



Department of  
**Local Government, Sport  
and Cultural Industries**

# **Racing Penalties Appeal Tribunal**

## 2020-21 Annual Report



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### Availability in other formats

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## Statement of Compliance

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Hon. Reece Whitby, MLA  
Minister for Racing and Gaming

In accordance with section 63 of the *Financial Management Act 2006*, I submit, for your information and presentation to Parliament, the Annual Report of the Racing Penalties Appeal Tribunal of Western Australia for the financial year ended 30 June 2021.

The Annual Report has been prepared in accordance with the provisions of the *Financial Management Act 2006*.



Karen Farley SC  
Chairperson

19 November 2021



## Overview of Tribunal

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### Executive Summary

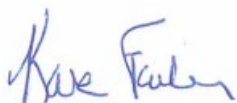
It is with pleasure that I present the Annual Report of the Racing Penalties Appeal Tribunal for the year ended 30 June 2021.

During the year, one appeal was carried over from the previous reporting period, and eight new appeals were lodged with the Tribunal. Of these, six were determined, one was withdrawn and two were carried over into the next financial year. All appeal determinations can be viewed at [www.rpat.wa.gov.au](http://www.rpat.wa.gov.au)

The Tribunal was not immune to the effects of the COVID-19 and the restrictions in place across Western Australia. Hearings, as required, are conducted via teleconference during this period.

I take this opportunity to thank Tribunal members for their invaluable contribution to the efficient operation of the Tribunal. They continue to give their time and expertise willingly in discharging their responsibilities and coping with the workload.

On behalf of the Tribunal, I also thank the Department of Local Government, Sport and Cultural Industries for its ongoing provision of executive services, and the State Administrative Tribunal for permitting the Tribunal to use its facilities. It would not be possible for the Tribunal to conduct its activities without this invaluable support.



Karen Farley SC  
Chairperson

19 November 2021

## Operational Structure

### Enabling Legislation

The Racing Penalties Appeal Tribunal is established under the *Racing Penalties (Appeals) Act 1990*. The Tribunal was established to confer jurisdiction in respect to appeals against penalties imposed in disciplinary proceedings arising from, or in relation to, the conduct of thoroughbred racing, harness racing and greyhound racing, and for related purposes.

### Purpose of the Tribunal

The aim of the *Racing Penalties (Appeals) Act 1990* is to create and maintain industry confidence in the enforcement of the various racing rules by providing an impartial judicial forum for the hearing of appeals.

Executive support for the Tribunal is provided by the Department of Local Government, Sport and Cultural Industries. The Department recoups the cost of providing these services from the Tribunal. The Tribunal is funded from the profits of Racing and Wagering Western Australia (RWWA).

### Responsible Minister

As at 30 June 2021, the Minister responsible for the Racing and Gaming Portfolio was the Honourable Reece Whitby, MLA, Minister for Emergency Services; Racing and Gaming; Small Business and Volunteering.

### Appeals Which may be Heard by the Tribunal

A person who is aggrieved by a determination of RWWA, a steward or a committee of a racing club may appeal to the Tribunal within 14 days of the determination date. The Tribunal can hear the following matters:

- the imposition of any suspension or disqualification, whether of a runner or of a person;
- the imposition of a fine; or
- the giving of a notice of the kind commonly referred to as a “warning-off”.

Additionally, the Tribunal may grant leave to appeal in relation to a limited range of other matters.

## Appeals which are outside the Jurisdiction of the Tribunal

The jurisdiction of the Tribunal does not extend to a determination of a steward, a racing club, or a committee in matters regarding:

- any protest or objection against a placed runner arising out of any incident occurring during the running of a race;
- the eligibility of a runner to take part in, or the conditions under which a runner takes part in, any race; or
- any question or dispute as to a bet.

These matters are dealt with by RWWA.

## Determination of Appeals

The Tribunal is required to hear and determine an appeal based on the evidence of the original hearing but may allow new evidence to be given or experts to be called to assist in its deliberations.

When determining an appeal, the Tribunal may make the following orders:

- refund or repayment of any stakes paid in respect of a race to which the appeal relates;
- refer the matter to RWWA, the stewards or the committee of the appropriate racing club for rehearing;
- confirm, vary, or set aside the determination or finding appealed against or any order or penalty imposed to which it relates;
- recommend or require that RWWA, the stewards or the committee of the appropriate racing club, take further action in relation to any person; and
- such other orders as the member presiding may think proper.

Decisions of the Tribunal are final and binding.

## Administered Legislation

The Tribunal is responsible for administering the *Racing Penalties (Appeals) Act 1990*.

## Other Key Legislation Impacting on the Tribunal's Activities

The Tribunal complied with the following relevant written laws in the performance of its functions:

- |   |  |
|---|--|
| ▪ Auditor General Act 2006;                 | ▪ Freedom of Information Act 1992;     |
| ▪ Corruption and Crime Commission Act 2003; | ▪ Industrial Relations Act 1979;       |
| ▪ Disability Services Act 1993;             | ▪ Public Interest Disclosure Act 2003; |
| ▪ Electoral Act 1907;                       | ▪ Public Sector Management Act 1994;   |
| ▪ Equal Opportunity Act 1984;               | ▪ Salaries and Allowances Act 1975;    |
| ▪ Electronic Transactions Act 2003;         | ▪ State Records Act 2000; and          |
| ▪ Financial Management Act 2006;            | ▪ State Supply Commission Act 1991.    |

## Administrative Structure

Sections 5 and 6 of the *Racing Penalties (Appeals) Act 1990* provide that the Tribunal shall consist of a Chairperson and a panel of members, each appointed by the Minister. The Schedule to the Act specifies terms of appointment shall not exceed three years, with eligibility for reappointment. The Tribunal, constituted by the Chairperson (or the Acting Chairperson or member presiding), and two members sitting together hear appeals. An appeal may be heard by the Chairperson, Acting Chairperson or member presiding sitting alone where the Regulations so provide.

As of 30 June 2021, the Racing Penalties Appeal Tribunal consisted of eight members, namely:

### **Karen Farley SC - Chairperson**

Ms Karen Farley was appointed Chairperson in March 2018. Ms Farley holds a Bachelor of Jurisprudence and a Bachelor of Laws from the University of WA. She is a Senior Appeals Consultant at Legal Aid WA.

Ms Farley has taught at UWA, Notre Dame and Murdoch University law schools. She has held positions on many government and non-government Boards and Committees. She has served on the Council of Management of St Hildas ASG for 15 years and was Chair of Council for seven years. Currently she is an elected member of the Shire of Peppermint Grove. From 2000 to 2006 she was Supervising Solicitor of the Unrepresented Criminal Appellants Scheme (UCAS), an innovative forensic legal skills programme initially operated from UWA Law School which gave law students the opportunity to assist otherwise unrepresented litigants prepare and present their case in the Court of Criminal Appeal.

In 2011, Women Lawyers of WA named her as Senior Lawyer of the year. In December 2013, she was appointed Senior Counsel for and in the State of Western Australia.

### **Patrick Hogan**

Mr Patrick Hogan is a barrister admitted to the Supreme Court of Western Australia and the High Court of Australia in June 1982. Mr Hogan worked as a barrister and solicitor with the Legal Aid Commission of Western Australia, practising in civil and criminal law, then in private practice as a barrister with Howard Chambers. Mr Hogan was appointed as a part-time Magistrate of the Children's Court of Western Australia in September 1999 and President of the Gender Reassignment Board of Western Australia in 2007.

### **Robert Nash**

Mr Robert Nash is a barrister admitted as a Practitioner of the Supreme Court of WA and the High Court of Australia, and also is a General Public Notary.

