



Western Australia

## **Racing Penalties (Appeals) Act 1990**

Compare between:

[01 Mar 2009, 02-f0-02] and [17 Sep 2009, 02-g0-03]



Western Australia

## **Racing Penalties (Appeals) Act 1990**

**An Act to constitute the Racing Penalties Appeal Tribunal of Western Australia, 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.**

## Part 1 — Preliminary

### 1. Short title

This Act may be cited as the *Racing Penalties (Appeals) Act 1990*<sup>1</sup>.

### 2. Commencement

This Act shall come into operation on such day as is, or such days as are respectively, fixed by proclamation<sup>1</sup>.

### 3. Interpretation

(1) In this Act, unless the contrary intention appears —

*bet* includes wager;

*bookmaker* means a person holding a current licence under the *Betting Control Act 1954*;

*Chairperson* means the holder of the office of Chairperson of the Tribunal but includes a reference to a member acting as Chairperson;

*determination* includes a reference to a decision, order or direction;

*horse* includes pony;

*member* means the Chairperson or a person appointed by the Minister under section 6 who, in relation to any particular appeal, has been appointed by the Chairperson to sit as a member of the Tribunal in respect of that appeal;

*owner*, in relation to a runner which is leased, includes any person who is a lessee of that runner;

*pacers* means a horse which when raced is driven in harness, and includes the kind of horse commonly known as a trotter;

*race* means a contest in which 2 or more runners compete simultaneously one against the other or others, in a test of speed over a designated distance, course or period of time or for the

purpose of providing a contingency on which bets may be made, but the term does not include —

- (a) a trial; or
- (b) except in relation to a steeple chase or other event where jumping skills are material, a contest or event in which skills other than speed alone are tested;

**racecourse** means a place for the holding of lawful race meetings;

**race meeting** means a meeting for the purpose of conducting races between greyhounds or thoroughbreds or pacers;

**racing** includes a reference —

- (a) to greyhound racing;
- (b) to harness racing; and
- (c) to thoroughbred racing,

and to any race or race meeting, as the context may require;

**Registrar** means the Registrar of the Tribunal referred to in section 8;

**runner** in relation —

- (a) to greyhound racing, means a greyhound;
- (b) to harness racing, means a pacer; and
- (c) to thoroughbred racing, means a thoroughbred;

**RWWA** means Racing and Wagering Western Australia established under the *Racing and Wagering Western Australia Act 2003*;

**RWWA Act** means the *Racing and Wagering Western Australia Act 2003*;

**steward** means a steward appointed under the RWWA Act;

**thoroughbred** means a horse which when raced is galloped and is ridden by a jockey;

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**trial** means an event held for the purpose of testing or training runners for which no prize money or other award, gratuity or privilege of more than a nominal value is offered;

**Tribunal** means the Racing Penalties Appeal Tribunal of Western Australia established under section 4 and includes a reference to that Tribunal however it may be from time to time constituted under this Act.

- (2) A word or expression used in this Act has the same meaning as it has in the RWWA Act unless —
- (a) this Act gives it another meaning; or
  - (b) the contrary intention appears in some other way.

*[Section 3 amended by No. 11 of 1992 s. 70; No. 23 of 1998 s. 20; No. 35 of 2003 s. 180.]*

## **Part 2 — The Racing Penalties Appeal Tribunal of Western Australia**

### **Division 1 — Constitution and administration**

#### **4. The Racing Penalties Appeal Tribunal of Western Australia**

- (1) There is hereby established a body which, when constituted in accordance with this Act and carrying out the functions conferred by this Act, shall be known as the Racing Penalties Appeal Tribunal of Western Australia.
- (2) The Tribunal shall have a seal of which all courts and persons acting judicially shall take judicial notice.
- (3) The Tribunal may, by arrangement made between the Chairperson and the Minister concerned, and on such terms and conditions as may be mutually arranged with that Minister and, if appropriate, with the relevant employing authority within the meaning of the *Public Sector Management Act 1994*, make use, either full time or part time, of —
  - (a) the services of any officer or employee employed in the Public Service of the State or in a State instrumentality or otherwise in the service of the Crown in the right of the State; or
  - (b) any facilities of a department of the Public Service of the State or of a State instrumentality.
- (4) The Schedule has effect with respect to the constitution of the Tribunal.

*[Section 4 amended by No. 32 of 1994 s. 19.]*

#### **5. Chairperson and acting Chairperson**

- (1) The Minister shall, in writing, appoint a person who is an Australian lawyer (within the meaning of that term in the *Legal Profession Act 2008* section 3), of not less than 7 years' standing and practice to be the Chairperson of the Tribunal.

- (2) The Minister may, in writing, appoint a member, who need not be eligible for appointment as the Chairperson under subsection (1), to act, at any time when in the opinion of the Minister it may be necessary, in the office of Chairperson of the Tribunal (either in addition to, or where the need arises by reason of the absence or any incapacity of that person in substitution for, the Chairperson appointed under subsection (1)), and when so acting a person has the powers and duties of Chairperson but if additionally appointed shall so act in accordance with any directions that may be given by the Chairperson appointed under subsection (1).

*[Section 5 amended by No. 65 of 2003 s. 116; No. 21 of 2008 s. 695(2).]*

**6. Panel of members**

- (1) Where the Chairperson is of the opinion that it is practicable, a Tribunal sitting in relation to any appeal shall be constituted by not less than 3 members.
- (2) The members who are to constitute the Tribunal in relation to any appeal shall be selected by the Chairperson, who may have regard to their respective knowledge or experience relating to the code of racing in respect of which the appeal arose.
- (3) The Minister shall, by appointments in writing notified in the *Gazette*, establish a panel of persons who are eligible to be selected by the Chairperson to be appointed as members of a Tribunal in relation to any appeal.
- (4) A person shall not be appointed by the Minister under this section unless the Minister is satisfied that the person —
- (a) is, or would be eligible for appointment as, or has been, a magistrate; or



- (b) 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.

