

**RACING PENALTIES APPEAL TRIBUNAL
OF WESTERN AUSTRALIA**

ANNUAL REPORT

2003/2004

STATEMENT OF COMPLIANCE

HON NICK GRIFFITHS LLB MLC
MINISTER FOR HOUSING AND WORKS; RACING AND GAMING;
GOVERNMENT ENTERPRISES; LAND INFORMATION

RACING PENALTIES APPEAL TRIBUNAL ANNUAL REPORT 2003/2004

In accordance with section 66 of the *Financial Administration and Audit Act 1985*, we submit for your information and tabling in Parliament, the Annual Report of the Racing Penalties Appeal Tribunal of Western Australia for the year ended 31 July 2004.

The report has been prepared in accordance with the provisions of the *Financial Administration and Audit Act 1985*.

The report summarises the Tribunal's functions and objectives, presents an overview of achievements and includes financial statements for the year.

The Tribunal's success in meeting its objectives has been significantly influenced by the dedication and commitment of the employees of the Department of Racing, Gaming and Liquor. We take this opportunity on behalf of the Tribunal to express appreciation for their efforts.



Dan Mossenson
CHAIRPERSON
27 September 2004



Patrick Hogan
MEMBER
27 September 2004

**STATEMENT OF COMPLIANCE
WITH RELEVANT LAW**

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.

LEGISLATION ADMINISTERED

Racing Penalties (Appeals) Act 1990.

LEGISLATION IMPACTING ON ACTIVITIES

In the performance of its functions, the Tribunal complies with the following relevant written laws:

- *Financial Administration and Audit Act 1985;*
- *Public Sector Management Act 1994;*
- *Salaries and Allowances Act 1975;*
- *State Records Act 2000;*
- *Freedom of Information Act 1992;*
- *Industrial Relations Act 1979;*
- *State Supply Commission Act 1991;*
- *Anti Corruption Commission Act 1988;*
- *Disability Services Act 1993;*
- *Parliamentary Commissioner Act 1971;*
- *Public Interest Disclosure Act; and*
- *Electoral Act 1907.*

In the financial administration of the Tribunal, the Tribunal has complied with the requirements of the *Financial Administration and Audit Act 1985* and relevant written law. It has exercised controls which provide reasonable assurance that the receipt and expenditure of moneys, the acquisition and disposal of public property and incurring of liabilities have been in accordance with legislative provisions.

**STATEMENT OF COMPLIANCE
WITH RELEVANT LAW (cont.)**

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



Dan Mossenson
CHAIRPERSON
27 September 2004



Terry Ng
PRINCIPAL ACCOUNTING OFFICER
27 September 2004



Patrick Hogan
MEMBER
27 September 2004

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I. THE TRIBUNAL

Purpose of the Tribunal

The Racing Penalties (Appeals) Act 1990 (the Act) was enacted in November 1990 to establish the Racing Penalties Appeal Tribunal. The Act came into operation on 15 April 1991. The aim of the legislation 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.

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 (RWVA).

Equity, Access and Customer Focus

The Tribunal does not employ staff but has a net appropriation agreement with the Department of Racing, Gaming and Liquor relating to the functions carried out on behalf of the Tribunal by staff of that agency.

As such, the Tribunal does not maintain plans for –

- *Equal Employment Opportunity;*
- *Public Sector Standards;*
- *Language Services; and*
- *Disability Services,*

and relies on the relevant plans of the Department of Racing, Gaming and Liquor. Accordingly, the Tribunal does not report on the outcomes of those plans. Details of the relevant plans and outcomes are available in the Department's Annual Report.

Responsible Minister

The Honourable Nick Griffiths, LLB MLC, Minister for Housing and Works; Racing and Gaming; Government Enterprises; Land Information.

Appeals which may be heard by the Tribunal

A person who is aggrieved by a determination of RWVA, of a steward, of a racing club, or of a committee may, within 14 days after the making of the determination, appeal to the Tribunal. The matters that can be appealed against are those determinations or findings -

- (a) imposing any suspension or disqualification, whether of a runner or of a person;
- (b) imposing a fine;
- (c) which results, or may result, in the giving of a notice of the kind commonly referred to as a warning-off; or
- (d) in relation to any other matter, where the Tribunal gives leave to appeal.

1. THE TRIBUNAL (cont.)

Determination of Appeals

The Tribunal is required to hear and determine an appeal upon the evidence of the original hearing but may allow new evidence or call on experts 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 or the appropriate racing club, committee or stewards 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 or the appropriate racing club, committee or stewards 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.

2. *TRIBUNAL MEMBERSHIP*

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

The composition of the Tribunal as at 31 July 2004 is as follows:

Mr Dan Mossenson (current term expires 28 February 2006)	Inaugural Chairperson - initial appointment 1 March 1991
Mr Patrick Hogan (current term expires 28 February 2006)	Inaugural Member - initial appointment 1 March 1991
Mr John Prior (current term expires 28 February 2006)	Member - initial appointment 1 March 1994
Ms Karen Farley (current term expires 28 February 2005)	Member - initial appointment 1 March 1997
Mr Andrew Monisse (current term expires 28 February 2005)	Member - initial appointment 1 March 1997
Mr Robert Nash (current term expires 28 February 2005)	Member - initial appointment 1 March 1997
Mr Steven Pynt (current term expires 28 February 2005)	Member - initial appointment 1 March 1997
Ms Gillian Braddock SC (current term expires 28 February 2006)	Member - initial appointment 6 June 2000
Mr William Chesnutt (current term expires 28 February 2006)	Member - initial appointment 6 June 2000

Mr Doug Smith was appointed **Registrar** and **executive officer** on 6 November 1995.

