on its promised changes. For these reasons, the Government has decided not to delay the introduction of the new governance model while legislation is prepared to create a new State-owned company. Rather, the transition to a State-owned company can be progressed once the broader structure is in place, without holding back other crucial elements of the restructure model.

Foreshadowing the likely transition of the TRB to a State-owned company and to ensure business continuity during the move to the new governance model, the legislation establishes a time-limited 'initial TRB'. I will, as Minister for Racing, select the members of the initial TRB after consultation with opposition parties and the President of the Legislative Council. The appointments will be for a period not exceeding 12 months. However, in order to provide sufficient security of tenure to attract quality candidates, the Chairperson will be appointed for a term of up to three years and will also serve as the Chairperson of the new State-owned company following the abolition of the initial TRB. In addition, the Chief Racing Officer of TOTE Tasmania will be appointed as the Acting Chief Executive Officer of the TRB until the TRB appoints a permanent CEO itself, which I would expect to take no longer than six months from the initial TRB's establishment.

Under the new governance model, the three racing code councils will be abolished with their existing powers and functions transferred to the new TRB and the Director of Racing, as appropriate. I do not believe that there will be too many in the industry today that will mourn the passing of the code councils. Certainly the feedback I have been receiving is that the code council structure as it currently stands is not working.

The clear intent of abolishing the councils is to move away from the current situation where commercial issues are handled in a fragmented manner by individual codes, and towards a governance structure that allows commercial decisions to be made from a unified perspective in the best interests of the entire industry. The clear message from industry during the consultation process has been that it supports a united vision for all three codes of racing.

The Government is keenly aware through feedback from the industry that the new TRB must have its finger on the pulse of the issues, challenges and opportunities facing the industry in all three codes, and that the lines of communication between the board and industry grassroots must be kept open and clear. This is why knowledge of the industry must be at the forefront when considering appointments to the TRB. It is also why the legislation mandates minimum quarterly consultation between the TRB, the Director of Racing, clubs and industry associations, and prescribes a feedback mechanism to ensure communication remains genuinely two-way.

Madam President, the Government is committed to providing funding to ensure the ongoing sustainability of the State's racing industry. I can assure the industry that there will be no change to the present funding arrangements. Indeed, there is nothing in the legislation before the Council today which changes the obligations of TOTE Tasmania to directly fund the Tasmanian racing industry. The only change will be that the TRB, rather than TOTE, will become the body responsible for distributing funding to the industry. The guaranteed funding currently paid by TOTE to the racing industry for the conduct of race meetings, including prize money, will now be paid to the TRB for allocation to the industry. Similarly, from 1 January next year, payments made to TOTE to support the racing industry pursuant to the Gaming Control Act 1993, will be transferred to the TRB.

This Government is committed to racing in Tasmania long-term. Over the next 12 months, a long-term funding model, which also looks to the future capital requirements, will be developed in close consultation with industry and TOTE. I want to assure the industry that the clear intent in developing the funding model will be to grow funding to the industry and ensure its long-term sustainability.

I believe there are three principles that will be central to any future funding model: sustainability and revenue predictability for the Tasmanian racing industry; funding for an appropriate level of capital works; and funding to enable the TRB to aggressively pursue the development of the Tasmanian product to enhance the future viability of Tasmanian racing. It is proposed that the implementation of the new funding model will be partly delivered through changes to the Gaming Control Act next year and, therefore, any changes will need to be approved by Parliament.

Madam President, I would also like to make it clear today that staff currently employed by TOTE perform duties relating to the proposed roles and functions of the new TRB, as well as all staff currently employed by code councils will be transferred to the TRB on their existing terms and conditions. No transferred staff member will be worse off under the proposed changes. TRB employees will not be State servants but will remain on contracts that are materially identical to those under which they are currently employed. I will detail the transfer arrangements for employees in greater detail when I speak to the separate Racing Regulation Amendment (Governance Reform) (Transitional and Consequential Provisions) Bill.

I have spoken about the commercial side of the industry and the intent and benefits of the proposed governance model. But it is crucial that the commercial structure is also supported by efforts to improve the industry's integrity, which is increasingly becoming a key plank in the marketability of racing products internationally.

Tasmania's existing integrity model is already highly regarded for its transparency and accountability. But the Government wants to go further and make Tasmania a genuine leader in racing integrity by ensuring decision makers are completely free from any real or perceived conflicts of interest. The new structure will see the introduction of a contemporary best practice model that will deliver enhanced transparency and accountability to the industry.

Unlike other jurisdictions, the integrity and commercial arms of the industry in Tasmania do not compete for the same funding dollars. Here, the Government funds integrity and the industry funds commercial activities. It is absolutely crucial for the reputation of the industry into the future that this clear separation in terms of both operations and funding is maintained and strengthened. Honourable members would appreciate that this separation goes a long way towards reducing the likelihood of both real and perceived conflicts of interest.

Under the new governance model an Integrity Assurance Board - IAB - will be created to adjudicate appeals arising from the statutory decisions of the Director of Racing. The IAB will be an integrity appeal body, empowered to review all statutory decisions made by the Director of Racing. It should be noted, however, that the IAB would not have a right of veto over rules made by the TRB. In performing its functions as an independent statutory authority, the IAB will deliver better checks and balances in the regulatory process as they relate to the integrity and probity of the industry.

The thoroughbred, harness and greyhound racing regulatory panels will be abolished and their existing powers and functions will be transferred to the TRB and the Director of Racing,

as appropriate. As with the TRB, the IAB will be a fully independent, skills-based board. The IAB will comprise five members with the requisite skills to make appropriate judgments on appeals against decisions of the Director of Racing, in accordance with its powers and functions. To ensure that the IAB operates with proper legal process and with regard to the principles of natural justice, both the Chairperson and Deputy Chairperson of the IAB will be required to be Australian legal practitioners of at least five years' standing.

Given the integrity function of the IAB, it is critical that its members are, and are seen to be, beyond reproach. For this reason, there will necessarily be tight restrictions placed on members. These restrictions will include a prohibition on any member being a licensed or registered person, a member of either the TOTE or TRB board, a member of a racing industry association or an employee of either TOTE, a racing club or the TRB. IAB members will be prohibited from betting on a Tasmanian race meeting or with a Tasmanian registered bookmaker.

As is currently the case with the racing regulatory panels, the Government will fund costs associated with the establishment and ongoing operations of the IAB. The establishment of the IAB will likely result in a small overall additional cost to Government in the order of approximately \$20 000 per annum, but I am sure that members would agree that this is a very small price to ensure enhanced transparency in the delivery of integrity to the industry.

