

RACING REGULATION AMENDMENT (TRAB) BILL 2009

CLAUSE NOTES

Clause 1	Short Title and citation.
Clause 2	The <i>Racing Regulation Amendment (TRAB) Act 2009</i> is to commence on 1 January 2010.
Clause 3	The Principal Act is the <i>Racing Regulation Act 2004</i> .
Clause 4	This clause amends Part 3 of the Principal Act by replacing the existing heading "TASMANIAN RACING BOARD" with the new heading "TASRACING" to reflect the transition of the former body (a statutory authority) to the latter entity (a State-owned Company) on 1 July 2009.
Clause 5	<p>This clause amends section 23 of the Principal Act by:</p> <p>under paragraph (a), reducing the membership of the Tasmanian Racing Appeal Board (TRAB) from eight members to six;</p> <p>under paragraph (b), increasing by one the number of members of the TRAB that are required to be Australian legal practitioners of at least five years' standing;</p> <p>under paragraph (c), requiring two of the legal practitioners referred to in paragraph (b) to be appointed as deputy chairpersons of the TRAB;</p> <p>under paragraph (d), empowering the Governor to appoint two deputy chairpersons; and</p> <p>under paragraph (e), providing for the cessation of the office of three 'ordinary' members of the TRAB, at the commencement of the <i>Racing Regulation Amendment (TRAB) Act 2009</i>, notwithstanding the limitation imposed by clause 5(4) of Schedule 3B of the Principal Act that a member must not be removed from office otherwise than in accordance with clause 5 'Vacation of office'. It also requires the Minister to nominate, on the advice of the TRAB Chairperson, the three members whose office will cease at the commencement of <i>the Act</i> and makes it clear that no compensation is payable to any person in respect of their office ceasing to exist as a result of this amendment.</p>
Clause 6	This clause enables the chairperson of the TRAB to delegate any of his or her functions or powers under this or any other Act, other than the power of delegation, to either of the two deputy chairpersons.
Clause 7	This clause repeals the existing section 25 of the Principal Act

	and substitutes a new section 25 in its place.
NEW SECTION 25 – ROLE OF DEPUTY CHAIRPERSON	
new section 25	<p>This section sets out the role of a deputy chairperson of the TRAB by:</p> <p>under subsection (1), defining the role of a deputy chairperson;</p> <p>under subsection (2), specifying the powers and functions of a deputy chairperson, nominated by the chairperson, to act as chairperson in the absence of the chairperson; and</p> <p>under subsection (3), specifying the powers and functions of a deputy chairperson, nominated by the Minister, to act as chairperson during a vacancy in the office of chairperson.</p>
Clause 8	This clause inserts a new section 27 in Part 5 of the Principal Act.
NEW SECTION 27 – CONSULTATION WITH RACING INDUSTRY	
new section 27	This section requires the chairperson and deputy chairpersons of the TRAB to consult with specified industry stakeholders on a biannual basis.
Clause 9	<p>This clause amends section 28 of the Principal Act by:</p> <p>under paragraph (a), replacing the existing subsections (3) and (4) to clarify if a person has a right of appeal to the TRAB against a decision of Tasracing, a registered club or against a stewards' decision no appeal lies to either Tasracing or a registered club;</p> <p>under paragraph (b), clarifying that the reference to a club in subsection 28(5)(b) of the Principal Act means a club that is registered under section 40 of that Act; and</p> <p>under paragraph (c), inserting a new subsection 28(5)(c) clarifying that subsections 28(3) and (4) of the Principal Act - as referred to in paragraph (a) above - not only have effect notwithstanding anything to the contrary that may be contained in the Rules of Racing or constitution, rules or articles of the registered club (referred to in paragraph (b) above), but also have effect irrespective of anything to the contrary that may be contained in the constitution of Tasracing. This amendment comes about because of an omission in the original amending legislation.</p>