3. REPORT ON OPERATIONS

Appeals

This year 15 appeals were lodged with the Tribunal and four were carried over from the previous year. During the year the Tribunal determined 17 appeals with two pending at the end of this year. These appeals, together with appeals from the previous year, are summarised by racing code as follows:

Appeals Lodged and Determined							
Racing Code	Appeals Lodged 2002/03	Appeals Determined 2002/03	Hearing Days Occupied 2002/03	Appeals Carried Over To 2003/04	Appeals Lodged 2003/04	Appeals Determined 2003/04	Hearing Days Occupied 2003/04
Thoroughbred	17	18	9.50	2	7	8	6.00
Harness	2	3	2.00	2	6	7	3.50
Greyhound	4	4	2.00	0	2	2	1.00
Total	23	25	13.50	4	15	17	10.50

The results of the determinations for the respective racing codes for the years 2003/04 and 2002/03 and the appeals awaiting determination are summarised below:

2003/04 Appeal Results			
	Thoroughbred Racing	Harness Racing	Greyhound Racing
Allowed in Full	1	1	0
Allowed in Part (Penalty Reduced)	0	1	0
Referred Back to Stewards (RWWA)	1	0	0
Dismissed	5	5	2
Withdrawn	1	0	0
Total	8	7	2

3. **REPORT ON OPERATIONS (cont.)**

2002/03 Appeal Results			
	Thoroughbred Racing	Harness Racing	Greyhound Racing
Allowed in Full	1	1	0
Allowed in Part (Penalty Reduced)	1	0	1
Referred Back to Stewards (RWWA)	0	0	0
Dismissed	12	1	3
Withdrawn	4	1	0
Total	18	3	4

2003/04 Appeals Awaiting Determination			
	Thoroughbred Racing	Harness Racing	Greyhound Racing
Reserved Decision	1	0	0
Yet to be Heard	0	1	0
Total	1	1	0

Stays of Proceedings

Section 17(7) of the Act deals with the suspension of the operation of any order or pecuniary or other penalty imposed, or any consequence arising from any determination or finding. This stay of proceedings provision brings into consideration factors such as prejudice to an appellant due to the passage of time from a conviction until the Tribunal has determined the appeal, and circumstances where the appellant's capacity to earn a livelihood is interrupted.

An application for a suspension of the operation of a penalty must be in writing. The Stewards of the relevant code are invited to respond and provide written submissions. A stay of proceedings is generally granted when the Stewards do not oppose the application. In those instances where the Stewards oppose the granting of an application, the Registrar invites the appellant to respond to the submission made by the Stewards.

The Chairperson or presiding member determines each application on all of the available material. Where a suspension of the operation of a penalty is granted, the Chairperson or presiding member also determines the conditions under which the stay will operate.

3. REPORT ON OPERATIONS (cont.)

In 2003/04 there were eight applications for stays of proceedings compared to 14 last year. The Chairperson or presiding member made the determinations as follows:

2003/04 Applications for Stays of Proceedings		
Racing Code	Stays Granted	Stays Refused
Thoroughbred	2	4
Harness	2	0
Greyhound	0	0
Total	4	4

2002/03 Applications for Stays of Proceedings		
Racing Code	Stays Granted	Stays Refused
Thoroughbred	10	3
Harness	1	0
Greyhound	0	0
Total	11	3

Matters Heard and Determined by the Tribunal

The following is a summary of the matters heard and determined by the Tribunal and the results of those determinations during 2003/04 by reference to each racing code.

Thoroughbred Racing

Trainers

Stephen Wolfe <i>Appeal 585</i>	Disqualification for two years for a prohibited substance detected in a horse presented for an official trial – conviction confirmed, referred back to the Stewards of RWWA Thoroughbred Racing to reconsider penalty.
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Gordon O'Donnell <i>Appeal 605</i>	Disqualification for two periods of five years and one period of two years to be served concurrently for possession of three electrical devices – appeal dismissed, penalties confirmed.
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3. **REPORT ON OPERATIONS (cont.)**

Jockeys/Apprentices

Damian Miller <i>Appeal 602</i>	Suspension for 14 days for careless riding in a race – appeal dismissed, penalty confirmed.
Paul Harvey <i>Appeal 603</i>	Suspension for 18 days for careless riding in a race – appeal dismissed, penalty confirmed.
Daniel Staeck <i>Appeal 612</i>	Suspension for six weeks for failing to obtain the best possible placing in a race – appeal upheld, conviction quashed.
Paul Harvey <i>Appeal 615</i>	Suspension for three months for improper riding in a race – appeal dismissed, penalty confirmed.
Glenn Smith <i>Appeal 616</i>	Suspension for two months and a fine of \$2,000 for careless riding in a race – appeal dismissed, penalty confirmed.

