

Racing Appeals Tribunal

Annual Report

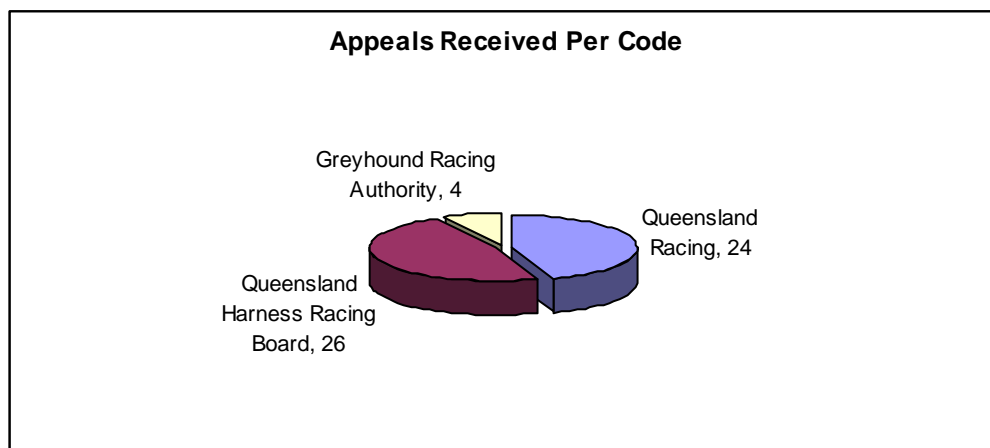
2003-2004

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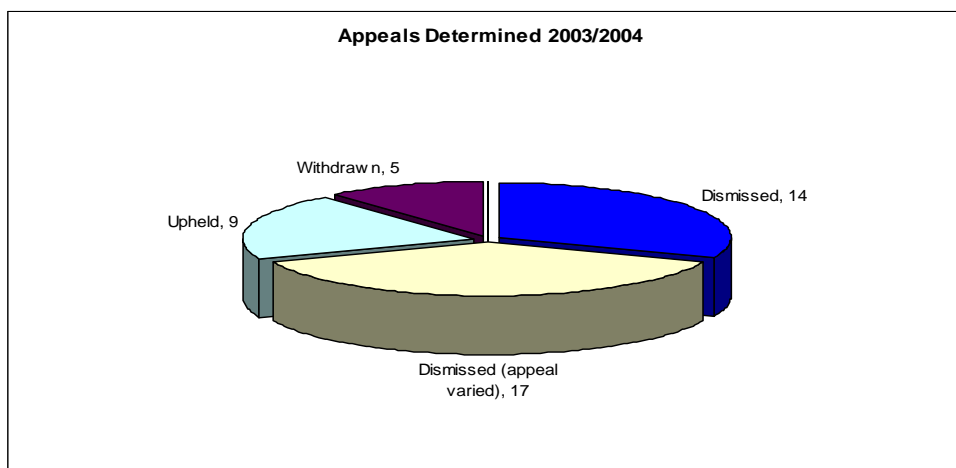
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1. Snapshot of the Racing Appeals Tribunal Annual Report 2003/2004

- The Racing Appeals Tribunal (“the Tribunal”) replaced the Racing Appeals Authority under the new Act, the *Racing Act 2002*.
- The three standing members were re-appointed in April 2004, two for three years and one for one year.
- The registry function continues to be provided by the Commercial and Consumer Tribunal registry which re-located to level 11, 259 Queen Street in March 2004.
- The total number of appeals lodged this reporting year has increased to 54, up from 40 the previous year.



- Despite a statutory timeframe of 28 days, the Tribunal averages 20 days between lodgement and the hearing of an appeal. This takes into account the time taken to prepare and read transcripts.
- The Tribunal’s timeframe for the delivery of a decision is 6 days. Decisions in less complex cases are delivered sometimes instantly, mostly within 24 hours. Some more complex matters require up to 7-14 days.
- The Tribunal finalised 45 of its 54 outstanding appeals, leaving 9 appeals to be heard at the reporting date. This situation is only one of timing between notice of appeal and hearing date. The only long standing appeal not finalised is [IASBet.Com Pty Ltd –v- Queensland Racing](#) which was heard for two days in November 2003 and has been adjourned several times at the request of the parties while they continue to negotiate.



