



Department of  
**Local Government, Sport  
and Cultural Industries**

# Racing Penalties Appeal Tribunal

## 2018-19 Annual Report



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### Availability in other formats

This publication can be made available in alternative formats. The report is available in PDF format at [www.rpat.wa.gov.au](http://www.rpat.wa.gov.au).

People who have a hearing or speech impairment may call the National Relay Service on 133 677 and quote telephone number (08) 6551 4888.

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## Statement of Compliance

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Hon. Paul Papalia CSC, MLA  
**Minister for Racing and Gaming**

In accordance with section 63 of the *Financial Management Act 2006*, I submit, for your information and presentation to Parliament, the Annual Report of the Racing Penalties Appeal Tribunal of Western Australia for the financial year ended 30 June 2019.

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



**Chairperson**

9 September 2019

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# Overview of Tribunal

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## Executive Summary

It is with pleasure that I present the Annual Report of the Racing Penalties Appeal Tribunal for the year ended 30 June 2019.

The report details the significant issues that the Tribunal faced throughout the reporting period and is designed to satisfy the Tribunal's statutory reporting requirements.

During the year, three appeals were carried over from the previous reporting period, and seven new appeals were lodged with the Tribunal. Of these, nine were determined and only one has been carried over into the next financial year.

All appeal determinations can be viewed at [www.rpat.wa.gov.au](http://www.rpat.wa.gov.au)

I acknowledge and thank the members of the Tribunal for their contributions during the year. I thank the Supreme Court of Western Australia for permitting the Tribunal to use its facilities.

On behalf of all Tribunal members I acknowledge the work and commitment of our Registrar, Ms Seema Saxena, without whom we would not be able to function. It would not be possible for the Tribunal to conduct its activities in an effective, efficient manner without this invaluable support.



Karen Farley SC  
Chairperson

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## **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 to appeals against penalties imposed in disciplinary proceedings arising from, or in relation to, the conduct of thoroughbred racing, harness racing and greyhound racing, and for related purposes.

### **Purpose of the Tribunal**

The aim of the *Racing Penalties (Appeals) Act 1990* is to create and maintain industry confidence in the enforcement of the various racing rules by providing an impartial judicial forum for the hearing of appeals.

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

### **Responsible Minister**

As at 30 June 2019, the Minister responsible for the Racing and Gaming Portfolio was the Honourable Paul Papalia CSC, MLA, Minister for Racing and Gaming.

### **Appeals Which may be Heard by the Tribunal**

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

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

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

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## **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 on the evidence of the original hearing but may allow new evidence to be given or experts to be called to assist in its deliberations.

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

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

Decisions of the Tribunal are final and binding.

## **Administered Legislation**

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

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## **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 Interest Disclosure Act 2003;*
- *Public Sector Management Act 1994;*
- *Salaries and Allowances Act 1975;*
- *State Records Act 2000; and*
- *State Supply Commission Act 1991.*

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## **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.

As of 30 June 2019, the Racing Penalties Appeal Tribunal consisted of seven members, namely:

### **Ms Karen Farley SC - Chairperson**

Ms Karen Farley was appointed Chairperson in March 2018.

Ms Farley holds a Bachelor of Jurisprudence and a Bachelor of Laws from the University of WA. She is a Senior Appeals Consultant at Legal Aid WA.

Ms Farley has taught at UWA, Notre Dame and Murdoch University law schools. She has held positions on many government and non-government Boards and Committees. She has served on the Council of Management of St Hildas ASG for 15 years and was Chair of Council for seven years. Currently she is an elected member of the Shire of Peppermint Grove. From 2000 to 2006 she was Supervising Solicitor of the Unrepresented Criminal Appellants Scheme (UCAS), an innovative forensic legal skills programme initially operated from UWA Law School which gave law students the opportunity to assist otherwise unrepresented litigants prepare and present their case in the Court of Criminal Appeal.

In 2011, Women Lawyers of WA named her as Senior Lawyer of the year. In December 2013, she was appointed Senior Counsel for and in the State of Western Australia.

### **Mr Patrick Hogan**

Mr Patrick 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 Robert Nash**

Mr Robert Nash is a barrister admitted as a Practitioner of the Supreme Court of WA and the High Court of Australia, and also is a General Public Notary.

Mr Nash has during the course of his career served in a non-executive capacity on several councils, committees, and charitable and non-charitable boards, including Chairman and Director of Bauxite Resources Ltd, Director of North West Property Holdings Pty Ltd, Director of The Mandalay Projects Limited, Chairman of the WA Soccer Disciplinary Tribunal, Council

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Member of the Law Society of WA, Convenor Education Committee of Law Society, Counsel Assisting the Royal Commission into the City of Wanneroo, Member of the Professional Conduct Committee and Ethics Committee of the Law Society, Head of the WA Legal Panel of the Royal Australian Navy, resident tutor in law at St George's College, Council Member of WA Bar Association Council, and Director WA Bar Chambers Ltd.

### **Mr Andrew Monisse**

Mr Andrew Monisse has served as member of the Racing Penalties Appeal Tribunal of Western Australia since February 1997. He was admitted as a barrister and solicitor of the Supreme Court of Western Australia in December 1990 after completing articles at Mallesons Stephen Jaques. Mr Monisse's 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 Director of Public Prosecutions in the Perth office from 1992 to 1998. In April 1997 he commenced serving in the ADF as a member of the Perth Legal Panel of the RAAF Specialist Reserve, and since September 2006 has held the rank of Squadron Leader. In July 2000 Mr Monisse commenced his practice as a barrister, where he has since October 2000 been a member of the WA Bar Association. Mr Monisse practises predominantly in Criminal Law at Quarry Chambers.

### **Ms Brenda Robbins**

Ms Brenda Robbins practices as a Barrister and mediator at Sir Clifford Grant Chambers in a variety of areas of law. Prior to her legal career she held a number of senior executive positions, including as CEO in Western Australian Government agencies. She has served on numerous boards including the Senate of the University of Western Australia, the Legal Aid Commission, Keystart Loans Ltd and the Australian Institute of Management (including a term as President). She is currently the Chair of the Metropolitan Cemeteries Board and a member of its Audit and Risk Committee and a Trustee of the Scholarships Trust of Graduate Women WA Inc. She holds a Juris Doctor (High Dist.), BA (Econs), Graduate Certificate in Australian Migration Law and Practice and is a Graduate of Australian Institute of Company Directors (GAICD). Brenda is a Fellow of the Australian Institute of Management and a Fellow of the AICD.

### **Ms Emma Power**

Ms Power graduated with a Law degree from Murdoch University in 2004 and has been working predominately in property, development, corporate and commercial law since that time. Prior to studying law, she was a secondary school teacher teaching visual arts. In 2017, Ms Power became the principal of the private law practice Power Commercial Law. She is also a member of the Local Government Standards Panel and Liquor Commission.

### **Ms Johanna Overmars**

Ms Johanna Overmars, Barrister and Solicitor graduated from the University of Notre Dame in 2003 with degrees in Law and Arts. Ms Overmars was admitted in 2005 after completing her articles as an Associate at the Family Court of WA and at Legal Aid WA. She has practiced in the areas of family and criminal law and set up her own firm Hills Hope Legal Pty Ltd in May 2013. Ms Overmars is a horse owner, who has studied horsemanship for many years. She previously undertook volunteer work with a horse rescue organisation.