*[Section 6 amended by No. 24 of 2000 s. 37.]*

**7. Eligibility to sit on a particular Tribunal**

- (1) A person shall not sit as a member of a Tribunal on an appeal where the person is, or at the time when the event giving rise to the appeal occurred was, interested in —
  - (a) a greyhound, where the appeal relates to greyhound racing;
  - (b) a thoroughbred, where the appeal relates to thoroughbred racing; or
  - (c) a pacer, where the appeal relates to harness racing,and any person who so sits as a member commits an offence.  
Penalty: \$5 000.
- (2) A person shall not sit as a member of a Tribunal on an appeal arising out of —
  - (a) the running of a race;
  - (b) any matter which occurred during a race; or
  - (c) a swab which was taken from a runner competing in a race,if that person had an interest in a runner in the race, and any person who so sits as a member commits an offence.  
Penalty: \$5 000.
- (3) For the purposes of subsections (1) and (2) a person shall be deemed to have had an interest in a runner if that person —
  - (a) at the time when the event giving rise to the appeal occurred was —
    - (i) an owner or the trainer of the runner; or

- (ii) an employee or agent of the owner or trainer;
  - or
  - (b) bet on the race or matter which is the subject of the appeal, whether or not on that runner.
- (4) A Tribunal constituted in accordance with this Act may sit and exercise the jurisdiction of the Tribunal notwithstanding that a Tribunal differently constituted in accordance with this Act is at the same time sitting and exercising the jurisdiction of the Tribunal in relation to some other appeal.
- (5) Any question as to the manner in which a Tribunal shall be, or is, constituted in relation to any particular appeal may, subject to direction by the Minister, be determined by the Chairperson.

*[Section 7 amended by No. 35 of 2003 s. 181.]*

## **8. The Registrar**

- (1) The Minister shall appoint a person employed under and subject to Part 3 of the *Public Sector Management Act 1994* to be the Registrar and executive officer of the Tribunal.
- (2) The Registrar may exercise such functions of the Tribunal, or such functions in relation to such matters, as may in writing under the hand of the Chairperson be delegated to the Registrar but shall, if the Tribunal or the Chairperson so directs, refer any matter or thing arising in the exercise of those functions to the Tribunal for its determination.
- (3) Nothing in subsection (2) prevents the Tribunal from exercising a function referred to in that subsection.

*[Section 8 amended by No. 32 of 1994 s. 19.]*

## **9. Relationship with Minister**

- (1) For parliamentary purposes or for the proper conduct of the Minister's public business, the Minister is entitled to have

information in the possession of the Tribunal and to have and retain copies of documents requested.

- (2) For the purposes of subsection (1) the Minister may —
  - (a) request the Registrar to furnish information to the Minister;
  - (b) request the Chairperson to ensure that the Minister is given access to information; and
  - (c) make use of any staff or facilities available to the Tribunal to obtain the information and to furnish it to the Minister.
- (3) A request made under subsection (2) shall be complied with, and staff and facilities made available to the Minister for the purposes of that subsection.
- (4) Prior to the submission of the annual report of operations required by the *Financial Management Act 2006*, which shall include the text of any direction given under subsection (5), and at any other time the Minister so requests, the Chairperson shall furnish to the Minister a report on the activities of the Tribunal, during the then or preceding racing calendar year and not previously reported on, in terms of the conduct and consequence of any investigations, appeals, and other matters likely to affect the racing industry.
- (5) The Minister may give directions in writing to the Tribunal with respect to its functions and administration, either generally or with respect to a particular matter (but not in relation to the conduct of any particular appeal) and the Chairperson shall ensure that effect is given to any such direction.
- (6) For the purposes of this section —

**document** includes any data that is recorded or stored mechanically, photographically, or electronically and any tape, disc or other device or medium on which it is recorded or stored;

*information* means documents or other information relating to the functions of the Tribunal being information, as so defined, specified, or of a description specified, by the Minister; and

*parliamentary purposes* means the purpose of —

- (a) answering a question asked in a House of Parliament; or
- (b) complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament.

[Section 9 amended by No. 77 of 2006 s. 17.]

### **Division 2 — Jurisdiction and functions**

#### **10. Jurisdiction, as variously constituted**

- (1) Subject to this section the Tribunal shall, when exercising jurisdiction conferred on it in relation to any appeal, be constituted by —
  - (a) the member presiding, being the Chairperson or a member whom the Chairperson has appointed as such in relation to that appeal or appeals of that kind; and
  - (b) where in the opinion of the Chairperson that is practicable, not more than 2 other members appointed by the Chairperson to sit in relation to that appeal.
- (2) Subject to subsection (3), if proceedings before the Tribunal are instituted in relation to 2 or more appeals and the same or similar questions are involved the proceedings may by order of the Chairperson be consolidated, if the Chairperson considers that it would not unfairly prejudice any party and it would be otherwise expedient to conduct the proceedings together, and thereupon the Tribunal shall exercise the jurisdiction conferred in respect of each of those appeals together in the consolidated proceedings, either on the basis of the evidence given at the original hearings or by way of a new hearing, in such manner as may be specified in that order.

