

1994—No. 420

HARNESS RACING AUTHORITY ACT 1977—REGULATION

(Harness Racing Authority (Appeals) Regulation 1994)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Harness Racing Authority Act 1977, has been pleased to make the Regulation set forth hereunder.

CHRIS DOWNY
Minister for Sport, Recreation and Racing.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Harness Racing Authority (Appeals) Regulation 1994.

Commencement

2 This Regulation commences on 1 September 1994.

Repeal and savings

3. (1) The Harness Racing Authority (Appeals) Regulation 1980 is repealed.

(2) Any appeal made under the repealed Regulation and not determined before the commencement of this Regulation is taken to be an appeal made under this Regulation.

Definitions

4. In this Regulation:

“**General Manager**” means the General Manager of the Authority;

“**the Act**” means the Harness Racing Authority Act 1977.

PART 2—APPEALS TO AUTHORITY**Appeals to Authority**

5. Appeals to the Authority under section 18 of the Act are to be made in accordance with this Part.

Procedure for initiating and hearing appeals

6. (1) An appeal is to be initiated by the lodging of a written notice of appeal with the General Manager within 7 days of the date on which the appellant is notified of the decision appealed against.

(2) A notice of appeal must specify the grounds of appeal and, except by leave of the Authority, the appeal is limited to those grounds.

(3) The General Manager is, on receiving a notice of appeal:

- (a) to send the harness racing club or harness racing association concerned a copy of the notice of appeal; and
- (b) to serve on the appellant any available transcript of the evidence taken at the hearing in respect of the decision appealed against; and
- (c) to send the members of the Authority a copy of the notice of appeal, along with any such transcript of evidence.

(4) The date, time and place for the hearing of an appeal is to be fixed by the Chairman. The General Manager is to give at least 7 days’ written notice of such date, time and place to the appellant and the harness racing club or harness racing association concerned, and to such other persons as the Chairman thinks fit.

(5) The Authority is to commence the hearing of an appeal as soon as practicable within 28 days of the lodging of the notice of appeal.

(6) The Authority may, in a particular case, extend any period of time specified in this clause if in its opinion the circumstances of the case so require.

Fee to be lodged with notice of appeal

7. (1) A notice of appeal must be accompanied by a fee of \$100 when it is lodged.

(2) The fee may be paid at a later time with the consent of the Authority.

(3) On the determination or withdrawal of the appeal, the Authority may, if it thinks fit, direct that the fee (or part of the fee) is to be repaid to the appellant.

Suspension or variation of decision pending determination of appeal

8. (1) The Authority may, on written application by an appellant lodged with the General Manager, order that the decision appealed against:

(a) is not to be carried into effect; or

(b) is to be carried into effect only to the extent specified in the order, pending the determination of the appeal. Any such order has effect for the period it is in force.

(2) The Authority may, in making any such order, impose conditions. The order is taken not to be in force for any period during which any such condition is not complied with.

(3) An order remains in force until it is revoked by further order by the Authority or the appeal to which it relates is dismissed, determined or withdrawn (whichever happens first).

Withdrawal of appeal

9. An appeal duly lodged may not be withdrawn except with the leave of the Authority. In granting any such leave, the Authority may impose such conditions as to the payment of costs or otherwise as it thinks fit.

Evidence on appeal

10. (1) The Authority, when hearing an appeal, is to consider as the evidence in the matter the evidence presented at the hearing in respect of the decision appealed against.

(2) The Authority may not consider any other evidence unless it is satisfied that it is relevant to the subject-matter of the appeal and that there is good reason why it was not presented at the earlier hearing. If any new evidence is presented at the hearing of the appeal, the harness racing

club or harness racing association concerned is to be given an opportunity to make submissions in respect of that evidence at the hearing.

(3) The Authority, when hearing an appeal, is not bound by the rules or practice as to evidence but may inform itself of any matter in such manner as it thinks fit.

Costs where appeal dismissed

11. (1) On dismissing an appeal, the Authority may order the appellant to pay to it the actual costs incurred by the Authority in hearing the appeal, including costs of any lawyer retained to assist the Authority in determining the appeal (but not including any costs incurred by members of the Authority in hearing the appeal).

(2) On service on an appellant of such an order for the payment of costs, the amount of the costs specified in the order becomes a debt payable by the appellant to the Authority.

No appeal from certain decisions

12. An appeal may not be made to the Authority in respect of a decision:

- (a) given on a betting dispute by a betting supervisor employed by a harness racing club or harness racing association; or
- (b) to impose on any person a fine not exceeding \$50; or
- (c) which affects only a right or privilege of a member of a harness racing club, being a right or privilege arising from his or her membership of that club.

