

# Racing Appeals Tribunal Act 1983 No 199

[1983-199]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Racing Legislation Amendment Act 2019 No 12](#) (not commenced — to commence on 1.1.2020)

### Authorisation

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# Racing Appeals Tribunal Act 1983 No 199



New South Wales

An Act to constitute a Racing Appeals Tribunal to hear appeals from certain decisions of the Appeal Panel under the *Thoroughbred Racing Act 1996* and appeals from certain decisions under the *Greyhound Racing Act 2017* and the *Harness Racing Act 2009*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Racing Appeals Tribunal Act 1983*.

### 2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

### 3 (Repealed)

### 4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**Appeal Panel** means the Appeal Panel under the *Thoroughbred Racing Act 1996*.

**court** includes the Industrial Relations Commission of New South Wales.

**HRNSW** means Harness Racing New South Wales constituted under the *Harness Racing Act 2009*.

**qualified person** means a judge of any court in New South Wales, a retired judge of any court (whether or not in New South Wales) or a person qualified to be appointed as a Judge of the District Court.

**racing association** has the meaning given by the *Thoroughbred Racing Act 1996*.

**Racing NSW** means Racing New South Wales.

**regulation** means a regulation made under this Act.

**Tribunal** means the Racing Appeals Tribunal constituted by this Act.

(2) In this Act, a reference to:

(a) a function includes a reference to a power, authority and duty, and

(b) the exercise of a function includes, where that function is a duty, a reference to the performance of that duty.

## **Part 2 Constitution of Racing Appeals Tribunal**

### **5 Racing Appeals Tribunal**

There is hereby constituted a tribunal under the name of the “Racing Appeals Tribunal”.

### **6 Appointment of Tribunal**

The Minister may, upon the recommendation of the Attorney General, appoint a qualified person as the Tribunal.

### **7 Appointment of acting Tribunal**

(1) The Minister may from time to time, upon the recommendation of the Attorney General, appoint:

(a) a qualified person to act as the Tribunal:

(i) during the illness or absence of the person appointed as the Tribunal,

(ii) during a vacancy in the office of the Tribunal, or

(iii) on such occasions or in respect of such appeals as the person appointed as the Tribunal directs, and

(b) another qualified person to act as the Tribunal in the circumstances described in paragraph (a), but to act only during the illness or absence of the person appointed to act as the Tribunal under paragraph (a).

(2) A qualified person while acting as the Tribunal shall be deemed to be the Tribunal.

(3) More than one sitting of the Tribunal may be held at the same time, but the person appointed as the Tribunal and a person appointed to act as the Tribunal shall not sit on the same appeal.

### **8 (Repealed)**

## **8A Expert advice**

The Tribunal may seek expert advice in connection with the hearing of an appeal from any person who, in its opinion, has special knowledge of, and experience in, the racing industry.

## **8B, 9 (Repealed)**

## **10 Term of office**

Subject to this Act, a person appointed as:

- (a) the Tribunal, or
- (b) (Repealed)

shall hold office for such period, not exceeding 3 years, as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

## **11 Effect of appointment of a judge as the Tribunal**

- (1) The appointment of a person who is a judge of any court as, or to act as, the Tribunal shall not, nor shall the person's service as the Tribunal, affect the person's tenure of the office of judge of that court or the person's rank, title, status, precedence, salary or other rights or privileges as a holder of that office.
- (2) A judge of any court may, notwithstanding that he or she holds office as, or acts as, the Tribunal, exercise the functions of a judge of that court.
- (3) The service, as the Tribunal, of a judge of any court shall, for all purposes, be taken to be service as a judge of that court.

## **12 Remuneration**

A person (not being a judge of any court) holding office as, or acting as, the Tribunal is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

## **13 Vacation of office**

- (1) A person (being a judge of any court) holding office as the Tribunal shall be deemed to have vacated that office if the person:
  - (a) ceases to be a judge of that court, or
  - (b) resigns that office by instrument in writing addressed to the Minister.
- (2) A person (not being a judge of any court) holding office as the Tribunal shall be deemed to have vacated that office if the person:

- (a) dies,
  - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,
  - (c) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the *Mental Health Act 1958* or a person under detention under Part 7 of that Act,
  - (d) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards, or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable,
  - (e) resigns that office by instrument in writing addressed to the Minister, or
  - (f) (Repealed)
  - (g) is removed from office by the Minister under subsection (3).
- (3) The Minister may remove from office:
- (a) a person (not being a judge of any court) holding office as, or appointed to act as, the Tribunal, or
  - (b) (Repealed)