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## Performance Management Framework

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### Agency Level Government Desired Outcome

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

Government Goal	Desired Outcome of the Tribunal	Services Delivered by the Tribunal
Sustainable Finances: Responsible financial management and better service delivery	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 2018-19.

### Shared Responsibilities with Other Agencies

The Tribunal did not share any responsibilities with other agencies in 2018-19.

# Report on Operations

## Actual Results versus Budget Targets

<b>Financial Targets</b>	<b>Target (\$)</b>	<b>Actual (\$)</b>	<b>Variation (\$)</b>
Total cost of services (expense limit) (sourced from Statement of Comprehensive Income)	256,205	213,394	(42,811)
Net cost of services (sourced from Statement of Comprehensive Income)	0	202,854	202,854
Total equity (sourced from Statement of Financial Position)	471,324	267,556	(203,768)
Net increase (decrease) in cash held (sourced from Statement of Cash Flows)	0	(227,080)	227,080
Approved salary expense level*	0	0	0

\* Executive support for the Tribunal is provided by the Department of Local Government, Sport and Cultural Industries.

The table below provides a summary of key performance indicators for 2018-2019. A detailed explanation is provided later in the report.

<b>Summary of Key Performance Indicators</b>	<b>Target</b>	<b>Actual</b>	<b>Variation</b>
Total number of stay applications received	7	2	5
Number of stay applications determined as per KPI	7	2	5
Average cost of processing an appeal	\$18,300	\$23,710	\$5,410

## Performance Summary for 2018-19

During the year, three appeals were carried over from 2017-18 and 7 new appeals were lodged with the Tribunal. As at 30 June 2019, the Tribunal had determined 9 appeals, including three from the previous year, with only one appeal being carried over to 2019-20. These appeals, together with appeals from the previous year, are summarised by racing code:

Racing Code	Appeals carried over from 2017-18	Appeals Lodged	Appeals Determined	Appeals carried over to 2018-19
Thoroughbred	0	3	2	1
Harness	3	2	5	0
Greyhound	0	2	2	0
<b>TOTAL</b>	<b>3</b>	<b>7</b>	<b>9</b>	<b>1</b>

The results of the determinations in respect of the racing codes for the year 2018-19 are summarised below.

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

Appeals Carried Over to 2019-20	Thoroughbred	Harness	Greyhound
Reserved Decision	1	0	0
Reserved Decision on penalty only	0	0	0
Reasons to be published	0	0	0
Yet to be heard	0	0	0
<b>Total</b>	<b>1</b>	<b>0</b>	<b>0</b>

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## Stays of Proceedings

In 2018-19, there were two applications for stays of proceedings. The Chairperson made the determinations as follows:

<b>Stays of Proceedings 2018-19</b>			
<b>Results</b>	<b>Thoroughbred</b>	<b>Harness</b>	<b>Greyhound</b>
Stays Granted	1	1	0
Stays Refused	0	0	0
Withdrawn	0	0	0
<b>Total</b>	<b>1</b>	<b>1</b>	<b>0</b>

The following table provides a summary of the number, nature and outcome of matters before the Tribunal during 2018-19. Full determinations are available on the Tribunal's website at [www.rpat.wa.gov.au](http://www.rpat.wa.gov.au)

<b>Applications Lodged, Heard and Determined in 2018-19</b>					
<b>Case No.</b>	<b>Name</b>	<b>Nature of Appeal</b>	<b>Hearing Date</b>	<b>Determination Date</b>	<b>Outcome</b>
819	Amanda MacLean	Appeal against penalties totalling \$1800 in fines, with \$800 suspended for 12 months, for breach of rules GAR 86(o) and GAR 86(f)(i) of the RWWA Rules of Greyhound Racing	25 November 2018	14 November 2018	Appeal dismissed
820	Graham Jordan	Appeal against disqualification of two years for breach of Rule AR175(a) of the Rules of Thoroughbred Racing	29 November 2018	29 November 2018	Appeal dismissed
821	Gary Elson	Appeal against disqualification of 12 months for breaches of Rule 190 of Harness Racing	6 December 2018	29 January 2019	Appeal dismissed
822	Brian Jacobson	Leave to Appeal against the decision of RWWA Integrity Assurance Committee to not approve the Greyhound Trainers licence application	Not Applicable	Not Applicable	Leave to Appeal not progressed
824	Asha Vanmaris	Appeal against disqualification of four months pursuant to Rule 267(1) of the RWWA Rules of Harness Racing	Not Applicable	21 March 2019	By consent, leave to discontinue appeal granted
825	Christopher James Parnham	Appeal against a 23-day suspension, for breach of Rule 137A of the Australian Rules of Thoroughbred Racing.	9 May 2019	26 June 2019	Penalty referred back to Stewards for redetermination

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## Examples of Appeals before the Tribunal

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The Tribunal heard a number of appeals throughout the course of the reporting period. Below are some examples of the types of matters which come before the Tribunal.

### **KIM NEVILLE PRENTICE**

Mr Prentice, a licensed harness trainer and driver for about 30 years, appealed against the severity of the penalty imposed by the RWWA Stewards on 10 May 2018 for not presenting as the trainer of the horse EXTRADITE NZ (“the Horse”), free of a prohibited substance in that the Horse had a concentration of cobalt in excess of 100 micrograms per litre in its urine. The Stewards imposed a disqualification of his harness training and driving licences until 7 January 2019 for breach of Rule 190 of the RWWA Rules of Harness Racing.

In an endeavour to explain what could have caused the cobalt level to be so high (150 micrograms per litre), Dr Alan McGregor, a veterinarian and Mr Prentice’s witness, gave extensive evidence about potential explanations for the Horse’s elevated cobalt level. However, the reason the Horse had an elevated cobalt level was never satisfactorily established albeit there was much conjecture and hypothesis as to the potential causes for the elevated levels. Although Mr Prentice pleaded not guilty, in doing so he admitted that the Horse was presented not free of a prohibited substance. A presentation offence is committed regardless of how a prohibited substance comes to be present in a horse.

The Tribunal observed that the Stewards in this case did not make a finding that Mr Prentice had not been honest or forthcoming in his evidence. Rather, the Stewards had praised Mr Prentice for his cooperation and professional dealing in respect of every aspect of the inquiry and of the investigation. Mr Prentice’s long standing record in the industry and his good character, combined with his fulsome and respectful cooperation with the inquiry, entitled him to the presumption that he was a witness of truth. There was no aspect about the manner in which he conducted himself through the inquiry, or during the prior investigation, that could justify an inference that he was not endeavouring to faithfully assist the Stewards in trying to find an explanation for the elevated cobalt level.

The Tribunal came to the conclusion that the approach of the Stewards in that even if explanations sought to be put forward to explain an elevated level, unless they were satisfied

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to the Briginshaw standard, then their conclusion was that no satisfactory explanation had been offered and accordingly the degree of mitigation that would otherwise have been given for a satisfactory explanation is not afforded to the trainer was not a correct application of the Briginshaw test. In Tribunal's view, this approach raised a concern that the Stewards were placing an unjustified and heavy onus on trainers to come up with explanations about matters which they may just simply and in all good faith be unable to provide.

