

# **Racing Appeals Tribunal Queensland**

**Annual Report  
2007-08**

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## 1. Role of the Tribunal

The Racing Appeals Tribunal was originally set up in its present form in the early 1990s under the name of the Racing Appeals Authority. The Tribunal was given jurisdiction to hear and decide appeals against decisions of control bodies and their Stewards affecting licensees in matters relating to licensing, disciplinary action, exclusion or monetary penalties. It also hears appeals from Stewards against decisions of First Level Appeals bodies in Thoroughbred and Harness Racing. There is no First Level Appeals process in Greyhound Racing.

The Tribunal is constituted by 3 persons one of whom is appointed Chairperson. Each is appointed by the Governor-in-Council for a term of not more than 3 years. The qualification for appointment as a Tribunal Member is that the person is a lawyer of at least 5 years standing.

The current Tribunal consists of:

Leo Williams AO RFD BA LL B (Chairperson)  
Brockwell Miller LL B (Deputy Chairperson)  
Dennis Standfield LL M (Member)

Each of the above holds office until 26 April 2010.

Under section 165 of the Act the Tribunal can be constituted by any one or more members. Depending on the nature of the case members either sit singly or as a panel of 2 or 3.

## 2. Legislation – Powers and Jurisdiction

The legislation controlling the activities and operation of the Tribunal is the *Racing Act 2002*, Chapter 5, Parts 1-5. The Tribunal has defined powers and a defined jurisdiction. Decisions that may be appealed are set out in section 167 of the Act, subsections (1)-(4).

### ***167 Decisions that may be appealed***

(1) *Subject to subsection (4), a person aggrieved by any of the following decisions may appeal to the tribunal against the decision—*

(a) *a control body's decision to—*

- (i) *refuse to grant or renew a licence; or*
- (ii) *take disciplinary action relating to a licence; or*
- (iii) *take an exclusion action against a person; or*
- (iv) *impose a monetary penalty on a person;*

(b) *a decision of an appeal committee made in relation to an appeal against a monetary penalty imposed by, or other decision of, a steward;*

(c) *the imposition of a monetary penalty by, or other decision of, a steward of a control body if there is no right of appeal to an appeal committee against the decision;*

(d) *another decision of a control body prescribed under a regulation.*

(2) *A steward of a control body may appeal to the tribunal against a decision of an appeal committee made on an appeal against the steward's decision.*

In general most appeals relate to disciplinary action involving conviction of licensees for various offences under the Rules of the respective Codes and/or penalties imposed. Many relate to penalties following drug testing for prohibited substances.

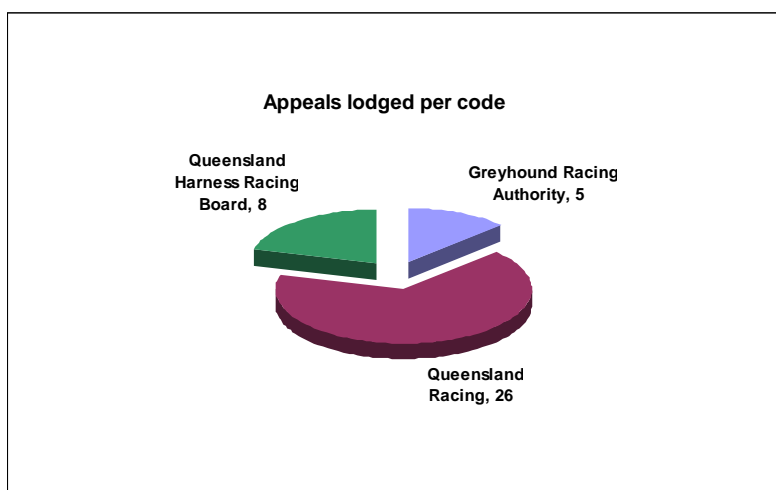
Appeals often come from decisions of the regional first level bodies but many appeals stop at that level.

There is also a right of appeal to the Tribunal for the Stewards of the Thoroughbred Control Body against decisions made by regional first level appeals bodies.

Since last year's Report the Harness Racing Control Body has established a First Level Appeals body to deal with many offences to avoid the costs associated with a full Tribunal hearing.

### **3. Snapshot of the Racing Appeals Tribunal Annual Report 2007-08**

The total number of appeals lodged this reporting year was 39, a decrease from 52 appeals lodged during the previous year.



