

**AUSTRALASIAN RACING MINISTERS' CONFERENCE**

**Sydney, 19 April 2013**

**Agenda Item No 5**

**DISCUSSION PAPER (TASMANIA)**

**HARNESS RACING APPEAL STRUCTURES AND PROCESSES**

**RECOMMENDATION:**

**That Ministers note:**

- racing codes have worked cooperatively to formulate national rules which are enforced with consistency across jurisdictions;
- consistency of rule application and enforcement is an important feature of public and industry confidence, especially considering that participants and punters, more so than ever before, undertake activities across borders; and
- while national consistency has been achieved on many important fronts, there remains a significant disparity in appeal structures and processes between jurisdictions.

**1. PURPOSE**

- 1.1. The National Racing Integrity Advisory Group (NRIAG) has conducted a review of the excellent work undertaken by Harness Racing Australia (HRA) in relation to the disparity in the structure and processes of appeal bodies between jurisdictions.
- 1.2. The review by NRIAG has highlighted that while national consistency has been achieved on many significant racing integrity issues, the lack of consistency in the appeal systems is disadvantageous to participants and punters alike.
- 1.3. The purpose of this Paper is to highlight the existing disparities and to identify the real and potential consequences of such.

**2. BACKGROUND**

- 2.1. Members of HRA have become increasingly concerned about the time taken and costs associated with the varying approaches to the structures and processes of racing appeal bodies by each state and territory.

- 2.2. It was for this reason that, at the 2012 Australasian Racing Ministers' Conference (ARMC) in Hobart, HRA recommended the various jurisdictional appeal systems be reviewed in this context with a view to establishing a uniform approach and consistency of powers which best serve the industry, without undermining procedural fairness or diluting the rights of participants.
- 2.3. While the ARMC has yet to agree to a formal review, HRA has undertaken its own assessment of the various structures and processes, contrasting appeal systems across jurisdictions as they relate to the harness code (copy of report attached).
- 2.4. While each system is understood and no doubt well intended, a clear contrast has emerged regarding the performance of civil tribunals when compared with specialist racing tribunals.
- 2.5. When hearing racing appeals, civil-based tribunals, which were designed as cost effective "one stop shops" for dealing with a range of disputes, have become entrapped in both costly legal procedures and frustrating delays, some of which are manipulated by industry participants for convenience.

### **3. OBSERVATIONS FROM THE HRA REVIEW**

- 3.1. Specialist racing tribunals are significantly more efficient than large, civil "one stop shop" tribunals.
- 3.2. Specialist racing tribunals are funded by the racing codes, with the exception of Tasmania where its appeal body is funded by government.
- 3.3. Hearings can be conducted more expediently by specialist racing tribunals.
- 3.4. The administration of racing justice in Victoria and Queensland is inefficient (slow and costly) due to the use of civil tribunals.
- 3.5. There is a query on the purpose of directions hearings at the Victorian Civil and Administrative Tribunal (VCAT) and Queensland Civil and Administrative Tribunal (QCAT) – they appear to delay hearings and increase costs.
- 3.6. VCAT's goal of listing hearings within six weeks of filing an appeal is unachievable. One of the reasons for abolishing the Racing Appeals Tribunal (RAT) in Victoria was Judge Lewis' concern that the average period of time in the previous three years between an appeal being lodged and heard by the RAT was approximately 40 days. With VCAT, that timeframe is approximately 195 days.
- 3.7. In terms of the current Victorian appeals structure, the intention was for the expert judges who had previously sat on the RAT to hear the VCAT matters, but this does not appear to have occurred.
- 3.8. Three of the seven tribunals hear the matters *de novo*.

- 3.9. Victoria and Queensland are the only states which have a two-tier appeals structure in place, with a specialist racing tribunal the first port of call.
- 3.10. Legal representation is permitted in all forums but is considered almost mandatory for appearing at the civil tribunals.
- 3.11. While theoretically, the goal of civil tribunals is to promote less formality, less cost and swift justice – the reality for racing is the opposite; these goals may be relevant when comparing legal proceedings commenced in the higher courts such as the County or Supreme Courts, but not when comparing proceedings commenced in the specialist racing tribunals.

#### **4. KEY ISSUES**

- 4.1. More than ever, industry participants are crossing borders and undertaking racing activities in multiple jurisdictions, under national rules.
- 4.2. While national rules are consistently enforced across the borders, the appeal structures and processes of the various jurisdictions can be significantly different.
- 4.3. This difference between the jurisdictional systems has resulted in a disparity in terms of appeal costs, timing of appeals and length of appeals. Given the national approach in relation to rules and their enforcement, NRIAG is firmly of the view that uniformity of appeals structures and processes will deliver enhanced outcomes.
- 4.4. Continuing to have disparate approaches to integrity systems, such as appeal models, is contrary to a best practice, national integrity strategy.
- 4.5. The level of confidence in the racing industry impacts on a variety of key stakeholders, whether they be industry participants, administrators, punters, wagering operators or governments. There is, quite rightly, an expectation from stakeholders that there will be a competitive, level playing field, including consistency and efficacy in terms of rules being upheld and appropriate penalties being issued when breaches occur.
- 4.6. The racing industry is a global, 24-hour/7-day a week industry which requires an appeal system capable of operating efficiently and expeditiously.