**The current Tasmanian Racing Appeals Board - TRAB - will be retained. However, there will be a number of minor changes to the existing racing appeal provisions, including a reduction in the time within which appellants must lodge an appeal and the forfeiture, in full or part, of the appeal deposit in certain circumstances. These changes are aimed at reducing the number of ambit appeals and meeting the rising costs of administering the appeals process. In response to feedback from industry during the consultation, I can advise there will be a more substantive consideration of a further area for improvement in the racing appeals processes in the new year, once the new governance model has had a chance to bed down.**

This Government is committed to ensuring that integrity is delivered to best practice standard. I would like to assure industry participants that this Government will make sure that adequate funding is made available for the ongoing delivery of integrity through the Director of Racing and Racing Services Tasmania, the IAB and the TRAB. To this end, I have asked the Director of Racing to conduct a review of RST's present funding arrangements, and report back to me within the first six months of the implementation of the new structure, having regard to the views expressed at the consultation workshops as well as benchmarks in other jurisdictions. Any suggested changes to RST's present funding arrangements will be considered as a priority during next year's budget development process.

Madam President, the Government has listened closely to industry participants in making sure that the right governance model is put in place to ensure the ongoing vibrancy, viability and strength of the Tasmanian racing industry. Both the Director of Racing and the CEO of TOTE Tasmania have undertaken wide consultation with the three code racing councils, racing industry associations, the CEOs of peak national administration bodies and all other key industry stakeholder groups.

Following initial consultation with a number of key groups, including code councils during late August and September, formal consultation with industry representatives was conducted at facilitated workshops in Hobart and Launceston on 26 September and 1 October 2008 respectively. A follow-up meeting was then held in Campbell Town on the evening of 16 October 2008 where industry was provided with feedback as to how concerns raised at the

initial workshops had been addressed in the detail of the governance model that was being developed.

The Director of Racing and the CEO of TOTE have also made themselves available for one-on-one meetings with small groups or individuals to discuss specific aspects of the proposed model. Understandably, the issue of structural reform has sparked considerable debate across the industry. However, the debate has been largely constructive, with the result, I believe, being a broad consensus on both the rationale for change and the key principles and features of the new governance model.

I believe the detail of the new governance model properly addresses the concerns expressed by stakeholders on issues such as funding, the TRB appointment process and mandated ongoing consultation between the TRB and the industry, and has the support of the majority in the racing industry. I want to assure industry participants that the respective codes will not lose their identity and direct input into the decision-making process. As key stakeholders, the code councils have had the opportunity to provide input on matters of key concern, including representation on the TRB. And, as I outlined previously, the legislation mandates that, in the exercise of its functions and powers, the TRB must consult meaningfully with the industry.

We are faced with a clear opportunity to embrace positive change that will provide the conditions under which the racing industry in Tasmania can grow and flourish. To do nothing in the face of this opportunity and maintain the status quo has the potential to hamstring the industry to the point where it will stagnate. Without change, the industry will continue to operate in a fragmented manner, with individual codes making determinations on commercial issues, which would have far better outcomes if addressed from a whole of industry perspective. Without change, we will have an ongoing perception that sectorial interests may seek to influence integrity matters. Without change, the issue of conflicts of interest, whether real or perceived, will continue to arise in key integrity decision-making processes. And, perhaps most critically, without change, the Tasmanian racing industry will continue to be at a competitive disadvantage in meeting future challenges and opportunities for effectively marketing the Tasmanian product. In this situation there is a very real risk of decreased revenues and a decline in the long-term viability of the industry.

Madam President, the industry accepts that positive change is required and expects the Government to deliver. The proposed structural reform will deliver a framework that fundamentally strengthens both the commercial and integrity sides of Tasmanian racing. It will position the industry to overcome the inter-code rivalry that has constrained commercial development for decades and facilitate the pursuit of a clear and unified vision for the industry. It will provide the industry with a new level of business and customer focus, which will see the development of better products with greater appeal to punters locally, nationally and globally. It will deliver better accountability and transparency in integrity and ensure that decision makers are beyond reproach and free of real or perceived conflicts of interest. And it will position Tasmanian racing to both meet the challenges and seize the opportunities that it currently faces in the global market.

In delivering these things the proposed governance model will provide a renewed confidence in the viability of the industry, bringing greater investment and ensuring its long-term sustainability. I commend the bill to the Council.

[12.51 p.m.]

## Website Notice - Review of Tasmanian Racing Appeal System

The Minister has requested that I undertake a review of the Racing Appeal system in place in Tasmania.

The relevant legislation with regards to the Tasmanian Racing Appeal Board can be found in Part 5 of the *Racing Regulation Act 2004* at [www.racing.tas.gov.au/legislation](http://www.racing.tas.gov.au/legislation).

It is important that the appeals system be in accordance with best practice and following changes to appeals processes in some interstate jurisdictions it is considered timely to conduct this review.

To assist with the review, I am seeking submissions from industry stakeholders. Submissions may include, amongst other things:

- the strengths and weaknesses of the current system,
- your personal experience with appeals, and
- your recommendations for improvement.

Should you wish to make a submission, it would be appreciated if it could be received prior to 10 July 2009.

The address for submissions is:

TRAB Review  
P O Box 1329  
LAUNCESTON TAS 7250

A Murray  
DIRECTOR OF RACING

2 June 2009

**RACING REGULATION ACT 2004 (NO. 62 OF 2004)**

**Part 5 – TRAB**

**23. Tasmanian Racing Appeal Board (TRAB)**

**(1)** The Tasmanian Racing Appeal Board constituted under [section 25\(1\) of the \*Racing Act 1983\*](#) continues.

**(2)** The TRAB consists of 8 members.

**(3)** At least 2 of the members are to be Australian legal practitioners of at least 5 years' standing and one such member is to be appointed as chairperson and another such member is to be appointed as deputy chairperson.

**(4)** The members, and the chairperson and deputy chairperson, are appointed by the Governor.

**(5)** A member is to be appointed for a term not exceeding 3 years and, if eligible, may be reappointed for further terms.

**(6)** [Schedule 3B](#) has effect in relation to the membership of the TRAB.

**(7)** A person is not eligible to be a member of the TRAB if the person is –

- (a)** registered as a bookmaker or a bookmaker's agent; or
- (b)** the trainer, owner or lessee of a horse or greyhound used for racing; or
- (c)** the rider or driver of a horse used for racing; or
- (d)** a Director or employee of TOTE Tasmania; or
- (e)** a member or employee of Tasracing; or
- (f)** the chairperson of the IAB or deputy chairperson of the IAB; or
- (g)** a member of a racing club committee; or
- (h)** an employee of a racing club; or
- (i)** a member of a racing industry association committee.

## **24. Delegation by chairperson**

The chairperson may delegate any of the chairperson's functions or powers under this or any other Act, other than this power of delegation, to the deputy chairperson.

## **25. Role of deputy chairperson**

The deputy chairperson assists the chairperson and acts as the chairperson while the chairperson is absent or during any vacancy in that office and, while so acting, may perform the functions and exercise the powers of the chairperson as fully and effectively as the chairperson.

## **26. TRAB secretary**

The Secretary of the Department may appoint a State Service officer or State Service employee employed in the Department to be secretary to the TRAB and that officer or employee may hold that office in conjunction with State Service employment.

27.