Mr Nash has during the course of his career served in a non-executive capacity on several councils, committees, and charitable and non-charitable boards, including Chairman and Director of Bauxite Resources Ltd, Director of North West Property Holdings Pty Ltd, Director of The Mandalay Projects Limited, Chairman of the WA Soccer Disciplinary Tribunal, Council Member of the Law Society of WA, Convenor Education Committee of Law Society, Counsel Assisting the Royal Commission into the City of Wanneroo, Member of the Professional Conduct Committee and Ethics Committee of the Law Society, Head of the WA Legal Panel of the Royal Australian Navy, resident tutor in law at St George's College, Council Member of WA Bar Association Council, and Director WA Bar Chambers Ltd.

**Andrew Monisse**

Mr Andrew Monisse has served as member of the Racing Penalties Appeal Tribunal of Western Australia since February 1997. He was admitted as a barrister and solicitor of the Supreme Court of Western Australia in December 1990 after completing articles at Mallesons Stephen Jaques. Mr Monisse's employment experience has included working as a solicitor assisting counsel assisting at the WA Inc Royal Commission in 1991 and as a prosecutor for the Commonwealth Director of Public Prosecutions in the Perth office from 1992 to 1998. In April 1997 he commenced serving in the ADF as a member of the Perth Legal Panel of the RAAF Specialist Reserve, and since September 2006 has held the rank of Squadron Leader. In July 2000 Mr Monisse commenced his practice as a barrister, where he has since October 2000 been a member of the WA Bar Association. Mr Monisse practises predominantly in Criminal Law at Quarry Chambers.

**Brenda Robbins**

Ms Brenda Robbins practices as a Barrister and Mediator at Murray Chambers in a variety of areas of law. Prior to her legal career she held a number of CEO and senior executive positions in Western Australian Government agencies. She has served on numerous boards including the Senate of the University of Western Australia, the Legal Aid Commission, Keystart Loans Ltd and the Australian Institute of Management (including a term as President). She is currently the Chair of the Metropolitan Cemeteries Board and a member of its Audit and Risk Committee. She is a Trustee of the Scholarships Trust of Graduate Women WA Inc. Brenda holds a Juris Doctor (High Dist.), BA (Econs), Graduate Certificate in Australian Migration Law and Practice and is a Graduate of Australian Institute of Company Directors (GAICD). Brenda is a Life Fellow of the Australian Institute of Management and a Fellow of the AICD.

**Emma Power**

Ms Emma Power graduated with a Law degree from Murdoch University in 2004 and has been working predominately in property, development, corporate and commercial law since that time. Prior to studying law, she was a secondary school teacher teaching visual arts. In 2017, Ms Power became the principal of the private law practice Power Commercial Law. She is also a member of the Local Government Standards Panel and the Liquor Commission.

**Johanna Overmars**

Ms Johanna Overmars, Barrister and Solicitor graduated from the University of Notre Dame in 2003 with degrees in Law and Arts. Ms Overmars was admitted in 2005 after completing her articles as an Associate at the Family Court of WA and at Legal Aid WA. She has practiced in the areas of family and criminal law and set up her own firm Hills Hope Legal Pty Ltd in May 2013. Ms Overmars is a horse owner, who has studied horsemanship for many years. She previously undertook volunteer work with a horse rescue organisation.

**Zoe Gilders**

Ms Zoe Gilders was appointed to the Tribunal in July 2019. She graduated with a Bachelor of Laws from Victoria University in 2005 and has a Graduate Diploma of Professional Legal Practice from the College of Law. She was admitted to the Supreme Court of Victoria in 2010 and the Supreme Court of Western Australia in 2016.

Ms Gilders is currently a sole legal practitioner practising in the area of criminal law. Her previous legal experience includes working at the Aboriginal Legal Service of WA, Her Majesty's Revenue and Customs in the United Kingdom, Victoria Legal Aid and Isabelle Harrison Barrister & Solicitor

## Performance Management Framework

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### Agency Level Government Desired Outcome

Broad Government goals are supported by the Tribunal via specific outcomes. The Tribunal delivers services to achieve these outcomes. The following table illustrates the relationship between the Tribunal's services and desired outcomes, and the Government goal the Tribunal contributes to.

Government Goal	Desired Outcome of the Tribunal	Services Delivered by the Tribunal
Sustainable Finances: Responsible financial management and better service delivery.	To provide an appeal tribunal in relation to determinations made by racing industry stewards and controlling authorities.	Processing appeals and applications in accordance with statutory obligations.

### Changes to Outcome Based Management Framework

The Tribunal's Outcome Based Management Framework did not change during 2020-21.

### Shared Responsibilities with Other Agencies

The Tribunal did not share any responsibilities with other agencies in 2020-21.



## Report on Operations

### Actual Results versus Budget Targets

Financial Targets	Target (\$)	Actual (\$)	Variation (\$)
Total cost of services (expense limit) (sourced from Statement of Comprehensive Income)	226,925	206,502	(20,423)
Net cost of services (sourced from Statement of Comprehensive Income)	64,495	48,903	(15,592)
Total equity (sourced from Statement of Financial Position)	12,987	27,791	14,804
Net increase (decrease) in cash held (sourced from Statement of Cash Flows)	(64,495)	(46,736)	(17,759)
Approved salary expense level*	0	0	0

\* Executive support for the Tribunal is provided by the Department of Local Government, Sport and Cultural Industries.

The table below provides a summary of key performance indicators for 2020-21. A detailed explanation is provided later in the report.

Summary of Key Performance Indicators	Target	Actual	Variation
Total number of stay applications received	6	2	4
Number of stay applications determined as per KPI	6	2	4
Average cost of processing an appeal	\$18,910	\$34,417	\$15,507

## Performance Summary for 2020-21

During the year, two appeals were carried over from 2019-20 and 7 new appeals were lodged with the Tribunal. As at 30 June 2021, the Tribunal had determined 7 appeals, with two carried over to 2021-22. These appeals, together with appeals from the previous year, are summarised by racing code:

Racing Code	Appeals carried over from 2019-20	Appeals Lodged	Appeals Determined	Appeals carried over to 2021-22
Thoroughbred	0	2	2	0
Harness	2	5	5	2
Greyhound	0	0	0	0
<b>TOTAL</b>	<b>2</b>	<b>7</b>	<b>7</b>	<b>2</b>

The results of the determinations in respect of the racing codes for the year 2020-21 are summarised below:

Results	Thoroughbred	Harness	Greyhound
Allowed in Full	0	1	0
Allowed in Part (Penalty Reduced)	0	3	0
Referred Back to Stewards (RWWA)	0	0	0
Dismissed	2	1	0
Withdrawn/not progressed	0	0	0
Leave to Appeal Refused	0	0	0
<b>Total</b>	<b>2</b>	<b>5</b>	<b>0</b>

Appeals Carried Over to 2021-22	Thoroughbred	Harness	Greyhound
Reserved Decision	0	2	0
Reserved Decision on penalty only	0	0	0
Reasons to be published	0	0	0
Yet to be heard	0	0	0
<b>Total</b>	<b>0</b>	<b>2</b>	<b>0</b>

## Stays of Proceedings

In 2020-21, there were three applications for stays of proceedings. The Chairperson or the presiding member made the determinations as follows:

Stays of Proceedings 2020-21			
Results	Thoroughbred	Harness	Greyhound
Stays Granted	1	0	0
Stays Refused	0	1	0
Withdrawn	1	0	0
<b>Total</b>	<b>2</b>	<b>1</b>	<b>0</b>

The following table provides a summary of the number, nature and outcome of matters before the Tribunal during 2020-21. Full determinations are available on the Tribunal's website at [www.rpat.wa.gov.au](http://www.rpat.wa.gov.au)

Applications Lodged, Heard and Determined in 2020-21					
Case No.	Name	Nature of Appeal	Hearing Date	Determination Date	Outcome
827	Matthew Henwood	Rules of Harness Racing 190(2), 231(1), 238, 231(2)	23/3/2020	03/08/2020	Penalty varied from 7-year disqualification to 5 years and 6 months.
837	Peter Anderson	Rules of Harness Racing 231(2) and 231(1)(e)	6/07/2020	21/08/2020	Appeal against conviction dismissed. Penalty varied to \$5000 fine.
838	Clint Johnston-Porter	Rules of Thoroughbred Racing 131(a)	5/10/2020	26/10/2020	Appeal dismissed.
839	Denis Wych	Rules of Harness Racing 190(1) and 190(2)	7/12/2020	12/04/2021	Appeal dismissed.
840	Kyle Harper	Rules of Harness Racing 149	15/10/20	15/10/2020	Penalty varied to 4 weeks suspension.
841	Paul Harvey	Rules of Thoroughbred Racing 131(b)	29/03/2021	28/04/2021	Appeal dismissed.
842	Brian Ferguson	Rules of Harness Racing 190(1)	12/4/2021	30/06/2021	Penalty varied for \$6000 to \$1000.