The Tribunal was satisfied that there has been a discernible and material error on the Stewards' part in their determination of the penalty, by not according the appropriate weight to the inability of Mr Prentice's failure to offer them an explanation for the cobalt level present in the Horse, despite having found him to be a cooperative witness throughout the process and despite his long standing good record in the industry and his unquestioned good character.

The Tribunal therefore allowed the appeal against the penalty by reducing the overall period of disqualification from 12 months to 9 months back dated to the commencement of Mr Prentice's suspension from training.

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## **GARY ELSON**

Mr Gary Elson, a licensed harness trainer and driver of long standing, by his Notice of Appeal dated 1 November 2018, contended that the total effective penalty of 12 months disqualification for two breaches of Rule 190 of Harness Rules of Racing was manifestly excessive in all the circumstances of the case. His grounds of appeal agitated two issues:

- a. that the penalty imposed by the Stewards was manifestly excessive in all the circumstances; and
- b. the Stewards erred in finding that the cobalt involved in the two elevated readings had the potential to affect the horses' race performances or the horses' welfare.

On 3 November 2017, Mr Elson presented ARTURUS NZ to race at Gloucester Park. A pre-race urine sample was taken which subsequently produced a reading of 320 ug/l of cobalt. The contention being advanced by Mr Elson, which was considered by the Stewards at the hearing concerned the difference between cobalt found in its inorganic state, such as when it forms part of a Cobalt Sulphate [also spelled Cobalt Sulfate] or Cobalt Chloride molecule, and cobalt in the organic state as part of the cyanocobalamin molecule, better known as Vitamin B12,

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which is a complex molecule comprising 181 atoms of which the cobalt atom is one. The testing of the urine samples by the Chem Centre and by RASL measured the total cobalt level and did not differentiate between cobalt which was in the organic form and that which was in the inorganic form.

The argument relied upon was that when cobalt is in the organic form of Vitamin B12, the cobalt atom in the tightly bound B12 molecule cannot have any effect on a horse's system, because it is not possible for there to be any biochemical activity from the free cobalt ion which occurs when the cobalt is found in the inorganic form.

It was apparent from the evidence before the Stewards that the feeding regime adopted by Mr Elson in respect of ARTURUS NZ and SCOOBYS DELIGHT involved a lot of products that contained Vitamin B12. One of the products used was VAM which did contain cobalt both in the organic form as Vitamin B12 and in the inorganic form, in the form of Cobalt Sulphate. However, Mr Elson put to the Stewards that Vitamin B12 was not cobalt. At the Stewards hearing, Dr Judith Medd, RWWA veterinarian submitted that Vitamin B12 contains approximately 4% cobalt in the trivalent state, whereas inorganic cobalt is found in the divalent state. He noted that Mr Elson's horse feeding and supplements regime included giving the horses substances containing cobalt that were in both states (namely, the organic trivalent state and the inorganic divalent state). The Stewards relied on the evidence of Mr Medd and came to the conclusion that: *cobalt was a substance capable of causing either directly or indirectly an action or effect, or both an action and effect, within one or more of the listed mammalian body systems (Rule 188A(1)(a)). That the rules enshrine a prescribed level at which the presence of cobalt is excepted from being a prohibited substance cannot be ignored or set aside.*

In their reasons, the Stewards noted it was not necessary for there to be demonstrated that there was a performance benefit in order for a substance to be a prohibited substance. The Stewards also acknowledged that there was ongoing debate amongst experts as to what effects cobalt has on a horse's body systems. Furthermore, it was observed that there are differences of opinion among experts as to whether cobalt enhances a horse's performance and that the only studies where it has been shown to do so in mammalian systems is in other mammals, not horses. It was also noted that Rule 188A(1)(a) which defined prohibited substance referred to mammalian body systems and was not restricted to equine body systems. One explanation for why more studies had not been carried out on horses, as

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opposed to some other mammals, may have been based on the ethics of carrying out such tests on horses by exposing them to high doses of cobalt.

The Tribunal observed that in recent times there has been increasing disquiet, at least in some quarters within the industry, that trainers were returning positives to cobalt tests of pre-race urine samples and facing significant periods of disqualification, even though there was a significant body of scientific opinion that there was no sound scientific basis to show that cobalt found at the levels (such as those measured in this case) had the capacity to enhance a horse's performance or give rise to a welfare risk. Dr McGregor, a veterinarian of 46 years, in his evidence before the Tribunal, described the "whole cobalt issue" as 'silly' and one that 'has put a lot of people in a dreadful situation'.

The Tribunal accepted that it remained the case, despite the scientific controversy, that there is a view shared by many in the racing and harness industries and among its participants (rightly or wrongly) that high cobalt levels can enhance performance. It observed that in considering this issue, the nature of the offence under Rule 190 was one of strict liability and that it was not necessary to prove an administration nor an intention on the part of the trainer to enhance a horse's performance. It was also not necessary to show that a performance advantage was actually obtained. The purpose and object of the rule is to ensure as far as possible that the integrity of racing is protected, horses race without being administered prohibited drugs, racing is conducted safely, and racing is conducted fairly from the perspective of the betting public. The fact that there is no evidence that the cobalt detected in each horse's system could be shown to be performance enhancing or present a welfare risk, does not mean the offences could be regarded as trifling or technical. The presentations of the horses with the readings they had were serious contraventions of the Rules. It is the perception and the preservation of the public interest in the integrity of racing that remains the critical consideration.

The Tribunal further observed that the public interest in the preservation of the perception of racing as a drug free sport, makes the drawing of distinctions as to the source of prohibited substances found in a horses' system problematic. By allowing such distinctions to be drawn (despite the fact that there is no basis to do so under the Rules), especially whilst there remains no accredited and verifiable testing process that allows accurate measurements to be taken, it is likely to give rise to increased uncertainty in enforcement of the Rules and may act as an

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incentive to trainers facing cobalt related charges to seek to attribute positive test results to the over use of supplements containing Vitamin B12. The industry had been given ample notice that supplements containing Vitamin B12 contain cobalt which can add to a horse's cobalt reading when subjected to pre-race testing and may lead to a horse's tested level of cobalt exceeding the threshold. Until such time as the bodies regulating the industry determine that the Rules should be amended so as to exclude cobalt of an organic origin, which may depend on whether an accredited, accurate and verifiable system of measurement can be achieved, then nothing should turn on seeking to make the distinction between the different sources of cobalt.

After close consideration of the matters the Tribunal was not persuaded that the Stewards had erred in their approach and was not satisfied that the period of disqualification imposed in this case was in all the circumstances of the case manifestly excessive.

The Appeal was dismissed.

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### **CHRISTOPHER JAMES PARNHAM**

An appeal was lodged against conviction and penalty by Mr Parnham, the rider of HE's A PARKER which raced in race 7 at Bunbury race meeting on Sunday, 24 March 2019. At about the 400m point of that race, thoroughbred BURGER TIME ridden by Jockey Clinton Johnston-Porter, fell, as a result of Mr Parnham shifting his mount outwards and dislodging Mr Johnston-Porter in the process. Mr Johnston-Porter suffered severe back injuries as a consequence of the fall, together with a concussion. No significant injuries were suffered by BURGER TIME in the fall.