Harness Racing

Trainer

Ross Olivieri <i>Appeal 510</i>	Disqualified for 12 months (reduced to approximately seven months by the Committee of the Western Australian Trotting Association) for a prohibited substance detected in a horse presented for a race – appeal dismissed, penalty confirmed.
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Owner/Trainer

Terrence Ferguson <i>Appeal 589</i>	Disqualification of BACKINA FALCON from race after prohibited substance detected – appeal dismissed, stake money of \$8,500 forfeited.
Terrence Ferguson <i>Appeal 606</i>	Disqualification of BACKINA FALCON from race after prohibited substance detected – appeal dismissed, stake money of \$7,820 forfeited.
Terrence Ferguson <i>Appeal 607</i>	Disqualification of BACKINA FALCON from race after prohibited substance detected – appeal dismissed, stake money of \$60,000 forfeited.

3. **REPORT ON OPERATIONS (cont.)**

Drivers

Callan Suvaljko <i>Appeal 604</i>	Suspension for 28 days for causing interference – appeal dismissed, penalty confirmed.
Aldo Cortopassi <i>Appeal 609</i>	Suspension for 21 days for causing interference – appeal as to penalty upheld, penalty reduced to 14 days suspension.
Gary Hall Jnr <i>Appeal 610</i>	Suspension for 28 days for failing to obtain the best possible placing in a race – appeal upheld, conviction quashed.

Greyhound Racing

Trainers

Geoffrey Shaw <i>Appeal 608</i>	Disqualification for 12 months and a fine of \$500 for assaulting another trainer on a racetrack – appeal dismissed, penalty confirmed.
Linda Britton <i>Appeal 611</i>	Suspension of STAR BEYOND TIME for three months at all tracks for fighting during a race – appeal dismissed, penalty confirmed.

Significant Cases Determined

R A Olivieri v RWWA Stewards of Harness Racing

On 20 June 2000 the Stewards of the Western Australian Trotting Association (WATA) disqualified Mr Olivieri, a licensed trainer, for 12 months for presenting a horse with a violate level of total carbon dioxide (TCO₂). Mr Olivieri lodged an appeal against the conviction on 27 June 2000 but was refused a stay of proceedings.

The race the subject of the Stewards' inquiry was run on 12 April 1999. The Stewards' inquiry ran in excess of 12 months, involved 23 separate sitting days, 1,245 pages of transcript and 235 exhibits comprising some 1,200 pages.

The Committee of the WATA resolved on 31 January 2001 to cease Mr Olivieri's disqualification from that date. This meant that Mr Olivieri served only seven months of his disqualification. Subsequently, the Australian Harness Racing Council handed down its findings in respect of the significant increase in violate levels of TCO₂ detected throughout Australian jurisdictions. The most significant change to the Rules of Harness Racing was to raise the violate level of TCO₂ from 35.0 millimoles per litre (mmol/l) to 36.0 mmol/l. This is now the same as the level under the Australian Rules of Racing for thoroughbred racing.

The appeal eventually came on for hearing on 23 October 2003. The hearing was adjourned when it became obvious that the 56 page submission being relied upon by Mr Olivieri's advocate had so many incorrect references that to continue would have been impracticable.

3. REPORT ON OPERATIONS (cont.)

The appeal hearing was finalised on 20 November 2003 when the Tribunal reserved its decision.

The Tribunal dismissed the appeal when the decision was handed down on 23 April 2004.

G W O'Donnell v RWWA Stewards of Thoroughbred Racing

On 9 October 2003 the RWWA Stewards of Thoroughbred Racing disqualified Mr O'Donnell, a licensed trainer, for two periods of five years and one period of two years to be served concurrently for possession of three electrical devices. The devices were an electrical hand piece, an electrical saddle blanket and a cattle prod. All three devices were seized at an inspection carried out at Mr O'Donnell's racing stables by the Racecourse Investigator and the Stewards.

The Tribunal heard the appeal on 30 March 2004 and reserved its decision. The appeal was dismissed on 30 April 2004 and the penalties were confirmed.

S J Wolfe v RWWA Stewards of Thoroughbred Racing

Mr Wolfe was the trainer of the unraced two-year-old SAVAGE CABBAGE which competed in an Official Barrier Trial over 400 metres at Belmont Park Racecourse on 28 October 2002. Nearing the winning post the horse fell. Jockey Jason Oliver sustained fatal injuries from the fall. SAVAGE CABBAGE suffered a catastrophic fracture to its off foreleg and was euthanased.

A post-mortem urine sample taken from the horse disclosed the presence of the prohibited substances Phenylbutazone and Oxyphenbutazone. The forelegs of the euthanased horse were removed by the Veterinary Steward and later taken to Murdoch University for examination.

Mr Wolfe advised the Chairman of Stewards on the afternoon of the trial that his partner had administered "20 mls of bute" to SAVAGE CABBAGE on the previous Wednesday afternoon to alleviate swelling in a back leg. Following an inquiry the Stewards' on 5 December 2002 disqualified Mr Wolfe for two years for presenting the horse to trial with prohibited substances in its system. The Stewards findings, based on the evidence of analysts, was that a large dose of Phenylbutazone had been administered to the horse closer to the trial than claimed by Mr Wolfe.

Mr Wolfe appealed to the Tribunal on 6 December 2002 and applied for a stay of proceedings which was refused. Mr Wolfe immediately sought and that day obtained an order from the Supreme Court of Western Australia staying the disqualification decision until further order of the Supreme Court.

