



# Racing Penalties Appeal Tribunal Western Australia 2009/10 Annual Report



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### Availability in other formats

This publication is available in alternative formats such as computer disk, audiotape or Braille.

People who have a hearing or speech impairment may call the National Relay Service on 133 677 and quote telephone number (08) 9425 1888.

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## STATEMENT OF COMPLIANCE

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Hon. Terry Waldron, MLA  
MINISTER FOR RACING AND GAMING

In accordance with section 61 of the *Financial Management Act 2006*, I submit, for your information and presentation to Parliament, the Annual Report of the Racing Penalties Appeal Tribunal of Western Australia for the financial year ended 30 June 2010.

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



Dan Mossenson  
CHAIRPERSON

17 September 2010

## OVERVIEW OF AGENCY

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### EXECUTIVE SUMMARY



I am pleased to present the Racing Penalties Appeal Tribunal Annual Report for the year ended 30 June 2010, prepared in accordance with Section 61 of the *Financial Management Act 2006*.

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

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

During the year, 13 appeals were lodged and 11 were heard and determined. The nature of matters coming before the Tribunal have become increasingly complex, resulting in an increasing number of applicants retaining the services of legal counsel. As a result, Tribunal members have often had to review the detailed submitted material, requiring them to spend a considerable amount of time in preparation for hearing matters. This has often resulted in the Tribunal having to provide much more detailed reasons for its determinations.

Included is a summary of the most significant cases in order to provide the reader with an insight into the range of matters brought before the Tribunal.

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

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

A handwritten signature in black ink that reads "Dan Mossenson". The signature is written in a cursive, flowing style.

Dan Mossenson  
CHAIRPERSON

## **OPERATIONAL STRUCTURE**

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### **ENABLING LEGISLATION**

The Racing Penalties Appeal Tribunal is established under the *Racing Penalties (Appeals) Act 1990*. The Tribunal was established to confer jurisdiction in respect of appeals against penalties imposed in disciplinary proceedings arising from, or in relation to, the conduct of thoroughbred racing, harness racing and greyhound racing, and for related purposes.

### **PURPOSE OF THE TRIBUNAL**

The aim of the Act is to create and maintain industry confidence in the enforcement of the various racing rules by providing an impartial judicial forum for the hearing of appeals.

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).

### **RESPONSIBLE MINISTER**

As at 30 June 2010, the Minister responsible for the Racing and Gaming Portfolio was the Honourable Terry Waldron MLA, Minister for Sport and Recreation; Racing and Gaming; Minister Assisting the Minister for Health.

### **APPEALS WHICH MAY BE HEARD BY THE TRIBUNAL**

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

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

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

## **APPEALS WHICH ARE OUTSIDE THE JURISDICTION OF THE TRIBUNAL**

Without the leave of the Tribunal, the jurisdiction of the Tribunal does not extend to a determination of a steward, a racing club or a committee, in matters regarding:

- any protest or objection against a placed runner arising out of any incident occurring during the running of a race;
- the eligibility of a runner to take part in, or the conditions under which a runner takes part in, any race; or
- any question or dispute as to a bet.

These matters are dealt with by RWWA.

## **DETERMINATION OF APPEALS**

The Tribunal is required to hear and determine an appeal based upon the evidence of the original hearing, but may allow new evidence 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, the stewards or the committee of the appropriate racing club for rehearing;
- confirm, vary or set aside the determination or finding appealed against or any order or penalty imposed to which it relates;
- recommend or require that RWWA, the stewards or the committee of the appropriate racing club, take further action in relation to any person; and
- make such other order as the member presiding may think proper.

Decisions of the Tribunal are final and binding.

## **ADMINISTERED LEGISLATION**

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

## OTHER KEY LEGISLATION IMPACTING ON THE TRIBUNAL'S ACTIVITIES

The Tribunal complied with the following relevant written laws in the performance of its functions:

- Auditor General Act 2006;
- Corruption and Crime Commission Act 2003;
- Disability Services Act 1993;
- *Electoral Act 1907*;
- *Equal Opportunity Act 1984*;
- *Electronic Transactions Act 2003*;
- *Financial Management Act 2006*;
- *Freedom of Information Act 1992*;
- *Industrial Relations Act 1979*;
- *Public Sector Management Act 1994*;
- *Salaries and Allowances Act 1975*;
- *State Records Act 2000*; and
- *State Supply Commission Act 1991*

## ADMINISTRATIVE STRUCTURE

Sections 5 and 6 of the *Racing Penalties (Appeals) Act 1990* provide that the Tribunal shall consist of a Chairperson and a panel of members, each appointed by the Minister. The Schedule to the Act specifies terms of appointment shall not exceed three years, with eligibility for reappointment. The Tribunal, constituted by the Chairperson (or the Acting Chairperson or member presiding) and two members, sitting together hear appeals. An appeal may be heard by the Chairperson, Acting Chairperson or member presiding sitting alone, where the Regulations provide.

The composition of the Tribunal as at 30 June 2010 was as follows:

### **Mr Dan Mossenson - Inaugural Chairperson**

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

Mr Mossenson chaired both the WA State Government Gaming Inquiry in 1984 and the Land Valuation Tribunal of Western Australia from 1985 to 1997. He was founding Vice



Chairman of the National Association for Gambling Studies and Board Member of the Australian Institute of Gambling Studies and the Indian Ocean Tourism Organisation. He has been a board member of Tourism Council Western Australia Limited and its predecessor body for the past 13 years and is President of the Perth Hebrew Congregation Inc. In 2008 he founded, and is the secretary of, the Small Bar Association of W.A. Inc.

### **Mr Patrick Hogan - Inaugural Member**

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

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

### **Mr John Prior - Member**

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

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

### **Ms Karen Farley - Member**

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

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

**Mr Andrew Monisse - Member**

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

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

**Mr Robert Nash - Member**

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

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

**Mr William Chesnutt - Member**

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

**EXECUTIVE SUPPORT FOR THE RACING PENALTIES APPEAL TRIBUNAL**

Executive support for the Racing Penalties Appeal Tribunal is provided by the Department of Racing, Gaming and Liquor. The Registrar to the Tribunal is Ms Seema Saxena.

## PERFORMANCE MANAGEMENT FRAMEWORK

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### AGENCY LEVEL GOVERNMENT DESIRED OUTCOME

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

Government Goal	Desired Outcome of the Tribunal	Services Delivered by the Department
Greater focus on achieving results in key service delivery areas for the benefit of all Western Australians.	To provide an Appeal Tribunal in relation to determinations made by racing industry Stewards and controlling authorities.	Processing appeals / applications in accordance with statutory obligations.

### CHANGES TO OUTCOME BASED MANAGEMENT FRAMEWORK

The Tribunal's Outcome Based Management Framework did not change during 2009/10.

### SHARED RESPONSIBILITIES WITH OTHER AGENCIES

The Tribunal did not share any responsibilities with other agencies in 2009/10.

## AGENCY PERFORMANCE

### REPORT ON OPERATIONS

#### Actual Results v Budget Targets

<b>Financial Targets</b>	<b>2009/10 Target<sup>1</sup></b>	<b>2009/10 Actual</b>	<b>Variation<sup>2</sup></b>
	<b>\$000</b>	<b>\$000</b>	<b>\$000</b>
Total cost of services (expense limit) (sourced from Statement of Comprehensive Income)	270,607	224,349	46,258
Net cost of services (sourced from Statement of Comprehensive Income)	5,727	(46,041)	51,768
Total equity (sourced from Statement of Financial Position)	86,739	141,597	54,858
Net increase (decrease) in cash held (sourced from Statement of Cash Flows)	(5,727)	56,428	62,155
	<b>No.</b>	<b>No.</b>	<b>No.</b>
Approved full time equivalent (FTE) staff level <sup>3</sup>	0	0	0

The table below provides a summary of key performance indicators for 2009/10. A detailed explanation is provided on pages 46 and 47.

<b>Summary of Key Performance Indicator</b>	<b>2009/10 Target</b>	<b>2009/10 Actual</b>	<b>Variation</b>
Total number of stay applications received	7	8	
Number of stay applications determined same day	3	2	
<b>Indicator</b>	<b>43%</b>	<b>25%</b>	<b>17%</b>
Average cost of processing an appeal	\$22,551	\$18,696	\$3,855

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

2 Explanations for significant variances are contained in Note 12 'Explanatory Statement' to the financial statements (page 43).

3 The Racing Penalties Appeal Tribunal does not employ staff. Executive support for the Tribunal is provided by the Department of Racing, Gaming and Liquor.

