

SECOND READING SPEECH – THE HON JEREMY ROCKLIFF MP

Racing Regulation Amendment (Amalgamation) Bill 2015

Madam Speaker, I move that the Bill now be read a second time.

The *Racing Regulation Amendment (Amalgamation) Bill 2015* is yet another step in the process of this Government delivering on its commitment to reduce the number of boards and committees.

The Tasmanian racing industry is currently serviced by two independent, statutory appeal boards – the Tasmanian Racing Appeal Board (“the TRAB”) and the Integrity Assurance Board (“the IAB”).

A review of these boards by the former Department of Infrastructure, Energy and Resources in terms of their purpose, role, size, composition, cost and other relevant aspects identified that it was feasible for a single board to undertake the duties and responsibilities for both boards, and that transferring the IAB’s functions to the TRAB would deliver savings without compromising integrity.

The amalgamation of the IAB and TRAB was subsequently announced as a savings strategy in the 2014-15 State Budget.

The Bill before the House today amends the *Racing Regulation Act 2004* to effect the amalgamation of those two boards.

Madam Speaker, the TRAB was first constituted in 1983 to adjudicate appeals against certain decisions of the controlling bodies, clubs and stewards for all three codes of racing in Tasmania (thoroughbred, harness and greyhound), as well as appeals in relation to disputed bets.

In 1999, the Board assumed the additional role of hearing minor appeals, previously heard by the three code controlling bodies.

Most appeals to the Board are brought by jockeys, drivers, trainers and owners, and are against decisions of stewards made under the respective codes’ *Rules of Racing*.

In 2009, the IAB was established as an independent statutory authority to adjudicate appeals arising from certain statutory decisions of the Director of Racing, Tasracing and racing clubs, as well as appeals relating to disputed bets (some of which, but not all, were previously dealt with by the TRAB).

The underlying principle of creating the IAB was to deliver enhanced checks and balances in the regulatory process as they relate to the integrity and probity of the racing industry.

Most appeals to the IAB relate to licensing and registration decisions of the Director of Racing made under the *Rules of Racing* pursuant to his powers and functions under the Racing Regulation Act.

Prior to the establishment of this Board in 2009, there was no right of appeal for decisions relating to licensing or registration matters under the *Rules of Racing*.

Madam Speaker, both boards currently hear appeals on an 'as needs' basis and their determinations are subject to legal challenge.

In the preceding two racing seasons, the TRAB dealt with 23 and 18 appeals, respectively.

By contrast, in the same period of time the IAB dealt with only two and three appeals, respectively.

Given this disparity, it is considered appropriate to rationalise the two boards to generate savings and ensure a more efficient use of resources.

The *Racing Regulation Amendment (Amalgamation) Bill 2015* realises these savings and efficiency gains by dissolving the IAB and transferring its powers and functions to the TRAB.

It is extremely important to note that the amalgamation of the boards, while creating both savings and efficiencies, will in no way compromise the integrity of the racing product or undermine procedural fairness principles for industry participants.

Madam Speaker, procedural fairness requires that a person whose interests may be affected by a decision receives a fair and unbiased hearing.

Appeals to the TRAB are punitive in nature as, generally, the Board is considering penalties imposed by stewards under the *Rules of Racing*, whereas appeals to the IAB are administrative in nature as, normally, they deal with a determination by the Director or Racing as to whether a person is fit and proper to be licensed under the *Rules of Racing* and in accordance with the licensing standards and criteria set by Tasracing.

The potential for a conflict of interest, or perceived conflict of interest, could be seen by the industry to arise where a participant unsuccessfully appeals to the TRAB a decision of the stewards in relation to, say, a disqualification of their licence for a serious breach of the *Rules of Racing*.

If, at some future stage, that person applies to the Director of Racing for the reinstatement of their licence and is refused on the grounds of not being a fit and proper person to hold a licence, the person would then be in a position of having to appeal the Director of Racing's decision to the same board that adjudicated on the prior matter.

The *Racing Regulation Amendment (Amalgamation) Bill 2015* mitigates this risk by including a provision requiring the TRAB chairperson, when choosing the members who are to constitute the panel for an appeal hearing, to consider all Board members and give due consideration to the issues likely to be involved in the particular appeal and to ensure there is no risk of a chosen member having an actual, or perceived, bias or conflict of interest as a result of having previously sat in judgement of the person who has lodged the appeal.

