

**RACING PENALTIES (APPEALS)  
ACT 1990**  
(No. 46 of 1990)

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# RACING PENALTIES (APPEALS) ACT

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No. 46 of 1990

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**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.**

*[Assented to 26 November 1990.]*

The Parliament of Western Australia enacts as follows:

## PART 1—PRELIMINARY

### Short title

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

**Commencement**

2. This Act shall come into operation on such day as is, or such days as are respectively, fixed by proclamation.

**Interpretation**

3. In this Act, unless the contrary intention appears—

“bet” includes wager;

“bookmaker” means a person holding a current license 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;

“club” includes a society or association;

“committee” in relation to a club includes the governing body of a club or a body constituted by the club to make determinations on behalf of the club;

“controlling authority” means—

(a) in relation to greyhound racing, the Western Australian Greyhound Racing Association;

(b) in relation to horse racing, The Western Australian Turf Club; and

(c) in relation to harness racing, the Western Australian Trotting Association,

and includes any other body of persons prescribed (either in addition to, or in substitution for, any of those bodies) as a controlling authority for the purposes of this Act;

“determination” includes a reference to a decision, order or direction;

“galloper” means a horse which when raced is galloped and is ridden by a jockey;

“greyhound racing” means racing between greyhounds in competitive pursuit of an artificial lure;

“greyhound racing club” means a racing club the principal object of which is to conduct meetings for greyhound racing;

“*Greyhound Racing Rules*” means the rules for the time being governing and relating to greyhound racing, being the *Greyhound Racing Rules 1973* as from time to time amended or such other rules as the controlling authority may from time to time make or adopt;

“harness racing” means racing between pacers, commonly known as trotting;

“harness racing club” means a racing club the principal object of which is to conduct meetings for harness racing;

“horse” includes pony;

“horse racing” means racing between gallopers;

“horse racing club” means a racing club the principal object of which is to conduct meetings for horse racing;

“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;

“pacer” 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;

“racing club” means a body of persons corporate or unincorporate, other than a controlling authority, that promotes, holds or controls, or is formed to promote, hold or control, a race meeting;

“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 gallopers or pacers;

“racing” includes a reference—

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

“*Rules of Racing*” means the rules for the time being governing and relating to horse racing, being an amalgamation of the *Australian Rules of Racing* as promulgated from time to time by the Australian Conference of Principal Racing Clubs and of local rules relating to horse racing as from time to time amended, or such other rules as the controlling authority may from time to time make or adopt;

“*Rules of Trotting*” means the rules for the time being governing and relating to harness racing, being the rules adopted by the Western Australian Trotting Association as at 6 December 1977 as from time to time amended, or such other rules as the controlling authority may from time to time make or adopt;

“runner” in relation—

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

“the Board” means the Totalisator Agency Board constituted under the *Totalisator Agency Board Betting Act 1960*;

“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.

## PART 2—THE RACING PENALTIES APPEAL TRIBUNAL OF WESTERN AUSTRALIA

### *Division 1—Constitution and Administration*

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

4. (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 Public Service Commissioner, 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.

### **Chairperson and Acting Chairperson**

5. (1) The Minister shall, in writing, appoint a person who is a practitioner, as defined by the *Legal Practitioners Act 1893*, 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).

### **Panel of members**

6. (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 having 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.



**Eligibility to sit on a particular Tribunal**

7. (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 galloper, where the appeal relates to horse 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.

### **The Registrar**

8. (1) The Minister shall appoint a person employed under and subject to the *Public Service Act 1978* 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.

### **Relationship with Minister**

9. (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 Administration and Audit Act 1985*, 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.

*Division 2—Jurisdiction and functions***Jurisdiction, as variously constituted**

10. (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.

### **Proceedings before the Tribunal**

11. (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.

### **Appeals which are not to be heard by the Tribunal**

12. (1) Subject to section 13 (2) and leave of the Tribunal, the jurisdiction of the Tribunal does not extend to a determination of a controlling authority, racing club, committee or stewards, 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 the appropriate controlling authority, a right of appeal to that controlling authority.

