



2008/2009  
Annual Report

# Racing Penalties Appeal Tribunal of Western Australia



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Hon. Terry Waldron, MLA  
MINISTER FOR RACING AND GAMING

In accordance with section 61 of the [Financial Management Act 2006](#), I hereby submit, for your information and presentation to Parliament, the Annual Report of the Racing Penalties Appeal Tribunal of Western Australia for the financial year ended 30 June 2009.

The Annual Report has been prepared in accordance with the provisions of the *Financial Management Act 2006*.



Dan Mossenson  
CHAIRPERSON

18 September 2009

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## Chairperson's Overview



Section 61 of the [Financial Management Act 2006](#) provides for the Chairperson on or before 30 September each year, to submit to the Minister for Racing and Gaming an annual report on the activities of the Racing Penalties Appeal Tribunal of Western Australia during the year ending on the preceding 30 June.

Accordingly, I am pleased to present this report on the activities of the Tribunal for the 2008/2009 financial year.

The Tribunal received 17 appeals this financial year – six for thoroughbred racing, eight for harness racing and three for greyhound racing. Of these, 16 have been heard and determined. The Tribunal spent a total of nine days hearing these matters.

In a departure from previous years, this year's annual report provides a more detailed summary of each matter heard before the Tribunal. This has been designed to provide the reader with a greater insight into, and potentially a greater appreciation of, both the activities of the Tribunal and the nature of matters heard before the Tribunal.

I take this opportunity to acknowledge and thank the other members of the Tribunal for their invaluable contributions to the functioning of the Tribunal.

Last but not least, I also take this opportunity to thank the Department of Racing, Gaming and Liquor, and in particular the Registrar of the Tribunal, for their dedication and the ongoing provision of executive support services. It would be impossible for the Tribunal to conduct its activities in an effective, efficient manner without their invaluable support.

A handwritten signature in black ink, appearing to read 'Dan Mossenson' in a cursive script.

Dan Mossenson  
CHAIRPERSON

18 September 2009

# Overview of the Racing Penalties Appeal Tribunal of Western Australia

## Operational Structure

### Enabling Legislation

The Racing Penalties Appeal Tribunal is established under the [Racing Penalties \(Appeals\) Act 1990](#) (the Act). The Tribunal was established to confer jurisdiction in respect of appeals against penalties imposed in disciplinary proceedings arising from, or in relation to, the conduct of thoroughbred racing, harness racing and greyhound racing, and for related purposes.

### Purpose of the Tribunal

The aim of the Act is to create and maintain industry confidence in the enforcement of the various racing rules by providing an impartial judicial forum for the hearing of appeals.

Support for the Tribunal is provided by the Department of Racing, Gaming and Liquor. The Department recoups the cost of providing these services from the Tribunal. The Tribunal is funded from the profits of [Racing and Wagering Western Australia](#) (RWWA).

### Responsible Minister

As at 30 June 2009, the Minister responsible for the Racing and Gaming Portfolio was the [Honourable Terry Waldron MLA](#), Minister for Sport and Recreation; Racing and Gaming; Minister Assisting the Minister for Health.

### Appeals Which May Be Heard By the Tribunal

A person, who is aggrieved by a determination of RWWA, or of a steward or a committee of a racing club, may within 14 days after the making of the determination, appeal to the Tribunal. The matters that can be appealed against as of right are determinations or findings which:

- impose any suspension or disqualification, whether of a runner or of a person;
- impose a fine; or
- result, or may result, in the giving of a notice of the kind commonly referred to as a warning-off.

In addition, the Tribunal may grant leave to appeal in relation to any other matters.

### Appeals Which Are Outside the Jurisdiction of the Tribunal

Without the 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 matters regarding:

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

These matters are dealt with by RWWA.

### **Determination of Appeals**

The Tribunal is required to hear and determine an appeal upon the evidence of the original hearing but may allow new evidence or call on experts to assist in its deliberations.

When determining an appeal, the Tribunal may:

- order the refund or repayment of any stakes paid in respect of a race to which the appeal relates;
- refer the matter to RWWA, the stewards or the committee of the appropriate racing club for rehearing;
- confirm, vary or set aside the determination or finding appealed against or any order or penalty imposed to which it relates;
- recommend, or require, that RWWA, the stewards or the committee of the appropriate racing club, take further action in relation to any person; and
- make such other order as the member presiding may think proper.

Decisions of the Tribunal are final and binding.

### **Administered Legislation**

The Tribunal is responsible for administering the [\*Racing Penalties \(Appeals\) Act 1990\*](#).

### **Other Key Legislation Impacting on the Tribunal's Activities**

The Tribunal complied with the following relevant written laws in the performance of its functions:

- [\*Auditor General Act 2006\*](#);
- [\*Corruption and Crime Commission Act 2003\*](#);
- [\*Disability Services Act 1993\*](#);
- [\*Electoral Act 1907\*](#);
- [\*Equal Opportunity Act 1984\*](#);
- [\*Electronic Transactions Act 2003\*](#);
- [\*Financial Management Act 2006\*](#);
- [\*Freedom of Information Act 1992\*](#);
- [\*Industrial Relations Act 1979\*](#);
- [\*Public Sector Management Act 1994\*](#);
- [\*Salaries and Allowances Act 1975\*](#);
- [\*State Records Act 2000\*](#); and
- [\*State Supply Commission Act 1991\*](#)

### **Administrative Structure**

Sections 5 and 6 of the Act provide that the Tribunal shall consist of a Chairperson and a panel of members, each appointed by the Minister. The Schedule to the Act specifies terms of appointment shall not exceed three years with eligibility for reappointment. The Tribunal, constituted by the Chairperson (or the Acting Chairperson or member presiding) and two members, sitting together hear appeals. Where the Regulations provide, an appeal may be heard by the Chairperson, Acting Chairperson or presiding member sitting alone.

The composition of the Tribunal as at 30 June 2009 is as follows:

#### **Mr Dan Mossenson - Inaugural Chairperson**

Mr Dan Mossenson, the inaugural chairperson, was appointed in 1990.

Mr Mossenson was admitted to practice law in 1970 and specialises in liquor licensing, hospitality and tourism law. Dan became a partner in 1973 of Lavan and Walsh, subsequently a founding partner of Phillips Fox and currently is Chairman of Partners of Lavan Legal.

Mr Mossenson chaired both the WA State Government Gaming Inquiry 1984 and the Land Valuation Tribunal of Western Australia from 1985 to 1997. He was founding Vice Chairman of the National Association for Gambling Studies and Board Member of the Australian Institute of Gambling Studies and the Indian Ocean Tourism Organisation. He has been a board member of Tourism Council Western Australia Limited and its predecessor body for the past 10 years and is President of the Perth Hebrew Congregation Inc. Mr Mossenson and his wife Dr Diane Mossenson established Indigenart at the Mossenson Galleries, which represent many Aboriginal communities and independent artists.

#### **Mr Patrick Hogan - Inaugural Member**

Mr Patrick Hogan, an inaugural member of the panel of the Tribunal, was appointed in 1991.

Mr Hogan is a Barrister admitted to the Supreme Court of Western Australia and the High Court of Australia in June 1982. Mr Hogan worked as a Barrister and Solicitor with the Legal Aid Commission of Western Australia, practising in civil and criminal law then in private practice as a Barrister with Howard Chambers.

Mr Hogan was appointed as a part-time Magistrate of the Children's Court of Western Australia in September 1999. He was appointed President of the Gender Reassignment Board of Western Australia in 2007.

#### **Mr John Prior - Member**

Mr John Prior was appointed to the panel of the Tribunal in March 1994.

Mr Prior is a Barrister practising with Francis Burt Chambers Perth, specialising in criminal and civil litigation in the areas of sports law and liquor licensing.

Mr Prior has served on many committees including President of the Criminal Lawyers Association of Western Australia and Convenor of the Law Society of Western Australia Criminal Law Committee, Magistrates' Courts Liaison Committee, Ministry of Justice Advisory Council, Reduction of Delay in Criminal Jurisdiction of the District Court, Unrepresented Litigants Scheme Committee Supreme Court, and Chaired the Ministerial Taskforce on drug law reform.



**Ms Karen Farley - Member**

Ms Karen Farley was appointed to the panel of the Tribunal in March 1997.

Ms Farley is a Barrister and Solicitor specialising in Legal Aid assistance. Ms Farley was a totalisator operator at Ascot and Belmont Racecourses between 1978 and 1982.

Ms Farley has served on several Boards and Committees including Chairman of the Board of Visitors to Alma Street Centre, Fremantle Hospital, Board of Visitors to Heathcote Hospital, Member Criminal Law Association, Vice President Criminal Law Association, Secretary Criminal Law Association, Committee Member Pro Bono Committee of Law Society, Committee Member Legal Aid Committee of Law Society and President of the WA Debating League. Karen is also currently Chair of the Council of Management, St Hilda's Anglican School for Girls.

**Mr Andrew Monisse - Member**

Mr Andrew Monisse was appointed to the panel of the Tribunal in March 1997.

Mr Monisse was admitted as a Barrister and Solicitor of the Supreme Court of Western Australia in December 1990 after completing articles at Mallesons Stephen Jaques. His employment experience has since included working as a solicitor assisting counsel assisting at the WA Inc Royal Commission in 1991 and as a prosecutor for the Commonwealth DPP in the Perth office between 1992 and 1998. Since July 2000 he has worked as a barrister from Howard Chambers, practicing predominantly in criminal law.

Mr Monisse, who is a member of the Perth Legal Panel of the RAAF Specialist Reserve, with the current rank of Squadron Leader, graduated from the University of Western Australia with degrees in Jurisprudence, Laws and Economics, and in 2002 with a Master of Laws.

**Mr Robert Nash - Member**

Mr Robert Nash was appointed to the panel of the Tribunal in March 1997.

Mr Nash is a Barrister admitted as Practitioner of Supreme Court of WA and of the High Court of Australia and was also a General Public Notary.

Mr Nash has served on several councils, committees and directorships including Director, Bauxite Resources Ltd, North West Property Holdings Pty Ltd, Termitube Pty Ltd, Lecturer in Business Law, President of the Rotary Club of Broome, Founding Secretary of the Broome Branch of Institute of Arbitrators and Mediators, Chairman of the WA Soccer Disciplinary Tribunal, Council Member of the Law Society of WA, Convenor Education Committee of Law Society of WA, Counsel Assisting the Royal Commission into the City of Wanneroo, Member of the Professional Conduct Committee of Law Society, Consultative Committee to the District Court on Civil Reforms in the District Court, the Ethics Committee of Law Society, the Articles Training Program, Legal Panel of the Royal Australian Navy, Federal Courts Committee, Resident Tutor in law, Council Member of WA Bar Association Council, Director WA Bar Chambers Ltd and Tutor in Civil Procedure at University of WA.

**Mr William Chesnutt - Member**

Mr William Chesnutt was appointed to the panel of the Tribunal in June 2000.

Mr Chesnutt is a Barrister and Solicitor engaged in conducting general litigation matters with exposure to a wide variety of commercial and criminal matters. Mr Chesnutt has tutored for company law and legal framework of business subjects.

**Executive Support for the Racing Penalties Appeal Tribunal**

Executive support for the Racing Penalties Appeal Tribunal is provided by the Department of Racing, Gaming and Liquor. The Registrar to the Tribunal is Ms Seema Saxena.

# Performance Management Framework

## Outcome Based Management

### Agency Level Government Desired Outcome

The Tribunal operates under the broad high level government strategic goal of proving a “greater focus on achieving results in key service delivery areas for the benefit of all Western Australians.”

The Tribunal was created to maintain industry confidence in the enforcement of the various racing rules by providing the industry with an impartial judicial forum for the hearing of appeals against the determinations of committees of racing clubs and stewards initially, and more recently RWWA.

The Tribunal must ensure that appeals and applications are processed in accordance with the [Racing Penalties \(Appeals\) Act 1990](#) and the [Racing Penalties \(Appeals\) Regulations 1991](#), whilst providing an effective and efficient service to the racing industry at minimal cost.