2. Role of the Tribunal

The Racing Appeals Tribunal (“the Tribunal”) is established under the *Racing Act 2002* (“the Act”) to hear and determine appeals mostly from decisions of the control bodies or their stewards or from first level appeal committees.

The Tribunal has power to hear appeals from all three codes of racing, namely Thoroughbred, Harness and Greyhound racing. Most appeals from the Thoroughbred Code go to a first level appeal committee before coming to the Tribunal, unless they are over a \$2000 fine or a three month suspension or disqualification in which case they can be made direct to the Tribunal.

Appeals from the Harness Racing Code and the Greyhound Code have no first level appeals committee and come direct from the respective control body or its stewards. Appeals are heard from the licensees or control bodies, licensees or stewards from all over Queensland.

This is the first full year that the Tribunal has operated under the *Racing Act 2002*. The *Racing and Betting Act 1980* was repealed by the new legislation. The Tribunal works in much the same way as the Racing Appeals Authority did.

Section 167 of the Act sets out the jurisdiction of the Tribunal whereby, subject to subsection (4), a person aggrieved by a decision may appeal to the Tribunal against:

- “(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.”

A steward of a control body may also appeal to the Tribunal against a decision of an appeal committee against the steward’s decision.

3. Membership of the Tribunal

In this financial year, the existing members of the Tribunal were re-appointed. The Tribunal comprises:

- Mr Leo Williams AO RFD BA LL B (Chairperson) – appointed for three years until 22 April 2007
- Sir James Killen KCMG AC (Deputy Chairperson) – appointed for one year until 22 April 2005
- Mr Dennis Standfield LL M (Member) – appointed for three years until 22 April 2007

Under section 165 of the Act, the Tribunal can be constituted by one or more members. All three members are sessional and meet as required either singularly or together.

4. Commercial and Consumer Tribunal Registry

Registry and Procedure

The registry functions of the Tribunal are delivered by the Commercial and Consumer Tribunal (“the CCT”) registry which has, as of March 2004, relocated to level 11, 259 Queen Street, Brisbane with the hearing rooms situated on level 10.

The Director of the CCT continues to act most efficiently in the capacity of the Secretary of the Tribunal. The Registry and its staff are helpful and cooperative and the relationship with the Tribunal members is good.

Under the Act an appeal is instituted by an appellant lodging a notice of appeal and paying the relevant fee. The notice must be served on the Respondent in accordance with the Act and the Regulations. The fees for a racing appeal are an appeal deposit of \$200 and a non-refundable administration fee of \$50. The appeal deposit is refundable if the appeal is successful.

A notice of appeal must be lodged with the Secretary of the Tribunal within 14 days of receiving notice of the decision being appealed.

The Act provides that appeals 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.

In this financial year the Tribunal's average timeframe is 20 days between the notice of appeal being lodged and the matter being heard.

Section 172 of the Act provides that the Tribunal may decide its own procedures. While not bound by rules of evidence, it must ensure the rules of natural justice are followed and it can inform itself in any way it considers appropriate.

A hearing before the Tribunal is usually by way of a rehearing based on the transcript of the evidence before the control body or stewards who made the decision appealed against. Further evidence required by the Tribunal can be called and presented in either a formal or informal manner. Alternatively, the Tribunal can rehear all evidence.

The Tribunal receives, at the controlling body's cost, a transcript of proceedings if there is a hearing. In some matters such as licensing there may only be documentation available and this is usually provided.

All available evidence provided is read by the members prior to the hearing.

