



New South Wales

# Greyhound and Harness Racing Administration (Appeals) Regulation 2004

under the

Greyhound and Harness Racing Administration Act 2004

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Greyhound and Harness Racing Administration Act 2004*.

GRANT McBRIDE, M.P.,

Minister for Gaming and Racing

## Explanatory note

The object of this Regulation is to replace the *Greyhound Racing (Appeals) Regulation 1999* and the *Harness Racing (Appeals) Regulation 1999*, which are to be repealed by the *Greyhound and Harness Racing Administration Act 2004*. This Regulation is in substantially the same terms as the Regulations to be repealed. This Regulation provides for administrative and procedural matters concerning appeals to the Greyhound and Harness Racing Regulatory Authority and the Greyhound and Harness Racing Appeals Tribunal.

This Regulation is made under the *Greyhound and Harness Racing Administration Act 2004*, including section 25 (regulations concerning appeals and special inquiries) and section 50 (the general regulation-making power).

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

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Part 1             Preliminary

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# Greyhound and Harness Racing Administration (Appeals) Regulation 2004

under the

Greyhound and Harness Racing Administration Act 2004

## Part 1        Preliminary

### 1    Name of Regulation

This Regulation is the *Greyhound and Harness Racing Administration (Appeals) Regulation 2004*.

### 2    Commencement

This Regulation commences on 1 October 2004.

### 3    Definitions

(1) In this Regulation:

*chief executive officer* means the chief executive officer of the Authority.

*Secretary of the Tribunal* means the person designated under clause 4 to act as the Secretary of the Tribunal for the time being.

*the Act* means the *Greyhound and Harness Racing Administration Act 2004*.

(2) Notes included in this Regulation do not form part of this Regulation.

### 4    Secretary of the Tribunal

(1) The Tribunal may, by order in writing, designate a member of staff of the Authority to act as the Secretary of the Tribunal.

(2) The Tribunal is to consult with the chairperson of the Authority before making an order under subclause (1).

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## Part 2 Appeals to Authority

### 5 Appeals to Authority

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

### 6 Decisions from which an appeal lies to Authority

For the purposes of section 19 (1) of the Act, one or more of the following decisions may be appealed to the Authority:

- (a) a decision to fine a person an amount exceeding \$50 but less than \$550,

**Note.** A person may opt whether to appeal to the Tribunal or the Authority in relation to a decision to impose a fine of more than \$50 but less than \$550. Fines greater than \$550 must be appealed to the Tribunal.

- (b) a decision to place an endorsement on the registration certificate of a greyhound for fighting or failing to pursue the lure, that gives rise to a disqualification of the greyhound for a period exceeding 4 weeks,
- (c) a decision to disqualify a greyhound from participating in greyhound racing, but only if the decision to disqualify is made in conjunction with a decision to impose a penalty on a person (the latter being a decision in respect of which an appeal may be made to the Authority),
- (d) a decision to disqualify for a period of less than 4 weeks any horse from participating in harness racing,
- (e) a decision to suspend, for a period of less than 14 days, any right or privilege conferred on a person by the Act or by a rule,
- (f) a decision to reduce in grade a driver for a period of less than 4 weeks,
- (g) a decision relating to the payment of a bet.

### 7 Further investigation of appeal

- (1) If the Authority, at any time before determining an appeal, is of the opinion that the subject-matter of the appeal or any matter connected with it should be investigated, or that the evidence considered on the appeal should be reconsidered, the Authority may:

- (a) itself conduct the investigation, or

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Part 2 Appeals to Authority

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- (b) direct that the investigation be conducted by the person or body against whose decision the appeal is brought, and that the person or body report the result of the investigation to the Authority, or
  - (c) remit the whole or any part of the subject-matter of the appeal for reconsideration by the person or body against whose decision the appeal is brought and may give such directions as it thinks fit in relation to that reconsideration.
- (2) A right of appeal lies to the Authority in respect of any decision given by a person or body arising out of any reconsideration referred to in subclause (1) (c) as if the decision were an original decision of that person or body.