In addition to this, the Tribunal endeavours to finalise applications for stays of proceedings on the same day as they are lodged. A stay of proceeding application occurs when an appellant applies for a suspension of the operation of a penalty in the course of appeal proceedings. This is only potentially achievable when the appellant (or the appellant’s counsel) and the stewards of the relevant code of racing are immediately contactable to provide submissions and their material is available to be forwarded in sufficient time to be dealt with that day by the Tribunal. It is essential to the racing codes, trainers, owners and the general public that these applications are dealt with expeditiously, as stay applications impact directly on the eligibility of riders, drivers and runners to fulfil prior engagements.

### Changes to Outcome Based Management Framework

The Tribunal’s Outcome Based Management Framework did not change during 2008/2009.

### Shared Responsibilities with Other Agencies

The Tribunal did not share any responsibilities with other agencies in 2008/2009.

# Agency Performance – Report on Operations

## Major Achievements for 2008/2009

### Appeals

This year 17 appeals were heard with the Tribunal, with three appeals carried over from 2007/08. As at June 30 2009, the Tribunal had determined 16 appeals with one determination yet to be published and three determinations pending. Two appeals were withdrawn after lodgement. Details of the appeals, together with those from the previous year, are summarised by racing code, as follows.

<b>Appeals Lodged and Determined</b>							
Racing Code	Appeals Lodged 2007/08	Appeals Determined 2007/08	Hearing Days Occupied 2007/08	Appeals Carried Over To 2008/09	Appeals Lodged 2008/09	Appeals Determined 2008/09	Hearing Days Occupied 2008/09
Thoroughbred	13	7	4.5	4	8	7	3.5
Harness	4	3	2	0	9	6	4
Greyhound	0	0	0	0	3	3	1.5
<b>Total</b>	<b>17</b>	<b>10</b>	<b>6.5</b>	<b>3</b>	<b>20</b>	<b>16</b>	<b>9</b>

The results of the determinations in respect of the racing codes for the years 2007/2008 and 2008/2009 are summarised below.

<b>2008/2009 Appeal Results</b>			
	Thoroughbred Racing	Harness Racing	Greyhound Racing
Allowed in Full	1	0	0
Allowed in Part (Penalty Reduced)	1	2	0
Referred Back to Stewards (RWWA)	0	0	0
Dismissed	5	4	3
Withdrawn	0	2	0
Leave to Appeal Refused	0	0	0
<b>Total</b>	<b>7</b>	<b>8</b>	<b>3</b>

<b>2007/2008 Appeal Results</b>			
	Thoroughbred Racing	Harness Racing	Greyhound Racing
Allowed in Full	0	0	0
Allowed in Part (Penalty Reduced)	3	0	0
Referred Back to Stewards (RWWA)	0	0	0
Dismissed	3	3	0
Withdrawn	4	1	0
Leave to Appeal Refused	1	0	0
<b>Total</b>	<b>11</b>	<b>4</b>	<b>0</b>

<b>Appeals to be Carried Over to 2009/2010</b>			
	Thoroughbred Racing	Harness Racing	Greyhound Racing
Reserved Decision	0	0	0
Reserved Decision on penalty only	0	0	0
Reasons to be published	0	1	0
Yet to be heard	2	1	0
<b>Total</b>	<b>2</b>	<b>2</b>	<b>0</b>

### **Stays of Proceedings**

In 2008/2009, there were nine applications for stays of proceedings, compared to four in the previous year. The Chairperson made the determinations as follows.

<b>2008/2009 Applications for Stays of Proceedings</b>			
Racing Code	Stays Granted	Stays Refused	Withdrawn
Thoroughbred	1	3	0
Harness	0	5	0
Greyhound	0	0	0
<b>Total</b>	<b>1</b>	<b>8</b>	<b>0</b>

<b>2007/2008 Applications for Stays of Proceedings</b>		
Racing Code	Stays Granted	Stays Refused
Thoroughbred	0	4
Harness	0	0
Greyhound	0	0
<b>Total</b>	<b>0</b>	<b>4</b>

These figures do not include those appeals heard, though not determined, in the year under review.

## Matters Heard and Determined by the Tribunal

The following is a summary of the matters heard and determined by the Tribunal and the results of those determinations during 2008/2009 by reference to each racing code.

Full determinations of the Tribunal may be perused free of charge. A small fee is payable for photocopies. Transcripts of Tribunal proceedings can be purchased from the Tribunal for a fee of \$4 per page, in accordance with regulation 4 of the *Racing Penalties (Appeals) Regulations 1991*.

### Greyhound Racing

#### Appeal No. 691 – Geoffrey Ernest Liebeck

*In the matter of an appeal against the determinations made by the RWWA Stewards of Greyhound Racing on 15 July 2008 in respect of several breaches of the Rules of Greyhound Racing.*

On 1 July 2008 a City of Fremantle ranger attended Mr Liebeck's premises to speak with him regarding a barking dog complaint. During the visit Mr Liebeck had a conversation with the ranger regarding training methods Mr Liebeck employed to excite his greyhounds. Mr Liebeck told the ranger that rabbits were good for that purpose and showed the ranger two live bush rabbits which were kept in an esky in the house. The ranger was also shown a bottle of penicillin in the fridge.

As a consequence of the ranger's visit, the principal investigator for Racing and Wagering Western Australia interviewed the ranger regarding the matter. On 7 July 2008 the investigator conducted an interview on site with Mr Liebeck. In the course of the latter interview Mr Liebeck denied many of the assertions which the ranger attributed to him.

The stewards opened an inquiry on 5 July 2008 into the statements that were allegedly made by Mr Liebeck to the ranger. Both the ranger and the RWWA Principal Investigator were called to the inquiry in addition to the RWWA veterinarian, Dr Peter Symons. The stewards charged Mr Liebeck with five separate offences. Mr Liebeck pleaded guilty to all charges.

The offences and penalties are listed as follows:

- Possessing a non-prescription drug which had not been issued by a veterinary surgeon after examining the greyhound (Rule 84(2)), namely penicillin - \$100 fine;
- Making a misleading statement in relation to an investigation (Rule 86(d)), namely that the supplier of rabbits in the trainer's possession was not connected to racing - \$500 fine;
- Being a trainer having refused to give evidence at an inquiry (Rule 86(e)), namely refused to provide the name of the rabbit supplier at the inquiry – 12 months disqualification;
- Engaging in conduct detrimental to the image of greyhound racing (Rule 86(q)), namely when showing the ranger live rabbits used words to the effect that live game was being used in the training of greyhounds – six months disqualification;
- Using live animals to excite greyhounds (Local Rule 86(b)), namely rabbits – 12 months disqualification.

The latter three penalties were ordered to be served concurrently.

The appeal was heard on 12 September 2008 by the Chairperson, Mr Dan Mossenson and members Mr Andrew Monisse and Ms Karen Farley.

Mr Liebeck appealed against the severity of the penalties. The grounds specified in the appeal notice were severity of time and fine. At the Hearing, Mr Liebeck failed to raise any issues or arguments of any substance in support of the appeal.

After hearing submissions on behalf of the stewards and viewing the video taken by the RWWA Principal Investigator, the Tribunal issued its determination on 12 September 2008, dismissing the appeal.

### **Appeal No. 701 – James Andrew Millstead**

*In the matter of an appeal against the determination made by the RWWA Stewards of Greyhound Racing on 11 November 2008, imposing a fine of \$1,000 for breach of Rule 83(2)(a) of the Rules of Greyhound Racing.*

Mr James Andrew Millstead presented 'Seeka Dream' to compete at a trial at Greyhounds WA Mandurah on 11 September 2008. The greyhound won the trial. A report received from Racing Chemistry Centre in Perth subsequently revealed that a urine sample taken from the greyhound contained the drug Flunixin. Confirmatory analysis was received from the Queensland Racing Science Centre.

Stewards conducted an inquiry on 27 October 2008. Dr Peter Symons, the RWWA Industry Veterinarian Surgeon gave evidence to the inquiry that Flunixin is an anti-inflammatory agent. It therefore was a drug for the purposes of the Rules of Greyhound Racing.

Mr Millstead told stewards that he used beef and probiotic powder which contained herbal extracts. Mr Millstead was adamant that he did not administer anything untoward to the dog. Mr Millstead acknowledged he purchased his meat from a farmer in Harvey who had access to cows that were contaminated, sick, diseased, or unfit for human consumption.

When the inquiry resumed on 11 November 2008, it was reported that, following testing, Flunixin was detected in a meat sample as well as the liquid from the meat. The sample was taken from a batch of feed which Mr Millstead had been giving to 'Seeka Dream.' The evidence from the analysis of the concentrations in the meat and the liquid suggested that the Flunixin was not introduced after the meat was processed.

The stewards laid a charge against Mr Millstead under Rule 83(2) (a) and fined him \$1000.

The grounds of appeal were:

- The greyhound was presented in good faith not knowing that the meat the greyhound was fed was contaminated;
- The Chemistry Centre proved that the meat was contaminated; and
- The severity of the fine.

The appeal was heard on 14 January 2009 by the Chairperson, Mr Dan Mossenson.

Counsel for RWWA stated Mr Millstead knew that the meat he fed his greyhounds came from animals that could be contaminated, sick and diseased and there was therefore the

possibility they were being treated with drugs. It was argued that Mr Millstead should have established quality control measures over the meat he was feeding his greyhounds. As it was, Mr Millstead's control measures were found lacking.

Counsel for RWWA also submitted the stewards took into account that this was a qualifying trial and the circumstances of the likely introduction of the drug. Mr Millstead's unblemished record was also a factor in imposing a light penalty.

After hearing from all parties, the Tribunal issued its determination on 14 January 2009, dismissing the appeal.

### **Appeal No. 702 – Leni Salvatore Celenza**

*In the matter of an appeal against the determination made by the RWWA Stewards of Greyhound Racing on 19 November 2008 against a conviction and fine of \$250 for breach of Rule 86(f)(i) of the Rules of Greyhound Racing.*

Following the running of race nine at Cannington on 8 November 2008, Mr Celenza was interviewed by three stewards in the presence of the course veterinarian regarding two issues. One was the apparent poor performance of Apache Flyer in the race. The other was Mr Celenza's improper conduct and language towards a steward after the race.

Subsequently, on 19 November 2008 the stewards held a formal inquiry into the matter. Mr Celenza raised a number of arguments at the inquiry in defence of his behaviour.

As a consequence of what emerged at the inquiry a charge was laid. The stewards subsequently imposed a fine of \$250. Mr Celenza lodged an appeal against the penalty.

The matter was heard on 9 January 2009 by the Chairperson, Mr Dan Mossenson.

Counsel for the appellant alleged the stewards were biased in their attitudes towards Mr Celenza. This was based on previous incidents where, in the opinion of the stewards, Mr Celenza's behaviour was deemed to be unacceptable. The Tribunal found no evidence to support this claim.

After hearing from all parties, the Tribunal issued its determination on 20 February 2009, dismissing the appeal and upholding the stewards' decision to impose a fine of \$250.

## **Harness Racing**

### **Appeal No. 692 – Kyle Harper**

*In the matter of an appeal against the determination made by the RWWA Stewards of Harness Racing on 13 August 2008 imposing a suspension of two months for breach of Rule 149(2) of the Rules of Harness Racing.*

Mr Kyle Harper was the driver of 'Royden Holmes', which ran at Gloucester Park on 8 August 2008. At the conclusion of the race, the stewards opened an inquiry into Mr Harper's driving tactics.

Mr Harper agreed that his drive was not acceptable. He produced some written evidence from other drivers to the effect that the trainer had instructed his reinsmen to drive his horses forward to lead or race outside the leader and with aggression.

The stewards accepted that Mr Harper's trainer had issued such instructions. They did not accept as a defence the fact that Mr Harper drove according to those instructions.

The Stewards charged Mr Harper with an offence against Rule 149(2). Mr Harper pleaded not guilty. On 13 August 2008, the stewards suspended Mr Harper for two months based on mitigating circumstances. They took into account his relative inexperience and factors personal to him, namely he was only 18 years old and driving was his only source of income. There was also the fact that he had two previous driving offences on his record.

The appeal was heard on 28 August 2008 by one member, Mr Patrick Hogan.

The Tribunal concluded that the stewards failed to fully take into account that Mr Harper was driving according to his instructions. Although that fact did not amount to a defence as such, it should have been recognised as a mitigating factor, particularly so because Mr Harper was only 18 years of age and was relatively inexperienced. He acknowledged the error in his driving tactics and he fully cooperated with the stewards during the course of the inquiry.