## Examples of Appeals Before the Tribunal

The Tribunal heard a number of appeals throughout the course of the reporting period. Below are some examples of the types of matters which come before the Tribunal.

### APPEAL NO 839 – DENNIS CHARLES WYCH

This was an appeal against penalty imposed by RWWA Stewards of Harness Racing on 15 September 2020 against a disqualification of Mr Wych's licence for 15 months after he pleaded guilty to one charge of breaching Harness Rules of Racing for presenting RICHIE REACTOR to race in Race 9 at Northam on 15 August 2020, where it finished first, not free of the prohibited substance Cobalt, evidenced by a concentration level in excess of 25 micrograms per litre in plasma.

Mr Wych also appealed against the penalty imposed by the RWWA Stewards on 9 November 2020 in which they imposed a disqualification of his trainers licence for a period of 12 months of which 7 months was to be served concurrently with charge 1 after he pleaded guilty to a second charge of breaching Harness Rule of Racing 190(1), (2) for presenting CLASSY SAVETTE to race in Race 5 at Pinjarra on 31 August 2020, where it finished ninth, not free of the prohibited substance Cobalt, evidenced by a concentration level in excess of 100 ug per litre in urine ("Charge 2").

Mr Wych submitted before the Tribunal that the total effective disqualification of 20 months was manifestly excessive.

His grounds of appeal were as follows:

1. Classing the plasma level as extremely high when there was no system of comparing it to cobalt levels measured in urine was unfair.
2. He should not receive a higher penalty because he is a hobby trainer and to do so was discriminatory. He paid the same fee for his licence and was required to follow the same rules as a trainer who relied on their licence for their livelihood, and therefore he should not be disadvantaged just because he did not rely on training for his primary income.
3. The total disqualification period, together with each individual period, were manifestly excessive.

At the hearing, the Stewards submitted that cases where no satisfactory explanation can be given for the elevated level cannot be afforded the same level of mitigation as those where the Stewards are satisfied the source of the Cobalt was in all probability via a routine supplement. It was submitted that the total lack of explanation did not act to aggravate but did affect the level of mitigation afforded.

Stewards distinguished the cases of 2015 S Taylor (Thoroughbreds) ("Taylor"), 2015 B Stanley (Harness) ("Stanley"), Coulson and Elson on the basis that the trainers in those cases did not know about the elevated levels prior to racing their other horses. Mr Wych however, could have chosen to act as he knew about RICHIE REACTORS level from the report issued prior to CLASSY SAVETTE racing.

Whilst Mr Wych accepted that he knew about RICHIE REACTOR'S elevated Cobalt level prior to presenting CLASSY SAVETTE to race, this supported his evidence that he simply did not know how RICHIE REACTOR came to have an elevated Cobalt level and certainly did not expect another one of his horses to also have an elevated level. Had he done something untoward, such as administering his horses Cobalt injections, he could have simply scratched his mare from the race. He should therefore not be more harshly penalised than other trainers with multiple horses who returned positive swabs.

The Tribunal did not accept that just because the plasma sample level could not be compared to a urine sample level, it made the Stewards finding unfair. Such a comparison was not required. It observed that when a level is high or extreme, the level of mitigation afforded cannot be the same as that afforded to a trainer, who's horses (or dog's) levels are close to the threshold. This is because the level effects a) the blameworthiness of the trainer and b) the welfare of the animal.

Mr Wych submitted at the hearing that just because he was a hobby trainer and did not rely on his licence for his income, it shouldn't be a reason for him to receive a greater period of disqualification than trainers that do. His evidence was that he paid the same amount for his trainers' licence as any other trainer and therefore all trainers should be treated the same when deciding penalty. The Tribunal did not agree with this submission and observed that this mitigating factor was relevant for the overall financial and practical ramifications that a disqualification would have on a person. The flow on effects of a disqualification for a trainer who relies on his or her licence for their income is generally far greater to that of a hobby trainer. Stewards can consider any relevant personal, including financial circumstances when considering mitigating factors, and so each trainer is dealt with on a case-by-case basis.

Furthermore, there was no evidence put forward at either the inquiry or the hearing by Mr Wych as to any financial hardship or any welfare.

After reviewing several similar case laws including all the cases referred to by the Stewards in their judgment, and the cases to which Mr Wych has referred, the Tribunal accepted that, given the facts of his case, Mr Wych's penalty could be deemed to be severe, but not manifestly excessive.

As noted by the Tribunal several times previously, it will not substitute its own opinion for that of the Stewards, unless the ultimate penalty is shown to be manifestly excessive or there is some demonstrated error on the part of the stewards in their reasoning that leads to a penalty being imposed that is demonstrably wrong.

As no demonstrable error was shown by the Stewards in the imposition of penalty and given that the Tribunal was of the view that the total disqualification period could not be said to be manifestly excessive, the Appeals were dismissed.

#### **APPEAL NO 841 – PAUL JAMES HARVEY**

Paul James Harvey is a RWWA Licensed Jockey in the WA Thoroughbred Racing Industry.

Mr Harvey was found to have breached Thoroughbred Rule of Racing 131(b) by failing to ride his mount, FREQUENT FRIAR out to the end (being the final stride) of Race 6 at Ascot on 17 March 2021. Mr Harvey's mount FREQUENT FRIAR finished second in the race. The winner beat him by a nose. Mr Harvey had ridden the horse vigorously in the race and particularly when approaching the finish line. However, Stewards found that Mr Harvey had compromised FREQUENT FRIAR'S opportunity to win the race by failing to ride the horse out in the final stride and consequently imposed a 20-day suspension commencing midnight 20 March 2021 and expiring midnight 9 April 2021.

Mr Harvey had initially appealed against the finding that he had breached AR131(b), however he discontinued that appeal prior to the hearing and pursued only the appeal against the penalty before the Tribunal.

The Tribunal's reasons noted that "the importance of the rule is of course to protect the integrity of the racing industry by ensuring that every horse is given the best chance of achieving a placing. Persons betting on the outcome of a race need to be assured that their chosen mount is given every opportunity to win. It is for this reason that Stewards will look keenly at the way a horse is ridden when the placings are close."

The Tribunal was satisfied that the Stewards were not in error in the matters that they had taken into account when determining the penalty and whilst it could be argued that the penalty imposed upon Mr Harvey was not lenient, or that it was severe, it was not manifestly excessive.

The Appeal was dismissed.



**APPEAL NO 837 - PETER LESLIE ANDERSON**

Mr Peter Leslie Anderson, a licensed trainer and driver lodged an appeal against the conviction and penalty imposed RWWA Stewards of Harness Racing on 9 June 2020 imposing a fine of \$500 for a breach of Rule 231(2) and a disqualification of 12 months for a breach of Rule 231(1)(e) of the Rules of Harness Racing for misconduct and assault.