## MAJOR ACHIEVEMENTS FOR 2009/2010

Appeals Lodged and Determined							
Racing Code	Appeals Lodged 2008/09	Appeals Determined 2008/09	Hearing Days Occupied 2008/09	Appeals Carried Over to 2009/10	Appeals Lodged 2009/10	Appeals Determined 2009/10	Hearing Days Occupied 2009/10
Thoroughbred	8	7	3.5	2	5	4	2.5
Harness	9	6	4	1	7	6	4.5
Greyhound	3	3	1.5	0	1	1	0.5
<b>Total</b>	<b>20</b>	<b>16</b>	<b>9</b>	<b>3</b>	<b>13</b>	<b>11</b>	<b>7.5</b>

The results of the determinations in respect of the racing codes for the years 2008/2009 and 2009/2010 are summarised below.

2009/2010 Appeal Results			
	Thoroughbred Racing	Harness Racing	Greyhound Racing
Allowed in Full	0	0	0
Allowed in Part (Penalty Reduced)	3	1	0
Referred Back to Stewards (RWWA)	0	0	0
Dismissed	2	5	1
Withdrawn	1	2	0
Leave to Appeal Refused	0	0	0
<b>Total</b>	<b>5</b>	<b>8</b>	<b>1</b>

2008/2009 Appeal Results			
	Thoroughbred Racing	Harness Racing	Greyhound Racing
Allowed in Full	1	0	0
Allowed in Part (Penalty Reduced)	1	2	0
Referred Back to Stewards (RWWA)	0	0	0
Dismissed	5	4	3
Withdrawn	0	2	0
Leave to Appeal Refused	0	0	0
<b>Total</b>	<b>7</b>	<b>8</b>	<b>3</b>

Appeals to be Carried Over to 2010/2011			
	Thoroughbred Racing	Harness Racing	Greyhound Racing
Reserved Decision	0	0	0
Reserved Decision on penalty only	0	0	0
Reasons to be published	0	0	0
Yet to be heard	0	1	0
<b>Total</b>	<b>0</b>	<b>1</b>	<b>0</b>

## STAYS OF PROCEEDINGS

In 2009/10, there were eight applications for stays of proceedings, compared to nine in the previous year. The Chairperson made the determinations as follows.

<b>2009/2010 Applications for Stays of Proceedings</b>			
<b>Racing Code</b>	<b>Stays Granted</b>	<b>Stays Refused</b>	<b>Withdrawn</b>
Thoroughbred	0	2	2
Harness	2	1	1
Greyhound	0	0	0
<b>Total</b>	<b>2</b>	<b>3</b>	<b>3</b>

<b>2008/2009 Applications for Stays of Proceedings</b>			
<b>Racing Code</b>	<b>Stays Granted</b>	<b>Stays Refused</b>	<b>Withdrawn</b>
Thoroughbred	1	3	0
Harness	0	5	0
Greyhound	0	0	0
<b>Total</b>	<b>1</b>	<b>8</b>	<b>0</b>

These figures do not include those appeals heard, though not determined, in the year under review.

## SIGNIFICANT APPEALS BEFORE THE TRIBUNAL

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The following pages contain a synopsis of significant appeals heard before the Tribunal. They provide an insight into the nature of appeals brought before the Tribunal.

### **APPEAL NOS. 707 AND 708 – CLINT JONES AND MELISSA COLLINS**

*In the matter of appeals against the determinations made by the RWWA Stewards of Thoroughbred Racing on 7 May 2009, imposing a disqualification of five years in each case for breach of Rule 175(o)(i) of the Rules of Thoroughbred Racing.*

These were appeals against penalty. The appeals were heard jointly because the factual circumstances were common to each appellant.

Mr Jones was a licensed stable hand rider, employed as a farrier at the relevant times. Ms Collins was a licensed track rider, employed by a local trainer. The appellants were also pre-training several horses in the stables on their property.

The appellants found themselves in a period of financial hardship and were struggling to afford to provide sufficient food to the horses in their care. Several unsuccessful attempts to sell the horses were made between December 2008 and February 2009.

On 23 March 2009, RSPCA Inspector Ms Milne attended the appellants' property in response to complaints about the condition and welfare of several horses. She observed a lack of sufficient feed for the number of horses that appeared to be in poor condition. Ms Milne attended the appellants' property again the next day and made contact with Mr Jones on the phone. Mr Jones said that they were in the process of destocking. Ms Milne gave Mr Jones a verbal direction to feed the horses. Ms Milne also contacted RWWA Investigator Mr O'Reilly. He contacted Ms Collins, who advised that she was in the process of disposing of the animals and that this would be done in the near future.

On 1 and 9 April 2009, Ms Milne re-visited the appellants' property. On 9 April, having seen that there was no improvement, Ms Milne told Mr Jones that he could surrender the horses to the RSPCA. Mr Jones declined, as he took the view that the horses might well end up worse off after being moved around unwanted from place to place. Mr Jones said that he would have the horses destroyed.

On 9 April, Ms Milne gave Mr Jones a verbal direction to feed the horses. Ms Milne contacted Mr O'Reilly again and stated her concerns about the horses. One of the concerns she had, was Mr Jones' proposal to have the horses destroyed. Mr O'Reilly contacted Mr Askevold, a senior trainer in Albany and employer of the appellants. Mr Askevold advised Mr O'Reilly that a plan to dispose of the appellants' horses had been put in place and would be carried out as soon as possible.

On 20 and 21 April 2009, seven horses were euthanised at the property. The next day, Ms Milne issued Ms Collins with a formal written direction to provide proper and sufficient food to all horses remaining in the care of her and Mr Jones.

On 6 May 2009, Mr O'Reilly attended at the appellants' premises. Mr O'Reilly inspected the property and conducted video interviews with the appellants.

On 7 May 2009, at the Stewards inquiry in Albany, the appellants were charged with failing to exercise reasonable care, control or supervision of horses to prevent the commission of an act of cruelty upon the animals. Each of the appellants pleaded guilty, and each was disqualified for five years.

The grounds of appeal were as follows:

- The Stewards erred in imposing a penalty on each of the appellants that was manifestly excessive in all the circumstances of the case. The penalties failed to adequately reflect the mitigating factors.
- The Stewards erred in finding as an aggravating factor in the case the proposition that the appellants did not surrender their animals to the RSPCA.

The appeal was heard on 1 December 2009.

The Chairman asked the appellants why they did not allow the RSPCA to take the horses, after Ms Milne had put that as an option on 9 April. Ms Collins conceded that it would have been the "responsible thing to do" and would have absolved "at least some of the hardships" that they were facing at the time. Ms Collins also outlined an experience she had had in the past when she had given up a horse, only to be contacted later to be told that the horse was in poor condition. She said that she did not want that to happen again. Mr Jones also said to Ms Milne that he would not surrender the horses to the RSPCA because there were "too many useless horses around".

The Tribunal found both appellants had proper concerns about the usefulness of surrendering the horses to the RSPCA. Neither appellant was charged by the RSPCA with any offence, even though that organisation had been involved for approximately a month before the horses were euthanised.

The Tribunal considered whether the penalty was excessive. Counsel for the appellants and Counsel for the Stewards did not refer to any range, because there was none. There was no identifiable tariff for an offence of this nature.

The offence was serious, with the potential to cause great damage to the public perception of the racing industry. The appellants failed in their duty to properly care for the horses. Even after the appellants had been put on notice by Inspector Milne, they failed to act.



On the other hand, the Tribunal noted that the appellants did not act maliciously towards the horses, or act out of self interest. They had been taking steps to dispose of the horses well before complaints were made. Therefore, the Tribunal considered the penalty of five years was manifestly excessive.

After hearing from all parties, the Tribunal issued its determination on 1 December 2009. The appeals against the penalties were upheld. The penalty of five years disqualification imposed by the Stewards for each appellant was substituted by a penalty of disqualification for a period beginning on 7 May 2009 and ending on the date of delivery of the Tribunal's decision for each appellant.

### **APPEAL NO. 710 – GEOFFREY DONALD HARPER**

*In the matter of an appeal against the determination made by the RWWA Stewards of Thoroughbred Racing on 13 July 2009 imposing a five year disqualification for breach of Australian Rule of Racing 178.*

On 13 February 2009, the RWWA Stewards of Thoroughbred Racing opened an inquiry following receipt of a report from the Racing Chemistry Laboratory that the blood sample taken from FLYTHAIGA, prior to it competing at Ascot on 31 January 2009, had a level of total carbon dioxide (TCO<sub>2</sub>) in excess of 36 millimoles per litre in plasma. Mr Geoffrey Harper was called to the inquiry as the trainer of FLYTHAIGA. Medical evidence was presented on behalf of Mr Harper, which led the Stewards to adjourn the inquiry indefinitely.