Clause 10	<p>This clause amends section 30 of the Principal Act by:</p> <p>under paragraph (a), amending subsection (1)(c) of the Principal Act consequential to the insertion of the new subsection (1)(d);</p> <p>under paragraph (b), inserting the new subsection (1)(d) requiring the Secretary of the TRAB, as soon as practicable after an appeal has been lodged, to provide to the relevant parties copies of the transcript of proceedings and the race patrol film relating to the matter that is the object of the appeal;</p> <p>under paragraph (c), inserting a new subsection (1A) requiring the chairperson of the TRAB to endeavour to ensure that appeals are heard within a specified period of time from lodgement of the appeal;</p> <p>under paragraph (d), inserting a new paragraph (ab) requiring the TRAB, on the hearing of an appeal, to act according to equity, good conscience and the substantial merits of the case;</p> <p>under paragraph (e), inserting the following new subsections</p> <p style="padding-left: 40px;">(6A), requiring the presiding member at an appeal proceeding to determine questions relating to the Board's jurisdiction, admissibility of evidence, and law or procedure;</p> <p style="padding-left: 40px;">(6B), requiring appeals to be heard and determined on the evidence of the original hearing but enabling the presiding member to admit or require other evidence if considered proper;</p> <p style="padding-left: 40px;">(6C), requiring the TRAB to make a full and thorough investigation in open court, allowing it to inform itself on any matter in such manner as it thinks fit, admit any evidence and take into account certain matters that are within the knowledge or experience of the Board or have arisen in or as a result of other appeals or proceedings before the Board; and</p> <p style="padding-left: 40px;">(6D), authorising the TRAB to hear evidence in camera; and</p> <p>under paragraph (f), clarifying that the TRAB may appoint a person with appropriate expertise or skills to help it conduct an appeal; and</p> <p>under paragraph (g), inserting new subsection (11) to provide a definition of "race patrol film" for the purposes of the section.</p>
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Clause 11	<p>This clause amends section 31 of the Principal Act by:</p> <p>under paragraph (a), requiring the chairperson or a deputy chairperson to be empanelled for all major appeals; and</p> <p>under paragraph (b), requiring a deputy chairperson to preside at hearings of the TRAB if the chairperson is not present.</p>
Clause 12	<p>This clause repeals section 33 of the Principal Act and substitutes a new section 33.</p>
<p>NEW SECTION 33 – SUSPENSION OF PENALTIES PENDING APPEALS</p>	
new section 33	<p>This section provides for the suspension of the operation of penalties pending appeals by:</p> <p>under subsection (1), empowering the chairperson to suspend the operation of a penalty pending the hearing and determination of an appeal;</p> <p>under subsection (2), restricting the power of the chairperson to suspend the operation of a penalty under the specified circumstances; and</p> <p>under subsection (3), providing that where a request for the suspension of the operation of a penalty is received by the chairperson before the commencement of this Act, the chairperson is to make a determination in relation to that request as if this Act had not been enacted.</p>
Clause 13	<p>This clause amends section 34 of the Principal Act by:</p> <p>under paragraph (a), replacing subsection (1) with the following new subsections –</p> <p>(1), enabling the TRAB to affirm, vary or quash the decision that was the object of the appeal, or refer the matter back to the stewards for rehearing if satisfied the appellant has been charged with the incorrect offence;</p> <p>(1A), requiring the TRAB to make an order regarding the disposal of the appeal deposit;</p> <p>(1B), specifying that, subject to (1C), where the original decision is affirmed or varied, it is to take effect immediately;</p> <p>(1C), empowering the TRAB to defer the immediate implementation of the decision or part of the decision (including restrictions arising out of the decision or part thereof) for a maximum period of five days if the implementation would be detrimental to the wellbeing of</p>

	<p>racine animals; and</p> <p>under paragraph (b), amending the reference in subsection (2) consequent to the replacement of the existing subsection (1) referred to above;</p> <p>under paragraph (c), making provision for the appeal deposit to be refunded in full where the TRAB refers the decision that was the object of the appeal to the stewards for rehearing;</p> <p>under paragraph (d), inserting the following new subsections –</p> <p style="padding-left: 40px;">(4A), requiring the TRAB to make an order for the appellant to pay a percentage of the cost incurred in the preparation of the transcript of proceedings of the original hearing to the Secretary of DIER;</p> <p style="padding-left: 40px;">(4B), specifying the circumstances under which the TRAB must order that a percentage of the cost referred to in (4A) is to be paid;</p> <p style="padding-left: 40px;">(4C), specifying the grounds for the TRAB to have regard to in determining whether to charge more than the required minimum percentage of the cost referred to in (4A); and</p> <p>under paragraph (e), omitting subsection (5). This amendment is brought about by the change in the nature of appeal hearings from rehearings <i>de novo</i> to ordinary rehearings.</p>
Clause 14	This clause amends Part 5 of the Principal Act by inserting new section 34A.
<p>NEW SECTION 34A – APPEALS LODGED BEFORE COMMENCEMENT OF RACING REGULATION AMENDMENT (TRAB) ACT 2009</p>	
new section 34A	<p>This section provides for amendments of a transitional and savings nature consequential to the commencement of this Act by:</p> <p>under subsection (1), requiring the chairperson of the TRAB, if required in order to comply with section 31, to replace a member who was empanelled to hear an appeal prior to the commencement of this Act but whose office ceased to exist on the commencement of this Act with another member.</p> <p>under subsection (2), requiring an appeal to be subject to the provisions of this Act if it was instituted but a hearing had not commenced before the commencement of this Act; and</p> <p>under subsection (3), providing for an appeal hearing that</p>

	commenced but was not finally determined before the commencement of this Act to continue to be conducted as if this Act had not been enacted.
Clause 15	This clause provides for the automatic repeal of this Act on 31 March 2010. This is a standard provision to be included in all Amendment Bills, the effect of which is to automatically repeal the Amendment Act after 90 days from the date of its commencement. This will make it unnecessary to periodically pass a Legislation Repeal Act to remove Amendment Acts, from the statute books as once the amendments are incorporated into the Principal Act, the Amendment Act serves no practical purpose.