



New South Wales

Racing Appeals Tribunal Regulation 2015

under the

Racing Appeals Tribunal Act 1983

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

TROY GRANT, MP
Minister for Racing

Explanatory note

The object of this Regulation is to repeal and remake, with some changes, the provisions of the *Racing Appeals Tribunal Regulation 2010*, which would otherwise be repealed by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the decisions that give rise to an appeal to the Tribunal,
- (b) the procedure for making an appeal,
- (c) the fees for making an appeal,
- (d) the conduct of an appeal,
- (e) the awarding of costs,
- (f) the attendance of interested parties,
- (g) the offence of making false statements and contempt,
- (h) savings, transitional and formal matters.

The changes made in this Regulation include removing references to chief executives of racing authorities from the definition of *Secretary*, limiting the circumstances in which the Tribunal may award costs, enabling the Tribunal to extend the period for lodging certain notices, providing for electronic lodgment of notices and applications and clarifying the Tribunal's powers to issue directions as to the conduct of an appeal.

This Regulation is made under the *Racing Appeals Tribunal Act 1983*, including sections 15, 15A, 15B, 18 and 23 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely 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.

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Racing Appeals Tribunal Regulation 2015

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Racing Appeals Tribunal Regulation 2015*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note. This Regulation repeals and replaces the *Racing Appeals Tribunal Regulation 2010* which would otherwise be repealed on 1 September 2015 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

Secretary means:

- (a) in respect of an appeal relating to thoroughbred racing—an officer of Racing NSW, or an officer of a Department administered by the Minister, designated by the Minister as Secretary of the Tribunal with respect to thoroughbred racing, or
- (b) in respect of an appeal relating to greyhound racing—an officer of GRNSW, or an officer of a Department administered by the Minister, designated by the Minister as Secretary of the Tribunal with respect to greyhound racing, or
- (c) in respect of an appeal relating to harness racing—an officer of HRNSW, or an officer of a Department administered by the Minister, designated by the Minister as Secretary of the Tribunal with respect to harness racing.

the Act means the *Racing Appeals Tribunal Act 1983*.

the rules means:

- (a) in respect of an appeal relating to thoroughbred racing—the Rules of Racing under the *Thoroughbred Racing Act 1996*, or
- (b) in respect of an appeal relating to greyhound racing—the rules made under Division 2 of Part 3 of the *Greyhound Racing Act 2009*, or
- (c) in respect of an appeal relating to harness racing—the rules made under Division 2 of Part 3 of the *Harness Racing Act 2009*.

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

Part 2 Appeals to Tribunal

Division 1 Preliminary

4 Appeals to Tribunal

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

Division 2 Appeals relating to thoroughbred racing

5 Decisions from which an appeal lies to Tribunal

- (1) An appeal may be made to the Tribunal under section 15 (1) (a), (b) or (c) of the Act 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) An appeal may be made to the Tribunal under section 15 (1) (d) 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 \$200 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 this clause 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.

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 lodging a written notice of appeal with the Secretary:
 - (a) for 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 such longer period as the Tribunal may allow under subclause (7)), or
 - (b) for 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:
 - (a) to forward notice of the appeal 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 race club concerned, and

- (c) if the decision appealed against was made as a result of a hearing or inquiry, to serve on the appellant a transcript of the evidence taken at the hearing or inquiry.
- (3) If a transcript of evidence referred to in subclause (2) (c) is not available to the Secretary on receiving a notice of appeal, the Secretary is to serve it on the appellant as soon as it becomes available.
- (4) If the decision appealed against was made as a result of a hearing or inquiry, the appellant is to lodge with the Secretary a written notice of the grounds of appeal within 7 days of receiving a transcript of the evidence taken at the hearing or inquiry. The appeal is to be limited to those grounds, except by leave of the Tribunal.
- (5) On receiving notice of the grounds of appeal under subclause (4), the Secretary is to forward a copy of the notice to the Tribunal along with a transcript of the evidence taken at the hearing or inquiry in respect of the decision appealed against.
- (6) If the decision appealed against was not made as a result of a hearing or inquiry, the appellant is to lodge a notice of the grounds of appeal in such manner and within such time (not being less than 7 days) as the Tribunal directs on receiving notice of the appeal. The appeal is limited to the grounds specified in that notice, except by leave of the Tribunal.
- (7) The Tribunal may, on written application of the appellant being lodged with the Secretary, extend the time:
 - (a) for lodging a notice of appeal under subclause (1) (a), or
 - (b) for lodging a notice of the grounds of appeal under subclause (4),or both, if satisfied that special or exceptional circumstances exist that justify the extension.

7 Procedure for appeals by Racing NSW

- (1) An appeal under section 15 (2) of the Act is to be initiated by lodging a written notice of appeal with the Tribunal:
 - (a) for 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) for 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 is, on the lodging of a notice of appeal with the Tribunal:
 - (a) to serve the following on the respondent:
 - (i) notice of the appeal,
 - (ii) notice of the grounds of appeal,
 - (iii) a transcript of the evidence taken at the hearing in respect of the decision appealed against, 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 respondent) and to the race club concerned.
- (4) The Tribunal may, on written application of Racing NSW being lodged with the Secretary, extend the time for lodging a notice of appeal under subclause (1) (a) if satisfied that special or exceptional circumstances exist that justify the extension.

8 Fees

- (1) A notice of appeal, other than an appeal by Racing NSW, must be accompanied by (or, if lodged electronically, must include provision for) 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.

