



Racing Penalties Appeal Tribunal of Western Australia

ANNUAL REPORT 2010/11



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STATEMENT OF COMPLIANCE

Hon. Terry Waldron, MLA
MINISTER FOR RACING AND GAMING

In accordance with section 61 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 2011.

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



Dan Mossenson
CHAIRPERSON

20 September 2011

OVERVIEW OF AGENCY

EXECUTIVE SUMMARY



I am pleased to present the Racing Penalties Appeal Tribunal Annual Report for the year ended 30 June 2011, prepared in accordance with Section 61 of the *Financial Management Act 2006*.

The Report outlines the Tribunal's activities and is designed to satisfy its statutory reporting requirements. The Report includes a synopsis of the Tribunal's activities, performance indicators and audited financial statements.

The Tribunal continues to maintain the confidence of the Western Australian racing industry by providing an impartial judicial forum for the hearing of appeals against Racing and Wagering Western Australia Stewards' determinations. In this way, the Tribunal also maintains the confidence of the Western Australian public by ensuring the integrity of the racing industry is not compromised.

During the year, eight appeals were heard and determined. This report includes a summary of each appeal in order to provide the reader with an insight into the range of matters brought before the Tribunal. Appeal determinations are available from the Tribunal's website at www.rpat.wa.gov.au

I acknowledge and thank the members of the Tribunal for their invaluable contributions to the functioning of the Tribunal.

I also thank the Department of Racing, Gaming and Liquor for its ongoing provision of executive support services, and the Supreme Court of Western Australia for permitting the Tribunal to use its facilities. It would be impossible for the Tribunal to conduct its activities in an effective, efficient manner without this invaluable support.

A handwritten signature in blue ink that reads "Dan Mossenson". The signature is fluid and cursive.

Dan Mossenson
CHAIRPERSON

OPERATIONAL STRUCTURE

ENABLING LEGISLATION

The Racing Penalties Appeal Tribunal is established under the *Racing Penalties (Appeals) Act 1990*. The Tribunal was established to confer jurisdiction in respect of 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.

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 Racing, Gaming and Liquor. The Department recoups the cost of providing these services from the Tribunal. The Tribunal is funded from the profits of Racing and Wagering Western Australia (RWWA).

RESPONSIBLE MINISTER

As at 30 June 2011, the Minister responsible for the Racing and Gaming Portfolio was the Honourable Terry Waldron MLA, Minister for Sport and Recreation; Racing and Gaming.

APPEALS WHICH MAY BE HEARD BY THE TRIBUNAL

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

- 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.

In addition, 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 RWWA.

DETERMINATION OF APPEALS

The Tribunal is required to hear and determine an appeal based upon 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:

- order the 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
- make such other order as the member presiding may think proper.

Decisions of the Tribunal are final and binding.

ADMINISTERED LEGISLATION

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

OTHER KEY LEGISLATION IMPACTING ON THE TRIBUNAL'S 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 Sector Management Act 1994;*
- *Salaries and Allowances Act 1975;*
- *State Records Act 2000; and*
- *State Supply Commission Act 1991.*

ADMINISTRATIVE STRUCTURE

Sections 5 and 6 of the *Racing Penalties (Appeals) Act 1990* 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.

The composition of the Tribunal as at 30 June 2011 was as follows:

Mr Dan Mossenson - Inaugural Chairperson

Mr Dan Mossenson, the inaugural Chairperson, was appointed in 1990. Mr Mossenson was admitted to practice law in 1970 and specialises in liquor licensing, hospitality and tourism law. Mr Mossenson became a partner of Lavan and Walsh in 1973, subsequently a founding partner of Phillips Fox and Lavan Legal, and currently is Chairman of Partners of Lavan Legal.

Mr Mossenson chaired both the WA State Government Gaming Inquiry in 1984 and the Land Valuation Tribunal of Western Australia from 1985 to 1997, was founding Vice Chairman of the National Association for Gambling Studies, board member of the Australian Institute of Gambling Studies, the Indian Ocean Tourism Organisation and the Tourism Council Western Australia Limited and its predecessor body for 14 years. Mr Mossenson is President of the Perth Hebrew Congregation Inc, board member of Yirra Yaakin Aboriginal Corporation and founder and secretary the Small Bar Association of W.A. Inc.

Mr Patrick Hogan - Inaugural Member

Mr Patrick Hogan, an inaugural member of the panel of the Tribunal, was appointed in 1991. Mr Hogan is a barrister admitted to the Supreme Court of Western Australia and the High Court of Australia in June 1982. Mr Hogan worked as a barrister and solicitor with the Legal Aid Commission of Western Australia practising in civil and criminal law, then in private practice as a barrister with Howard Chambers.

Mr Hogan was appointed as a part-time Magistrate of the Children's Court of Western Australia in September 1999 and President of the Gender Reassignment Board of Western Australia in 2007.

Mr John Prior - Member

Mr John Prior was appointed to the panel of the Tribunal in March 1994. Mr Prior is a barrister practising with Francis Burt Chambers Perth, specialising in criminal and civil litigation in the areas of sports law and liquor licensing.

Mr Prior has served on many committees including President of the Criminal Lawyers' Association of Western Australia, Convenor of the Law Society of Western Australia Criminal Law Committee, Magistrates' Courts Liaison Committee, Ministry of Justice Advisory Council, Reduction of Delay in Criminal Jurisdiction of the District Court, Unrepresented Litigants Scheme Committee Supreme Court and chaired the Ministerial Taskforce on Drug Law Reform.

Ms Karen Farley - Member

Ms Karen Farley was appointed to the panel of the Tribunal in March 1997. Ms Farley is a barrister and solicitor specialising in Legal Aid assistance and a councillor for the Shire of Peppermint Grove. Ms Farley was a totalisator operator at Ascot and Belmont Racecourses between 1978 and 1982.

Ms Farley has served on several boards and committees including Chairperson of the Board of Visitors to Alma Street Centre, Fremantle Hospital, Board of Visitors to Heathcote Hospital, Member Criminal Law Association, Vice President Criminal Law Association, Secretary Criminal Law Association, Committee Member Pro Bono Committee of Law Society and Committee Member Legal Aid Committee of Law Society. She is also currently Chair of the Council of Management, St Hilda's Anglican School for Girls.

Mr Andrew Monisse - Member

Mr Andrew Monisse was appointed to the panel of the Tribunal in March 1997. Mr Monisse was admitted as a barrister and solicitor of the Supreme Court of Western Australia in December 1990 after completing articles at Mallesons Stephen Jaques. His employment experience has included working as a solicitor assisting counsel assisting at the WA Inc Royal Commission in 1991 and as a prosecutor for the Commonwealth DPP in the Perth office between 1992 and 1998. Since July 2000 he has worked as a barrister from Howard Chambers, practising predominantly in criminal law.

Mr Monisse is a member of the Perth Legal Panel of the RAAF Specialist Reserve with the current rank of Squadron Leader. Mr Monisse graduated from the University of Western Australia with degrees in Jurisprudence, Laws and Economics and subsequently in 2002 with a Master of Laws.

Mr Robert Nash - Member

Mr Robert Nash was appointed to the panel of the Tribunal in March 1997. Mr Nash is a barrister admitted as Practitioner of Supreme Court of WA and the High Court of Australia, and also is a General Public Notary.

Mr Nash has served on several councils, committees and directorships, including Director of Bauxite Resources Ltd and North West Property Holdings Pty Ltd, Chairman of the WA Soccer Disciplinary Tribunal, Council Member of the Law Society of WA, Convenor Education Committee of Law Society of WA, Counsel Assisting the Royal Commission into the City of Wanneroo, Member of the Professional Conduct Committee of Law Society, Consultative Committee to the District Court on Civil Reforms in the District Court, the Ethics Committee of Law Society, Legal Panel of the Royal Australian Navy, resident tutor in law at St George's College, Council Member of WA Bar Association Council, Director WA Bar Chambers Ltd and Tutor in Civil Procedure at University of WA.

Mr William Chesnutt - Member

Mr William Chesnutt was appointed to the panel of the Tribunal in June 2000. Mr Chesnutt is a barrister and solicitor engaged in conducting general litigation matters with exposure to a wide variety of commercial and criminal matters. Mr Chesnutt has tutored in company law and legal framework of business subjects.

EXECUTIVE SUPPORT FOR THE RACING PENALTIES APPEAL TRIBUNAL

Executive support for the Racing Penalties Appeal Tribunal is provided by the Department of Racing, Gaming and Liquor.

PERFORMANCE MANAGEMENT FRAMEWORK

AGENCY LEVEL GOVERNMENT DESIRED OUTCOME

Broad government goals are supported by this Tribunal by 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
Greater focus on achieving results in key service delivery areas for the benefit of all Western Australians.	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 during 2010/11.

SHARED RESPONSIBILITIES WITH OTHER AGENCIES

The Tribunal did not share any responsibilities with other agencies in 2010/11.

AGENCY PERFORMANCE

REPORT ON OPERATIONS

Actual Results v Budget Targets 2010/11

FINANCIAL TARGETS	TARGET¹ \$	ACTUAL \$	VARIATION² \$
Total cost of services (expense limit) (sourced from Statement of Comprehensive Income)	273,386	207,345	66,041
Net cost of services (sourced from Statement of Comprehensive Income)	(4,850)	(74,238)	(69,388)
Total equity (sourced from Statement of Financial Position)	156,724	215,835	59,111
Net increase (decrease) in cash held (sourced from Statement of Cash Flows)	4,850	61,950	57,100

The table below provides a summary of key performance indicators for 2010/11. A detailed explanation is provided on pages 46 and 47.

SUMMARY OF KEY PERFORMANCE INDICATOR	TARGET	ACTUAL	VARIATION
Total number of stay applications received	3	2	
Number of stay applications determined same day	2	1	
Indicator	66.7%	50%	16.7%
Average cost of processing an appeal	\$22,782	\$23,038	\$256

¹ As specified in the budget statements for the year in question.

² Explanations for significant variances are contained in Note 12 'Explanatory Statement' to the financial statements (page 45).