In view of the seriousness of the inquiry and Mr Harper's state of health, the Stewards suspended both Mr Harper's thoroughbred and standard breeder's licences. The Stewards directed that the suspension pertained to nominating and racing horses in races or trials. The Stewards took this action pursuant to Thoroughbred Local Rule 10 and Harness Racing Local Rule 298(3).

The inquiry resumed on 13 July 2009. Evidence from a wide range of sources was produced. Some of the key aspects of the evidence included:

- the TCO<sub>2</sub> content in the sample taken from FLYTHAIGA was 39 millimoles per litre;
- anything in excess of 36 millimoles is an indication of administration of excessive amounts of alkalising agents, which is the only way to reach that level;
- Mr Harper stomach-tubed his horses two days before races and after each race with feed containing 250gms per kilogram of sodium bicarbonate;
- FLYTHAIGA was drenched with one of the two different drenching mixtures which was concocted prior to Mr Harper attending at the crush on the morning of the race; and

- when Mr Harper learned FLYTHAIGA was drenched, he became very angry. Despite that he “inadvertently omitted scratching her from the race”.

The Stewards charged Mr Harper with a breach of Australian Rule of Racing 178, for administering a prohibited substance to a horse. After Mr Harper pleaded guilty to the charge, the Stewards imposed a penalty of five years disqualification.

Mr Harper lodged an appeal against the penalty on the following grounds:

- severity of sentence; and
- loss of income.

The appeal was heard on 5 October 2009.

Counsel for Mr Harper argued that the period of disqualification was excessive, given the guilty plea and other mitigating circumstances, including Mr Harper’s personal circumstances. Counsel also argued that the penalty was harsh in comparison to other penalties imposed for the same offence.

With respect to the loss of income, counsel argued that Mr Harper had already been punished for five months, having been under suspension during the inquiry which was on top of the five year disqualification following the inquiry. Mr Harper was being punished for what he did in the past rather than what he did on this occasion. Counsel argued the Stewards were not entitled to take into account those past offences and incorporate them into the present punishment.

Counsel for RWWA submitted that Rule 178 vests wide power in the Stewards to penalise for a breach in a presenting case. The Rule says “may be penalised” without specifying what penalty may be imposed. This leaves the Rule at large to be determined at the discretion of the Stewards who are charged with the duty of protecting the wellbeing of the industry. Furthermore, the Stewards were entitled to find Mr Harper’s explanations were unacceptable. Mr Harper had been asked on four separate occasions to explain what happened. The Stewards were entitled to reject the explanations.

The Tribunal noted that the transcript of the proceedings clearly revealed the Stewards thoroughly inquired into this matter and afforded Mr Harper every reasonable opportunity to be heard. An examination of the reasons given for the penalty showed the Stewards took into account all of the relevant facts and circumstances that emerged from the scenario before them.

After hearing from all parties, the Tribunal issued its determination on 21 December 2009, dismissing the appeal.

**APPEAL NO. 712 – DUNCAN MILLER**

*In the matter of an appeal against the determinations made by the RWWA Stewards of Thoroughbred Racing on 26 October 2009 imposing disqualifications of 12 months for a breach of Rule 175(a) and six months for a breach of Rule 137A(1)(b) of the Rules of Thoroughbred Racing.*

Mr Miller was an apprentice jockey. In June 2009, Mr Miller claimed to have found a whip in the jockey's room of the Kalgoorlie Race Course. Mr Miller took possession of the whip and used it for a total of 103 starts.

Following the running of Race 4 at Belmont Park on 3 October 2009, the Stewards conducted an impromptu inspection of the riders' whips. The Stewards inspected the whip that Mr Miller was using that belonged to Jarred Noske. The Stewards also inspected a whip found beside Mr Miller, which was the whip subject to the charges.

Mr Miller asserted that he had used the whip for two races that day but then felt that it had become too flexible and that he had commenced using a whip he borrowed from Mr Noske.

Upon a close inspection of Mr Miller's whip, the whip appeared to have been modified. It was subsequently found to contain two pieces of lead. Mr Miller denied any knowledge of the modifications to the whip.

Mr Miller appeared before a Stewards' inquiry which commenced on 3 October and was charged with two offences. Count one alleged that he was guilty of an improper practice, having carried and used the modified whip in races and trials in the period between 1 August 2009 and 3 October 2009, contrary to rule 175(a) of the Rules of Racing. The second count alleged that he carried the whip in races and trials during the same period contrary to rule 137A of the Rules of Racing. The Stewards found Mr Miller guilty on both counts. Mr Miller pleaded not guilty.

At the inquiry before the Stewards, Mr Miller's counsel advanced a number of submissions and also made some admissions. The fact that the whip was carried and used extensively in both races and trials for some time was not disputed, nor was it disputed that the whip was modified and was contrary to the regulations.

Mr Miller claimed he was innocent because he did not know that the weighted objects had been inserted into the whip. Counsel for RWWA argued why Mr Miller's evidence as to his state of mind should be accepted. A character reference was produced. The Stewards were then reminded that Mr Miller's legal representative at an earlier hearing had raised the issue that the charges were duplicitous, being the same conduct in respect of two charges.

The allegation of lack of knowledge was in essence the issue between the parties at the hearing. It was accepted by the parties that the conduct would be improper if the appellant had known of the presence of the foreign objects in the whip. The Stewards

did not believe the appellant's explanation and reached their decisions to convict in each case based on a range of circumstantial factors.

After reading the reasons for convicting, the Stewards allowed Mr Miller's counsel to make submissions and to call Mr Parnham to give character evidence. After counsel submitted the Stewards should treat the matter as "reckless misconduct" as opposed to deliberate conduct designed to achieve some advantage, the Stewards reached their verdict on the penalties.

On 26 October 2009, Mr Miller was disqualified for 12 months in relation to the first charge and six months in relation to the second charge. The penalties were backdated to 4 October 2009 and ordered to be served concurrently.

Mr Miller lodged an appeal against the decisions. There were 12 grounds of appeal:

- the first six grounds contested the convictions; and
- "the penalty imposed was manifestly excessive in all the circumstances of the case penalties."

The appeal was heard on 12 February 2010. In reaching their decision, the Tribunal took the following factors into consideration:

- The transcript of proceedings of the Stewards inquiry clearly revealed that the Stewards found that the appellant knew the whip was unsatisfactory due to the presence of the weighted objects, or at least because he knew that the whip had been modified.
- The case against the appellant was virtually entirely reliant on the circumstantial evidence. The Stewards were able to identify the large body of factual material which they relied on to reach their findings. The Stewards made clear the basis on which they drew their conclusions.
- The evidence led the Stewards to the conclusion that the appellant knew he was using a modified whip which did not meet the standards of approval.
- The Stewards acknowledged and considered the fact of the appellant's youth and implications for his career progression as a consequence of the imposition of the period of disqualification. The decision was unbalanced in relation to the general deterrence and damage to the image of racing.
- The offence was serious in nature due to the prolonged use of the whip at a time when so much attention was being placed on the role of whips in racing.

After hearing from all parties, the Tribunal issued its determination on 7 May 2010:

- By a unanimous decision of the Tribunal, the appeal against conviction in relation to the improper conduct offence was dismissed.

- By a decision of the majority of the Tribunal, the Chairperson dissenting, the appeal against conviction in relation to the modified whip offence was allowed and that conviction was set aside.
- By a decision of the majority of the Tribunal, the Chairperson dissenting, the appeal against penalty in relation to the improper conduct offence was allowed. The penalty imposed by the Stewards was varied from 12 months suspension to nine months suspension.

#### **APPEAL NO. 714 – ROBERT HARVEY JR.**

*In the matter of an appeal against the determination made by the RWWA Stewards of Thoroughbred Racing on 20 November 2009 imposing a nine month disqualification for breach of Australian Racing Rule 175(h)(ii).*

Mr Robert Harvey Jr. was the licensed trainer of MOONEMIA. On 13 November 2009, the RWWA Stewards of Thoroughbred Racing inquired into a report received from the ChemCentre that a urine sample taken from MOONEMIA after winning Race 3 at Belmont on 2 September 2009 contained the substance aminocaproic acid. The Australian Racing Forensic Laboratory analysed the control sample and also found the presence of the substance.

