

SECOND READING SPEECH

Racing Regulation Amendment (TRAB) Bill 2009

Mr Speaker

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

Mr Speaker, this Bill principally arises in response to concerns expressed by industry during the 2008 Review of the Tasmanian Racing Industry's Governance Structure, regarding the existing appeals system in this State.

Honourable Members will recall during my Second Reading Speech on the racing governance reform legislation in November 2008 that, notwithstanding a number of changes that were made at that time to the appeal provisions of that Act, the Government foreshadowed its intention to give more substantive consideration to further areas for improvement in the racing appeals processes in 2009.

The Minister for Racing subsequently tasked the Director of Racing to undertake a formal review and provide a recommendation to the Government on how to provide a more effective, efficient and contemporary appeals system in Tasmania.

The Tasmanian Racing Appeal Board is established pursuant to Part 5 and Schedule 3B of the *Racing Regulation Act 2004* to hear appeals

against certain decisions of Tasracing, racing clubs and stipendiary stewards, for all three codes of racing in Tasmania.

In terms of reviewing the current racing appeals model, the Director examined the standards and benchmarks in place in other jurisdictions to ensure a best practice approach was adopted.

The Director also invited submissions from key industry stakeholders which provided the opportunity for interested parties to comment on the operations of the Tasmanian Racing Appeal Board (the Board), and in particular –

- the strengths and weaknesses of the current system;
- personal experience with appeals; and
- recommendations for improvement.

Mr Speaker, fifteen submissions were received in total and it was apparent from these submissions that there is some disenchantment within the racing industry concerning the appeals system in this State.

The Director concluded from his review that the existing structure and processes of the Board should be changed, with particular focus on the composition of the Board, the manner in which appeals are heard, the timeliness of appeals and the information available to the Board.

The object of the Bill before you today is to amend the *Racing Regulation Act 2004* to address the matters raised by the Director following the formal review process.

Taking the legislative proposals in the Bill in turn, they relate to the following matters.

Mr Speaker, the recurrent theme of many submissions to the review related to perceived, unacceptable delays in the hearing and resolution of appeals by the Board.

The first matter dealt with in the Bill is the composition of the Board, which is established as an independent, statutory body. Currently, membership comprises a Chairperson and Deputy Chairperson - both of who are required to be Australian legal practitioners of at least five years' standing - and six other members.

Under the proposed structure, the composition of the Board will be changed from eight members to six, but will now include a Chairperson plus two Deputy Chairpersons.

At this point, it is important to note that the reduction in the overall Board numbers of itself will have negligible impact on timeframes as the 'ordinary' members are rarely empanelled for minor appeals and, under the proposed structural change, there would remain sufficient such members to draw upon for major appeals.

However, the addition of a second Deputy Chairperson will provide additional expertise to the Board and, therefore, result in more flexibility for the conduct of minor appeals, which comprise approximately 70

percent of total appeals heard. This should in turn enhance current timeframes for resolution of appeals.

Mr Speaker, the proposed reform of the Board's structure will result in the office of three members ceasing at the implementation of the amending legislation.

Let me emphasise this is a consequence of the structural change needed to address the concerns of the industry. It in no way reflects on the carriage of appeals under the existing framework, nor on the capacity and diligence of people who have served this industry well.

The three members affected by the downsizing of the Board, who will be nominated by the Minister on the advice of the Chairperson of the Board, will be consulted throughout the process.

Mr Speaker, the second matter dealt with is of a minor nature, but no less important in terms of the reform process.

Current legislation does not require the Chairperson or Deputy Chairperson to sit on major appeals, only 'as often as is practicable'. Under the proposed legislation, the relevant provision has been strengthened so that the Chairperson or a Deputy Chairperson must be selected as one of the panel members on all major appeals.

Mr Speaker, the third matter dealt with relates to the nature of appeals to the Board.

The industry is of the view that appeals should be conducted as promptly as is possible. This of course is highly desirable, but must be weighed against the absolute need to ensure procedural fairness is afforded to the appellant. It was therefore essential to carefully examine the current system and formulate changes which provided enhancements, yet at the same time did not compromise the legality of the process.

Currently, the Board conducts its hearings as rehearings '*de novo*'. In a rehearing *de novo*, the Board hears the matter afresh, that is, all evidence is taken again. Whilst the transcript of the original stewards' inquiry can be tendered to the hearing, all evidence is reheard. This, by its very nature, will generally increase the time it takes to hear appeals, as well as providing the appellant and witnesses the opportunity to alter or amend evidence provided to the original inquiry.