The Tribunal issued its determination on 3 September 2008, dismissing the appeal against the conviction and allowing the appeal against the penalty. The penalty was reduced to one month's suspension.

#### **Appeal No. 693 Daniel William Voak**

*In the matter of an appeal against the determinations made by the RWWA Stewards of Harness Racing on 6 August 2008, imposing two six month disqualifications to be served concurrently for breach of Rule 190(2) of the Rules of Harness Racing.*

The RWWA Stewards of Harness Racing conducted an inquiry into reports they had received from analysts regarding post race urine samples taken from two horses trained by Mr Daniel William Voak. Both horses were found to contain levels of hydrocortisone in excess of the level specified in the Australian Rules of Harness Racing. As a consequence the following charges were laid by the stewards for breaches of Harness Racing Rule 190(2):

- Presenting 'Jesse Hanover' to race at the York meeting on Saturday 27 October 2007; and
- Presenting 'Park Drive' to race at the Gloucester Park meeting on Saturday 10 November 2007.

Mr Voak appealed against his convictions on the following grounds:

- A denial of natural justice for having been charged with a substance that he had no control over; and
- One of the samples was contaminated by a fly.

The matter was heard on 2 October 2008 by the Chairperson, Mr Dan Mossenson and members Mr Patrick Hogan and Mr Andrew Monisse.

The Tribunal found that nothing was presented at the hearing to cast any doubt on the test results of the sample in question.

The Tribunal also found the stewards went to great detail in explaining and justifying their findings. Their reasons and findings were not in any way challenged or discredited by any argument Mr Voak advanced.



Furthermore, the reports from the two accredited and highly experienced laboratories amounted to conclusive evidence that the rules had been breached.

The Tribunal issued its determination on 2 October 2008, dismissing the appeal.

### **Appeal No. 694 Jonathan Peter Gavin**

*In the matter of an appeal against the determination made by the RWWA Stewards of Harness Racing on 20 August 2008 imposing a six month disqualification for breach of Rule 190 of the Rules of Harness Racing.*

Mr Jonathan Peter Gavin, a licensed trainer and owner, was called before the Stewards of Harness Racing for breach of the Rules of Harness Racing. A stewards' inquiry was conducted on 20 August 2008 and Mr Gavin was charged under Rule 190 for presenting a horse which he had trained to race with excessive carbon dioxide levels in its bloodstream.

Mr Gavin informed the inquiry that he did not at least directly cause the high reading. He stated that on a daily basis he was feeding the horse some 300 grams of the alkalinising agent product, Neutradox (being a sodium bicarbonate substance), however consistent with his practice he at least did not give any of this product to the horse on race day.

Two veterinarian experts employed by RWWA, Dr Timothy Mather and Dr Peter Symons, gave evidence that the horse's carbon dioxide level could only be attributed to an artificial means that was administered to the horse on the day of the race. Mr Gavin was unable to provide the stewards with a plausible explanation as to what may have caused this.

Mr Gavin entered a guilty plea to the charge the stewards laid against him. The stewards imposed a disqualification period of six months.

Mr Gavin specified the grounds of appeal as follows:

- The severity of the penalty;
- The investigation being conducted within 24 hours of Mr Gavin undergoing major surgery.
- The chairman of the inquiry having refused to answer a question.
- Both RWWA vets gave conflicting evidence.
- That Dr Symons gave misleading evidence.

Mr Gavin readily acknowledged he had broken the rule and had entered a plea of guilty to the charge before the stewards. What was in dispute in the appeal was the manner in which the stewards dealt with Mr Gavin in relation to the penalty which was imposed.

The appeal was heard before the Tribunal on 7 October 2008 by the Chairperson, Mr Dan Mossenson and members Mr Andrew Monisse and Mr Robert Nash.

The Tribunal found there was no merit in the second ground of appeal regarding the coincidence of timing of the investigation following Mr Gavin's hospitalisation.

As to the proposition regarding the refusal by the steward who chaired the inquiry to respond to a question, the Tribunal was satisfied the inquiry was conducted in a perfectly proper manner in all aspects.

Further, the Tribunal found nothing conflicting in the evidence presented by the two veterinarians, nor did they find any evidence that Dr Symons' evidence was misleading or in any way a basis for interfering with the penalty imposed by the stewards.

The Tribunal's majority view was that the extent of the personal hardship that a disqualification would place on Mr Gavin and his family was not fully taken into account by the stewards. The reason for this may be partly due to the fact that Mr Gavin represented himself before the stewards and did not fully articulate the extent of that hardship to them.

The Tribunal issued its determination on 19 December 2008. By a decision of the majority of the members of the Tribunal, the Chairman dissenting, the appeal against the penalty was upheld. The disqualification period was reduced from six to four months.

### **Appeal No. 695 Bryce McIntosh**

*In the matter of an appeal against the determination made by the RWWA Stewards of Harness Racing on 20 August 2008 imposing a disqualification of eight months for breach of Rule 190(2) of the Rules of Harness Racing.*

Mr McIntosh was the trainer of 'Zulushar', which was presented to race at Kalgoorlie on 1 August 2008. 'Zulushar' was submitted for a pre-race blood test. The sample was analysed at the Racing Chemistry Laboratory and was reported to contain excessive carbon dioxide levels. Confirmatory analysis was received from Racing Analytical Services in Victoria. Because of the results, the stewards opened an inquiry. There was a hearing on 20 August 2008. The certificates of analysis were presented as evidence of the presence of a prohibited substance.

On 20 August 2008, the RWWA Stewards of Harness Racing disqualified Mr McIntosh for eight months for a breach of Rule 190(2) of the Rules of Harness Racing.

The grounds of appeal were as follows:

- Personal circumstances.
- A guilty plea.
- Previous cases. Stewards gave considerable weight to a previous conviction more than 15 years ago.
- Carbon dioxide levels can be caused by factors other than an illegal dose of bicarbonate.

Mr McIntosh specifically complained that the penalty imposed on him was different than that imposed on a different trainer in similar circumstances. In the case of John Peter Gavin (A30/08/694), a horse was presented with an excess carbon dioxide level but the trainer received a disqualification of six months. Mr McIntosh pointed out that in that case the trainer had a previous conviction more recent than his, but still received a disqualification of only six months.

The appeal was heard on 4 December 2008 by the Chairperson, Mr Dan Mossenson and members Mr Patrick Hogan and Mr William Chesnutt.

Mr McIntosh stated he had an honest but mistaken belief that he had not contravened any rules or regulations, his reason being that the excessive levels of carbon dioxide can be caused by factors other than an illegal dose of bicarbonate.

The Tribunal noted the stewards' decision on penalty contained no reference to the disputed matters of fact, namely whether 'Zulushar' had a higher than normal naturally occurring level and whether accidental factors could have taken it above the accepted level. This was because Mr McIntosh pleaded guilty as soon as possible, obviating the need to pursue this line of inquiry.

After hearing from all parties, the Tribunal handed its determination on 6 March 2009, dismissing the appeal.

### **Appeal No. 698 – Brian Colin Ferguson**

*In the matter of appeal against the determination made by the RWWA Stewards of Harness Racing on 30 October 2008 imposing a six month disqualification for breach of Rule 190(2) of the Rules of Harness Racing.*

Mr Ferguson was called to a stewards' inquiry on 25 September 2008 into a report received from the Racing Chemistry Centre that the pre-race blood sample taken from 'Class Mate' prior to its competing at Gloucester Park on 12 September 2008 had excessive levels of carbon dioxide in its bloodstream.

The control sample went to the Racing Analytical Services Limited laboratory whose report confirmed the original analysis result.

Veterinary evidence was presented of the significance of raised carbon dioxide levels in horses delaying the onset of fatigue resulting in a faster run time. This means that horses are capable of performing at high speeds for longer when they have alkalisating agents in their systems.

At the conclusion of the initial inquiry proceedings the matter was adjourned until 30 October 2008. Further evidence was taken which lead to a charge being made pursuant to Harness Racing Rule 190(2). Mr Ferguson was disqualified for six months.

Mr Ferguson appealed against both the conviction and the penalty and at the same time sought a stay of proceedings. The stay application was refused. In the Notice of Appeal Mr Ferguson stated his grounds as follows:

- The conviction was unfair as the stewards did not explore all avenues to enable him prove his innocence with regards to the horse 'Class Mate's' previous history.
- The disqualification was severe.
- The loss of income as a result of the disqualification.

The appeal was heard on 2 December 2008 by the Chairperson, Mr Dan Mossenson and members Ms Karen Farley and Mr William Chesnutt.

The Tribunal noted that based on the evidence before the stewards there was no alternative but to convict. The Tribunal also noted that the arguments put forward by Mr Ferguson as to the alleged unfairness of the conviction had no merit in them. Furthermore, the Tribunal concluded the length of the period of disqualification was consistent with the many decisions of the stewards and the determinations on appeal of some of those decisions by the Tribunal.

After hearing from all parties, the Tribunal issued its determination on 17 February 2009, dismissing the appeal.

### **Appeal No. 703 Kim David Young**

*In the matter of an appeal against the determination made by the RWWA Stewards of Harness Racing on 15 December 2008 imposing a six week suspension for breach of Rule 149(2) of the Rules of Harness Racing.*

Mr Kim David Young drove 'Van Helsing' at Northam on 25 November 2008. Following the running of the race the RWWA Stewards of Harness Racing conducted an inquiry into Mr Young's driving and sought an explanation for the tactics employed in the early part of the race.

Despite Mr Young's efforts to explain and justify his approach and the fact that his horse pulled up sore after the race, the stewards proceeded to lay a charge.

Mr Young pleaded not guilty to the charge and presented further argument to support his position. However, the stewards concluded that the charge was sustained and found Mr Young guilty.

Mr Young appealed against the decision, the grounds of appeal being:

'My evidence was that my horse was not travelling like he should after release point. From then on, I had to drive accordingly. He has since been found to be sore, supporting my case.'

This matter was heard on 7 January 2009 by the Chairperson, Mr Dan Mossenson.

Counsel for Mr Young produced a veterinary report dated 7 January 2009, concluding that the horse's lameness was sufficient to result in the horse not performing during the course of the race and was likely to change the horse's action and make it drift on the track.

In response to that report, counsel for the stewards explained that the on-track vet in the evening had examined the horse and, whilst acknowledging soreness to touch, gave evidence that the horse trotted up sound. Counsel also stated that the usual situation is for a horse to run away from soreness. Therefore, if soreness had contributed to the wayward running, the horse should have run outwards, not inwards.

It was further argued that it was the tactics adopted by the driver that contributed to the run. The stewards investigated the drive and had laid the charge because Mr Young had gone back in the field. It was the stewards' view that the poor drive was not as a consequence of the horse's condition, but by virtue of the choice made by the driver.

After hearing from all parties, the Tribunal issued its determination on 7 January 2009, dismissing the appeal.

### **Appeal No. 705 Mark Reed**

*In the matter of an appeal against the determination made by the RWWA Stewards of Harness Racing on 8 March 2009 imposing suspensions of 28 days and 21 days for breach of Rule 156 (2)(b) of the Rules of Harness Racing*

On 24 June 2009 the Chairperson granted leave to withdraw the appeal. The fee paid on lodgement was forfeited.

## **Appeal No. 706 Ainsley Grace Swankie**

*In the matter of an appeal against the determination made by the RWWA Stewards of Harness Racing on 5 April 2009 imposing a 21-day suspension for breach of Rule 163(1)(a) of the Rules of Harness Racing.*

On 14 April 2009 the Chairperson granted leave to withdraw the appeal. The fee paid on lodgement was forfeited.

## **Thoroughbred**

### **Appeal No. 687 Clifford Lindsay Smith**

*In the matter of an appeal against the determination made by the RWWA Stewards of Thoroughbred Racing on 18 May 2008, imposing a \$500 fine for breach of Rule 143 of the Australian Rules of Thoroughbred Racing.*

Mr Clifford Lindsay Smith is a licensed trainer of thoroughbreds. His horse, 'Power Torque', was disqualified by the stewards after a short inquiry following a race which took place in Kalgoorlie on 25 April 2008. Following the decision to disqualify the horse, the stewards panel addressed the question of the gear which had been involved. The Clerk of Scales had recorded on weighing out there were two pieces of packing, but one piece subsequently went missing.