### 8 Procedure for initiating and hearing appeals

- (1) An appeal is to be initiated by the lodging of a written notice of appeal with the chief executive officer within 14 days of the date on which the appellant is notified of the decision to be appealed against.
- (2) A notice of appeal must specify the grounds of appeal (including the particulars of those grounds). The appeal is limited to those grounds, except by leave of the Authority.
- (3) The chief executive officer is, on receiving a notice of appeal:
  - (a) to send the greyhound racing club or harness racing club concerned a copy of the notice of appeal, and
  - (b) to serve on the appellant a 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 chief executive officer. The chief executive officer is to give at least 7 days' written notice of such date, time and place to the appellant and the greyhound racing club or harness racing club concerned, and to such other persons as the chief executive officer 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.

**9 Fees**

- (1) A notice of appeal to the Authority must be accompanied by a fee of \$100 when it is lodged.
- (2) 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.

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

- (1) The Authority may, on written application by an appellant lodged with the chief executive officer, 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).

**11 Withdrawal of appeal**

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.

**12 Persons required to attend hearings or produce documents**

- (1) The Authority 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
  - (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.

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Part 2                Appeals to Authority

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- (2) The Authority may do so either on its own motion or on application by the appellant.
- (3) A person who is served with a notice under this clause must not, without reasonable excuse, fail or refuse to comply with the requirements of the notice.  
Maximum penalty: 5 penalty units.
- (4) A person who is served with a notice under this clause is to be given 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.

### **13 Evidence on appeal**

- (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 greyhound racing club or harness racing club 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 of, or practice as to, evidence but may inform itself of any matter in such manner as it thinks fit.

### **14 Determination of appeal**

- (1) The Authority may do any of the following in respect of an appeal:
  - (a) dismiss the appeal,
  - (b) confirm the decision appealed against or vary the decision by substituting any decision that could have been made by the steward or greyhound racing club or harness racing club (as the case requires),
  - (c) refer any matter relating to the decision appealed against to the steward or greyhound racing club or harness racing club that made that decision (in accordance with directions given by the Authority),
  - (d) order the refund of any stake paid or monetary prize given in connection with any race to which the appeal relates,



- (e) order the return of any prize (other than a monetary prize) given in connection with any race to which the appeal relates,
  - (f) make such other order in relation to the disposition of the appeal as the Authority thinks fit.
- (2) If the Authority makes an order under subclause (1) (d) requiring a person to refund any stake paid, or monetary prize given, to the person and the order is served on the person, personally or by post, the amount of the stake or prize becomes a debt payable by that person to the person to whom the stake or prize is required by the order to be refunded.
- (3) If the Authority makes an order under subclause (1) (e) requiring a person to return a prize (other than a monetary prize) within a specified period and the order is served on the person, personally or by post, and the person does not comply with the order within the specified period, an amount equal to the value of the prize becomes a debt payable by that person to the person to whom the prize is required to be returned.

**15 Conduct of appeal**

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

**16 Costs where appeal dismissed**

- (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.

## 2004 No 630

Clause 17 Greyhound and Harness Racing Administration (Appeals) Regulation 2004

Part 3 Appeals to Tribunal

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### Part 3 Appeals to Tribunal

#### 17 Appeals to Tribunal

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

#### 18 Decisions from which an appeal lies to Tribunal

- (1) For the purposes of section 19 (1) and (2) of the Act, one or more of the following decisions may be appealed to the Tribunal:
  - (a) a decision to disqualify a person,
  - (b) a decision to cancel the registration of, or to refuse to register, a person,
  - (c) a decision to cancel the registration of, or to refuse to register:
    - (i) a greyhound (including registration of a greyhound as a sire and registration of a litter of greyhounds), or
    - (ii) a harness racing horse,
  - (d) a decision to fine a person an amount of \$50 or more,  
**Note.** A person may opt whether to appeal to the Tribunal or the Authority in relation to a decision to impose a fine of more than \$50 but less than \$550. Fines greater than \$550 must be appealed to the Tribunal.
  - (e) a decision to disqualify a greyhound from participating in greyhound racing, but only if the decision to disqualify is made in conjunction with a decision to impose a penalty on a person (the latter being a decision in respect of which an appeal may be made to the Tribunal),
  - (f) a decision to disqualify for a period of 4 weeks or more any horse from participating in harness racing,
  - (g) a decision to suspend, for a period of 14 days or more, any right or privilege conferred on a person by the Act or by a rule,
  - (h) a decision to reduce in grade a driver for a period of 4 weeks or more,
  - (i) a decision of the Authority in determining an appeal under section 19 (1) of the Act.
- (2) For the purposes of section 19 (1) of the Act, any of the following decisions of a greyhound racing club, a harness racing club, a steward of a greyhound racing club or a steward of the Authority may be appealed by the Authority to the Tribunal:

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- (a) a decision not to lay charges after an inquiry,
  - (b) a decision to impose a penalty,
  - (c) a decision to impose no penalty.

**19 Procedure for initiating and hearing appeals**

- (1) An appeal is to be initiated by the lodging of a written notice of appeal with the Secretary of the Tribunal within 7 days of the date on which the appellant is notified of the decision to be appealed against.
- (2) The Secretary of the Tribunal is, on receiving a notice of appeal:
  - (a) to forward notice of it to the Tribunal, and
  - (b) if the appeal is in relation to greyhound racing and if the placing of any greyhound may be affected by the result of the appeal, to give a copy of the notice of the appeal to the owner of the greyhound (if the owner is not the appellant) and to the greyhound racing club concerned, and
  - (c) if the appeal is in relation to harness racing and 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 concerned, and
  - (d) 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 of the Tribunal a written notice of the grounds of appeal. The appeal is limited to those grounds, except by leave of the Tribunal.
- (4) On receiving notice of the grounds of appeal, the Secretary of the Tribunal 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 Secretary of the Tribunal 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.

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Part 3                Appeals to Tribunal

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- (6) The Tribunal is to commence the hearing of an appeal as soon as reasonably practicable after 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.

### **20 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 time fixed under clause 19 (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 limited to those grounds, except by leave of the Tribunal.

### **21 Fees**

- (1) A notice of appeal to the Tribunal 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.

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

- (1) The Tribunal may, on written application by an appellant lodged with the Secretary of the Tribunal, order that the decision appealed against:
  - (a) is not to be carried into effect, or

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(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).

**23 Withdrawal of appeal**

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.

**24 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.

**25 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 of an appeal.

**26 Assessors**

- (1) One or more greyhound racing assessors may assist the Tribunal in hearing an appeal in relation to greyhound racing if the Tribunal, whether before or during the hearing, so directs.
- (2) One or more harness racing assessors may assist the Tribunal in hearing an appeal in relation to harness racing if the Tribunal, whether before or during the hearing, so directs.
- (3) The Tribunal is to determine the greyhound racing assessors or harness racing assessors who may assist the Tribunal in hearing the appeal concerned.

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Clause 27            Greyhound and Harness Racing Administration (Appeals) Regulation 2004

Part 3                Appeals to Tribunal

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- (4) The Tribunal may, at any time during the hearing of an appeal, dispense with the services of any greyhound racing assessor or harness racing assessor assisting the Tribunal.
- (5) 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.

### **27 Costs**

- (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.

### **28 Orders to return stake or prize**

- (1) If the Tribunal makes an order under section 23 (1) (d) of the Act requiring a person to refund any stake paid, or monetary prize given, to the person and the order is served on the person, personally or by post, the amount of the stake or prize becomes a debt payable by that person to the person to whom the stake or prize is required by the order to be refunded.
- (2) If the Tribunal makes an order under section 23 (1) (d) of the Act requiring a person to return a prize (other than a monetary prize) within a specified period and the order is served on the person, personally or by post, and the person does not comply with the order within the specified period, an amount equal to the value of the prize becomes a debt payable by that person to the person to whom the prize is required to be returned.

### **29 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 4 Miscellaneous

### 30 Contempt

A person appearing before the Tribunal in connection with an appeal must not say or do anything that is likely to bring the Tribunal into contempt.

Maximum penalty: 5 penalty units.

### 31 Savings

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