- (3) Where proceedings are to be consolidated under subsection (2) the Tribunal shall be constituted by —
- (a) the Chairperson, or a member appointed by the Chairperson, as the order for consolidation may provide, who shall preside; and
  - (b) 2 or more members appointed by the Chairperson being, so far as may be practicable, persons who —
    - (i) were members of one or more of the Tribunals before which the proceedings to be consolidated were originally instituted; and
    - (ii) are appointed so as to take into account each of those proceedings,
- and the manner in which the Tribunal can be constituted shall be taken into account by the Chairperson when determining the manner in which the consolidated proceedings are to be conducted.
- (4) Where the parties to an appeal so agree, the regulations so prescribe, or the Chairperson determines that in the circumstances it is necessary, matters in which the Tribunal has jurisdiction may be dealt with by the Tribunal constituted by the Chairperson or a member appointed to do so by the Chairperson, sitting alone.
- (5) Where the regulations so prescribe, matters in which the Tribunal has jurisdiction may be dealt with by the Tribunal constituted by the Registrar sitting alone but the Registrar may, and if the Chairperson so directs the Registrar shall, refer a particular matter or thing to the Tribunal as constituted under subsection (1), (3) or (4).
- (6) Nothing in subsection (4) or (5) prevents any matter from being dealt with by the Tribunal constituted in accordance with subsection (1) or (3), as the case requires.

- (7) Where the Chairperson in relation to a particular appeal appoints a person to be a member constituting the Tribunal for that appeal the Chairperson shall cause the appointment to be evidenced in writing under the hand of the Registrar.

**11. Proceedings before the Tribunal**

- (1) The Tribunal, comprising the member or members by which it is for the time being constituted, shall —
- (a) conduct its proceedings at such times and places as are necessary to enable it to discharge its functions;
  - (b) act according to equity, good conscience and the substantial merits of the case; and
  - (c) observe the principles of natural justice.
- (2) The Minister may at any time require the Chairperson to convene a meeting of the Tribunal, in relation to any matter in respect of which a notice of appeal has been lodged under this Act.
- (3) At any proceedings —
- (a) the member presiding shall determine any question relating to —
    - (i) the jurisdiction of the Tribunal;
    - (ii) the admissibility of evidence; and
    - (iii) law or procedure;
  - (b) subject to paragraph (a), any decision of the Tribunal shall be determined by a majority vote of its members, but the member presiding shall have a casting vote in addition to a deliberative vote should the votes be otherwise equal;
  - (c) an appeal shall be heard and determined upon the evidence at the original hearing when the decision or finding appealed against was made, but, if the member presiding considers that to be proper, expert or other evidence may be required or admitted;

- (d) the Tribunal may appoint persons to act as —
    - (i) counsel; or
    - (ii) expert or technical advisers,to assist the Tribunal; and
  - (e) the Tribunal —
    - (i) is to make a full and thorough investigation in open court, without regard to the forms, requirements or solemnities that might have been appropriate in legal proceedings;
    - (ii) may inform itself on any matter in such manner as it thinks fit, and admit any evidence considered by the member presiding to be relevant notwithstanding that that evidence would not be admissible in a court of law; and
    - (iii) may take into account any matters relating to, or to the administration of, racing that are within the knowledge or experience of a member of the Tribunal or which have arisen in or as a result of other proceedings or appeals before a controlling authority or the Tribunal,but may hear evidence in camera in prescribed circumstances.
- (4) The Tribunal shall cause accurate minutes to be kept of proceedings at its meetings.
- (5) Where the member presiding is of the opinion that this Act or any regulation relating to the practice or procedure of the Tribunal does not apply to a particular matter or circumstance arising before the Tribunal, the member presiding may issue such directions as that member considers appropriate.

**12. Appeals which are not to be heard by the Tribunal**

- (1) Subject to section 13(2) and leave of the Tribunal, the jurisdiction of the Tribunal does not extend to a determination

of a steward, a racing club or a committee, in so far as that determination relates only to —

- (a) any protest or objection against a placed runner arising out of any incident occurring during the running of a race;
- (b) the eligibility of a runner to take part in, or the conditions under which a runner takes part in, any race; or
- (c) any question or dispute as to a bet,

where, in respect to that determination, the prospective appellant has, under the rules of racing, a right of appeal to RWWA.

- (2) An appeal under subsection (1) to RWWA shall be heard and determined in accordance with the rules of racing.
- (3) The determination of RWWA with respect to the subject of an appeal to which subsection (1) applies —
  - (a) shall be taken to be, and given effect to as though it had been, also the determination of any club, or of any committee or stewards, from which the appeal was made; and
  - (b) subject to section 13(2), is final and binding on the parties to that appeal and not subject to further appeal or review.

*[Section 12 amended by No. 35 of 2003 s. 182.]*

**13. Appeals which shall be heard by the Tribunal**

- (1) A person (in this Part referred to as *the appellant*) who is aggrieved by a determination, or a finding comprised in or related to a determination, of RWWA, of a steward, of a racing club, or of a committee —
  - (a) imposing any suspension or disqualification, whether of a runner or of a person;



- (b) imposing a fine;
- (c) which results, or may result, in the giving of a notice of the kind commonly referred to as a warning-off; or
- (d) in relation to any other matter, where the Tribunal gives leave to appeal,

may, within 14 days after the making of the determination, or in the case of a notice of warning-off the giving of the notice, appeal to the Tribunal.

(2) An appeal —

- (a) that by reason of section 12 would not lie to the Tribunal were it not for this subsection, but is an appeal that in the opinion of the Chairperson may arise out of the same incident, or incidents, as an appeal which could have been or has been made to the Tribunal; or
- (b) that by reason of the public interest, the Chairperson has determined may be an appeal to which this subsection should apply,

may be made to and heard by the Tribunal, by leave of the Tribunal.