The inquiry was adjourned and resumed on 11 May 2008. Of the original stewards' panel, only Mr Biggs was present on the resumption. Mr Smith pleaded not guilty to the charge. Discussion took place regarding the circumstances surrounding the saddle and gear after weighing out. A second saddle had been handled by Mr Smith for a horse which was trialled. Questioning as to whether any of the gear became mixed ensued. The inquiry was adjourned until 18 May 2008 when Mr Biggs announced a finding of fault.

Mr Smith lodged an appeal with the Tribunal on the following grounds:

- The decision to convict was void on the basis that it was made by one steward;
- The decision to convict "was manifestly against the weight of the evidence, was unsafe and unsatisfactory, was not reasonably open to the stewards on the evidence before them."; and
- The appellant should have been allowed to re-open his case to prove the weight of the saddle cloth.

The appeal was heard on 28 July 2008 by the Chairperson, Mr Dan Mossenson.

On the issue that the decision to convict was void on the basis that it was made by one steward, the Tribunal noted that on the basis that Mr Biggs was present at the race meeting and had participated in the discussion at inquiry level following the running of the race, he had appropriate authority to continue through to finality on his own.

The Tribunal also noted that all of the elements identified in the reasons for convicting combined to lead to the conclusion that the discrepancy in the weight following the race compared to prior to the race was caused, or contributed to, by Mr Smith.

Furthermore, there was no argument or dispute regarding the accuracy of the scales. However, there was some attempt by Mr Smith to demonstrate that the Clerk of Scales had not directly observed precisely what was the total weight of the equipment.

The Tribunal was satisfied that there was no evidence to support Mr Smith's argument that there had been a failure in procedural fairness regarding the refusal to allow the case to be re-opened.

After hearing from all parties, the Tribunal handed its Determination on 4 November 2008, dismissing the appeal.

### **Appeal No. 689 - Willie Arnold**

*In the matter of an appeal by Willie Arnold against the determination made by the RWWA Stewards of Thoroughbred Racing on 6 June 2008, imposing an eight week suspension for breach of Rule 135(b) of the Australian Rules of Thoroughbred Racing.*

Following his ride at Kalgoorlie Racecourse on 1 June 2008, jockey Willie Arnold was suspended from riding by the RWWA Stewards of Thoroughbred Racing for a period of eight weeks, due to his failure to take all reasonable and permissible measures in breach of Rule 135(b) of the Australian Rules of Thoroughbred Racing. The charges were:

‘..to shift to the outside of ‘China Visit’ was certainly reasonable and also permissible. In fact, you have shifted your mount a lot further inwards than what you had to shift outwards. We believe that you were in a position at the 200m where your mount had the opportunity to be tested and should have been tested but you have failed to do this by shifting inwards behind the wall of horses. We are of the opinion that your riding at that stage was not a simple error in judgement but to be completely unreasonable and the reason ‘Nad Al Sheba’ not obtaining its best possible placing in the field.’

The grounds of appeal were:

- The stewards erred in convicting the appellant of the offence;
- The stewards erred in their interpretation of the phrase ‘reasonable and permissible’ in Rule 135 (b);
- The stewards’ decision to convict was not reasonably open to them on the evidence; and
- The penalty was excessive by not adequately reflecting the lack of intention to finish in the best possible position and by being similar to penalties imposed where riders had deliberately cost their mounts the best prospects in the race.

The appeal was heard on 14 July 2008 by the Chairperson, Mr Dan Mossenson.

Counsel for RWWA stated that Rule 135(b) does not necessarily require intention on the part of a rider. Active carelessness or negligence on the part of a rider does not preclude the offence from being made out. The incompetence displayed by Mr Arnold in the ride in question was evident from viewing the video of the race. After viewing the footage, the Tribunal reached the same conclusion.

The Tribunal was satisfied the stewards had not been in error in their evaluation of the ride, the interpretation and application of the rule or any aspect of reaching the conclusion to convict.

The Tribunal was also satisfied that the penalty meted out to Mr Arnold was within the proper discretionary range.

After hearing from all parties, the Tribunal issued its determination on 14 July 2008, dismissing the appeal.

### **Appeal No. 690 – William Andrew Pike**

*In the matter of an appeal against the determination made by the RWWA Stewards of Thoroughbred Racing on 18 June 2008, imposing an 18 day suspension for breach of Rule 137 (a) of the Australian Rules of Thoroughbred Racing.*

Jockeys William Andrew Pike and Joshua Brown were called to a stewards' inquiry following the race at Belmont on 18 June 2008. At the outset of the inquiry the Chairman of the Stewards' panel explained to both jockeys that the inquiry related to an incident that occurred shortly after straightening until about the 150 metre mark. After showing the video the chairman expressed his concern that the film reflected the fact that Mr Pike continued to ride out and make contact with Mr Brown on numerous occasions and seemed to unbalance him.

Later in the inquiry, Mr Brown gave evidence that he was bumped three or four times from the 400 metre mark to the 200 metre mark. As a consequence, Mr Pike was charged with careless riding under Australian Racing Rule 137 (a). He pleaded not guilty and asserted it was not a careless action.

The stewards then heard further evidence relating to the penalty, after they clarified that the degree of interference was at the lower end of the scale. Stewards also took Mr Pike's record into consideration and handed down an 18 day suspension.

Mr Pike was given leave to substitute the following grounds of appeal:

- The Stewards erred in convicting the appellant, the conviction not being reasonably open to them on the evidence.
- The penalty imposed by the stewards was manifestly excessive in all the circumstances of the case.

The appeal was heard on 4 July 2008 by the Chairperson, Mr Dan Mossenson.

Counsel for Mr Pike went through the transcript of the proceedings to support his argument in relation to the amended grounds. The Tribunal was not persuaded that there was any error on the part of the stewards in reaching their decision to convict.

The Tribunal was also satisfied the penalty imposed on Mr Pike was appropriate, bearing in mind the quality of the ride in question.

After hearing from all parties, the Tribunal issued its determination on 4 July 2008, dismissing the appeal.

## **Appeal No. 696 – Clint Kenneth Harvey**

*In the matter of an appeal against the determination made by the RWWA Stewards of Thoroughbred Racing on 24 September 2008, imposing a 21 day suspension for breach of Rule 137(a) of the Australian Rules of Thoroughbred Racing.*

Mr Clint Harvey, who rode at Belmont Park on 24 September 2008, was called to a stewards' inquiry following the running of the race. The stewards investigated an incident which occurred on or close to the finishing line where another jockey's mount was tightened and brushed the rail.

After a brief exchange with the two riders involved, the stewards charged Mr Harvey for careless riding under Rule 137(a).

The inquiry proceeded with discussion regarding the condition of the horse. The film of the race was shown. The stewards heard some evidence from the veterinary surgeon who was at the course. Mr Harvey was found guilty of the offence although the stewards, in the course of the hearing, failed to ask him how he pleaded after the charge was laid. The stewards then addressed penalty. They concluded that both the carelessness and amount of interference were mid-range. Mr Harvey's record was also taken into account. The stewards imposed a 21 day suspension.

The following amended grounds of appeal alleged the Stewards erred by:

- Failing to lay a charge against Mr Harvey.
- Failing to particularise the charge or the relevant provision.
- Failing to take a plea.
- Failing to invite or entertain submissions on the question of penalty.
- Failing to consider the defence proffered by Mr Harvey at the hearing.
- Failing to give any adequate reasons.
- Imposing a penalty that was unreasonable in the circumstances.

The appeal was heard on 3 October 2008 by the Chairperson, Mr Dan Mossenson.

After reading the transcripts of the inquiry, the Tribunal was satisfied the charge was properly laid. It contained adequate particulars and was clearly accompanied by the reading of the relevant rule. Further, the transcript revealed that Mr Harvey acknowledged he understood the charge when asked by the chairman of the stewards' inquiry.

The Tribunal was also satisfied that overall the proceedings were fair and did not jeopardise Mr Harvey's rights. There was no failure to invite submissions from Mr Harvey on the question of conviction. After the charge was laid and the conviction recorded, Mr Harvey was specifically asked by the chairman of the inquiry if he had anything to add. Mr Harvey then advanced some propositions and answered some queries.

The Tribunal also found that sufficient information by way of explanation was contained in the reasons for Mr Harvey to glean why the conclusion was reached and what the fault was. Although short on detail, the reasons enunciated sufficiently to enable one to evaluate them. It was apparent on the face of the reasons why the stewards arrived at their conclusions.

After hearing from all parties, the Tribunal issued its determination on 3 October 2008, dismissing the appeal.



## **Appeal No. 697 – Dean Ronald Nazzari**

*In the matter of an appeal against the determination made by the RWWA Stewards of Thoroughbred Racing on 24 October 2008 imposing a six month disqualification for breach of Rule 178 of the Rules of Thoroughbred Racing.*

Mr Nazzari was called to an inquiry conducted by the RWWA Stewards of Thoroughbred Racing on 24 October 2008 in respect to a report received from the Racing Chemistry Laboratory that the pre-race blood sample taken from 'Glastonbury Tor' prior to competing at Northam on 15 October 2008 had excessive levels of carbon dioxide in its bloodstream. A confirmatory analysis was received from the Racing Analytical Services Ltd Laboratory.

When stewards advised Mr Nazzari of the irregularity of the sample the trainer was at a loss to explain the high readings. When questioned regarding the feeding regime he identified various additives given to 'Glastonbury Tor.' RWWA veterinarian Dr Symons said this would certainly contribute to but could not completely explain the excessive level.

The print-outs of the last two pre-race samples of 'Glastonbury Tor' were produced at the hearing by stewards. Although high levels had been recorded, both results were below the threshold. The list of print swabs which was produced showed numerous much lower readings. Mr Nazzari did not refute the findings of the analysts but refuted that he had done something knowingly outside the law. Stewards charged Mr Nazzari under Australian Rule of Racing 178.

Mr Nazzari pleaded guilty to the charge. When it came to addressing penalty, Mr Nazzari gave evidence that he had been a trainer for approximately two and a half years and that he had never previously been before the stewards. There was no other source of work available to him as he had been seriously injured in a car accident. Mr Nazzari was awaiting a medical clearance to return to work but the prospect of this was unlikely. The only other potential source of income was from a small accommodation facility in Kalgoorlie. On his training fees Mr Nazzari roughly broke even and managed financially due to his accident insurance policy. He was a hobby trainer. Mr Nazzari had five children who were mainly dependent on him.

The matter was heard before the Tribunal on 18 December 2008 by the Chairperson, Mr Dan Mossenson and members Ms Karen Farley and Mr John Prior.

At the hearing of the appeal Mr Nazzari argued his own cause and amongst other things claimed:

- He was harshly penalised.
- The horse was a chronic sufferer of colic and was experiencing urinary problems, for which he administered treatments.
- He had called both Mr Lewis and Dr Symons regarding his feeding regime.
- Factors such as stress, seasonal change and a combination of alkalising agents can affect carbon dioxide levels.
- Higher readings were caused due to the fact the horse had travelled from Kalgoorlie to Northam.
- The stewards failed to make appropriate allowance for the mitigating circumstances.

The Tribunal concluded that based on the evidence before them, stewards were justified in imposing the penalty which they did.

Mr Nazzari admitted he failed to obtain professional advice regarding this horse, its disposition and the substances he was administering. In view of that answer, the Tribunal concluded the second proposition put forward was not a valid or helpful argument.

As to the third argument, stewards were entitled, on the evidence before them, to conclude any conversations with or queries put by Mr Nazzari to the two officials were at best oblique and insufficiently direct for any feedback which he may or may not have received to have had any impact or consequence on penalty.

The Tribunal found that the evidence presented by Mr Nazzari to stewards and the Tribunal did not support his proposition that a combination of stress, seasonal change and several alkalising agents could cause the levels in question to be reached.

The Tribunal also found that stewards did not inappropriately treat the mitigating factors, including the fact this was Mr Nazzari's first offence, his admission of guilt, the cooperation he displayed and the lack of both support and financial gain.

In the course of the appeal hearing Mr Nazzari produced a report from his psychologist. The report revealed that Mr Nazzari suffers from depression, anxiety and post traumatic stress disorder as a direct result of the motor vehicle accident. The report stated Mr Nazzari's only interest was training race horses. The psychologist was of the opinion that the six months disqualification period would have a negative impact upon the patient's psychological wellbeing.

