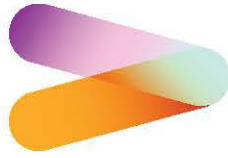




Department of  
Local Government, Sport  
and Cultural Industries



# Racing Penalties Appeal Tribunal

## 2023-24 Annual Report



## Table of contents

Statement of compliance .....	2
Executive summary .....	3
Operational structure .....	4
Enabling legislation.....	4
Responsible Minister .....	4
Purpose of the Tribunal .....	4
Appeals which may be heard by the Tribunal.....	4
Appeals which are outside the jurisdiction of the Tribunal .....	4
Determination of appeals.....	5
Organisational structure.....	5
Administered legislation.....	6
Other legislation impacting Tribunal activities.....	6
Performance management framework.....	7
Report on Tribunal performance and operations .....	7
Actual results versus budget targets.....	7
Performance summary for 2023-24 .....	8
Disclosures and legal compliance.....	11
Audit opinion.....	11
Financial statements.....	16
Key performance indicator information .....	30
Significant issues and trends impacting the Tribunal .....	33
Statutory, governance and legal requirements .....	34
Contacts.....	36

### Acknowledgement of country and peoples

The Racing Penalties Appeal Tribunal acknowledges Aboriginal people throughout Western Australia as the Traditional Owners and Custodians of the lands, waters, and communities in which we operate. We pay our respects to all Aboriginal people and their cultures, and to Elders past and present.

## Statement of compliance

Hon. Paul Papalia CSC MLA  
Minister for Racing and Gaming

In accordance with section 63 of the *Financial Management Act 2006*, I submit, for your information and presentation to Parliament, the Annual Report of the Racing Penalties Appeal Tribunal of Western Australia for the financial year ended 30 June 2024.

The Annual Report has been prepared in accordance with the provisions of the *Financial Management Act 2006*.

The financial statements comply with Australian Accounting Standards – Simplified Disclosures issued by the Australian Accounting Standards Board.



Robert Nash  
Chairperson

10 September 2024

## Executive summary

It is with pleasure that I present the Racing Penalties Appeal Tribunal Annual Report for the year ended 30 June 2024.

The Tribunal has once again experienced significant changes to its membership during the reporting period. The term of former member, Andrew Monisse, expired on 30 September 2023. Andrew was first appointed to the Tribunal in March 1997 and had served with distinction for over 26 years. Andrew's dedicated support and wise counsel was invaluable and on behalf of the Tribunal I wish him all the best in his endeavours.

The Tribunal also welcomed two new members, Benjamin Willesee and Kelly Zhang, who were appointed in December 2023.

The Tribunal has observed that there is a tendency for appellants to view the Tribunal as an opportunity to conduct a hearing de novo where the merits of the case will be considered and determined by the Tribunal afresh. This is a misunderstanding of the Tribunal's jurisdiction. In the large majority of appeals, the Tribunal is reviewing discretionary decisions of the Stewards upon the evidence that was before the Stewards. The approach that the Tribunal is required to take in such cases was the subject of analysis by Murray J in *Danagher v Racing Penalties Appeals Tribunal (1995) 13 WAR 531 at 554*. The Tribunal is to approach the matter in the same way as appellate courts review discretionary judgments of lower courts.

It is worth emphasising that when reviewing penalties imposed by the Stewards, the Tribunal will not substitute its own opinion for that of the Stewards simply because it may have exercised the discretion differently. The Tribunal must be satisfied that there has been an error on the part of the Stewards in the sense referred to above. The Stewards' deep understanding of the industry and how actions of its participants impact the industry and perceptions of the industry, are matters which are accorded considerable weight by the Tribunal.

I thank the Tribunal members for their support over the last year and their commitment and dedication to their role.

I also thank the State Administrative Tribunal for the continued use of their facilities to conduct hearings. Their ability, flexibility and willingness to cater to the Tribunal's needs is greatly appreciated.

Finally, I thank the Registrar of the Tribunal, Steve Spallarossa, and the staff of the Department of Local Government, Sport and Cultural Industries, for their wonderful support and provision of executive services. Their dedication, professionalism and commitment ensuring the Tribunal continues to meet its corporate, financial and legal obligations, are vital to the ongoing effective operations of the Tribunal.



Robert Nash  
Chairperson  
10 September 2024

## Operational structure

### Enabling legislation

The Racing Penalties Appeal Tribunal (the Tribunal) is established under the *Racing Penalties (Appeals) Act 1990* (the Act). The Tribunal was established to confer jurisdiction in respect to appeals against penalties imposed in disciplinary proceedings arising from, or in relation to, the conduct of thoroughbred racing, harness racing and greyhound racing, and for related purposes.

### Responsible Minister

As at 30 June 2024, the Minister responsible for the Racing and Gaming Portfolio is Hon. Paul Papalia CSC MLA, Minister for Police; Corrective Services; Racing and Gaming; Defence Industry; Veterans Issues.

### Purpose of the Tribunal

The aim of the Act is to create and maintain industry confidence in the enforcement of the various racing rules by providing an impartial judicial forum for the hearing of appeals.

Executive support for the Tribunal is provided by the Department of Local Government, Sport and Cultural Industries (the DLGSC). The DLGSC recoups the cost of providing these services from the Tribunal through a service level agreement, which is funded by Racing and Wagering Western Australia (RWVA).

### Appeals which may be heard by the Tribunal

A person who is aggrieved by a determination of RWVA, a steward or a committee of a racing club may appeal to the Tribunal within 14 days of the determination date. The Tribunal can hear the following matters:

- the imposition of any suspension or disqualification, whether of a runner or of a person;
- the imposition of a fine; or
- the giving of a notice of the kind commonly referred to as a “warning-off”.

Additionally, the Tribunal may grant leave to appeal in relation to a limited range of other matters.

### Appeals which are outside the jurisdiction of the Tribunal

The jurisdiction of the Tribunal does not extend to a determination of a steward, a racing club, or a committee in matters regarding:

- any protest or objection against a placed runner arising out of any incident occurring during the running of a race;
- the eligibility of a runner to take part in, or the conditions under which a runner takes part in, any race; or
- any question or dispute as to a bet.

These matters are dealt with by RWVA.

## **Determination of appeals**

The Tribunal is required to hear and determine an appeal based on the evidence of the original hearing but may allow new evidence to be given or experts to be called to assist in its deliberations.

When determining an appeal, the Tribunal may make the following orders:

- refund or repayment of any stakes paid in respect of a race to which the appeal relates;
- refer the matter to RWWA, the stewards or the committee of the appropriate racing club for rehearing;
- confirm, vary, or set aside the determination or finding appealed against or any order or penalty imposed to which it relates;
- recommend or require that RWWA, the stewards or the committee of the appropriate racing club, take further action in relation to any person; and
- such other orders as the member presiding may think proper.

Decisions of the Tribunal are final and binding.

## **Organisational structure**

Sections 5 and 6 of the Act provide that the Tribunal shall consist of a chairperson and a panel of members, each appointed by the Minister. The Schedule to the Act specifies terms of appointment shall not exceed three years, with eligibility for reappointment. The Tribunal, constituted by the chairperson (or the acting chairperson or member presiding) and two members sitting together hear appeals. An appeal may be heard by the chairperson, acting chairperson or member presiding sitting alone where the Regulations so provide.

As of 30 June 2024, the Tribunal consisted of six members.