(3) An application, to refer to the Chairperson any question as to whether or not an appeal which would otherwise not lie to the Tribunal is an appeal to which subsection (1)(d) or subsection (2) applies, may be made to the Registrar —

- (a) if the case is one of urgency, *ex parte* on affidavit; and
- (b) in any other case, in such manner and on giving such notice, as the Registrar may require,

and shall be determined in the first instance by the Chairperson, and if the Chairperson is of the opinion that the leave of the Tribunal should be sought may be heard by the Tribunal by way of preliminary argument.

- (4) On an application made under subsection (3), the Chairperson may give directions as to the further proceedings in the matter, including directions of a kind to which section 17(7) refers or as to the effect to be given to any determination, and effect shall be given to any such direction by any person to whom the direction applies.

*[Section 13 amended by No. 35 of 2003 s. 183.]*

**14. The determination of an appeal**

- (1) A determination of the Tribunal in relation to an appeal —
- (a) shall be taken to be, and given effect to as though it had been, also the determination of RWWA, of a steward, of a racing club, or of a committee, from which the appeal was made; and
  - (b) is final and binding on the parties to that appeal, and not subject to further appeal or review.
- (2) The Tribunal shall cause notice of any determination in relation to an appeal to be given to the parties to the appeal.
- (3) Upon a determination in respect of an appeal the Tribunal shall order that any security for costs lodged under section 16 be refunded to the appellant unless the Tribunal is of the opinion that the appeal was frivolous or vexatious and —
- (a) orders that the whole or part of the moneys be forfeited; or
  - (b) makes an order for the payment of costs from those moneys to any other party to the appeal.
- (4) The member presiding shall, in every case, forward to the Minister a copy of the determination of the Tribunal, and shall if so requested also forward notes of the evidence given, and any member of the Tribunal who dissents from the determination may likewise forward written reasons for so dissenting.

*[Section 14 amended by No. 35 of 2003 s. 184.]*

**15. Other avenues of appeal may no longer be applicable**

- (1) Subject to subsection (2), notwithstanding —
- (a) any law or rule of law to the contrary; or
  - (b) anything contained in the Rules of Greyhound Racing, the Rules of Harness Racing or the Rules of Thoroughbred Racing or in the constitution, rules or articles of a racing club,

an appeal shall not, after the commencement of this Act, be made to, or heard by, RWWA, a racing club or any committee or stewards in respect of any determination or finding in relation to which an appeal is made to the Tribunal under section 13.

- (2) Where, in relation to any determination or finding of RWWA, of a racing club, or of any committee or stewards, an appeal lies to the Tribunal only if the Tribunal gives leave, any appeal in respect of that determination or finding heard otherwise than by the Tribunal shall be given effect to until such time as the Tribunal has given leave and made its determination.

*[Section 15 amended by No. 35 of 2003 s. 185.]*

**Division 3 — Procedures and powers**

**16. Procedure on making an appeal**

- (1) An appeal shall be instituted by lodging with the Registrar —
- (a) a written notice of appeal;
  - (b) the prescribed fee on lodgement of a notice of appeal; and
  - (c) if the Chairperson so directs, security for costs,

within 14 days after the determination or finding appealed from was made.

- (2) A notice of appeal shall set out clearly —
- (a) the name and address of the appellant;

- (b) the determination appealed against;
  - (c) the grounds of appeal; and
  - (d) the occasion when, and the person by which, that determination was made.
- (3) On the lodgement with the Registrar of a notice of appeal, the Registrar shall —
- (a) bring the fact of the lodgement and the notice of the appeal to the attention of the Chairperson, and in accordance with the directions of the Chairperson cause a Tribunal to be constituted;
  - (b) fix a time and place for the hearing of the appeal, which shall be heard and determined as soon as is practicable after the lodging of the notice of appeal;
  - (c) give reasonable notice of that time and place to the appellant; and
  - (d) serve —
    - (i) on the secretary of the club or to the committee or stewards, responsible for the determination or finding appealed against;
    - (ia) on RWWA;
    - (ii) on such other persons likely to be affected as the Registrar may determine or the Chairperson may direct; and
    - (iii) so far as is practicable, if the placing of any runner may be affected by the result of the appeal, on the trainer or an owner of that runner (not being the appellant),

a copy of the notice of appeal, together with reasonable notice of the time and place fixed for the hearing,

and any person on whom a copy of the notice of appeal is served under this subsection is entitled to be heard at the appeal and, if that person appears or is represented at the hearing, the

person shall be taken to have elected to be a party to the proceedings.

- (4) On receipt of a notice of appeal, RWWA, a steward or a club or committee responsible for the determination or finding appealed against shall forthwith furnish to the Registrar a transcript of the evidence taken at the hearing in relation to which the appeal has been lodged, but the Tribunal is not required to make a copy of that transcript, or information as to what it contains, available to the appellant or any other person.
- (5) If a person served with notice of a hearing under subsection (3) does not attend at the time and place fixed by the notice, the Tribunal may conduct the proceedings in the absence of that person.
- (6) A person entitled to be heard at an appeal may —
- (a) appear personally; or
  - (b) be represented in those proceedings —
    - (i) by counsel; or
    - (ii) with the leave of the Tribunal, by any other person.
- (7) A person who, not being an Australian legal practitioner (within the meaning of that term in the *Legal Profession Act 2008* section 3), demands or receives any fee or reward for representing a party to an appeal commits an offence.  
Penalty: \$500.
- (8) The Tribunal shall afford to a person who is entitled to be heard at an appeal a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions to the Tribunal.