Madam Speaker, it is critical the existing expertise of the IAB members is not lost through the amalgamation process.

Given that the quantum of savings identified by amalgamating the two boards is based on the TRAB's composition, size and remuneration levels remaining the same, the option of appointing all or some of the members of the former IAB to the amalgamated TRAB is not considered a feasible option for the Government in the circumstances.

Therefore, it is proposed to revoke all existing Instruments of Appointment for IAB and TRAB board members alike, effective on commencement of the amending legislation, and appoint persons to the newly amalgamated TRAB based on their individual qualifications, skills and experience, as well as the specific needs of the Board.

I'd like to thank the current members of the IAB and TRAB for diligence in ensuring they have performed their function with professionalism and impartiality.

The board members whose current Instruments of Appointment are to be revoked as a consequence of this Bill remain eligible for appointment to the amalgamated TRAB.

From those eligible for appointment, I will, as Minister for Racing, in consultation with the Secretary of the Department of State Growth and the chairpersons of the IAB and TRAB, select six members, inclusive of a chairperson and two deputy chairpersons, for appointment by the Governor-in-Council to the amalgamated TRAB for a period of not exceeding three years.

It should be noted that the Bill retains the existing requirement for the chairperson and deputy chairpersons to be Australian legal practitioners of at least five years' standing.

Members affected by the amalgamation of the two boards will be consulted throughout the process.

Madam Speaker, historically, the TRAB conducted appeals by way of hearing *de novo*, which is a form of appeal in which a decided case is heard afresh.

However, in 2010, following a review of the Tasmanian racing appeal system, a number of changes were made to the structure and processes of the TRAB, including a move away from hearings *de novo* to the current system whereby appeals are heard upon the evidence of the original stewards' inquiry. If the presiding member considers it to be proper, expert or other evidence may be required or admitted.

While the legislation is silent on the matter, the IAB applies the *de novo* standard of review in respect of certain statutory decisions made by the Director of Racing, Tasracing or racing clubs. That is, the Board considers the matter afresh.

The 2010 legislative changes were recently subject to a mandated review by an independent panel. The panel concluded that the advantages of the move away from *de novo* appeals are important and that the negative effects identified during the review process could be substantially mitigated by providing information on the kinds of matters that the TRAB is likely to take into account in deciding whether to accept or reject a request to introduce new evidence.

Moreover, the panel recommended that no change be made to the legislation in terms of the TRAB's standard of review.

Notwithstanding each standard of review has its merits and historical justifications, taking into consideration the independent panel's recommendation and for reasons of consistency, this Bill retains the TRAB's existing standard of review for all appeals that will come within the remit of that Board at the commencement of the amendment legislation.

Madam Speaker, the legislation currently limits the power of the TRAB chairperson to grant a stay of proceedings pending the hearing and determination of an appeal in a number of circumstances, including where the chairperson considers the primary reason for the request is to enable the appellant to undertake a racing activity in the period before the matter is heard.

This limitation was implemented as part of the 2010 legislative amendments to the structure and processes of the TRAB, and was reviewed by the aforementioned independent panel. The panel found this particular provision to be subjective and impractical and recommended its repeal. The Government has responded to the panel's recommendation by including a clause in the Bill to effect the repeal of the offending provision.

Madam Speaker, the Bill also makes a number of minor consequential amendments to the legislation.

The Racing Regulation Act stipulates that a full-time stipendiary steward cannot be appointed by the Secretary of the administering department unless a panel, comprising the Director of Racing and the chairpersons of Tasracing and the IAB, has recommended the appointment.

The replacement of the IAB chairperson with the TRAB chairperson is not considered appropriate in the circumstances, given the TRAB currently hears appeals against decisions of the stewards and will continue to do so under the revised appeal board structure.

Accordingly, the Bill provides for the Secretary of the administering department to determine the third panel member.

The *Racing (Miscellaneous) Regulations 2004*, which among other things, prescribe fees and deposits for the purposes of the Racing Regulation Act, have been amended to ensure the quantum of the prescribed deposit for appeals against statutory decisions of the Director of Racing, Tasracing and registered clubs, as well as matters relating to disputed bets, remains at \$200 on commencement of the amending legislation.

Contingent on the successful passage of the Bill through the Parliament, it is proposed the *Racing Regulation Amendment (Board Amalgamation) Act 2015* commence on 1 July 2015.

Madam Speaker, I commend the Bill to the House.