### **Mr Robert Nash - Chairperson**

Mr Nash was appointed chairperson in August 2022. He is a barrister admitted as a practitioner of the Supreme Court of Western Australia and the High Court of Australia, and is a General Public Notary. Mr Nash has, during the course of his career, served in a non-executive capacity on several councils, committees, and charitable and non-charitable boards, including Chairman of Australian Silica Quartz Group Limited, Councillor for the Town of Mosman Park, Chairman of the WA Soccer Disciplinary Tribunal, Council Member of the Law Society of WA, Convenor of the Education Committee of the Law Society of WA, Counsel Assisting the Royal Commission into the City of Wanneroo, Member of the Professional Conduct Committee and Ethics Committee of the Law Society of WA, Head of the WA Legal Panel of the Royal Australian Navy, and Council Member of the WA Bar Association Council.

### **Ms Johanna Overmars**

Mr Overmars was appointed to the Tribunal in March 2018. She holds a Bachelor of Laws and Bachelor of Arts from the University of Notre Dame Australia and was admitted as a Barrister and Solicitor of the Supreme Court of WA in 2005. Ms Overmars has had a varied career working for Legal Aid Western Australia, Women's Legal Service WA and in private practice in the areas of Family Law, Criminal Law, Restraining Orders and Wills and Estates. Ms Overmars ran her own firm, Hills Hope Legal Pty Ltd in Mundaring for six years, until closing it to have her family. She currently works at Corinne Griffin and Co where she practices in the Wills and Estates and Family Law teams. Ms Overmars is a horse owner, who has a keen interest in horsemanship.

**Mr Phillip Gleeson**

Mr Gleeson was appointed to the Tribunal in August 2022. He is a founding Director of Percy Kakulas Gleeson Injury Lawyers. He specialises in all aspects of plaintiff litigation, advocacy and advice across medical negligence, historical sexual abuse, work and industrial accidents and disease, motor vehicle accidents, product liability, and superannuation and group insurance claims. He is listed by the prestigious Doyles Guide as a leading lawyer for work injury compensation nationally as well as in Western Australia, and for medical negligence, motor vehicle accident and public liability compensation in Western Australia.

**Ms Natalie Sinton**

Ms Sinton was appointed to the Tribunal in August 2022. She completed a Bachelor of Science and Master of Forensic Science before graduating with a Bachelor of Laws with Honours in 2007. Ms Sinton was a Judge's Associate at the Court of Appeal for two years before commencing as a solicitor in the Criminal Law Division at Legal Aid in 2010, initially in the Duty Lawyer team. In 2012 she joined the Criminal Appeals team, where she remains to this day. Ms Sinton was the Secretary of the Criminal Lawyers' Association from 2015 to 2019 and is an accredited mediator.

**Mr Benjamin Willesee**

Mr Willesee was appointed to the Tribunal in December 2023. He works at Francis Burt Chambers where he practices in commercial litigation and arbitration. He has acted for clients in disputes in State and Federal courts, administrative tribunals, international and domestic arbitrations as well as a range of alternative dispute resolution procedures. He has a broad commercial practice with experience in high value, complex disputes arising out of the energy, resources, transport and infrastructure sectors. Prior to joining the Bar, Mr Willesee was a Senior Associate in the dispute resolution team of Ashurst in Perth and London. He had previously been Associate to the Hon Justice Pritchard at the Supreme Court of Western Australia.

**Ms Kelly Zhang**

Mr Zhang was appointed to the Tribunal in December 2023. She is a barrister at Francis Burt Chambers in 2023, where she accepts briefs on a wide range of matters, with recent experience in commercial litigation, especially construction matters. She has acted on matters concerned with insurance claims, class actions, white collar and corporate crime, family property disputes, and wills and estates. Prior to being called to the Bar in Western Australia, Ms Zhang was a senior associate at Johnson Winter & Slattery in Perth. She has experience in criminal and family law at the New Zealand Bar. She is a barrister admitted as Practitioner of Supreme Court of Western Australia, of the High Court of Australia and of the High Court of New Zealand.

**Administered legislation**

The Tribunal is responsible for administering the *Racing Penalties (Appeals) Act 1990*.

**Other legislation impacting Tribunal activities**

The Tribunal complied with the following relevant written laws in the performance of its functions:

- *Auditor General Act 2006*
- *Corruption and Crime Commission Act 2003*
- *Disability Services Act 1993*
- *Electoral Act 1907*
- *Equal Opportunity Act 1984*
- *Electronic Transactions Act 2003*
- *Financial Management Act 2006*
- *Freedom of Information Act 1992*
- *Industrial Relations Act 1979*
- *Public Interest Disclosure Act 2003*
- *Public Sector Management Act 1994*
- *Salaries and Allowances Act 1975*
- *State Records Act 2000*
- *State Supply Commission Act 1991*

## Performance management framework

### Outcome-based management framework / agency level government desired outcome

Broad Government goals are supported by the Tribunal via specific outcomes. The Tribunal delivers services to achieve these outcomes. The following table illustrates the relationship between the Tribunal's services and desired outcomes, and the Government goal the Tribunal contributes to.

Government Goal	Desired Outcome of the Tribunal	Services Delivered by the Tribunal
Safe, Strong and Fair Communities: Supporting our local and regional communities to thrive.	To provide an appeal tribunal in relation to determinations made by racing industry stewards and controlling authorities.	Processing appeals and applications in accordance with statutory obligations.

### Changes to outcome-based management framework

The Tribunal's Outcome Based Management Framework did not change in 2023-24.

### Shared responsibilities with other agencies

The Tribunal did not share any responsibilities with other agencies in 2023-24.

## Report on Tribunal performance and operations

### Actual results versus budget targets

The table below provides a summary of key financial targets for 2023-24. A detailed explanation is provided in the financial statements.

Financial Targets	Target (\$)	Actual (\$)	Variation (\$)
Total cost of services (expense limit) (sourced from Statement of Comprehensive Income)	271,600	236,448	35,152
Net cost of services (sourced from Statement of Comprehensive Income)	12,325	27,751	(15,426)
Total equity (sourced from Statement of Financial Position)	17,297	77,623	(60,326)
Net increase (decrease) in cash held (sourced from Statement of Cash Flows)	(12,324)	27,841	(15,517)
Approved salary expense level*	0	0	0

\* Executive support for the Tribunal is provided by the DLGSC.

The table below provides a summary of key performance indicators for 2023-24. A detailed explanation is provided later in the report.

Summary of Key Performance Indicators	Target	Actual	Variation
Total number of stay applications received	6	6	0
Number of stay applications determined as per KPI	6	3	3
Average cost of processing an appeal	\$22,633	\$19,704	\$2,929



### Performance summary for 2023-24

During the year, three appeals were carried over from 2022-23 and 13 new appeals were lodged with the Tribunal. As at 30 June 2024, the Tribunal determined 11 appeals, with five carried over to 2024-25. These appeals, together with appeals from the previous year, are summarised by racing code:

Racing Code	Appeals carried over from 2022-23	Appeals Lodged	Appeals Determined	Appeals carried over to 2024-25
Thoroughbred	2	4	5	1
Harness	1	8	5	4
Greyhound	0	1	1	0
<b>TOTAL</b>	<b>3</b>	<b>13</b>	<b>11</b>	<b>5</b>

The results of the determinations in respect of the racing codes for the year 2023-24 are summarised below:

Results	Thoroughbred	Harness	Greyhound
Allowed in Full	0	0	0
Allowed in Part (Penalty Reduced)	0	1	0
Referred Back to Stewards (RWWA)	0	0	0
Dismissed	3	4	1
Withdrawn/not progressed	2	0	0
Leave to Appeal Refused	0	0	0
<b>Total</b>	<b>5</b>	<b>5</b>	<b>1</b>

