

**RACING PENALTIES
APPEAL TRIBUNAL of WA**

**Practice Direction – No. 1
August 1993**

**SUSPENSION OF OPERATION OF PENALTIES OR
ORDERS**

The Racing Penalties (Appeals) Act 1990 constituted the Tribunal as an independent body to hear appeals against penalties imposed in disciplinary proceedings arising from or in relation to the conduct of greyhound racing, horse racing and harness racing. As part of the appellate process the Act conferred jurisdiction to suspend the operation of orders and penalties in relation to which a right of appeal exists.

The Tribunal is called upon to consider and to determine the question of granting of suspensions of the operation of the orders appealed against in many of the appeals which have come before it from each of the racing codes.

Section 17(7) of the Act which deals with this subject specifies that:

“Upon, or prior to, the hearing of an appeal the Chairperson or the member appointed to preside at the Tribunal determining that appeal may, by direction signed by the Registrar, direct any appropriate controlling authority, racing club, committee or stewards, to suspend the operation of any order, or any pecuniary or other penalty imposed, or any consequences arising from any determination or finding, in relation to which that person has a right of appeal –

- (a) to the appropriate controlling authority;
- (b) to the Tribunal; or
- (c) to both,

until that right of appeal is exercised or has lapsed and, if exercised, until the appeal is determined, but shall not make any direction if it would prejudice a stay of proceedings implemented by that controlling authority, racing club or committee or by those stewards or where it appears that the primary reason for a request to do so is to allow the appellant to continue to undertake riding or driving engagements or to conduct business pending the appeal for a period in excess of that which may be permitted by the controlling authority.”

This provision gives an unfettered discretion to grant a stay but does not specify the basis upon which the applications are to be dealt with. There are no other provisions in the Act which affect this discretion and no regulations or rules have been promulgated on this aspect of the Tribunal's function.

At times the Chairman has been invited to consider the possibility of granting qualified stays, particularly following disqualifications, by means of a limited right to participate in the sport. It is acknowledged that power to grant limited stays does appear to exist by virtue of the provisions of section 17(7) of the Act.

The determination of the Tribunal's suspension of orders and penalties is not only important to appellants but is of vital interest to the industry generally. With a view to assisting appellants as well as all sections of the industry to understand how stays are dealt with, Mr D Mossenson, the Chairman of the Tribunal, issues this practice direction:

PRACTICE DIRECTION No. 1

A request for the suspension of operation of penalties can only be received if the applicant has lodged notice of appeal against the decision sought to be stayed. The request must be in writing setting out the grounds upon which the appellant relies and preferably should be lodged with the Registrar of the Tribunal simultaneously with the lodging of the notice of appeal.

The granting of applications for suspension are at the complete discretion of the Chairman. Although there are no rules as to the circumstances in which a stay will be granted or refused the following principles will generally apply:-

1. *The appellant must claim to be innocent of the charge. If the appeal is as to the severity of the penalty only and not as to the conviction a stay will be granted only in exceptional circumstances.*
2. *The appellant must be timely in lodging a notice of appeal after the original penalty was imposed and demonstrate that the appeal is being pursued with due diligence.*
3. *A stay is more likely to be granted if there is going to be a time delay before the appeal can be listed for hearing and in circumstances where this occurs through no fault of the appellant, for example, in the event that there is an inability to obtain the transcript of the proceedings appealed against.*
4. *A major consideration is the degree of any hardship which is likely to be suffered by the appellant if a suspension is not granted, whether of a financial nature or otherwise. Personal considerations of sympathy for the appellant will not dictate or influence the decision.*
5. *The potential merits of the appellant's appeal and the prospect of success are relevant factors. An appeal which on its face appears to have no basis to it cannot be used merely for the purpose of obtaining a stay.*
6. *The likelihood of the appellant offending again is a relevant factor.*
7. *The nature of the offence will also be taken into account. More serious offences may require a higher degree of persuasive argument.*

8. *The length of the suspension or disqualification will be considered. It is unlikely that there will be a stay granted if the suspension or disqualification is lengthy. If however the penalty is brief and the majority of it will be served before the appeal hearing, then a stay is more likely to be considered to be appropriate.*
9. *Although it will usually not be a ground for a stay that the appellant simply wishes to drive or ride in coming meetings, there may be exceptions to this rule, if, for example, the appellant has commitments to drive or ride in an event of particular importance and the appellant's inability to drive or ride is likely to cause hardship to others.*
10. *It may be necessary to bear in mind the interests of other parties in circumstances other than those mentioned in the previous clause.*
11. *Generally, a stay pending consideration of an appeal is less likely to be given when the delay until the appeal is heard may have the effect of thwarting the whole purpose of the penalty which has been imposed.*
12. *An attempt to find a balance between the private interests of the appellant and the public interest will be made.*
13. *Injustice in general will be avoided if it is likely to be caused by a decision to grant a stay.*
14. *The power to grant a stay is exercised sparingly. The onus is on the appellant to justify it and the respondent is entitled to be heard on the application.*
15. *As the granting of a stay will depend on all of the circumstances of each particular matter this list is not exhaustive.*

Upon receipt of an application for a stay the Registrar will communicate with the responsible person from the body against whom the decision is appealed inviting written response. Where the urgency of the matter dictates the Registrar will accept an oral response from the source. After the response from the respondent is to hand, it will be presented to the Chairman for his determination together with the application for the stay and the appeal notice.

In appropriate cases, the parties may attend in chambers in order to make oral submissions in support of the written application.

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