#### **14 Effect of certain other Acts**

- (1) The *Government Sector Employment Act 2013* does not apply to or in respect of the appointment of a person as, or to act as, the Tribunal and a person holding office as, or acting as, the Tribunal is not, as the Tribunal, subject to that Act.
- (2) The office of the Tribunal shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

### **Part 3 Appeals to Tribunal**

#### **Division 1 Appeals relating to thoroughbred racing**

##### **15 Appeals to Tribunal**

- (1) A person who is aggrieved by any of the following decisions may, in accordance with the regulations, appeal against the decision to the Tribunal:
  - (a) a decision of the Appeal Panel on an appeal under the *Thoroughbred Racing Act 1996*,

- (b) a decision of a racing association on an appeal heard by virtue of a delegation of Racing NSW under the *Thoroughbred Racing Act 1996*,
  - (c) a decision in respect of which an appeal is made to the Appeal Panel or a racing association under the *Thoroughbred Racing Act 1996* but that the Appeal Panel or racing association neglects or refuses to hear and determine,
  - (d) a decision of Racing NSW.
- (2) Racing NSW may, in accordance with the regulations, appeal to the Tribunal against the following decisions:
- (a) a decision of the Appeal Panel on an appeal under the *Thoroughbred Racing Act 1996*,
  - (b) a decision of a racing association on an appeal heard by virtue of a delegation by Racing NSW under the *Thoroughbred Racing Act 1996*,
  - (c) a decision in respect of which an appeal is made to the Appeal Panel or a racing association under the *Thoroughbred Racing Act 1996* but that the Appeal Panel or racing association neglects or refuses to hear and determine.

## **Division 2 Appeals relating to greyhound racing or harness racing**

### **15A Appeals to Tribunal relating to greyhound racing**

- (1) Any person who is aggrieved by any of the following decisions may, in accordance with the regulations, appeal against the decision to the Tribunal:
- (a) a decision of a greyhound racing club within the meaning of the *Greyhound Racing Act 2017*,
  - (b) a decision of a steward appointed by the Greyhound Welfare and Integrity Commission.
- (2) Any of the following persons or bodies that are aggrieved by any decision of the Greyhound Welfare and Integrity Commission or Greyhound Racing New South Wales may, in accordance with the regulations, appeal against the decision to the Tribunal:
- (a) any person,
  - (b) a greyhound racing club within the meaning of the *Greyhound Racing Act 2017*.

### **15B Appeals to Tribunal relating to harness racing**

- (1) Any person who is aggrieved by any of the following decisions may, in accordance with the regulations, appeal against the decision to the Tribunal:
- (a) a decision of a harness racing club (within the meaning of the *Harness Racing Act*



2009),

(b) a decision of a steward of HRNSW.

(2) Any of the following persons or bodies that are aggrieved by a decision of HRNSW may, in accordance with the regulations, appeal against the decision to the Tribunal:

(a) any person,

(b) a harness racing club (within the meaning of the *Harness Racing Act 2009*).

### **Division 3 Procedure and regulations relating to appeals**

#### **16 Procedure on appeal**

(1) An appeal to the Tribunal is to be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence on which the decision appealed against was made, may be given on the appeal.

(2) Proceedings on an appeal are to be held as in open court before the Tribunal.

#### **16A Persons required to attend hearings or produce documents**

(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 a notice under this section must not, without reasonable excuse, fail or refuse to comply with the requirements of the notice.

Maximum penalty: 5 penalty units.

(3) A person who is served with a notice under this section 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.

#### **17 Determination of appeals relating to thoroughbred racing**

(1) The Tribunal may do any of the following in respect of an appeal under section 15:

(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 Appeal Panel, the racing association or

Racing NSW (as the case requires),

- (c) refer any matter relating to the decision appealed against to the Appeal Panel, the racing association or Racing NSW for rehearing (in accordance with directions given by the Tribunal),
- (d) make such other order in relation to the disposal of the appeal as the Tribunal thinks fit.

- (2) The decision of the Tribunal is final and is taken (except for the purposes of an appeal against the decision under this Act or the *Thoroughbred Racing Act 1996*) to be the decision of the Appeal Panel, the racing association or Racing NSW (as the case requires).