Appeals Carried Over to 2024-25	Thoroughbred	Harness	Greyhound
Reserved Decision	1	2	0
Reserved Decision on penalty only	0	0	0
Reasons to be published	0	0	0
Yet to be heard	0	2	0
<b>Total</b>	<b>1</b>	<b>4</b>	<b>0</b>

The number of appeals determined over a 10-year period is summarised in the following table:

Racing Code	2014/-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
Thoroughbred	2	4	0	3	2	3	2	1	2	5
Harness	3	6	5	11	5	4	5	7	5	5
Greyhound	2	4	2	6	2	3	0	2	2	1
<b>TOTAL</b>	<b>7</b>	<b>14</b>	<b>7</b>	<b>20</b>	<b>9</b>	<b>10</b>	<b>7</b>	<b>10</b>	<b>9</b>	<b>11</b>

## Stays of proceedings

In 2023-24, there were six applications for stays of proceedings. The Chairperson or the presiding member made the determination on the applications as follows:

Stays of Proceedings 2023-24			
Results	Thoroughbred	Harness	Greyhound
Stays Granted	0	0	0
Stays Refused	3	1	1
Withdrawn	0	1	0
Discontinued	0	0	0
Stay application determined 2024-25 FY	0	0	0
<b>Total</b>	<b>3</b>	<b>2</b>	<b>1</b>

The following table provides a summary of the number, nature and outcome of matters before the Tribunal during 2023-24. Full determinations are available from the Tribunal's website: [Racing Penalties Appeal Tribunal](#).

Applications Heard and Determined in 2023-24					
Appeal No.	Name	Nature of Appeal	Hearing Date	Determination Date	Outcome
863	Brock Lewthwaite (carried over from 2022/23 FY)	Appeal against a disqualification period of 10 months for breach of Rule AR 240(2) of the Rules of Thoroughbred Racing	17/7/2023	26/9/2023	Appeal dismissed
865	Norman Champion	Appeal against a disqualification of NICKYS SON for breach of Rule 190(1), (2) and (4) of the Rules of Harness Racing	29/09/2023	19/12/2023	Appeal dismissed
866	Kendall Laidlaw	Appeal against a disqualification period of 9 months for breach of Rule 190(1), (2) and (4) of the Rules of Harness Racing	29/09/2023	19/12/2023	Appeal against conviction dismissed. Appeal against penalty upheld in part, disqualification period reduced to 7 months backdated to 21/7/2023
869	Aiden De Campo	Appeal against a suspension of 21 days for breach of Rule 163(1) of the Rules of Harness Racing	12/10/2023	12/10/2023	Appeal dismissed
870	Graham Ellis	Appeal against disqualification period of 9 months for breach of Rule 21(1)(d) of the Rules of Greyhound Racing	31/10/2023	31/10/2023	Appeal dismissed

<b>Applications Heard and Determined in 2023-24</b>					
<b>Appeal No.</b>	<b>Name</b>	<b>Nature of Appeal</b>	<b>Hearing Date</b>	<b>Determination Date</b>	<b>Outcome</b>
871	Jayce Buckley	Appeal against disqualification period of 3 months for breach of Rule AR 240(2) of the Rules of Harness Racing	27/11/2023	1/12/2023	Appeal dismissed
872	Kyle Harper	Appeal against decision to impose a \$100 fine for breach of Rule 170(2) of the Rules of Harness Racing	6/6/2024	27/06/2024	Appeal dismissed
873	Peter Hamilton	Appeal against disqualification period of 6 months for breach of Rule AR 132 of the Rules of Thoroughbred Racing	N/A	2/2/2024	Appeal withdrawn
874	David Hopperton	Appeal against disqualification period of 6 months for breach of rule AR 240(2) and a fine of \$500 for breach of LR97(a) (b) of the Rules of Thoroughbred Racing	6/5/2024	6/6/2024	Appeal dismissed
875	Brock Jonson	Appeal against a 21 day suspension for breach of Rule 149(2) of the Rules of Harness Racing	16/4/2024	17/4/2024	Appeal dismissed
876	Michael Poy	Appeal against a 19 day suspension for breach of Rule AR131(a) of the Rules of Thoroughbred Racing	N/A	23/4/2024	Appeal withdrawn

# Disclosures and legal compliance

## Audit opinion



## Auditor General

### INDEPENDENT AUDITOR'S REPORT

2024

### Racing Penalties Appeal Tribunal of Western Australia

To the Parliament of Western Australia

## Report on the audit of the financial statements

I have audited the financial statements of the Racing Penalties Appeal Tribunal of Western Australia (Tribunal) which comprise:

- the statement of financial position as at 30 June 2024, the statement of comprehensive income, statement of changes in equity and statement of cash flows for the year then ended
- notes comprising a summary of material accounting policies and other explanatory information.

In my opinion, the financial statements are:

- based on proper accounts and present fairly, in all material respects, the operating results and cash flows of the Racing Penalties Appeal Tribunal of Western Australia for the year ended 30 June 2024 and the financial position as at the end of that period
- in accordance with Australian Accounting Standards (applicable to Tier 2 Entities), the *Financial Management Act 2006* and the Treasurer's Instructions.

### Basis for opinion

I conducted my audit in accordance with the Australian Auditing Standards. My responsibilities under those standards are further described in the Auditor's responsibilities for the audit of the financial statements section of my report.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

### Responsibilities of the Tribunal for the financial statements

The Tribunal is responsible for:

- keeping proper accounts
- preparation and fair presentation of the financial statements in accordance with Australian Accounting Standards (applicable to Tier 2 Entities), the *Financial Management Act 2006* and the Treasurer's Instructions
- such internal control as it determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Tribunal is responsible for:

- assessing the entity's ability to continue as a going concern
- disclosing, as applicable, matters related to going concern
- using the going concern basis of accounting unless the Western Australian Government has made policy or funding decisions affecting the continued existence of the Tribunal.

### **Auditor's responsibilities for the audit of the financial statements**

As required by the *Auditor General Act 2006*, my responsibility is to express an opinion on the financial statements. The objectives of my audit are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Australian Auditing Standards will always detect a material misstatement when it exists.

Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations or the override of internal control.

A further description of my responsibilities for the audit of the financial statements is located on the Auditing and Assurance Standards Board website. This description forms part of my auditor's report and can be found at [https://www.auasb.gov.au/auditors\\_responsibilities/ar4.pdf](https://www.auasb.gov.au/auditors_responsibilities/ar4.pdf)

## **Report on the audit of controls**

### **Opinion**

I have undertaken a reasonable assurance engagement on the design and implementation of controls exercised by the Racing Penalties Appeal Tribunal of Western Australia. The controls exercised by the Racing Penalties Appeal Tribunal of Western Australia are those policies and procedures established to ensure that the receipt, expenditure and investment of money, the acquisition and disposal of property, and the incurring of liabilities have been in accordance with the State's financial reporting framework (the overall control objectives).

In my opinion, in all material respects, the controls exercised by the Racing Penalties Appeal Tribunal of Western Australia are sufficiently adequate to provide reasonable assurance that the controls within the system were suitably designed to achieve the overall control objectives identified as at 30 June 2024, and the controls were implemented as designed as at 30 June 2024.