*[Section 16 amended by No. 35 of 2003 s. 186; No. 65 of 2003 s. 58(2); No. 21 of 2008 s. 695(3).]*

**17. Hearing powers**

- (1) At the hearing of an appeal the Tribunal, if it considers in the circumstances of the case that it would be just to do so, may permit the appellant to amend the grounds of appeal.
- (2) The Tribunal shall have the power to enlarge or abridge the times fixed or appointed by this Act or the Tribunal as it sees fit.
- (3) The Tribunal may by summons signed by the Registrar before or during the hearing of an appeal call upon any person to appear before it to —
  - (a) give evidence in such manner as may be directed;
  - (b) produce such papers, documents, exhibits or other things; and
  - (c) furnish such information,as the Tribunal determines to be necessary or proper for the purpose of the hearing.
- (4) The Tribunal may —
  - (a) inspect any document, exhibit or other thing produced before the Tribunal, and retain it for such reasonable period as the Tribunal thinks fit, and make copies of any document or any of its contents;
  - (b) inspect any racecourse or other place or facilities relevant to the proceedings;
  - (c) require any person to swear or affirm that the person will truly answer all questions relating to a matter being inquired into by the Tribunal that are put to the person either by or before the Tribunal (and for that purpose the member presiding, the Registrar or an officer employed in the Public Service of the State and assisting the Tribunal may administer any oath or affirmation); and
  - (d) require any person appearing before the Tribunal, and any person whose conduct is or becomes a matter of inquiry at that appeal whether or not that person was

initially summoned to appear, to answer any relevant question put to that person by a member of the Tribunal or by any other person appearing before the Tribunal.

- (5) A person is not excused from complying with a requirement under subsection (4) to swear or affirm, or to answer any question, on the ground that the answer to a question put to the person might incriminate the person or render the person liable to a penalty, but an answer given by a person pursuant to a requirement under subsection (4) is not admissible in evidence against the person in any civil or criminal proceedings other than proceedings for perjury or for an offence arising out of the false or misleading nature of that answer.
- (6) In the course of any proceedings the Tribunal may —
- (a) receive in evidence any transcript of evidence in proceedings before a court or other person acting judicially and draw any conclusion of fact from that evidence;
  - (b) receive and admit any evidence given by affidavit or statutory declaration, or otherwise in a manner the member presiding determines to be appropriate, having regard to the principles of natural justice;
  - (c) adopt, in the discretion of the member presiding, any finding, decision, or judgment of a court or other person acting judicially that is relevant to the proceedings before the Tribunal; or
  - (d) adjourn the hearing from time to time or from place to place, upon such conditions as the member presiding thinks fit.
- (7) Upon, or prior to, the hearing of an appeal the Chairperson or the member appointed to preside at the Tribunal determining that appeal may, by direction signed by the Registrar, 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 —

- (a) to RWWA;
- (b) to the Tribunal; or
- (c) to both,

until that right of appeal is exercised or has lapsed and, if exercised, until the appeal is determined, but shall not make any such direction if it would prejudice a stay of proceedings implemented by RWWA or by that steward, racing club or committee or where it appears that the primary reason for a request to do so is to allow the appellant to continue to undertake riding or driving engagements or to conduct business pending the appeal for a period in excess of that which may be permitted by RWWA.

- (8) The member presiding may direct that any evidence given before the Tribunal, or the contents of any documents or a report as to the nature of any exhibit or other thing there produced, shall not be published.
- (9) Upon the determination of an appeal the Tribunal may —
  - (a) order the refund or repayment of any stakes paid in respect of a race to which the appeal relates;
  - (b) refer the matter to RWWA or the appropriate racing club, committee or stewards for rehearing;
  - (c) confirm, vary or set aside the determination or finding appealed against or any order or penalty imposed to which it relates;
  - (d) recommend, or require, that RWWA or the appropriate racing club, committee or stewards take further action in relation to any person;
  - (e) make such other order as the member presiding may think proper including an order for the total or partial refund of any fee paid or, subject to subsection (10), an order that all or any of the costs and expenses of the



Tribunal or any party to the appeal shall be paid by a specified person; and

- (f) where the payment of costs or expenses is ordered, fix the amount to be paid.
- (10) An order for the payment of costs shall not be imposed save where the member presiding is satisfied that the appeal, or the aspect of the appeal to which the order relates, was vexatious or frivolous.

*[Section 17 amended by No. 35 of 2003 s. 187.]*

**18. Withdrawal of appeals**

- (1) An application for leave to withdraw an appeal shall be made in writing and lodged with the Registrar.
- (2) An appeal duly lodged shall not be withdrawn without the leave of the Chairperson, or of the member presiding at the Tribunal as constituted for that appeal.
- (3) In granting leave to withdraw an appeal conditions may be imposed —
  - (a) notwithstanding section 17(10), as to costs; and
  - (b) otherwise,

as the Chairperson or member presiding thinks fit.

**19. Disobedience to determinations of the Tribunal**

- (1) RWWA and each steward, racing club, committee and other person affected by a determination of the Tribunal in relation to an appeal shall forthwith comply with any order made or direction given by the Tribunal to that person in respect of the determination and give effect to the determination within the time required by the Tribunal.
- (2) Subject to subsection (3), the Chairperson has, in relation to —
  - (a) RWWA;

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- (aa) a steward;
- (b) a racing club;
- (c) any committee; or
- (d) other persons,

guilty of disobedience to an order made or direction given by the member presiding at any Tribunal the same powers as are conferred on a Judge under the *Supreme Court Act 1935* for punishing disobedience to an order of the Supreme Court.

- (3) Subsection (2) does not apply in respect of disobedience to an order where proceedings have been commenced for an offence against section 20 or a provision of any other Act in respect of that disobedience.