The Stewards conducted an inquiry into the matter. Mr Harvey's lawyer was given permission by the Stewards to be present during the inquiry. Dr Peter Symons, the RWWA Industry Veterinarian, gave evidence that aminocaproic acid is a prohibited substance under the Rules of Racing. He described it as:

*".. an antifibrilic agent and it's got an action on the cardio vascular system where it stabilises clots and helps to minimise their breakdown. So the aim of the medication is to reduce further bleeding".*

The appellant's veterinarian, Dr Vines, was present at the inquiry. Dr Vines questioned whether the substance actually affected the cardiovascular system and denied the substance fell into the category of a prohibited substance.

Dr Vines told the Stewards she imported the product Amicar and that it was a fully registered product for human use. Evidence was given that there were concerns MOONEMIA was potentially bleeding because it did not finish its races off. As a consequence Mr Harvey sought advice from Dr Vines. It was Mr Harvey who actually suggested the use of Amicar based on what he had heard about it from other trainers.

Discussion ensued regarding testing for the problem and notification to inform the industry of changes. Mr Harvey then arranged to purchase the substance. There was a direction on the bottle which was procured which stated "six hours before fast work". Before the horse raced on 2 September, Mr Harvey administered 10ml of the substance around 8am. MOONEMIA was due to race around 2.40pm that day.

Six weeks after the race Dr Medd, a RWWA investigator and a Steward arrived at Mr Harvey's stables to question him. Mr Harvey claimed he honestly but mistakenly believed the substance was legal to administer but did not know it should not have been administered within 24 hours of the race.

Mr Harvey admitted the substance was present in the sample which he accepted had been taken from the horse after the race. Mr Harvey admitted he was aware the medication should not have been administered to a horse 24 hours before a race.

The Stewards charged Mr Harvey with a breach of Australian Racing Rule 175(h)(ii). After the charge was laid Mr Harvey acknowledged to the Stewards that he understood the charge. Mr Harvey was then afforded an adjournment to talk with his solicitor. Once the inquiry resumed, Mr Harvey entered a plea of guilty.

The Stewards then examined Mr Harvey's personal circumstances including his financial situation. Mr Harvey had been training for approximately 26 years. He had three convictions over that period. In addition, Mr Harvey had been convicted of administering vitamins on race day.

The Stewards adjourned. One week later they reconvened to deliver their penalty decision, imposing a period of disqualification of nine months.

Mr Harvey lodged an appeal against the penalty on the ground that it was "manifestly excessive in all of the circumstances of the case". The appeal notice was supported by a detailed statement of evidence by Mr Harvey. At the same time Mr Harvey applied for a stay of proceedings, which was refused.

The appeal was heard on 25 February 2010.

At the appeal hearing, counsel for Mr Harvey acknowledged the penalty was not excessive on its face. It was argued relevant considerations were not taken into account and the terms of the inquiry consequently were not clear. It was claimed it was confusing as to whether the inquiry was directed to the breach of the race day rule or the issue of knowingly administering a prohibited substance. This ambiguity led the Stewards into error in determining the penalty in the circumstances where only the breach of the 24 hour rule was admitted.

Counsel for RWWA argued that the penalty was within the range. The Tribunal agreed with counsel's comments, noting the penalty was not challenged and needed to be considered in the light of the fact Mr Harvey was a repeat offender.

The Tribunal was satisfied that the nine month disqualification was appropriate. The Tribunal could see no reason to interfere with the Stewards' findings. Furthermore, the Tribunal found the terms of the Stewards' inquiry were quite clear. There was no confusion as to the actual charge involved or other ambiguity.

After hearing from all parties, the Tribunal issued its determination on 2 June 2010, dismissing the appeal.

### **APPEAL NOS. 717 AND 720 – SHANE LOONE**

*In the matter of appeals against the determinations made by the RWWA Stewards of Harness Racing on 25 February 2010 imposing a three month disqualification for breach of Rule 187(2) of the Rules of Harness Racing (Appeal No 717) and disqualifying the horse FLYING VILLAGE LORD from the race at Bunbury on 6 October 2009 pursuant to Rule 195 (Appeal No 720).*

FLYING VILLAGE LORD was swabbed after winning at Bunbury on 6 October 2009. Two approved racing laboratories found the presence of aminocaproic acid in the horse's urine sample. This led to a Stewards' inquiry which commenced on 10 February 2010, and was completed 25 February 2010. Mr P O'Reilly, the principal investigator for RWWA gave evidence at the inquiry and produced a report of his investigations into the matter.

On 2 November 2009, Mr O'Reilly, accompanied by Harness Steward Mr B Sumner and RWWA veterinarian Dr P Symons, attended the stables of Mr James Currie. Mr Currie was served an irregularity notice, which outlined the detection of the substance by analysis of the sample. Mr Currie was video interviewed, as was Mr Loone. Mr Loone was working for Mr Currie as a stable hand at the time. Mr Loone admitted he prepared FLYING VILLAGE LORD prior to its 6 October Bunbury race.

Three days later, Mr Currie telephoned Mr O'Reilly and confessed that he had not been honest during this initial visit to the stables. Consequently, he was requested to attend Mr O'Reilly's office to set the record straight. This occurred on 25 November 2009. Mr O'Reilly was advised that Mr Loone had asked Mr Currie to obtain Amicar the day before FLYING VILLAGE LORD raced at Bunbury. Mr Currie had gone to Dr K Rose's veterinary practice in Ascot and purchased a bottle of Amicar from an attendant at the business which he brought back to the stables. Mr Currie was present when Mr Loone injected FLYING VILLAGE LORD with the Amicar. This treatment occurred "after tea the night before the horse raced in Bunbury".

The Stewards received evidence regarding the taking and testing of FLYING VILLAGE LORD'S urine sample. There was no dispute by Mr Loone in regard to any aspect of the sampling and testing processes both at the Stewards' inquiry and subsequently during the course of the appeal.

Dr Medd, the RWWA veterinarian, provided detailed information as to what aminocaproic acid was, how it worked, and why it should be defined as a prohibited substance. Dr Medd also gave evidence that aminocaproic acid had never been registered as a product for use on horses in Australia. Aminocaproic acid is the drug name and Amicar was the common name of the human medication in Australia.

During the course of the inquiry, Mr Loone told the Stewards that he had administered Amicar to the horse, which he claimed definitely occurred the night before the race. Mr Loone expressed his remorse for his actions.

The Stewards laid charges against Mr Currie, as the trainer of FLYING VILLAGE LORD, and Dr Rose. Mr Loone was also charged in relation to his role in the affair. In Mr Loone's case, it was with a breach of Rule 187(2). Mr Loone pleaded guilty to the charge.

The Stewards, acting under the provisions of Harness Racing Rule 195, also disqualified FLYING VILLAGE LORD and amended the placings. Mrs Currie was the other part owner of FLYING VILLAGE LORD with Mr Loone. Mrs Currie did not participate in the appeal, but acknowledged in writing she would be bound by the Tribunal's ruling.

At the time of lodging his appeals, Mr Loone also sought a suspension of operation of his penalty. The grounds for this application were:

- severity of penalty;
- this was his first offence;
- mitigating circumstances causing guilt; and
- loss of earnings and opportunities due to a disqualification instead of a fine.

After receiving written submissions from both parties, the Chairperson granted the stay application. However, at the direction's hearing on 18 March 2010 the Chairperson ordered the immediate cessation of the suspension of operation of the penalty.

The Chairperson heard the two appeals together on 19 April, 5 May and 13 May 2010

With respect to Appeal 717, the Tribunal was satisfied that the Stewards were entitled to make the findings they did on the evidence which was presented before them. The Tribunal saw Mr Loone's actions as a serious case of misconduct by a licensed person who knowingly gave false evidence to various persons all of whom were authorised under the Rules to investigate a detected substance in a winning horse. The Tribunal was satisfied that the period of three months disqualification was not shown to be unreasonable, plainly unjust or otherwise excessive.

With respect to Appeal 720, the original ground of appeal against the horse's disqualification was that aminocaproic acid was not a prohibited substance under the Rules of Harness Racing.

Mr Loone's counsel argued that there was no power under the rules to investigate this matter at all, unless it involved a prohibited substance. The Tribunal found that the RWWA investigator, RWWA harness racing Steward and RWWA veterinarian were



validly exercising their powers when they came onto Mr Currie's stables on 2 November 2009 to serve the irregular notice and carry out the video interview.