### **The Tribunal's responsibilities**

The Tribunal is responsible for designing, implementing and maintaining controls to ensure that the receipt, expenditure and investment of money, the acquisition and disposal of property and the incurring of liabilities are in accordance with the *Financial Management Act 2006*, the Treasurer's Instructions and other relevant written law.

### **Auditor General's responsibilities**

As required by the *Auditor General Act 2006*, my responsibility as an assurance practitioner is to express an opinion on the suitability of the design of the controls to achieve the overall control objectives and the implementation of the controls as designed. I conducted my engagement in accordance with Standard on Assurance Engagements ASAE 3150 Assurance Engagements on Controls issued by the Australian Auditing and Assurance Standards Board. That standard requires that I comply with relevant ethical requirements and plan and perform my procedures to obtain reasonable assurance about whether, in all material respects, the controls are suitably designed to achieve the overall control objectives and were implemented as designed.

An assurance engagement involves performing procedures to obtain evidence about the suitability of the controls design to achieve the overall control objectives and the implementation of those controls. The procedures selected depend on my judgement, including an assessment of the risks that controls are not suitably designed or implemented as designed. My procedures included testing the implementation of those controls that I consider necessary to achieve the overall control objectives.

I believe that the evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

### **Limitations of controls**

Because of the inherent limitations of any internal control structure, it is possible that, even if the controls are suitably designed and implemented as designed, once in operation, the overall control objectives may not be achieved so that fraud, error or non-compliance with laws and regulations may occur and not be detected. Any projection of the outcome of the evaluation of the suitability of the design of controls to future periods is subject to the risk that the controls may become unsuitable because of changes in conditions.

## **Report on the audit of the key performance indicators**

### **Opinion**

I have undertaken a reasonable assurance engagement on the key performance indicators of the Racing Penalties Appeal Tribunal of Western Australia for the year ended 30 June 2024 reported in accordance with *Financial Management Act 2006* and the Treasurer's Instructions (legislative requirements). The key performance indicators are the Under Treasurer-approved key effectiveness indicators and key efficiency indicators that provide performance information about achieving outcomes and delivering services.

In my opinion, in all material respects, the key performance indicators report of the Racing Penalties Appeal Tribunal of Western Australia for the year ended 30 June 2024 is in accordance with the legislative requirements, and the key performance indicators are relevant and appropriate to assist users to assess the Tribunal's performance and fairly represent indicated performance for the year ended 30 June 2024.

### **The Tribunal's responsibilities for the key performance indicators**

The Tribunal is responsible for the preparation and fair presentation of the key performance indicators in accordance with the *Financial Management Act 2006* and the Treasurer's Instructions and for such internal controls as the Tribunal determines necessary to enable the preparation of key performance indicators that are free from material misstatement, whether due to fraud or error.

In preparing the key performance indicators, the Tribunal is responsible for identifying key performance indicators that are relevant and appropriate, having regard to their purpose in accordance with Treasurer's Instruction 904 Key Performance Indicators.

### **Auditor General's responsibilities**

As required by the *Auditor General Act 2006*, my responsibility as an assurance practitioner is to express an opinion on the key performance indicators. The objectives of my engagement are to obtain reasonable assurance about whether the key performance indicators are relevant and appropriate to assist users to assess the entity's performance and whether the key performance indicators are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. I conducted my engagement in accordance with Standard on Assurance Engagements ASAE 3000 Assurance Engagements Other than Audits or Reviews of Historical Financial Information issued by the Australian Auditing and Assurance Standards Board. That standard requires that I comply with relevant ethical requirements relating to assurance engagements.

An assurance engagement involves performing procedures to obtain evidence about the amounts and disclosures in the key performance indicators. It also involves evaluating the relevance and appropriateness of the key performance indicators against the criteria and guidance in Treasurer's Instruction 904 for measuring the extent of outcome achievement and the efficiency of service delivery. The procedures selected depend on my judgement, including the assessment of the risks of material misstatement of the key performance indicators. In making these risk assessments, I obtain an understanding of internal control relevant to the engagement in order to design procedures that are appropriate in the circumstances.

I believe that the evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

### **My independence and quality management relating to the report on financial statements, controls and key performance indicators**

I have complied with the independence requirements of the *Auditor General Act 2006* and the relevant ethical requirements relating to assurance engagements. In accordance with ASQM 1 Quality Management for Firms that Perform Audits or Reviews of Financial Reports and Other Financial Information, or Other Assurance or Related Services Engagements, the Office of the Auditor General maintains a comprehensive system of quality management including documented policies and procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements.

### **Other information**

The Tribunal is responsible for the other information. The other information is the information in the entity's annual report for the year ended 30 June 2024, but not the financial statements, key performance indicators and my auditor's report.

My opinions on the financial statements, controls and key performance indicators do not cover the other information and accordingly I do not express any form of assurance conclusion thereon.

In connection with my audit of the financial statements, controls and key performance indicators my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements and key performance indicators or my knowledge obtained in the audit or otherwise appears to be materially misstated.

If, based on the work I have performed, I conclude that there is a material misstatement of this other information, I am required to report that fact. I did not receive the other information prior to the date of this auditor's report. When I do receive it, I will read it and if I conclude that there is a material misstatement in this information, I am required to communicate the matter to those charged with governance and request them to correct the misstated information. If the misstated information is not corrected, I may need to retract this auditor's report and re-issue an amended report.

### **Matters relating to the electronic publication of the audited financial statements and key performance indicators**

This auditor's report relates to the financial statements and key performance indicators of the Racing Penalties Appeal Tribunal of Western Australia for the year ended 30 June 2024 included in the annual report on the Tribunal's website. The Tribunal's management is responsible for the integrity of the Tribunal's website. This audit does not provide assurance on the integrity of the Tribunal's website. The auditor's report refers only to the financial statements, controls and key performance indicators described above. It does not provide an opinion on any other information which may have been hyperlinked to/from the annual report. If users of the financial statements and key performance indicators are concerned with the inherent risks arising from publication on a website, they are advised to contact the entity to confirm the information contained in the website version.



Aram Madnack  
Acting Senior Director Financial Audit  
Delegate of the Auditor General for Western Australia  
Perth, Western Australia  
9 September 2024



### **Financial statements**

The aim of these financial statements is to inform the Parliament and other interested parties, not only of what the Racing Penalties Appeal Tribunal has achieved during the financial year, but also of the reasons behind those achievements.

## **Racing Penalties Appeal Tribunal of Western Australia**

# **Financial Statements**

**For the year ended 30 June 2024**

## Disclosures and legal compliance

### Racing Penalties Appeal Tribunal of Western Australia

#### Certification of financial statements

#### For the reporting period ended 30 June 2024

The accompanying financial statements of the Racing Penalties Appeal Tribunal of Western Australia have been prepared in compliance with the provisions of the *Financial Management Act 2006* from proper accounts and records to present fairly the financial transactions for the reporting period ended 30 June 2024 and the financial position as at 30 June 2024.

At the date of signing we are not aware of any circumstances which would render the particulars included within the financial statements misleading or inaccurate.