## **28. Persons may appeal to TRAB about certain matters**

**(1)** A person may appeal to the TRAB if the person is –

**(a)** aggrieved by the decision of Tasracing or a registered club to issue the person with a warning-off notice under [section 54](#); or

**(b)** aggrieved by the decision of the stewards to –

**(i)** impose a fine on the person; or

**(ii)** impose a suspension or disqualification on the person or on a horse or greyhound owned, leased or trained by the person.

**(2)** However, an appeal does not lie to the TRAB in respect of a stewards' decision which alters the result of a horse race or greyhound race if the decision was made before the declaration of "correct weight" or "all clear".

**(3)** If a person has a right of appeal under this section against a decision of a registered club, no appeal against that decision lies to that club.

**(4)** If a person has a right of appeal under this section against a steward's decision, no appeal against that decision lies to a club.

**(5)** [Subsections \(3\)](#) and [\(4\)](#) have effect notwithstanding anything to the contrary that may be contained in –

**(a)** the *Rules of Racing*; or

**(b)** the constitution, rules or articles of the club.

## **29. How and when should persons appeal?**

**(1)** An appeal is instituted by lodging a notice of appeal with the secretary.

**(2)** The notice of appeal –

**(a)** is to be in a form approved by the TRAB; and

(b) must specify the parties to the appeal, the relevant decision and the grounds of appeal.

(3) The notice of appeal must be lodged with the secretary within –

(a) in the case of a minor appeal, 7 days after the taking of the relevant decision; or

(ab) in the case of any other appeal, 14 days after the taking of the relevant decision; or

(b) if [section 28\(1\)\(a\)](#) applies, 14 days after the day on which the person is issued with the warning-off notice; or

(c) . . . . .

### 30. Hearing of appeals

(1) On the lodgment of an appeal, the secretary is to –

(a) request the chairperson to fix a time and place, as soon as practicable, for the hearing of the appeal; and

(b) give the parties to the appeal notice of that time and place; and

(c) give the respondent a copy of the notice of appeal.

(2) Before an appeal is heard or consideration is given under [section 33](#) to suspending the operation of a penalty, the appellant must pay the prescribed deposit, if any, to the secretary.

(3) An appeal is not capable of being withdrawn or abandoned except by leave of the chairperson.

(4) An application for leave to withdraw or abandon an appeal is to be –

(a) in a form approved by the TRAB; and

(b) lodged with the secretary.

(5) At the hearing of an appeal, the TRAB may allow the appellant to amend the grounds of appeal if satisfied in the circumstances of the case that it would be just to do so.

(6) On the hearing of an appeal, the TRAB –

(a) is to proceed with as little formality and technicality, and with as much expedition, as a proper consideration of the appeal permits; and

(b) must observe the rules of natural justice; and

(c) may adjourn the hearing from time to time or from place to place as it thinks fit; and

(d) except as provided by this Act, may otherwise regulate its own proceedings.

(7) Except as otherwise provided by this Act, [Part 3](#) and [section 33 of the Commissions of Inquiry Act 1995](#) apply to appeal proceedings as if the TRAB were a Commission established under [section 4](#) of that Act and the appeal were an inquiry being conducted by that Commission under that Act.

(8) A person, other than the appellant, who is required by the TRAB to attend the hearing of an appeal is entitled to be paid such allowances and expenses as are prescribed or, if not prescribed, as the TRAB determines.

(9) A party to an appeal may be represented by an Australian legal practitioner or any other person.

(10) The TRAB may appoint an Australian legal practitioner or other person to help it conduct an appeal.

### **31. Constitution of TRAB for appeals, &c.**

(1) For the purposes of hearing an appeal, the TRAB is properly constituted by –

(a) one, 2 or 3 members for a minor appeal; and

(b) 3 or more members for any other appeal.

(2) The chairperson is to choose the members who are to constitute the TRAB for an appeal, but –

(a) for a minor appeal, the member chosen or, if applicable, one of the members chosen must be the chairperson or deputy chairperson; and

(b) as often as practicable for any other appeal, the chairperson or deputy chairperson is to be chosen as such a member.

(3) The chairperson is to preside at all hearings of the TRAB at which the chairperson is present.

(4) If the chairperson is not present at a hearing of the TRAB, the deputy chairperson or, if the deputy chairperson is also absent from the hearing, such other member of the TRAB as the members present elect is to preside at the hearing.

(5) The presiding member has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(6) If the members constituting the TRAB for any hearing do not agree on a matter, the decision of the majority is the decision of the TRAB.

(7) .....

(8) .....

### **32. Protection of TRAB members, &c.**

(1) A member of the TRAB has, in that capacity, the same protection and immunity as a judge of the Supreme Court.

**(2)** An Australian legal practitioner or other person who represents a party to an appeal or is engaged to help the TRAB conduct an appeal has, in that capacity, the same protection and immunity as an Australian legal practitioner appearing for a party in proceedings in the Supreme Court.

### **33. Suspension of penalties pending appeals**

The chairperson may, unconditionally or on such conditions as he or she thinks fit, suspend the operation of a penalty pending the hearing and determination of an appeal.

### **34. Determination of appeals**

**(1)** After hearing an appeal, the TRAB –

**(a)** may affirm, vary or quash the decision that was the object of the appeal; and

**(b)** must make an order regarding the disposal of the prescribed deposit, if any, lodged on appeal.

**(2)** For the purposes of [subsection \(1\)\(b\)](#), the TRAB must order that –

**(a)** if the decision that was the object of the appeal is affirmed, an amount of not less than 50 per cent of the prescribed deposit is to be forfeited to the Secretary of the Department; or

**(b)** if an appeal is withdrawn or abandoned after consideration has been given under [section 33](#) to suspending the operation of a penalty, an amount of not less than 50 per cent of the prescribed deposit is to be forfeited to the Secretary of the Department; or

**(c)** if an appeal is withdrawn or abandoned and no consideration has been given under [section 33](#) to suspending the operation of a penalty, the whole of the prescribed deposit is to be refunded to the appellant; or

**(d)** if the decision that was the object of the appeal is varied, an amount of not less than 25 per cent of the prescribed deposit is to be forfeited to the Secretary of the Department; or

**(e)** if the decision that was the object of the appeal is quashed, the whole of the prescribed deposit is to be refunded to the appellant.

**(3)** If the TRAB orders that an amount of more than 50 per cent of the prescribed deposit is to be forfeited to the Secretary of the Department, it is to have regard to –

**(a)** whether the appeal appears to the TRAB to have been made in good faith or vexatiously; and

**(b)** whether the grounds of appeal appear to the TRAB to have been serious or frivolous; and

**(c)** whether the appellant appears to the TRAB to have been seeking genuine redress or merely a delay in the implementation of the decision under appeal; and

**(d)** whether, in the reasonable opinion of the TRAB, the appellant pursued the appeal with due diligence or was obstructive; and

**(e)** such other matters as the TRAB thinks reasonable and fair in the circumstances.

**(4)** Any part of a prescribed deposit not forfeited to the Secretary of the Department is to be refunded to the appellant.