MAJOR ACHIEVEMENTS FOR 2010/11

APPEALS LODGED AND DETERMINED					
Racing Code	Appeals Lodged 2009/10	Appeals Determined 2009/10	Appeals Carried Over to 2010/11	Appeals Lodged 2010/11	Appeals Determined 2010/11
Thoroughbred	5	4	0	8	6
Harness	7	6	2	0	2
Greyhound	1	1	0	0	0
Total	13	11	2	8	8

The results of the determinations in respect of the racing codes for the years 2009/10 and 2010/11 are summarised below.

2010/11 APPEAL RESULTS	Thoroughbred Racing	Harness Racing	Greyhound Racing
Allowed in Full	1	0	0
Allowed in Part (Penalty Reduced)	1	0	0
Referred Back to Stewards (RWVA)	0	1	0
Dismissed	4	1	0
Withdrawn	1	0	1
Leave to Appeal Refused	0	0	0
Total	7	2	1

2009/10 APPEAL RESULTS	Thoroughbred Racing	Harness Racing	Greyhound Racing
Allowed in Full	0	0	0
Allowed in Part (Penalty Reduced)	3	1	0
Referred Back to Stewards (RWVA)	0	0	0
Dismissed	2	5	1
Withdrawn	1	2	0
Leave to Appeal Refused	0	0	0
Total	6	8	1

APPEALS TO BE CARRIED OVER TO 2011/12	Thoroughbred Racing	Harness Racing	Greyhound Racing
Reserved Decision	0	0	0
Reserved Decision on penalty only	0	0	0
Reasons to be published	0	0	0
Yet to be heard	2	0	0
Total	2	0	0

STAYS OF PROCEEDINGS

In 2010/11 there were three applications for stays of proceedings, compared to eight in the previous year. The Chairperson made the determinations as follows:

2010/11 APPLICATIONS FOR STAYS OF PROCEEDINGS			
Racing Code	Stays Granted	Stays Refused	Withdrawn
Thoroughbred	1	1	0
Harness	0	0	0
Greyhound	0	0	1
Total	1	1	1

2009/10 APPLICATIONS FOR STAYS OF PROCEEDINGS			
Racing Code	Stays Granted	Stays Refused	Withdrawn
Thoroughbred	0	2	2
Harness	2	1	1
Greyhound	0	0	0
Total	2	3	3

SIGNIFICANT APPEALS BEFORE THE TRIBUNAL

The following pages contain a synopsis of appeals heard before the Tribunal. Full determinations are available on the Tribunal's website at www.rpat.wa.gov.au

APPEAL NO. 719 – DR KIMBERLY JOHN ROSE

In the matter of an appeal against the determination made by the RWWA Stewards of Harness Racing on 25 February 2010 imposing a fine of \$10,000 for breach of Rule 187(2) of the Rules of Harness Racing

The appeal concerned a horse named FLYING VILLAGE LORD. The trainer was Mr James Currie. Mr Shane Loone was the stable hand at the relevant times, and he was also a part owner of the horse. Dr Rose was a veterinarian. Both Mr Currie and Mr Loone were licensed persons under the RWWA Rules of Harness Racing, but Dr Rose was not.

FLYING VILLAGE LORD competed and won at Bunbury on 6 October 2009. The horse was swabbed. Two approved racing laboratories found the presence of aminocaproic acid in the horse's urine sample. This led to an investigation carried out by the RWWA Principal Investigator.

The investigator interviewed Mr Currie on 2 November 2009. Mr Currie denied any knowledge of how the substance came to be in the horse.

Dr Rose was interviewed by the investigator on 6 November 2009. Dr Rose expressed the opinion that the Stewards may have changed their methodology for the detection of aminocaproic acid.

Mr Loone was also interviewed by the investigator on 2 November 2009 and told the investigator that Dr Rose advised him to administer aminocaproic acid intravenously.

Dr Rose was interviewed by the investigator on 6 November 2009 and told the investigator that he advised Mr Loone to administer aminocaproic acid intravenously to prevent bleeding in the horse's lungs.

On 25 November 2009, Mr Currie contacted the investigator and confessed to lying. The investigator interviewed Mr Currie again. The allegation was that each person gave false evidence to the investigator to the effect that the drug was dispensed as part of a drip and then administered by way of that drip.

Following investigations, there was a Steward's inquiry. The inquiry commenced on 10 February 2010. The RWWA veterinarian gave the following evidence:

'aminocaproic acid is classed as an anti-fibrinolytic drug. What that means is that it acts to stabilize blood clots that form within the vascular walls to help heal and repair those vessels walls...it's a drug that veterinarians have prescribed over the years to clients to help prevent bleeding in horse's lungs.'

Aminocaproic acid is sold under the trade name Amicar. The particular amount in this case was a 20 ml bottle. The drug can be administered either directly from the bottle by way of intramuscular injection, or indirectly by way of being introduced into a drip which itself can be administered to the horse. In this case, the drug was administered by way of direct injection.

At the inquiry, Dr Rose, Mr Currie and Mr Loone admitted to lying to the investigator. Each made the admission before being charged. Mr Currie and Mr Loone made their admissions on the first day of the inquiry, on 10 February 2010. Dr Rose admitted his lie at the inquiry on its second sitting day, on 25 February 2010. Dr Rose's position was that he made the false statement, but it was of no consequence because aminocaproic acid was not a prohibited substance.

On 25 February 2010, Mr Currie, Mr Loone and Dr Rose were each charged with and found guilty of giving false evidence to the RWWA Principal Investigator. The findings were that Mr Currie gave false evidence on 2 November 2009, Mr Loone gave false evidence on a separate occasion on 2 November 2009, and Dr Rose gave false evidence on 6 November 2009. The subject matter was the same in each case, namely an explanation of how the substance came to be in the horse.

On 25 February 2010, the Stewards imposed a fine of \$10,000 upon Dr Rose.

Dr Rose appealed against the decision on the following grounds:

1. The Stewards acted without jurisdiction in requiring him to attend the inquiry in the FLYING VILLAGE LORD matter.
2. The Stewards acted without jurisdiction in charging hm with an alleged offence under Harness Rule of Racing 187(2).
3. The Stewards acted without jurisdiction in fining him the sum of \$10,000.
4. The Stewards in the hearing of 25 February 2010 acted beyond jurisdiction in that he was not afforded procedural fairness and natural justice.

5. The Stewards erred in finding that aminocaproic acid was a prohibited substance under Harness Rule of Racing 188A in that aminocaproic acid is not a substance capable of acting upon any of the mammalian body systems referred to in the Rule.
6. In regards to the issue of prohibition, the Stewards exceeded their jurisdiction in preferring the evidence of the RWWA veterinarian to his evidence.
7. The Stewards exceeded their jurisdiction when they refused Mr Loone the right to challenge this issue, a refusal which flowed through the Inquiry to his detriment.
8. The Stewards conclusion that aminocaproic acid was a prohibited substance was made without sufficient evidence in the inquiry.
9. The decision to fine him implied conviction of the charged offence when no reasonable tribunal could reach such a decision based upon the evidence before the Tribunal.
10. The decision was beyond the Tribunal's power to reach without extending him procedural fairness and natural justice, was unreasonable, and should be set aside.

The appeal was heard on 28 February 2011.

With respect to grounds 1, 2 and 3, the Tribunal found that Dr Rose was a person associated with the keeping, training and racing of horses, and was therefore subject to the Rules. The fact that Dr Rose was associated in the relevant sense was so obvious to Dr Rose himself and the Stewards that it merited no discussion at the inquiry, nor did Dr Rose raise it as an issue, and the Stewards did not refer to it in finding him guilty.

The Tribunal found no merit in ground 4. The particulars of ground 4 asserted that Dr Rose was not afforded procedural fairness. The Tribunal was satisfied that Dr Rose was afforded procedural fairness, based on a number of facts, summarised as follows:

- The Stewards launched an inquiry as to whether the detected substance was a prohibited substance, and when and how it got into the horse.
- The investigator had conducted interviews with the three defendants.
- The Stewards provided Dr Rose with several opportunities to provide evidence before the inquiry and to respond to Mr Currie's allegations. Prior to attending the inquiry on 25 February 2010, Dr Rose was provided with the transcript of the earlier sitting of the inquiry, which included the transcripts of the RWWA inspector's interviews with all three persons. Dr Rose was aware of the allegations made against him.

- Prior to questioning, the Stewards informed Dr Rose that he was at risk of being charged.
- Both Mr Currie and Mr Loone were present at the inquiry on 25 February 2010, and were available to answer any of Dr Rose's questions. Dr Rose did not ask any questions, and admitted lying to the RWWA inspector at the inquiry.
- Dr Rose was given the opportunity to test the evidence against him. For example, he was given the opportunity to call witnesses, which he declined.

The Tribunal found no merit to grounds 5, 6, 7 and 8. The question of whether or not aminocaproic acid was a prohibited substance was relevant for different reasons. At the inquiry, it was an element of the offence with which Mr Currie was ultimately charged, and it was also relevant to the possible disqualification of the horse. At Mr Loone's appeal, it was relevant to the disqualification of the horse. The fact that the evidence on the subject was relevant and therefore admissible at those places and for those purposes did not make it relevant to Dr Rose's conviction, and did not make it relevant on this appeal.

The Tribunal found there was no merit to ground 9 as there was sufficient evidence for the Stewards to find the charge proved. On three occasions before he was charged, Dr Rose admitted lying. On two occasions after he pleaded not guilty, he admitted lying. Based on those facts, it would have been illogical and irrational for the Stewards to find Dr Rose not guilty.

Finally, the Tribunal found no merit to ground 10, and did not consider the matter further.

The Tribunal issued its determination to dismiss the appeal on 25 March 2011.

APPEAL NO. 723 – ROSS STEPHEN ASHBY

In the matter of an appeal against the determination made by the RWWA Stewards of Harness Racing on 10 June 2010 imposing a disqualification of six months for breach of Rule 190(1) of the Rules of Harness Racing

Mr Ashby was a licensed trainer for harness racing. He was convicted on 10 June 2010 after a hearing by the RWWA Stewards of a charge that on Saturday 22 May 2010, he presented the horse DISCO GEMINI to a race at Gloucester Park with a total carbon dioxide (TCO₂) blood level in excess of 36 millimoles per litre of plasma.