*[Section 19 amended by No. 35 of 2003 s. 188.]*

### **Part 3 — Miscellaneous**

#### **20. Offences**

- (1) A person who —
- (a) having been served with a summons to attend before the Tribunal, fails without reasonable excuse (proof of which lies upon that person) to attend in obedience to the summons;
  - (b) having been served with a summons to produce before the Tribunal any document, exhibit or other thing, fails without reasonable excuse (proof of which lies upon that person) to comply with the summons;
  - (c) fails to provide access to any racecourse, place or facility required by the Tribunal, being a person apparently in a position to grant or obtain that access;
  - (d) misbehaves before the Tribunal, wilfully insults the Tribunal or any member, or interrupts the proceedings of the Tribunal; or
  - (e) fails without reasonable excuse (proof of which lies upon that person) to swear or affirm, or to answer any question, when required to do so by the Tribunal,

is guilty of an offence.

Penalty: \$2 000.

- (2) A person who knowingly —
- (a) makes a false declaration, false statement or false representation; or
  - (b) gives false evidence,

in connection with an appeal under this Act is guilty of an offence.

Penalty: \$2 000.

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**21. Reasons for determinations**

Where, within 14 days after the Tribunal has given notice of its determination in relation to that appeal to that party, a party to an appeal before the Tribunal requests the Registrar to furnish reasons in writing for the determination the Tribunal shall comply with the request of that party and set out in writing the reasons for the determination.

**22. Protection**

- (1) No liability attaches to the Chairperson or any member of the Tribunal, the Registrar, or any other person for any act or omission by or on the part of that person, or by the Tribunal or on the part of the Tribunal, that occurred in good faith and in the performance or discharge, or purported performance or discharge, of the functions of that person or the Tribunal under this Act.
- (2) A party to the appeal or a witness appearing before the Tribunal has the same protection, and is subject to the same liabilities, as a witness in any case tried in the Supreme Court.
- (3) No action or proceeding, civil or criminal, lies against the Crown in right of the State, the Minister, the Chairperson or a member presiding at the Tribunal or the Registrar in respect of the publication of a transcript or proceedings of the Tribunal or of a report of a determination made, or the reasons for a determination given, by the Tribunal.

**23. Evidentiary provisions, and recovery of moneys ordered to be paid**

- (1) In all courts and before all persons and bodies authorised to receive evidence —
  - (a) a document purporting to record a determination made by the Tribunal and purporting to be certified by the Registrar to be such a record, or a copy of it, shall be

admitted as a true copy of the record of that determination; and

- (b) judicial notice shall be taken of the signature of the Registrar on such a document.
- (2) Where a determination of the Tribunal requires the payment of any money, the Registrar shall, upon application by a party to the proceedings in which the determination was made or a person claiming through or under such a party, issue a certified copy of the record of that determination.
- (3) The certified copy of the record of the determination may be lodged with the Magistrates Court in accordance with the court's rules of court (which may provide for the payment of a lodging fee), for registration and when registered by the court may be enforced as if it were a judgment of the court.

*[Section 23 amended by No. 59 of 2004 s. 142.]*

**24. Finance and audit**

- (1) The funds available to the Tribunal to enable it to perform its functions are —
- (a) moneys from time to time appropriated by Parliament;
  - (b) moneys derived from the performance of its functions;
  - (c) moneys payable in accordance with subsection (4); and
  - (d) other moneys made available to the Tribunal or to which it becomes entitled.
- (2) The Registrar, before the end of each financial year, shall —
- (a) make an estimate of the total anticipated cost of the operations of the Tribunal for the ensuing financial year of the Tribunal; and
  - (b) submit that estimate, adjusted in accordance with subsection (3), to the Minister for approval.

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- (3) The estimate submitted under subsection (2)(b) shall be adjusted —
- (a) to include the amount, if any, by which the amount paid by RWWA under subsection (4) in respect of the previous financial year, fell short of the actual total cost of the operations of the Tribunal for that financial year; or
  - (b) to exclude the amount, if any, by which the amount paid by RWWA under subsection (4) in respect of the previous financial year, exceeded the actual total cost of the operations of the Tribunal for that financial year,

as the case requires.

- (4) The amount representing the estimate approved by the Minister under subsection (2) shall be —
- (a) deducted by RWWA from the moneys that, but for section 105(1)(h) or 106(1)(h) of the RWWA Act, would otherwise be available to be paid or credited to racing clubs by RWWA under section 105 or 106 of the RWWA Act; and
  - (b) paid by RWWA to the Tribunal.

*[(5)-(7) deleted]*

- (8) One or more accounts are to be established in respect of the funds of the Tribunal —
- (a) as agency special purpose accounts under section 16 of the *Financial Management Act 2006*; or
  - (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act,

to which all amounts received by the Tribunal are to be credited and all expenditure charged.

- (9) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial

administration, audit and reporting of statutory authorities apply to and in respect of the Tribunal and its operations.

- (10) The financial year of the Tribunal that —
- (a) began on 1 August 2006; and
  - (b) would have ended on 31 July 2007 in accordance with this subsection, as in force immediately before the commencement of the *Racing and Wagering Legislation Amendment Act 2007* section 7,

is to be taken to have ended on 30 June 2007.