**(5)** If, after hearing an appeal against a decision, the TRAB is satisfied that the appellant did not engage in the conduct that prompted the making of the decision but may have engaged in some other conduct that would have justified the respondent making another decision against the appellant, the TRAB may, if it considers it just to do so, make any decision that could have been made by the respondent in relation to the other conduct.

**(6)** The TRAB is to give the parties to an appeal notice of its determination in relation to the appeal.

**(7)** A determination of the TRAB in relation to an appeal is final and, in the case of an appeal against a decision, is to be taken to be the decision of the respondent to which the determination relates.

**(8)** .....

**RACING REGULATION ACT 2004 (NO. 62 OF 2004)**

**Schedule 3B - Further Provisions Relating to Membership of  
TRAB**

[Section 23\(6\)](#)

**1. Interpretation**

In this Schedule –

"**member**" means a member of the TRAB;

"**State servant**" means a State Service officer or State Service employee.

**2. Holding other office**

The holder of an office who is required by the terms of his or her employment to devote the whole of his or her time to the duties of that office is not disqualified from –

(a) holding that office and also the office of a member; or

(b) accepting any remuneration payable to a member.

**3. State servants may be members**

(1) The [State Service Act 2000](#) does not apply in relation to a member in his or her capacity as a member.

(2) A State servant may hold the office of a member in conjunction with State Service employment.

**4. Remuneration of members and conditions of appointment**

(1) A member is entitled to be paid such remuneration and allowances as the Governor may from time to time determine.

(2) A member who is a State servant is not entitled to receive remuneration or allowances under this clause, except with the approval of the Minister administering the [State Service Act 2000](#).

(3) A member holds office on such conditions in relation to matters not provided for by this Act as are specified in the member's instrument of appointment.

## 5. Vacation of office

(1) A member vacates office if he or she –

(a) dies before the end of the term for which he or she has been appointed; or

(b) resigns by notice given to the Governor; or

(c) is removed from office under [subclause \(2\)](#) or [\(3\)](#).

(2) The Governor may remove a member from office if the member –

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or

(b) under this Act, ceases to be eligible to hold the office; or

(c) fails to disclose a personal interest as required by [clause 6\(1\)](#); or

(d) is convicted, in Tasmania or elsewhere, of a crime or offence punishable by imprisonment or by a fine of 300 or more penalty units; or

(e) is convicted of an offence against this Act, the [Racing \(Totalizator Betting\) Act 1952](#) or the [Gaming Control Act 1993](#); or

(f) ceases to hold a practising certificate, within the meaning of the [Legal Profession Act 2007](#), or has his or her name removed from the roll of local lawyers kept by the Supreme Court.

(3) The Governor may remove a member from office if satisfied that the member is unable to perform the duties of the office adequately or competently.

(4) A member must not be removed from office otherwise than in accordance with this clause.

## 6. Disclosure of interest

(1) A member of the TRAB who has a direct or indirect interest in a matter being considered, or about to be considered, by the TRAB must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest prior to the hearing before the TRAB to which the direct or indirect interest relates.

Penalty:

Fine not exceeding 50 penalty units or a term of imprisonment not exceeding 3 months, or both.

(2) A member who discloses an interest under [subclause \(1\)](#) must not, unless the chairperson determines otherwise –

(a) be present during any deliberations of the TRAB in relation to the matter; or

(b) take part in any decision of the TRAB in relation to the matter.

## **7. Filling of vacancies**

If the office of a member of the TRAB becomes vacant, otherwise than by the expiration of the term for which the member was appointed, the Governor may appoint a person to the vacant office for the remainder of the member's term of office.

## **8. Validity of proceedings, &c.**

**(1)** An act or proceeding of the TRAB or of a person acting under a direction of the TRAB is not invalidated by reason only that, at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the membership of the TRAB.

**(2)** All acts and proceedings of the TRAB or of a person acting under a direction of the TRAB are, despite the subsequent discovery of a defect in the appointment of a member or that any other person was disqualified from acting as, or incapable of being, a member, as valid as if the member had been duly appointed and was qualified to act as, or capable of being, a member, and as if the TRAB had been fully constituted.

## **9. Presumptions**

In any proceedings by or against the TRAB, unless evidence is given to the contrary, proof is not required of –

(a) the constitution of the TRAB; or

(b) any resolution of the TRAB; or

(c) the appointment of any member of the TRAB.

## Comparison of Australian Jurisdictions

Q1: STRUCTURE						
TAS	NSW	VIC	QLD	SA	WA	NT
<p>The Tasmanian Racing Appeal Board (TRAB) is an independent body established by the Tasmanian Government under section 23 of the <i>Racing Regulation Act 2004</i> to administer appeals for the three codes of racing in Tasmania.</p>	<p>The Racing Appeals Tribunal (RAT), is constituted <i>under its own Act, the Racing Appeals Tribunal Act 1983</i>, and regulated by the <i>Racing Appeals Tribunal Regulation 1999</i>. The RAT can hear appeals on certain matters from persons aggrieved by decisions of the Panel or racing authorities.</p>	<p>The Victorian Racing Appeals Tribunal (VRAT) commenced operations in 1984. The operations of the VRAT are governed by Sections 83F-O of the <i>Racing Act 1958</i>.</p>	<p>The Queensland Racing Appeals Tribunal (RAT) is an independent body established by the Queensland Government under section 150 of the <i>Racing Act 2002</i> to administer appeals from the three codes of racing in Queensland.</p>	<p>The South Australian Racing Appeals Tribunal (RAT) is an independent body established by a Deed (the Deed has an Annexure which is the RAT Constitution and also the Rules of RAT).</p> <p>The parties to the Deed are Thoroughbred Racing SA Ltd, Harness Racing SA Ltd, Greyhound Racing SA Ltd and Racing SA Ltd.</p> <p>Racing SA Ltd is the peak body of racing authorities in this State.</p>	<p>The Racing Penalties Appeal Tribunal (RPAT) of Western Australia is an independent body established by the Western Australian Government under the <i>Racing Penalties (Appeals) Act 1990</i> to confer jurisdiction in respect of appeals against penalties imposed in disciplinary proceedings arising from, or in relation to, the conduct of greyhound racing, horse racing and harness racing, and for related purposes.</p>	<p>The Racing Appeals Tribunal is an independent body established by section 145F of the <i>Racing and Betting Act</i>.</p>