There were two laboratory tests undertaken in respect of the pre-race blood sample taken from the horse:

- the Racing Chemistry Laboratory (RCL) measured the TCO₂ level at 37.5 mm/l; and

- the Racing Analytical Services Ltd (RASL) measured the TCO₂ level at 36.4 mm/l.

The Stewards heard evidence from Mr Russo, the manager of the RCL laboratory, who had certified the RCL measurement of the TCO₂ level. Mr Russo gave evidence that if a sample was more than four or five days old, the measurement of the TCO₂ level tended to be lower because the samples tended to degrade in that period of time.

Mr Russo referred to having discussed the difference in the two laboratory results with Mr Batty, the Deputy Director of the RASL laboratory. Mr Russo said that he was advised by Mr Batty that there had been a problem with their machine, which meant that the measurement of the TCO₂ level was delayed after the blood tube had been opened. Mr Russo said the result of that delay in testing following the opening of the blood tube would have meant that there would have been a lower concentration of TCO₂ found in the blood.

The Stewards did not hear evidence from Mr Batty, who had certified the RASL measurement of the TCO₂ level. Stewards found Mr Ashby guilty and imposed a six month disqualification.

Mr Ashby appealed against his conviction and the sentence imposed on him. The Tribunal heard the matter on 6 July 2010.

The main issue for the Tribunal to determine was whether it was reasonably open to the Stewards to be satisfied that the TCO₂ level of the horse, DISCO GEMINI, exceeded 36 mm/l.

Mr Batty was not called to give evidence to the Stewards, nor was he contacted by the Stewards to confirm the explanation given by Mr Russo.

Furthermore, there was no suggestion in the RASL certification of a greater level of uncertainty in the measurement of the sample as a consequence of the problems experienced in the testing process.

The RASL test was undertaken as a confirmatory test of the RCL test. In this instance, the confirmatory test did not confirm the result of the RCL test but suggested a significantly different reading of TCO₂. The Tribunal concluded that without a satisfactory explanation for the difference in the measurement reported by RASL, the RCL test could not be relied upon to convict Mr Ashby.

The Tribunal issued its determination on 3 August 2010. The Tribunal dismissed the appeal against the sentence. There was no evidence that Mr Ashby would suffer significant financial or personal hardship as a consequence of the six month disqualification as he was a hobby trainer. Furthermore, the Stewards indicated they

would relax the restrictions arising from the disqualification so that Mr Ashby could undertake work in the stock feeds industry.

However, the Tribunal allowed the appeal against the conviction and directed the Stewards to re-hear the matter in order to clarify the disparity between the RASL and RCL results, and determine whether the evidence proved the charge against Mr Ashby.

APPEAL NO. 724 – DUNCAN MILLER

In the matter of an appeal against the determination made by the RWWA Stewards of Thoroughbred Racing on 18 September 2010 imposing a 10 day suspension for breach of Rule 137(c) of the Rules of Thoroughbred Racing

On 18 September 2010, Mr Miller gesticulated with his whip just before the winning post during the running of the XXXX Gold-Kalgoorlie Cup. The RWWA Stewards of Thoroughbred Racing held an inquiry chaired by the Chief Steward of Thoroughbred Racing. The Chief Steward indicated that from his observation of the race, it appeared that Mr Miller had gesticulated or celebrated with his whip a couple of strides before the finishing line. A film of the incident was played.

Both Mr Miller's father and his trainer were at the hearing and responded by referring to the jubilation of winning a major race when one's '*emotions go through the roof*'. In response, the Chairman explained that he and other Stewards had spoken to Mr Miller before the first race. The officials addressed the significant number of recent offences from 1 August 2010 in respect of which Mr Miller had received eight fines totalling \$2300. Mr Miller was provided with a list of these offences and was told that the Stewards were concerned with both the frequency and total amount of the fines incurred.

Mr Miller was also told the Stewards were aware that he was not complying with the rules of racing and that it appeared the fines were not having the necessary deterrent effect. Furthermore, he was advised that offences of a similar nature in the immediate future may be treated in a more serious light, with consideration being given to a period of suspension. Mr Miller was advised that offences in regard to celebrating prior to the end of a race were both unnecessary and avoidable.

Mr Miller claimed that his action only amounted to an error of judgment. Despite that, Mr Miller was charged with making a celebratory gesture prior to the winning post in breach of Australian Rule 137(c). Mr Miller refrained from putting in a plea to the charge. The Stewards convicted Mr Miller and issued a 10 day suspension.

Mr Miller appealed against the penalty on the grounds that the penalty was severe, and that the Stewards erred in considering breaches of other rules of racing. The Tribunal heard the matter on 28 September 2010.

Mr Miller's counsel argued that the suspension was inappropriate and excessive as the offence normally attracted a reprimand or fine, there was no interference to other horses or riders, this was Mr Miller's second conviction for a breach of this rule, and he did not receive a reprimand the first offence, Mr Miller was an 18 year old jockey who recently returned from a lengthy suspension and the timing of the celebration was an error of judgment.

Mr Miller's counsel also presented both a summary of the penalties which have been imposed for breaches of this particular rule in WA from 2001 as well as a detailed list which was produced by Racing New South Wales of breaches from July 2002 through to the current period. Mr Miller's case was the only case in that period in Western Australia where a suspension was imposed.

Counsel for RWWA explained in his submissions that horses were unpredictable. The Tribunal was shown footage where a leading rider fell off his mount after winning the Darwin Cup whilst making a celebratory gesture at the end of the race. The element of uncertainty in competitive riding and the potential risk were relevant considerations to be taken into account in evaluating the offence and the penalty.

The Tribunal was satisfied the Stewards were entitled to take the nature of Mr Miller's misbehaviour into account in the context of the targeted direction given at the outset of the meeting. The Tribunal was satisfied that a suspension was appropriate in this case.

The Tribunal published its determination to dismiss the appeal on 28 September 2010.

APPEAL NO. 726 – SUSANNAH HOPPMANN

In the matter of an appeal against the determination made by the RWWA Stewards of Thoroughbred Racing on 30 September 2010 imposing a fine of \$2000 for breach of Rule 143 of the Rules of Thoroughbred Racing

Ms Susannah Hoppmann was a RWWA licensed trainer. Ms Hoppmann trained BATTLE SCENE, which won at Kalgoorlie on 1 August 2010. The jockey who rode BATTLE SCENE weighed in after the race at 56.1kg, after having weighed out at 57kg. The Stewards convened an inquiry into the matter as the discrepancy exceeded the half kilogram tolerance which the Rules allowed. The Stewards declared the correct weight for the race at the end of the inquiry.

The Stewards subsequently revisited the issue and conducted an inquiry into the circumstances of the official weigh in. Ms Hoppmann was charged with a breach of Rule 143(b) of the Rules of Thoroughbred Racing and was issued a \$2000 fine.

Ms Hoppmann appealed on the grounds that:

- The Stewards were in error by adopting an interpretation of AR143 that imposed strict liability on the appellant; and
- The Stewards' findings were not supported by the evidence.

The Tribunal heard the matter on 25 November 2010. The Tribunal had to determine whether Ms Hoppmann was at fault in respect of the significant weight discrepancy which was detected in the race won by BATTLE SCENE. It was clear from the evidence presented to the Stewards that Ms Hoppmann instructed two other persons to put the saddle on BATTLE SCENE after having taken the saddle down to the stalls and placed it on the rails. Ms Hoppmann was then required to depart to load SUGAR FIX, another horse for which she was also responsible, onto a transport vehicle.

Ms Hoppmann had 13 horses engaged to run at the meeting. She was assisted by Messrs Rowe and Smith, both licensed trainers, as well as two strappers. Ms Hoppmann had not applied to the Stewards for permission to delegate the task of saddling.

It was also clear that the Stewards did not query the competence of Messrs Rowe and Smith to saddle the horse. There was nothing to cause Ms Hoppmann to doubt that BATTLE SCENE was not properly saddled up by competent personnel in her absence.

The Tribunal found that the Stewards were in error in their interpretation of Rule 143. The Tribunal was satisfied no fault lay with Ms Hoppmann as she had properly delegated her responsibility to others. It was not open to the Stewards to convict her as there was insufficient evidence of any fault on Ms Hoppmann's part. The evidence did not support the Stewards' finding.

The Tribunal published its determination on 25 November 2010, upholding the appeal and quashing the conviction and penalty. Counsel for Ms Hoppmann sought an order requiring the Stewards to reimburse his client the \$528 paid to obtain the transcript of the proceedings. The Tribunal issued an order for reimbursement to be made pursuant to Section 17 of the *Racing Penalties (Appeal) Act 1990*.

APPEAL NO. 727 – MARK BRADLEY REED

In the matter of an appeal against the determination made by the RWWA Stewards of Thoroughbred Racing on 28 October 2010 imposing a six month disqualification for breach of Rule 178 of the Rules of Thoroughbred Racing

Mr Mark Reed was the trainer of GONDORFF, which competed and ran sixth in the XXXX Gold Kalgoorlie Cup on Saturday 18 August 2010. A pre-race blood sample was taken. The sample was split and later analysed at three different racing chemistry laboratories - the Racing Chemistry Laboratory (WA), the Racing Science Centre Laboratory (Qld) and the Racing Analytical Services Limited Laboratory (Vic). Each of the laboratories reported varying levels of total carbon dioxide (TCO₂) in plasma.

The Perth laboratory reported a result of 38.3 mm/l; the Queensland laboratory reported a result of 37.1 mm/l; and the Melbourne laboratory reported a result of 39.4 mm/l.

The reports from the laboratories prompted the Stewards to commence an inquiry on 25 October 2010. Expert witnesses addressed the different results.

The Stewards had two pieces of scientific evidence available to them in deciding whether or not the level was over 36 mm/l. They had the Queensland and Victorian results, both of which were over 36 mm/l. They also had expert evidence that one of the pieces of scientific evidence was incorrect, and that it was impossible to determine which was correct.

Mr Reed's counsel argued that the difference between the Queensland and Victorian results was significant, and therefore the Stewards should not rely on either pieces of scientific evidence. However, the Stewards charged Mr Reed with presenting a horse with a TCO₂ level in excess of 36 mm/l in plasma. Mr Reed pleaded not guilty.

Mr Reed appealed against the decision on the grounds that the Stewards were in error in relying on such evidence to convict him of a breach of Rule 178. The Tribunal heard the matter on 27 January 2011.