Tasmania is one of only a few jurisdictions that conduct hearings *de novo*.

Mr Speaker, the general view in any inquiry situation, whether it is racing or any other regulatory field, is that the evidence given at the time closest to the matter being investigated is the most accurate. In this regard, the expertise of Racing Services Tasmania stewards has progressed markedly in recent times, with formal training delivered by Racing Victoria Ltd and on-the-job training delivered by such persons as the Solicitor General. It can be reasonably argued that stewards are now

much better equipped to gather evidence, conduct inquiries and ensure that participants are provided procedural fairness.

The proposed amendments before you today provide for all appeals to be dealt with by way of an 'ordinary' rehearing. This type of hearing involves the appeal being heard and determined upon the evidence at the original hearing when the decision or finding appealed against was made, with the Chairperson of the Board able to admit expert or other evidence if he or she considers it proper to do so.

Mr Speaker, while this new system is a significant change from the current rehearings *de novo*, it has operated successfully in Western Australia for a considerable period of time and has strong support from key stakeholders in that jurisdiction. Advantages of the proposed model include the timeliness of appeals, the fact that evidence taken at the stewards' inquiry is generally regarded as the most pertinent, and expert witnesses (for example, laboratory analysts) would not be required to provide their lengthy, often complex evidence twice. Moreover, the Board can still allow fresh evidence if it is of a mind to do so.

The proposed legislation also enables the Board, if satisfied that the appellant has been charged with the incorrect offence, to refer the matter back to the body from which the original decision is being appealed for rehearing.

This change to the appeal hearings being conducted on the evidence of the original inquiry will, I believe, result in enhanced effectiveness and greater efficiencies, whilst not compromising the procedural fairness afforded to the appellant.

Mr Speaker, the fourth matter dealt with relates to the timeframes for hearing appeals.

One of the main issues raised in submissions to the review process was the length of time it takes the Board to conduct appeals. Although a number of changes aimed at enhancing the timeliness of appeal hearings were made to the racing appeal provisions as a result of the 2008 'Review of the Tasmanian Racing Industry's Governance Structure', there is still room for improvement in the timeframe within which appeals are heard and resolved.

In order to address this issue, the proposed legislation requires the Board, wherever practicable, to ensure minor appeals are heard within seven days of lodgement, and all other appeals within 21 days of lodgement. While this proposal places particular timeframes on the Board, it still affords the Board some flexibility when required.

This is not considered to be an unreasonable expectation, given that the appeals will now be conducted on the basis of evidence provided to the original inquiry.

Mr Speaker, the fifth matter dealt with relates to the appellant's access to stewards' evidence, which generally comprises a race patrol film and/or a transcript of proceedings of the original stewards' inquiry at which the decision that is the subject of the appeal was made.

Current policy in relation to access by appellants to race patrol film is subject to a number of restrictions, and although the transcript may be made available upon the request of the appellant, the Chairperson of the Board may, at his discretion and depending on the nature of the appeal, determine to hear the matter without the benefit of a transcript.

Given the aforementioned proposal to move away from rehearings *de novo* to 'ordinary' rehearings, it will be essential that a transcript of proceedings is prepared for each appeal to enable the Board to hear and determine a matter on the evidence of the original hearing.

In terms of the concerns regarding the timeliness of appeals, once again it is important to ensure that the appellant is afforded procedural fairness. There is also a need, however, for the expectations of stewards and the industry in general to be carefully considered. There is a general perception amongst the industry participants who made submissions that some appellants "use the system" to prolong appeals, particularly at key times during the racing year.

Any proposed changes must therefore balance the desire of the racing industry for appeals to be held in a timely manner against the need to ensure that appellants are provided every reasonable opportunity to present their case.

Mr Speaker, under the proposed reform, copies of the race patrol film (where the matter relates to a racing incident) and the transcript are to be made available to all parties as soon as is practicable after an appeal

is lodged. This will ensure that all parties to an appeal have timely access to the relevant material.

Mr Speaker, it is further proposed that the Board, at the conclusion of the appeal hearing and the handing down of its decision, is to make an order requiring the appellant to pay a percentage of the costs incurred in the preparation of the transcript, but only in circumstances where an appeal is withdrawn, abandoned or dismissed, or where the penalty is varied.