At the conclusion of the inquiry, the Stewards having considered all the evidence put forward by all riders and after viewing a number of angles of the patrol film formed the view that Mr Parnham had breached Rule 137A of the Australian Rules of Thoroughbred Racing by engaging in careless riding and suspended him for 23 days.

At the hearing of this matter, Mr Davies QC for the Stewards argued that the Stewards were entitled on the evidence before them, and particularly upon the video footage of the race, to form the conclusion that Mr Parnham was guilty of careless riding leading to the fall of Mr Porter-Johnston. Mr Percy QC for Mr Parnham maintained however that Stewards could

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not conclude from the evidence of the jockeys involved and from a viewing of the race footage that Mr Parnham's riding was careless.

In considering the matter, the Chairperson formed the view that from the evidence concerned it was not particularly clear from the Stewards' decision what particular part of Mr Parnham's riding was careless. At paragraphs 51 and 52, The Tribunal stated *"To put it another way, at what point in the race did Mr Parnham's riding tactics deteriorate to the point of becoming unacceptable conduct that was worthy of penalty? This question was particularly pertinent when considering penalty and giving appropriate notice to the other jockeys of the particulars of the careless riding. The reason for this is threefold. Firstly, it gives Mr Parnham certainty as to what tactics and style of riding he may employ in the future to prevent further inquiries and possible charges. Secondly, this message will also clearly go out to other riders of thoroughbred racehorses and will hopefully result in a higher quality of riding. Thirdly, it goes without saying that clear expectations of riders as to their standard of riding and acceptable manoeuvres and tactics will improve safety in the industry for riders or horses alike, which must be a positive outcome."*

The Tribunal disagreed with the view of the Stewards that the "level of interference" was at the higher end of the scale. Whilst it was open to the Stewards to find that Mr Parnham's riding was careless in that his horse made contact with or dictated the line of DARK MUSKET, any such interference was minimal at worst. It was the consequences of that interference that were severe- that of BURGER TIME falling. Mr Parnham could have had no intention of, or control of, that being the outcome, and to punish him for that fall without more would be unfair.

The Tribunal observed that penalties for careless riding must reflect the behaviour exhibited and in Mr Parnham's case, the riding that he engaged in could only be said to be at the lower end of the scale of seriousness, if not at the lowest. Careless riding of course involves no degree of recklessness or wilfulness. Although in this instance a horse fell, and a jockey was injured, that appeared to be the sole aggravating factor. On the other hand, Mr Parnham was a leading rider with an overall fair record as to careless riding.

The finding of careless riding was confirmed. However, the penalty of 23 days suspension was set aside, and the matter of penalty was referred to RWWA Stewards for reconsideration.

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## Significant Issues and Trends Impacting the Tribunal

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### Changes to Acts

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

### Likely Developments and Forecast Results of Operations

It is expected that the workload of the Racing Penalties Appeal Tribunal for 2018-19 will remain steady. However, the Tribunal is not currently adequately resourced to efficiently carry out its functions. Steps will be undertaken to remedy the concern.

### Disclosures and Legal Compliance

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The following pages contain the Financial Statements of the Tribunal.

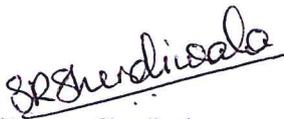
## Financial statements

### Certification of financial statements

For the year ended 30 June 2019

The accompanying financial statements of the Racing Penalties Appeal Tribunal of Western Australia have been prepared in compliance with the provisions of the *Financial Management Act 2006* from proper accounts and records to present fairly the financial transactions for the reporting period ended 30 June 2019 and the financial position as at 30 June 2019.

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.



Shanaeya Sherdiwala  
Director and Portfolio Chief Financial  
Officer

4 September 2019



Karen Farley SC  
Chairperson

Racing Penalties Appeal Tribunal of  
Western Australia

4 September 2019



Patrick Hogan  
Member

Racing Penalties Appeal Tribunal of  
Western Australia

4 September 2019

**Racing Penalties Appeal Tribunal**  
**Statement of comprehensive income**  
For the year ended 30 June 2019

	Notes	2019 \$	2018 \$
<b>COST OF SERVICES</b>			
<b>Expenses</b>			
Tribunal members' expenses	2.1	20,481	40,489
Supplies and services	2.2	<u>192,913</u>	<u>195,492</u>
<b>Total cost of services</b>		<u><b>213,394</b></u>	<u><b>235,981</b></u>
<b>Income</b>			
<i>Revenue</i>			
User charges and fees	3.1	1,928	238,868
Interest revenue	3.2	<u>8,612</u>	<u>10,824</u>
<b>Total revenue</b>		<u><b>10,540</b></u>	<u><b>249,692</b></u>
<b>NET COST OF SERVICES</b>		<u><b>202,854</b></u>	<u><b>(13,711)</b></u>
<b>SURPLUS/(DEFICIT) FOR THE PERIOD</b>		<u><b>(202,854)</b></u>	<u><b>13,711</b></u>
<b>TOTAL COMPREHENSIVE INCOME FOR THE PERIOD</b>		<u><b>(202,854)</b></u>	<u><b>13,711</b></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 2019

	Notes	2019 \$	2018 \$
<b>ASSETS</b>			
<b>Current Assets</b>			
Cash and cash equivalents	5.1	248,325	475,405
Receivables	4.1	21,789	4,197
<b>Total Current Assets</b>		<u>270,114</u>	<u>479,602</u>
<b>TOTAL ASSETS</b>		<u>270,114</u>	<u>479,602</u>
<b>LIABILITIES</b>			
<b>Current Liabilities</b>			
Payables	4.2	2,558	9,192
<b>Total Current Liabilities</b>		<u>2,558</u>	<u>9,192</u>
<b>TOTAL LIABILITIES</b>		<u>2,558</u>	<u>9,192</u>
<b>NET ASSETS</b>		<u>267,556</u>	<u>470,410</u>
<b>EQUITY</b>			
Accumulated surplus/(deficit)	7.8	267,556	470,410
<b>TOTAL EQUITY</b>		<u>267,556</u>	<u>470,410</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 2019

	Notes	Accumulated surplus/ (deficit) \$	Total equity \$
<b>Balance at 1 July 2017</b>	7.8	456,699	456,699
Surplus/(deficit)	7.8	13,711	13,711
Other comprehensive income		-	-
Total comprehensive income for the period		<u>13,711</u>	<u>13,711</u>
<b>Balance at 30 June 2018</b>		<u><b>470,410</b></u>	<u><b>470,410</b></u>
<b>Balance at 1 July 2018</b>		470,410	470,410
Surplus/(deficit)	7.8	(202,854)	(202,854)
Other comprehensive income		-	-
Total comprehensive income for the period		<u>(202,854)</u>	<u>(202,854)</u>
<b>Balance at 30 June 2019</b>	7.8	<u><b>267,556</b></u>	<u><b>267,556</b></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 2019

	Notes	2019 \$	2018 \$
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
<b>Payments</b>			
Tribunal members' expenses		(27,081)	(41,209)
Supplies and services		(211,601)	(195,458)
GST paid on purchases		(19,278)	(19,545)
GST payments to taxation authority		(1)	(23,225)
<b>Receipts</b>			
Receipts from customers		1,545	238,868
Interest received		9,984	10,601
GST receipts on sales		-	23,226
GST receipts from taxation authority		19,352	17,964
<b>Net cash provided by/(used in) operating activities</b>		<b>(227,080)</b>	<b>11,222</b>
Net increase/(decrease) in cash and cash equivalents		(227,080)	11,222
Cash and cash equivalents at the beginning of the period		475,405	464,183
<b>CASH AND CASH EQUIVALENTS AT THE END OF THE PERIOD</b>	5.1	<b>248,325</b>	<b>475,405</b>

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 2019

### 1. Basis of preparation

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

A description of the nature of its operations and its principal activities have been included in the 'Overview' which does not form part of these financial statements.