The Tribunal was satisfied that the Stewards applied the correct standard of proof in this case. The Stewards gave weight to the variation of the TCO₂ levels. Much of the Stewards' inquiry involved attempting to quantify in statistical terms the extent and meaning of the variation.

In the Tribunal's view, the only issue was whether the TCO₂ level was over 36 mm/l. The Stewards relied on both Queensland and Victorian results to reach the conclusion that the level was over 36 mm/l.

The Tribunal published its determination to dismiss the appeal on 16 February 2011.

APPEAL NO. 728 – SHANE ALLEN EDWARDS

In the matter of an appeal against the determination made by the RWWA Stewards of Thoroughbred Racing on 25 January 2011, imposing a one year disqualification for breach of Rule 175(hh) of the Australian Rules of Thoroughbred Racing

Mr Shane Allen Edwards was a RWWA licensed open class trainer. On 7 January 2011 Mr Edwards was called to a RWWA Stewards of Thoroughbred Racing inquiry following his convictions in the Midland Police Court in relation to the possession of an unauthorised apparatus and an assault on a licensed track rider. The device in question was an electric shock device disguised as an imitation mobile telephone. The fines imposed for these offences were \$500 and \$400 respectively. Spent conviction orders were made by the Magistrate. The convictions received some press publicity.

The incident which led to the prosecutions took place approximately three months after purchasing the device. Mr Edwards had received information that one of his employees, John Anderson, had allegedly mistreated one or more of Mr Edwards' horses. Mr Edwards took the device with him for protection as he was concerned that there would be an altercation when he confronted Mr Anderson over the allegations. Whilst confronting Mr Anderson, Mr Edwards activated the device to intimidate Mr Anderson, but no contact was made. This was the only occasion Mr Edwards used the device.

Mr Edwards was represented by legal counsel at the inquiry. It was admitted early in the proceedings that there was no issue regarding possession of the prohibited weapon as that fact was admitted. Mr Edwards gave evidence that the purpose of purchasing the device was for self defence, not for use on horses.

A qualified licensed electrician was called to the inquiry to speak to the report he had given to the RWWA Principal Investigator. The report stated the device was live and rated at 1200kw. A blue arc was visible and the apparatus could be clearly heard from a distance when activated. The device could be used to deliver an electric shock either on a human being or an animal.

The RWWA veterinarian gave evidence to the inquiry that an electric shock device typically caused a painful stimulus to the receiver. Electrical devices were prohibited under the Rules of Racing because they either induced horses to run faster or conditioned them to run faster.

The Stewards charged Mr Edwards with possessing an '*electronic apparatus designed to deliver an electric shock*' and for the assault on Mr Anderson. Mr Edwards pleaded guilty to both charges and the inquiry was adjourned.

The inquiry resumed on 11 January 2011. At the reconvened hearing, Mr Edwards sought to change his plea in relation to the first charge, which the Stewards allowed, and the inquiry was adjourned.

The inquiry was adjourned again to 25 January 2011. Mr Edwards' counsel tendered evidence in response to the question of penalty. This included a letter from Mr Edwards' wife which explained the circumstances of the purchase of the device, several written character references that were favourable to Mr Edwards and letters from two veterinarians stating that the device in question was unsuitable for use on animals.

Mr Edwards' counsel submitted to the Stewards that Mr Edwards had qualified for a spent conviction in the Magistrates Court prosecution proceedings as the Magistrate considered Mr Edwards was unlikely to reoffend. Mr Edwards had already suffered significant punishment, not just as a consequence of his convictions in the Magistrates Court, but also embarrassment and adverse publicity. The prosecution had been reported in *The West Australian* newspaper.

The Stewards found Mr Edwards guilty and issued him with a 12 month disqualification.

Mr Edwards appealed on the following ground:

'The Stewards erred in imposing a period of disqualification after having made a specific finding that the possession of the electrical device was unrelated to the Appellant's position as a horse trainer and that the device was not intended for use in relation to horses'.

The Tribunal heard the matter on 8 February 2011.

Counsel for Mr Edwards asserted that the electric device was never intended for use on horses; rather, it was a response or reaction to information he had received regarding mistreatment of horses. Counsel also argued that forfeiting a trainer's livelihood for 12 months would result in adverse consequences including loss of clients. Furthermore, there was a separate specific offence of bringing the industry into disrepute, which was not the basis of the charge. Counsel presented strong character references in Mr Edwards' favour.

Counsel for RWWA argued that Rule 175 (hh) only required proof of possession rather than possession with intent. Counsel also argued the apparatus was deemed to be capable of affecting the performance of a horse. The image of the industry had been tainted by the publicity, and proper control of the sport was essential.

The Tribunal was satisfied that the device was not acquired to be used in relation to racing. The evidence established Mr Edwards had a well developed and very positive attitude in favour of the treatment of animals. Furthermore, Mr Edwards was held in high regard by the racing industry. The positive character references which were produced before the Stewards were of considerable influence in assuring the Tribunal that Mr Edwards was not likely to re-offend.

The Tribunal also concluded that the consequences of serving a 12 month disqualification would cause extreme hardship to Mr Edwards' business operations. The Tribunal was satisfied that Mr Edwards had already suffered a stain to his record and had also incurred a fine as well as the embarrassment of the public reporting of the Magistrate's proceedings in *The West Australian* newspaper.

The Tribunal published its determination to allow the appeal on 16 May 2011. The Tribunal set aside the Stewards' decision to disqualify Mr Edwards for a period of 12 months. Mr Edwards was given a suspended sentence for a period of two years from 25 January 2011, on the condition that Mr Edwards did not commit a further breach of Rule 175 (hh) within the two year period.

APPEAL NO. 729 – CLINT KENNETH HARVEY

In the matter of an appeal against the determination made by the RWWA Stewards of Thoroughbred Racing on 22 January 2011, imposing a 19 day suspension from riding for breach of Rule 137(a) of the Australian Rules of Racing

The RWWA Stewards of Thoroughbred Racing conducted an inquiry into an incident which occurred during the last race at Ascot on 19 January 2011. Four riders were called to give evidence.

Early in the proceedings, Ms Hill told Stewards she ran out of room at 1200 metres and had to steady her mount as a consequence. Mr Parnham, who was on Ms Hill's outside, gave evidence that he was carried in by Mr Harvey. Mr Harvey maintained throughout the inquiry he was just holding his line.

Steward Mance gave evidence of his observations in the following terms:

'...viewing the race from the 1200-metre stand as they raced near that position I thought Mr Harvey with AYZOZED racing to the outside of PRINCE OF SANDS had started to shift inwards and prior to crossing PRINCE OF SANDS I thought that he caused that horse to shift in onto BUCKETS, Jessica Hill's mount, and that has caused tightening to BUCKETS and I thought Mr Hill [sic] had to restrain her mount and lost her position'.

The final jockey to give evidence, Mr McCallum, described the incident in these terms, *'I don't believe I put any pressure. My horse has got its head turned out as I've come up outside Clint's horse there and I didn't believe I put any pressure on him'.*

In response, Mr Harvey asserted that he *'didn't shift in'* and he *'couldn't shift out'* but rather he *'just rode the line I was in being dictated by my inside and outside runners'.*

The inquiry was adjourned at Mr Harvey's request. When the inquiry resumed on 22 January 2011, Mr Harvey brought the trainer Mr Luciani along to express his opinion of the incident. Despite Mr Luciani's contribution and other evidence favourable to Mr Harvey, the Stewards charged Mr Harvey with careless riding. Mr Harvey pleaded not guilty to the charge and gave some brief evidence before the hearing was suspended. When the inquiry resumed, the Stewards issued Mr Harvey with a 19 day suspension.

Mr Harvey appealed on the grounds that the conviction was not supported by the evidence and that the penalty was excessive. The Tribunal heard the matter on 2 February 2011.

Counsel for Mr Harvey presented various arguments to support the appeal against conviction. These included addressing matters raised in the particulars as well as the fact that the position of the portable rail was such that there was the usual congestion near the start of the race and none of the jockeys could specify who was to blame for the incident.

As counsel for RWWA explained, Mr Mance had 20 years experience as a Steward and extensive experience in evaluating races from different vantage points around the track. Furthermore, Mr McCallum's evidence did not support Mr Harvey's version of the incident.

The Tribunal was satisfied that the Stewards made the correct decision based on the evidence before them as Steward Mance's evidence at the Stewards inquiry was clear, cogent and supported by the film evidence. Further, the Tribunal was satisfied that the penalty imposed on Mr Harvey was not inconsistent and was not excessive.

The Tribunal published its determination to dismiss the appeal on 2 February 2011.

APPEAL NO. 730 – PAUL JAMES HARVEY

In the matter of an appeal against the determination made by the RWWA Stewards of Thoroughbred Racing on 29 January 2011, imposing a 13 day suspension for breach of Rule 137 (a) of the Australian Rules of Thoroughbred Racing.

The RWWA Stewards of Thoroughbred Racing held a hearing into a protest made by Mr Knuckey after the running of a race on 29 January 2011, in which DONT GIVE A STAR, ridden by Mr Harvey, finished first. Mr Knuckey, the rider of the second placed horse MISS SAFRAI, alleged interference over the final 100 metres.

After viewing the film of the race, Mr Knuckey claimed contact with his horse was made twice. The outcome of the protest was announced by the Stewards as follows:

'...we see that MISS SAFARI was shifted approximately two horses in by Mr Harvey's mount DON'T GIVE A STAR, that caused MISS SAFARI to become

unbalanced and impeded and because Mr Knuckey's line was dictated to by the inward shift by DON'T GIVE A STAR Mr Harvey's mount we see that Mr Knuckey wasn't able to ride his filly out fully. It was only a nose, it was the barest of margins and because of all those circumstances we believe that we should uphold the objection and we are to reverse the placings so it will now read MISS SAFARI first and DON'T GIVE A STAR second.'

At the conclusion of the objection proceedings, the Stewards continued their inquiry into the incident. This resulted in the Stewards charging Mr Harvey with careless riding. Mr Harvey pleaded not guilty to the charge. The Stewards convicted Mr Harvey and issued a 13 day suspension.

Mr Harvey appealed on the basis that the conviction was unreasonable and the penalty was excessive. The Tribunal heard the matter on 7 February 2011.