Ludisha Kalasopatan  
Chief Finance Officer

5 September 2024



Phillip Gleeson  
Acting Chairperson

5 September 2024

Natalie Sinton  
Member



5 September 2024



Racing Penalties Appeal Tribunal of Western Australia  
Statement of comprehensive income  
For the year ended 30 June 2024

	Notes	2024 \$	2023 \$
<b>COST OF SERVICES</b>			
<b>Expenses</b>			
Tribunal members' expenses	2.1	23,220	17,462
Supplies and services	2.2	213,228	204,074
<b>Total cost of services</b>		<b>236,448</b>	<b>221,536</b>
<b>Income</b>			
User charges and fees	3.2	3,853	1,835
Interest income	3.3	6,606	3,462
<b>Total income</b>		<b>10,459</b>	<b>5,297</b>
<b>NET COST OF SERVICES</b>		<b>225,989</b>	<b>216,239</b>
<b>Income from State Government</b>			
Income from other public sector entities	3.1	253,740	226,788
<b>Total income from State Government</b>		<b>253,740</b>	<b>226,788</b>
<b>SURPLUS FOR THE PERIOD</b>		<b>27,751</b>	<b>10,549</b>
<b>TOTAL COMPREHENSIVE INCOME FOR THE PERIOD</b>		<b>27,751</b>	<b>10,549</b>

The Statement of comprehensive income should be read in conjunction with the accompanying notes.



30 June 2024

Racing Penalties Appeal Tribunal of Western Australia  
Statement of financial position  
As at 30 June 2024

	Notes	2024 \$	2023 \$
<b>ASSETS</b>			
<b>Current assets</b>			
Cash and cash equivalents	5.1	74,890	47,049
Receivables	4.1	5,748	5,286
<b>Total current assets</b>		<b>80,638</b>	<b>52,335</b>
<b>TOTAL ASSETS</b>		<b>80,638</b>	<b>52,335</b>
<b>LIABILITIES</b>			
<b>Current liabilities</b>			
Payables	4.2	1,411	1,440
Other liabilities	4.3	1,604	1,023
<b>Total current liabilities</b>		<b>3,015</b>	<b>2,463</b>
<b>TOTAL LIABILITIES</b>		<b>3,015</b>	<b>2,463</b>
<b>NET ASSETS</b>		<b>77,623</b>	<b>49,872</b>
<b>EQUITY</b>			
Accumulated surplus		77,623	49,872
<b>TOTAL EQUITY</b>		<b>77,623</b>	<b>49,872</b>

The Statement of financial position should be read in conjunction with the accompanying notes.



Racing Penalties Appeal Tribunal of Western Australia  
Statement of changes in equity  
For the year ended 30 June 2024

	Notes	Accumulated surplus \$	Total equity \$
<b>Balance at 1 July 2022</b>		39,323	39,323
Surplus		10,549	10,549
<b>Total comprehensive income for the period</b>		<u>10,549</u>	<u>10,549</u>
<b>Balance at 30 June 2023</b>		<u>49,872</u>	<u>49,872</u>
<b>Balance at 1 July 2023</b>		49,872	49,872
Surplus		27,751	27,751
<b>Total comprehensive income for the period</b>		<u>27,751</u>	<u>27,751</u>
<b>Balance at 30 June 2024</b>		<u>77,623</u>	<u>77,623</u>

The Statement of changes in equity should be read in conjunction with the accompanying notes.



30 June 2024

Racing Penalties Appeal Tribunal of Western Australia  
Statement of cash flows  
For the year ended 30 June 2024

	Notes	2024 \$	2023 \$
<b>Cash flows from State Government</b>			
Funds from other public sector entities		253,740	226,788
<b>Net cash provided by State Government</b>		<u>253,740</u>	<u>226,788</u>
<i>Utilised as follows:</i>			
<b>Cash flows from operating activities</b>			
<b>Payments</b>			
Tribunal members' expenses		(23,293)	(17,076)
Supplies and services		(213,183)	(204,074)
GST payments on purchases		(21,283)	(20,369)
GST payments to taxation authority		(20,751)	(18,162)
<b>Receipts</b>			
User charges and fees		4,487	2,709
GST receipts on sales		25,339	22,646
GST receipts from taxation authority		16,607	15,887
Interest received		6,178	2,986
<b>Net cash used in operating activities</b>		<u>(225,899)</u>	<u>(215,453)</u>
Net increase in cash and cash equivalents		27,841	11,335
Cash and cash equivalents at the beginning of the period		47,049	35,714
<b>Cash and cash equivalents at the end of the period</b>	5.1	<u>74,890</u>	<u>47,049</u>

The Statement of cash flows should be read in conjunction with the accompanying notes.

## Racing Penalties Appeal Tribunal of Western Australia

### Notes to the financial statements

#### For the year ended 30 June 2024

#### 1 Basis of preparation

The Racing Penalties Appeal Tribunal of Western Australia (the Tribunal) is a WA Government entity and is controlled by the State of Western Australia, which is the ultimate parent. The Tribunal is a not-for-profit entity (as profit is not its principal objective).

A description of the nature of its operations and its principal activities have been included in the "Purpose of the Tribunal" section of the Annual Report.

These annual financial statements were authorised for issue by the Accountable Authority of the Tribunal on 5 September 2024.

#### Statement of compliance

These general purpose financial statements comply with Australian Accounting Standards – Simplified Disclosures. The general purpose financial statements have been prepared in accordance with Australian Accounting Standards, the Framework, Statement of Accounting Concepts and other authoritative pronouncements of the Australian Accounting Standards Board as applied by Treasurer's instructions. Several of these are modified by Treasurer's instructions to vary application, disclosure, format and wording.

The Financial Management Act (the Act) and Treasurer's Instructions are legislative provisions governing the preparation of financial statements and take precedence over Australian Accounting Standards, the Framework, Statement of Accounting Concepts and other authoritative pronouncements of the Australian Accounting Standards Board. Where modification is required and has had a material or significant financial effect upon the reported results, details of that modification and the resulting financial effect are disclosed in the notes to the financial statements.

#### Basis of preparation

These financial statements are presented in Australian dollars applying the accrual basis of accounting and using the historical cost convention. All values are rounded to the nearest dollar.

#### Accounting for Goods and Services Tax

Income, expenses and assets are recognised net of the amount of goods and services tax (GST), except that the:

- a) amount of GST incurred by the Tribunal as a purchaser that is not recoverable from the Australian Taxation Office (ATO) is recognised as part of an asset's cost of acquisition or as part of an item of expense; and
- b) receivables and payables are stated with the amount of GST included.

Cash flows are included in the Statement of cash flows on a gross basis. However, the GST components of cash flows arising from investing and financing activities which are recoverable from, or payable to, the ATO are classified as operating cash flows.

#### Comparative information

Except when an Australian Accounting Standard permits or requires otherwise, comparative information is presented in respect of the previous period for all amounts reported in the financial statements.

#### Judgements and estimates

Judgements, estimates and assumptions are required to be made about financial information being presented. The significant judgements and estimates made in the preparation of these financial statements are disclosed in the notes where amounts affected by those judgements and/or estimates are disclosed. Estimates and associated assumptions are based on professional judgements derived from historical experience and various other factors that are believed to be reasonable under the circumstances.

Racing Penalties Appeal Tribunal of Western Australia  
Notes to the financial statements  
For the year ended 30 June 2024

**Services performed for the Tribunal by the Department of Local Government, Sports and Cultural Industries**

The Department of Local Government, Sports and Cultural Industries (DLGSC) provides support to the Tribunal to carry out its objectives. This support comprises most of the amount recorded in the Statement of comprehensive income under 'Supplies and services'. These expenses are in the nature of salaries and administration costs in providing these support services.

Recoups from the Tribunal to DLGSC are made on a monthly basis under a net appropriation determination.



