

TASMANIA

RACING REGULATION AMENDMENT (TRAB) BILL 2009

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**RACING REGULATION AMENDMENT (TRAB)
BILL 2009**

*(Brought in by the Minister for Police and Emergency
Management, the Honourable James Glennister Cox)*

A BILL FOR

An Act to amend the *Racing Regulation Act 2004*

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Racing Regulation
Amendment (TRAB) Act 2009*.

2. Commencement

This Act commences on 1 January 2010.

3. Principal Act

In this Act, the *Racing Regulation Act 2004** is
referred to as the Principal Act.

*No. 62 of 2004

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4. Part 3: Heading amended

Part 3 of the Principal Act is amended by omitting “**TASMANIAN RACING BOARD**” from the heading to that Part and substituting “**TASRACING**”.

5. Section 23 amended (Tasmanian Racing Appeal Board (TRAB))

Section 23 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “8” and substituting “6”;
- (b) by omitting from subsection (3) “2” and substituting “3”;
- (c) by omitting from subsection (3) “another such member is to be appointed as deputy chairperson” and substituting “the other 2 such members are to be appointed as deputy chairpersons”;
- (d) by omitting from subsection (4) “deputy chairperson” and substituting “deputy chairpersons”;
- (e) by inserting the following subsections after subsection (7):
 - (8) Notwithstanding clause 5(4) of Schedule 3B, on the commencement of the *Racing Regulation Amendment (TRAB)*

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Act 2009, the office of 3 members of the TRAB cease to exist.

- (9) The members referred to in subsection (8) are to be nominated by the Minister on the advice of the chairperson.
- (10) A person is not entitled to any compensation or payment in respect of his or her office ceasing to exist.

6. Section 24 amended (Delegation by chairperson)

Section 24 of the Principal Act is amended by omitting “the deputy chairperson” and substituting “a deputy chairperson”.

7. Section 25 substituted

Section 25 of the Principal Act is repealed and the following section is substituted:

25. Role of deputy chairperson

- (1) A deputy chairperson assists the chairperson in the performance of the chairperson’s functions.
- (2) If the chairperson is absent, a deputy chairperson nominated by the chairperson is to act as chairperson during that absence and, where so acting,

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may perform the functions and exercise the powers of the chairperson as fully and effectively as the chairperson.

- (3) If the office of chairperson is vacant, a deputy chairperson nominated by the Minister is to act as chairperson during the vacancy and, while so acting, may perform the functions and exercise the powers of the chairperson as fully and effectively as the chairperson.

8. Section 27 inserted

After section 26 of the Principal Act, the following section is inserted in Part 5:

27. Consultation with racing industry

The chairperson and deputy chairpersons are to consult with the chairpersons of racing industry associations and racing clubs, the Director and the 3 chairmen of stewards on at least 2 occasions in a year.

9. Section 28 amended (Persons may appeal to TRAB about certain matters)

Section 28 of the Principal Act is amended as follows:

- (a) by omitting subsections (3) and (4) and substituting the following subsections:

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- (3) If a person has a right of appeal under this section against a decision of Tasracing or a registered club, no appeal against that decision lies to Tasracing or that club, as the case may be.
- (4) If a person has a right of appeal under this section against a stewards' decision, no appeal against that decision lies to Tasracing or a registered club.
- (b) by omitting from subsection (5)(b) "club." and substituting "registered club; or";
- (c) by inserting the following paragraph after paragraph (b) in subsection (5):
 - (c) the constitution of Tasracing.

10. Section 30 amended (Hearing of appeals)

Section 30 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(c) "appeal." and substituting "appeal; and";
- (b) by inserting the following paragraphs after paragraph (c) in subsection (1):
 - (d) give the parties to the appeal, as soon as practicable, a copy of the transcript of the proceedings at

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which the decision that is the object of the appeal was made; and

- (e) give the appellant, as soon as practicable, a copy of the race patrol film relating to the matter that is the object of the appeal.
- (c) by inserting the following subsection after subsection (1):
 - (1A) For the purposes of subsection (1), the chairperson is to make every endeavour to ensure that –
 - (a) a minor appeal is heard within 7 days of lodgment of the appeal; and
 - (b) any other appeal is heard within 21 days of the lodgment of the appeal.
- (d) by inserting the following paragraph after paragraph (a) in subsection (6):
 - (ab) is to act according to equity, good conscience and the substantial merits of the case; and
- (e) by inserting the following subsections after subsection (6):

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- (6A) At any appeal proceedings the presiding member is to determine any question relating to –
- (a) the jurisdiction of the TRAB; and
 - (b) the admissibility of evidence; and
 - (c) law or procedure.
- (6B) An appeal is to be heard and determined upon the evidence at the original hearing when the decision or finding appealed against was made, but, if the presiding member considers it to be proper, expert or other evidence may be required or admitted.
- (6C) The TRAB –
- (a) is to make a full and thorough investigation in open court, without regard to the forms, requirements or solemnities that might have been appropriate in legal proceedings; and
 - (b) may inform itself on any matter in such manner as it thinks fit, and admit any evidence considered by the presiding member to

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be relevant notwithstanding that that evidence would not be admissible in a court of law; and

- (c) may take into account any matters relating to, or to the administration of, racing that are within the knowledge or experience of a member of the TRAB or which have arisen in or as a result of other proceedings or appeals before the TRAB.

(6D) Notwithstanding subsection (6C)(a) the TRAB may hear evidence in camera.