*[Section 24 amended by No. 11 of 1992 s. 71; No. 49 of 1996 s. 59; No. 35 of 2003 s. 189; No. 28 of 2006 s. 407; No. 77 of 2006 s. 17; No. 2 of 2007 s. 7.]*

## **25. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for enabling the Tribunal to exercise the jurisdiction conferred on it or otherwise for giving effect to the purposes of this Act.
- (2) Without derogating from the generality of the power conferred by subsection (1), the regulations may —
- (a) provide for the qualifications of persons to be eligible for appointment under section 6, and require consultation with RWWA or other persons in relation to the membership of the Tribunal;
  - (b) in relation to the jurisdiction of the Tribunal, provide for sittings of the Tribunal and for security for costs to be given;
  - (c) prescribe generally as to the practice and procedure of the Tribunal, including the power of the Chairperson or member presiding to order that proceedings be heard in camera;

- (d) provide for —
  - (i) the manner of lodging appeals;
  - (ii) the forms to be used;
  - (iii) the fees to be paid and their application;
  - (iv) the payment of witness allowances; and
  - (v) the amount that may be charged for the provision of transcripts of evidence in proceedings the subject of an appeal;
- (e) provide for the enforcement of the determinations of the Tribunal;
- (f) assign functions to the Registrar and regulate the manner in which they are to be carried out;
- (g) subject to any costs determination (as defined in the *Legal Profession Act 2008* section 252), prescribe a scale of costs for proceedings before the Tribunal; and
- (h) provide for the method, and periods, to be utilised in accounting for moneys payable to or by the Tribunal.

*[Section 25 amended by No. 35 of 2003 s. 190; No. 65 of 2003 s. 58(3); No. 21 of 2008 s. 695(4).]*

**26. Transitional**

- (1) Where jurisdiction to hear and determine any proceedings or deal with any other matter was immediately before the coming into operation of this Act exercisable by any controlling authority, racing club, committee or stewards, or other person —
  - (a) any proceedings or other matter commenced before that jurisdiction was conferred on the Tribunal may be continued and determined or dealt with, and any proceedings in the nature of an appeal arising therefrom may be taken and disposed of, as if this Act had not come into operation; and



- (b) any legal or other proceedings or any remedies that might, but for this Act, have been commenced or available under that jurisdiction may be commenced and shall be available before the Tribunal, notwithstanding that the act or omission to which the proceedings or remedy relates occurred prior to the coming into operation of this Act.
- (2) The Minister may, as to any matter connected with the transfer of jurisdiction under this Act to the Tribunal, give directions as to the matter and the matter shall be dealt with in accordance with those directions.
- (3) Nothing in this section affects the operation of the *Interpretation Act 1984*.

[27. Deleted by No. 35 of 2003 s. 191.]

[28, 29. Omitted under the Reprints Act 1984 s. 7(4)(e).]

## **Schedule**

[Section 4(4)]

### **Provisions with respect to the constitution and membership of the Racing Penalties Appeal Tribunal of Western Australia**

#### **1. Public service officer may be member of a Tribunal**

- (1) An officer of the Public Service may be appointed to be a member of a Tribunal.
- (2) The provisions of Part 3 of the *Public Sector Management Act 1994* do not apply to or in respect of —
  - (a) the appointment of a person to the panel established under section 6(3);
  - (b) the selection of a person from that panel to be a member of a Tribunal; or
  - (c) a member of a Tribunal, in that capacity.
- (3) A member of the Tribunal who is an officer of the Public Service is entitled to be paid from the funds of the Tribunal such travelling and subsistence allowances as the Minister, after consultation with the Minister for Public Sector Management<sup>2</sup>, may from time to time determine.

*[Clause 1 amended by No. 32 of 1994 s. 19.]*

#### **2. Remuneration**

A person who is appointed as Chairperson or to a panel established under section 6(3) (other than a person who is an officer of the Public Service) is entitled to be paid from the funds of the Tribunal such remuneration (if any) and allowances as the Minister, after consultation with the Minister for Public Sector Management<sup>2</sup>, may from time to time determine.

**3. Eligibility for, and vacation of, office and conditions of appointment**

*[(1) deleted]*

- (2) 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 —
- (a) a bookmaker or a bookmaker's clerk;
  - (b) the trainer of a greyhound, thoroughbred or pacer;
  - (c) whether professionally or not, a rider in races for thoroughbreds or a driver in races for pacers; or
  - (d) a director of RWWA or a member of staff of RWWA.
- (3) A person who holds office as the Chairperson or is appointed to the panel established under section 6(3) shall cease to hold that office —
- (a) when the term for which that person was appointed expires;
  - (b) when that person dies;
  - (c) if that person is not, or ceases to be, eligible to hold office as a member; or
  - (d) if removed from office by the Minister under clause 4.
- (4) Where a person who holds office as Chairperson or who is appointed to the panel —
- (a) by the operation of this Schedule, ceases to hold that office; or
  - (b) by notice in writing delivered to the Minister, resigns that office,
- the office becomes vacant.
- (5) Subject to subclause (4), a person who is appointed to be the Chairperson, or to the panel established under section 6(3), shall hold that office for such term not exceeding 3 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.

*[Clause 3 amended by No. 42 of 1997 s. 8; No. 23 of 1998 s. 20; No. 35 of 2003 s. 192.]*

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**4. Removal from office**

The Minister may remove the Chairperson or a person eligible to be a member from that office —

- (a) if, in the opinion of the Minister, that person —
  - (i) has contravened section 7(1) or (2) or a condition specified in the instrument of appointment; or
  - (ii) is or becomes ineligible to hold the office; or
  - (iii) is guilty of —
    - (A) incompetence; or
    - (B) misconduct;or
  - (iv) is, by reason of impairment within the meaning of Part IVA of the *Equal Opportunity Act 1984*, unable to carry out satisfactorily the duties of the office;
- ~~(b) if the person has become bankrupt, applied to take the benefits of any law for the relief of bankrupt or insolvent debtors, compounded with creditors (whether separate creditors of that person or the creditors of a partnership which includes that person), or made an assignment of any remuneration or estate for the benefit of such creditors; or~~  
or
- (b) if the person is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
- (c) if the person was absent from 3 consecutive meetings of a Tribunal, being a Tribunal in relation to which reasonable notice of the appointment or selection of that person as a member had been given to that person, either personally or in the ordinary course of post, and that person had not requested from, and been granted by, the Minister leave of absence.