These annual financial statements were authorised for issue by the Accountable Authority of the Tribunal on 4 September 2019.

#### Statement of compliance

These general purpose financial statements have been prepared in accordance with:

- 1) The *Financial Management Act 2006 (FMA)*
- 2) The Treasurer's Instructions (TIs)
- 3) Australian Accounting Standards (AASs) - Reduced Disclosure Requirements
- 4) Where appropriate, those AAS paragraphs applicable for not-for-profit entities have been applied.

The *Financial Management Act 2006* and the Treasurer's Instructions (the Instructions) take precedence over AAS. Several AAS are modified by the Instructions to vary application, disclosure format and wording. Where modification is required and has had a material or significant financial effect upon the reported results, details of that modification and the resulting financial effect are disclosed in the notes to the financial statements.

#### Basis of preparation

These financial statements are presented in Australian dollars applying the accrual basis of accounting and using the historical cost convention. Certain balances will apply a different measurement basis (such as the fair value basis). Where this is the case the different measurement basis is disclosed in the associated note. All values are rounded to the nearest dollar.

#### Judgements and estimates

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

#### Services Performed for the Racing Penalties Appeal Tribunal by the Department of Local Government, Sports and Cultural Industries

The Department of Local Government, Sports and Cultural Industries ("DLGSC") provides support to the 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 DLGSC are made on a monthly basis under a net appropriation determination.

### 2. Use of our funding

#### Expenses incurred in the delivery of services

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

	Notes	2019	2018
		\$	\$
Tribunal members' expenses	2.1	20,481	40,489
Supplies and services	2.2	192,913	195,492

#### 2.1 Tribunal members' expenses

	2019	2018
	\$	\$
Board fees	18,708	36,976
Superannuation - defined contribution plans <sup>(a)</sup>	1,773	3,513
<b>Total Tribunal members' expenses</b>	<b>20,481</b>	<b>40,489</b>

(a) Defined contribution plans include West State Superannuation Scheme (WSS), Gold State Superannuation Scheme (GSS), Government Employees Superannuation Board Schemes (GESBs) and other eligible funds.

#### Superannuation

The amount recognised in profit or loss of the Statement of Comprehensive Income comprises employer contributions paid to the GSS (concurrent contributions), the WSS, the GESBs, or other superannuation funds. The employer contribution paid to the Government Employees Superannuation Board (GESB) in respect of the GSS is paid back into the Consolidated Account by the GESB.

GSS (concurrent contributions) is a defined benefit scheme for the purposes of employees and whole-of-government reporting. It is however a defined contribution plan for Tribunal purposes because the concurrent contributions (defined contributions) made by the Tribunal to GESB extinguishes the Tribunal's obligations to the related superannuation liability.

The Tribunal does not recognise any defined benefit because it has no legal or constructive obligation to pay future benefits relating to its employees. 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 Tribunal to the GESB.

The GESB and other fund providers administer public sector superannuation arrangements in Western Australia in accordance with legislative requirements. Eligibility criteria for membership in particular schemes for public sector employees vary according to commencement and implementation dates.

## 2.2 Supplies and services

	2019	2018
	\$	\$
Professional Services <sup>(a)</sup>	180,027	183,897
External Audit Fees	11,500	11,100
Other	1,386	495
<b>Total supplies and services expenses</b>	<b>192,913</b>	<b>195,492</b>

### Supplies and services:

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

(a) The Department of Local Government, Sports and Cultural Industries ("DLGSC") provides support to the Tribunal to enable the Tribunal to carry out its objectives. This support comprises most of the amount reported in the Statement of comprehensive income under 'Supplies and services'. These charges are in the nature of salaries and administration costs in providing these support services. Recoups from the Tribunal to DLGSC are made on a monthly basis under a net appropriation determination.

## 3. Our funding sources

### How we obtain our funding

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

	Notes	2019	2018
		\$	\$
User charges and fees	3.1	1,928	238,868
Interest revenue	3.2	8,612	10,824

### 3.1 User charges and fees

	2019	2018
	\$	\$
Stay of proceedings	76	446
Appeal fee/lodgement application	1,852	6,172
Services provided to RWWA <sup>(a)</sup>	-	232,250
	<b>1,928</b>	<b>238,868</b>

Revenue is recognised and measured at the fair value of consideration received or receivable. This income is received pursuant to the Racing Penalties (Appeals) Act 1990. Revenue is recognised for the major business activities as follows: funding from the Racing and Wagering Western Australia, appeal fees and transcription fees.

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

(a) Services provided include services provided to Racing and Wagering Western Australia (2019: nil; 2018: \$232,250). The Tribunal received no funding from RWWA in 2018-19.

### 3.2 Interest Revenue

	2019	2018
	\$	\$
Interest revenue from Commonwealth Bank of Australia	8,612	10,824
	<b>8,612</b>	<b>10,824</b>

## 4. Other assets and liabilities

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

	Notes	2019	2018
		\$	\$
Receivables	4.1	21,789	4,197
Payables	4.2	2,558	9,192

### 4.1 Receivables

	2019	2018
	\$	\$
<b>Current</b>		
Interest receivable	1,243	2,614
Other receivable	19,037	-
GST receivable	1,509	1,583
<b>Total current</b>	<b>21,789</b>	<b>4,197</b>
<b>Total receivables</b>	<b>21,789</b>	<b>4,197</b>

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

	2019	2018
	\$	\$
<b>4.2 Payables</b>		
<b>Current</b>		
Other payables	2,558	9,192
<b>Total current</b>	<b>2,558</b>	<b>9,192</b>
<b>Balance at end of period</b>	<b>2,558</b>	<b>9,192</b>

Payables are recognised at the amounts payable when the Tribunal becomes obliged to make future payments as a result of a purchase of assets or services. The carrying amount is equivalent to fair value, as settlement is generally within 30 days.

## 5. Financing

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

	Notes	
Cash and cash equivalents	5.1	
<b>5.1 Cash and cash equivalents</b>		
	Notes	2019
		2018
		\$
Cash and cash equivalents	5.1	248,325
Balance at end of period		475,405
		248,325
		475,405

For the purpose of the statement of cash flows, cash and cash equivalent (and restricted cash and cash equivalent) assets comprise cash on hand and short-term deposits with original maturities of three months or less that are readily convertible to a known amount of cash and which are subject to insignificant risk of changes in value.