The appellant's case relied on medical evidence which was given at the appeal hearing. This evidence meant Mr Loone presented a substantially different and far more sophisticated case on appeal to that which he advanced in person to the Stewards during the course of their inquiry. This new evidence comprised Dr Leon Rozen's report dated 6 February 2010 as supplemented by Dr Rozen's oral evidence. Dr Rozen gave his evidence by telephone link up from Melbourne.

Dr Rozen's evidence was disputed by a panel of expert witnesses on behalf of the Stewards. Their main argument was that aminocaproic acid was capable of acting on the cardiovascular system on a mammal. Supporting evidence was also submitted.

The Tribunal acknowledged that the overwhelming body of scientific evidence supported the position of the Stewards. Based on all the evidence before it, the Tribunal concluded that aminocaproic acid was a prohibited substance under the relevant Rule.

After hearing from all parties, the Tribunal issued its determination on 18 May 2010, ruling:

- The appeal against Mr Loone's conviction was dismissed.
- The appeal against Mr Loone's penalty was dismissed.
- The appeal against the disqualification of FLYING VILLAGE LORD was dismissed.

This was a significant appeal because it was considered to be a landmark judgement for all racing jurisdictions, as it provided reasons on the detailed evidence presented by both sides as to why aminocaproic acid was a prohibited substance.

### **APPEAL NO. 721 – ALLEN CHRISTOPHER LEWIS**

*In the matter of an appeal against the determination made by the RWWA Stewards of Harness Racing on 10 March 2010 imposing a suspension of six weeks for breach of Rule 149(2) of the Rules of Harness Racing.*

Mr Allen Lewis was called to an inquiry by the RWWA Stewards of Harness Racing following his drive of OUR MERCURIO NZ in Race Six at Gloucester Park on 15 January 2010. The Chairman of the inquiry stated the purpose of the inquiry was to investigate:

*“... the reason for IMA ROCKET STAR being able to gain a position in the one wide line racing towards the back straight on the first occasion and that was in advance ... there was a position for him to ease into the one wide line in advance of you .. didn't appear to be contested by you at all.”*

Both OUR MERCURIO NZ and IMA ROCKET STAR were trained by Mr G Bond, as were two other horses in the race. The driver of IMA ROCKET STAR briefly gave evidence. The films of the race were then viewed.

The Stewards then adjourned to review the evidence and continue with their inquiries. They resumed the hearing on 4 February 2010. At the resumption the panel continued to take evidence and invited Mr Lewis to make further comment. After giving a detailed explanation of his discussions with the trainer and what transpired during the course of the race, further videos were shown.

After retiring to consider the position, the Stewards laid a charge pursuant to Rule 149(2) of the Rules of Harness Racing. Mr Lewis pleaded not guilty and then sought an adjournment to review the evidence and to organise witnesses and his evidence to defend the charge. The matter was adjourned until 18 February 2010.

At the resumption of the hearing on 18 February 2010, Mr Lewis called Mr Bond as a witness. Mr Bind was asked a range of questions, including his opinion regarding the race and whether or not any inducements were offered if one of his other horses won the race. The inducement question was categorically denied. This was followed by the Chairman denying there was any suggestion of any collusion prior to the race or in relation to the running of the race.

Mr Lewis then sought clarification as to the location of each Steward as they viewed the race. Further detailed discussion ensued regarding OUR MERCURIO NZ's position in relation to IMA ROCKET STAR after Mr Lewis' copy of the video of the race was run.

At the resumption of the hearing on 4 March 2010, Mr Fred Kersley was called by Mr Lewis to give evidence as an expert witness based on his having viewed the video replay of the race.

Shortly after that evidence, Mr Lewis raised an allegation made by Shane Loone of an incident that occurred after the running of Race 6 of the City of Perth Pace on 12 February 2010. Mr Loone alleged that Mr Carl Coady, one of the Stewards at Mr Lewis' inquiry, had stated that an adverse decision had been made in Mr Lewis' case.

Mr Loone was called to the inquiry. In addition to giving evidence, Mr Loone's affidavit was read into the transcript. The affidavit contained the same allegation regarding the reply allegedly made to Mr Loone.

Mr Coady was asked to provide an explanation. After denying there was any mention of Mr Lewis in the conversation with Mr Loone, Mr Coady volunteered to stand down from the inquiry. The other Stewards agreed.

At the resumption of the inquiry on 10 March 2010, the Chairman of Stewards confirmed Mr Coady had ceased sitting on the panel and would take no further part in any deliberations.

The Chairman also stated that no decision in relation to Mr Lewis had to that stage been made nor could it be made until the completion of the evidence. The Chairman went on to state that Mr Coady's evidence would remain in the transcript and would be given such consideration, in the normal course of proceedings, as the Stewards determined, along with all the other evidence that had been tendered in the inquiry.

Mr Coady was called to the inquiry and asked whether he had read the transcript of the evidence which he had previously presented. He stated he stood by the evidence which he had presented and was then excused.

Mr Lewis presented further evidence regarding the incident and commented on Mr Kersley's evidence. Once the Stewards had considered the matter, they imposed a suspension of Mr Lewis' driver's licence for a period of six weeks.

Mr Lewis lodged an appeal with the Tribunal, contesting the convictions and the evidence by which the Stewards reached their decision, and "the penalty imposed was manifestly excessive in all the circumstances of the case penalties".

The appeal was heard on 25 March 2010.

The Tribunal was satisfied the Stewards were entitled to treat Mr Coady's contribution to the inquiry as admissible evidence, noting that the evidence was able to be taken into account and given such weight as the Stewards considered appropriate. Furthermore, the Tribunal noted that the finding of guilt was open to the Stewards based on their combined evidence. They were entitled to reach the conclusion that the drive was unacceptable.

On 25 March 2010, the Tribunal dismissed the appeal as to conviction and ordered the Stewards to supply details regarding the penalties imposed under Rule 149(2) of the Rules of Harness Racing.

After it received those details as well as submissions on them on behalf of Mr Lewis, the Tribunal issued its determination on 31 March 2010, upholding the appeal against penalty. The suspension of Mr Lewis' driver's licence for a period of six weeks was replaced by a suspension of three weeks.

## **SIGNIFICANT ISSUES AND TRENDS IMPACTING THE TRIBUNAL**

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The issues coming before the Tribunal for determination have become increasingly complex. Consequently many appellants retain the services of legal counsel.

As a result, Tribunal members are often required to review the detailed material submitted, requiring them to spend a considerable amount of time in preparation for hearing matters.

This has often meant the Tribunal is required to provide much more detailed reasons for its determinations. This means the members devote substantially more time than was envisaged at the time the Tribunal was established some two decades ago.

Furthermore, the Tribunal is finding it increasingly difficult, and in most cases impossible, to determine stay applications on the same day they are received. The process is being hindered by parties failing to provide submissions and other material in sufficient time to be dealt with that day by the Tribunal.

### **CHANGES TO ACTS**

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

### **CHANGES TO REGULATIONS**

The *Racing Penalties (Appeals) Amendment Regulations 2009* provided new fees and charges under the *Racing Penalties (Appeals) Act 1990*. The new fees and charges came into effect on 1 January 2010:

### **LIKELY DEVELOPMENTS AND FORECAST RESULTS OF OPERATIONS**

It is expected that the workload of the Racing Penalties Appeal Tribunal for 2010/2011 will remain steady. Indications are that the Tribunal is adequately resourced to efficiently carry out its functions.

### **NEW RACING PENALTIES APPEAL TRIBUNAL WEBSITE**

The Tribunal launched its website on 4 August 2010. The Tribunal intends to publish all determinations handed down since 1 January 2010 on the website. The website address is [www.rpat.wa.gov.au](http://www.rpat.wa.gov.au).

## DISCLOSURES AND LEGAL COMPLIANCE

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### Financial Statements

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

### CERTIFICATION OF FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2010

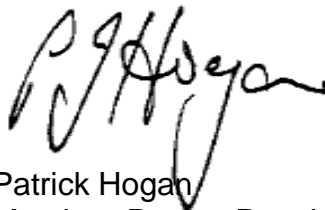
The accompanying financial statements of the Racing Penalties Appeal Tribunal of Western Australia have been prepared in compliance with the provisions of the *Financial Management Act 2006* from proper accounts and records to present fairly the financial transactions for the financial year ending 30 June 2010 and the financial position as at 30 June 2010.

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.