The Stewards particularised the charges in the following terms:

Misconduct:

*"The particulars of the charge are that you, licenced trainer/driver Peter Anderson did misconduct yourself on 11 February 2020 at the Byford training track when you deliberately and intentionally allowed STAR OF THE CLASS to run up the track making contact with the sulky shaft of SHE SAID DIAMNDS, driven by Miss Roberts."*

Assault:

*"The particulars of the charge are that you, licenced trainer/driver Peter Anderson did assault Miss Deni Roberts on 11 February 2020 at your registered stables at Byford when you placed your hand on the chest area of Miss Roberts and applied force to move her away."*

After close consideration of the matters related to the conviction for misconduct, the Tribunal was not persuaded that the Stewards had erred in their approach. It formed the view that the Stewards' findings of fact were open on the evidence and concluded that their finding that Mr Anderson's action amounted to misconduct was in accordance with authority. It therefore dismissed the appeal against misconduct.

As to penalty of \$500 imposed by the Stewards for misconduct, the Tribunal rejected the Appellant's submission that the offence was at the lowest end of the scale and merited being disposed of by way of caution or reprimand. In his reasons for decision, Presiding Member Mr Hogan stated "In my opinion, the fine imposed of \$500 in the present case was modest and was within a sound discretionary judgment and cannot be said to be unreasonable or unjust. One only has to look at the Appellant's own previous history in order to see that misconduct is most often dealt with by way of a fine. In 2012 he was fined \$1500 for swearing at the Starter and the Deputy Chief Steward. In 2006 he used abusive language to the Chief Steward and was fined \$2000. The \$500 fine imposed was not manifestly excessive."

The Appeal against penalty of \$500 for the charge of misconduct was dismissed.

When considering the grounds for assault, the Tribunal noted "it was open to the Stewards to use the evidence concerning the previous incident of 4 February in the way which they did on the assault offence. It was relevant evidence because it tended to disprove that the Appellant acted suddenly, and without time for his passion to cool."

Presiding Member, Mr Hogan in his reasons further stated "... The Stewards certainly did not say that the Appellant had not made out his defence. The conduct of the inquiry up to delivering the reasons, and the fact that paragraph 25 comes at the end, indicates to me that it simply a summary of the outcome on the principal issue, rather than a statement of law" and dismissed the appeal against the conviction for the charge of assault.

However, when assessing the penalty for the charge of assault, the Tribunal formed the view that the Stewards had fallen in error in not taking into account the Appellant's personal circumstances when imposing the penalty of disqualification of 12 months. It was satisfied that the seriousness of the offence could be adequately reflected in a fine as a disqualification would have had a catastrophic effect on the Appellant.

The penalty of disqualification was set aside and instead substituted with a fine of \$5,000.

## Disclosures and Legal Compliance

### Financial Statements

The aim of these financial statements is to inform the Parliament and other interested parties, not only of what the Racing Penalties Appeal Tribunal has achieved during the financial year, but also of the reasons behind those achievements.

#### Racing Penalties Appeal Tribunal of Western Australia

##### Certification of financial statements

For the reporting period ended 30 June 2021

The accompanying financial statements of the Racing Penalties Appeal Tribunal of Western Australia have been prepared in compliance with the provisions of the *Financial Management Act 2006* from proper accounts and records to present fairly the financial transactions for the reporting period ended 30 June 2021 and the financial position as at 30 June 2021.

At the date of signing, we are not aware of any circumstances which would render the particulars included in the financial statements misleading or inaccurate.



Liam Carren  
Executive Director Finance,  
Procurement and Payroll

4/7/21



Karen Farley SC  
Chairperson

Racing Penalties Appeal Tribunal of  
Western Australia

4/7/21



Patrick Hogan  
Member

Racing Penalties Appeal Tribunal of  
Western Australia

4/7/21

## Racing Penalties Appeal Tribunal of Western Australia

### Statement of comprehensive income

For the year ended 30 June 2021

	Notes	2021 \$	2020 \$
<b>COST OF SERVICES</b>			
<b>Expenses</b>			
Tribunal members' expenses	2.1	13,947	17,228
Supplies and services	2.2	192,555	193,596
<b>Total cost of services</b>		<b>206,502</b>	<b>210,824</b>
<b>Revenue and Income</b>			
User charges and fees	3.2	2,438	2,950
<b>Total income</b>		<b>2,438</b>	<b>2,950</b>
<b>NET COST OF SERVICES</b>		<b>204,064</b>	<b>207,874</b>
<b>Income from State Government</b>			
Income from other public sector entities	3.1	155,161	17,400
<b>Total Income from State Government</b>		<b>155,161</b>	<b>17,400</b>
<b>DEFICIT FOR THE PERIOD</b>		<b>(48,903)</b>	<b>(190,474)</b>
<b>TOTAL COMPREHENSIVE INCOME FOR THE PERIOD</b>		<b>(48,903)</b>	<b>(190,474)</b>

The Statement of Comprehensive Income should be read in conjunction with the accompanying notes.

## Racing Penalties Appeal Tribunal of Western Australia

### Statement of financial position

As at 30 June 2021

	Notes	2021 \$	2020 \$
<b>ASSETS</b>			
<b>Current Assets</b>			
Cash and cash equivalents	5.1	29,106	75,842
Receivables	4.1	3,771	1,640
<b>Total Current Assets</b>		<b>32,877</b>	<b>77,482</b>
<b>TOTAL ASSETS</b>		<b>32,877</b>	<b>77,482</b>
<b>LIABILITIES</b>			
<b>Current Liabilities</b>			
Payables	4.2	4,836	-
Contract liabilities	4.3	250	788
<b>Total Current Liabilities</b>		<b>5,086</b>	<b>788</b>
<b>TOTAL LIABILITIES</b>		<b>5,086</b>	<b>788</b>
<b>NET ASSETS</b>		<b>27,791</b>	<b>76,694</b>
<b>EQUITY</b>			
Accumulated surplus	7.7	27,791	76,694
<b>TOTAL EQUITY</b>		<b>27,791</b>	<b>76,694</b>

The Statement of Financial Position should be read in conjunction with the accompanying notes.

## Racing Penalties Appeal Tribunal of Western Australia

### Statement of changes in equity

For the year ended 30 June 2021

	Notes	Accumulated surplus/ (deficit) \$	Total equity \$
<b>Balance at 1 July 2019 (Restated)</b>		267,168	267,168
Deficit		(190,474)	(190,474)
<b>Total comprehensive income for the period</b>		<b>(190,474)</b>	<b>(190,474)</b>
<b>Balance at 30 June 2020</b>		<b>76,694</b>	<b>76,694</b>
<b>Balance at 1 July 2020</b>		76,694	76,694
Deficit		(48,903)	(48,903)
<b>Total comprehensive income for the period</b>		<b>(48,903)</b>	<b>(48,903)</b>
<b>Balance at 30 June 2021</b>	7.7	<b>27,791</b>	<b>27,791</b>

The Statement of Changes in Equity should be read in conjunction with the accompanying notes.