The Tribunal issued its determination on 23 January 2009, upholding the appeal and reducing the disqualification period, from six to four months.

### **Appeal No. 699 Daniel Jurgen Staeck**

*In the matter of an appeal against the determination made by the RWWA Stewards of Thoroughbred Racing on 17 November 2008 imposing a two month suspension from riding for breach of Rule 137(a) of the Australian Rules of Racing.*

Mr Daniel Jurgen Staeck is a jockey who was involved in a riding incident near the 200 metre mark at Ascot on 15 November 2008. Both Mr Staeck and the other rider involved, Mr P Knuckey, were called before the RWWA stewards.

Mr Staeck stated to stewards that Mr Knuckey's horse was travelling quite well and was trying to improve its position but his own horse became unbalanced as they were approaching the 200 metre mark and continued to ride and hold his line. Further, Mr Staeck explained that Mr Knuckey bumped him from behind which turned his hindquarters out. Mr Staeck claimed that when Mr Knuckey's horse bumped him, his saddle shifted to the side.

At the continuation of the hearing on 17 November 2008, stewards proceeded to charge Mr Staeck with improper riding in breach of Australian Racing Rule 137(a). Mr Staek pleaded not guilty. The Stewards concluded a period of two months suspension should apply. Mr Staeck appealed against his conviction on the ground of insufficient evidence.

The application was heard on 15 December 2008 by the Chairperson, Mr Dan Mossenson.

Counsel for Mr Staeck argued that the stewards had fallen into error in their approach to the handling of the matter as Mr Staeck was entitled to hold his line and maintain his position in the race. It was claimed that Mr Staeck did not ride inwards but was entitled to maintain his position because he was slightly ahead. According to this argument, it was Mr Knuckey who dangerously shifted position and moved when he had no clear passage.

Senior counsel for stewards argued the matter by reference to the introductory provision in the Rule which contains the phrase 'in the opinion of the stewards'. The proper application of Rule 137(a) requires any appellant involved in challenging a riding conviction to satisfy the Tribunal that the decision of the stewards under appeal was so unreasonable that it could not have been made by any stewards acting reasonably based on the information which was before the stewards in question.

The argument from the Counsel for the stewards and observations which he made of the riding tactics during the course of showing the head on and rear view of the incident convinced the Tribunal that the stewards had correctly evaluated Mr Staeck's ride versus Mr Knuckey's ride.

After hearing from all parties, the Tribunal issued its determination on 15 December 2008, dismissed the appeal.

### **Appeal No. 700 – Maki Morita**

*In the matter of an appeal against the determination made by the RWWA Stewards of Thoroughbred Racing on 19 November 2008 imposing a 12 day suspension for breach of Rule 137(d) of the RWWA Rules of Thoroughbred Racing.*

Mr Maki Morita is an apprentice jockey who rode in his first race in Western Australia at Pinjarra on 19 November 2008. The RWWA Stewards conducted an inquiry as a consequence of the way Mr Morita rode.

At the conclusion of the inquiry, Stewards laid the following charge under Rule 137(d):

'We allege that in Race 9 today when you rode 'Eternally Lucky', that after obtaining the lead you did reduce the speed of your mount leaving the 1000m resulting in Shaun O'Donnell on 'Raise A Light', which was following being restrained and Brad Parnham on 'Extra Grand' being restrained and checked at the 900m. So that's the charge of slowing the pace of your mount causing the interference behind those two runners'.

Mr Morita pleaded not guilty. The stewards convicted him and imposed a 12 day suspension.

The amended grounds of appeal were:

- Stewards erred in preferring a charge that was not known under the Rules of Racing; there being no prohibition on slowing the pace of a race provided that it was not slowed "excessively".
- Stewards erred in dealing with the charge on the basis that proof of the offence was complete once a rider slowed his mount and thereby caused inconvenience or interference to other riders; when the rule specifically requires that any slowing of the race be "excessive" before an offence is committed.
- The finding of guilt was contrary to the weight of the evidence and was not reasonably open to the Stewards given their finding that the appellant did not restrain his mount 'overly' or 'excessively' nor excessively slow the pace of the race.
- Stewards failed to take into account or adequately take into account the fact that the race slowed in part as a result of the horse relaxing itself of its own volition rather than as a result of the actions or the intention of the rider.

- The penalty imposed by stewards was excessive in all the circumstances of the case, in particular:
  - The appellant's age and record.
  - The fact that it was the appellant's first ride in WA.
  - The fact that the pace of the race was slowed only for a few strides.
  - The low level of interference which resulted.

The appeal was heard on 2 December 2008 by the Chairperson, Mr Dan Mossenson.

One of the issues that was discussed in the course of the appeal was whether the word 'excessively' in the sub-rule under consideration qualifies only the word 'slows' only or whether it also qualifies the other two key words 'reduces' and 'checks' The appellant asserted that there is no offence of causing interference simply by slowing the pace of a race. For an offence to be created under this part of the rule, a jockey must be shown to have 'excessively' slowed the speed of his horse.

In the Tribunal's opinion in the context of Rule 137(d), the word 'excessively' is only intended to apply to the first of the three offences. Each of the three different concepts of slowing, reducing and checking in this rule involve different degrees, qualities or types of actions taken by a rider.

The Tribunal noted that it was the responsibility of the stewards to make it clear to the jockey precisely which offence he was charged with. In this case the particulars that were supplied rather than clarifying precisely what the offence was actually confused matters by using terminology which created uncertainty.

The Tribunal agreed that the rule requires slowing of a race to be excessive for an offence to be committed yet stewards dealt with this matter on the basis that it was sufficient only for a rider to slow his mount and cause inconvenience or interference.

After hearing from all parties, the Tribunal issued its determination on 15 December 2008, upholding the appeal and the conviction was quashed.

# Significant Issues and Trends

## Changes in Written Law

### Changes to Acts

There were no amendments to the [Racing Penalties \(Appeals\) Act 1990](#) for the year under review.

### Changes to Regulations

The *Racing Penalties (Appeals) Amendment Regulations 2008* provided new fees and charges under Section 4 of the [Racing Penalties \(Appeals\) Regulations 1991](#).

The new fees and charges came into effect on 1 January 2009:

- Application for leave to appeal relating to greyhound racing - \$125
- Application for leave to appeal relating to other appeals - \$310
- Notice of appeal relating to greyhound racing - \$125
- Notice of appeal relating to other appeals - \$310
- Stay of proceedings - \$65

## Likely Developments and Forecast Results of Operations

It is expected that the workload of the Racing Penalties Appeal Tribunal for 2009/2010 will remain steady. Indications are that the Tribunal is adequately resourced to efficiently carry out its functions.

### New Racing Penalties Appeal Tribunal website

Information regarding the Tribunal is currently hosted on the Department of Racing, Gaming and Liquor's website. However, it is expected that this will soon change. The Tribunal is currently developing its own website and it is anticipated this will be launched in early 2010.

## Disclosures and Legal Compliance

This part of the annual report provides the means by which Parliament and other interested parties can be informed, not only of what the Racing Penalties Appeal Tribunal has achieved during the financial year, but also of the reasons behind those achievements.

This part of the report includes the Tribunal's Financial Statements and accompanying notes, detailed information on the Tribunal's Key Performance Indicators and other financial disclosures.

## Financial Statements

The aim of these Financial Statements is to present to Parliament details of revenue and expenditure for the Tribunal.

This part of the Annual Report contains:

- Financial Statements;
- Accompanying Notes; and
- Certification of the Financial Statements.

## Certification of Financial Statements

*For The Year Ended 30 June 2009*

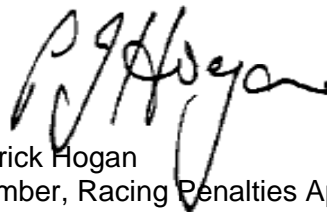
The accompanying financial statements of the Racing Penalties Appeal Tribunal of Western Australia have been prepared in compliance with the provisions of the [Financial Management Act 2006](#) from proper accounts and records to present fairly the financial transactions for the financial year ending 30 June 2009 and the financial position as at 30 June 2009.

At the date of signing, we are not aware of any circumstances which would render the particulars included in the financial statements misleading or inaccurate.



Terry Ng  
Chief Finance Officer

11 September 2009



Patrick Hogan  
Member, Racing Penalties Appeal  
Tribunal of Western Australia

14 September 2009



Dan Mossenson  
Chairperson, Racing Penalties Appeal  
Tribunal of Western Australia

12 September 2009

# Racing Penalties Appeal Tribunal

## Income Statement

for the year ended 30 June 2009

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	Note	2009 \$	2008 \$
<b>COST OF SERVICES</b>			
<b>Expenses</b>			
Tribunal members' expenses	13	67,226	28,322
Superannuation	13	6,050	2,394
Supplies and services		<u>177,965</u>	<u>153,149</u>
<b>Total cost of services</b>		<u>251,241</u>	<u>183,865</u>
<b>Income</b>			
<b>Revenue</b>			
Operating income	4	225,515	270,645
Interest revenue	5	<u>9,818</u>	<u>11,702</u>
<b>Total revenue</b>		<u>235,333</u>	<u>282,347</u>
<b>NET COST OF SERVICES</b>	10	<u>15,908</u>	<u>(98,482)</u>
<b>SURPLUS/(DEFICIT) FOR THE PERIOD</b>		<u>(15,908)</u>	<u>98,482</u>

The Income Statement should be read in conjunction with the accompanying notes.

# Racing Penalties Appeal Tribunal

## Balance Sheet

as at 30 June 2009

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	Note	2009 \$	2008 \$
<b>ASSETS</b>			
<b>Current Assets</b>			
Cash and cash equivalents	6	95,446	110,004
Receivables	7	<u>1,010</u>	<u>3,770</u>
<b>Total Current Assets</b>		<u>96,456</u>	<u>113,774</u>
<b>TOTAL ASSETS</b>		<u>96,456</u>	<u>113,774</u>
<b>LIABILITIES</b>			
<b>Current Liabilities</b>			
Payables	8	<u>900</u>	<u>2,310</u>
<b>Total Current Liabilities</b>		<u>900</u>	<u>2,310</u>
<b>Total Liabilities</b>		<u>900</u>	<u>2,310</u>
<b>NET ASSETS</b>		<u>95,556</u>	<u>111,464</u>
<b>EQUITY</b>			
Accumulated surplus/(deficiency)	9	<u>95,556</u>	<u>111,464</u>
<b>TOTAL EQUITY</b>		<u>95,556</u>	<u>111,464</u>

The Balance Sheet should be read in conjunction with the accompanying notes.



**Racing Penalties Appeal Tribunal**  
**Statement of Changes in Equity**  
**for the year ended 30 June 2009**

	Note	2009 \$	2008 \$
<b>Balance of equity at start of period</b>	9	<u>111,464</u>	<u>12,982</u>
<b>ACCUMULATED SURPLUS (RETAINED EARNINGS)</b>	9		
Balance at start of period		111,464	12,982
Net adjustment on transition to AIFRS		<u>0</u>	<u>0</u>
Restated balance at start of period		111,464	12,982
Surplus/(deficit) or profit/(loss) for the period		(15,908)	98,482
Balance at end of period		<u>95,556</u>	<u>111,464</u>
<b>Balance of equity at end of period</b>		<u><u>95,556</u></u>	<u><u>111,464</u></u>
Total income and expense for the period <sup>(a)</sup>		<u>(15,908)</u>	<u>98,482</u>

(a) The aggregate net amount attributable to each category of equity is: deficit \$15,908 (2008: surplus \$98,482).

The Statement of Changes in Equity should be read in conjunction with the accompanying notes.

**Racing Penalties Appeal Tribunal**  
**Cash Flow Statement**  
**for the year ended 30 June 2009**

---

	Note	2009 \$	2008 \$
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
<b>Payments</b>			
Tribunal members' expenses		(68,344)	(30,590)
Superannuation		(6,151)	(3,760)
Supplies and services		(177,060)	(156,134)
GST paid on purchases		(2,908)	(730)
GST payments to taxation authority		(20,636)	0
<b>Receipts</b>			
Receipts from customers		225,515	271,793
Interest received		11,567	9,025
GST receipts on sales		21,936	0
GST receipts from taxation authority		1,523	959
<b>Net cash provided by/(used in) operating activities</b>	10	<u>(14,558)</u>	<u>90,563</u>
<b>Net increase/(decrease) in cash and cash equivalents</b>		(14,558)	90,563
Cash and cash equivalents at the beginning of period		110,004	19,441
<b>CASH AND CASH EQUIVALENTS AT THE END OF PERIOD</b>	10	<u><u>95,446</u></u>	<u><u>110,004</u></u>

The Cash Flow Statement should be read in conjunction with the accompanying notes.