Division 3 Appeals relating to greyhound racing or harness racing

9 Decisions from which an appeal lies to Tribunal

- (1) An appeal may be made to the Tribunal under section 15A or 15B of the Act only in respect of a decision:
 - (a) to disqualify or warn off a person, or
 - (b) to cancel the registration of, or to refuse to register, a person, or
 - (c) 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, or
 - (d) to fine a person an amount of \$200 or more, or
 - (e) to disqualify a greyhound, if the disqualification is made in conjunction with the imposition of a penalty on the appellant or any other person, or
 - (f) to disqualify any horse from participating in harness racing, if the disqualification is made in conjunction with the imposition of a penalty on the appellant or any other person, or
 - (g) to suspend any licence, right or privilege granted under the rules, or
 - (h) to reduce in grade a driver for a period of 4 weeks or more, or
 - (i) to place an endorsement on the registration certificate of a greyhound for marring or failing to pursue the lure, that gives rise to a suspension of the greyhound for a period of more than 4 weeks.
- (2) Expressions used in this clause have the meanings given to them in the rules.

10 Procedure for appeals

- (1) An appeal under section 15A or 15B of the Act is to be initiated by lodging a written notice of appeal with the Secretary within 7 days of the date on which the appellant is notified of the decision appealed against.
- (2) The Secretary is, on receiving a notice of appeal:
 - (a) to forward notice of the appeal 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) if the decision appealed against was made as a result of a hearing or inquiry, to serve on the appellant a transcript of the evidence taken at the hearing or inquiry.
- (3) If a transcript of evidence referred to in subclause (2) (d) is not available to the Secretary on receiving a notice of appeal, the Secretary is to serve it on the appellant as soon as it becomes available.
- (4) If the decision appealed against was made as a result of a hearing or inquiry, the appellant is to lodge with the Secretary a written notice of the grounds of appeal within 7 days of receiving a transcript of the evidence taken at the hearing or inquiry. The appeal is to be limited to those grounds, except by leave of the Tribunal.
- (5) On receiving notice of the grounds of appeal under subclause (4), the Secretary is to forward a copy of the notice to the Tribunal along with a transcript of the evidence taken at the hearing or inquiry in respect of the decision appealed against.
- (6) If the decision appealed against was not made as a result of a hearing or inquiry, the appellant is to lodge a notice of the grounds of appeal in such manner and within such time (not being less than 7 days) as the Tribunal directs on receiving notice of the appeal. The appeal is limited to the grounds specified in that notice, except by leave of the Tribunal.
- (7) The Tribunal may, on written application of the appellant being lodged with the Secretary, extend the time:
 - (a) for lodging a notice of appeal under subclause (1), or
 - (b) for lodging a notice of the grounds of appeal under subclause (4),or both, if satisfied that special or exceptional circumstances exist that justify the extension.

11 Fees

- (1) A notice of appeal to the Tribunal must be accompanied by (or, if lodged electronically, must include provision for) 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.

Division 4 Appeals generally

12 Hearing of an appeal

- (1) 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.
- (2) 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.
- (3) The Tribunal may, in a particular case, extend:
 - (a) the minimum period of notice to be given to the appellant under subclause (1), or
 - (b) the period specified in subclause (2) within which the Tribunal is to commence the hearing of an appeal,or both, if in its opinion the circumstances of the case so require.

13 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 a hearing or inquiry 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 12 (1).
- (2) If such an order is made:
 - (a) the Tribunal may rely on such evidence as is available to it concerning the hearing or inquiry 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.

14 Suspension or variation of decision pending determination

- (1) The Tribunal may, on written application by an appellant being 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).

15 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.

16 Evidence on appeal

- (1) 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.
- (2) The Tribunal may require a witness to be examined on oath or affirmation, or may require evidence to be proven by a statutory declaration.

17 Hearings in absence of a party and representation

- (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.

18 Conduct of appeal

- (1) The Tribunal may, subject to the Act and this Part, direct the manner in which an appeal is to be conducted.

- (2) Without limiting subclause (1), the Tribunal may make directions as to the preparation of the matter for appeal (including directions to the appellant to provide to the Tribunal the names of witnesses who may provide statements, and the nature of any other documents, on which the appellant intends to rely).

19 Costs

- (1) On determining an appeal, the Tribunal may order that a party to the appeal pay all or a specified part of the costs of another party to the appeal (including the payment of costs in respect of the hearing or inquiry by the Appeal Panel, Racing NSW, GRNSW, HRNSW, a racing association, a greyhound racing club or a harness racing club in respect of the decision appealed against).
- (2) The Tribunal must not make an order under subclause (1) unless the Tribunal decides:
 - (a) the appeal is vexatious or frivolous, or
 - (b) a party has caused unreasonable delay in the conduct of the appeal, or
 - (c) a party has caused another party unreasonable cost by the manner in which the appeal has been conducted.
- (3) 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.

20 Electronic lodgment of notices and applications

A notice or application required by or under this Part to be lodged with the Secretary may be lodged with the Secretary electronically in accordance with arrangements indicated by the Secretary as appropriate for electronic lodgment.

Part 3 Miscellaneous

21 Attendance of interested parties

In the case of an appeal under clauses 5 (1) (e) or (2) (e) or 9 (1) (e) or (f), 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) in accordance with the Act and clause 16, adduce evidence.

22 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.

23 Repeal, savings and transitional

- (1) The *Racing Appeals Tribunal Regulation 2010* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Racing Appeals Tribunal Regulation 2010*, had effect under that Regulation continues to have effect under this Regulation.
- (3) Clause 19 of this Regulation applies in relation to a determination of an appeal by the Tribunal on or after the commencement of this Regulation whether the appeal was made before, on or after that commencement.