



# Racing Appeals Tribunal Regulation 2004

under the

Racing Appeals Tribunal Act 1983

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Racing Appeals Tribunal Act 1983*.

GRANT McBRIDE, M.P.,  
Minister for Gaming and Racing

## Explanatory note

The object of this Regulation is to repeal and remake, with minor changes, the *Racing Appeals Tribunal Regulation 1999*.

This Regulation contains provisions which:

- (a) allow appeals from a decision of the Appeals Panel, a racing association or Racing NSW in relation to certain matters, and
- (b) establish procedures for lodging an appeal to the Racing Appeals Tribunal, and
- (c) permit the Tribunal to dispense with certain procedural matters where the Tribunal is of the opinion that the appeal should be heard as a matter of urgency, and
- (d) impose a fee for lodgment of a notice of appeal in certain circumstances, and
- (e) allow the Tribunal to make orders with respect to costs.

This Regulation is made under the *Racing Appeals Tribunal Act 1983*, including sections 18 and 23 (the general regulation-making power) and clause 1 of Schedule 1 (savings and transitional regulations).

This Regulation comprises or relates to matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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

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## Racing Appeals Tribunal Regulation 2004

under the

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### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Racing Appeals Tribunal Regulation 2004*.

#### 2 Commencement

This Regulation commences on 1 July 2004.

#### 3 Definitions

In this Regulation:

**Secretary** means:

- (a) the Chief Executive of Racing NSW, or
- (b) an officer of Racing NSW, 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 under the *Thoroughbred Racing Act 1996*.

## **2004 No 371**

Clause 4 Racing Appeals Tribunal Regulation 2004

Part 2 Appeals to Tribunal

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## **Part 2 Appeals to Tribunal**

### **4 Appeals to Tribunal**

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

### **5 Decisions from which an appeal lies to Tribunal**

- (1) In the case of an appeal made under section 15 (1) (a), (b) or (c) of the Act, 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, or
  - (e) to disqualify a horse, if the disqualification is made in conjunction with the imposition of a penalty on the appellant or any other person.
- (2) In the case of an appeal made under section 15 (1) (d) of the Act, 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 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 \$100 or more, or
  - (e) to disqualify a horse, if the disqualification is made in conjunction with the imposition of a penalty on the appellant or any other person.
- (3) A reference in subclause (1) or (2) to a person does not include a reference to a racing club.
- (4) Expressions used in this clause have the meanings given to them in the Rules.

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**6 Procedure for appeals (other than appeals by Racing NSW)**

- (1) An appeal under section 15 (1) of the Act 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 (1) (a), (b) or (d) 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 (1) (c) of the Act—at any time after the expiration of 28 days after the appeal to the Appeal Panel or racing association is lodged.
- (2) The Secretary is, on receiving a notice of appeal under section 15 (1) of the Act:
  - (a) to forward notice of the appeal 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.

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Clause 7 Racing Appeals Tribunal Regulation 2004

Part 2 Appeals to Tribunal

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### 7 Procedure for appeals by Racing NSW

- (1) An appeal under section 15 (2) of the Act is to be initiated by the lodging of a notice of appeal in writing with the Tribunal:
  - (a) in the case of an appeal made under section 15 (2) (a) or (b) of the Act—within 2 months of the date on which the decision to be appealed against is made, or
  - (b) in the case of an appeal made under section 15 (2) (c) of the Act—at any time after the expiration of 2 months after the appeal to the Appeal Panel or racing association is lodged.
- (2) A notice of appeal under subclause (1) is to include the grounds of appeal and a transcript of the evidence taken at the hearing in respect of the decision appealed against.
- (3) The Secretary, on lodging a notice of appeal with the Tribunal, is to serve on the respondent:
  - (a) notice of the appeal, and
  - (b) notice of the grounds of appeal, and
  - (c) a transcript of the evidence taken at the hearing in respect of the decision appealed against.
- (4) 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.
- (5) The Tribunal 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 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.

### 8 Expedited hearing

- (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 period of notice fixed under clause 6 (5) or 7 (4).

- (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.

## **9 Fees**

- (1) A notice of appeal, other than an appeal by Racing NSW, must be accompanied by a fee of \$250 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.

## **10 Suspension or variation of decision pending determination of appeal**

- (1) The Tribunal may, on written application by an appellant 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 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 Tribunal or the appeal to which it relates is dismissed, determined or withdrawn (whichever happens first).

## **11 Withdrawal of appeal**

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.

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Clause 12 Racing Appeals Tribunal Regulation 2004

Part 2 Appeals to Tribunal

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### **12 Evidence on appeal**

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.

### **13 Hearings in absence of a party and representation at hearings**

- (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.

### **14 Costs**

- (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 Appeal Panel, Racing NSW or racing association 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.

### **15 Conduct of appeal**

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



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## Part 3      Miscellaneous

### 16    Attendance of interested parties

In the case of an appeal under clause 5 (1) (e) or (2) (e), a person who may be affected (whether or not adversely) by the decision of the Tribunal on the appeal may, with the leave of the Tribunal:

- (a) appear and make submissions before the Tribunal in relation to the appeal, and
- (b) present such evidence as the Tribunal may, in accordance with the Act and clause 12, consider.

### 17    False statements and contempt

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.

### 18    Repeal and savings

- (1) The *Racing Appeals Tribunal Regulation 1999* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Racing Appeals Tribunal Regulation 1999*, had effect under that Regulation is taken to have effect under this Regulation.