**Racing Penalties Appeal Tribunal  
Notes to the Financial Statements  
for the year ended 30 June 2009**

---

**1. Australian equivalents to International Financial Reporting Standards**

**General**

The Tribunal's financial statements for the year ended 30 June 2009 have been prepared in accordance with Australian equivalents to International Financial Reporting Standards (AIFRS), which comprise a Framework for the Preparation and Presentation of Financial Statements (the Framework) and Australian Accounting Standards (including the Australian Accounting Interpretations).

In preparing these financial statements the Tribunal has adopted, where relevant to its operations, new and revised Standards and Interpretations from their operative dates as issued by the AASB and formerly the Urgent Issues Group (UIG).

**Early adoption of standards**

The Tribunal cannot early adopt an Australian Accounting Standard or Australian Accounting Interpretation unless specifically permitted by TI 1101 'Application of Australian Accounting Standards and Other Pronouncements'. No Standards and Interpretations that have been issued or amended but are not yet effective have been early adopted by the Tribunal for the annual reporting period ended 30 June 2009.

**2. Summary of significant accounting policies**

**(a) General Statement**

The financial statements constitute a general purpose financial report which has been prepared in accordance with the Australian Accounting Standards, the Framework, Statements of Accounting Concepts and other authoritative pronouncements of the Australian Accounting Standards Board as applied by the Treasurer's instructions. Several of these are modified by the Treasurer's instructions to vary application, disclosure, format and wording.

The Financial Management Act and the Treasurer's instructions are legislative provisions governing the preparation of financial statements and take precedence over the Accounting Standards, the Framework, Statements of Accounting Concepts and other authoritative pronouncements of the Australian Accounting Standards Board.

Where modification is required and has a material or significant financial effect upon the reported results, details of that modification and the resulting financial effect are disclosed in the notes to the financial statements.

**(b) Basis of Preparation**

The financial statements have been prepared on the accrual basis of accounting using the historical cost convention.

The accounting policies adopted in the preparation of the financial statements have been consistently applied throughout all periods presented unless otherwise stated.

The financial statements are presented in Australian dollars and all values are rounded to the nearest dollar.

**(c) Reporting Entity**

The reporting entity comprises the Tribunal only.

**(d) Income**

***Revenue recognition***

Revenue is measured at the fair value of consideration received or receivable. Operating income mainly comprises funding from the Racing and Wagering Western Australia, appeal fees and transcription fees. This income is received pursuant to the Racing Penalties (Appeals) Act 1990.

***Interest***

Revenue is recognised as the interest accrues.

**(e) Services Performed for the Racing Penalties Appeal Tribunal by the Department of Racing, Gaming and Liquor**

The Department of Racing, Gaming and Liquor provides support to the Racing Penalties Appeal Tribunal to enable the Tribunal to carry out its objectives. This support comprises most of the amount recorded in the Income Statement under 'Supplies and services'. These expenses are in the nature of salaries and administration costs in providing these support services.

Recoups from the Tribunal to the Department of Racing, Gaming and Liquor are made on a monthly basis under a net appropriation agreement.

**(f) Financial Instruments**

In addition to cash, the Tribunal has two categories of financial instrument:

- \* Receivables; and
- \* Financial liabilities measured at amortised cost.

These have been disaggregated into the following classes:

**Financial Assets**

- \* Cash and cash equivalents
- \* Receivables

**Financial Liabilities**

- \* Payables

Initial recognition and measurement of financial instruments is at fair value which normally equates to the transaction cost or the face value. Subsequent measurement is at amortised cost using the effective interest method.

The fair value of short-term receivables and payables is the transaction cost or the face value because there is no interest rate applicable and subsequent measurement is not required as the effect of discounting is not material.

**(g) Cash and Cash Equivalents**

For the purpose of the Cash Flow Statement, cash and cash equivalent assets comprise cash on hand.

**(h) Receivables**

Receivables are recognised and carried at original invoice amount less an allowance for any uncollectible amounts (i.e. impairment). The collectability of receivables is reviewed on an ongoing basis and any receivables identified as uncollectible are written-off against the allowance account. The allowance for uncollectible amounts (doubtful debts) is raised when there is objective evidence that the Tribunal will not be able to collect the debts. The carrying amount is equivalent to fair value as it is due for settlement within 30 days.

**(i) Payables**

Payables are recognised at the amounts payable when the Tribunal becomes obliged to make future payments as a result of a purchase of assets or services. The carrying amount is equivalent to fair value, as they are generally settled within 30 days.

**(j) Employee Benefits**

*Annual and Long Service Leave*

The Tribunal does not employ staff. The Tribunal utilises the staff and facilities of the Department of Racing, Gaming and Liquor. The cost of the services provided by the Department of Racing, Gaming and Liquor is recouped from the Tribunal as a service fee. Accordingly, provisions have not been made for annual and long service leave.

*Superannuation*

Tribunal members commencing employment prior to 16 April 2007 who were not members of either the Pension or the GSS Schemes became non-contributory members of the West State Superannuation Scheme (WSS). Tribunal members commencing employment on or after 16 April 2007 became members of the GESB Super Scheme (GESBS). Both of these schemes are accumulation schemes. The Tribunal makes concurrent contributions to GESB on behalf of employees in compliance with the Commonwealth Government's *Superannuation Guarantee (Administration) Act 1992*. These contributions extinguish the liability for superannuation charges in respect of the WSS and GESBS Schemes.

The note disclosure required by paragraph 121 of AASB 119 (being the employer's share of the difference between employees' accrued superannuation benefits and the attributable net market value of plan assets) has not been provided. State scheme deficiencies are recognised by the State in its whole of government reporting. The GESB's records are not structured to provide the information for the Tribunal. Accordingly, deriving the information for the Tribunal is impractical under current arrangements, and thus any benefits thereof would be exceeded by the cost of obtaining the information.

**(k) Comparative Figures**

Comparative figures are, where appropriate, reclassified to be comparable with the figures presented in the current financial year.

**3. Disclosure of changes in accounting policy and estimates**

**Initial application of an Australian Accounting Standard**

The Tribunal has applied the following Australian Accounting Standards and Australian Accounting Interpretations effective for annual reporting periods beginning on or after 1 July 2008 that impacted on the Tribunal:

Review of AAS 27 'Financial Reporting by Local Governments', AAS 29 'Financial Reporting by Government Departments and AAS 31 'Financial Reporting by Governments'. The AASB has made the following pronouncements from its short term review of AAS 27, AAS 29 and AAS 31:

AASB 1004 'Contributions';

AASB 1050 'Administered Items';

AASB 1051 'Land Under Roads';

AASB 1052 'Disaggregated Disclosures';

AASB 2007-9 'Amendments to Australian Accounting Standards arising from the review of AASs 27, 29 and 31 [AASB 3, AASB 5, AASB 8, AASB 101, AASB 114, AASB 116, AASB 127 & AASB 137]; and

Interpretation 1038 'Contributions by Owners Made to Wholly-Owned Public Sector Entities'.

The existing requirements in AAS 27, AAS 29 and AAS 31 have been transferred to the above new and revised topic-based Standards and Interpretation. These requirements remain substantively unchanged. AASB 1050, AASB 1051 and AASB 1052 do not apply to Statutory Authorities. The other Standards and Interpretation make some modifications to disclosures and provide additional guidance, otherwise there is no financial impact.

### Future impact of Australian Accounting Standards not yet operative

The Tribunal cannot early adopt an Australian Accounting Standard or Australian Accounting Interpretation unless specifically permitted by TI 1101 'Application of Australian Accounting Standards and Other Pronouncements'. Consequently, the Tribunal has not applied early the following Australian Accounting Standards and Australian Accounting Interpretations that have been issued and which may impact the Tribunal but are not yet effective. Where applicable, the Tribunal plans to apply these Standards and Interpretations from their application date:

Title	Operative for reporting periods beginning on/after
AASB 101 'Presentation of Financial Statements' (September 2007). This Standard has been revised and will change the structure of the financial statements. These changes will require that owner changes in equity are presented separately from non-owner changes in equity. The Tribunal does not expect any financial impact when the Standard is first applied.	1 January 2009
AASB 2008-13 'Amendments to Australian Accounting Standards arising from AASB Interpretation 17 - Distributions of Non-cash Assets to Owners [AASB 5 & AASB 110]. This Standard amends AASB 5 'Non-current Assets Held for Sale and Discontinued Operations' in respect of the classification, presentation and measurement of non-current assets held for distribution to owners in their capacity as owners. This may impact on the presentation and classification of Crown land held by the Tribunal where the Crown land is to be sold by the Department of Regional Development and Lands (formerly Department for Planning and Infrastructure). The Tribunal does not expect any financial impact when the Standard is first applied prospectively.	1 July 2009
AASB 2009-2 'Amendments to Australian Accounting Standards - Improving Disclosures about Financial Instruments [AASB 4, AASB 7, AASB 1023 & AASB 1038]'. This Standard amends AASB 7 and will require enhanced disclosures about fair value measurements and liquidity risk with respect to financial instruments. The Tribunal does not expect any financial impact when the Standard is first applied.	1 January 2009

	2009 \$	2008 \$
<b>4. Operating income</b>		
Fees and charges	6,415	4,985
Funding from Racing and Wagering Western Australia	<u>219,100</u>	<u>265,660</u>
	<u>225,515</u>	<u>270,645</u>
<b>5. Interest revenue</b>		
Interest revenue		
Commonwealth Bank of Australia	<u>9,818</u>	<u>11,702</u>
<b>6. Cash and cash equivalents</b>		
Cash and cash equivalents are represented by funds held at the Commonwealth Bank of Australia	<u>95,446</u>	<u>110,004</u>

	2009	2008
	\$	\$
<b>7. Receivables</b>		
Prepayment	0	1,091
Interest receivable	927	2,677
GST receivable	83	2
	<u>1,010</u>	<u>3,770</u>
Reconciliation of changes in the allowance for impairment of receivables:		
Balance at start of year	0	0
Doubtful debts expense recognised in the Income Statement	0	0
Amounts written off during the year	0	0
Amount recovered during the year	0	0
Balance at end of year	<u>0</u>	<u>0</u>
The Tribunal does not hold any collateral as security or other credit enhancements relating to receivables.		

<b>8. Payables</b>		
Accrued expenses	900	2,310
	<u>900</u>	<u>2,310</u>

<b>9. Equity</b>		
Equity represents the residual interest in the net assets of the Tribunal. The Government holds the equity interest in the Tribunal on behalf of the community.		
<b>Accumulated surplus/(deficit)</b>		
Balance at start of year	111,464	12,982
Result for the period	(15,908)	98,482
Income and expense recognised directly to equity	0	0
Balance at end of year	<u>95,556</u>	<u>111,464</u>

## 10. Notes to the Cash Flow Statement

### Reconciliation of cash

Cash and cash equivalents	95,446	110,004
	<u>95,446</u>	<u>110,004</u>

### Reconciliation of net cost of services to net cash flows provided by/(used in) operating activities

Net cost of services	(15,908)	98,482
(Increase)/decrease in assets:		
Receivables	2,841	(2,889)
Increase/(decrease) in liabilities:		
Payables	(1,410)	(5,273)
Net GST receipts/(payments)	(85)	230
Change in GST in receivables/payables	4	13
Net cash provided by/(used in) operating activities	<u>(14,558)</u>	<u>90,563</u>

At the balance sheet date, the Tribunal had fully drawn on all financial facilities, details of which are disclosed in the financial statements.

## 11. Financial instruments

### (a) Financial Risk Management Objectives and Policies

Financial instruments held by the Tribunal are cash and cash equivalents, receivables, and payables. The Tribunal has limited exposure to financial risks. The Tribunal's overall risk management program focuses on managing the risks identified below.

