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**Response to the Legislative Council Government Administration Committee  
"A" Short Inquiry Process Report on Workers Compensation Insurance within  
the Racing Industry**

October 2024

## **Inquiry timeline**

The recommendations reported as a consequence of this inquiry were determined from submissions received during the period 5 December 2023 to 14 February 2024. Subsequent to this inquiry period, the 'fit and proper person' definition has been refined and Worksafe Tasmania has commenced workers compensation insurance investigations within the racing industry. Therefore the outcomes of these actions could not have been incorporated into formulation of the Inquiry recommendations.

A further inquiry is not supported for the following reasons.

- (a) The criteria and assessment process for determining a person is a 'fit and proper person' to hold a licence in the racing industry have been established.**

Under section 6(2)(f) of the *Racing Regulation Act 2004*, the Director of Racing is empowered to licence various classes of industry participants under the Australian Harness Rules of Racing (AHRR) and, in accordance with s 6(1)(a), is functioned with regulating and controlling racing to ensure that it is conducted with integrity. However, there is no express legislative requirement that a person be fit and proper to be granted a licence or registration nor a legislative definition of 'fit and proper'.

The Greyhound Racing Rules (TGRR 14) expressly provide that the Controlling Body (being the Director of Racing) can consider whether a person is 'fit and proper' to hold a registration of person or greyhound. Under the AHRR, the Director may refuse an application for a licence without assigning any reason (AHRR 90(5)) and may cancel or suspend a licence if satisfied that a licensed person is no longer a 'fit and proper person' (AHRR 90(7)).

In the Thoroughbred Code, known as the Tasmanian Local Rules of Racing, there is no mention of 'fit and proper person'. Under the different categories of licensing in that Code, some considerations and requirements are expressed and others are silent. For instance, a jockey, apprentice, and approved trial rider's licence may be cancelled by the Director (TLRR 16.7) but the Director may refuse to grant a rider's agent licence and may at any time suspend, withdraw or cancel any licence without giving any reason (TLRR 18.5). With respect to trainers, the Director may simply grant a licence (TLRR 15.5).

To provide consistency across all Tasmanian Racing Codes, Tasracing, in conjunction with the Director, has set licence standards and criteria in accordance with s 11(1)(l) of the *Racing Regulation Act 2004*. Those criteria are incorporated into each application for licence information packs published



by the Director. In reliance on its power under s 6(1)(a) of the *Racing Regulation Act 2004*, the Director has published licensing 'Requirements' for each racing code and imposed the 'fit and proper' person test as a requirement for each relevant person seeking registration or licensing for the purpose of ensuring integrity in the racing industry.

A person aggrieved by a decision of the Director to refuse to grant a licence may appeal to the Tasmanian Racing Appeal Board by virtue of s 28A(1)(a) of the *Racing Regulation Act 2004*. This ensures there is supervision and oversight of the decisions made by the Director in this regard.

The Tasmania Racing Appeal Board (TRAB) has accepted that it was appropriate for the Director to establish a set of requirements to be used in the assessment of applications for the various forms of licence in the racing industry in Tasmania, and to publish the Requirements to the industry at large.<sup>1</sup> Further, in reliance on the power to suspend or cancel a licence pursuant to AHRR 90(7)(b), the TRAB has said that the Director is correct to require that a person is fit and proper to be associated with the harness racing industry before granting a licence.<sup>2</sup>

The expression 'fit and proper person' has been judicially considered and defined. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities.<sup>3</sup>

The 'fit and proper person' test is multidimensional including:

- physical and mental health;
- respect for, and compliance with, the rules of society;
- respect for, and compliance with, the AHRR;
- living according to the principles of honesty, ethics and morals generally expected by the community;
- financial sufficiency to meet the requirements of a licensed person;
- actions and history that will not bring the racing industry into disrepute or threaten its ability to maintain social licence.

The licence application packs for all three racing codes contain the following explanation of the 'fit and proper' criteria which expands on the generalised statements above.

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<sup>1</sup> Appeal No 1 of 2024-25, Walters, Robert, Tasmanian Racing Appeal Board, 26 July 2024 at [57].

<sup>2</sup> Appeal No 1 of 2024-25, Walters, Robert, Tasmanian Racing Appeal Board, 26 July 2024 at [19].

<sup>3</sup> *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at [36].