The requirements of the format of decisions of the Tribunal are stated in section 187. A final decision must be in writing, must state the reasons for the decision and may be published. Written decisions are prepared, stating reasons. They are sent to the parties and published on the internet.

5. Tribunal Output

The Tribunal has seen an increase this year in the total number of appeals lodged. Factors which have influenced the increase are reorganisation of integrity guidelines but also the change in legislation which restricts the jurisdiction of the first level appeals in the Thoroughbred Code.

Based on figures provided at the Australasian Racing Conference, the racing appeals body in Queensland has the heaviest case load of all states and territories.

Of the 54 appeals received across all three codes the breakdown is as follows:

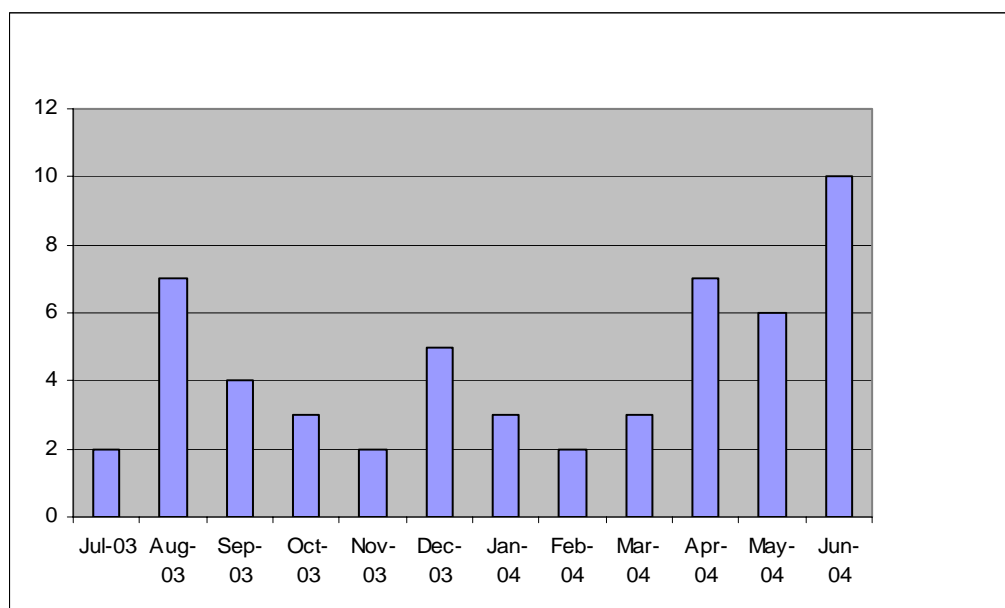
Table 1 Appeals Received Per Code

Appeals Received by code	2002/2003	2003/2004
Greyhound Racing (GRA)	3	4
Harness Racing (QHRB)	28	26
Thoroughbred Racing (QR)	6	24
Licences (QPC)*	3	n/a
TOTAL	40	54

*The Tribunal no longer separates licensing appeals from the Thoroughbred code.

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

Table 2 Appeals Received Per Month



The Tribunal continues to hear appeals which cover a variety of issues with varying degrees of seriousness and penalty.

Table 3 Subject Matter of Appeals Determined

Principal issue in Tribunal decision	2003/2004
Driving/Riding infractions	18
Prohibitive Substance/Positive Swab (Animal)	9
Improper/Detrimental Actions to the Industry	4
Licensing	2
Failure to Withdraw/Notify Change	2
Ownership/Fraudulent Actions	3
Banned substance in system (Human)	1
Improper care	1
TOTAL	40

Table 4 Penalties Appealed Against

Penalty		2003/2004
Disqualification/Suspension	Greater than or equal to six months	10
	Between three & six months	5
	Less than three months	16
Fine	Greater than or equal to \$2000	2
	Less than \$2000	5
Licensing	Not granted by Control Body	2
TOTAL		40

Timing

The average number of days between lodgement of a notice of appeal and the hearing date is 20 days and the average number of days from commencement to formal judgement to finalise an appeal at 26 days. (This figure is slightly exaggerated due to several appeals being adjourned for lengthy periods at the request of the party/s.)