#### *Credit risk*

Credit risk arises when there is the possibility of the Tribunal's receivables defaulting on their contractual obligations resulting in financial loss to the Tribunal.

The maximum exposure to credit risk at balance sheet date in relation to each class of recognised financial assets is the gross carrying amount of those assets inclusive of any provisions for impairment as shown in the table at Note 11(c) 'Financial Instruments Disclosures' and Note 7 'Receivables'.

Credit risk associated with the Tribunal's financial assets is minimal. For receivables other than government, the Tribunal trades only with recognised, creditworthy third parties. The Tribunal has policies in place to ensure that sales of products and services are made to customers with an appropriate credit history. In addition, receivable balances are monitored on an ongoing basis with the result that the Tribunal's exposure to bad debts is minimal. At the balance sheet date there were no significant concentrations of credit risk.

Allowance for impairment of financial assets is calculated based on objective evidence such as observed data indicating changes in client credit ratings. For financial assets that are either past due or impaired, refer to at Note 11(c) 'Financial Instruments Disclosures'.

#### *Liquidity risk*

Liquidity risk arises when the Tribunal is unable to meet its financial obligations as they fall due. The Tribunal is exposed to liquidity risk through its trading in the normal course of business.

The Tribunal has appropriate procedures to manage cash flows by monitoring forecast cash flows to ensure that sufficient funds are available to meet its commitments.

#### *Market risk*

Market risk is the risk that changes in market prices such as foreign exchange rates and interest rates will affect the Tribunal's income or the value of its holdings of financial instruments. The Tribunal does not trade in foreign currency and is not materially exposed to other price risks. Other than as detailed in the Interest rate sensitivity analysis table at Note 11(c), the Tribunal has no borrowings and its exposure to market risk for changes in interest rates relates primarily to cash and cash equivalents which are interest bearing.

### (b) Categories of Financial Instruments

In addition to cash, the carrying amounts of each of the following categories of financial assets and financial liabilities at the balance sheet date are as follows:

	2009	2008
	\$	\$
<b>Financial Assets</b>		
Cash and cash equivalents	95,446	110,004
Receivables <sup>(a)</sup>	927	3,768
<b>Financial Liabilities</b>		
Financial liabilities measured at amortised cost	900	2,310

(a) The amount of receivables excludes GST recoverable from the ATO (statutory receivable).



**Racing Penalties Appeal Tribunal**  
**Notes to the Financial Statements**  
**for the year ended 30 June 2009**

**11. (c) Financial Instrument Disclosures**

*Credit Risk and Interest Rate Risk Exposures*

The following table discloses the Tribunal's maximum exposure to credit risk, interest rate exposures and the ageing analysis of financial assets. The Tribunal's maximum exposure to credit risk at the balance sheet date is the carrying amount of financial assets as shown below. The table discloses the ageing of financial assets that are past due but not impaired and impaired financial assets. The table is based on information provided to senior management of the Tribunal.

The Tribunal does not hold any collateral as security or other credit enhancements relating to the financial assets it holds.

The Tribunal does not hold any financial assets that had to have their terms renegotiated that would have otherwise resulted in them being past due or impaired.

**Interest rate exposures and ageing analysis of financial assets <sup>(a)</sup>**

	Weighted Average Effective Interest Rate	Interest rate exposure			Past due but not impaired							Impaired Financial Assets
		Carrying Amount	Variable Interest Rate	Non- Interest Bearing	Up to 3 Months	3-12 Months	1-2 Years	2-3 Years	3-4 Years	4-5 Years	More Than 5 Years	
<u>Financial Assets</u>	%	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
<b>2009</b>												
Cash and cash equivalents	5.5865	95,446	95,446									
Receivables <sup>(a)</sup>	5.5865	927	927									
		96,373	96,373	0	0	0	0	0	0	0	0	0
<b>2008</b>												
Cash and cash equivalents	7.03	110,004	110,004									
Receivables <sup>(a)</sup>	7.03	3,768	2,677	1,091	1,091							
		113,772	112,681	1,091	1,091	0	0	0	0	0	0	0

(a) The amount of receivables excludes the GST recoverable from the ATO (statutory receivable).

**Racing Penalties Appeal Tribunal**  
**Notes to the Financial Statements**  
**for the year ended 30 June 2009**

**11. (c) Financial Instrument Disclosures**

*Liquidity Risk*

*The following table details the contractual maturity analysis for financial liabilities. The contractual maturity amounts are representative of the undiscounted amounts at the balance sheet date. The table includes interest and principal cash flows. An adjustment has been made where material.*

**Interest rate exposure and maturity analysis of financial liabilities**

	Weighted Average Effective Interest Rate	Interest rate exposure				Maturity dates							
		Carrying Amount	Variable Interest Rate	Non- Interest Bearing	Adjustment for Discounting	Total Nominal Amount	Up to 3 Months	3-12 Months	1-2 Years	2-3 Years	3-4 Years	4-5 Years	More Than 5 Years
<u>Financial Liabilities</u>	%	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
<b>2009</b>													
Payables		900		900									
		900	0	900	0	0	0	0	0	0	0	0	0
<b>2008</b>													
Payables		2,310		2,310									
		2,310	0	2,310	0	0	0	0	0	0	0	0	0

The amounts disclosed are the contractual undiscounted cash flows of each class of financial liabilities.

**Racing Penalties Appeal Tribunal  
Notes to the Financial Statements  
for the year ended 30 June 2009**

**11. (c) Financial Instrument Disclosures (contd)**

*Interest rate sensitivity analysis*

The following table represents a summary of the interest rate sensitivity of the Tribunal's financial assets and liabilities at the balance sheet date on the surplus for the period and equity for a 1% change in interest rates. It is assumed that the change in interest rates is held constant throughout the reporting period.

	Carrying Amount	-1% Change		+1% Change	
		Profit	Equity	Profit	Equity
<b>2009</b>	\$	\$	\$	\$	\$
<u>Financial Assets</u>					
Cash and cash equivalents	95,446	(954)	(954)	954	954
<u>Financial Liabilities</u>					
Total Increase/(Decrease)		<u>(954)</u>	<u>(954)</u>	<u>954</u>	<u>954</u>

	Carrying Amount	-1% Change		+1% Change	
		Profit	Equity	Profit	Equity
<b>2008</b>	\$	\$	\$	\$	\$
<u>Financial Assets</u>					
Cash and cash equivalents	110,004	(1,100)	(1,100)	1,100	1,100
<u>Financial Liabilities</u>					
Total Increase/(Decrease)		<u>(1,100)</u>	<u>(1,100)</u>	<u>1,100</u>	<u>1,100</u>

*Fair Values*

All financial assets and liabilities recognised in the balance sheet, whether they are carried at cost or fair value, are recognised at amounts that represent a reasonable approximation of fair value unless otherwise stated in the applicable notes.

## 12. Explanatory statement

Significant variations between estimates and actual results for income and expense are shown below. Significant variations are considered to be those greater than 10% or \$20,000.

### (i) Significant variances between actual results for 2008 and 2009

	<u>2009</u> \$	<u>2008</u> \$	<u>Variance</u> \$
<i>Tribunal members' expenses</i>	67,226	28,322	38,904
The increase of \$38,904 was due to more appeals being lodged and dealt with in 2008-09.			
<i>Superannuation</i>	6,050	2,394	3,656
The increase of \$3,656 was attributed to the higher members fees being paid during the year.			
<i>Supplies and services</i>	177,965	153,149	24,816
The increase of \$24,816 was partly due to an increase in the amount recouped by the Department of Racing, Gaming and Liquor for the provision of support services as a consequence of an increase in the Consumer Price Index, and partly due to the costs related to the Australasian Racing Appeals Tribunal conference held in 2008-09.			
<i>Operating income</i>	225,515	270,645	(45,130)
The decrease of \$45,130 was due to a higher contribution from Racing and Wagering Western Australia, including funding for the Australasian Racing Appeals Tribunal conference in 2008.			
<i>Interest revenue</i>	9,818	11,702	(1,884)
The decrease of \$1,884 was the result of a lower bank balance throughout the period plus decreasing interest rates.			

### (ii) Significant variances between estimated and actual result for 2009

Variations which have been explained in part (i) of this note have not been repeated here in the interests of concise reporting.

	<u>2009</u> Estimate \$	<u>2009</u> Actual \$	<u>Variation</u> \$
<i>Supplies and services</i>	208,830	177,965	(30,865)
The decrease of \$30,865 was mainly due to a lower than budgeted expense for the conference costs in 2008-09.			

2009	2008
\$	\$

**13. Remuneration of members of the Accountable Authority**

The number of members of the Accountable Authority, whose total of fees, salaries, superannuation, non-monetary benefits and other benefits for the financial year, fall within the following bands are:

\$		
0 - 10,000	6	7
20,001 - 30,000	0	1
50,001 - 60,000	1	0

The total remuneration of members of the Accountable Authority is:	<u>73,276</u>	<u>30,716</u>
--	---------------	---------------

The total remuneration includes the superannuation expense incurred by the Authority in respect of members of the Accountable Authority.

No members of the Accountable Authority are members of the Pension Scheme.

**14. Remuneration of auditor**

Remuneration payable to the Auditor General in respect to the audit for the current financial year is as follows:

Auditing the accounts, financial statements and performance indicators	<u>6,350</u>	<u>6,000</u>
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**15. Commitments**

As at 30 June 2009 the Tribunal did not have any other material capital or expenditure commitments.

**16. Contingent liabilities and contingent assets**

The Tribunal is not aware of any contingent liabilities and contingent assets as at balance sheet date.

**17. Events occurring after the balance sheet date**

We are not aware of any matters or circumstances that have arisen since the end of the financial year to the date of this report which has significantly affected or may significantly affect the activities of the Tribunal, the results of those activities or the state of affairs of the Tribunal in the ensuing or any subsequent financial year.

**18. Related bodies**

Nil

**19. Affiliated bodies**

Nil


## Detailed Information on the Tribunal's Key Performance Indicators

Key Performance Indicators (KPIs) are required by section 62 of the [Financial Management Act 2006](#) and are provided to assist interested parties such as Government, Parliament and community groups in assessing an agency's desired outcomes. KPIs measure the efficiency and effectiveness of an agency.

## Certification of Key Performance Indicators

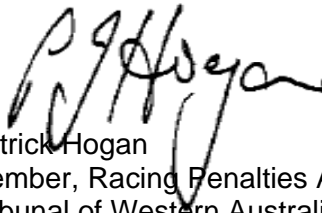
For the Year Ended 30 June 2009

We hereby certify that the performance indicators are based on proper records, are relevant and appropriate for assisting users to assess the Racing Penalties Appeal Tribunal of Western Australia's performance, and fairly represent the performance of the Racing Penalties Appeal Tribunal of Western Australia for the financial year ended 30 June 2009.



Dan Mossenson  
Chairperson, Racing Penalties Appeal  
Tribunal of Western Australia

12 September 2009



Patrick Hogan  
Member, Racing Penalties Appeal  
Tribunal of Western Australia

14 September 2009

## Key Performance Indicators

**Desired Outcome:** To provide an Appeal Tribunal in relation to determinations made by racing industry Stewards and controlling authorities.

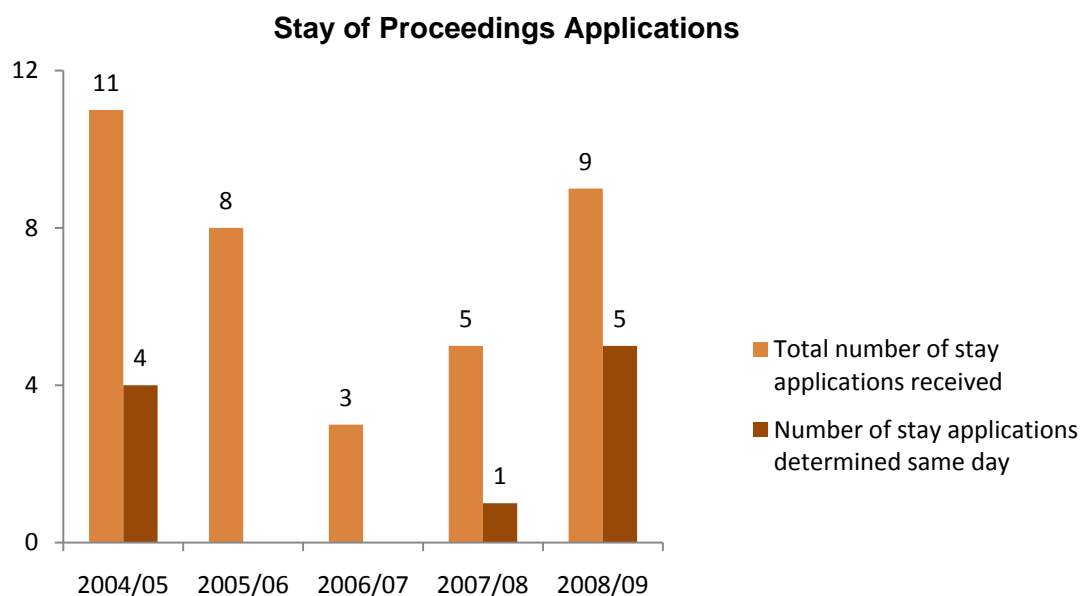
**Strategy:** To ensure that a timely and effective appeal forum is provided at minimum cost to the racing industry.