## Q2: WHAT CAN BE APPEALED?

TAS	NSW	VIC	QLD	SA	WA	NT
<ul style="list-style-type: none"> <li>• Appeals may be lodged with the TRAB by a person aggrieved by a decision of :               <ul style="list-style-type: none"> <li>- Tasracing or a registered club to issue the person with a warning-off notice; or</li> <li>- Stewards to impose a fine on the person; or impose a suspension or disqualification on the person or on a horse or greyhound owned, leased or trained by the person.</li> </ul> </li> <li>• An appeal does not lie to the TRAB in respect of a stewards' decision which alters the result of a horse race or greyhound race if the decision was made before the declaration of "correct weight" or "all clear".</li> </ul>	<ul style="list-style-type: none"> <li>• Appeals may be lodged with the RAT by:               <ul style="list-style-type: none"> <li>- a person aggrieved by a decision of a t/bred association, RNSW or the RNSW Appeal Panel, or</li> <li>- RNSW aggrieved by a decision of a t/bred association or the RNSW Appeal Panel to                   <ul style="list-style-type: none"> <li>▪ disqualify or warn off a person, or</li> <li>▪ suspend for 3 months or more any licence, right or privilege granted under the Rules (no minimum suspension period applies if imposed by RNSW), or</li> <li>▪ revoke the licence of any person under the Rules, or</li> <li>▪ impose on any person a fine of \$2,000 or more (\$100 or more if imposed by RNSW), or</li> <li>▪ disqualify a horse, if the disqualification is made in conjunction with the imposition of a penalty on the appellant or any other person.</li> </ul> </li> </ul> </li> <li>• Appeals may also be lodged with the RAT by:               <ul style="list-style-type: none"> <li>- a person or RNSW aggrieved by a decision of a t/bred association or the RNSW Appeal Panel neglecting or refusing to hear or determine an appeal;</li> <li>- a person aggrieved by a decision of a harness or greyhound racing club, or steward of HRNSW, GRNSW or a greyhound racing club; or</li> <li>- a person or a harness or greyhound racing club aggrieved by a decision of HRNSW or GRNSW.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Persons whom a penalty has been imposed by a controlling body, the Racing Appeals and Disciplinary Board (thoroughbred racing) or the stewards employed by the controlling body.</li> <li>• There are minimum threshold penalties set to hear appeals (\$250 fine, or suspension of greater than one month)</li> </ul>	<ul style="list-style-type: none"> <li>• Appeals may be lodged with the Tribunal against decisions to refuse or renew licenses, or against disciplinary action or penalties imposed by stewards.</li> </ul>	<ul style="list-style-type: none"> <li>• The Tribunal has jurisdiction to hear and determine an appeal against a decision made under the rules of a Controlling Authority for its respective code of racing:               <ul style="list-style-type: none"> <li>- disqualifying or suspending a person from participating in that code in any particular capacity; or</li> <li>- imposing a fine greater than \$499 or such other amount as may be prescribed by the Controlling Authorities; or</li> <li>- disqualifying or suspending a horse (but only when this decision is made in conjunction with a decision to disqualify or suspend a person or to impose a fine greater than \$499).</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• A person who is aggrieved by a determination, or a finding comprised in or related to a determination, of RWWA, a steward, racing club or committee:               <ul style="list-style-type: none"> <li>- imposing any suspension or disqualification, whether of a runner or of a person;</li> <li>- imposing a fine;</li> <li>- which results, or may result, in the giving of a notice of the kind commonly referred to as a 'warning-off'; or</li> <li>- in relation to any other matter, where the Tribunal gives leave.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Appeals may be lodged by a person or owner of an animal aggrieved by a decision of a steward or an official of a club made in respect to that person or animal, where the decision was to:               <ul style="list-style-type: none"> <li>- impose a fine greater than \$1000;</li> <li>- impose on a person a suspension or disqualification for a period longer than three months;</li> <li>- impose on an animal a disqualification or suspension;</li> <li>- warn off a person for more than 12 meetings; or</li> <li>- impose on a person a fine of more than \$500 with a suspension or disqualification for longer than one month.</li> </ul> </li> </ul>

### Q3: HOW IS TRIBUNAL CONSTITUTED?

TAS	NSW	VIC	QLD	SA	WA	NT
<ul style="list-style-type: none"> <li>The TRAB consists of eight members.</li> <li>At least two of the members are required to be Australian legal practitioners of at least five years' standing and one such member is to be appointed as chairperson and the other as deputy chairperson.</li> </ul>	<p>The Minister on the recommendation of the Attorney General, appoints a qualified person as the Tribunal.</p>	<p>The VRAT consists of a Chairman and three Deputy Chairmen.</p> <p>Minimum requirement for appointment for the panel is that each shall be an Australian lawyer of no less than seven years' standing.</p> <p>Under the Act, a panel of advisers is appointed by the Minister for Racing and formed for each racing code.</p> <p>For the purpose of hearing and determining an appeal, the Tribunal shall be constituted by the Chairman (or a Deputy Chairman).</p> <p>Two advisers from each industry code are required to assist the Chairman at each VRAT hearing.</p>	<ul style="list-style-type: none"> <li>There are three members of the tribunal who may sit as individuals, a couple or all three.</li> <li>A person is qualified for appointment as a tribunal member only if the person is a lawyer of at least five years standing.</li> </ul>	<ul style="list-style-type: none"> <li>The Tribunal consists of a President, Deputy President and not less than two other persons for each racing code known as Assessors.</li> <li>The President and Deputy President must be legal practitioners of not less than 10 years standing.</li> <li>The other persons, known as Assessors, must have, in the opinion of the appointor, a sound knowledge and experience of the appointer's racing code.</li> </ul>	<ul style="list-style-type: none"> <li>The RPAT consists of seven members.</li> <li>One such member (who is an Australian lawyer of not less than seven years' standing and practice) is to be appointed by the Minister as a Chairperson.</li> <li>A person shall not be appointed to the panel unless the Minister is satisfied that the person: <ul style="list-style-type: none"> <li>is, or would be eligible for appointment as, or has been, a magistrate; or</li> <li>by virtue of practice or judicial service in another jurisdiction, in Australia or elsewhere, has qualifications and experience of a nature substantially similar to those required in a magistrate.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>RAT consists of a Chairman and two members (there is a panel of six members).</li> <li>The Chairman and Deputy Chairman must be a Judge of the Supreme Court, a magistrate or a legal practitioner</li> </ul>

<b>Q4: HOW ARE MEMBERS APPOINTED?</b>						
<b>TAS</b>	<b>NSW</b>	<b>VIC</b>	<b>QLD</b>	<b>SA</b>	<b>WA</b>	<b>NT</b>
The members, chairperson and deputy chairperson are appointed by the Governor.	A member of the RAT is appointed by the Minister on the recommendation of the Attorney General.	The Governor in Council is responsible for all appointments.	The Governor in Council appoints tribunal members, including 1 tribunal member as chairperson of the tribunal and another tribunal member as deputy chairperson of the tribunal.	The President and Deputy President are appointed by Racing SA Ltd, the peak body of racing authorities in this State. The other persons, known as Assessors, are appointed by each Controlling Authority.	The Chairperson and Members are appointed by the Minister.	Chairman, Deputy Chair and all panel members are appointed by the Minister.
<b>Q5: TERM OF APPOINTMENT</b>						
<b>TAS</b>	<b>NSW</b>	<b>VIC</b>	<b>QLD</b>	<b>SA</b>	<b>WA</b>	<b>NT</b>
A member is appointed for a term not exceeding three years and, if eligible, may be reappointed for further terms.	A member of the RAT is appointed for a period not exceeding 3 years, but is eligible (if otherwise qualified) for re-appointment.	A member is appointed for a term not exceeding three years.	A tribunal member is to be appointed for a term of not more than 3 years.	A member of the Tribunal may be appointed for such term of office, not exceeding three years, as the Controlling Authorities may determine and on the expiration of that term of office is eligible for reappointment.	A member is appointed for a term not exceeding three years as is, and in accordance with such conditions as are, specified in the instrument of appointment and, upon expiration of that term, is eligible for reappointment.	For such period as determined by the Minister but eligible for re-appointment.