The Tribunal heard the appeal on 25 February 2003 and reserved its decision. Prior to the Tribunal handing down its decision, solicitors for the appellant sought to reconvene the appeal proceedings to hear fresh evidence which was claimed to have come to light subsequent to the February hearing. At the further hearing, which was convened on 20 May 2003, leave was granted to the appellant to reopen the case. After hearing further evidence the Tribunal again reserved its decision.

3. REPORT ON OPERATIONS (cont.)

On 1 December 2003 the Tribunal by a unanimous decision dismissed the appeal against conviction. By a majority decision, the matter was referred back to the Stewards to redetermine the appropriate penalty after taking into account the Chairperson's reasons and such further evidence, if any as the Stewards thought fit.

On 19 April 2004 the Stewards disqualified Mr Wolfe for 12 months. Mr Wolfe appealed that penalty and was granted a stay of proceedings. The Tribunal heard the appeal on 26 July 2004 and reserved its decision.

Legislation Impacting on the Tribunal

State Administrative Tribunal

The *State Administrative Tribunal Bill 2003* and the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003* were introduced into Parliament on 24 June 2003.

The Bills passed through the Legislative Assembly in August 2003 and have been referred to the Standing Committee on Legislation by the Legislative Council. The Standing Committee has been granted extensions of time and is not required to report back to the Legislative Council until 27 October 2004.

If passed, the legislation will establish the State Administrative Tribunal (SAT) and transfer the functions of the Tribunal to SAT.

The Tribunal Chairperson has appeared before, and made written submissions to, the Standing Committee in respect to the Bills.

Tribunal Library

The Registrar maintains an up to date index of all determinations made since the Tribunal commenced operations in 1991, to assist persons who may wish to utilise the appeal process. This index is available for perusal free of charge. To streamline research, the index is divided into the following sections:

- Section 1 Thoroughbred Racing
- Section 2 Harness Racing
- Section 3 Greyhound Racing

In respect of the two horse racing codes, the index is further divided into the following sub-sections:

- (i) Conduct
- (ii) Prohibited Substances
- (iii) Protests
- (iv) Leave to Appeal
- (v) Nominal Index

In respect of the greyhound racing code, the index is divided as above except for protests.

3. REPORT ON OPERATIONS (cont.)

In addition, there is a summary of the issues and results in respect of all appeal/application determinations including the relevant rule and prohibited substance (if applicable).

The index is now available on the web site of the Department of Racing, Gaming and Liquor at www.rgl.wa.gov.au.

Any person may peruse the full determinations of the Tribunal free of charge. A small fee is payable for photocopies.

A copy of every determination is forwarded to the Supreme Court of Western Australia Library.

Available for perusal free of charge are the Racing Appeals Reports. These reports are a digest of rulings, observations and comments of Australian and New Zealand statutory appeals tribunals for the three codes of racing. Photocopies are available on request (subject to copyright laws) on payment of a small fee.

2004 Australasian Conference

The Tribunal Chairperson, Mr Dan Mossenson, and the Registrar, Mr Doug Smith, represented Western Australia at the Australasian Racing Appeals Tribunal Conference held in Melbourne from 11 to 14 March 2004. The Conference was also attended by delegates from New Zealand and all Australian States and Territories.

Topics discussed included –

- proposed Victorian Racing Appeals & Disciplinary Board;
- Stewards' perspective with respect to "Big Brother Technology";
- betting exchanges and the effect on the racing industry;
- effect on rule making as a result of racing appeals tribunals' decisions;
- procedural fairness requirements in Stewards' reasons for decision and penalty;
- DNA testing in the Harness Racing Industry; and
- reliability of Stewards' records on prior penalties for similar offences.

The Conference also included a debate on the question of whether the Australian Rules of Racing AR.177 and AR.178 were "draconian". The central issue of the debate was whether a horse should automatically be disqualified from a race when a prohibited substance is found in a sample taken. The debate teams were comprised of various industry representatives.

The "adjudicators" of the debate were the five Judges of the Victorian Racing Appeals Tribunal who determined by a unanimous decision that the Rules were not draconian.

4. **BUDGET INFORMATION**

Summary Information

	Estimate 2004/05 \$	Estimate 2003/04 \$	Actual 2003/04 \$	Actual 2002/03 \$
Expenses from Ordinary Activities				
Fees Paid to Tribunal Members	59,120	47,500	54,704	36,628
Other Expenses from Ordinary Activities	121,046	110,839	112,411	106,439
Total Cost of Services	180,166	158,339	167,115	143,067
Revenues from Operating Activities				
Operating Income	189,825	134,185	131,564	155,850
Interest	1,769	1,265	1,345	1,781
Total Revenues from Ordinary Activities	191,594	135,450	132,909	157,631
Net Cost of Services	(11,428)	22,889	34,206	(14,564)
Total Changes in Equity Other Than Those Resulting from Transactions with WA State Government as Owners	11,428	(22,889)	(34,206)	14,564

**GOVERNMENT EXPENDITURE 2003/04
- COMPLIANCE WITH SECTION 175ZE OF THE ELECTORAL ACT 1907**

During the reporting year, the Tribunal did not incur any costs in respect of advertising.

5. OUTPUT, OUTCOME PERFORMANCE INFORMATION

During the reporting year, output and outcome measures were established in respect of quantity, quality, timeliness and cost.

