

1994—No. 438

RACING APPEALS TRIBUNAL ACT 1983—REGULATION

(Racing Appeals Tribunal 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 Racing Appeals Tribunal Act 1983, has been pleased to make the Regulation set forth hereunder.

CHRIS DOWNY

Minister for Sport, Recreation and Racing.

Citation

1. This Regulation may be cited as the Racing Appeals Tribunal Regulation 1994.

Commencement

2. This Regulation commences on 1 September 1994.

Repeal and savings

3. (1) The Racing Appeals Tribunal Regulation 1984 is repealed.

(2) Any appeal made under the repealed Regulation and not determined before the commencement of this Regulation is taken to be an appeal made under this Regulation.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

“**Committee**” means the Committee of the Australian Jockey Club;

“Secretary” means:

- (a) the Secretary of the Australian Jockey Club; or
- (b) an officer of that Club, or an officer of a Department administered by the Minister, designated by the Minister as Secretary of the Tribunal;

“the Act” means the Racing Appeals Tribunal Act 1983;

“the Rules” means the Rules of Racing of the Australian Jockey Club.

Appeals to Tribunal

5. Appeals to the Tribunal under the Act are to be made in accordance with this Regulation.

Procedure for initiating and hearing appeals

6. (1) An appeal is to be initiated by the lodging of a notice of appeal in writing with the Secretary:

- (a) in the case of an appeal made under section 15 (a) of the Act—within 7 days of the date on which the appellant is notified of the decision appealed against; or
- (b) in the case of an appeal made under section 15 (b) of the Act—at any time after the expiration of 28 days after the appeal to the Committee was lodged.

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

- (a) to forward notice of it to the Tribunal; and
- (b) 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 Secretary a written notice of the grounds of appeal. The appeal is to be limited to those grounds, except by leave of the Tribunal.

(4) On receiving notice of the grounds of appeal, the Secretary is to forward a copy 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 Secretary is to give at least 7 days' written notice of the 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.

Suspension or variation of decision pending determination of appeal

7. (1) The Tribunal may, on written application by an appellant that is lodged with the Secretary, 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, in making any such order, may 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 Tribunal or the appeal to which it relates is dismissed, determined or withdrawn (whichever happens first).

Expedited hearing

8. (1) If the Tribunal is of the opinion that an appeal should be heard and determined as a matter of urgency, the Tribunal may, 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 period of notice fixed under clause 6 (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

9. (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 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.

Withdrawal of appeal

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

Evidence

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

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

Hearings in absence of a party and representation at hearings

12. (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.

Costs

13. (1) On determining an appeal, the Tribunal may make such orders as it thinks fit as to the payment of costs (including the payment of costs in respect of the hearing by the Committee of the decision appealed against).

(2) On service on a party to an appeal of an order for the payment of costs, the amount of costs specified in the order:

- (a) is payable by the party to the person specified in the order as the person to whom the costs are to be paid; and
- (b) may be recovered as a debt in a court of competent jurisdiction.

Appeals from certain decisions

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

- (a) to disqualify or warn off a person; or
- (b) to suspend for a period of 3 months or more any licence, right or privilege granted under the Rules; or
- (c) to revoke the licence of any person under the Rules; or
- (d) to impose on any person a fine of \$2,000 or more.

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

(3) Expressions used in this clause have the meanings given to them in the Rules.

Determination of appeal

15. 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 Committee; or
- (d) make such other order in relation to the disposition of the appeal as the Tribunal thinks fit.

Conduct of appeal

16. The Tribunal may, subject to this Regulation, direct the manner in which any appeal before it is to be conducted.

Service of instruments

17. 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 place of residence or business last known to the Secretary, 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

18. (1) The 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 purpose of

- (a) giving evidence relating to an appeal being heard or to be heard by the 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) 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 and contempt

19. A person appearing before the Tribunal in connection with an appeal must not:

- (a) knowingly make a statement that is false or misleading in a material respect; or
- (b) say or do anything that is likely to bring the Tribunal into contempt.

Maximum penalty: 5 penalty units.

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EXPLANATORY NOTE

The object of this Regulation is to repeal the Racing Appeals Tribunal Regulation 1984 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.