## Q6: ELIGIBILITY

TAS	NSW	VIC	QLD	SA	WA	NT
<p>A person is not eligible to be a member of the TRAB if the person is:</p> <ul style="list-style-type: none"> <li>- registered as a bookmaker or bookmaker's agent; or</li> <li>- the trainer, owner or lessee of a horse or greyhound used for racing; or</li> <li>- the rider or driver of a horse used for racing; or</li> <li>- a Director or employee of TOTE Tasmania; or</li> <li>- a member or employee of Tasracing; or</li> <li>- the chairperson or deputy chairperson of the Integrity Assurance Board; or</li> <li>- a member of a racing club committee; or</li> <li>- an employee of a racing club; or</li> <li>- a member of a racing industry association committee.</li> </ul>	<p>The Minister appoints a qualified person as member of the RAT. "Qualified person" means a judge of any court in NSW, a retired judge of any court (whether or not in NSW) or a person qualified to be appointed as a Judge of the District Court.</p>	<ul style="list-style-type: none"> <li>• Subject to conditions (other than Part 3) outlined in the <i>Public Administration Act 2004</i>.</li> <li>• Advisers must have sufficient knowledge of the racing code they are appointed to.</li> </ul>	<p>A person is not qualified to be appointed, or to continue, as a tribunal member if the person is any one of the following:</p> <ul style="list-style-type: none"> <li>- an executive officer, or official or other member of staff of, a control body;</li> <li>- a licence holder of a control body or an executive officer of a licence holder;</li> <li>- a committee member;</li> <li>- a member of a committee, or an employee of an association formed to promote the interests of one or more participants in a code of racing;</li> <li>- an individual who has certain specified convictions other than a spent conviction.</li> </ul>	<p>A person is not eligible for appointment as a member of the Tribunal if the person is:</p> <ul style="list-style-type: none"> <li>- a member or employee of a Controlling Authority or Racing SA Ltd, or</li> <li>- licensed under the rules of a Controlling Authority</li> </ul>	<p>A person is not eligible for appointment as, and shall cease to be eligible to hold the office of, Chairperson or a member if the person is or becomes:</p> <ul style="list-style-type: none"> <li>- a bookmaker or bookmaker's clerk;</li> <li>- the trainer of a greyhound, thoroughbred or pacer;</li> <li>- whether professionally or not, a rider in races for thoroughbreds or a driver in races for pacers; or</li> <li>- a director of RWWA or a member of staff of RWWA.</li> </ul>	<p>Must have a sound knowledge of greyhound and thoroughbred racing.</p>

## Q7: LODGEMENT OF APPEALS

TAS	NSW	VIC	QLD	SA	WA	NT
<ul style="list-style-type: none"> <li>The notice of appeal must be lodged with the Secretary.</li> <li>For a minor appeal (a fine not exceeding \$500 or a suspension for a period not exceeding 30 days) documents must be lodged within seven days after the imposition of the penalty together with appeal deposit.</li> <li>For any other appeal documents must be lodged within fourteen days after the imposition of the penalty together with appeal deposit.</li> </ul>	<ul style="list-style-type: none"> <li>The notice of appeal must be lodged with the Secretary: <ul style="list-style-type: none"> <li>– within 7 days (or 2 months for appeals by RNSW) of the date on which the appellant is notified of the decision appealed against, or</li> <li>– at any time after the expiration of 28 days after the appeal to the RNSW Appeal Panel or racing association is lodged but the Panel or racing association has neglected or refused to hear or determine the appeal;</li> </ul> </li> </ul>	<p>The notice of appeal must be lodged with the Registrar within 14 days of the decision, accompanied by appeal deposit.</p>	<ul style="list-style-type: none"> <li>An appeal is started by: <ul style="list-style-type: none"> <li>– lodging a notice of appeal with the director within 14 days of the appellant receiving notice of the decision being appealed; and</li> <li>– paying an administration fee that is non-refundable, and an appeal deposit that is refundable in the circumstances prescribed under a regulation; and</li> <li>– serving a copy of the notice on the control body, steward or appeal committee that made the decision (as applicable)</li> </ul> </li> <li>The notice of appeal must state fully the grounds of appeal and the facts relied on.</li> <li>The tribunal may at any time extend the period for lodging the notice of appeal.</li> </ul>	<ul style="list-style-type: none"> <li>A Notice of Appeal must be delivered or posted to the Registrar of the Tribunal or the Controlling Authority for the code of racing to which the appeal relates so as to be received not later than seven days after notification to the appellant of the decision or order appealed against.</li> <li>The Notice of Appeal must be accompanied by the non-refundable lodgement fee and a bond.</li> </ul>	<ul style="list-style-type: none"> <li>An appeal is instituted by lodging with the Registrar a written notice of appeal, together with the prescribed fee and, if the Chairperson so directs, security for costs.</li> <li>A notice of appeal must be lodged within fourteen days after the determination or finding appealed from was made.</li> </ul>	<p>Notice of Appeal, with appropriate fee must be lodged with the Tribunal not later than seven days after notice of the decision by which the person is aggrieved has been delivered to that person.</p>