Certain persons not to participate at certain meetings of the Authority

13. A member of the Authority who participated in a race as an owner, breeder, trainer or driver may not participate as such a member at a meeting of the Authority at which an appeal arising out of the running of that race is heard or determined.

Determination of appeal

14. (1) The Authority may in respect of an appeal:

- (a) adjourn or dismiss the appeal; or
- (b) uphold, reverse or vary the decision appealed against; or

- (c) order the refund of any stake paid in connection with any race to which the appeal relates; or
 - (d) refer any matter in which the decision appealed against was made for re-hearing (in accordance with directions given by the Authority) to the committee of the harness racing club or harness racing association which made that decision; or
 - (e) make such other order in relation to the disposition of the appeal as it thinks fit.
- (2) On service on a person, personally or by post, of an order made under subclause (1) (c) requiring the refund of any stake paid to the person, the amount of the stake becomes a debt payable by that person to the person to whom the stake is required by the order to be refunded.

Conduct of appeal

15. The Authority may, subject to this Part, direct the manner in which any appeal before it is to be conducted.

PART 3—APPEALS TO TRIBUNAL

Appeals to Tribunal

16. Appeals to the Tribunal under section 19 of the Act are to be made in accordance with this Part.

Procedure for initiating and hearing appeals

17. (1) An appeal is to be initiated by the lodging of a written notice of appeal with the General Manager within 7 days of the date on which the appellant is notified of the decision appealed against.

(2) The General Manager is, on receiving a notice of appeal:

- (a) to forward notice of it to the Tribunal; and
- (b) if the placing of any horse may be affected by the result of the appeal, to give a copy of the notice of the appeal to the owner of the horse (if the owner is not the appellant) and to the harness racing club or harness racing association concerned; and
- (c) to serve on the appellant a transcript of the evidence taken at the hearing in respect of the decision appealed against.

(3) Within 7 days of receiving the transcript of evidence, the appellant is to lodge with the General Manager a written notice of the grounds of appeal. The appeal is to be limited to such grounds, except by leave of the Tribunal.

(4) On receiving notice of the grounds of appeal, the General Manager is to forward 3 copies of the notice to the Tribunal along with a transcript of the evidence taken at the hearing in respect of the decision appealed against.

(5) The date, time and place for the hearing of an appeal is to be fixed by the Tribunal. The General Manager is to give at least 7 days' written notice of such date, time and place to the appellant and to such other persons as the Tribunal thinks fit.

(6) The Tribunal is to commence the hearing of an appeal as soon as practicable within 28 days of the lodging of the notice of the grounds of appeal.

(7) The Tribunal may, in a particular case, extend any period of time specified in this clause if in its opinion the circumstances of the case so require.

Expedited hearing

18. (1) If the Tribunal is of the opinion that an appeal should be heard and determined as a matter of urgency, the Tribunal may, by order made with the concurrence of the appellant:

- (a) dispense with the requirement for a transcript of the evidence taken at the hearing in respect of the decision appealed against to be served on the appellant and forwarded to the Tribunal; and
- (b) shorten the time fixed under clause 17 (5).

(2) If such an order is made:

- (a) the Tribunal may rely on such evidence as is available to it concerning the hearing in respect of the decision appealed against; and
- (b) the appellant must lodge a notice of the grounds of appeal in such manner and within such time as the Tribunal directs. The appeal is to be limited to the grounds specified in that notice, except by leave of the Tribunal.

Fees

19. (1) A notice of appeal must be accompanied by a fee of \$100 when it is lodged.

(2) The fee may be paid at a later time with the consent of the Tribunal.

(3) On the determination or withdrawal of the appeal, the Tribunal may, if it thinks fit, direct that the fee (or part of the fee) is to be repaid to the appellant.

Suspension or variation of decision pending determination of appeal

20. (1) The Tribunal may, on the written application by an appellant lodged with the General Manager, order that the decision appealed against:

- (a) is not to be carried into effect; or
- (b) is to be carried into effect only to the extent specified in the order, pending the determination of the appeal. Any such order has effect for the period it is in force.

(2) The Tribunal may, in making any such order, impose conditions. The order is taken not to be in force for any period during which a condition is not complied with.

(3) An order remains in force until it is revoked by further order by the Tribunal or the appeal to which it relates is dismissed, determined or withdrawn (whichever happens first).

Withdrawal of appeal

21. An appeal duly lodged may not be withdrawn except with the leave of the Tribunal. In granting any such leave, the Tribunal may impose such conditions as to the payment of costs or otherwise as it thinks fit.