Quantity

Number of appeals processed

2003/04 Target	2003/04 Actual
28	17

Quality

% of appellants who did not lodge a complaint in relation to the appeal process

2003/04 Target	2003/04 Actual
100%	100%

Timeliness

% of applications for stays of proceedings determined on day of lodgement

2003/04 Target	2003/04 Actual
75%	38%

Cost

Average cost of processing an appeal

2003/04 Target	2003/04 Actual
\$5,655	\$9,830

6. FINANCIAL STATEMENTS

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1. *Financial Statements*
2. *Notes to the Financial Statements*
3. *Statement of Certification*
4. *Opinion of the Auditor General*

6. FINANCIAL STATEMENTS (cont.)

Racing Penalties Appeal Tribunal

Statement of Financial Performance

for the year ended 31 July 2004

	Note	2003/04 \$	2002/03 \$
COST OF SERVICES			
Expenses from ordinary activities			
Tribunal members' expenses	8, 10(i)	54,704	36,628
Superannuation	1(g), 8, 10(i)	4,923	3,297
Other expenses from ordinary activities	1(c)	107,488	103,142
Total cost of services		<u>167,115</u>	<u>143,067</u>
Revenues from ordinary activities			
Revenue from operating activities			
Operating income	1(h)	131,564	155,850
Revenue from non-operating activities			
Interest revenue	10(i)	1,345	1,781
Total revenues from ordinary activities		<u>132,909</u>	<u>157,631</u>
NET COST OF SERVICES	7(b)	<u>34,206</u>	<u>(14,564)</u>
CHANGE IN NET ASSETS		<u>(34,206)</u>	<u>14,564</u>
TOTAL CHANGES IN EQUITY OTHER THAN THOSE RESULTING FROM TRANSACTIONS WITH WA STATE GOVERNMENT AS OWNERS			
		<u>(34,206)</u>	<u>14,564</u>

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

6. FINANCIAL STATEMENTS (cont.)

Racing Penalties Appeal Tribunal

Statement of Financial Position

as at 31 July 2004

	Note	2003/04 \$	2002/03 \$
Current Assets			
Cash assets	2, 7(a), 9(a)	1,128	31,591
Receivables	1(e), 3, 9(a)	76	36
Other assets	4, 9(a)	106	415
Total Current Assets		1,310	32,042
Total Assets		1,310	32,042
Current Liabilities			
Payables	1(e), 5, 9(a)	6,734	9,139
Accrued Tribunal members' fees		5,879	0
Total Current Liabilities		12,613	9,139
Total Liabilities		12,613	9,139
NET ASSETS		(11,303)	22,903
Equity			
Accumulated surplus/(deficit)	6	(11,303)	22,903
TOTAL EQUITY		(11,303)	22,903

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

6. FINANCIAL STATEMENTS (cont.)

Racing Penalties Appeal Tribunal

Statement of Cash Flows

for the year ended 31 July 2004

	Note	2003/04 \$ Inflows (Outflows)	2002/03 \$ Inflows (Outflows)
CASH FLOWS FROM OPERATING ACTIVITIES			
Payments			
Tribunal members' expenses		(48,824)	(41,211)
Superannuation		(4,394)	(3,709)
Payments to suppliers		(110,422)	(102,160)
GST paid on purchases		(812)	(553)
Receipts			
Receipts from customers		131,495	155,850
Interest		1,654	1,657
GST receipts on sales		0	53
GST received from taxation authority		840	512
Net cash provided by/(used in) operating activities	7(b)	(30,463)	10,439
Net increase/(decrease) in cash held		(30,463)	10,439
Cash assets at the beginning of the financial year		31,591	21,152
Cash assets at the end of the financial year	2, 7(a)	1,128	31,591

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

6. FINANCIAL STATEMENTS (cont.)

Racing Penalties Appeal Tribunal
Notes to the Financial Statements
for the year ended 31 July 2004

1. SIGNIFICANT ACCOUNTING POLICIES

The financial year of the Racing Penalties Appeal Tribunal is 1 August to 31 July, as determined by the Racing Penalties (Appeals) Act 1990.

The following accounting policies have been adopted in the preparation of the financial statements. Unless otherwise stated, these policies are consistent with those adopted in the previous year.

(a) General

The financial statements constitute a general purpose financial report which has been prepared in accordance with Accounting Standards, Statements of Accounting Concepts and other authoritative pronouncements of the Australian Accounting Standards Board, and Urgent Issues Group (UIG) Consensus Views 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 Administration and Audit Act and the Treasurer's Instructions are legislative provisions governing the preparation of financial statements and take precedence over Accounting Standards, Statements of Accounting Concepts and other authoritative pronouncements of the Australian Accounting Standards Board, and UIG Consensus Views. The modifications are intended to fulfil the requirements of general application to the public sector, together with the need for greater disclosure and also to satisfy accountability requirements.

If any such modification has a material or significant financial effect upon the reported results, details of that modification and where practicable, the resulting financial effect, are disclosed in individual notes to these financial statements.

(b) Basis of accounting

The financial statements have been prepared on the accrual basis of accounting using the historical cost convention, except for certain assets and liabilities which, as noted, are measured at fair value.

(c) 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 Financial Performance under 'Other expenses from ordinary activities'. 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.