## Q8: PROCEEDINGS

### - Type of Hearing

TAS	NSW	VIC	QLD	SA	WA	NT
<ul style="list-style-type: none"> <li>• An appeal is by way of rehearing.</li> <li>• The hearing of appeals proceeds with as little formality and technicality as possible and observes the rules of natural justice.</li> <li>• Except as provided by the legislation, the TRAB may otherwise regulate its own proceedings.</li> </ul>	<ul style="list-style-type: none"> <li>• An appeal to the RAT is by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence on which the decision appealed against was made, may be given on the appeal.</li> <li>• The Tribunal, when hearing an appeal, is not bound by the rules of, or practice as to, evidence but may inform itself of any matter in such manner as it thinks fit.</li> </ul>	<ul style="list-style-type: none"> <li>• The VRAT may regulate its own procedure and is not bound by formal rules and practices as to evidence, but may inform itself as to any matter in such manner as it thinks fit.</li> <li>• An appeal before the Tribunal is by way of rehearing unless the Tribunal otherwise directs.</li> </ul>	<ul style="list-style-type: none"> <li>• An appeal is by way of rehearing, unaffected by the decision appealed against, on the material before the entity that made the decision and any further evidence allowed by the tribunal.</li> <li>• To the extent a matter relating to the tribunal's procedures is not provided for by legislation or practice directions issued by the tribunal chairperson, the tribunal may decide its own procedure.</li> <li>• In making a decision relating to an appeal, the tribunal must observe natural justice and is not bound by the rules of evidence. It may inform itself of anything in the way it considers appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>• The hearing of appeals proceeds as informally as possible.</li> <li>• Except as otherwise determined by the Tribunal, an appeal is to be conducted by way of re-hearing of the evidence at the original hearing, but the Tribunal may receive fresh evidence given orally or, if the Tribunal so determines, by statutory declaration.</li> <li>• The Tribunal must afford each party to an appeal a reasonable opportunity to make submissions to the Tribunal and to call or give evidence and examine and cross-examine witnesses.</li> <li>• Subject to the relevant legislation, the Tribunal may conduct an appeal in such manner as it thinks fit.</li> </ul>	<ul style="list-style-type: none"> <li>• The hearing of appeals proceeds with as little formality and technicality as possible.</li> <li>• The Tribunal acts according to equity, good conscience and the substantial merits of the case and observes the rules of natural justice.</li> <li>• The Tribunal is required to hear and determine an appeal upon the evidence of the original hearing but may allow new evidence or call on experts to assist in its deliberations.</li> <li>• Subject to the relevant legislation, the Tribunal may conduct an appeal in such manner as it thinks fit.</li> </ul>	<ul style="list-style-type: none"> <li>• On the hearing of an appeal the Tribunal does not consider any other evidence, other than that adduced at the hearing in respect of the decision appealed against, unless satisfied that the evidence is relevant and that there is good reason why it was not adduced at that hearing.</li> <li>• On the hearing of an appeal the Tribunal is not bound by the rules of evidence and may inform itself of any matter in such manner as it thinks fit.</li> <li>• Appeals are heard and determined in accordance with the procedures and rules determined from time to time by the Tribunal.</li> </ul>

## Q8: PROCEEDINGS (continued)

### - Hearing timeframe

TAS	NSW	VIC	QLD	SA	WA	NT
<ul style="list-style-type: none"> <li>Minor appeals will usually be heard within 14-21 days of receipt of the appeal documentation by the Secretary.</li> <li>All other appeals are scheduled for hearing at the earliest opportunity, however, where the issues are complex, matters may take longer to be heard.</li> </ul>	<ul style="list-style-type: none"> <li>The Tribunal is to commence the hearing of an appeal as soon as practicable within 28 days of the lodging of the notice of the grounds of appeal.</li> <li>The Tribunal may, in a particular case, extend any period of time specified if in its opinion the circumstances of the case so require.</li> </ul>	<p>The VRAT hears appeals as soon as possible within 28 days of lodgement, unless the Chairman is of the view there is good cause to grant extension of that time.</p>	<ul style="list-style-type: none"> <li>The Tribunal must start the hearing of an appeal as soon as practicable, but, in any event, not later than 28 days after the notice of appeal is lodged with the director.</li> <li>The tribunal may, by order, extend the period if it considers the special circumstances of the case require it to do so.</li> </ul>	<ul style="list-style-type: none"> <li>All appeals are scheduled for hearing at the earliest opportunity (usually approximately 4-6 weeks), but where matters are complex or parties are legally represented appeals may take longer to be heard.</li> <li>Subject to its Rules, the Tribunal must commence the hearing of an appeal as soon as practicable within 28 days of the date of receipt by the Registrar of the notice of appeal.</li> <li>The President or a Deputy President of the Tribunal may, in a particular case, extend the period of time if satisfied there is good cause to do so.</li> </ul>	<ul style="list-style-type: none"> <li>All appeals are scheduled to be heard and determined as soon as is practicable after the lodging of the notice of appeal.</li> <li>Minor appeals are usually heard within 3-5 weeks though listing of matters is largely dependent on the availability of parties and Tribunal members.</li> </ul>	<p>Appeals proceed as soon as convenient to all parties and subject to receipt of transcripts and grounds of appeal. Some time frames are legislated – eg seven days notice must given for appeal date, etc.</p>

## Q8: PROCEEDINGS (continued)

### - Stay of Proceedings

TAS	NSW	VIC	QLD	SA	WA	NT
<p>The chairperson may, unconditionally or on such conditions as he or she thinks fit, suspend the operation of a penalty pending the hearing and determination of the appeal.</p>	<ul style="list-style-type: none"> <li>The Tribunal may order that the decision appealed against is not to be carried into effect, or is to be carried into effect only to the extent specified in the order pending the determination of the appeal. Any such order has effect for the period it is in force.</li> <li>The Tribunal may, in making any such order, impose conditions. The order is taken not to be in force for any period during which any such condition is not complied with.</li> <li>An order remains in force until it is revoked by further order by the Tribunal or the appeal to which it relates is dismissed, determined or withdrawn (whichever happens first).</li> </ul>	<p>Pending the determination of an appeal the Chairman or a Deputy Chairman may order a stay of the execution of the penalty appealed against subject to any terms or conditions that the Chairman or Deputy Chairman thinks appropriate.</p>	<p>The chairperson may, unconditionally or on such conditions as he or she thinks fit, suspend the operation of a penalty pending the hearing and determination of the appeal.</p>	<ul style="list-style-type: none"> <li>A stay of proceedings can be applied for by an appellant. The President/Deputy President will make an order as to a stay of proceedings based on the facts of the case.</li> <li>In most cases a stay of proceedings is granted.</li> </ul>	<p>Upon, or prior to, the hearing of an appeal the Chairperson, or the member appointed to preside at the Tribunal determining that appeal may, direct RWWA, a steward, racing club or committee, as appropriate, to suspend the operation of any order, or any pecuniary or other penalty imposed, or any consequences arising from any determination or finding, in relation to which that person has a right of appeal.</p>	<p>A person has ability to apply for stay of proceedings pending the appeal hearing.</p>

## Q8: PROCEEDINGS (continued)

### - Legal Representation

TAS	NSW	VIC	QLD	SA	WA	NT
<ul style="list-style-type: none"> <li>The appellant may be represented at the hearing by any person, including a lawyer.</li> <li>Any costs involved in representation must be met by the appellant.</li> </ul>	<ul style="list-style-type: none"> <li>The Tribunal may hear an appeal in the absence of a party to the appeal.</li> <li>The Tribunal may grant leave for each party to be represented by a lawyer or agent at the hearing.</li> </ul>	<ul style="list-style-type: none"> <li>All parties to an appeal must be present at the hearing, however appellants may be represented by a qualified legal practitioner or any other person approved by VRAT.</li> <li>Each party to an appeal pays own costs except where the Tribunal is of the opinion that this would be unjust, in which case the Tribunal may make such order as to costs as it thinks fit.</li> </ul>	<ul style="list-style-type: none"> <li>An individual who is a party to an appeal must attend personally at the hearing of the appeal unless excused from attending by the Tribunal.</li> <li>Also, each party to an appeal may be represented by a lawyer or, with the approval of the tribunal, by another person.</li> <li>Absence does not prevent the tribunal hearing an appeal or making a decision or order in the absence of a party who, after having been served with notice of the time and place of the hearing, fails to attend at the hearing.</li> </ul>	<ul style="list-style-type: none"> <li>An appellant (or a party to an appeal) is entitled to appear personally or by counsel or by some other representative (by leave of the Tribunal).</li> </ul>	<ul style="list-style-type: none"> <li>A person entitled to be heard at an appeal may appear personally or be represented in those proceedings by counsel or by any other person (with the leave of the Tribunal).</li> </ul>	<ul style="list-style-type: none"> <li>Appellant has right to legal counsel – but must be advised to Tribunal.</li> </ul>