Terry Ng  
Chief Finance Officer

17 September 2010



Patrick Hogan  
Member, Racing Penalties  
Appeal Tribunal of Western  
Australia

17 September 2010



Dan Mossenson  
Chairperson, Racing  
Penalties Appeal  
Tribunal of Western  
Australia

17 September 2010

# Racing Penalties Appeal Tribunal

## Statement of Comprehensive Income

for the year ended 30 June 2010

	Note	2010 \$	2009 \$
<b>COST OF SERVICES</b>			
<b>Expenses</b>			
Tribunal members' expenses	13	60,818	67,226
Superannuation	13	5,474	6,050
Supplies and services		<u>158,057</u>	<u>177,965</u>
<b>Total cost of services</b>		<u><b>224,349</b></u>	<u><b>251,241</b></u>
<b>Income</b>			
<i>Revenue</i>			
Operating income	4	261,543	225,515
Interest revenue	5	<u>8,847</u>	<u>9,818</u>
<b>Total Revenue</b>		<u><b>270,390</b></u>	<u><b>235,333</b></u>
<b>NET COST OF SERVICES</b>	10	<u><b>(46,041)</b></u>	<u><b>15,908</b></u>
<b>SURPLUS/(DEFICIT) FOR THE PERIOD</b>		<u><u><b>46,041</b></u></u>	<u><u><b>(15,908)</b></u></u>
<b>OTHER COMPREHENSIVE INCOME</b>			
Gains/(losses) recognised directly in equity		<u>0</u>	<u>0</u>
<b>Total other comprehensive income</b>		<u><b>0</b></u>	<u><b>0</b></u>
<b>TOTAL COMPREHENSIVE INCOME FOR THE PERIOD</b>		<u><u><b>46,041</b></u></u>	<u><u><b>(15,908)</b></u></u>

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

# Racing Penalties Appeal Tribunal

## Statement of Financial Position

### as at 30 June 2010

	Note	2010 \$	2009 \$
<b>ASSETS</b>			
<b>Current Assets</b>			
Cash and cash equivalents	6	151,874	95,446
Receivables	7	<u>2,192</u>	<u>1,010</u>
<b>Total Current Assets</b>		<b><u>154,066</u></b>	<b><u>96,456</u></b>
<b>TOTAL ASSETS</b>		<b><u>154,066</u></b>	<b><u>96,456</u></b>
<b>LIABILITIES</b>			
<b>Current Liabilities</b>			
Payables	8	<u>12,469</u>	<u>900</u>
<b>Total Current Liabilities</b>		<b><u>12,469</u></b>	<b><u>900</u></b>
<b>TOTAL LIABILITIES</b>		<b><u>12,469</u></b>	<b><u>900</u></b>
<b>NET ASSETS</b>		<b><u>141,597</u></b>	<b><u>95,556</u></b>
<b>EQUITY</b>			
Accumulated surplus/(deficit)	9	<u>141,597</u>	<u>95,556</u>
<b>TOTAL EQUITY</b>		<b><u>141,597</u></b>	<b><u>95,556</u></b>

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 2010

	Note	Contributed equity \$	Reserves \$	Accumulated surplus/ (deficit) \$	Total equity \$
<b>Balance at July 2008</b>	9	0	0	111,464	111,464
Changes in accounting policy or correction of prior period errors		0	0	0	0
<b>Restated balance at 1 July 2008</b>		<u>0</u>	<u>0</u>	<u>111,464</u>	<u>111,464</u>
Total comprehensive income for the year		0	0	(15,908)	(15,908)
Transactions with owners in their capacity as owners:					
Other contributions by owners		0	0	0	0
Distributions to owners		0	0	0	0
Total		<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b>Balance at 30 June 2009</b>		<u><b>0</b></u>	<u><b>0</b></u>	<u><b>95,556</b></u>	<u><b>95,556</b></u>
<b>Balance at 1 July 2009</b>		0	0	95,556	95,556
Total comprehensive income for the year		0	0	46,041	46,041
Transactions with owners in their capacity as owners:					
Other contributions by owners		0	0	0	0
Distributions to owners		0	0	0	0
Total		<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b>Balance at 30 June 2010</b>		<u><b>0</b></u>	<u><b>0</b></u>	<u><b>141,597</b></u>	<u><b>141,597</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 2010

	Note	2010 \$	2009 \$
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
<b>Payments</b>			
Tribunal members' expenses		(49,379)	(68,344)
Superannuation		(4,444)	(6,151)
Supplies and services		(158,953)	(177,060)
GST paid on purchases		(747)	(2,908)
GST payments to taxation authority		(25,079)	(20,636)
<b>Receipts</b>			
Receipts from customers		261,543	225,515
Interest received		7,647	11,567
GST receipts on sales		25,716	21,936
GST receipts from taxation authority		124	1,523
<b>Net cash provided by/(used in) operating activities</b>	10	<b>56,428</b>	<b>(14,558)</b>
Net increase/(decrease) in cash and cash equivalents		56,428	(14,558)
Cash and cash equivalents at the beginning of period		95,446	110,004
<b>CASH AND CASH EQUIVALENTS AT THE END OF PERIOD</b>	10	<b>151,874</b>	<b>95,446</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 ending 30 June 2010**

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**Note 1. Australian Accounting Standards**

**General**

The Authority's financial statements for the year ended 30 June 2010 have been prepared in accordance with Australian Accounting Standards. The term 'Australian Accounting Standards' refers to Standards and Interpretations issued by the Australian Accounting Standard Board (AASB).

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

**Early adoption of standards**

The Authority cannot early adopt an Australian Accounting Standard unless specifically permitted by TI 1101 *Application of Australian Accounting Standards and Other Pronouncements*. No Australian Accounting Standards that have been issued or amended but not operative have been early adopted by the Authority for the annual reporting period ended 30 June 2010.

**Note 2. Summary of significant accounting policies**

**(a) General statement**

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

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

Where modification is required and has had a material or significant financial effect upon the reported results, details of that modification and the resulting financial effect are disclosed in the notes to the financial statements.

**(b) Basis of preparation**

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

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

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

**(c) Reporting entity**

The reporting entity comprises the Tribunal only.

**(d) Contributed equity**

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

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

**(e) Income*****Revenue recognition***

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

***Interest***

Revenue is recognised as the interest accrues.

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

The Department of Racing, Gaming and Liquor provides support to the Racing Penalties Appeal Tribunal to enable the Tribunal to carry out its objectives. This support comprises most of the amount recorded in the Statement of Comprehensive Income under 'Supplies and services'. These expenses are in the nature of salaries and administration costs in providing these support services.

Recoups from the Tribunal to the Department of Racing, Gaming and Liquor are made on a monthly basis under a net appropriation agreement.

**(g) Financial instruments**

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

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

Financial instruments have been disaggregated into the following classes:

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

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

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

**(h) Cash and Cash Equivalents**

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

**(i) Receivables**

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

**(j) Payables**

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

**(k) Employee Benefits***Annual and Long Service Leave*

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

*Superannuation*

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

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

The note disclosure required by paragraph 121 of AASB 119 (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 Authority. Accordingly, deriving the information for the Authority is impractical under current arrangements, and thus any benefits thereof would be exceeded by the cost of

**(l) Superannuation expense**

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

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

**(m) Comparative figures**

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

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

The Authority has applied the following Australian Accounting Standards effective for annual reporting periods beginning on or after 1 July 2009 that impacted on the Authority.

- AASB 101** *Presentation of Financial Statements* (September 2007). This Standard has been revised and introduces a number of terminology changes as well as changes to the structure of the Statement of Changes in Equity and the Statement of Comprehensive Income. It is now a requirement that owner changes in equity be presented separately from non-owner changes in equity. There is no financial impact resulting from the application of this revised Standard.
- AASB 2007-10** *Further Amendments to Australian Accounting Standards arising from AASB 101*. This Standard changes the term 'general purpose financial report' to 'general purpose financial statements', where appropriate in Australian Accounting Standards and the Framework to better align with IFRS terminology. There is no financial impact resulting from the application of this Standard.
- AASB 2008-13** *Amendments to Australian Accounting Standards arising from AASB Interpretation 17 – Distributions of Non-cash Assets to Owners [AASB 5 & AASB 110]*. This Standard amends AASB 5 Non-current Assets Held for Sale and Discontinued Operations in respect of the classification, presentation and measurement of non-current assets held for distribution to owners in their capacity as owners. This may impact on the presentation and classification of Crown land held by the Authority where the Crown land is to be sold by the Department of Regional Development and Lands (formerly Department for Planning and Infrastructure). The Authority does not expect any financial impact when the Standard is first applied prospectively.
- AASB 2009-2** *Amendments to Australian Accounting Standards – Improving Disclosures about Financial Instruments AASB 4, AASB 7, AASB 1023 & AASB 1038*. This Standard amends AASB 7 and will require enhanced disclosures about fair value measurements and liquidity risk with respect to financial instruments. There is no financial impact resulting from the application of this Standard.