6. FINANCIAL STATEMENTS (cont.)

(d) Cash

For the purpose of the Statement of Cash Flows, cash includes cash assets.

(e) Receivables and Payables

Receivables are recognised at the amounts receivable and they are due for settlement no more than 30 days from the date of recognition.

Collectability of receivables is reviewed on an ongoing basis. Debts which are known to be uncollectable are written off. A provision for doubtful debts is raised where some doubts as to collection exist and in any event where the debt is more than 60 days overdue.

Payables, including accruals not yet billed, are recognised when the Tribunal becomes obliged to make future payments as a result of a purchase of goods or services. Payables are generally settled within 30 days.

(f) Insurance

Personal accident insurance for Tribunal members is arranged through Riskcover by the Department of Racing, Gaming and Liquor.

(g) Employee benefits

(i) Annual and Long Service Leave

The Racing Penalties Appeal 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.

(ii) Superannuation

The Tribunal members of the Racing Penalties Appeal Tribunal are non-contributory members of the West State Superannuation Scheme, an accumulation fund complying with the Commonwealth Government's Superannuation Guarantee (Administration) Act 1992. The superannuation expense comprises employer contributions in respect of Tribunal members which are payable to the West State Superannuation Scheme by the Tribunal.

The liabilities for superannuation charges under the West State Superannuation Scheme are extinguished by payment of employer contributions to the Government Employees Superannuation Board (GESB).

The note disclosure required by paragraph 6.10 of AASB 1028 (being the employer's share of the difference between employees' accrued superannuation benefits and the attributable net market value of plan assets) has not been provided. State scheme deficiencies are recognised by the State in its whole of government reporting. The GESB's records are not structured to provide the information for the Tribunal. Accordingly, deriving the information for the Tribunal is impractical under current arrangements, and thus any benefits thereof would be exceeded by the cost of obtaining the information.

6. FINANCIAL STATEMENTS (cont.)

(h) Operating income

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.

(i) Comparative figures

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

	2003/04 \$	2002/03 \$
2. CASH ASSETS		
Cash assets are represented by funds held at the Commonwealth Bank of Australia	<u>1,128</u>	<u>31,591</u>
3. RECEIVABLES		
Receivables for goods and services supplied	76	0
GST receivable	<u>0</u>	<u>36</u>
	<u>76</u>	<u>36</u>
4. OTHER ASSETS		
Interest receivable	<u>106</u>	<u>415</u>
5. PAYABLES		
Payables for goods and services received	6,732	9,139
GST payable	<u>2</u>	<u>0</u>
	<u>6,734</u>	<u>9,139</u>
6. EQUITY		
Accumulated surplus/(deficit)		
Opening balance	22,903	8,339
Change in net assets	<u>(34,206)</u>	<u>14,564</u>
Closing balance	<u>(11,303)</u>	<u>22,903</u>

6. FINANCIAL STATEMENTS (cont.)

	2003/04 \$	2002/03 \$
7. NOTES TO THE STATEMENT OF CASH FLOWS		
(a) 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 assets	1,128	31,591
	<u>1,128</u>	<u>31,591</u>
(b) Reconciliation of net cost of services to net cash flows provided by/(used in) operating activities		
Net cost of services	(34,206)	14,564
(Increase)/decrease in assets:		
Receivables	(76)	0
Other assets	309	(124)
Increase/(decrease) in liabilities:		
Payables	(2,407)	570
Accrued Tribunal members' fees	5,879	(4,583)
Net GST receipts/(payments)	(29)	12
Change in GST in receivables/payables	67	0
Net cash provided by/(used in) operating activities	<u>(30,463)</u>	<u>10,439</u>

8. REMUNERATION OF MEMBERS OF THE ACCOUNTABLE AUTHORITY

The number of members of the Accountable Authority whose total of fees, salaries, superannuation and other benefits for the financial year, fall within the following bands:

	No.	No.
\$0 - \$10,000	7	8
\$30,001 - \$40,000	0	1
\$40,001 - \$50,000	1	0
	<u>8</u>	<u>9</u>

	2003/04 \$	2002/03 \$
The total remuneration of the members of the Accountable Authority is:	<u>59,627</u>	<u>39,925</u>

The superannuation included here represents the superannuation expense incurred by the Authority in respect of members of the Accountable Authority.

No members of the Accountable Authority are members of the Pension Scheme.

6. FINANCIAL STATEMENTS (cont.)

Racing Penalties Appeal Tribunal
Notes to the Financial Statements
for the year ended 31 July 2004

9. ADDITIONAL FINANCIAL INSTRUMENTS DISCLOSURES

a) Interest rate risk exposure

The Tribunal's exposure to interest rate risk and effective interest rates on financial instruments are:

	Weighted average effective interest rate	Floating interest rate	Non-interest bearing	Total 31 July 2004	Total 31 July 2003
		\$	\$	\$	\$
i) Financial assets					
Cash assets	5.115%	1,128		1,128	31,591
Receivables			76	76	36
Other assets			106	106	415
Total financial assets		1,128	182	1,310	32,042
ii) Financial liabilities					
Payables			6,734	6,734	9,139
Total financial liabilities			6,734	6,734	9,139

b) Credit risk exposure

All financial assets are unsecured. Amounts owing by other government agencies are guaranteed and therefore no credit risk exists in respect of those amounts. In respect of other financial assets the carrying amounts represent the Tribunal's maximum exposure to credit risk in relation to those assets.