- (f) by inserting in subsection (10) “with appropriate expertise or skills” after “person”;
- (g) by inserting the following subsection after subsection (10):

(11) In this section –

“race patrol film” means a visual recording of a horse or greyhound race used by stewards in determining a matter under the Rules of Racing.

11. Section 31 amended (Constitution of TRAB for appeals, &c.)

Section 31 of the Principal Act is amended as follows:

(a) by omitting paragraph (b) from subsection (2) and substituting the following paragraph:

(b) for any other appeal, the chairperson or a deputy chairperson is to be chosen as such a member.

(b) by omitting subsection (4) and substituting the following subsection:

(4) If the chairperson is not present at a hearing of the TRAB, a deputy chairperson is to preside at the hearing.

12. Section 33 substituted

Section 33 of the Principal Act is repealed and the following section is substituted:

33. Suspension of penalties pending appeals

(1) The chairperson, on the request of the appellant, may, unconditionally or on such conditions as he or she thinks fit, suspend the operation of a penalty pending the hearing and determination of an appeal.

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- (2) The chairperson must not suspend the operation of a penalty under subsection (1) if –
 - (a) the appeal is in relation to the penalty only; or
 - (b) the appeal is intended to be heard within 7 days of lodgment, unless the chairperson considers that extenuating circumstances require otherwise; or
 - (c) the chairperson considers that the primary reason for the appellant's request for the suspension of the operation of a penalty is to enable a racing activity to be undertaken in the period before the appeal is heard.
- (3) Notwithstanding subsection (2), if a request for the suspension of the operation of a penalty is received by the chairperson before the commencement of the *Racing Regulation Amendment (TRAB) Act 2009*, the chairperson is to make his or her determination in relation to the request as if that Act had not been enacted.

13. Section 34 amended (Determination of appeals)

Section 34 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsections:

- (1) After hearing an appeal, the TRAB –

- (a) may affirm, vary or quash the decision that was the object of the appeal; or
 - (b) may, if it considers it just to do so, refer the matter to the stewards for rehearing if the TRAB is satisfied that the appellant did not engage in the conduct that prompted the making of the decision but may have engaged in some other conduct that would have justified the respondent making another decision against the appellant.
- (1A) After hearing an appeal, the TRAB must make an order regarding the disposal of the prescribed deposit, if any, lodged on appeal.
- (1B) Subject to subsection (1C), if the decision that was the object of the appeal is affirmed or varied, the decision is to take effect immediately.

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- (1C) If the immediate implementation of the decision referred to in subsection (1B) would have a detrimental effect in relation to the care and wellbeing of a horse or a greyhound, the TRAB may defer the implementation of the decision, or part of the decision, and any restrictions arising out of the decision or part of the decision for such period, not exceeding 5 days, as it thinks fit.
- (b) by omitting from subsection (2) “subsection (1)(b)” and substituting “subsection (1A)”;
- (c) by inserting in subsection (2)(e) “or referred to the stewards for rehearing under subsection (1)(b)” after “quashed”;
- (d) by inserting the following subsections after subsection (4):
 - (4A) If after hearing an appeal the TRAB affirms or varies the decision that was the object of the appeal, the TRAB must make an order requiring the appellant to pay to the Secretary of the Department a percentage of the cost incurred in the preparation of the transcript referred to in section 30(1)(d).

(4B) For the purposes of subsection (4A), the TRAB must order that –

- (a) if the decision that was the object of the appeal is affirmed, an amount of not less than 50 per cent of the cost referred to in that subsection is to be paid to the Secretary of the Department; or
- (b) if an appeal is withdrawn or abandoned, an amount of not less than 50 per cent of the cost referred to in that subsection is to be paid to the Secretary of the Department; or
- (c) if the decision that was the object of the appeal is varied, an amount of not less than 25 per cent of the cost referred to in that subsection is to be paid to the Secretary of the Department.

(4C) If the TRAB orders that an amount of more than 50 per cent of the cost referred to in subsection (4A) is to be paid to the Secretary of the Department, it is to have regard to –

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- (a) whether the appeal appears to the TRAB to have been made in good faith or vexatiously; and
 - (b) whether the grounds of appeal appear to the TRAB to have been serious or frivolous; and
 - (c) whether the appellant appears to the TRAB to have been seeking genuine redress or merely a delay in the implementation of the decision under appeal; and
 - (d) whether, in the reasonable opinion of the TRAB, the appellant pursued the appeal with due diligence or was obstructive; and
 - (e) such other matters as the TRAB thinks reasonable and fair in the circumstances.
- (e) by omitting subsection (5).

14. Section 34A inserted

After section 34 of the Principal Act, the following section is inserted in Part 5:

34A. Appeals lodged before commencement of *Racing Regulation Amendment (TRAB) Act 2009*

- (1) If a member constituting the TRAB, in respect of any hearing that has commenced but has not been finally determined before the commencement of the *Racing Regulation Amendment (TRAB) Act 2009*, ceases to hold office as a member of the TRAB by virtue of section 23(8) (the “**former member**”), the chairperson is to, in order to comply with section 31, choose another member to act in place of the former member.
- (2) If an appeal under section 29 has been instituted but a hearing has not commenced in relation to the appeal before the commencement of the *Racing Regulation Amendment (TRAB) Act 2009*, the hearing is to be conducted as if the appeal had been instituted on or after that commencement.
- (3) If a hearing in relation to an appeal instituted under section 29 has commenced but has not been finally determined before the commencement of the *Racing Regulation Amendment (TRAB) Act 2009*, the hearing is to

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continue to be conducted as if that Act
had not been enacted.

15. Repeal of Act

This Act is repealed on the ninetieth day from
the day on which it commences.