## FINAL TIER APPEALS BODIES FOR HARNESS RACING

STATE	VIC	NSW	QLD	WA	SA	TAS	ACT
<b>Form &amp; Name</b>	Civil VCAT	Specialist Racing Appeals Tribunal	Civil QCAT	Specialist Racing Penalties Appeal Tribunal (RPAT)	Specialist Racing Appeals Tribunal	Specialist Tasmanian Racing Appeal Board (TRAB)	Specialist ACT Racing Appeals Tribunal
<b>Governing Legislation</b>	<i>VCAT Act 1998</i>	<i>Racing Appeals Tribunal Act 1983</i>	<i>QCAT Act 2009</i>	<i>Racing Penalties Appeals Tribunal Act 1990</i>		<i>Racing Regulation Act 2004</i>	<i>Racing Act 1999</i>
<b>Who Hears</b>	Applications are heard and determined by Deputy Presidents (appointed on a full time basis) Senior Members and ordinary Members (may be appointed on a full time, part time or sessional basis)	Judge, Retired Judge or person eligible to be Judge of District Court Tribunal may also seek 'expert advice' from person with special knowledge of racing	Hearing could comprise be 1, 2 or 3 Members as determined by Pres of QCAT. Members must be lawyer of 6 years standing or have special expertise	7 Members on Panel, 1 must be a Lawyer of 7 years standing, others must be eligible for appointment as Magistrate	Pres, Dep Pres (lawyers of 10 years standing) and Assessors (people with racing experience)	6 Members, 3 lawyers with at least 5 years standing, 3 members plus 3 Advisers (1 from each code)	Pres, Dep Pres (lawyers with at least 5 years standing) 4 other members and assessors (with specialist knowledge in racing industry)
<b>Who Appoints</b>	Attorney General	Min for Racing on rec of Attorney General	Attorney General	Minister for Racing	Racing SA Ltd	Minister for Racing	Minister
<b>Legal representation</b>	Permitted	Permitted	Generally no, but can apply to have legal rep	Permitted	Permitted	Permitted	Permitted
<b>Appeal Fees</b>	\$322	\$250	\$275	\$349	\$300 inc \$50non-refundable and \$250 bond	\$200 minor or \$500 other but with refunds	\$500 bond
<b>Costs</b>	Parties are expected to bear their own costs, unless the Tribunal	Tribunal may make such orders as it sees fit	Parties are expected to bear their own costs, unless the Tribunal orders	Only if appeal considered vexatious	Parties are expected to bear their own costs	No except for transcripts	Parties are expected to bear their own costs

	orders otherwise.		otherwise.				
<b>Hearing DeNovo</b>	Yes	Yes	Yes	No	No	No	No
<b>Bound by Rules of Evidence</b>	No	No	No	No	No	No	No
<b>Open Court</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes unless Tribunal determines otherwise
<b>Who Pays</b>	State	Racing codes	State	Racing Codes	Racing Codes	State	State
<b>Proposed Time from Filing Appeal to Hearing</b>	Directions Hearing “within a few weeks of your application being made” then “generally anticipate that your matter will be listed for hearing within six weeks of the tribunal being satisfied that the matter is ready to be heard”.	ASAP or within 28 day of lodging Notice but Tribunal may extend	ASAP or within 28 days of lodging Notice but Tribunal may extend	ASAP	ASAP or within 28 days of lodging Notice but Tribunal may extend	Every endeavour to ensure that within 7 days for minor appeals and 21 days for other appeals	Earliest possible opportunity (usually with 2-4 weeks) but complex matters may take longer.
<b>Actual Time from Filing to Hearing (average)</b>	27.85 weeks	5.5 weeks	8.85 weeks	6 weeks	5 weeks	5.1 weeks	Unknown
<b>Is there a 1<sup>st</sup> tier appeals body?</b>	Yes, RADB	No	Yes, Racing Disciplinary Board	No	No	No	No

## 1<sup>st</sup> TIER APPEALS BODIES FOR HARNESS RACING

STATE	VIC	NSW	QLD	WA	SA	TAS	ACT
<b>Form</b>	Racing Appeals and Disciplinary Board	HRNSW only has one appeals body (Thoroughbreds have a 1 <sup>st</sup> tier Appeal Panel)	Racing Disciplinary Board (NEW)	Only has one appeals body	Only has one appeals body	Only has one appeals body	Only has one appeals body
<b>Governing Legislation</b>	<i>Racing Act 1958</i>		<i>Racing Act 2002</i>				
<b>Who Hears</b>	Chair or Dep Chair and up to 4 other members		The RDB consists of minimum of 5 persons, the Chair and Dep Chair must be lawyers, other members must have knowledge of the relevant rules.				
<b>Who Appoints</b>	Minister for Racing appoints Chair & Dep Chair, codes appoint other members		Minister for Racing				
<b>Legal representation</b>	Permitted		Controlling body not permitted to have legal rep unless participant does				
<b>Appeal Fees</b>	Nil		Yes - TBA				
<b>Costs</b>	No		Parties are expected to bear their own costs, unless the Board orders otherwise.				
<b>Hearing De</b>	Yes		Yes				

<b>Novo</b>							
<b>Bound by Rules of Evidence</b>	No		No				
<b>Open Hearing</b>	Yes		Yes				
<b>Who Pays</b>	Racing codes		Racing Codes				
<b>Time from Filing Appeal to Hearing</b>	As soon as is reasonably practicable after the Chairperson receives a copy of an appeal		ASAP but no later than 28 days after Notice filed but Board may extend.				