**Future impact of Australian Accounting Standards not yet operative**

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

**Operative for reporting periods beginning on/after**

AASB 2009-11 *Amendments to Australian Accounting Standards arising from AASB 9 [AASB 1, 3, 4, 5, 7, 101, 102, 108, 112, 118, 121, 127, 128, 131, 132, 136, 139, 1023 & 1038 and Interpretations 10 & 12]* 1 January 2013

The amendment to AASB 7 requires modification to the disclosure of categories of financial assets. The Authority does not expect any financial impact when the Standard is first applied. The disclosure of categories of financial assets in the notes will change.

**Note 4. Operating income**

	2010	2009
	\$	\$
Fees and charges	4,993	6,415
Funding from Racing and Wagering Western Australia	256,550	219,100
	<u>261,543</u>	<u>225,515</u>

**Note 5. Interest revenue**

	2010	2009
	\$	\$
Interest revenue		
Commonwealth Bank of Australia	8,847	9,818
	<u>8,847</u>	<u>9,818</u>

**Note 6. Cash and cash equivalents**

	2010	2009
	\$	\$
Cash and cash equivalents are represented by funds held at the Commonwealth Bank of Australia		
	<u>151,874</u>	<u>95,446</u>

**Note 7. Receivables**

	2010 \$	2009 \$
<u>Current</u>		
Interest receivable	2,127	927
GST receivable	65	83
<b>Total current</b>	<b>2,192</b>	<b>1,010</b>
<b>Total receivables</b>	<b>2,192</b>	<b>1,010</b>
Reconciliation of changes in the allowance for impairment of receivables:		
Balance at start of year	0	0
Doubtful debts expense recognised in the Statement of Comprehensive Income	0	0
Amounts written off during the year	0	0
Amount recovered during the year	0	0
<b>Balance at end of year</b>	<b>0</b>	<b>0</b>

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

**Note 8. Payables**

	2010 \$	2009 \$
<u>Current</u>		
Accrued expenses	12,469	900
<b>Total current</b>	<b>12,469</b>	<b>900</b>

**Note 9. Equity**

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

	2010 \$	2009 \$
<b>Contributed equity</b>		
Balance at start of period	0	0
<u>Contributions by owners</u>		
Transfer of net assets from other agencies	0	0
<b>Total contributions by owners</b>	<b>0</b>	<b>0</b>
<u>Distributions to owners</u>		
Transfer of net assets to other agencies	0	0
<b>Total distributions to owners</b>	<b>0</b>	<b>0</b>
<b>Balance at end of period</b>	<b>0</b>	<b>0</b>

**Accumulated surplus/(deficit)**

	<b>2010</b>	<b>2009</b>
	<b>\$</b>	<b>\$</b>
Balance at start of year	95,556	111,464
Result for the period	46,041	(15,908)
Income and expense recognised directly in equity	0	0
<b>Balance at end of year</b>	<b><u>141,597</u></b>	<b><u>95,556</u></b>

**Note 10. Notes to the Statement of Cash Flows**

	<b>2010</b>	<b>2009</b>
	<b>\$</b>	<b>\$</b>
<b>Reconciliation of cash</b>		
Cash at the end of the financial year as shown in the Statement of Cash Flows is reconciled to the related items in the Statement of Financial Position as follows:		
Cash and cash equivalents	<u>151,874</u>	<u>95,446</u>
	<b><u>151,874</u></b>	<b><u>95,446</u></b>

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

	<b>2010</b>	<b>2009</b>
	<b>\$</b>	<b>\$</b>
Net cost of services	46,041	(15,908)
<u>(Increase)/decrease in assets:</u>		
Receivables	(1,200)	2,841
<u>Increase/(decrease) in liabilities:</u>		
Payables	11,569	(1,410)
Net GST receipts/(payments)	14	(85)
Change in GST in receivables/payables	4	4
<b>Net cash provided by/(used in) operating activities</b>	<b><u>56,428</u></b>	<b><u>(14,558)</u></b>

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

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

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

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

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

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

Credit risk

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

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

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

Liquidity risk

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

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

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

Market risk

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

**(b) Categories of financial instruments**

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

	<b>2010</b>	<b>2009</b>
	<b>\$</b>	<b>\$</b>
<u>Financial Assets</u>		
Cash and cash equivalents	151,874	95,446
Receivables <sup>(a)</sup>	2,127	927
<u>Financial Liabilities</u>		
Financial liabilities measured at amortised cost	12,469	900

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



**Racing Penalties Appeal Tribunal**  
**Notes to the Financial Statements**  
**for the year ending 30 June 2010**

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

Credit risk and interest rate exposures

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

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

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

**Interest rate exposures and ageing analysis of financial assets <sup>(a)</sup>**

	Weighted Average Effective Interest Rate	Carrying Amount	Interest rate exposure			Past due but not impaired					Impaired financial assets
			Fixed interest rate	Variable interest rate	Non- interest bearing	Up to 3 months	3-12 months	1-2 years	2-5 years	More than 5 years	
<u>Financial Assets</u>	%	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
2010											
Cash and cash equivalent	4.17	151,874		151,874							
Receivables <sup>(a)</sup>	4.17	2,127		2,127							
		<b>154,001</b>	<b>0</b>	<b>154,001</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
2009											
Cash and cash equivalent	5.5865	95,446		95,446							
Receivables <sup>(a)</sup>	5.5865	927		927							
		<b>96,373</b>	<b>0</b>	<b>96,373</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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

**Racing Penalties Appeal Tribunal**  
**Notes to the Financial Statements**  
**for the year ending 30 June 2010**

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

Liquidity risk

The following table details the contractual maturity analysis for financial liabilities. The contractual maturity amounts are representative of the undiscounted amounts at the end of the reporting period. The table includes interest and principal cash flows. An adjustment has been made where material.

**Interest rate exposure and maturity analysis of financial liabilities**

	Weighted Average Effective Interest Rate	<u>Interest rate exposure</u>					<u>Maturity date</u>					
		Carrying Amount	Fixed interest rate	Variable interest rate	Non- interest bearing	Adjustment for discounting	Total Nominal Amount	Up to 3 months	3-12 months	1-2 years	2-5 years	More than 5 years
<u>Financial Liabilities</u>	%	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
2010												
Payables		12,469			12,469							
		<b>12,469</b>	<b>0</b>	<b>0</b>	<b>12,469</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
2009												
Payables		900			900							
		<b>900</b>	<b>0</b>	<b>0</b>	<b>900</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

The amounts disclosed are the contractual undiscounted cash flows of each class of financial liabilities.

**Racing Penalties Appeal Tribunal  
Notes to the Financial Statements  
for the year ending 30 June 2010**

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

Interest rate sensitivity analysis

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

	-100 basis points			+100 basis points	
	Carrying amount	Surplus	Equity	Surplus	Equity
<b>2010</b>	\$	\$	\$	\$	\$
<u>Financial Assets</u>					
Cash and cash equivalents	151,874	(1,519)	(1,519)	1,519	1,519
<u>Financial Liabilities</u>					
Total Increase/(Decrease)		<u>(1,519)</u>	<u>(1,519)</u>	<u>1,519</u>	<u>1,519</u>
	-100 basis points			+100 basis points	
	Carrying amount	Surplus	Equity	Surplus	Equity
<b>2009</b>	\$	\$	\$	\$	\$
<u>Financial Assets</u>					
Cash and cash equivalents	95,446	(954)	(954)	954	954
<u>Financial Liabilities</u>					
Total Increase/(Decrease)		<u>(954)</u>	<u>(954)</u>	<u>954</u>	<u>954</u>
<u>Fair values</u>					

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

**Note 12. Explanatory statement**

Significant variations between estimates and actual results for income and expense are shown below. Significant variations are considered to be those greater than 10% or \$20,000.

**(i) Significant variances between actual and prior year actual**

	<b>2010</b>	<b>2009</b>	<b>Variance</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
<i>Supplies and services</i>	158,057	177,965	(19,908)
The decrease of \$19,908 was mainly due to the costs related to the Australasian Racing Appeals Tribunal conference held			
<i>Operating income</i>	261,543	225,515	36,028
The increase of \$36,028 was due to a higher contribution from Racing and Wagering Western Australia.			