Counsel for Mr Harvey argued the conviction was not reasonably open to the Stewards as the contact was minimal, the evidence of careless riding came mainly from the protest, the incident did not qualify as careless riding, safety was not compromised, there was an obligation to fully ride out the race and Mr Knuckey had contributed to the problem. It was submitted Mr Harvey was held tight and had nowhere to go. The ride was said to be a normal fight to the finish.

As to the appeal against the excessive penalty, counsel for Mr Harvey contended that a reprimand or a fine was appropriate. It was argued the degree of interference was light and Mr Harvey enjoyed a good record. Furthermore, Mr Harvey had already suffered, having lost the race as a consequence of the protest.

In response, counsel for RWWA submitted there was no attempt to correct at any stage. This was not simply a momentary lapse, rather it occurred over more than 100 metres. Mr Harvey should have done something to correct it.

The Tribunal was not persuaded that there was any error on the part of Stewards in reaching their decision to convict.

The Tribunal published its determination to dismiss the appeal on 7 February 2011.

SIGNIFICANT ISSUES AND TRENDS IMPACTING THE TRIBUNAL

CHANGES TO ACTS

There were no amendments to the *Racing Penalties (Appeals) Act 1990* for the year under review.

CHANGES TO REGULATIONS

The *Racing Penalties (Appeals) Amendment Regulations 2010* provided new fees and charges under the *Racing Penalties (Appeals) Act 1990*. The new fees and charges came into effect on 1 January 2011.

LIKELY DEVELOPMENTS AND FORECAST RESULTS OF OPERATIONS

It is expected that the workload of the Racing Penalties Appeal Tribunal for 2011/12 will remain steady. Indications are that the Tribunal is adequately resourced to efficiently carry out its functions.

DISCLOSURES AND LEGAL COMPLIANCE

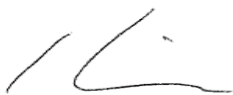
FINANCIAL STATEMENTS

This part of the annual report provides the means by which Parliament and other interested parties can be informed, not only of what the Racing Penalties Appeal Tribunal has achieved during the financial year, but also of the reasons behind those achievements.

CERTIFICATION OF FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2011

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 financial year ending 30 June 2011 and the financial position as at 30 June 2011.

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



Peter Bialas
A/Chief Finance Officer

25 August 2011



Patrick Hogan
Member, Racing Penalties
Appeal Tribunal of Western
Australia

25 August 2011



Dan Mossenson
Chairperson, Racing
Penalties Appeal
Tribunal of Western
Australia

25 August 2011

Racing Penalties Appeal Tribunal

Statement of Comprehensive Income

for the year ended 30 June 2011

	Note	2011 \$	2010 \$
COST OF SERVICES			
Expenses			
Tribunal members' expenses	13	39,724	60,818
Superannuation	13	3,575	5,474
Supplies and services		<u>164,046</u>	<u>158,057</u>
Total cost of services		<u>207,345</u>	<u>224,349</u>
Income			
<i>Revenue</i>			
Operating income	4	267,007	261,543
Interest revenue	5	<u>14,576</u>	<u>8,847</u>
Total Revenue		<u>281,583</u>	<u>270,390</u>
NET COST OF SERVICES	10	<u>(74,238)</u>	<u>(46,041)</u>
SURPLUS/(DEFICIT) FOR THE PERIOD		<u><u>74,238</u></u>	<u><u>46,041</u></u>
OTHER COMPREHENSIVE INCOME			
Gains/(losses) recognised directly in equity		<u>0</u>	<u>0</u>
Total other comprehensive income		<u>0</u>	<u>0</u>
TOTAL COMPREHENSIVE INCOME FOR THE PERIOD		<u><u>74,238</u></u>	<u><u>46,041</u></u>

The Statement of Comprehensive Income should be read in conjunction with the accompanying notes.

Racing Penalties Appeal Tribunal

Statement of Financial Position

as at 30 June 2011

	Note	2011 \$	2010 \$
ASSETS			
Current Assets			
Cash and cash equivalents	6	213,824	151,874
Receivables	7	<u>2,971</u>	<u>2,192</u>
Total Current Assets		<u>216,795</u>	<u>154,066</u>
TOTAL ASSETS		<u>216,795</u>	<u>154,066</u>
LIABILITIES			
Current Liabilities			
Payables	8	<u>960</u>	<u>12,469</u>
Total Current Liabilities		<u>960</u>	<u>12,469</u>
TOTAL LIABILITIES		<u>960</u>	<u>12,469</u>
NET ASSETS		<u>215,835</u>	<u>141,597</u>
EQUITY			
Accumulated surplus/(deficit)	9	<u>215,835</u>	<u>141,597</u>
TOTAL EQUITY		<u>215,835</u>	<u>141,597</u>

The Statement of Financial Position should be read in conjunction with the accompanying notes.

Racing Penalties Appeal Tribunal

Statement of Changes in Equity

for the year ended 30 June 2011

	Note	Contributed equity \$	Reserves \$	Accumulated surplus/ (deficit) \$	Total equity \$
Balance at July 2009	9	0	0	95,556	95,556
Changes in accounting policy or correction of prior period errors		0	0	0	0
Restated balance at 1 July 2009		<u>0</u>	<u>0</u>	<u>95,556</u>	<u>95,556</u>
Total comprehensive income for the year		0	0	46,041	46,041
Transactions with owners in their capacity as owners:					
Other contributions by owners		0	0	0	0
Distributions to owners		0	0	0	0
Total		<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Balance at 30 June 2010		<u>0</u>	<u>0</u>	<u>141,597</u>	<u>141,597</u>
Balance at 1 July 2010		0	0	141,597	141,597
Total comprehensive income for the year		0	0	74,238	74,238
Transactions with owners in their capacity as owners:					
Other contributions by owners		0	0	0	0
Distributions to owners		0	0	0	0
Total		<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Balance at 30 June 2011		<u>0</u>	<u>0</u>	<u>215,835</u>	<u>215,835</u>

The Statement of Changes in Equity should be read in conjunction with the accompanying notes.

Racing Penalties Appeal Tribunal

Statement of Cash Flows

for the year ended 30 June 2011

	Note	2011 \$	2010 \$
CASH FLOWS FROM OPERATING ACTIVITIES			
Payments			
Tribunal members' expenses		(50,282)	(49,379)
Superannuation		(4,525)	(4,444)
Supplies and services		(164,046)	(158,953)
GST paid on purchases		(977)	(747)
GST payments to taxation authority		(26,421)	(25,079)
Receipts			
Receipts from customers		267,007	261,543
Interest received		13,766	7,647
GST receipts on sales		26,421	25,716
GST receipts from taxation authority		1,007	124
Net cash provided by/(used in) operating activities	10	<u>61,950</u>	<u>56,428</u>
Net increase/(decrease) in cash and cash equivalents		61,950	56,428
Cash and cash equivalents at the beginning of period		151,874	95,446
CASH AND CASH EQUIVALENTS AT THE END OF PERIOD	10	<u><u>213,824</u></u>	<u><u>151,874</u></u>

The Statement of Cash Flows should be read in conjunction with the accompanying notes.

**Racing Penalties Appeal Tribunal
Notes to the Financial Statements
for the year ended 30 June 2011**

Note 1. Australian Accounting Standards

General

The Authority's financial statements for the year ended 30 June 2011 have been prepared in accordance with Australian Accounting Standards. The term 'Australian Accounting Standards' includes Standards and Interpretations issued by the Australian Accounting Standard Board (AASB).

The Authority has adopted any applicable, new and revised Australian Accounting Standards from their operative dates.

Early adoption of standards

The Authority cannot early adopt an Australian Accounting Standard unless specifically permitted by TI 1101 *Application of Australian Accounting Standards and Other Pronouncements*. No Australian Accounting Standards that have been issued or amended [but not operative] have been early adopted by the Authority for the annual reporting period ended 30 June 2011.

Note 2. Summary of significant accounting policies

(a) General statement

The financial statements constitute general purpose financial statements that have been prepared in accordance with Australian Accounting Standards, the Framework, Statements of Accounting Concepts and other authoritative pronouncements of the AASB as applied by the Treasurer's instructions. Several of these are modified by the Treasurer's instructions to vary application, disclosure, format and wording.

The *Financial Management Act* and the Treasurer's instructions are legislative provisions governing the preparation of financial statements and take precedence over Australian Accounting Standards, the Framework, Statements of Accounting Concepts and other authoritative pronouncements of the AASB.

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.

(b) Basis of preparation

The financial statements have been prepared on the accrual basis of accounting using the historical cost convention.

The accounting policies adopted in the preparation of the financial statements have been consistently applied throughout all periods presented unless otherwise stated.

The financial statements are presented in Australian dollars and all values are rounded to the nearest dollar.

(c) Reporting entity

The reporting entity comprises the Tribunal only.

(d) Contributed equity

AASB Interpretation 1038 *Contributions by Owners Made to Wholly-Owned Public Sector Entities* requires transfers in the nature of equity contributions, other than as a result of a restructure of administrative arrangements, to be designated by the Government (the owner) as contributions by owners (at the time of, or prior to transfer) before such transfers can be recognised as equity contributions. Capital appropriations have been designated as contributions by owners by TI 955 *Contributions by Owners made to Wholly Owned Public Sector Entities* and have been credited directly to Contributed equity.

The transfer of net assets to/from other agencies, other than as a result of a restructure of administrative arrangements, are designated as contributions by owners where the transfers are non-discretionary and non-reciprocal.

(e) IncomeRevenue recognition

Revenue is recognised and measured at the fair value of consideration received or receivable. Operating income mainly comprises funding from the Racing and Wagering Western Australia, appeal fees and transcription fees. This income is received pursuant to the Racing Penalties (Appeals) Act 1990.

The following specific recognition criteria must also be met before revenue is recognised for the major business activity as follow:

Interest

Revenue is recognised as the interest accrues.

(f) Services Performed for the Racing Penalties Appeal Tribunal by the Department of Racing, Gaming and Liquor

The Department of Racing, Gaming and Liquor provides support to the Racing Penalties Appeal Tribunal to enable 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 the Department of Racing, Gaming and Liquor are made on a monthly basis under a net appropriation agreement.