#### **17A Determination of appeals relating to greyhound racing or harness racing**

- (1) The Tribunal may do any of the following in respect of an appeal under section 15A or 15B:
  - (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, club, the Greyhound Welfare and Integrity Commission, Greyhound Racing New South Wales or HRNSW (as the case requires),
  - (c) make such other order in relation to the disposal of the appeal as the Tribunal thinks fit.
- (2) The decision of the Tribunal is final and is taken to be a decision of the person or body whose decision is the subject of the appeal.

#### **18 Regulations respecting appeals**

- (1) The regulations may make provision for or with respect to appeals to the Tribunal under this Act and, in particular, for or with respect to:
  - (a) the procedures to be followed at or in connection with any appeals under this Act,
  - (b) the suspension of a decision appealed against under this Act pending the determination of the appeal,
  - (c) the payment of fees and costs in respect of appeals under this Act, and
  - (d) any matters incidental to or connected with appeals under this Act.
- (2) Without affecting the generality of subsection (1), the regulations may:
  - (a) prescribe classes of matters in respect of which appeals may not be made under

this Act, or

- (b) provide that no appeals may be made under this Act except in respect of prescribed classes of matters.

## **Part 4 Miscellaneous**

### **19 Staff to assist Tribunal**

- (1) For the purposes of this Act, the Tribunal may, with the approval of the Minister, make use of the services of:
  - (a) any members of staff of Racing NSW, or
  - (b) any person employed in a Public Service agency responsible to the Minister.
- (2) The Minister may, by order in writing, direct Racing NSW to make available for the use of the Tribunal, in such manner as may be specified in the order, the services of any members of staff of Racing NSW.
- (3) Racing NSW shall not fail or refuse to comply with an order under subsection (2).  
Maximum penalty (subsection (3)): 5 penalty units.

### **20 Expenses of Tribunal**

- (1) Unless the Minister otherwise determines, the expenses (including remuneration payable to an expert under section 8A or payable under section 12) incurred by the Tribunal in the exercise of the functions of the Tribunal under this Act are to be met:
  - (a) by Racing NSW in relation to an appeal to the Tribunal under section 15, or
  - (b) by Greyhound Racing New South Wales in relation to an appeal to the Tribunal under section 15A, or
  - (c) by HRNSW in relation to an appeal to the Tribunal under section 15B.
- (2) If Racing NSW, Greyhound Racing New South Wales or HRNSW fails to meet any expenses it is required to meet under subsection (1), the Minister may recover the amount of those expenses from Racing NSW, Greyhound Racing New South Wales or HRNSW (as the case may be) as a debt in any court of competent jurisdiction.

### **21 Service of instruments**

Any instrument to be served on any person under this Act or the regulations may be served:

- (a) personally, or
- (b) by leaving it, at the place of residence or business of the person last known to the

person serving the instrument, with some other person apparently over the age of 16 years, or

- (c) by post addressed to the person at the place of residence or business of the person last known to the person serving the instrument.

## **22 Proceedings for offences**

Proceedings for an offence against this Act or the regulations may be taken before the Local Court.

## **23 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may impose a penalty not exceeding 5 penalty units for any contravention thereof.
- (3) A provision of a regulation may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
- or may do any combination of those things.

## **24 Savings and transitional provisions**

Schedule 1 has effect.

## **Schedule 1 Savings and transitional provisions**

(Section 24)

### **Part 1 General**

#### **1 Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Thoroughbred Racing Board Amendment Act 1998*

*Thoroughbred Racing Legislation Amendment Act 2004*

*Racing Legislation Amendment Act 2009*

- (2) A provision of a regulation authorised by this clause may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (3) To the extent to which a provision of a regulation authorised by this clause takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication.

**Part 2 Provisions consequent on enactment of *Thoroughbred Racing Board Amendment Act 1998***

**2 Pending appeals**

The amendment made by Schedule 2 [1] to the *Thoroughbred Racing Board Amendment Act 1998* applies to decisions that the Board makes before or after the commencement of that amendment, other than those in respect of which an appeal is pending immediately before the commencement.