6. FINANCIAL STATEMENTS (cont.)

10. EXPLANATORY STATEMENT

(i) Significant variations between actual revenues and expenditures for the financial year and revenues and expenditures for the immediately preceding financial year

Details and reasons for significant variations between actual results with the corresponding items of the preceding year are detailed below. Significant variations are considered to be those greater than 5% or \$20,000.

	2003/04	2002/03
	\$	\$
<i>Tribunal members' expenses</i>	54,704	36,628
The increase of \$18,076 was due to some complex and lengthy appeals in 2003/04, resulting in an overall increase in the time spent by members on appeals.		
<i>Superannuation</i>	4,923	3,297
The increase of \$1,626 was attributed to the increase in fees paid to members.		
<i>Operating income</i>	131,564	155,850
The decrease of \$24,286 was mainly due to a lower contribution from Racing and Wagering Western Australia.		
<i>Interest revenue</i>	1,345	1,781
The decrease of \$436 was the result of a lower bank balance throughout the year.		

(ii) Significant variations between estimates and actual results for the financial year

Section 42 of the Financial Administration and Audit Act requires statutory authorities to prepare annual budget estimates. Treasurer's Instruction 945 requires an explanation of significant variations between these estimates and actual results. Significant variations are considered to be those greater than 5% of budget or \$20,000. Variations which have been explained in part (i) of this note have not been repeated here in the interests of concise reporting.

11. REMUNERATION OF AUDITOR

The total of audit fees paid or due and payable to the auditors of the Tribunal for the financial year is as follows:

	2003/04	2002/03
	\$	\$
Fees to the Auditor General:		
- for external audit	<u>5,000</u>	<u>4,000</u>

6. FINANCIAL STATEMENTS (cont.)

12. OUTPUT INFORMATION

The only output of the Tribunal is *Functions Performed for the Racing Industry*. The details disclosed in the Statement of Financial Performance represent all details of expenses and revenues from ordinary activities for this output.

13. OTHER COMMITMENTS

As at 31 July 2004 the Tribunal did not have any other material capital or expenditure commitments.

14. CONTINGENT LIABILITIES AND CONTINGENT ASSETS

The Tribunal is not aware of any contingent liabilities and assets as at balance date.

15. EVENTS OCCURRING AFTER REPORTING DATE

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

16. RELATED BODIES

The Tribunal does not provide any assistance to other agencies which would deem them to be regarded as related bodies under the definitions included in Treasurer's Instruction 951.

17. AFFILIATED BODIES

The Tribunal does not provide any assistance to other agencies which would deem them to be regarded as affiliated bodies under the definitions included in Treasurer's Instruction 951.

18. THE IMPACT OF ADOPTING INTERNATIONAL ACCOUNTING STANDARDS

The Australian Accounting Standards Board (AASB) is adopting the Standards of the International Accounting Standards Board (IASB) for application to reporting periods beginning on or after 1 January 2005.

AASB 1047 'Disclosing the Impacts of Adopting Australian Equivalents to International Financial Reporting Standards' (IFRS) requires financial reports to disclose information about the impacts of any changes in accounting policies in the transition period leading up to the adoption date.

The Tribunal has commenced transitioning its accounting policies and financial reporting from the current Australian Standards to Australian equivalents to IFRS. The Tribunal conducts analyses and assessments to identify areas that will be impacted by the transition to IFRS. As the Tribunal has a reporting period ending 31 July, priority is given to the preparation of an opening IFRS balance sheet as at 1 August 2004 in accordance with AASB1 'First-time Adoption of Australian Equivalents to International Financial Reporting Standards'. This will form the basis of accounting for Australian equivalents to IFRS, and is required when the Tribunal prepares its fully IFRS compliant financial report for the year ended 31 July 2006. As at the reporting date, the Tribunal is not aware of any significant differences of the transition to IFRS in view of the nature of the Tribunal's current financial performance and position.

6. **FINANCIAL STATEMENTS (cont.)**

FINANCIAL STATEMENTS


STATEMENT OF CERTIFICATION

The accompanying financial statements of the Racing Penalties Appeal Tribunal of Western Australia have been prepared in compliance with the provisions of the *Financial Administration and Audit Act 1985* from proper accounts and records to present fairly the financial transactions for the year ending 31 July 2004 and the financial position as at 31 July 2004.

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.



Dan Mossenson
CHAIRPERSON
27 September 2004



Terry Ng
PRINCIPAL ACCOUNTING OFFICER
27 September 2004



Patrick Hogan
MEMBER
27 September 2004

6. **FINANCIAL STATEMENTS (cont.)**



AUDITOR GENERAL

INDEPENDENT AUDIT OPINION

To the Parliament of Western Australia

**RACING PENALTIES APPEAL TRIBUNAL OF WESTERN AUSTRALIA
FINANCIAL STATEMENTS FOR THE YEAR ENDED JULY 31, 2004**

Audit Opinion

In my opinion,

- (i) the controls exercised by the Racing Penalties Appeal Tribunal of Western Australia provide reasonable assurance that the receipt, expenditure and investment of moneys, the acquisition and disposal of property, and the incurring of liabilities have been in accordance with legislative provisions; and
- (ii) the financial statements are based on proper accounts and present fairly in accordance with applicable Accounting Standards and other mandatory professional reporting requirements in Australia and the Treasurer's Instructions, the financial position of the Tribunal at July 31, 2004 and its financial performance and cash flows for the year ended on that date.