Racing Penalties Appeal Tribunal of Western Australia  
Notes to the financial statements  
For the year ended 30 June 2024

**2 Use of our funding**

**Expenses incurred in the delivery of services**

This section provides additional information about how the Tribunal's funding is applied and the accounting policies that are relevant for an understanding of the items recognised in the financial statements. The primary expenses incurred by the Tribunal in achieving its objectives and the relevant notes are:

	Notes
Tribunal members' expenses	2.1
Supplies and services	2.2

**2.1 Tribunal members' expenses**

	2024	2023
	\$	\$
Board fees	20,943	15,797
Superannuation - defined contribution plans	2,277	1,665
<b>Total Tribunal members' expenses</b>	<b>23,220</b>	<b>17,462</b>

**Board fees** includes wages and salaries for board members.

**Superannuation** is the amount recognised in profit or loss of the Statement of comprehensive income that comprises employer contributions paid to the Gold State Superannuation GSS (concurrent contributions), the West State Superannuation (WSS), the Government Employees Superannuation Board (GESBs), or other superannuation funds.

**2.2 Supplies and services**

	2024	2023
	\$	\$
Professional services	184,528	180,027
External audit fees	26,000	23,300
Other supplies and services	2,700	747
<b>Total supplies and services expenses</b>	<b>213,228</b>	<b>204,074</b>

**Supplies and services expenses** are recognised as an expense in the reporting period in which they are incurred. The carrying amounts of any materials held for distribution are expensed when the materials are distributed.

**Professional services** comprise of payments made to DLGSC for services provided to the Tribunal.

Racing Penalties Appeal Tribunal of Western Australia  
Notes to the financial statements  
For the year ended 30 June 2024

### 3 Our funding sources

#### How we obtain our funding

This section provides additional information about how the Tribunal obtains its funding and the relevant accounting policy notes that govern the recognition and measurement of this funding. The primary income received by the Tribunal and the relevant notes are:

	Notes
Income from State Government	3.1
User charges and fees	3.2
Interest income	3.3

#### 3.1 Income from State Government

	2024	2023
	\$	\$
Income received from other public sector entities during the period:		
Contribution from Racing and Wagering Western Australia (RWWA)	253,740	226,788
<b>Total income from State Government</b>	<b>253,740</b>	<b>226,788</b>

**Income from other public sector entities** is recognised as income when the Tribunal has satisfied its performance obligations under the funding agreement. If there is no performance obligation, income will be recognised when the Tribunal receives the funds.

Revenue is recognised at a point-in-time for contributions from RWWA. The agreement between the Tribunal and RWWA contains no obligation to provide any service to RWWA in exchange for its contribution. Therefore, the Tribunal recognises income in accordance with *AASB 1058 Income of Not-for-Profit Entities* at the time the funds are received.

#### 3.2 User charges and fees

	2024	2023
	\$	\$
User charges and fees		
Stay of proceedings	315	154
Appeal fees	3,046	1,561
Transcription Fees	492	120
<b>Total user charges and fees</b>	<b>3,853</b>	<b>1,835</b>

Revenue is recognised at the transaction price when the Tribunal transfers control of the services to customers.

Revenue is recognised for the major activities as follows:

Revenue is recognised at a point-in-time for stay of proceedings (to suspend penalties) in relation to greyhound and harness racing. The performance obligations for these user fees and charges are satisfied when services have been provided. Stay applications are typically determined within one working day of receiving the submission.

Revenue is recognised at a point-in-time for appeal fees (appeal against penalties imposed in disciplinary proceedings) in relation to greyhound and harness racing. The Tribunal typically satisfies its performance obligations in relation to these user fees and charges when the appeal is determined and revenue is then recognised.

#### 3.3 Interest Income

	2024	2023
	\$	\$
Interest revenue	6,606	3,462
<b>Total interest income</b>	<b>6,606</b>	<b>3,462</b>

Revenue is recognised at a point-in-time when Department of Treasury informs RPAT regarding transferring the interest amount to its interest bearing account.

Racing Penalties Appeal Tribunal of Western Australia  
Notes to the financial statements  
For the year ended 30 June 2024

#### 4 Other assets and liabilities

This section sets out those assets and liabilities that arose from the Tribunal's controlled operations and includes other assets utilised for economic benefits and liabilities incurred during normal operations:

	Notes
Receivables	4.1
Payables	4.2
Other liabilities	4.3

##### 4.1 Receivables

	2024	2023
	\$	\$
<b>Current</b>		
Interest receivable	1,044	616
Other receivable	82	137
GST receivable	4,622	4,533
<b>Total receivables at end of the period</b>	<b>5,748</b>	<b>5,286</b>

Receivables are recognised at original invoice less any allowance for uncollectible amounts (i.e. impairment). The carrying amount of net receivables is equivalent to fair value as it is due for settlement within 30 days.

##### 4.2 Payables

	2024	2023
	\$	\$
<b>Current</b>		
Other payables	54	-
Accrued expenses	1,357	1,440
<b>Total payables at end of period</b>	<b>1,411</b>	<b>1,440</b>

Payables are recognised at the amounts payable when the Tribunal becomes obliged to make future payments as a result of a purchase of assets or services. The carrying amount is equivalent to fair value as settlement for the Tribunal is generally within 15-20 days.

Accrued expenses represent the amount due to the board members but unpaid at the end of the reporting period. Accrued expenses are settled within a fortnight after the reporting period. The Tribunal considers the carrying amount of accrued expenses to be equivalent to its fair value.

##### 4.3 Other liabilities

	2024	2023
	\$	\$
<b>Current</b>		
Income in advance	1,604	1,023
<b>Balance at end of period</b>	<b>1,604</b>	<b>1,023</b>
Opening balance	1,023	150
Additions	1,093	1,023
Revenue recognised in the reporting period	(512)	(150)
<b>Balance at end of period</b>	<b>1,604</b>	<b>1,023</b>
Other liabilities	1,604	1,023

Income in advance relates to appeal fees yet to be determined at the end of the reporting period. Typically, an appeal fee is received upfront upon submission of an application for review.

Racing Penalties Appeal Tribunal of Western Australia  
Notes to the financial statements  
For the year ended 30 June 2024

## 5 Financing

This section sets out the material balances and disclosures associated with the financing and cashflows of the Tribunal.

	Notes
Cash and cash equivalents	5.1

### 5.1 Cash and cash equivalents

	2024	2023
	\$	\$
Cash and cash equivalents	74,890	47,049
<b>Balance at end of period</b>	<b>74,890</b>	<b>47,049</b>

For the purpose of the Statement of cash flows, cash and cash equivalent assets comprise cash at bank.

## 6 Financial instruments and contingencies

This note sets out the key risk management policies and measurement techniques of the Tribunal.

	Notes
Financial instruments	6.1
Contingent assets and liabilities	6.2

### 6.1 Financial instruments

The carrying amounts of each of the following categories of financial assets and financial liabilities at the end of the reporting period are:

	2024	2023
	\$	\$
<b><u>Financial assets</u></b>		
Cash and cash equivalents	74,890	47,049
Financial assets at amortised cost <sup>(a)</sup>	1,126	753
<b>Total financial assets</b>	<b>76,016</b>	<b>47,802</b>
<b><u>Financial liabilities</u></b>		
Financial liabilities at amortised cost <sup>(b)</sup>	1,411	1,440
<b>Total financial liability</b>	<b>1,411</b>	<b>1,440</b>

(a) The amount of financial assets at amortised cost excludes GST recoverable from the ATO (statutory receivable).

(b) The amount of financial liabilities at amortised cost excludes GST payable to the ATO (statutory payable).