## Racing Penalties Appeal Tribunal of Western Australia

### Statement of cash flows

For the year ended 30 June 2021

	Notes	2021 \$	2020 \$
<b>Cash flows from State Government</b>			
Funds from other public sector entities		155,252	18,508
<b>Net Cash provided by State Government</b>		<b>155,252</b>	<b>18,508</b>
<i>Utilised as follows:</i>			
<b>Cash flows from operating activities</b>			
<b>Payments</b>			
Tribunal members' expenses		(11,586)	(19,786)
Supplies and services		(192,555)	(193,596)
GST payments on purchases		(19,223)	(19,332)
GST payments to taxation authority		(15,460)	(1,556)
<b>Receipts</b>			
User charges and fees		1,900	3,733
GST receipts on sales		15,460	19,338
GST receipts from taxation authority		19,226	1,554
Other receipts		250	18,654
<b>Net cash used in operating activities</b>		<b>(201,989)</b>	<b>(190,991)</b>
Net decrease in cash and cash equivalents		(46,736)	(172,483)
Cash and cash equivalents at the beginning of the period		75,842	248,325
<b>Cash and cash equivalents at the end of the period</b>	5.1	<b>29,106</b>	<b>75,842</b>

The Statement of Cash Flows should be read in conjunction with the accompanying notes.



## Racing Penalties Appeal Tribunal of Western Australia

### Notes to the financial statements

For the year ended 30 June 2021

#### 1. Basis of preparation

The Racing Penalties Appeal Tribunal of Western Australia (the "Tribunal") is a WA Government entity and is controlled by the State of Western Australia, which is the ultimate parent. The Tribunal is a not-for-profit entity (as profit is not its principal objective).

A description of the nature of its operations and its principal activities have been included in the 'Overview' which does not form part of these financial statements.

These annual financial statements were authorised for issue by the Accountable Authority of the Tribunal on 20 October 2021.

#### Statement of compliance

These general purpose financial statements have been prepared in accordance with:

- 1) The *Financial Management Act 2006* (FMA)
- 2) The Treasurer's Instructions (TIs)
- 3) Australian Accounting Standards (AASs) - Reduced Disclosure Requirements
- 4) Where appropriate, those AAS paragraphs applicable for not-for-profit entities have been applied.

The *Financial Management Act 2006* and the Treasurer's Instructions take precedence over AASs. Several AASs are modified by TIs to vary application, disclosure format and wording. Where modification is required and has had a material or significant financial effect upon the reported results, details of that modification and the resulting financial effect are disclosed in the notes to the financial statements.

#### Basis of preparation

These financial statements are presented in Australian dollars applying the accrual basis of accounting and using the historical cost convention. Certain balances will apply a different measurement basis (such as the fair value basis). Where this is the case the different measurement basis is disclosed in the associated note. All values are rounded to the nearest dollar.

#### Judgements and estimates

Judgements, estimates and assumptions are required to be made about financial information being presented. The significant judgements and estimates made in the preparation of these financial statements are disclosed in the notes where amounts affected by those judgements and/or estimates are disclosed. Estimates and associated assumptions are based on professional judgements derived from historical experience and various other factors that are believed to be reasonable under the circumstances.

#### Services performed for the Racing Penalties Appeal Tribunal of Western Australia by the Department of Local Government, Sports and Cultural Industries

The Department of Local Government, Sports and Cultural Industries ("DLGSC") provides support to the Tribunal to carry out its objectives. This support comprises most of the amount recorded in the Statement of comprehensive income under 'Supplies and services'. These expenses are in the nature of salaries and administration costs in providing these support services.

Recoups from the Tribunal to DLGSC are made on a monthly basis under a net appropriation determination.

#### 2. Use of our funding

##### Expenses incurred in the delivery of services

This section provides additional information about how the Tribunal's funding is applied and the accounting policies that are relevant for an understanding of the items recognised in the financial statements. The primary expenses incurred by the Tribunal in achieving its objectives and the relevant notes are:

	Notes
Tribunal members' expenses	2.1
Supplies and services	2.2

##### 2.1 Tribunal members' expenses

	2021 \$	2020 \$
Board fees	12,718	15,733
Superannuation - defined contribution plans	1,229	1,495
<b>Total Tribunal members' expenses</b>	<b>13,947</b>	<b>17,228</b>

**Superannuation:** The amount recognised in profit or loss of the Statement of Comprehensive Income comprises employer contributions paid to the GSS (concurrent contributions), the WSS, the GESBs, or other superannuation funds.

## 2.2 Supplies and services

	2021	2020
	\$	\$
Professional services	180,027	180,027
External audit fees	11,673	12,973
Other	855	596
<b>Total supplies and services expenses</b>	<b>192,555</b>	<b>193,596</b>

Supplies and services expenses are recognised as an expense in the reporting period in which they are incurred. The carrying amounts of any materials held for distribution are expensed when the materials are distributed.

## 3. Our funding sources

### How we obtain our funding

This section provides additional information about how the Tribunal obtains its funding and the relevant accounting policy notes that govern the recognition and measurement of this funding. The primary income received by the Tribunal and the relevant notes are:

	Notes
Income from State Government	3.1
User charges and fees	3.2

### 3.1 Income from State Government

	2021	2020
	\$	\$
Income received from other public sector entities during the period:		
- Contribution from Racing and Wagering Western Australia (RWWA)	154,925	15,730
- Interest revenue	236	1,670
<b>Total Income from State Government</b>	<b>155,161</b>	<b>17,400</b>

Revenue is recognised at a point-in-time for contributions from RWWA. The agreement between the Tribunal and RWWA contains no obligation to provide any service to RWWA in exchange for their contribution. Therefore, the Tribunal recognises the revenue in accordance with AASB 1058 at the time the funds are received.

Due to a change in account classification, Income from State Government is restated as \$17,400 for the prior year. In 2019-20, it was published as \$0.

### 3.2 User charges and fees

	2021	2020
	\$	\$
User charges and fees		
- Stay of proceedings	400	302
- Appeal fees	2,038	2,648
<b>Total user charges and fees</b>	<b>2,438</b>	<b>2,950</b>

Revenue is recognised at the transaction price when the Tribunal transfers control of the services to customers. Revenue is recognised for the major activities as follows:

Revenue is recognised at a point-in-time for stay of proceedings (to suspend penalties) in relation to greyhound and harness racing. Stay applications are typically determined within one working day of receiving the submission.

Revenue is recognised for appeal fees (appeal against penalties imposed in disciplinary proceedings) in relation to greyhound and harness racing at a point-in-time. The Tribunal satisfies their obligation when the appeal is determined and revenue is then recognised.

Due to a change in account classification, User charges and fees is restated as \$2,950 for the prior year. In 2019-20, it was published as \$18,680.

## 4. Other assets and liabilities

This section sets out those assets and liabilities that arose from the Tribunal's controlled operations and includes other assets utilised for economic benefits and liabilities incurred during normal operations:

	Notes
Receivables	4.1
Payables	4.2
Contract liabilities	4.3

### 4.1 Receivables

	2021	2020
	\$	\$
Current		
Interest receivable	42	134
Other receivable	2,226	-
GST receivable	1,503	1,506
<b>Total current</b>	<b>3,771</b>	<b>1,640</b>
<b>Total receivables</b>	<b>3,771</b>	<b>1,640</b>

Receivables are recognised at original invoice amount less any allowances for uncollectible amounts (i.e. impairment). The carrying amount of net trade receivables is equivalent to fair value as it is due for settlement within 30 days.

## 4.2 Payables

	2021	2020
	\$	\$
<b>Current</b>		
Accrued expenses	4,586	-
Other payables	250	-
<b>Balance at end of period</b>	<b>4,836</b>	<b>-</b>

Payables are recognised at the amounts payable when the Tribunal becomes obliged to make future payments as a result of a purchase of assets or services. The carrying amount is equivalent to fair value, as settlement is generally within 30 days.

## 4.3 Contract liabilities

	2021	2020
	\$	\$
<b>Reconciliation of changes in contract liabilities</b>		
Opening balance	788	388
Additions	250	788
Revenue recognised in the reporting period	(788)	(388)
<b>Balance at end of period</b>	<b>250</b>	<b>788</b>
<b>Current</b>	<b>250</b>	<b>788</b>
<b>Non-current</b>	<b>-</b>	<b>-</b>

The Tribunal's contract liabilities relate to appeal fees yet to be determined at the end of the reporting period. Typically, an appeal fee is received upfront upon submission of an application for review.