Under the [Racing Penalties \(Appeals\) Act 1990](#) an appellant may apply for a suspension of the operation of a penalty at the time of lodging the appeal. It is essential to the racing codes, trainers, owners and the general public that these applications are dealt with expeditiously. These determinations impact directly on the eligibility of riders, drivers and runners to fulfil prior engagements.

The aim of the Tribunal is to endeavour to finalise applications for stays on the same day as they are lodged. This is only potentially achievable when the appellant (or the appellant's counsel) and the stewards of the relevant code of racing are contactable on that day to provide submissions and the material is available to be forwarded in sufficient time to be dealt with that day by the Tribunal. In those cases where the application is lodged at the Registry later in the day there is virtually no prospect of it being determined until at least the next working day.

Stays of proceedings is the only process the Tribunal has some control over in respect of a timeliness measurement. The appeal process in respect of timeliness is governed by many factors including the availability of counsel for both parties, the provision of the transcript of a stewards' inquiry, legal proceedings in other jurisdictions and the complexity of matters required to be determined.

Out of nine stay of proceedings applications lodged in 2008/2009, two were lodged late in the course of the working day and were processed the next working day; and two applications were processed in 1 ½ days.



**Service:** To perform functions for the racing industry.

**Service Description:** To process appeals/applications in accordance with statutory obligations.

The Racing Penalties Appeal Tribunal was created to maintain industry confidence in the enforcement of the various racing rules by providing the industry with an impartial judicial forum for the hearing of appeals against RWWA determinations.

The Tribunal is responsible for hearing and determining appeals against penalties imposed in disciplinary proceedings arising from, or in relation to, the conduct of greyhound racing, horse racing and harness racing.

A person, who is aggrieved by a RWWA decision, or a determination of a steward or a committee of a racing club, may make an appeal to the Tribunal within 14 days of the decision being handed down. The matters that can be appealed against are those determinations or findings which:

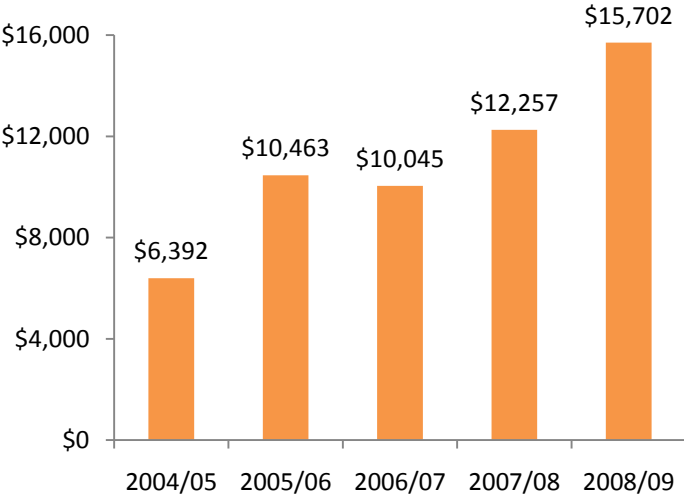
- impose any suspension or disqualification, whether of a runner or of a person;
- impose a fine; or
- result, or may result, in the giving of a notice of the kind commonly referred to as a 'warning-off'.

In addition, the Tribunal may grant leave to appeal in relation to any other matters.

The Registrar of the Racing Penalties Appeal Tribunal must ensure that appeals and applications are processed in accordance with the [Racing Penalties \(Appeals\) Act 1990](#) and the [Racing Penalties \(Appeals\) Regulations 1991](#), whilst providing an effective and efficient service to the racing industry at minimal cost.

The reason the average cost for the 2008/2009 financial year is greater than previous years is due to both the increased number of applications and the increased number of hearing days occupied by the Tribunal.

**Average Cost of Processing an Appeal**



**Above:** the average processing cost for each financial year was derived by dividing the cost of total services to the Tribunal by the number of applications heard and determined during the year



# Opinion of the Auditor General



## Auditor General

### INDEPENDENT AUDIT OPINION

To the Parliament of Western Australia

#### **RACING PENALTIES APPEAL TRIBUNAL OF WESTERN AUSTRALIA FINANCIAL STATEMENTS AND KEY PERFORMANCE INDICATORS FOR THE YEAR ENDED 30 JUNE 2009**

I have audited the accounts, financial statements, controls and key performance indicators of the Racing Penalties Appeal Tribunal of Western Australia.

The financial statements comprise the Balance Sheet as at 30 June 2009, and the Income Statement, Statement of Changes in Equity and Cash Flow Statement for the year then ended, a summary of significant accounting policies and other explanatory Notes.

The key performance indicators consist of key indicators of effectiveness and efficiency.

#### **Tribunal's Responsibility for the Financial Statements and Key Performance Indicators**

The Tribunal is responsible for keeping proper accounts, and the preparation and fair presentation of the financial statements in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations) and the Treasurer's Instructions, and the key performance indicators. This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements and key performance indicators that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; making accounting estimates that are reasonable in the circumstances; and complying with the Financial Management Act 2006 and other relevant written law.

#### **Summary of my Role**

As required by the Auditor General Act 2006, my responsibility is to express an opinion on the financial statements, controls and key performance indicators based on my audit. This was done by testing selected samples of the audit evidence. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion. Further information on my audit approach is provided in my audit practice statement. Refer [www.audit.wa.gov.au/pubs/AuditPracStatement\\_Feb09.pdf](http://www.audit.wa.gov.au/pubs/AuditPracStatement_Feb09.pdf).

An audit does not guarantee that every amount and disclosure in the financial statements and key performance indicators is error free. The term "reasonable assurance" recognises that an audit does not examine all evidence and every transaction. However, my audit procedures should identify errors or omissions significant enough to adversely affect the decisions of users of the financial statements and key performance indicators.

**Racing Penalties Appeal Tribunal of Western Australia  
Financial Statements and Key Performance Indicators for the year ended 30 June 2009**

**Audit Opinion**

In my opinion,

- (i) the financial statements are based on proper accounts and present fairly the financial position of the Racing Penalties Appeal Tribunal of Western Australia at 30 June 2009 and its financial performance and cash flows for the year ended on that date. They are in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations) and the Treasurer's Instructions;
- (ii) the controls exercised by the Tribunal provide reasonable assurance that the receipt, expenditure and investment of money, the acquisition and disposal of property, and the incurring of liabilities have been in accordance with legislative provisions; and
- (iii) the key performance indicators of the Tribunal are relevant and appropriate to help users assess the Tribunal's performance and fairly represent the indicated performance for the year ended 30 June 2009.



COLIN MURPHY  
AUDITOR GENERAL  
18 September 2009

## Other Legal Requirements

### Ministerial Directives

There was no Ministerial Directive received during the financial year.

### Advertising and Sponsorship

In accordance with section 175ZE of the [Electoral Act 1907](#), the Tribunal incurred the following expenditure in advertising, market research, polling, direct mail and media advertising:

Total expenditure for 2008-09 was nil.

### Disability Access and Inclusion Plan Outcomes

The Tribunal meets its obligations for Disability Access and Inclusion Outcomes through arrangements with the Department of Racing, Gaming and Liquor. The Department's Annual Report contains the information on how that department has complied with the obligations imposed under Section 29 of the [Disability Services Act 1993](#).

### Compliance with Public Sector Standards and Ethical Codes

The Tribunal does not employ staff, but has a net appropriation agreement with the Department of Racing, Gaming and Liquor relating to functions carried out on behalf of the Tribunal by staff of that Department. Accordingly, the Tribunal does not report on compliance with the Public Sector Standards. The Department's Annual Report contains the relevant information.

### Recordkeeping Plans

Section 19 of the [State Records Act 2000](#) requires every Government agency to have a Recordkeeping Plan. The Recordkeeping Plan is to provide an accurate reflection on the recordkeeping program within the agency and must be complied with by the agency and its officers. The records of the Tribunal are maintained by the Department of Racing, Gaming and Liquor. The Department's Annual Report contains the information on that department's Recordkeeping Plan.

### Freedom of Information

As a statutory authority, the Tribunal is an agency for the purposes of the [Freedom of Information Act 1992](#). Decision-makers in respect of all gambling related access applications are Senior Officers within the Department of Racing, Gaming and Liquor's Director and the internal reviewer is the Chairperson of the Tribunal.

## Government Policy Requirements

### **Contracts with Senior Officers**

At the date of reporting, other than normal contracts of employment of service, no Senior Officers, or firms of which Senior Officers are members, or entities in which Senior Officers have substantial interests had any interests in existing or proposed contracts with the Tribunal and Senior Officers.

### **Public Interest Disclosure**

The Tribunal meets its obligations under the [Public Interest Disclosure Act 2003](#) through arrangements with Department of Racing, Gaming and Liquor. The Department's Annual Report contains the information on how that Department has complied with the obligations imposed pursuant to section 23(1) of the *Public Interest Disclosure Act 2003*.

### **Corruption Prevention**

The Tribunal meets its obligations for Corruption Prevention through arrangements with the Department of Racing, Gaming and Liquor. The Department's Annual Report contains the information on how that department has complied with the obligations imposed under the [Public Sector Commissioner's Circular 2009-25](#).

### **Substantive Equality**

The Tribunal meets its obligations for the elimination of systemic racial discrimination from all policies and practices, in accordance with the Policy Framework for Substantive Equality, through arrangements with the Department of Racing, Gaming and Liquor. The Department's Annual Report contains the information on how that department has complied with the obligations imposed under the [Public Sector Commissioner's Circular 2009-23](#).

### **Occupational Safety, Health and Injury Management**

The Tribunal meets its obligations for occupational safety, health and injury management through arrangements with the Department of Racing, Gaming and Liquor. The Department's Annual Report contains the information on how that Department has complied with the obligations imposed under the [Public Sector Commissioner's Circular 2009-11](#).

## Summary of Publications Available to the Public

The following publications are available to assist the public of Western Australia and the industries regulated by the Racing Penalties Appeal Tribunal.

### General Publications

- Annual Report of the Racing Penalties Appeal Tribunal.

### Tribunal Library

To assist persons who may wish to utilise the appeal process the Registrar maintains an up to date index of all determinations made since the Tribunal commenced operations in 1991. This index is available for perusal free of charge. To streamline research, the index is divided into the following sections:

Section 1	Thoroughbred Racing
Section 2	Harness Racing
Section 3	Greyhound Racing

In respect of the two horse racing codes, the index is further divided into the following sub-sections:

- Conduct
- Prohibited Substances
- Protests
- Leave to Appeal
- Nominal Index

In respect of the greyhound racing code, the index is divided as above except for protests.

In addition, there is a summary of the issues and results in respect of all appeal/application determinations including the relevant rule and prohibited substance (if applicable).

The index is now available on the web site of the Department of Racing, Gaming and Liquor at [www.rgl.wa.gov.au](http://www.rgl.wa.gov.au).

Any person may peruse the full determinations of the Tribunal free of charge. A small fee is payable for photocopies.

A copy of every determination is forwarded to the Supreme Court of Western Australia Library.

Also available for perusal free of charge are the Racing Appeals Reports. These reports are a digest of rulings, observations and comments of Australian and New Zealand statutory appeals tribunals for the three codes of racing. Photocopies are available on request (subject to copyright laws) on payment of a small fee.