**Part 3 Provisions consequent on enactment of *Thoroughbred Racing Legislation Amendment Act 2004***

**3 Amendments made by *Thoroughbred Racing Legislation Amendment Act 2004***

- (1) Section 15, as in force immediately before its substitution by the *Thoroughbred Racing Legislation Amendment Act 2004*, continues to apply in respect of decisions referred to in that section that were made before that substitution.
- (2) The provisions of Part 3 of this Act, and the regulations made under Part 3, continue to apply in respect of an appeal made to the Tribunal before the commencement of an amendment made to those provisions by the *Thoroughbred Racing Legislation Amendment Act 2004* as if the amendment had not been enacted.
- (3) The amendments made to clause 1 of this Schedule by the *Thoroughbred Racing Legislation Amendment Act 2004* do not affect the operation of any regulations made under that clause before the commencement of those amendments.

**Part 4 Provisions consequent on enactment of *Racing Legislation***

## Amendment Act 2009

### 4 Definitions

In this Part:

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

**former Authority** means the Greyhound and Harness Racing Regulatory Authority constituted by the former Act.

**former Tribunal** means the Greyhound and Harness Racing Appeals Tribunal constituted by the former Act.

### 5 Pending proceedings before former Tribunal

- (1) If proceedings were commenced but not heard by the former Tribunal before its dissolution, the proceedings are taken to have been duly commenced in the Racing Appeals Tribunal.
- (2) If the former Tribunal had commenced to hear (but had not determined) a matter before its dissolution, the person or persons hearing the matter:
  - (a) are to continue to hear the matter, and to determine the matter, sitting as the Racing Appeals Tribunal, and
  - (b) have and may exercise, while sitting as the Racing Appeals Tribunal under this clause, all the functions that the former Tribunal had immediately before its dissolution.
- (3) A reference in section 20:
  - (a) to an appeal to the Tribunal under section 15A includes a reference to proceedings dealt with in accordance with this clause that relate to greyhound racing, and
  - (b) to an appeal to the Tribunal under section 15B includes a reference to proceedings dealt with in accordance with this clause that relate to harness racing.
- (4) This clause applies despite any contrary provision of this Act.

### 6 Pending proceedings before Greyhound and Harness Racing Regulatory Authority

If an appeal was made to the former Authority under section 19 of the former Act before the repeal of that section and was not determined by that Authority before its dissolution, the appeal is taken to have been made to the Racing Appeals Tribunal under this Act and is to be determined by that Tribunal in accordance with this Act.

### 7 Regulations relating to greyhound racing and harness racing appeals

- (1) The provisions of the *Greyhound and Harness Racing Administration (Appeals)*

*Regulation 2004* (as in force immediately before the repeal of section 19 of the former Act) are taken to apply to appeals relating to greyhound racing and harness racing dealt with by the Tribunal under this Act until regulations are made under this Act in relation to those appeals.

(2) Despite subclause (1), those provisions apply with the following modifications:

- (a) clause 6 of that Regulation is taken to provide for an appeal to the Tribunal in relation to a decision specified in that clause,
- (b) a reference to the Tribunal is taken to be a reference to the Racing Appeals Tribunal,
- (c) a reference to a provision of the former Act is taken to be a reference to the corresponding provision of this Act (if any),
- (d) such other modifications as the Tribunal considers necessary.

(3) This clause extends to proceedings referred to in clause 5.

## **8 Special inquiries under former Act**

A special inquiry that was commenced under section 24 of the former Act but was not completed before the repeal of that section is not to be continued after that repeal.

## **9 Orders**

- (1) An order made under the former Act by the former Tribunal, being an order having effect immediately before the dissolution of the former Tribunal, is taken to be an order made by the Racing Appeals Tribunal under the corresponding provision of this Act.
- (2) Any application for an order made to the former Tribunal under the former Act and not determined before the dissolution of the former Tribunal is to continue to be dealt with as if made under this Act (but only if there is a corresponding provision of this Act under which the order could be made).

## **10 General savings**

If anything done or commenced under the former Act in relation to the former Tribunal before its dissolution and still having effect or not completed immediately before that dissolution is something that could be done or commenced under this Act:

- (a) the thing done continues to have effect, or
- (b) the thing commenced may be completed, as if it had been done or commenced under this Act.

## **11 Assessors**

On the repeal of section 8A by the *Racing Legislation Amendment Act 2009*, any person who immediately before that repeal held the position of assessor ceases to hold that position. No remuneration or compensation is payable to any such person as a result of the operation of this clause.