## 5. Financing

This section sets out the material balances and disclosures associated with the financing and cashflows of the Tribunal.

	Note
Cash and cash equivalents	5.1

## 5.1 Cash and cash equivalents

	2021	2020
	\$	\$
Cash and cash equivalents	29,106	75,842
<b>Balance at end of period</b>	<b>29,106</b>	<b>75,842</b>

For the purpose of the statement of cash flows, cash and cash equivalent assets comprise cash at bank.

## 6. Financial instruments and Contingencies

This note sets out key risk management policies and measurement techniques of the Tribunal.

	Notes
Financial instruments	6.1
Contingent assets and liabilities	6.2

## 6.1 Financial instruments

The carrying amounts of each of the following categories of financial assets and financial liabilities at the end of the reporting period are:

	2021	2020
	\$	\$
<b>Financial assets</b>		
Cash and cash equivalents	29,106	75,842
Financial assets at amortised cost <sup>(a)</sup>	2,268	134
<b>Total financial assets</b>	<b>31,374</b>	<b>75,976</b>
<b>Financial liabilities</b>		
Financial liabilities at amortised cost	4,836	-
<b>Total financial liability</b>	<b>4,836</b>	<b>-</b>

(a) The amount of Financial assets at amortised cost excludes GST recoverable from the ATO (statutory receivable).

## 6.2 Contingent assets and liabilities

Contingent assets and contingent liabilities are not recognised in the statement of financial position but are disclosed and, if quantifiable, are measured at the best estimate. Contingent assets and liabilities are presented inclusive of GST receivable or payable respectively.

### 6.2.1 Contingent assets

The Tribunal is not aware of any contingent assets as at the end of the reporting period.

### 6.2.2 Contingent liabilities

The Tribunal is not aware of any contingent liabilities as at the end of the reporting period.

## 7. Other disclosures

This section includes additional material disclosures required by accounting standards or other pronouncements, for the understanding of this financial report.

	Notes
Events occurring after the end of the reporting period	7.1
Key management personnel	7.2
Related party transactions	7.3
Related bodies	7.4
Affiliated bodies	7.5
Remuneration of auditors	7.6
Equity	7.7

### 7.1 Events occurring after the end of the reporting period

The Tribunal is not aware of any matters or circumstances that have arisen since the end of the financial year to the date of this report which has significantly affected or may significantly affect the activities of the Tribunal, the results of those activities or the state of affairs of the Tribunal in the ensuing or any subsequent financial year.

### 7.2 Key management personnel

The Tribunal has determined key management personnel to include cabinet ministers and senior officers of the Tribunal. The Tribunal does not incur expenditures to compensate Ministers and those disclosures may be found in the *Annual Report on State Finances*.

The total fees, salaries, superannuation, non-monetary benefits and other benefits for members and senior officers of the Tribunal for the reporting period are presented within the following bands:

Compensation band (\$)	2021	2020
0 - 10,000	8	8
	2021	2020
	\$	\$
<b>Total compensation of members of the Tribunal</b>	<b>13,947</b>	<b>17,228</b>
	2021	2020
Compensation band (\$)		
0 - 10,000	1	1
	2021	2020
	\$	\$
<b>Total compensation of senior officers</b>	<b>-</b>	<b>-</b>

Total compensation includes the superannuation expense incurred by the Tribunal in respect of members and senior officers.

### 7.3 Related party transactions

The Tribunal is a wholly owned public sector entity that is controlled by the State of Western Australia.

Related parties of the Tribunal include:

- all cabinet ministers and their close family members, and their controlled or jointly controlled entities;
- all senior officers and their close family members, and their controlled or jointly controlled entities;
- other agencies and statutory authorities, including related bodies, that are included in the whole of government consolidated financial statements (i.e. wholly-owned public sector entities);
- associates and joint ventures, that are included in the whole of government consolidated financial statements; and
- the Government Employees Superannuation Board (GESB).

#### Significant transactions with Government-related entities

In conducting its activities, the Tribunal is required to transact with the State and entities related to the State. These transactions are generally based on the standard terms and conditions that apply to all agencies. Such transactions include:

- annual services fees payments to the Department of Local Government, Sport and Cultural Industries for services received (Note 2.2); and
- contribution received from Racing and Wagering Western Australia (Note 3.1); and
- audit fee payments to the Office of the Auditor General (Note 7.6).

#### Significant transactions with other related entities

- superannuation payments to GESB (Note 2.1).

#### Material transactions with other related parties

Outside of normal citizen type transactions with the Tribunal, there were no other related party transactions that involved key management personnel and/or their close family members and/or their controlled (or jointly controlled) entities.

### 7.4 Related bodies

The Tribunal had no related bodies during the financial year.

### 7.5 Affiliated bodies

The Tribunal had no affiliated bodies during the financial year.

### 7.6 Remuneration of auditors

Remuneration paid or payable to the Auditor General in respect of the audit for the current financial year is as follows:

	2021	2020
	\$	\$
Auditing the accounts, financial statements controls, and key performance indicators	14,500	11,673

### 7.7 Equity

	2021	2020
	\$	\$
<b>Accumulated surplus</b>		
Balance at start of period	76,694	267,556
Initial application of AASB 15	-	(388)
Result for the period	(48,903)	(190,474)
<b>Balance at end of period</b>	<b>27,791</b>	<b>76,694</b>

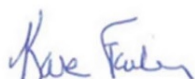


## Key Performance Indicator Information

### Key Performance Indicator Information

#### Certification of Key Performance Indicators

We hereby certify that the key performance indicators are based on proper records, are relevant and appropriate for assisting users to assess the performance of the Racing Penalties Appeal Tribunal of Western Australia, and fairly represent the performance of the Racing Penalties Appeal Tribunal of Western Australia for the financial year ended 30 June 2021.



Karen Farley SC  
Chairperson  
Racing Penalties Appeal Tribunal of  
Western Australia



Patrick Hogan  
Member  
Racing Penalties Appeal Tribunal of  
Western Australia



## Detailed Information in Support of Key Performance Indicators

**Government Goal:** Sustainable Finances: Responsible financial management and better service delivery

**Desired Outcome:** To provide an appeal tribunal in relation to determinations made by racing industry stewards and controlling authorities.

### Stays of Proceedings

Under the *Racing Penalties (Appeals) Act 1990* (the Act), an appellant may apply for a suspension of the operation of a penalty at the time of lodging the appeal (a stay). It is essential to the racing codes, trainers, owners and the general public that these stay applications are dealt with expeditiously. These determinations impact directly on the eligibility of riders, drivers and runners to fulfil prior engagements.

The aim and the key performance indicator of the Racing Penalties Appeal Tribunal of Western Australia (the Tribunal) is to determine the applications for stays on the same day as the full and final submissions are received from the parties.

The following table shows that in 2020-21 all stay applications received were determined within one working day of receipt of all submissions.

An overall decrease in the number of applications lodged has been noted for the reporting period. Subsequently, this has been reflected in the actual number of stay applications lodged being lower than the forecast target.

Key Effectiveness Indicator	2018-19 Actual	2019-20 Actual	2020-21 Target	2020-21 Actual
Total number of stay applications received	2	5	6	2*
Number of stay applications determined within one day of receipt of all submissions	2	4	6	2
Indicator <sup>1</sup>	100%	80%	100%	100%

\* One additional stay application was received but subsequently withdrawn before receipt of all submissions (Appeal No 841 refers).

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<sup>1</sup> The effectiveness indicator for this activity is derived by dividing the number of stay applications determined within one day of receipt of all submissions by the total number of stay applications received, then multiplying by 100.