(2) An appeal under subsection (1) to an appropriate controlling authority shall be heard and determined in accordance with the rules of that controlling authority.

(3) The determination of an appropriate controlling authority 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.

### **Appeals which shall be heard by the Tribunal**

13. (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 an appropriate controlling authority, of a racing club, or of any committee or stewards—

- (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.

### **The determination of an appeal**

14. (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 the appropriate controlling authority, or of any racing club, or of any committee or stewards, 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.

### **Other avenues of appeal may no longer be applicable**

**15.** (1) Subject to subsection (2), notwithstanding—

- (a) any law or rule of law to the contrary; or
- (b) anything contained in the *Greyhound Racing Rules*, the *Rules of Racing* or the *Rules of Trotting* or in the constitution, rules, or articles of an appropriate controlling authority, or a racing club,

an appeal shall not, after the commencement of this Act, be made to, or heard by, a controlling authority, 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 a controlling authority, 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.

### *Division 3—Procedures and powers*

#### **Procedure on making an appeal**

**16.** (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 controlling authority or other persons 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 appropriate controlling authority, or on the secretary of the club or to the committee or stewards, responsible for the determination or finding appealed against;
  - (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, any controlling authority, club, committee or stewards 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 a certificated legal practitioner within the meaning of the *Legal Practitioners Act 1893*, 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.

**Hearing powers**

17. (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 any appropriate controlling authority, racing club, committee or stewards,

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 the appropriate controlling authority;
- (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 that controlling authority, racing club or committee or by those stewards 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 the controlling authority.

(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 the appropriate controlling authority, 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 the appropriate controlling authority, 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.

### **Withdrawal of appeals**

18. (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.

### **Disobedience to determinations of the Tribunal**

19. (1) Every controlling authority, racing club, committee, stewards or 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 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) a controlling authority;
- (b) a racing club;
- (c) any committee or stewards; 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.

### PART 3—MISCELLANEOUS

#### Offences

20. (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.

### **Reasons for determinations**

21. 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.

### **Protection**

22. (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.

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

23. (1) In all courts and before all persons and bodies authorized 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) Where a certified copy of the record of a determination made by the Tribunal is lodged with the clerk of a Local Court in accordance with the Local Court Rules (which may include provision for the payment of a lodging fee), the clerk shall register the determination and the payment of any money ordered by that determination to be paid may be enforced as if it were required by an order of the Local Court.

### **Finance and audit**

24. (1) The funds available to the Tribunal to enable it to perform its functions are—

- (a) moneys from time to time appropriated by Parliament for that purpose;

- (b) moneys derived from the performance of its functions;
- (c) moneys constituting a deduction from the moneys that would otherwise be payable in respect of each racing code under section 28 of the *Totalisator Agency Board Betting Act 1960*, payable in accordance with this section; and
- (d) other moneys made available to the Tribunal or to which it becomes entitled.

(2) The Registrar, on the coming into operation of this section and thereafter before the end of each financial year, shall make an estimate of the total anticipated cost of the operations of the Tribunal for the ensuing financial year of the Tribunal and of the probable number of anticipated appeals that will arise during that financial year in relation to each code of racing, and shall apportion the total anticipated cost by reference to the percentage of the total number of anticipated appeals that the Registrar estimates will arise in relation to each of the respective codes of racing, and shall submit that estimate to the Minister for approval.

(3) Subject to subsection (7), the amount representing the proportion of the total anticipated cost of the operations for each financial year of the Tribunal in respect of each code of racing as apportioned under subsection (2) shall be—

- (a) deducted by the Board from the moneys that would otherwise be payable in respect of that code of racing under section 28 of the *Totalisator Agency Board Betting Act 1960*;  
and
- (b) paid by the Board on behalf of that code of racing to the Tribunal.

(4) As soon as is practicable after each financial year of the Tribunal the Registrar shall calculate the total actual cost of the operations of the Tribunal during that year, after deducting fees paid to the Tribunal, and the actual number of appeals arising in relation to the respective codes of racing during that year, and correct the estimates and apportionments made under subsection (2) accordingly.