(g) Financial instruments

In addition to cash, the Authority has two categories of financial instrument:

- * Receivables; and
- * Financial liabilities measured at amortised cost.

Financial instruments have been disaggregated into the following classes:

- * Financial Assets
 - Cash and cash equivalents
 - Receivables
- * Financial Liabilities
 - Payables

Initial recognition and measurement of financial instruments is at fair value which normally equates to the transaction cost or the face value. Subsequent measurement is at amortised cost using the effective interest method.

The fair value of short-term receivables and payables is the transaction cost or the face value because there is no interest rate applicable and subsequent measurement is not required as the effect of discounting is not material.

(h) Cash and Cash Equivalents

For the purpose of the Statement of Cash Flows, cash and cash equivalent assets comprise cash on hand.

(i) Receivables

Receivables are recognised at original invoice amount less an allowance for any uncollectible amounts (i.e. impairment). The collectability of receivables is reviewed on an ongoing basis and any receivables identified as uncollectible are written-off against the allowance account. The allowance for uncollectible amounts (doubtful debts) is raised when there is objective evidence that the Authority will not be able to collect the debts. The carrying amount is equivalent to fair value as it is due for settlement within 30 days.

(j) Payables

Payables are recognised when the Authority 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 is generally within 30 days.

(k) Employee BenefitsAnnual and Long Service Leave

The Tribunal does not employ staff. The Tribunal utilises the staff and facilities of the Department of Racing, Gaming and Liquor. The cost of the services provided by the Department of Racing, Gaming and Liquor is recouped from the Tribunal as a service fee. Accordingly, provisions have not been made for annual and long service leave.

Superannuation

The Government Employees Superannuation Board (GESB) administers public sector superannuation arrangements in Western Australia in accordance with legislative requirements.

Eligible employees contribute to the Pension Scheme, a defined benefit pension scheme closed to new members since 1987, or the Gold State Superannuation Scheme (GSS), a defined benefit lump sum scheme closed to new members since 1995.

The GSS is a defined benefit scheme for the purposes of employees and whole-of-government reporting. However, it is a defined contribution plan for agency purposes because the concurrent contributions (defined contributions) made by the Authority to GESB extinguishes the agency's obligations to the related superannuation liability.

The Authority has no liabilities under the Pension Scheme or the GSS. The liabilities for the unfunded Pension Scheme and the unfunded GSS transfer benefits attributable to members who transferred from the Pension Scheme, are assumed by the Treasurer. All other GSS obligations are funded by concurrent contributions made by the Authority to the GESB.

Employees commencing employment prior to 16 April 2007 who were not members of either the Pension Scheme or the GSS became non-contributory members of the West State Superannuation Scheme (WSS). Employees commencing employment on or after 16 April 2007 became members of the GESB Super Scheme (GESBS). Both of these schemes are accumulation schemes. The Authority makes concurrent contributions to GESB on behalf of employees in compliance with the *Commonwealth Government's Superannuation Guarantee (Administration) Act 1992*. These contributions extinguish the liability for superannuation charges in respect of the WSS and GESBS.

(l) Superannuation expense

The superannuation expense in the Statement of Comprehensive Income comprises employer contributions paid to the GSS (concurrent contributions), WSS, and the GESBS.

(m) Comparative figures

Comparative figures are, where appropriate, reclassified to be comparable with the figures presented in the current financial year.

Note 3. Disclosure of changes in accounting policy and estimates**Initial application of an Australian Accounting Standard**

The Authority has applied the following Australian Accounting Standards effective for annual reporting periods beginning on or after 1 July 2010 that impacted on the Authority.

Further Amendments to Australian Accounting Standards arising from the Annual AASB 2009-5 Improvements Project [AASB 5, 8, 101, 107, 117, 118, 136 & 139]

Under amendments to AASB 117, the classification of land elements of all existing leases has been reassessed to determine whether they are in the nature of operating or finance leases. As leases of land & buildings recognised in the financial statements have not been found to significantly expose the Authority to the risks/rewards attributable to control of land, no changes to accounting estimates have been included in the Financial Statements and Notes to the Financial Statements.

Under amendments to AASB 107, only expenditures that result in a recognised asset are eligible for classification as investing activities in the Statement of Cash Flows. All investing cashflows recognised in the Authority's Statement of Cash Flows relate to increases in recognised assets.

Future impact of Australian Accounting Standards not yet operative

The Authority cannot early adopt an Australian Accounting Standard unless specifically permitted by TI 1101 *Application of Australian Accounting Standards and Other Pronouncements*. Consequently, the Authority has not applied early any of the following Australian Accounting Standards that have been issued that may impact the Authority. Where applicable, the Authority plans to apply these Australian Accounting Standards from their application date.

	Operative for reporting periods beginning on/after
<p><i>AASB 2009-11 Amendments to Australian Accounting Standards arising from AASB 9 [AASB 1, 3, 4, 5, 7, 101, 102, 108, 112, 118, 121, 127, 128, 131, 132, 136, 139, 1023 & 1038 and Interpretations 10 & 12].</i></p> <p>The amendment to AASB 7 <i>Financial Instruments: Disclosures</i> requires modification to the disclosure of categories of financial assets. The Authority does not expect any financial impact when the Standard is first applied. The disclosure of categories of financial assets in the notes will change.</p>	1 Jan 2013
<p><i>AASB 2009-12 Amendments to Australian Accounting Standards [AASBs 5, 8, 108, 110, 112, 119, 133, 137, 139, 1023 & 1031 and Interpretations 2, 4, 16, 1039 & 1052]</i></p> <p>This Standard introduces a number of terminology changes. There is no financial impact resulting from the application of this revised Standard.</p>	1 Jan 2011
<p><i>AASB 1053 Application of Tiers of Australian Accounting Standards</i></p> <p>This Standard establishes a differential financial reporting framework consisting of two tiers of reporting requirements for preparing general purpose financial statements.</p> <p>The Standard does not have any financial impact on the Authority. However it may affect disclosures in the financial statements of the Authority if the reduced disclosure requirements apply. DTF has not yet determined the application or the potential impact of the new Standard for agencies.</p>	1 July 2013
<p><i>AASB 2010-2 Amendments to Australian Accounting Standards arising from Reduced Disclosure Requirements</i></p> <p>This Standard makes amendments to many Australian Accounting Standards, including Interpretations, to introduce reduced disclosure requirements into these pronouncements for application by certain types of entities.</p> <p>The Standard is not expected to have any financial impact on the Authority. However this Standard may reduce some note disclosures in the financial statements of the Authority. DTF has not yet determined the application or the potential impact of the amendments to these Standards for agencies.</p>	1 July 2013
<p><i>AASB 2011-2 Amendments to Australian Accounting Standards arising from the Trans-Tasman Convergence Project - Reduced Disclosure Requirements [AASB 101 & AASB1054]</i></p> <p>This Amending Standard removes disclosure requirements from other Standards and incorporates them in a single Standard to achieve convergence between Australian and New Zealand Accounting Standards for reduced disclosure reporting. DTF has not yet determined the application or the potential impact of the amendments to these Standards for agencies.</p>	1 July 2011

AASB 2010-5	<p><i>Amendments to Australian Accounting Standards [AASB 1, 3, 4, 5, 101, 107, 112, 118, 119, 121, 132, 133, 134, 137, 139, 140, 1023 & 1038 and Interpretations 112, 115, 127, 132 & 1042] (October 2010)</i></p> <p>This Standard introduces a number of terminology changes as well as minor presentation changes to the Notes to the Financial Statements. There is no financial impact resulting from the application of this revised Standard.</p>	1 Jan 2011
AASB 2010-6	<p><i>Amendments to Australian Accounting Standards - Disclosures on Transfers of Financial Assets [AASB 1 & AASB 7]</i></p> <p>This Standard makes amendments to Australian Accounting Standards, introducing additional presentation and disclosure requirements for Financial Assets.</p> <p>The Standard is not expected to have any financial impact on the Authority. DTF has not yet determined the application or the potential impact of the amendments to these Standards for agencies.</p>	1 July 2011
AASB 9	<p><i>Financial Instruments</i></p> <p>This Standard supersedes AASB 139 Financial Instruments: Recognition and Measurement, introducing a number of changes to accounting treatments.</p> <p>The Standard was reissued on 6 Dec 2010 and the Department is currently determining the impact of the Standard. DTF has not yet determined the application or the potential impact of the Standard for agencies.</p>	1 Jan 2013
AASB 2010-7	<p><i>Amendments to Australian Accounting Standards arising from AASB 9 (December 2010) [AASB 1, 3, 4, 5, 7, 101, 102, 108, 112, 118, 120, 121, 127, 128, 131, 132, 136, 137, 139, 1023 & 1038 and Interpretations 2, 5, 10, 12, 19 & 127]</i></p> <p>This Amending Standard makes consequential adjustments to other Standards as a result of issuing AASB 9 <i>Financial Instruments</i> in December 2010. DTF has not yet determined the application or the potential impact of the Standard for agencies.</p>	1 Jan 2013
AASB 1054	<p><i>Australian Additional Disclosures</i></p> <p>This Standard, in conjunction with AASB 2011-1 <i>Amendments to Australian Accounting Standards arising from the Trans-Tasman Convergence Project</i>, removes disclosure requirements from other Standards and incorporates them in a single Standard to achieve convergence between Australian and New Zealand Accounting</p>	1 July 2011
AASB 2011-1	<p><i>Amendments to Australian Accounting Standards arising from the Trans-Tasman Convergence Project [AASB 1, 5, 101, 107, 108, 121, 128, 132 & 134 and Interpretations 2, 112 & 113]</i></p> <p>This Amending Standard, in conjunction with AASB 1054 <i>Australian Additional Disclosures</i>, removes disclosure requirements from other Standards and incorporates them in a single Standard to achieve convergence between Australian and New Zealand Accounting Standards.</p>	1 July 2011

Note 4. Operating income

	2011	2010
	\$	\$
Fees and charges	2,793	4,993
Funding from Racing and Wagering Western Australia	264,214	256,550
	<u>267,007</u>	<u>261,543</u>

Note 5. Interest revenue

	2011	2010
	\$	\$
Interest revenue		
Commonwealth Bank of Australia	<u>14,576</u>	<u>8,847</u>

Note 6. Cash and cash equivalents

	2011	2010
	\$	\$
Cash and cash equivalents are represented by funds held at the Commonwealth Bank of Australia	<u>213,824</u>	<u>151,874</u>

Note 7. Receivables

	2011	2010
	\$	\$
<u>Current</u>		
Interest receivable	2,937	2,127
GST receivable	34	65
Total current	<u>2,971</u>	<u>2,192</u>

The Authority does not hold any collateral or other credit enhancements as security for receivables.