**Service:** To perform functions for the racing industry.

**Service Description:** To process appeals/stay applications in accordance with statutory obligations.

The Tribunal was established to maintain industry confidence in the enforcement of the various racing rules by providing the industry with an impartial quasi-judicial forum for the hearing of appeals against a determination, or a finding comprised in or related to a determination, of an appropriate controlling authority, of a racing club, or of any committee or stewards.

The Tribunal is responsible for hearing and determining appeals and stay applications against penalties imposed in disciplinary proceedings arising from, or in relation to, the conduct of greyhound racing, horse racing and harness racing.

A person who is aggrieved by a Racing and Wagering Western Australia (RWWA) decision, or a determination made by a steward/stewards or a committee of a racing club, may make an appeal to the Tribunal within 14 days of the decision being handed down.

The Registrar of the Tribunal must ensure that appeals and stay applications are processed in accordance with the *Racing Penalties (Appeals) Act 1990* and the *Racing Penalties (Appeals) Regulations 1991*, whilst providing an effective and efficient service to the racing industry at minimal cost.

The average cost for hearing appeals can change for each reporting year as a result of increases or reductions in the number of matters heard before the Tribunal, combined with annual increases to the total cost of providing services to the Tribunal to conduct its operations.

The reason for the discrepancy between the target average cost of processing appeals during the financial year 2020-21 versus the actual cost incurred in processing the appeals is due to the lower number of appeals lodged and heard during the year.

Key Efficiency Indicator	2017-18 Actual	2018-19 Actual	2019-20 Actual	2020-21 Target	2020-21 Actual
Average cost of processing an appeal <sup>2</sup>	\$13,881	\$23,710	\$23,425	\$18,910 <sup>3</sup>	\$34,417 <sup>4</sup>

<sup>2</sup> The average processing cost for each financial year is derived by dividing the total cost of services to the Tribunal by the number of appeals heard.

<sup>3</sup> This is based on 2020-21 budgeted cost of services of \$226,925 divided by a target of 12 appeals heard.

<sup>4</sup> This is based on 2020-21 actual cost of services of \$206,502 divided by 6 appeals heard.



## Auditor General

### INDEPENDENT AUDITOR'S OPINION

2021

### Racing Penalties Appeal Tribunal of Western Australia

To the Parliament of Western Australia

## Report on the audit of the financial statements

### Opinion

I have audited the financial statements of the Racing Penalties Appeal Tribunal of Western Australia (Tribunal) which comprise:

- the Statement of Financial Position at 30 June 2021, and the Statement of Comprehensive Income, Statement of Changes in Equity and Statement of Cash Flows for the year then ended.
- Notes comprising a summary of significant accounting policies and other explanatory information.

In my opinion, the financial statements are:

- based on proper accounts and present fairly, in all material respects, the operating results and cash flows of the Racing Penalties Appeal Tribunal of Western Australia for the year ended 30 June 2021 and the financial position at the end of that period
- in accordance with Australian Accounting Standards, the *Financial Management Act 2006* and the Treasurer's Instructions.

### Basis for opinion

I conducted my audit in accordance with the Australian Auditing Standards. My responsibilities under those standards are further described in the Auditor's responsibilities for the audit of the financial statements section of my report.

I am independent of the Tribunal in accordance with the *Auditor General Act 2006* and the relevant ethical requirements of the Accounting Professional & Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the Code) that are relevant to my audit of the financial statements. I have also fulfilled my other ethical responsibilities in accordance with the Code.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

### Responsibilities of the Tribunal Members for the financial statements

The Tribunal Members are responsible for:

- keeping proper accounts

- preparation and fair presentation of the financial statements in accordance with Australian Accounting Standards, the *Financial Management Act 2006* and the Treasurer's Instructions
- such internal control as it determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Tribunal Members are responsible for:

- assessing the entity's ability to continue as a going concern
- disclosing, as applicable, matters related to going concern
- using the going concern basis of accounting unless the Western Australian Government has made policy or funding decisions affecting the continued existence of the Tribunal.

### **Auditor's responsibilities for the audit of the financial statements**

As required by the *Auditor General Act 2006*, my responsibility is to express an opinion on the financial statements. The objectives of my audit are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Australian Auditing Standards will always detect a material misstatement when it exists.

Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations or the override of internal control.

A further description of my responsibilities for the audit of the financial statements is located on the Auditing and Assurance Standards Board website. This description forms part of my auditor's report and can be found at [https://www.auasb.gov.au/auditors\\_responsibilities/ar4.pdf](https://www.auasb.gov.au/auditors_responsibilities/ar4.pdf).

## **Report on the audit of controls**

### **Opinion**

I have undertaken a reasonable assurance engagement on the design and implementation of controls exercised by the Racing Penalties Appeal Tribunal of Western Australia. The controls exercised by the Tribunal are those policies and procedures established by the Tribunal Members to ensure that the receipt, expenditure and investment of money, the acquisition and disposal of property, and the incurring of liabilities have been in accordance with legislative provisions (the overall control objectives).

My opinion has been formed on the basis of the matters outlined in this report.

In my opinion, in all material respects, the controls exercised by the Racing Penalties Appeal Tribunal of Western Australia are sufficiently adequate to provide reasonable assurance that the receipt, expenditure and investment of money, the acquisition and disposal of property and the incurring of liabilities have been in accordance with legislative provisions during the year ended 30 June 2021.

### **The Tribunal Member's responsibilities**

The Tribunal Member's are responsible for designing, implementing and maintaining controls to ensure that the receipt, expenditure and investment of money, the acquisition and disposal of



property and the incurring of liabilities are in accordance with the *Financial Management Act 2006*, the Treasurer's Instructions and other relevant written law.

### **Auditor General's responsibilities**

As required by the *Auditor General Act 2006*, my responsibility as an assurance practitioner is to express an opinion on the suitability of the design of the controls to achieve the overall control objectives and the implementation of the controls as designed. I conducted my engagement in accordance with Standard on Assurance Engagements ASAE 3150 *Assurance Engagements on Controls* issued by the Australian Auditing and Assurance Standards Board. That standard requires that I comply with relevant ethical requirements and plan and perform my procedures to obtain reasonable assurance about whether, in all material respects, the controls are suitably designed to achieve the overall control objectives and were implemented as designed.

An assurance engagement involves performing procedures to obtain evidence about the suitability of the controls design to achieve the overall control objectives and the implementation of those controls. The procedures selected depend on my judgement, including an assessment of the risks that controls are not suitably designed or implemented as designed. My procedures included testing the implementation of those controls that I consider necessary to achieve the overall control objectives.

I believe that the evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

### **Limitations of controls**

Because of the inherent limitations of any internal control structure, it is possible that, even if the controls are suitably designed and implemented as designed, once in operation, the overall control objectives may not be achieved so that fraud, error or non-compliance with laws and regulations may occur and not be detected. Any projection of the outcome of the evaluation of the suitability of the design of controls to future periods is subject to the risk that the controls may become unsuitable because of changes in conditions.

## **Report on the audit of the key performance indicators**

### **Opinion**

I have undertaken a reasonable assurance engagement on the key performance indicators of the Racing Penalties Appeal Tribunal of Western Australia for the year ended 30 June 2021. The key performance indicators are the Under Treasurer-approved key effectiveness indicators and key efficiency indicators that provide performance information about achieving outcomes and delivering services.

In my opinion, in all material respects, the key performance indicators of the Racing Penalties Appeal Tribunal of Western Australia are relevant and appropriate to assist users to assess the Tribunal's performance and fairly represent indicated performance for the year ended 30 June 2021.

### **The Tribunal Member's responsibilities for the key performance indicators**

The Tribunal Member's are responsible for the preparation and fair presentation of the key performance indicators in accordance with the *Financial Management Act 2006* and the Treasurer's Instructions and for such internal control it determines necessary to enable the

preparation of key performance indicators that are free from material misstatement, whether due to fraud or error.