(5) Where any amount received by the Tribunal under subsection (3) exceeds the amount calculated under subsection (4) in relation to any code of racing, the balance shall be payable, or credited, by the Tribunal to the controlling authority appropriate to that code of racing.

(6) Where any amount received by the Tribunal under subsection (3) is less than the amount calculated under subsection (4) in relation to any code of racing, the balance shall be payable to the Tribunal by the controlling authority appropriate to that code of racing.

(7) A balance ascertained under subsection (5) or (6) and which is not paid or credited to, or paid by, the appropriate controlling authority shall be notified by the Tribunal to the Board and taken into account by the Board in calculating the amount payable by the Board under subsection (4) on behalf of that code of racing.

(8) An account or accounts shall be maintained at the Treasury, or in a bank approved by the Treasurer, in respect of the funds of the Tribunal into which all amounts received by the Tribunal shall be paid and from which all expenditure shall be met.

(9) Subject to subsection (10), the provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Tribunal and its operations.

(10) Notwithstanding the provisions of the *Financial Administration and Audit Act 1985*, the financial year of the Tribunal shall end on 31 July in each year.

## **Regulations**

25. (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 the appropriate controlling authority 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 order made under section 58W of the *Legal Practitioners Act 1893*, 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.

**Transitional**

26. (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*.

**Review of Act**

27. (1) The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from its commencement and in the course of that review the Minister shall consider and have regard to—

- (a) the effectiveness of the operation of the Tribunal;
- (b) the need for the continuation of the functions of the Tribunal; and
- (c) such matters, other than those referred to in paragraphs (a) and (b), as appear to the Minister to be relevant to the operation and effectiveness of this Act.

(2) The Minister shall prepare a report based on the review made under subsection (1) and shall, as soon as is practicable after its preparation, cause that report to be laid before each House of Parliament.

### **Amendment of *Financial Administration and Audit Act 1985***

28. Schedule 1 to the *Financial Administration and Audit Act 1985*\* is amended by inserting in the appropriate alphabetical position the following—

“ Racing Penalties Appeal Tribunal of Western Australia. ”.

[\*Reprinted as at 4 March 1987 and amended by Acts Nos. 9, 32, 65, 88, 89, 91, 99 and 113 of 1987, 4, 19, 21 and 52 of 1988 and 5, 31 and 48 of 1989.]

### **Amendment of *Totalisator Agency Board Betting Act 1960***

29. Section 28 of the *Totalisator Agency Board Betting Act 1960*\* is amended by adding the subsection following—

“ (6) From the amount that would otherwise be payable under this section to any controlling authority within the meaning of the *Racing Penalties (Appeals) Act 1989*, the Board shall—

- (a) deduct such moneys as may be payable by or on behalf of that controlling authority in respect of the Tribunal established under that Act; and
- (b) pay those moneys to the Tribunal to the credit of that controlling authority in advance and at intervals to be determined by the Tribunal. ”.

[\*Reprinted as approved 22 January 1979 and amended by Acts Nos. 48 and 98 of 1985, 113 and 125 of 1987, 66 of 1988 and 5 of 1989.]



## SCHEDULE

(Section 4 (4))

PROVISIONS WITH RESPECT TO THE CONSTITUTION  
AND MEMBERSHIP OF THE RACING PENALTIES APPEAL  
TRIBUNAL OF WESTERN AUSTRALIA**Public Servant may be member of a Tribunal**

1. (1) An officer of the Public Service may be appointed to be a member of a Tribunal.

(2) The provisions of the *Public Service Act 1978* 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 Public Service Commissioner, may from time to time determine.

**Remuneration**

2. 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 Public Service Commissioner, may from time to time determine.

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

3. (1) Except with the approval of the Governor, a person is not eligible for appointment to, or to continue to hold, office as Chairperson if that person has attained the age of 65 years.

(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, galloper or pacer;
- (c) whether professionally or not, a rider in races for gallopers or a driver in races for pacers; or

(d) a member of the committee of, or an employee of, a controlling authority.

(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.

### **Removal from office**

4. 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;

(ii) is or becomes ineligible to hold the office;

(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
- (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.

### **Validity of proceedings, etc.**

**5.** (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.

### **Presumptions**

**6.** 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.

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