Note 8. Payables

	2011	2010
	\$	\$
<u>Current</u>		
Accrued expenses	960	12,469
Total current	<u>960</u>	<u>12,469</u>

Note 9. Equity

The Government holds the equity interest in the Authority on behalf of the community. Equity represents the residual interest in the net assets of the Authority.

Contributed equity

	2011 \$	2010 \$
Balance at start of period	0	0
<u>Contributions by owners</u>		
Transfer of net assets from other agencies	0	0
Total contributions by owners	0	0
<u>Distributions to owners</u>		
Transfer of net assets to other agencies	0	0
Total distributions to owners	0	0
Balance at end of period	0	0

Accumulated surplus/(deficit)

	2011 \$	2010 \$
Balance at start of period	141,597	95,556
Result for the period	74,238	46,041
Income and expense recognised directly in equity	0	0
Balance at end of period	215,835	141,597
Total Equity at end of period	215,835	141,597

Note 10. Notes to the Statement of Cash Flows

	2011 \$	2010 \$
Reconciliation of cash		
Cash at the end of the financial year as shown in the Statement of Cash Flows is reconciled to the related items in the Statement of Financial Position as follows:		
Cash and cash equivalents	213,824	151,874
	213,824	151,874

Reconciliation of net cost of services to net cash flows provided by/(used in) operating activities

	2011 \$	2010 \$
Net cost of services	74,238	46,041
<u>(Increase)/decrease in assets:</u>		
Receivables ^(a)	(810)	(1,200)
<u>Increase/(decrease) in liabilities:</u>		
Payables ^(a)	(11,509)	11,569
Net GST receipts/(payments) ^(b)	30	14
Change in GST in receivables/payables ^(c)	1	4
Net cash provided by/(used in) operating activities	61,950	56,428

(a) Note that the Australian Taxation Office (ATO) receivable/payable in respect of GST and the receivable/payable in respect of the sale/purchase of non-current assets are not included in these items as they do not form part of the reconciling items.

(b) This is the net GST paid/received, ie. cash transactions.

(c) This reverses out the GST in receivables and payables.

At the end of the reporting period, the Authority had fully drawn on all financing facilities, details of which are disclosed in the financial statements.

Note 11. Financial instruments**(a) Financial risk management objectives and policies**

Financial instruments held by the Authority are cash and cash equivalents, receivables, and payables. The Authority has limited exposure to financial risks. The Authority's overall risk management program focuses on managing the risks identified below.

Credit risk

Credit risk arises when there is the possibility of the Authority's receivables defaulting on their contractual obligations resulting in financial loss to the Authority.

The maximum exposure to credit risk at end of the reporting period in relation to each class of recognised financial assets is the gross carrying amount of those assets inclusive of any provisions for impairment as shown in the table at note 11(c) 'Financial instruments disclosures' and note 7 'Receivables'.

Credit risk associated with the Authority's financial assets is minimal because the Authority trades only with recognised, creditworthy third parties. The Authority has policies in place to ensure that sales of products and services are made to customers with an appropriate credit history. In addition, receivable balances are monitored on an ongoing basis with the result that the Authority's exposure to bad debts is minimal. At the end of the reporting period there were no significant concentrations of credit risk.

Liquidity risk

Liquidity risk arises when the Authority is unable to meet its financial obligations as they fall due.

The Authority is exposed to liquidity risk through its trading in the normal course of business.

The Authority has appropriate procedures to manage cash flows by monitoring forecast cash flows to ensure that sufficient funds are available to meet its commitments.

Market risk

Market risk is the risk that changes in market prices such as foreign exchange rates and interest rates will affect the Authority's income or the value of its holdings of financial instruments. The Authority does not trade in foreign currency and is not materially exposed to other price risks. Other than as detailed in the interest rate sensitivity analysis table at Note 11(c), the Authority has no borrowings and its exposure to market risk for changes in interest rates relates primarily to cash and cash equivalents which are interest bearing.

(b) Categories of financial instruments

In addition to cash, the carrying amounts of each of the following categories of financial assets and financial liabilities at the end of the reporting period are:

	2011	2010
	\$	\$
<u>Financial Assets</u>		
Cash and cash equivalents	213,824	151,874
Receivables ^(a)	2,937	2,127
 <u>Financial Liabilities</u>		
Financial liabilities measured at amortised cost	960	12,469

(a) The amount of receivables excludes GST recoverable from the ATO (statutory receivable).

Racing Penalties Appeal Tribunal
Notes to the Financial Statements
for the year ended 30 June 2011

Note 11. (c) Financial instrument disclosures

Credit risk and interest rate exposures

The following table discloses the Authority's maximum exposure to credit risk, interest rate exposures and the ageing analysis of financial assets. The Authority's maximum exposure to credit risk at the end of the reporting period is the carrying amount of financial assets as shown below. The table discloses the ageing of financial assets that are past due but not impaired and impaired financial assets. The table is based on information provided to senior management of the Authority.

The Authority does not hold any collateral as security or other credit enhancements relating to the financial assets it holds.

The Authority does not hold any financial assets that had to have their terms renegotiated that would have otherwise resulted in them being past due or impaired.

Interest rate exposures and ageing analysis of financial assets ^(a)

	Weighted Average Effective Interest Rate	Carrying Amount	Interest rate exposure			Past due but not impaired					Impaired financial assets
			Fixed interest rate	Variable interest rate	Non- interest bearing	Up to 3 months	3-12 months	1-2 years	2-5 years	More than 5 years	
<u>Financial Assets</u>	%	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
2011											
Cash and cash equivalent	5.01	213,824		213,824							
Receivables ^(a)	5.01	2,937		2,937							
		216,761	0	216,761	0	0	0	0	0	0	0
2010											
Cash and cash equivalent	4.17	151,874		151,874							
Receivables ^(a)	4.17	2,127		2,127							
		154,001	0	154,001	0	0	0	0	0	0	0

(a) The amount of receivables excludes the GST recoverable from the ATO (statutory receivable).

Racing Penalties Appeal Tribunal
Notes to the Financial Statements
for the year ended 30 June 2011

Note 11. (c) Financial instrument disclosures

Liquidity risk

The following table details the contractual maturity analysis for financial liabilities. The table includes interest and principal cash flows. An adjustment has been made where material.

Interest rate exposure and maturity analysis of financial liabilities ^(a)

	Weighted Average Effective Interest Rate	Carrying Amount	Interest rate exposure			Adjustment for discounting	Total Nominal Amount	Maturity date				
			Fixed interest rate	Variable interest rate	Non- interest bearing			Up to 3 months	3-12 months	1-2 years	2-5 years	More than 5 years
Financial Liabilities	%	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
2011												
Payables ^(b)		960			960							
		960	0	0	960	0	0	0	0	0	0	0
2010												
Payables ^(b)		12,469			12,469							
		12,469	0	0	12,469	0	0	0	0	0	0	0

^(a) The amounts disclosed are the contractual undiscounted cash flows of each class of financial liabilities at the end of the reporting period.

^(b) The amount of payables excludes GST payable to the ATO (statutory payable).

**Racing Penalties Appeal Tribunal
Notes to the Financial Statements
for the year ended 30 June 2011**

Note 11. (c) Financial instrument disclosures (contd)

Interest rate sensitivity analysis

The following table represents a summary of the interest rate sensitivity of the Authority's financial assets and liabilities at the end of the reporting period on the surplus for the period and equity for a 1% change in interest rates. It is assumed that the change in interest rates is held constant throughout the reporting period.

	-100 basis points			+100 basis points	
	Carrying amount	Surplus	Equity	Surplus	Equity
2011	\$	\$	\$	\$	\$
<u>Financial Assets</u>					
Cash and cash equivalents	213,824	(2,138)	(2,138)	2,138	2,138
<u>Financial Liabilities</u>					
Total Increase/(Decrease)		<u>(2,138)</u>	<u>(2,138)</u>	<u>2,138</u>	<u>2,138</u>
	-100 basis points			+100 basis points	
	Carrying amount	Surplus	Equity	Surplus	Equity
2010	\$	\$	\$	\$	\$
<u>Financial Assets</u>					
Cash and cash equivalents	151,874	(1,519)	(1,519)	1,519	1,519
<u>Financial Liabilities</u>					
Total Increase/(Decrease)		<u>(1,519)</u>	<u>(1,519)</u>	<u>1,519</u>	<u>1,519</u>
<u>Fair values</u>					

All financial assets and liabilities recognised in the Statement of Financial Position, whether they are carried at cost or fair value, are recognised at amounts that represent a reasonable approximation of fair value unless otherwise stated in the applicable notes.

Note 12. Explanatory statement

This statement provides details of any significant variations between estimates and actual results for 2011 and between the actual results for 2010 and 2011. Significant variations are considered to be those greater than

(i) Significant variances between estimated and actual result for 2011

	2011 Estimate \$	2011 Actual \$	Variation \$
Tribunal members' expenses	90,166	39,724	(50,442)
Superannuation	8,116	3,575	(4,541)
Interest revenue	3,700	14,576	10,876

Tribunal members' expenses

The decrease of \$50,442 was mainly due to less appeals being lodged and dealt with in 2010-11.

Superannuation

The reason for the decrease of \$4,541 was explained in the Tribunal members' expenses mentioned above.

Interest revenue

The increase of \$10,876 was the result of a higher bank balance throughout the year.

(ii) Significant variances between actual result for 2010 and 2011

Variations which have been explained in part (i) of this note have not been repeated here in the interests of concise reporting.

Note 13. Remuneration of members of the Accountable Authority

The number of members of the accountable authority, whose total of fees, salaries, superannuation, non-monetary benefits and other benefits for the financial year, fall within the following bands are:

	2011	2010
\$		
0 - 10,000	5	5
30,001 - 40,000	0	0
50,001 - 60,000	1	1
	\$	\$
The total remuneration of members of the accountable authority	<u>43,299</u>	<u>66,292</u>

The total remuneration includes the superannuation expense incurred by the Authority in respect of members of the accountable authority.