**(ii) Significant variances between estimated and actual result for the financial year**

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

	<b>2010</b>	<b>2010</b>	<b>Variation</b>
	<b>Estimate</b>	<b>Actual</b>	<b>\$</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
<i>Tribunal members' expenses</i>	87,540	60,818	(26,722)
The decrease of \$26,722 was mainly due to less appeals being lodged and dealt with in 2009-10.			
<i>Superannuation</i>	7,880	5,474	(2,406)
The reason for the decrease of \$2,406 was explained in the Tribunal members' expenses mentioned above.			
<i>Interest revenue</i>	3,212	8,847	5,635
The increase of \$5,635 was the result of a higher bank balance throughout the year.			

**Note 13. Remuneration of members of the Accountable Authority**

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

	2010 \$	2009 \$
\$		
0 - 10,000	5	6
30,001 - 40,000	0	0
50,001 - 60,000	1	1
The total remuneration of members of the accountable authority	<u>66,292</u>	<u>73,276</u>

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

**Note 14. Remuneration of auditor**

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

	2010 \$	2009 \$
Auditing the accounts, financial statements and performance indicators	<u>6,600</u>	<u>6,350</u>

**Note 15. Commitments**

As at 30 June 2010 the Authority did not have any other material capital or expenditure commitments.

**Note 16. Contingent liabilities and contingent assets**

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

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

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

**Note 18. Related bodies**

Nil.

**Note 19. Affiliated bodies**


Nil.

## **ADDITIONAL KEY PERFORMANCE INDICATOR INFORMATION**

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

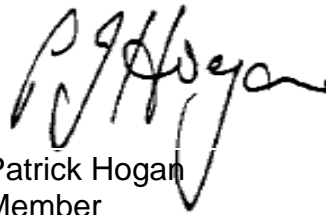
## **CERTIFICATION OF PERFORMANCE INDICATORS FOR THE RACING PENALTIES APPEAL TRIBUNAL FOR THE YEAR ENDED 30 JUNE 2010**

I hereby certify that the performance indicators are based on proper records, are relevant and appropriate for assisting users to assess the performance of the Racing Penalties Appeal Tribunal, and fairly represent the performance of the Racing Penalties Appeal Tribunal for the financial year ended 30 June 2010.



Dan Mossenson  
Chairperson  
Racing Penalties Appeal Tribunal

17 September 2010



Patrick Hogan  
Member  
Racing Penalties Appeal Tribunal

17 September 2010

## DETAILED INFORMATION IN SUPPORT OF KEY PERFORMANCE INDICATORS

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

**Strategy:** To ensure that a timely and effective appeal forum is provided at minimum cost to the racing industry.<sup>4</sup>

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

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

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

	2009/10 Target	2009/10 Actual	2008/09 Actual	2007/08 Actual	2006/07 Actual
Total number of stay applications received	7	8	9	5	3
Number of stay applications determined the same day	3	2	5	1	0
<b>Indicator</b>	<b>43%</b>	<b>25%</b>	<b>56%</b>	<b>20%</b>	<b>0%</b>

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<sup>4</sup> The effectiveness indicator for this activity is derived by dividing the number of stay applications determined the same day by the total number of stay applications received, then multiplying by 100.

## DETAILED INFORMATION IN SUPPORT OF KEY PERFORMANCE INDICATORS

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

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

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

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

A person who is aggrieved by a Racing and Wagering Western Australia 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 Racing Penalties Appeal Tribunal must ensure that appeals and applications are processed in accordance with the *Racing Penalties (Appeals) Act 1990* and the *Racing Penalties (Appeals) Regulations 1991*, whilst providing an effective and efficient service to the racing industry at minimal cost.

The average cost can change for each reporting year as a result of increases or reductions in the number of matters heard before the Tribunal, combined with annual increases to the total cost of providing services to the Tribunal to conduct its operations.

The reason the average cost for processing an appeal in the 2009/10 financial year is greater than previous years is due to the increasing complexity of appeals but a decrease in the number of matters heard before the Tribunal, that is, the fewer matters heard before the Tribunal, the greater the average cost of processing an appeal. The table below shows a steady increase in the average cost of processing an appeal.

	2009/10 Target	2009/10 Actual	2008/09 Actual	2007/08 Actual	2006/07 Actual
Average cost of processing an appeal <sup>5</sup>	\$22,551 <sup>6</sup>	\$18,696 <sup>7</sup>	\$15,702	\$12,257	\$10,045

<sup>5</sup> The average processing cost for each financial year was derived by dividing the cost of total services to the Tribunal by the number of appeals heard.

<sup>6</sup> Based on 2009/10 estimated actual cost of service of \$270,607 divided by a projected 12 appeals heard, based on figures as at 31 March 2010.

<sup>7</sup> Based on 2009/10 actual cost of service of \$224,349 divided by 12 appeals heard.





## Auditor General

### INDEPENDENT AUDIT OPINION

To the Parliament of Western Australia

#### RACING PENALTIES APPEAL TRIBUNAL OF WESTERN AUSTRALIA FINANCIAL STATEMENTS AND KEY PERFORMANCE INDICATORS FOR THE YEAR ENDED 30 JUNE 2010

I have audited the accounts, financial statements, controls and key performance indicators of the Racing Penalties Appeal Tribunal of Western Australia.

The financial statements comprise the Statement of Financial Position as at 30 June 2010, and the Statement of Comprehensive Income, Statement of Changes in Equity and Statement of Cash Flows for the year then ended, a summary of significant accounting policies and other explanatory Notes.

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

#### **Tribunal's Responsibility for the Financial Statements and Key Performance Indicators**

The Tribunal is responsible for keeping proper accounts, and the preparation and fair presentation of the financial statements in accordance with Australian Accounting Standards and the Treasurer's Instructions, and the key performance indicators. This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements and key performance indicators that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; making accounting estimates that are reasonable in the circumstances; and complying with the Financial Management Act 2006 and other relevant written law.

#### **Summary of my Role**

As required by the Auditor General Act 2006, my responsibility is to express an opinion on the financial statements, controls and key performance indicators based on my audit. This was done by testing selected samples of the audit evidence. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion. Further information on my audit approach is provided in my audit practice statement. This document is available on the OAG website under "How We Audit".

An audit does not guarantee that every amount and disclosure in the financial statements and key performance indicators 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 and key performance indicators.

**Racing Penalties Appeal Tribunal of Western Australia  
Financial Statements and Key Performance Indicators for the year ended 30 June 2010**

**Audit Opinion**

In my opinion,

- (i) the financial statements are based on proper accounts and present fairly the financial position of the Racing Penalties Appeal Tribunal of Western Australia at 30 June 2010 and its financial performance and cash flows for the year ended on that date. They are in accordance with Australian Accounting Standards and the Treasurer's Instructions;
- (ii) the controls exercised by the Tribunal 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; and
- (iii) the key performance indicators of the Tribunal are relevant and appropriate to help users assess the Tribunal's performance and fairly represent the indicated performance for the year ended 30 June 2010.



COLIN MURPHY  
AUDITOR GENERAL  
16 September 2010

## **OTHER LEGAL AND GOVERNMENT POLICY REQUIREMENTS**

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### **ADVERTISING AND SPONSORSHIP**

In accordance with section 175ZE of the *Electoral Act 1907*, the Tribunal must report on any expenditure incurred for advertising, market research, polling, direct mail and media advertising. In 2009/10, total expenditure was nil.

### **DISABILITY ACCESS AND INCLUSION PLAN OUTCOMES**

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

### **COMPLIANCE WITH PUBLIC SECTOR STANDARDS AND ETHICAL CODES**

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

### **RECORDKEEPING PLANS**

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

### **SUBSTANTIVE EQUALITY**

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

## OCCUPATIONAL SAFETY, HEALTH AND INJURY MANAGEMENT

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

## SUMMARY OF PUBLICATIONS AVAILABLE TO THE PUBLIC

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The following publications are available to assist the public of Western Australia and the industries regulated by the Racing Penalties Appeal Tribunal.

### TRIBUNAL LIBRARY

To assist persons who may wish to utilise the appeal process the Registrar maintains an up to date index of all determinations made since the Tribunal commenced operations in 1991. 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:

- Conduct
- Prohibited Substances
- Protests
- Leave to Appeal
- Nominal Index

In respect of the greyhound racing code, the index is divided as above except for protests. 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 Department of Racing, Gaming and Liquor's website at [www.rpat.wa.gov.au](http://www.rpat.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.

Also 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.