## 6. Financial instruments and Contingencies

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

	Note
Financial instruments	6.1
Contingent assets	6.2.1
Contingent liabilities	6.2.2

### 6.1 Financial instruments

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

	2019	2018
	\$	\$
<b>Financial assets</b>		
Cash and cash equivalents	248,325	475,405
Loans and receivables <sup>(a)</sup>	20,280	2,614
<b>Total financial assets</b>	<b>268,605</b>	<b>478,019</b>
<b>Financial liabilities</b>		
Financial liabilities measured at amortised cost	2,558	9,192
<b>Total financial liability</b>	<b>2,558</b>	<b>9,192</b>

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

### 6.2 Contingent assets and liabilities

Contingent assets and contingent liabilities are not recognised in the statement of financial position but are disclosed and, if quantifiable, are measured at the best estimate. Contingent assets and liabilities are presented inclusive of GST receivable or payable respectively.

#### 6.2.1 Contingent assets

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

#### 6.2.2 Contingent liabilities

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

## 7. Other disclosures

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

	Notes
Events occurring after the end of the reporting period	7.1
Initial application of Australian Accounting Standards	7.2
Key management personnel	7.3
Related party transactions	7.4
Related bodies	7.5
Affiliated bodies	7.6
Remuneration of auditors	7.7
Equity	7.8

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

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

### 7.2 Initial application of Australian Accounting Standards

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

### 7.3 Key management personnel

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

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

Compensation band (\$)	2019	2018
0 - 10,000	7	6
10,001 - 20,000	0	0
20,001 - 30,000	0	1
	2019	2018
	\$	\$
<b>Total compensation of senior officers</b>	<b>20,481</b>	<b>44,002</b>

Total compensation includes the superannuation expense incurred by the Tribunal in respect of senior officers.

### 7.4 Related party transactions

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

Related parties of the Tribunal include:

- all cabinet ministers and their close family members, and their controlled or jointly controlled entities;
- all senior officers and their close family members, and their controlled or jointly controlled entities;
- other departments and public sector entities, including related bodies included in the whole of government consolidated financial statements;
- associates and joint ventures, that are included in the whole of government consolidated financial statements; and
- the Government Employees Superannuation Board (GESB).

#### Significant transactions with Government-related entities

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

- annual services fees payments to the Department of Local Government, Sport and Cultural Industries for services received (Note 2.2); and
- audit fee payments to the Office of the Auditor General (Note 7.7).

#### Significant transactions with other related entities

- superannuation payments to GESB (Note 2.1).

#### Material transactions with other related parties

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

### 7.5 Related bodies

The Tribunal had no related bodies during the financial year.

### 7.6 Affiliated bodies

The Tribunal had no affiliated bodies during the financial year.

### 7.7 Remuneration of auditors

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

	2019	2018
	\$	\$
Auditing the accounts, financial statements controls, and key performance indicators	11,673	11,500

### 7.8 Equity

	2019	2018
	\$	\$
<b>Accumulated surplus/(deficit)</b>		
Balance at start of period	470,410	456,699
Result for the period	(202,854)	13,711
Balance at end of period	<b>267,556</b>	<b>470,410</b>

# Key Performance Indicator Information

## Certification of Key Performance Indicators

We hereby certify that the key performance indicators are based on proper records, are relevant and appropriate for assisting users to assess the performance of the Racing Penalties Appeal Tribunal, and fairly represent the performance of the Racing Penalties Appeal Tribunal for the financial year ended 30 June 2019.



Karen Farley SC  
**Chairperson**  
Racing Penalties Appeal Tribunal

4 September 2019

Patrick Hogan  
**Member**  
Racing Penalties Appeal Tribunal

4 September 2019



## Detailed Information in Support of Key Performance Indicators

**Government Goal:** Sustainable Finances: Responsible financial management and better service delivery

**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.<sup>1</sup>

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

The aim and the key performance indicator of the Racing Penalties Appeal Tribunal (the Tribunal) is to determine the applications for stays on the same day as the full and final submissions are received from the parties.

The following table shows that in 2018-19 the stay applications were determined within one working day of receipt of all submissions.

Key Effectiveness Indicator	2016-17 Actual	2017-18 Actual	2018-19 Target	2018-19 Actual
Total number of stay applications received	3	6	7	2
Number of stay applications determined within one day of receipt of all submissions	3	5	7	2
<b>Indicator</b>	<b>100%</b>	<b>83%</b>	<b>100%</b>	<b>100%</b>

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<sup>1</sup> The effectiveness indicator for this activity is derived by dividing the number of stay applications determined within one day of receipt of all submissions by the total number of stay applications received, then multiplying by 100.

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

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

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

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

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

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

The average cost for hearing appeals can change for each reporting year as a result of increases or reductions in the number of 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 for the discrepancy between the estimated average cost of processing appeals during the financial year 2018-19 versus the actual cost incurred in processing the appeals is due to the lower number of appeals lodged and heard during the year.

Key Efficiency Indicator	2015-16 Actual	2016-17 Actual	2017-18 Actual	2018-19 Target	2018-19 Actual
Average cost of processing an appeal <sup>2</sup>	\$24,242	\$26,037	\$13,881	\$18,300 <sup>3</sup>	\$23,710 <sup>4</sup>

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

<sup>3</sup> This is based on 2018-2019 budgeted cost of services of \$256,205 divided by a target of 14 appeals.

<sup>4</sup> This is based on 2018-19 actual cost of services of \$213,394 divided by 9 appeals heard with 2 stay applications.



# Auditor General

## INDEPENDENT AUDITOR'S REPORT

To the Parliament of Western Australia

## RACING PENALTIES APPEAL TRIBUNAL OF WESTERN AUSTRALIA

### Report on the Financial Statements

#### **Opinion**

I have audited the financial statements of the Racing Penalties Appeal Tribunal of Western Australia which comprise the Statement of Financial Position as at 30 June 2019, the Statement of Comprehensive Income, Statement of Changes in Equity, Statement of Cash Flows for the year then ended, and Notes comprising a summary of significant accounting policies and other explanatory information.

In my opinion, the financial statements are based on proper accounts and present fairly, in all material respects, the operating results and cash flows of the Racing Penalties Appeal Tribunal of Western Australia for the year ended 30 June 2019 and the financial position at the end of that period. They are in accordance with Australian Accounting Standards, the *Financial Management Act 2006* and the Treasurer's Instructions.

#### **Basis for Opinion**

I conducted my audit in accordance with the Australian Auditing Standards. My responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of my report. I am independent of the Tribunal in accordance with the *Auditor General Act 2006* and the relevant ethical requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants* (the Code) that are relevant to my audit of the financial statements. I have also fulfilled my other ethical responsibilities in accordance with the Code. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

#### **Responsibility of the Tribunal 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, the *Financial Management Act 2006* 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.

In preparing the financial statements, the Tribunal is responsible for assessing the agency's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the Western Australian Government has made policy or funding decisions affecting the continued existence of the Tribunal.

#### **Auditor's Responsibility for the Audit of the Financial Statements**

As required by the *Auditor General Act 2006*, my responsibility is to express an opinion on the financial statements. The objectives of my audit are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Australian Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

As part of an audit in accordance with Australian Auditing Standards, I exercise professional judgment and maintain professional scepticism throughout the audit. I also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the agency's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Tribunal.
- Conclude on the appropriateness of the Tribunal's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the agency's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with the Tribunal regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

## **Report on Controls**

### ***Opinion***

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

My opinion has been formed on the basis of the matters outlined in this report.