Note 14. Remuneration of auditor

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

	2011	2010
	\$	\$
Auditing the accounts, financial statements and key performance indicators	<u>6,350</u>	<u>6,600</u>

Note 15. Commitments

As at 30 June 2011 the Authority did not have any other material capital or expenditure commitments.

Note 16. Contingent liabilities and contingent assets

The Authority is not aware of any contingent liabilities and contingent assets as at the end of the reporting

Note 17. Events occurring after the end of the reporting period

We are 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 Authority, the results of those activities or the state of affairs of the Authority in the ensuing or any subsequent financial year.

Note 18. Related bodies

Nil

Note 19. Affiliated bodies

Nil

ADDITIONAL KEY PERFORMANCE INDICATOR INFORMATION

Key Performance Indicators (KPIs) are required by section 62 of the *Financial Management Act 2006* and are provided to assist interested parties such as Government, Parliament and community groups in assessing an agency's desired outcomes. KPIs measure the efficiency and effectiveness of an agency.

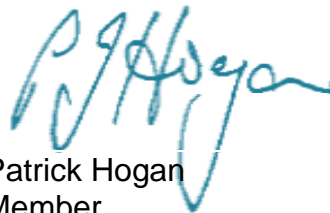
CERTIFICATION OF PERFORMANCE INDICATORS FOR THE RACING PENALTIES APPEAL TRIBUNAL FOR THE YEAR ENDED 30 JUNE 2011

I hereby certify that the performance indicators are based on proper records, are relevant and appropriate for assisting users to assess the performance of the Racing Penalties Appeal Tribunal, and fairly represent the performance of the Racing Penalties Appeal Tribunal for the financial year ended 30 June 2011.



Dan Mossenson
Chairperson
Racing Penalties Appeal Tribunal

25 August 2011



Patrick Hogan
Member
Racing Penalties Appeal Tribunal

25 August 2011

DETAILED INFORMATION IN SUPPORT OF KEY PERFORMANCE INDICATORS

Desired Outcome: To provide an Appeal Tribunal in relation to determinations made by racing industry Stewards and controlling authorities.

Strategy: To ensure that a timely and effective appeal forum is provided at minimum cost to the racing industry.³

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

The aim of the Tribunal is to endeavour to finalise applications for stays on the same day as they are lodged. This is only potentially achievable when the appellant (or the appellant's counsel) and the Stewards of the relevant code of racing are contactable on that day to provide submissions and the material is available to be forwarded in sufficient time to be dealt with that day by the Tribunal. In those cases where the application is lodged at the Registry later in the day there is virtually no prospect of it being determined until at least the next working day.

Stays of proceedings is the only process the Tribunal has some control over in respect of the length of time taken to process an appeal. The time involved in processing of stay applications is governed by many factors including the availability of counsel for both parties, the provision of the transcript of a Stewards' inquiry and other supporting information, legal proceedings in other jurisdictions and the complexity of matters required to be determined.

	2010/11 Target	2010/11 Actual	2009/10 Actual	2008/09 Actual	2007/08 Actual
Total number of stay applications received	3	2	8	9	5
Number of stay applications determined the same day	2	1	2	5	1
Indicator	66.7%	50%	25%	56%	20%

³ The effectiveness indicator for this activity is derived by dividing the number of stay applications determined the same day by the total number of stay applications received, then multiplying by 100.

DETAILED INFORMATION IN SUPPORT OF KEY PERFORMANCE INDICATORS

Service: To perform functions for the racing industry.

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

The Racing Penalties Appeal Tribunal was created to maintain industry confidence in the enforcement of the various racing rules by providing the industry with an impartial judicial forum for the hearing of appeals against Racing and Wagering Western Australia determinations.

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

A person who is aggrieved by a Racing and Wagering Western Australia decision, 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 Racing Penalties Appeal Tribunal must ensure that appeals and 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 can change for each reporting year as a result of increases or reductions in the number of matters heard before the Tribunal, combined with annual increases to the total cost of providing services to the Tribunal to conduct its operations.

The reason the average cost for processing an appeal in the 2010/11 financial year is greater than previous years is due to a decrease in the number of matters heard before the Tribunal, that is, the fewer matters heard before the Tribunal, the greater the average cost of processing an appeal. The table below shows a steady increase in the average cost of processing an appeal.

	2010/11 Target	2010/11 Actual	2009/10 Actual	2008/09 Actual	2007/08 Actual
Average cost of processing an appeal ⁴	\$22,782 ⁵	\$23,038 ⁶	\$18,696	\$15,702	\$12,257

⁴ The average processing cost for each financial year was derived by dividing the cost of total services to the Tribunal by the number of appeals heard.

⁵ Based on 2010/114 estimated actual cost of service of \$273,386 divided by a projected 12 appeals heard, based on figures as at 28 February 2011.

⁶ Based on 2010/11 actual cost of service of \$207,345 divided by 9 appeals heard.



Auditor General

INDEPENDENT AUDITOR'S REPORT

To the Parliament of Western Australia

RACING PENALTIES APPEAL TRIBUNAL OF WESTERN AUSTRALIA

Report on the Financial Statements

I have audited the accounts and financial statements of the Racing Penalties Appeal Tribunal of Western Australia.

The financial statements comprise the Statement of Financial Position as at 30 June 2011, the Statement of Comprehensive Income, Statement of Changes in Equity and Statement of Cash Flows for the year then ended, and Notes comprising a summary of significant accounting policies and other explanatory information.

Tribunal's Responsibility for the Financial Statements

The Tribunal is responsible for keeping proper accounts, and the preparation and fair presentation of the financial statements in accordance with Australian Accounting Standards and the Treasurer's Instructions, and for such internal control as the Tribunal determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

As required by the Auditor General Act 2006, my responsibility is to express an opinion on the financial statements based on my audit. The audit was conducted in accordance with Australian Auditing Standards. Those Standards require compliance with relevant ethical requirements relating to audit engagements and that the audit be planned and performed to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Tribunal's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances. An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of accounting estimates made by the Tribunal, as well as evaluating the overall presentation of the financial statements.

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

Opinion

In my opinion, the financial statements are based on proper accounts and present fairly, in all material respects, the financial position of the Racing Penalties Appeal Tribunal of Western Australia at 30 June 2011 and its financial performance and cash flows for the year then ended. They are in accordance with Australian Accounting Standards and the Treasurer's Instructions.

Racing Penalties Appeal Tribunal of Western Australia

Report on Controls

I have audited the controls exercised by the Racing Penalties Appeal Tribunal of Western Australia. The Tribunal is responsible for ensuring that adequate control is maintained over the receipt, expenditure and investment of money, the acquisition and disposal of public and other property, and the incurring of liabilities in accordance with the Financial Management Act 2006 and the Treasurer's Instructions, and other relevant written law.

As required by the Auditor General Act 2006, my responsibility is to express an opinion on the controls exercised by the Tribunal based on my audit conducted in accordance with Australian Auditing Standards.

Opinion

In my opinion, the controls exercised by the Racing Penalties Appeal Tribunal of Western Australia are sufficiently adequate to provide reasonable assurance that the receipt, expenditure and investment of money, the acquisition and disposal of property, and the incurring of liabilities have been in accordance with legislative provisions.

Report on the Key Performance Indicators

I have audited the key performance indicators of the Racing Penalties Appeal Tribunal of Western Australia. 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.

As required by the Auditor General Act 2006, my responsibility is to express an opinion on the key performance indicators based on my audit conducted in accordance with Australian Auditing Standards.

Opinion

In my opinion, the key performance indicators of the Racing Penalties Appeal Tribunal of Western Australia are relevant and appropriate to assist users to assess the Tribunal's performance and fairly represent indicated performance for the year ended 30 June 2011.

Independence

In conducting this audit, I have complied with the independence requirements of the Auditor General Act 2006 and the Australian Auditing Standards, and other relevant ethical requirements.



COLIN MURPHY
AUDITOR GENERAL
5 September 2011

OTHER LEGAL AND GOVERNMENT POLICY REQUIREMENTS

ADVERTISING AND SPONSORSHIP

Section 175ZE of the *Electoral Act 1907* requires public agencies to report details of expenditure to organisation providing services in relation to advertising, market research, polling, direct mail and media advertising. The Tribunal did not incur expenditure of this nature in 2010/11.

DISABILITY ACCESS AND INCLUSION PLAN OUTCOMES

The Tribunal meets its obligations for Disability Access and Inclusion Outcomes through arrangements with the Department of Racing, Gaming and Liquor. The Department's Annual Report contains the information on how that department has complied with the obligations imposed under Section 29 of the *Disability Services Act 1993*.

COMPLIANCE WITH PUBLIC SECTOR STANDARDS AND ETHICAL CODES

The Tribunal does not employ staff, but has a net appropriation agreement with the Department of Racing, Gaming and Liquor relating to functions carried out on behalf of the Tribunal by staff of that Department. Accordingly, the Tribunal does not report on compliance with the Public Sector Standards. The Department's Annual Report contains the relevant information.

RECORDKEEPING PLANS

Section 19 of the *State Records Act 2000* requires every Government agency to have a Recordkeeping Plan. The Recordkeeping Plan is to provide an accurate reflection on the recordkeeping program within the agency and must be complied with by the agency and its officers. The records of the Tribunal are maintained by the Department of Racing, Gaming and Liquor. The Department's Annual Report contains the information on that department's Recordkeeping Plan.

SUBSTANTIVE EQUALITY

The Tribunal meets its obligations for the elimination of systemic racial discrimination from all policies and practices, in accordance with the Policy Framework for Substantive Equality, through arrangements with the Department of Racing, Gaming and Liquor. The Department's Annual Report contains the information on how that department has complied with the obligations imposed under the *Public Sector Commissioner's Circular 2009-23*.

OCCUPATIONAL SAFETY, HEALTH AND INJURY MANAGEMENT

The Tribunal meets its obligations for occupational safety, health and injury management through arrangements with the Department of Racing, Gaming and Liquor. The Department's Annual Report contains the information on how that Department has complied with the obligations imposed under the *Public Sector Commissioner's Circular 2009-10*.