Against a statutory timeframe of 28 days, the Tribunal averaged 20.3 days between lodgement and the hearing of an appeal. This takes into account the time taken to prepare and read transcripts.

Twenty nine of the 39 appellants were legally represented. The Appellants represented by Senior or Junior Counsel/instructed by a Solicitor were:

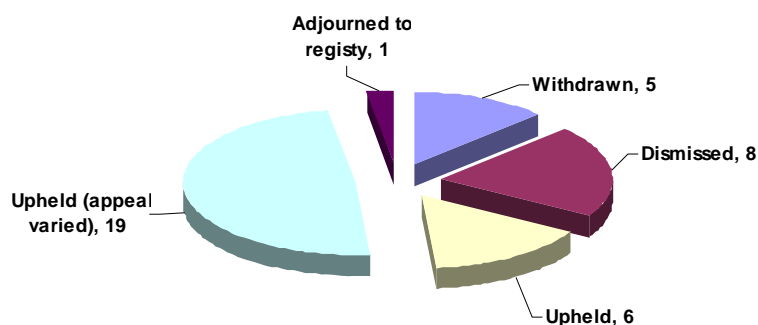
Thoroughbred: 14  
 Harness: 6  
 Greyhound: 3

All other appellants/respondents were either self-represented or had an agent speak on their behalf.

The Tribunal's timeframe for the delivery of a decision is usually 7 days. Decisions in less complex cases are delivered sometimes on the day of the hearing. All reasons for decisions are reduced to writing, provided to the parties and published on the Racing Appeals Tribunal website <http://racingappealtribunal.qld.gov.au>. Some more complex matters require up to 14 days before written reasons are published.

The Tribunal finalised 34 appeals during the 2007-08 period. Five appeals were withdrawn. Six appeals were allowed in full, 19 were allowed in part or had the penalty varied, eight were dismissed, and one was settled by consent at a Directions Hearing.

### Appeals determined 2007-08



The reduction in numbers was a direct result of the equine influenza virus and of the introduction of the First Level Appeals Committee in the Harness Racing Code.

## 4. Registry

### Procedures

The registry functions of the Tribunal are delivered by the Commercial and Consumer Tribunal (the CCT) Registry which is located on level 11, 259 Queen Street, Brisbane. The hearing rooms are situated on levels 10 and 11. The CCT Director is the Secretary of the Tribunal in accordance with the Act. There is one CCT case manager assigned to the Tribunal.

An appeal is instituted by an appellant lodging a Notice of Appeal at the Tribunal and paying the relevant fee. The notice must be served on the respondent. The fees for a racing appeal are an appeal deposit of \$200.00 and a non-refundable administration fee of \$54.70. (This was increased to \$56.10 by Regulation in December 2007.) The appeal deposit is refundable, in the discretion of the Tribunal, if the appeal is successful.

The Notice of Appeal must be lodged with the Registry within 14 days of receiving notice of the decision being appealed.

The Act provides that appeals must be heard within 28 days. The Tribunal can and does order extensions of time both for lodgement and hearing, having the power to do so. It also frequently orders a stay of proceedings to preserve situations and avoid potential injustice pending preparation of transcripts and allocation of dates.

### **Stays of Proceedings**

Many requests are made to the Tribunal for a “stay of proceedings” after decisions by Stewards or first level appeal bodies.

An appeal does not operate as an automatic stay and such applications are not granted as of right.

In cases involving prohibited substances or drugs they are almost always refused. Continued training and nomination of horses during a stay of proceedings is not considered an option in drug disqualification cases. Otherwise the Tribunal seeks to hear such cases as soon as possible.

### **Directions Hearings**

The Tribunal will where required convene to make interim orders regarding procedures and evidence before an appeal proceeds.

All material evidence is read by the Members prior to the hearing. This is usually in the form of a transcript and exhibits. Frequently the Tribunal will also direct appellants to give sworn testimony before it.

### **Hearings**

The Tribunal controls its own procedures and can proceed by way of a re-hearing based on the record or a hearing de novo or a combination of each.