In my opinion, in all material respects, the controls exercised by the Racing Penalties Appeal Tribunal of Western Australia are sufficiently adequate to provide reasonable assurance that the receipt, expenditure and investment of money, the acquisition and disposal of property and the incurring of liabilities have been in accordance with legislative provisions during the year ended 30 June 2019.

### ***The Tribunal's Responsibilities***

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

### ***Auditor General's Responsibilities***

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

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

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

### ***Limitations of Controls***

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

### **Report on the Key Performance Indicators**

#### ***Opinion***

I have undertaken a reasonable assurance engagement on the key performance indicators of the Racing Penalties Appeal Tribunal of Western Australia for the year ended 30 June 2019. The key performance indicators are the key effectiveness indicators and the key efficiency indicators that provide performance information about achieving outcomes and delivering services.

In my opinion, in all material respects, 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 2019.

#### ***The Tribunal's Responsibility for the Key Performance Indicators***

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

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

#### ***Auditor General's Responsibility***

As required by the *Auditor General Act 2006*, my responsibility as an assurance practitioner is to express an opinion on the key performance indicators. The objectives of my engagement are to obtain reasonable assurance about whether the key performance indicators are relevant and appropriate to assist users to assess the agency's performance and whether the key performance indicators are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion.

I conducted my engagement in accordance with Standard on Assurance Engagements ASAE 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* issued by the Australian Auditing and Assurance Standards Board. That standard requires that I comply with relevant ethical requirements relating to assurance engagements.

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

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

#### **My Independence and Quality Control Relating to the Reports on Controls and Key Performance Indicators**

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

#### **Matters Relating to the Electronic Publication of the Audited Financial Statements and Key Performance Indicators**

This auditor's report relates to the financial statements and key performance indicators of the Racing Penalties Appeal Tribunal of Western Australia for the year ended 30 June 2019 included on the Tribunal's website. The Tribunal's management is responsible for the integrity of the Tribunal's website. This audit does not provide assurance on the integrity of the Tribunal's website. The auditor's report refers only to the financial statements and key performance indicators described above. It does not provide an opinion on any other information which may have been hyperlinked to/from these financial statements or key performance indicators. If users of the financial statements and key performance indicators are concerned with the inherent risks arising from publication on a website, they are advised to refer to the hard copy of the audited financial statements and key performance indicators to confirm the information contained in this website version of the financial statements and key performance indicators.



KELLIE TONICH  
SENIOR DIRECTOR  
FINANCIAL AUDIT  
Delegate of the Auditor General for Western Australia  
Perth, Western Australia  
4 September 2019

## Other Legal and Government Policy Requirements

### Remuneration of Members

The members of the Racing Penalties Appeal Tribunal are entitled to payment of:

\$756 per day (for over 4 hours)

\$494 per half day (under 4 hours)

Plus

\$105 per hour for preparation time (i.e 1 hour per day of hearing)

\$105 per hour for decision writing time (i.e 2 hours for up to 1 day of hearing)

The Chairperson of the Tribunal is entitled to a remuneration of \$ 126 per hour.

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

Position	Name	Type of remuneration	Period of membership	Gross/actual remuneration 2018/19 financial year
Chairperson	Karen Farley SC	Attendance / Decision Writing	12 months	\$ 5,647.08
Member	Patrick Hogan	Attendance / Decision Writing	12 months	\$ 4,298.00
Member	Andrew Monisse	Attendance / Decision Writing	12 months	\$ 2,890.00
Member	Robert Nash	Attendance / Decision Writing	12 months	\$ 7,870.00
Member	Johanna Overmars	Attendance / Decision Writing	12 months	\$ 1,245.52
Member	Brenda Robbins	Attendance / Decision Writing	12 months	\$ 1,692.00
Member	Emma Power	Attendance / Decision Writing	12 months	\$ 1,093.00
			<b>Total</b>	<b>\$ 24,735.60</b>

# Annual Estimates 2019-20



**Department of Local Government, Sport and Cultural Industries**  
Racing Penalties Appeal Tribunal

<b>TO:</b>	<b>HON PAUL PAPALIA CSC, MLA</b>	<b>MIN REF:</b>	<b>N/A</b>
<b>FROM:</b>	<b>KAREN FARLEY SC, CHAIRPERSON</b>	<b>FILE NO:</b>	<b>F02/08/04-02</b>
<b>SUBJECT:</b>	<b>RACING PENALTIES APPEAL TRIBUNAL ANNUAL ESTIMATES 2019-20</b>	<b>DATE:</b>	<b>19 June 2019</b>

## RECOMMENDATION

I recommend you approve the 2018-19 financial year:

- (i) Annual cash estimates under the *Racing Penalties (Appeals) Act 1990*; and
- (ii) Annual accrual estimates under the *Financial Management Act 2006*.

## 2019-20 BUDGET ESTIMATES

In accordance with section 24(2) of *Racing Penalties (Appeals) Act 1990*, the attached estimates of income and expenditure for Racing Penalties Appeal Tribunal (RPAT) 2019-20 financial year are submitted for your approval.

The estimates for 2019-20 have projected 14 appeals. In 2018-19, 9 appeal applications have been received to date.

The estimated income for 2019-20 is \$15,900 requiring \$15,730 to be funded by Racing and Wagering Western Australia (RWVA). RWVA's obligation to fund the operations of RPAT is in accordance with section 106 of the *Racing and Wagering Western Australia Act 2003*.

RWVA has advised that they have no objection to the 2019-20 budget estimates.

In accordance with section 40 of *Financial Management Act 2006*, the attached annual budget estimates of RPAT for 2019-20 financial year are submitted for your approval. RPAT is required to report the approved 2019-20 budget estimates in 2018-19 financial statement which will be tabled at Parliament.

Explanations of significant variations between 2018-19 estimates and 2017-18 actual are detailed overleaf. Please note that the figures presented as actuals for 2017-18 are based on unaudited financial statements.

## 1. STATEMENT OF COMPREHENSIVE INCOME

### 1.1 Operating Expenses

#### *Fee Expenses to Tribunal Members*

There is an increase of \$7,092 in Fee Expenses to Tribunal Members in 2018-19, bringing the budget in line with time taken determining appeals.

*Other Operating Expenses*

The budget for other operating expenses is higher as compared to financial year 2018-19, mainly due to the provision for travel.

1.2 Operating Revenues

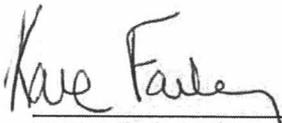
*Funding from Racing & Wagering WA*

The revenue shown from RWWA in 2019-20 increased by \$15,730 from 2018-19 as the Tribunal was wholly funded from the trust fund balance.

**2. STATEMENT OF FINANCIAL POSITION**

2.1 Cash Resources

The cash resources at the end of 2019-20 have decreased from financial year 2018-19 as monies carried forward in the trust fund will be used to support the Tribunal's activities.



**KAREN FARLEY SC  
CHAIRPERSON**

Enc.