If an appeal is upheld or the Board refers the matter back to the stewards for rehearing, the appellant will not be required to contribute to the cost of the transcript.

This proposal is aimed at further reducing the number of ambit appeals and meeting the rising costs of administering the appeals process.

Mr Speaker, the sixth matter dealt with in this Bill relates to the suspension of penalties pending an appeal, most commonly referred to as a 'stay of proceedings'.

The existing legislation enables the Chairperson of the Board to unconditionally, or on such conditions as he thinks fit, suspend the operation of a penalty pending the hearing and determination of an appeal.

However, the industry has previously expressed concern that stays are granted as a matter of course, with the system being 'used' by some industry participants to enable participation in feature events.

Mr Speaker, to address this issue, the proposed legislation puts in place some conditions in relation to the granting of a stay of proceedings. A stay shall not be granted –

- where the appeal is against penalty only;
- where the appeal is intended to be heard within seven days of lodgement, except if the Chairperson considers that extenuating circumstances require otherwise; and
- where the Chairperson considers that the primary reason for the request is to delay the commencement of the penalty to enable participation in upcoming events.

Mr Speaker, the seventh matter dealt with in the Bill relates to the commencement of penalties that are the subject of an appeal.

The rules of racing provide that the commencement of penalties can be deferred for a particular number of days, although the rules differ across the three codes. The perception amongst some in the industry is there has been some inconsistency in the application of these particular rules by the Board.

Another concern raised is that participants delay lodging an appeal until such time as fields are concluded, inclusive of riding or driving engagements, for upcoming events. It is claimed that, in the event that an appeal is dismissed, appellants will argue that they have obligations in the immediate future and that their penalty should only commence once those obligations are fulfilled. The Board, quite rightly, considers each case on its individual merits; however, this has resulted in variances in decisions in respect to cases which, at least on face value, appear to be extremely similar.

To provide for consistency of decisions, it is proposed that any determination of the Board will take effect immediately. There will, therefore, be an obligation placed on the appellant to inform any person wishing to engage their services that they have a matter currently before the Board and, if unsuccessful, they will not be able to fulfil the commitment.

The one proviso to this proposal is that the Board will have discretion with respect to deferring a penalty where matters necessitate a transitional period to care for racing animals.

The intention of the proposed amendments is to provide certainty for industry participants, whilst at the same time having regard to the welfare of the animals.

Mr Speaker, the final matter dealt with in the Bill is consultation between the Board and the racing industry.

A submission to the review process recommended that an impartial racing advisor be appointed to provide assistance to the Board on racing matters. It should be noted that the existing legislation enables the Board to appoint other legal practitioners or persons to help it conduct an appeal. However, its decision making would be enhanced by ensuring that it is well informed on key industry matters. Currently there is no formal process where the Board acquires such information, other than a national Racing Appeals Tribunal Conference which is convened every one to two years.

The views and expectations of industry stakeholders can change at a rapid pace. One only has to consider the movement in animal welfare issues and occupational health and safety across the three codes in recent times to understand the importance of such in today's racing environment. There is also significant movement in other areas, for example the use of prohibited substances.

To ensure that the Board is fully informed on such matters, whilst not compromising its independence, the proposed amendment mandates consultation by the Board with key stakeholders on a biannual basis. This will value add to the decision making of the Board by ensuring it has up-to-date knowledge of all key industry issues.

Mr Speaker, it is expected that the net operating costs of the proposed reforms will result in an overall additional cost to Government of \$14,000 per annum, but I am sure that Members would agree that this is a very

small price to ensure a more effective, efficient and contemporary appeals system in Tasmania.

I believe the proposed amendments incorporated in this Bill before you today not only respond to the changing needs over time, but also address the concerns expressed by stakeholders on issues such as the manner in which appeals are heard, the timeliness of appeals and the Board's understanding of key industry matters, and has wide support among the racing industry.

Tasmania's existing integrity model is already highly regarded for its transparency and accountability. With the implementation of the proposals contained in this Bill, the Tasmanian racing industry will be the beneficiary of a more effective, efficient and contemporary appeals system that will fundamentally strengthen the integrity of that industry. This, in turn, will assist in maintaining or enhancing confidence in the racing product.

Mr Speaker, the Government has listened closely to the industry participants in making sure that the right legislative framework is put in place to improve the current Tasmanian appeals structure and processes to further build on Tasmania's reputation as having a 'best practice' integrity model.

I commend the Bill to the House.