### ***“Fit”***

*To be considered “fit” a person must:*

- Be physically fit to perform the duties of a particular licence category;*
- Have the stated skills and knowledge required for a licence;*
- Be able to display the appropriate level of mental fitness to make correct decisions in relation to behaviour by demonstrating a continuing moral commitment to good behaviour and good character.*

*The Director may require an applicant to provide appropriate evidence of their fitness, skills and knowledge through testing, training and assessment or other means.*

### ***“Proper”***

*The requirements to be considered “proper” relate to the general level of integrity of the person. It is primarily concerned with general behaviour and conduct inclusive of:*

- History;*
- Reputation;*
- Integrity;*
- Honesty;*
- Character;*
- Regard to laws and community values.*

*Propriety will be assessed on the basis of general behaviour and conduct by an applicant, or an executive officer of an applicant, in particular any evidence of:*

- An applicant’s previous racing disciplinary history;*
- Any previous acts of dishonesty by the applicant or an executive officer of the applicant;*
- Improper behaviour towards an official or employee of the Office of Racing Integrity, Tasracing or a club and other licence participants or animals;*
- Any conduct or statement made by the applicant, or an executive officer of the applicant, that would impact on the applicant’s reputation and more broadly on the reputation of other licence holders, the Director, an official or employee of the Office of Racing Integrity, Tasracing, a club or the Tasmanian racing industry as a whole;*
- An ability of the applicant, or an executive officer of the applicant, to consistently operate within the requirements of the Racing legislation, a standard, policies of the Office of Racing Integrity or Tasracing, the Rules of Racing and any other laws and regulations in the State of Tasmania, another State or the Commonwealth, including any gambling and gaming legislation;*
- Unsatisfactory behaviour and/or misconduct by the applicant, or an executive officer of the applicant, including police records, court records and letters of complaint regarding the licence holder;*



- *A failure to adequately demonstrate sufficient and acceptable financial means to fulfil the requirements of the licence;*

Generally, in applying the 'fit and proper' test more than one of the above criteria are considered so as to ensure an applicant is not excluded based on outdated, irregular or limited offence of criteria. Mitigation offered by the applicant regarding an offence is also considered.

Because every application is assessed on its own merit there is no policy that prescribes a minimum standard that triggers failure of the "fit and proper" test.

Under the current Rules of Racing and the *Racing Regulation Act 2004*, obtaining and maintaining a policy of workers compensation insurance is not a pre-requisite to obtaining a licence nor is it a condition upon being issued a licence.

Provisions of the *Workers Rehabilitation and Compensation Act 1988* mandate employers to provide appropriate workers compensation insurance to their employees. As with any other legal requirement a person failing to comply with the *Workers Rehabilitation and Compensation Act 1998* would be dealt with under that specific legislation.

In its consideration of the Walters<sup>1</sup> Appeal the TRAB acknowledged that the 'fit and proper' test is a multidimensional concept and that failure on more than one component would be considered necessary in order to be excluded from being granted a racing licence.

Accordingly, failure to comply with legislation associated with provision of workers compensation insurance may not alone be sufficient for an applicant to fail the 'fit and proper' test.

**(b) Whether a person ought to be required to provide evidence that they meet all legal obligations as an employer, and any other relevant legal obligations, to hold a licence in the racing industry.**

While compliance with the rules of society is a criterion in the 'fit and proper' test this is determined by way of assessing criminal convictions as an indicator of whether an applicant is generally compliant with rules established by legislation.

It is appropriate to only consider convictions as compliance with non-racing legislation rests with agencies responsible for such legislation and the racing industry using the outcomes from such processes as inputs to its licence assessment processes.

**(c) Any actions undertaken by WorkSafe Tasmania, Tasracing and the Office of Racing Integrity specific to the issues raised in this Report.**

In May 2024 WorkSafe Tasmania commenced a workers compensation and work health and safety compliance program across all three Tasmanian racing codes.

This program aimed to audit compliance with the *Workers Rehabilitation and Compensation Act 1998* and the *Work Health and Safety Act 2012*.

As of 12 August 2024, 48 compliance inspections have been completed with no contraventions identified under either of the above legislation.

Fatigue was identified as a significant risk for many workplaces in the racing industry. While no notices have been issued in relation to fatigue management to date, Inspectors are looking closely at what systems employers in the industry have in place to manage fatigue.

The compliance program is ongoing with an anticipated completion date of end October 2024.

As obtaining and maintaining a policy of workers compensation insurance is not a pre-requisite to obtaining a licence nor is it a condition upon being issued a licence under the AHRR and the *Racing Regulation Act 2004* the Office of Racing Integrity has no powers relating to this matter.