### 6.2 Contingent assets and liabilities

The Tribunal is not aware of any contingent assets and liabilities as at the end of the reporting period.

Racing Penalties Appeal Tribunal of Western Australia  
Notes to the financial statements  
For the year ended 30 June 2024

## 7 Other disclosures

This section includes additional material disclosures required by accounting standards or other pronouncements, for the understanding of this financial report.

	Notes
Events occurring after the end of the reporting period	7.1
Key management personnel	7.2
Related party transactions	7.3
Related bodies	7.4
Affiliated bodies	7.5
Remuneration of auditors	7.6

### 7.1 Events occurring after the end of the reporting period

The Tribunal is not aware of any matters or circumstances that have arisen since the end of the financial year to the date of this report which has significantly affected or may significantly affect the activities of the Tribunal, the results of those activities or the state of affairs of the Tribunal in the ensuing or any subsequent financial year.

### 7.2 Key management personnel

The Tribunal has determined key management personnel to include cabinet ministers, board members and senior officers of the Tribunal. The Tribunal does not incur expenditures to compensate cabinet ministers and those disclosures may be found in the *Annual Report on State Finances*.

The total fees, salaries, superannuation, non-monetary benefits and other benefits for board members of the Tribunal for the reporting period are presented within the following bands:

#### Compensation band of members of the Tribunal

	2024	2023
<b>Compensation band (\$)</b>		
10,001 – 20,000	1	0
0 – 10,000	5	7
	<b>\$</b>	<b>\$</b>
Compensation of members of the Tribunal <sup>(a)</sup>	23,220	17,462
<b>Total compensation of members of the Tribunal</b>	<b>23,220</b>	<b>17,462</b>

#### Compensation band of senior officers

	2024	2023
<b>Compensation band (\$)</b>		
0 – 10,000	1	1
	<b>\$</b>	<b>\$</b>
Compensation of senior officers <sup>(a)</sup>	-	-
<b>Total compensation of members of senior officers</b>	<b>-</b>	<b>-</b>

(a) Total compensation includes the superannuation expense incurred by the Tribunal in respect of members and senior officers.

## Racing Penalties Appeal Tribunal of Western Australia

### Notes to the financial statements

#### For the year ended 30 June 2024

#### 7.3 Related party transactions

The Tribunal is a wholly owned public sector entity that is controlled by the State of Western Australia.

Related parties of the Tribunal include:

- all cabinet ministers and their close family members, and their controlled or jointly controlled entities;
- all senior officers and their close family members, and their controlled or jointly controlled entities;
- other agencies and statutory authorities, including related bodies, that are included in the whole of government consolidated financial statements (i.e. wholly-owned public sector entities);
- associates and joint ventures of a wholly-owned public sector entity; and
- the Government Employee's Superannuation Board (GESB).

#### Significant transactions with Government-related entities

In conducting its activities, the Tribunal is required to transact with the State and entities related to the State. These transactions are generally based on the standard terms and conditions that apply to all agencies. Such transactions include:

- annual services fees payments to DLGSC for services received (Note 2.2);
- contribution received from Racing and Wagering Western Australia (Note 3.1); and
- audit fee payments to the Office of the Auditor General (Note 7.6).

#### Significant transactions with other related entities

- superannuation payments to GESB (Note 2.1).

#### Material transactions with related parties

Outside of normal citizen type transactions with the Tribunal, there were no other related party transactions that involved key management personnel and/or their close family members and/or their controlled (or jointly controlled) entities.

#### 7.4 Related bodies

The Tribunal had no related bodies during the financial year.

#### 7.5 Affiliated bodies

The Tribunal had no affiliated bodies during the financial year.

#### 7.6 Remuneration of auditors

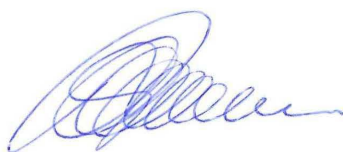
Remuneration paid or payable to the Auditor General in respect of the audit for the current reporting period is as follows:

	2024	2023
	\$	\$
Auditing the accounts, financial statements, controls, and key performance indicators	27,300	26,000
	<u>27,300</u>	<u>26,000</u>

## Key performance indicator information

### Certification of Key Performance Indicators

We hereby certify that the key performance indicators are based on proper records, are relevant and appropriate for assisting users to assess the performance of the Racing Penalties Appeal Tribunal of Western Australia, and fairly represent the performance of the Racing Penalties Appeal Tribunal of Western Australia for the financial year ended 30 June 2024.



Phillip Gleeson  
Acting Chairperson  
Racing Penalties Appeal Tribunal of  
Western Australia

5<sup>th</sup> September 2024



Natalie Sinton  
Member  
Racing Penalties Appeal Tribunal of  
Western Australia

5 September 2024



## Detailed Information in Support of Key Performance Indicators

**Government Goal:** Safe, Strong and Fair Communities

**Desired Outcome:** To provide an appeal tribunal in relation to determinations made by racing industry stewards and controlling authorities.

### Stays of Proceedings

Under the *Racing Penalties (Appeals) Act 1990* (the Act), an appellant may apply for a suspension of the operation of a penalty at the time of lodging the appeal (a stay). It is essential to the racing codes, trainers, owners and the general public that these stay applications are dealt with expeditiously. These determinations impact directly on the eligibility of riders, drivers and runners to fulfil prior engagements.

The number of stay applications lodged was on par with the forecast target for the reporting period.

The reason for the discrepancy between the number of stay applications received versus the number of stay applications determined as follows:

- Appeal No 866 Kendall Laidlaw: the stay application was lodged on 27 July 2023, and upon receipt of all submissions the Chairperson determined to hear the application on 9 August 2023. The application was determined on 10 August 2023.
- Appeal No 870 Graham Ellis: the stay application was determined later than one working day following receipt of final submissions being lodged by the parties.
- Appeal No 875 Brock Johnson: the stay application was lodged on 11 April 2024, and the appellant decided to withdraw the application on 15 April 2024 as his appeal was listed for hearing on 16 April 2024.

Key Effectiveness Indicator	2020-21 Actual	2021-22 Actual	2022-23 Actual	2023-24 Target	2023-24 Actual
Total number of stay applications received	2	2	3	6	6
Number of stay applications determined no later than one working day of receipt of final submissions being lodged by the parties to the proceedings	2	2	0	6	3
Indicator <sup>1</sup>	100%	100%	0%	100%	50%

<sup>1</sup> The effectiveness indicator for this activity is derived by dividing the number of stay applications determined no later than one working day of receipt of final submissions being lodged by the parties to the proceedings by the total number of stay applications received, then multiplying by 100.



**Service:** To perform functions for the racing industry.

**Service Description:** To process appeals/stay applications in accordance with statutory obligations.

The Tribunal was established to maintain industry confidence in the enforcement of the various racing rules by providing the industry with an impartial quasi-judicial forum for the hearing of appeals against a determination, or a finding comprised in or related to a determination, of an appropriate controlling authority, of a racing club, or of any committee or stewards.

The Tribunal is responsible for hearing and determining appeals and stay applications against penalties imposed in disciplinary proceedings arising from, or in relation to, the conduct of greyhound racing, horse racing and harness racing.

A person who is aggrieved by a RWWA decision, or a determination made by a steward/stewards or a committee of a racing club, may make an appeal to the Tribunal within 14 days of the decision being handed down.