Evidence on appeal

22. (1) The Tribunal is, when hearing an appeal, to consider as the evidence in the matter the evidence presented at the original hearing in respect of the decision appealed against.

(2) The Tribunal may not consider any other evidence unless it is satisfied that it is relevant to the subject-matter of the appeal and that there is good reason why it was not presented at the earlier hearing. If any new evidence is presented at the hearing of the appeal, the Authority or the stewards of the Authority concerned are to be given an opportunity to make submissions in respect of that evidence at the hearing.

(3) The Tribunal, when hearing an appeal, is not bound by the rules or practice as to evidence but may inform itself of any matter in such manner as it thinks fit.

Hearings in absence of a party and representation at hearings

23. (1) The Tribunal may hear an appeal in the absence of a party to the appeal.

(2) The Tribunal may grant leave for each party to be represented by a lawyer or agent at the hearing of an appeal.

Assessors

24. (1) One or more assessors may assist the Tribunal in hearing an appeal if the Tribunal, whether before or during the hearing, so directs.

(2) The Tribunal is to determine the assessors who may assist the Tribunal in hearing the appeal concerned.

(3) The Tribunal may, at any time during the hearing of an appeal, dispense with the services of any assessor assisting the Tribunal.

(4) An appellant or other party is not entitled to make any submission or objection in relation to the exercise of the Tribunal's functions under this clause.

Costs

25. (1) On determining an appeal, the Tribunal may make such orders as to the payment of costs as the Tribunal thinks fit.

(2) On service on a party to an appeal of an order for the payment of costs, the amount of the costs specified in the order becomes a debt payable by the party to the person specified in the order as the person to whom the costs are to be paid.

Appeals from certain decisions

26. (1) An appeal may be made to the Tribunal only in respect of a decision:

- (a) to disqualify, either permanently or temporarily, any person from participating in or being associated with the harness racing industry; or
- (b) to suspend for more than 14 days any right or privilege conferred on any person by the Act or the rules; or
- (c) to cancel the registration of any person under the rules; or
- (d) to disqualify, either permanently or for a period of 4 weeks or more, any horse from participating in harness racing meetings; or
- (e) to impose on any person a fine of \$50 or more; or
- (f) to reduce in grade a driver for 4 weeks or more.

(2) A reference in subclause (1) to a person does not include a reference to a harness racing club or harness racing association.

Determination of appeal

27. (1) The Tribunal may in respect of an appeal:

- (a) adjourn or dismiss the appeal; or
- (b) uphold, reverse or vary the decision appealed against; or
- (c) refer any matter in which the decision appealed against was made for re-hearing (in accordance with directions given by the Tribunal) to the stewards of the Authority or to the Authority; or
- (d) order the refund of any stake paid in connection with any race to which the appeal relates; or
- (e) make such other order in relation to the disposition of the appeal as the Tribunal thinks fit.

(2) On service on a person, personally or by post, of an order made under subclause (1) (d) requiring the refund of any stake paid to the person, the amount of the stake becomes a debt payable by that person to the person to whom the stake is required by the order to be refunded.

Conduct of appeal

28. The Tribunal may, subject to this Part, direct the manner in which any appeal before it is conducted.

PART4—MISCELLANEOUS**Service of instruments**

29. Any instrument to be served on any person under this Regulation may be served:

- (a) personally; or
- (b) by leaving it, at the person's last place of residence or business known to the Authority, with some other person; or
- (c) by post addressed to the person at the person's last such known place of residence or business.

Persons required to attend hearings or produce documents

30. (1) The Authority or Tribunal may, by written notice served on any person, require the person to attend at a time, date and place specified in the notice for the purposes of

- (a) giving evidence relating to an appeal being heard or to be heard by the Authority or Tribunal; or

(b) producing any document, relating to such an appeal, specified in the notice that is in the person's possession or under the person's control.

(2) The Authority or Tribunal may do so either on its own motion or on application by the appellant.

(3) A person who is served with such a notice, and to whom is tendered at the time of service an amount sufficient to cover the travelling and any other expenses likely to be incurred by the person in attending at the time, date and place specified in the notice must not, without reasonable excuse, fail or refuse to comply with the requirements of the notice.

Maximum penalty: 5 penalty units.

False statements

31. A person appearing before the Authority or Tribunal in connection with an appeal must not knowingly make a statement that is false or misleading in a material respect.

Maximum penalty: 5 penalty units.

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EXPLANATORY NOTE

The object of this Regulation is to repeal the Harness Racing Authority (Appeals) Regulation 1980 and to replace it with this Regulation which is in substantially the same terms as the Regulation to be repealed.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