Scope

The Tribunal's Role

The Tribunal is responsible for keeping proper accounts and maintaining adequate systems of internal control, preparing the financial statements, and complying with the Financial Administration and Audit Act 1985 (the Act) and other relevant written law.

The financial statements consist of the Statement of Financial Performance, Statement of Financial Position, Statement of Cash Flows, and the Notes to the Financial Statements.

Summary of my Role

As required by the Act, I have independently audited the accounts and financial statements to express an opinion on the controls and financial statements. This was done by looking at a sample of the evidence.

An audit does not guarantee that every amount and disclosure in the financial statements is error free. The term "reasonable assurance" recognises that an audit does not examine all evidence and every transaction. However, my audit procedures should identify errors or omissions significant enough to adversely affect the decisions of users of the financial statements.

A handwritten signature in black ink, appearing to read 'D D R Pearson'.

D D R PEARSON
AUDITOR GENERAL
October 20, 2004

7. PERFORMANCE INDICATORS

CONTENTS

1. *Performance Indicators*
2. *Statement of Certification*
3. *Opinion of the Auditor General*

7. PERFORMANCE INDICATORS (cont.)

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.

Effectiveness Indicator:

Stays of Proceedings

Under the Act, an appellant may apply for a suspension of the operation of a penalty when lodging an 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 late in the day there is virtually no prospect of it being determined until the next working day.

Stays of proceedings is the only process the Tribunal has some control over in respect of a timeliness measurement. The appeal process in respect of timeliness is governed by many factors including the availability of counsel for both parties, the provision of the transcript of a Stewards' inquiry, legal proceedings in other jurisdictions and the complexity of matters required to be determined.

In 2003/04 seven of the eight applications received for a stay of proceedings were determined either on the day of or within one working day of receipt at the Registry.

2003/04

Number of stay applications received	8
Number of stay applications determined same day	3
Indicator	37.5%

Comparative results for the previous four years are shown below.

2002/03

Number of stay applications received	14
Number of stay applications determined same day	8
Indicator	57.1%

7. **PERFORMANCE INDICATORS (cont.)**

2001/02			
Number of stay applications received			17
Number of stay applications determined same day			10
	Indicator		58.8%
2000/01			
Number of stay applications received			11
Number of stay applications determined same day			4
	Indicator		36.4%
1999/00			
Number of stay applications received			29
Number of stay applications determined same day			21
	Indicator		72.0%

Output: To perform functions for the racing industry.

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

Efficiency Indicator:

Cost of Appeals

	2003/04	2002/03	2001/02	2000/01	1999/00
Average cost per appeal	\$9,830	\$5,723	\$3,638	\$5,858	\$3,979

The lower than expected number of appeals did not result in a decrease in costs incurred. Three of the matters heard by the Tribunal, namely **Olivieri**, **O'Donnell** and **Wolfe**, were complex matters involving lengthy appeal hearings and complex written determinations.

In addition, the Chairperson was required to appear before and provide several written submissions to the Standing Committee on Legislation in respect of the *State Administrative Tribunal Bill 2003* and the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003*.

7. **PERFORMANCE INDICATORS (cont.)**

PERFORMANCE INDICATORS

STATEMENT OF CERTIFICATION

We certify that the performance indicators presented here are based on proper records, are relevant and appropriate for assisting users to assess the performance of the Racing Penalties Appeal Tribunal of Western Australia, and fairly represent the performance of the Tribunal for the financial year ended 31 July 2004.



Dan Mossenson
CHAIRPERSON
27 September 2004



Patrick Hogan
MEMBER
27 September 2004



AUDITOR GENERAL

INDEPENDENT AUDIT OPINION

To the Parliament of Western Australia

RACING PENALTIES APPEAL TRIBUNAL OF WESTERN AUSTRALIA
PERFORMANCE INDICATORS FOR THE YEAR ENDED JULY 31, 2004

Audit Opinion

In my opinion, the key effectiveness and efficiency performance indicators of the Racing Penalties Appeal Tribunal of Western Australia are relevant and appropriate to help users assess the Tribunal's performance and fairly represent the indicated performance for the year ended July 31, 2004.

Scope

The Tribunal's Role

The Tribunal is responsible for developing and maintaining proper records and systems for preparing performance indicators.

The performance indicators consist of key indicators of effectiveness and efficiency.

Summary of my Role

As required by the Financial Administration and Audit Act 1985, I have independently audited the performance indicators to express an opinion on them. This was done by looking at a sample of the evidence.

An audit does not guarantee that every amount and disclosure in the performance indicators is error free, nor does it examine all evidence and every transaction. However, my audit procedures should identify errors or omissions significant enough to adversely affect the decisions of users of the performance indicators.

A handwritten signature in black ink, appearing to read 'D D R Pearson'.

D D R PEARSON
AUDITOR GENERAL
October 20, 2004

ACKNOWLEDGMENTS

Compilation	Doug Smith	Department of Racing, Gaming and Liquor
Financial Statements	Terry Ng	Department of Racing, Gaming and Liquor

RACING PENALTIES APPEAL TRIBUNAL

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