The Registrar of the Tribunal must ensure that appeals and stay applications are processed in accordance with the *Racing Penalties (Appeals) Act 1990* and the *Racing Penalties (Appeals) Regulations 1991*, whilst providing an effective and efficient service to the racing industry at minimal cost.

The average cost for hearing appeals can change for each reporting year as a result of increases or reductions in the number of appeals heard before the Tribunal, combined with annual increases to the total cost of providing services to the Tribunal to conduct its operations.

The reason for the discrepancy between the estimated average cost of processing appeals during the financial year 2023-24 versus the actual cost incurred in processing the appeals is due to the operational expenses of the Tribunal being less than the budgeted estimate - there was a decrease in board remuneration and associated superannuation expenses and a higher cash balance.

The reasons for the decrease in remuneration is due to the Tribunal operating with four members during the reporting period; three were eligible for remuneration and one was not eligible for remuneration as she is a full-time public sector employee. In addition, there were several appeals where the Tribunal chairperson heard the appeals sitting alone in accordance with Schedule 1 of the *Racing Penalties (Appeals) Regulations 1991*.

Key Efficiency Indicator	2020-21 Actual	2021-22 Actual	2022-23 Actual	2023-24 Target	2023-24 Actual
Average cost of processing an appeal <sup>2</sup>	\$34,417	\$20,605	\$27,692	\$22,633 <sup>3</sup>	\$19,704 <sup>4</sup>

<sup>2</sup> The average processing cost for each financial year is derived by dividing the total cost of services to the Tribunal by the number of appeals heard.

<sup>3</sup> This is based on 2023-24 budgeted cost of services of \$271,600 divided by an estimated 12 appeals heard.

<sup>4</sup> This is based on 2023-24 actual cost of services of \$236,448 divided by 12 appeals heard.

## Significant issues and trends impacting the Tribunal

### Current and emerging issues and trends

The Tribunal has observed that there is a tendency for appellants to view the Tribunal as an opportunity to conduct a hearing de novo where the merits of the case will be considered and determined by the Tribunal afresh. This is a misunderstanding of the Tribunal's jurisdiction. In the large majority of appeals, the Tribunal is reviewing discretionary decisions of the Stewards upon the evidence that was before the Stewards. The approach that the Tribunal is required to take in such cases was the subject of analysis by Murray J in *Danagher v Racing Penalties Appeals Tribunal (1995) 13 WAR 531 at 554*. The Tribunal is to approach the matter in the same way as appellate courts review discretionary judgments of lower courts. In this respect Murray J referred to the High Court decision in *Australian Coal and Shale Employees Federation v Commonwealth (1953) 94 CLR 612 at 627*, where Kitto J said:

*“the manner in which appellate jurisdiction is exercised in respect of decisions involving discretionary judgment is that there is a strong presumption in favour of the correctness of the decision appealed from, and that that decision should therefore be affirmed unless the court of appeal is satisfied that it is clearly wrong. A degree of satisfaction sufficient to overcome the strength of the presumption may exist where there has been an error which consists in acting upon a wrong principle, or giving weight to extraneous or irrelevant matters, or failing to give weight or sufficient weight to relevant considerations, or making a mistake as to the facts. Again, the nature of the error may not be discoverable, but even so it is sufficient that the result is so unreasonable or plainly unjust that the appellate court may infer that there has been a failure properly to exercise the discretion which the law reposes in the court of first instance”.*

It is worth emphasising that when reviewing penalties imposed by the Stewards, the Tribunal will not substitute its own opinion for that of the Stewards simply because it may have exercised the discretion differently. The Tribunal must be satisfied that there has been an error on the part of the Stewards in the sense referred to above. The Stewards' deep understanding of the industry and how actions of its participants impact the industry and perceptions of the industry, are matters which are accorded considerable weight by the Tribunal.

### Economic and social trends

Public interest in animal welfare in the racing industry has been increasing, with concerns focused on the overbreeding of racing animals, injuries and deaths in the racing environment, and increasing transparency in welfare data. The racing industry's ongoing public licence to operate relies on the maintenance and enforcement of the highest standards of animal care.

### Changes in written law

The Racing and Gaming Regulations Amendment (Fees and Charges) Regulations 2023 increased the fees and charges under Section 4 of the Racing Penalties (Appeals) Regulations 1991, which came into effect on 1 January 2024:

- Application for leave to appeal relating to greyhound racing - \$170.00.
- Application for leave to appeal relating to other appeals - \$424.50.
- Notice of appeal relating to greyhound racing - \$161.50.
- Notice of appeal relating to other appeals - \$269.50.
- Stay of proceedings - \$53.50.

### Likely developments and forecast results of operations

It is expected that the workload of the Racing Penalties Appeal Tribunal for 2024-25 will remain steady.

## Statutory, governance and legal requirements

### Unauthorised use of credit cards

There have been no identified instances of unauthorised use of corporate credit cards.

### Act of Grace payments

There was no act of grace payments made during the reporting period.

### Advertising, market research, polling and direct mail

Section 175ZE of the *Electoral Act 1907* requires public agencies to report details of expenditure to organisations providing services in relation to advertising, market research, polling, direct mail and media advertising. The Tribunal incurred the following expenditure in 2023-24:

Expenditure	Organisation	Amount (\$)	Total (\$)
Advertising	Government Gazette	\$78.00	\$78.00
<b>Grand total</b>			<b>\$78.00</b>

### Other legal, statutory and governance requirements

The Tribunal meets its requirements through arrangements with the Department of Local Government, Sport and Cultural Industries. The Department's Annual Report contains information on the following requirements:

- Disability access and inclusion plan outcomes.
- Compliance with public sector standards and ethical codes.
- Recordkeeping plans.
- Employment and industrial relations.
- Staff development.
- Workers' compensation.
- Occupational safety, health and injury management.
- WA multicultural policy framework.
- Substantive equality.

## Remuneration of members

### Chairperson

The Chairperson is entitled to a remuneration of \$225.75 per hour for hearings/meetings.

Plus:

\$126 per hour for preparation time (i.e., one hour per day of hearing).

\$126 per hour for decision writing time (i.e., two hours for up to one day of hearing).

### Members

The members are entitled to payment of:

\$494 per half day for hearings/meetings (under four hours); or

\$756 per day for hearings/meetings (for over four hours).

Plus:

\$105 per hour for preparation time (i.e., one hour per day of hearing).

\$105 per hour for decision writing time (i.e., two hours for up to one day of hearing).

During the reporting period, the following remuneration figures applied to Tribunal members.

Position title	Member name	Type of remuneration	Period of membership		Gross/actual remuneration for 2023-24
Chairperson	Robert Nash	Sitting fees plus preparation and decision writing time	1/7/2023	30/6/2024	\$12,542.25
Member	Phillip Gleeson	Sitting fees plus preparation and decision writing time	1/7/2023	30/6/2024	\$3,489.00
Member	Natalie Sinton	Not applicable - Full time public sector employee	1/7/2023	30/6/2024	Nil
Member	Johanna Overmars	Sitting fees plus preparation and decision writing time	1/7/2023	30/6/2024	\$3,415.00
Member	Benjamin Willesee	Sitting fees plus preparation and decision writing time	18/12/2023	30/6/2024	\$1,093.00
Member	Kelly Zhang	Sitting fees plus preparation and decision writing time	18/12/2023	30/6/2024	Nil
Former Member	Andrew Monisse	Sitting fees plus preparation and decision writing time	1/7/2023	30/09/2023	\$494.00
<b>Total</b>					<b>\$21,0033.25</b>

## Contacts

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### Availability in other formats

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