### **Decisions**

The requirements of the format of decisions of the Tribunal are stated in section 187:

#### ***187 Forms of decision of tribunal***

*A decision of the tribunal that finally decides matters the subject of a proceeding-*

*(a) must be in writing; and*

- (b) *must state the decision, and the reasons for the decision; and*
- (c) *may be published.*

Written decisions stating reasons are prepared, communicated to the parties and published on the Tribunal's web site.

Unfortunately First Level Appeal Bodies have not in the past reduced the reasons for their decisions to writing. Stewards proceed by way of an inquiry followed by a charge with particulars and simply make a decision. This situation has improved in the last 12 months.

## Website

All decisions are published on the Tribunal's website <http://racingappealtribunal.qld.gov.au> enabling lawyers and litigants full access to all decisions.

## Decisions

Decisions are circulated and approved by sitting Members before release. A weakness of the system is that Reasons have to be researched and written by Members using their private resources e.g. secretarial, library, communications, as the CCT Registry does not provide these facilities. A glance at the website would reveal the size and complexity of this.

## 5. Tribunal output

The Tribunal has seen a decrease this year in the total number of appeals lodged. The decrease in appeals this year was predominantly as a result of the equine influenza and also of the introduction of the First Level Appeals Committee in Harness Racing.

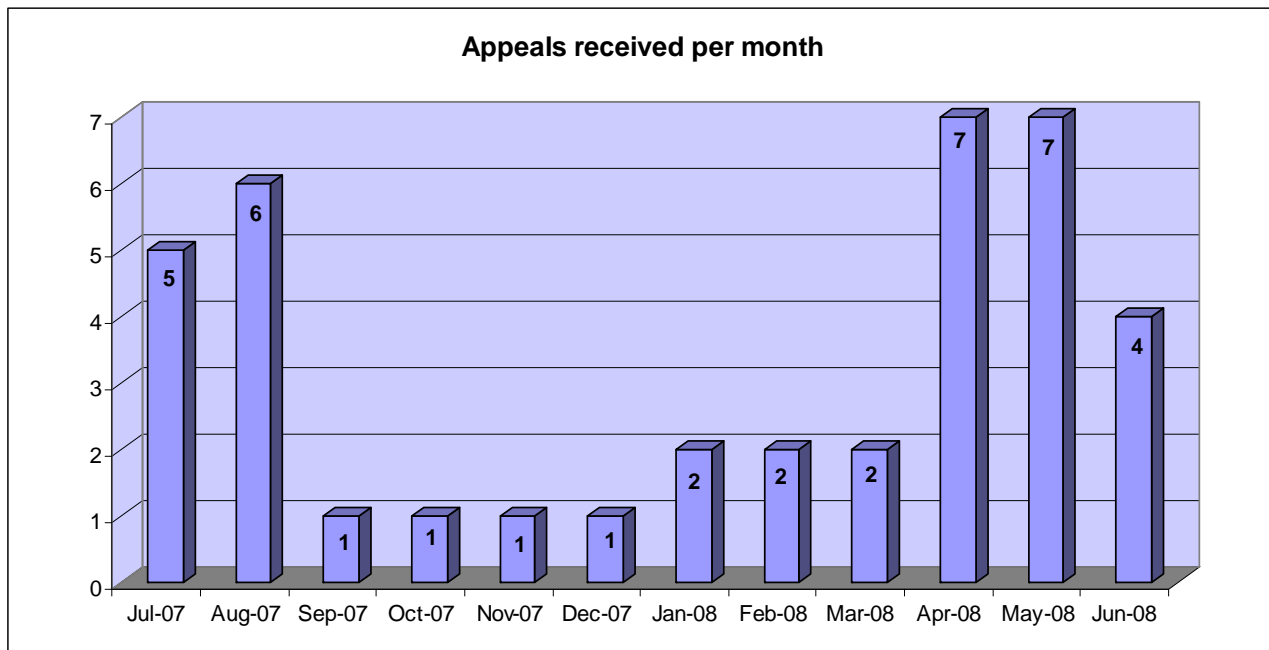
Of the 39 appeals received across all three codes the breakdown is as follows:

**Table 1 Appeals received per code**

Appeals received by code	2007-08	2006-07
Greyhound Racing (GRA)	5	6
Harness Racing (QHRB)	8	15
Thoroughbred Racing (QR)	26	31
<b>TOTAL</b>	<b>39</b>	<b>52</b>

The following is a break down of the number of appeals received per month.