*[Clause 4 amended by No. 18 of 2009 s. 72.]*

**5. Validity of proceedings, etc.**

- (1) No act or proceeding of a Tribunal, or of any person acting pursuant to any direction of a Tribunal, is, invalidated or prejudiced by reason only —
- (a) that as at the time the Tribunal was constituted —
    - (i) there was a defect in the appointment of any member of that Tribunal; or
    - (ii) a member of the Tribunal was a person who was disqualified from acting as, or was incapable of being, a member of that Tribunal;
  - or
  - (b) that after the Tribunal was constituted a vacancy occurred in the membership of the Tribunal,

and effect shall be given to any such act or proceeding as if the Tribunal had been properly constituted.

**6. Presumptions**

In any proceedings before or in relation to the Tribunal, unless evidence is given to the contrary, no proof shall be required of —

- (a) the constitution of the Tribunal;
- (b) any resolution of the Tribunal; or
- (c) the appointment of any member of the Tribunal.

### Notes

- <sup>1</sup> This is a compilation of the *Racing Penalties (Appeals) Act 1990* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Racing Penalties (Appeals) Act 1990</i>	46 of 1990	26 Nov 1990	15 Apr 1991 (see s. 2 and <i>Gazette</i> 12 Apr 1991 p. 1597)
<i>Acts Amendment and Repeal (Betting) Act 1992 Pt. 6</i>	11 of 1992	16 Jun 1992	31 Jul 1992 (see s. 2(1) and <i>Gazette</i> 31 Jul 1992 p. 3735)
<i>Acts Amendment (Public Sector Management) Act 1994 s. 19</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Statutes (Repeals and Minor Amendments) Act 1994 s. 4</i>	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Financial Legislation Amendment Act 1996 s. 59</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Equal Opportunity Amendment Act (No. 3) 1997 s. 8</i>	42 of 1997	9 Dec 1997	6 Jan 1998 (see s. 2(1))
<i>Western Australian Greyhound Racing Association Amendment Act 1998 s. 20</i>	23 of 1998	30 Jun 1998	1 Aug 1998 (see s. 3 and <i>Gazette</i> 21 Jul 1998 p. 3825)
<i>Statutes (Repeals and Minor Amendments) Act 2000 s. 37</i>	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
<b>Reprint of the <i>Racing Penalties (Appeals) Act 1990</i> as at 19 Oct 2001</b> (includes amendments listed above)			
<i>Racing and Gambling Legislation Amendment and Repeal Act 2003 Pt. 11<sup>3</sup></i>	35 of 2003	26 Jun 2003	s. 179, 180(1)(a), (b), (d)-(g) and 181-194: 1 Aug 2003 (see s. 2 and <i>Gazette</i> 29 Jul 2003 p. 3259); s. 180(1)(c) and (2): 30 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Jan 2004 p. 397)

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 58 and 116</i>	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 142</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 16 Div. 3</i>	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<b>Reprint 2: The Racing Penalties (Appeals) Act 1990 as at 18 Aug 2006</b> (includes amendments listed above)			
<i>Financial Legislation Amendment and Repeal Act 2006 s. 17</i>	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Racing and Wagering Legislation Amendment Act 2007 Pt. 3</i>	2 of 2007	28 Mar 2007	1 Jul 2007 (see s. 2)
<i>Legal Profession Act 2008 s. 695</i>	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)
<a href="#"><u><i>Acts Amendment (Bankruptcy) Act 2009 s. 72</i></u></a>	<a href="#"><u>18 of 2009</u></a>	<a href="#"><u>16 Sep 2009</u></a>	<a href="#"><u>17 Sep 2009 (see s. 2(b))</u></a>

<sup>2</sup> Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Commissioner is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management. This reference was changed under the *Reprints Act 1984* s. 7(5)(a).

<sup>3</sup> The *Racing and Gambling Legislation Amendment and Repeal Act 2003* s. 19 and Pt. 11 Div. 2 read as follows:

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**19. Power to amend regulations**

- (1) The Governor, on the recommendation of the Minister, may make regulations amending subsidiary legislation made under any Act.
- (2) The Minister may make a recommendation under subsection (1) only if the Minister considers that each amendment proposed to be

made by the regulations is necessary or desirable as a consequence of the enactment of the RWWA Act or this Act.

- (3) Nothing in this section prevents subsidiary legislation from being amended in accordance with the Act under which it was made.

**Division 2 — Transitional provisions**

**193. Appeals**

If, immediately before the coming into operation of this section, the Tribunal had the jurisdiction to hear and determine an appeal, or an application for leave to appeal and subsequent appeal, any appeal, or application for leave to appeal and subsequent appeal, that could have been made under that jurisdiction in relation to a determination made before the coming into operation of this section, may be made to or continued by, and determined by, the Tribunal.

**194. Funds of Tribunal**

Despite the amendments to section 24 of the *Racing Penalties (Appeals) Act 1990* effected by section 189 of this Act —

- (a) the amount of funds available to the Racing Penalties Appeal Tribunal of Western Australia under subsection (1)(c) of section 24 of the *Racing Penalties (Appeals) Act 1990* for any financial year commencing before the coming into operation of section 189 of this Act is to be the amount approved by the Minister for that financial year under that section before the coming into operation of section 189 of this Act;
- (b) to the extent that that amount has not been paid to the Tribunal by the Totalisator Agency Board before the coming into operation of section 189 of this Act, the amount is to be paid by RWWA.

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