Table 5 Results of Appeals Lodged

Decisions of the Tribunal	2002/2003	2003/2004
Dismissed	10	14
Dismissed (appeal varied)	20	17
Upheld	12	9
Totals	42	40

Five matters were withdrawn without being heard by the tribunal.

Parties have the right of appeal to the District Court on a matter of law only. In this reporting year there was one appeal to the District Court which was discontinued before hearing.

6. Other Matters

Database

The Tribunal members are in conference with the Secretary about the establishment of a database to access its decisions. While all decisions are currently published on the internet there is no precedent access enabling decisions to be cross referenced on issues, penalties, rules etc. This is being refined and the access will be published.

Industry Communication

The Tribunal also endeavours to maintain open lines of communication with the three codes. This reporting year, the Tribunal has held conferences with members of the Thoroughbred and Harness Racing Codes in an attempt to assist stewards and decision-making bodies and to streamline the appeal process with better understanding of relevant issues.

A meeting was proposed with the Queensland Racing ("QR") Stewards but was postponed until personnel issues are resolved by QR.

Conference

Tribunal member, Mr Dennis Standfield and the Secretary, Mr Brian Bauer travelled to Melbourne for the Australasian Racing Appeals Tribunals Conference between 11 March and 14 March 2004. The conference is held each year in different States or New Zealand and provides a valuable tool for comparison and interaction between those involved in the quasi-judicial positions such as members of a racing tribunal and those who administer them. All other States but not New Zealand have similar bodies to Queensland.

The conference assists in remaining apprised of contemporary legal and regulatory issues which impact the on-going performance of the Tribunal.

7. The Public

While it is obviously not possible to please all appellants, the Tribunal conducts its hearings in such a way as to ensure that all appellants have a fair hearing and a process they can understand. Lawyers have become more prevalent in recent times but many appellants choose to conduct their own cases or have some other industry-related person do it for them. The feedback seems to be one of acceptance of the process, both from appellants and control bodies and Stewards.

It is fair to observe that the industry has considerable difficulty with the strict liability drug rules. The wide net often captures not only drug cheats but also people guilty of ignorance, inadvertence or just people who have had careless veterinary advice.

8. Forecast for 2004/2005

The Tribunal has also seen an increase in the number of appeals lodged, both as a total over the last reporting year, as well as over the last three months. This is indicated in Table 2 above. This trend is likely to continue at least over the next year or so.

9. Budget

Funding is provided for the Tribunal from the Department's budget. The Tribunal's expenditure in the reporting year is set out below in **Table 6**.

Table 6 Racing Appeals Tribunal Expenditure for 2003/2004

Racing Appeals Tribunal Expenses	2003-04 \$
Employee Expenses	3,205
Supplies and Services	
Maintenance	
Lease Rental & Hire Services	500
Motor Vehicle Expenses	
Consumables	968
Data Processing Costs	
Members' Fees	30,885
Other Professional Expenses	7,079
Conferences & Seminars	
Travel Expenses	213
Other Administrative Expenses	266
Depreciation	883
Total Expenses	43,999

The Tribunal adopts a number of considerations in its procedures to reduce operational costs. The Tribunal will, on minor matters, sit 1 member only or will sit and determine several appeals on the one day. The most heard in one day was six. The Tribunal has in determining its 45 appeals, sat on a total of 24 days. However this includes a directions hearing and two days of hearing for a significant appeal involving internet betting, which was subsequently adjourned indefinitely to the registry.

Additional costs were also incurred due to the engagement of Counsel Assisting in the two day matter because of the potential to affect racing industry policy. This was a one off expense and occurs infrequently.

The Tribunal utilises videoconferencing facilities around the State and has not incurred any travel expenses due to appeals. In this reporting year, the Tribunal has conducted two hearings by way of video conference.