Approved:



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**HON PAUL PAPALIA CSC, MLA  
MINISTER FOR RACING AND GAMING**

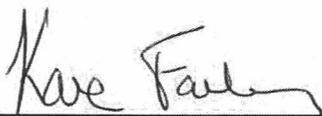
28/6/2019

**RACING PENALTIES APPEAL TRIBUNAL**

**CASH ESTIMATES 2019/2020**

DESCRIPTION	2018/2019 BUDGET	2018/2019 ESTIMATED ACTUAL	2019/2020 BUDGET
<b>COSTS INCURRED BY TRIBUNAL DIRECTLY</b>			
Members' Fees	\$54,000	\$50,272	\$54,000
Members' Superannuation	\$5,130	\$4,771	\$5,130
Members' Travel Costs	\$5,000	\$0	\$5,000
Audit Fees	\$11,500	\$11,500	\$11,673
Other Expenses (Web Development, Security, Library Acquisitions, Transcription Costs, Bank Charges)	\$550	\$1,213	\$2,500
<b>TOTAL COSTS INCURRED BY TRIBUNAL DIRECTLY</b>	<b>\$76,180</b>	<b>\$67,756</b>	<b>\$78,303</b>
<b><u>COSTS INCURRED DIRECT TO DLGSC</u></b>			
Salaries	\$113,513	\$113,513	\$113,513
Accommodation/Electricity	\$16,713	\$16,713	\$16,713
Superannuation Recoups	\$11,500	\$11,500	\$11,500
Other Operating Costs Excluding Depreciation	\$32,463	\$32,463	\$32,463
Travel Expenses	\$1,838	\$1,838	\$1,838
Maintenance Expenses (related to Navigate)	\$4,000	\$4,000	\$4,000
<b>TOTAL COSTS INCURRED DIRECT TO DLGSC</b>	<b>\$180,027</b>	<b>\$180,027</b>	<b>\$180,027</b>
<b>ANNUAL COST FOR TRIBUNAL</b>	<b>\$256,207</b>	<b>\$247,783</b>	<b>\$258,330</b>
<b><u>LESS TRIBUNAL REVENUE</u></b>			
Opening Balance	\$467,273	\$475,405	\$239,616
Funding from RWWA	\$240,485	\$0	\$15,730
Appeal Fees	\$4,675	\$1,852	\$4,675
Stay of Proceedings Fees	\$525	\$76	\$525
GST Refund from ATO	\$0	\$82	\$0
Interest	\$10,500	\$9,984	\$10,500
Transcription Fees	\$20	\$0	\$200
Other Revenue	\$0	\$0	\$0
<b>TOTAL TRIBUNAL REVENUE</b>	<b>\$723,478</b>	<b>\$487,399</b>	<b>\$271,246</b>
<b>BALANCE OF TRIBUNAL</b>	<b>\$467,271</b>	<b>\$239,616</b>	<b>\$12,916</b>

APPROVED:



CHAIRPERSON

20/6/19  
DATE

# Racing Penalties Appeal Tribunal

## Statement of Comprehensive Income

Estimates for the year ending 30 June 2020

	<b>BUDGET</b> <b>2019-20</b> \$	<b>ESTIMATED</b> <b>ACTUAL</b> <b>2018-19</b> \$
<b>COST OF SERVICES</b>		
Operating expenses		
Fee Expenses to Tribunal Members	54,000	46,908
Superannuation	5,130	4,452
Audit Fees	11,673	11,500
Services & Contracts Expense (Professional Services)	180,027	180,027
Other Operating Expenses	7,500	1,178
Total cost of services	<u>258,330</u>	<u>244,065</u>
Operating revenues		
Funding from Racing & Wagering WA	15,730	0
Operating Income	5,400	1,928
Interest	10,500	9,370
Total operating revenue	<u>31,630</u>	<u>11,298</u>
<b>Net cost of services</b>	<u>226,700</u>	<u>232,767</u>
<b>CHANGE IN NET ASSETS RESULTING FROM OPERATIONS</b>	(226,700)	(232,767)
Add Opening balance of accumulated surplus	237,643	470,410
<b>Closing balance of accumulated (deficit)/surplus</b>	<u>10,943</u>	<u>237,643</u>

# Racing Penalties Appeal Tribunal

## Statement of Financial Position

Estimates as at 30 June 2020

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	BUDGET 2019-20 \$	ESTIMATED ACTUAL 2018-19 \$
CURRENT ASSETS		
Cash Resources	12,916	239,616
GST Receivable	1,502	1,502
Interest Receivable	2,000	2,000
Total current assets	<u>16,418</u>	<u>243,118</u>
<b>Total assets</b>	<u>16,418</u>	<u>243,118</u>
CURRENT LIABILITIES		
Accounts Payable	0	0
Income Received in Advance	0	0
Accrued Tribunal Members Fees	5,000	5,000
Accrued Superannuation	475	475
Total current liabilities	<u>5,475</u>	<u>5,475</u>
<b>Total liabilities</b>	<u>5,475</u>	<u>5,475</u>
<b>Net assets</b>	<u>10,943</u>	<u>237,643</u>
EQUITY		
Accumulated (deficit)/surplus	<u>10,943</u>	<u>237,643</u>
<b>Total equity</b>	<u>10,943</u>	<u>237,643</u>

# Racing Penalties Appeal Tribunal

## Statement of Cash Flows

Estimates for the year ending 30 June 2020

	<b>BUDGET</b>	<b>ESTIMATED</b>
	<b>2019-20</b>	<b>2018-19</b>
	\$	\$
	Inflows	Inflows
	(Outflows)	(Outflows)
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Payments		
Payments to Tribunal Members	(54,000)	(50,272)
Superannuation Payments to GESB	(5,130)	(4,771)
Payments to DLGSC - RGL	(180,027)	(180,027)
Other Costs	(19,173)	(12,713)
GST Paid on Purchases	0	(16,198)
Receipts		
Receipts from Customers	5,400	1,928
Funding from RWWA	15,730	0
Interest Received	10,500	9,984
GST Received from Tax Authority	0	16,280
Net cash provided by/(used in) operating activities	<u>(226,700)</u>	<u>(235,789)</u>
<b>Net increase/(decrease) in cash held</b>	(226,700)	(235,789)
Cash at the beginning of the reporting period	<u>239,616</u>	<u>475,405</u>
<b>Cash at the end of the reporting period</b>	<u><u>12,916</u></u>	<u><u>239,616</u></u>

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## **Advertising and Sponsorship**

Section 175ZE of the *Electoral Act 1907* requires public agencies to report details of expenditure to organisations providing services in relation to advertising, market research, polling, direct mail and media advertising. The Tribunal did not incur expenditure of this nature in 2018-2019.

## **Other Government Policy Requirements**

The Tribunal meets its requirements through arrangements with the Department of Local Government, Sport and Cultural Industries. The Department's annual report contains information on how the following requirements are met:

- Disability Access and Inclusion Plan Outcomes.
- Compliance with Public Sector Standards and Ethical Codes.
- Recordkeeping Plans.
- Substantive Equality.
- Occupational Safety, Health and Injury Management.
- Government Building Training Policy.

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## **Governance Disclosures**

### **Unauthorised Use of Credit Cards**

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