**Table 2 Appeals received per month**



**Table 3 Subject matter of appeals determined**

Principal issue in tribunal decision	2007-08
Driving/riding infractions	13
Prohibitive substance/positive swab (animal)	8
Improper/detrimental actions to the industry	10
Licensing	4
Banned substance in system (human)	3
Other	1
<b>TOTAL</b>	<b>39</b>

**Table 4 Penalties appealed against**

Penalty	2007-08
Disqualified	11
Suspended	13
Fine	4
Fine and disqualified/suspended	9
Licensing - not granted by control body, cancelled or suspended	2
<b>TOTAL</b>	<b>39</b>

**Timing**

The average number of days between lodgement of a Notice of Appeal and the hearing date is 20 days.

**Table 5 Results of appeals lodged**

<b>Decisions of the tribunal</b>	<b>2007-08</b>	<b>2006-07</b>
Dismissed	10	18
Dismissed (penalty varied)	5	6
Upheld	5	9
Upheld (penalty varied)	9	12
Withdrawn	5	3
No jurisdiction	0	2
Adjourned to registry	0	1
Incomplete	0	1
Directions Hearing	1	0
EOT Refused	1	0
Order Issued	2	0
Referred back to code	1	0
<b>TOTAL</b>	<b>39</b>	<b>52</b>

### **Appeal from the Tribunal**

Parties have the right of appeal to the District Court on a matter of law only.

#### **193 Who may appeal**

- (1) *A party to an appeal to the tribunal may appeal to the District Court against the tribunal's decision on the appeal, including an order about costs, but only on a question of law.*
- (2) *Matters relating to appealing to the District Court are contained in the **Uniform Civil Procedure Rules 1999.***

In this reporting year no appeals were heard by the District Court.

## **6. Budget**

Funding has been provided for the Tribunal from Consolidate Revenue under the Department of Justice and Attorney-General and from racing appeal fees. The Tribunal's expenditure for both 2006-07 and 2007-08 is set out below in **Table 6.**

**Table 6 Racing Appeals Tribunal expenditure for 2006-07 and 2007-08**

<b>Racing Appeals Tribunal expenses</b>	<b>2007-08 \$</b>	<b>2006-07 \$</b>
<b>Employee expenses</b>	25,559	24,000
<b>Members' fees</b>	29,588	30,000
<b>Supplies and services</b>		
maintenance	0	0
lease rental and hire services	8,000	8,500
motor vehicle expenses	0	0
consumables	1,533	0
data processing costs (video conference)	305	0
Other professional expenses (subscriptions)	1,810	0
Conferences and seminars	0	13,500
Travel expenses	1,006	1,500
Other administrative expenses	0	4,000
<b>Depreciation</b>	0	0
<b>Total expenses</b>	<b>67,801</b>	<b>81,500</b>

The Tribunal adopts a number of considerations in its procedures to reduce operational costs. To reduce sitting and court costs, the Tribunal usually hears several appeals on the one day. In smaller cases, only one Member will sit as directed by the Chair. The Tribunal has in determining its 34 appeals, sat on a total of 18 days. This includes directions hearings which are separate to the appeal.

### **Remuneration**

Members are remunerated at rates approved by the Department of Industrial Development. The current rates are about 25% of the normal charge-out rate for a suburban lawyer and in many cases about 10% of the rates charged by the counsel and lawyers appearing before the Tribunal.

## **7. The Department**

The Tribunal maintains appropriate liaison with the Racing Division on decided cases and industry issues, and any implication such may have for Control Bodies of which the Department should be aware.

## **8. The Industry**

To the extent that it is possible and without compromising its independence, the Tribunal maintains reasonable contact on a periodic basis with the Stewards employed by the various Codes.

## **9. The Public**

While it is obviously not possible to please all appellants, including the Control Bodies of the various Codes, the Tribunal conducts its hearings in an attempt to ensure that all appellants have a fair hearing and a process they can understand. Lawyers have become the order of the day in recent times but some appellants seek leave to conduct their own cases or have some other industry-related person do it for them. The object of the appeals process is to ensure justice for both appellants and respondents alike.

## **10. Conference**

The Deputy Chair, Mr Miller, and Mr Standfield and the Case Officer attended the annual two day conference of the Australasian Racing Appeals Tribunals in Perth.