### - Equality of Votes

<ul style="list-style-type: none"> <li>The presiding member has a deliberative vote and, in the event of an equality of votes, also has a casting vote.</li> </ul>		<ul style="list-style-type: none"> <li>In hearing and determining an appeal before the Tribunal, the Chairman (or Deputy Chairman) alone shall decide all questions of law and of facts and shall make all decisions and orders.</li> </ul>	<ul style="list-style-type: none"> <li>If the tribunal is constituted by <ul style="list-style-type: none"> <li>– 2 or 3 members, question decided by a majority of votes of members.</li> <li>– 2 members and votes are equal, the chairperson or, in his or her absence, the deputy chairperson also has a casting vote.</li> <li>– one member, the question is decided by the member.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>The President or Deputy President alone makes the decision in the appeal. The Assessor assists the President or Deputy President in an advisory capacity only.</li> </ul>	<ul style="list-style-type: none"> <li>If the tribunal is constituted by three tribunal members, the question is to be decided by a majority of the votes of the members.</li> <li>Presiding member shall have a casting vote in addition to a deliberative vote should the votes be otherwise equal.</li> </ul>	
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## Q8: PROCEEDINGS (continued)

### - Public Hearings

TAS	NSW	VIC	QLD	SA	WA	NT
Hearings are open to the public, however, witnesses must remain outside the hearing room until called to give evidence.	Proceedings on an appeal are to be held as in open court before the RAT.	An appeal before the Tribunal is held at such place and time as is determined by the Tribunal and is held in public.	Hearings are open to the public, however, witnesses must remain outside the hearing room until called to give evidence.	An appeal to the Tribunal must be heard in public unless the Tribunal, for a good reason, determines otherwise.	Hearings are open to the public.	Hearings are open to the public.
<b>- Duration</b>						
Most hearings take between 30 minutes and three hours. Complex appeals may take longer.	.		Most hearings take between 30 minutes and three hours. Complex appeals may take longer.	Most appeals take between 30 minutes and three hours.	Hearings last for between 30 minutes and 3 hours.	
<b>- Location</b>						
The majority of appeals are heard in Launceston.			The majority of appeals are heard in Brisbane.	All appeals are heard in Adelaide.	The appeals are held in Perth at the Supreme Court.	Appeals may be heard in Darwin or Alice Springs – dependent upon where the original stewards/club decision was made.

## Q9: DEPOSITS

TAS	NSW	VIC	QLD	SA	WA	NT
<p>Deposit - \$200 (minor) or \$500 (other)</p>	<p>RAT Deposit - \$250 (other than an appeal by RNSW).</p>	<p>Deposit - \$250</p>	<p>Deposit - \$200</p>	<p>Lodgement fee (non-refundable)-</p> <p>Thoroughbred \$100            Harness \$ 50            Greyhound \$ 50</p> <p>Bond-</p> <p>Thoroughbred \$400            Harness \$250            Greyhound \$250</p>	<p>Deposit/Fees:</p> <p><i>Appeals/ Leave to Appeal -</i></p> <p>Thoroughbred \$310            Harness \$310            Greyhound \$125</p> <p><i>Stay of Proceedings –</i></p> <p>All codes \$65</p>	<p>Deposit - \$200.</p>
<p>Deposit refunded or forfeited as follows:</p> <ul style="list-style-type: none"> <li>• Appeal affirmed - 50% deposit forfeited.</li> <li>• Penalty varied - 25% deposit forfeited.</li> <li>• Appeal quashed - 100% deposit refunded to appellant.</li> <li>• Appeal withdrawn (no application for stay of proceedings) -100% deposit refunded to appellant.</li> <li>• Appeal withdrawn (after an application for a stay of proceedings) - 50% deposit forfeited.</li> </ul>	<p>Deposit refunds:</p> <ul style="list-style-type: none"> <li>• RAT - on the determination or withdrawal of the appeal, the Tribunal may, if it thinks fit, direct that the fee (or part of the fee) is to be repaid to the appellant.</li> </ul>	<p>Deposit refunded unless:</p> <ul style="list-style-type: none"> <li>• VRAT is of opinion that appeal was frivolous or vexatious and directs Registrar to not facilitate a refund or to only part refund deposit.</li> </ul>	<p>Deposit refunded if:</p> <ul style="list-style-type: none"> <li>• appeal is upheld; or</li> <li>• tribunal is satisfied it is in the interests of justice to refund deposit, eg tribunal might refund the appeal deposit if it sets aside the decision appealed against and substitutes its own decision.</li> </ul>	<p>Bond <u>not</u> refunded unless:</p> <ul style="list-style-type: none"> <li>• Tribunal allows appeal in whole or in part; or</li> <li>• appellant satisfies Tribunal that appeal was generally instituted on reasonable grounds including but not exclusively that it was not for the purpose of delaying the operation of the decision or order under appeal.</li> <li>• President or Deputy President makes decision regarding refund of bond based on facts of appeal.</li> </ul>	<p>Deposit refunded unless:</p> <ul style="list-style-type: none"> <li>• the Tribunal is of the opinion that the appeal was frivolous or vexatious and —               <ul style="list-style-type: none"> <li>– orders that the whole or part of the moneys be forfeited; or</li> <li>– makes an order for the payment of costs from those moneys to any other party to the appeal.</li> </ul> </li> </ul>	<p>Deposit refunds:</p> <ul style="list-style-type: none"> <li>• Tribunal may order whole or part of appeal fee to be refunded.</li> <li>• Tribunal may make such order as to costs as it thinks fit.</li> </ul>

APPENDIX G

**Tasmanian Appeal Statistics**  
**(by racing season: 1 August to 31 July)**

<b>Appeals Lodged/Determined</b>					
	2004/05	2005/06	2006/07	2007/08	2008/09
Number of Appeals Lodged	26	34	45	44	29*
Number of Appeals Withdrawn	2	7	6	8	5
Not within Jurisdiction, Incompetent or Invalid	0	1	4	0	2
Appeals Determined	24	26	35	36	22

\* Toulmin appeal still pending

<b>Appeal Decisions</b>					
	2004/05	2005/06	2006/07	2007/08	2008/09
Fully Upheld	4	4	4	2	2
Partly Upheld (penalty varied)	10	12	20	9	8
Dismissed	10	10	11	25	11

<b>Stays of Proceedings</b>					
	2004/05	2005/06	2006/07	2007/08	2008/09
Granted	16	19	29	24	12
Declined	1	3	4	12	7
Not Applied For	9	12	12	8	10