In preparing the key performance indicators, the Tribunal Member's are responsible for identifying key performance indicators that are relevant and appropriate, having regard to their purpose in accordance with Treasurer's Instruction 904 *Key Performance Indicators*.

### **Auditor General's responsibilities**

As required by the *Auditor General Act 2006*, my responsibility as an assurance practitioner is to express an opinion on the key performance indicators. The objectives of my engagement are to obtain reasonable assurance about whether the key performance indicators are relevant and appropriate to assist users to assess the entity's performance and whether the key performance indicators are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. I conducted my engagement in accordance with Standard on Assurance Engagements ASAE 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* issued by the Australian Auditing and Assurance Standards Board. That standard requires that I comply with relevant ethical requirements relating to assurance engagements.

An assurance engagement involves performing procedures to obtain evidence about the amounts and disclosures in the key performance indicators. It also involves evaluating the relevance and appropriateness of the key performance indicators against the criteria and guidance in Treasurer's Instruction 904 for measuring the extent of outcome achievement and the efficiency of service delivery. The procedures selected depend on my judgement, including the assessment of the risks of material misstatement of the key performance indicators. In making these risk assessments I obtain an understanding of internal control relevant to the engagement in order to design procedures that are appropriate in the circumstances.

I believe that the evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

### **My independence and quality control relating to the reports on controls and key performance indicators**

I have complied with the independence requirements of the *Auditor General Act 2006* and the relevant ethical requirements relating to assurance engagements. In accordance with ASQC 1 *Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, and Other Assurance Engagements*, the Office of the Auditor General maintains a comprehensive system of quality control including documented policies and procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements.

### **Other information**

The Tribunal Member's are responsible for the other information. The other information is the information in the entity's annual report for the year ended 30 June 2021, but not the financial statements, key performance indicators and my auditor's report.

My opinions do not cover the other information and, accordingly, I do not express any form of assurance conclusion thereon.

**Matters relating to the electronic publication of the audited financial statements and key performance indicators**

This auditor's report relates to the financial statements, controls and key performance indicators of the Racing Penalties Appeal Tribunal of Western Australia for the year ended 30 June 2021 included on the Tribunal's website. The Tribunal's management is responsible for the integrity of the Tribunal's website. This audit does not provide assurance on the integrity of the Tribunal's website. The auditor's report refers only to the financial statements, controls and key performance indicators described above. It does not provide an opinion on any other information which may have been hyperlinked to/from these financial statements, controls or key performance indicators. If users of the financial statements, controls and key performance indicators are concerned with the inherent risks arising from publication on a website, they are advised to contact the entity to confirm the information contained in the website version of the financial statements, controls and key performance indicators.



Nayna Raniga  
Acting Senior Director  
Financial Audit  
Delegate of the Auditor General for Western Australia  
4 November 2021

## 2021-22 Annual Estimates

79-00164



**Department of Local Government, Sport and Cultural Industries**  
**Racing Penalties Appeal Tribunal**

<b>TO:</b>	<b>HON REECE WHITBY, MLA</b>	<b>MIN REF:</b>	<b>N/A</b>
<b>FROM:</b>	<b>KAREN FARLEY SC, CHAIRPERSON</b>	<b>FILE NO:</b>	<b>19-1323</b>
<b>SUBJECT:</b>	<b>RACING PENALTIES APPEAL TRIBUNAL BUDGET ESTIMATES 2021-22</b>	<b>DATE:</b>	<b>23 March 2021</b>

**RECOMMENDATION**

I recommend you approve the Budget Estimates for the 2021-22 financial year and return to the Department of Local Government, Sport and Cultural Industries (DLGSC):

- (i) Annual cash estimates under the *Racing Penalties (Appeals) Act 1990*; and
- (ii) Annual accrual estimates under the *Financial Management Act 2006*.

**2021-22 BUDGET ESTIMATES**

In accordance with Section 24(2) of *Racing Penalties (Appeals) Act 1990*, the attached estimates of income and expenditure for the 2021-22 financial year for the Racing Penalties Appeal Tribunal (RPAT) are submitted for your approval.

The estimates for 2021-22 have projected 16 appeals with 4 stay applications. In 2020-21 it is expected that 10 appeals and 2 stay applications will be received.

In 2021-22 the estimated income is \$5,052 requiring \$235,130 to be funded by Racing and Wagering Western Australia (RWVA). Their obligation to fund the operations of RPAT is in accordance with Section 106 of the *Racing and Wagering Western Australia Act 2003*.

RWVA has advised that they have no objection to the 2021-22 budget estimates.

Explanations of significant variations between 2020-21 Estimated Actual and 2021-22 Annual Budget are detailed below. Please note that the figures presented as Estimated Actual for 2020-21 are based on unaudited financial statements.

**1. Statement of Comprehensive Income****1.1 Operating Expenses**

There is an increase of \$27,162 in Fee expenses to tribunal members and Superannuation in 2021-22 as compared to 2020-21 as more appeals are expected to be heard.



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Other operating expenses are higher in 2021-22 mainly due to the provision for travel and advertising with the potential reappointment of 8 members to be published in the Government Gazette.

#### 1.2 Operating Revenues

Funding from RWWA has been budgeted at \$235,130 for the 2021-22 financial year, an increase of \$80,205 from 2020-21.

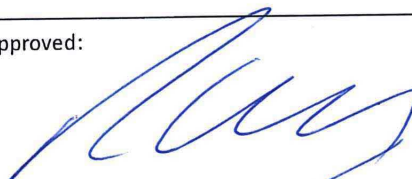
#### 2. Statement of Financial Position

The cash resources for the 2021-22 financial year are expected to decrease as only a working cash limit of 5% of total cost of services will be held.

  
KAREN FARLEY SC  
CHAIRPERSON

Enc.

Approved:



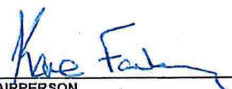
HON REECE WHITBY, MLA  
MINISTER FOR RACING AND GAMING

24 / 4 / 2021

**RACING PENALTIES APPEAL TRIBUNAL****CASH ESTIMATES 2021/2022**

DESCRIPTION	2020/2021 ANNUAL BUDGET	2020/2021 ESTIMATED ACTUAL	2021/2022 ANNUAL BUDGET
<b>COSTS INCURRED BY TRIBUNAL DIRECTLY</b>			
Members' Fees	\$25,000	\$18,757	\$46,563
Members' Superannuation	\$2,375	\$1,762	\$4,423
Members' Travel Costs	\$5,000	\$0	\$2,000
Audit Fees	\$12,973	\$11,673	\$11,673
Other Expenses (Web Development, Security, Library Acquisitions, Transcription Costs, Bank Charges)	\$1,550	\$1,014	\$2,850
<b>TOTAL COSTS INCURRED BY TRIBUNAL DIRECTLY</b>	<b>\$46,898</b>	<b>\$33,226</b>	<b>\$67,509</b>
<b>COSTS INCURRED DIRECT TO DLGSC</b>			
Services Provided by DLGSC	\$180,027	\$180,027	\$180,027
<b>TOTAL COSTS INCURRED DIRECT TO DLGSC</b>	<b>\$180,027</b>	<b>\$180,027</b>	<b>\$180,027</b>
<b>ANNUAL COST FOR TRIBUNAL</b>	<b>\$226,925</b>	<b>\$213,253</b>	<b>\$247,536</b>
<b>LESS TRIBUNAL REVENUE</b>			
Opening Balance	\$75,843	\$75,843	\$19,731
Funding from RWWA	\$154,925	\$154,925	\$235,130
Appeal Fees	\$3,705	\$1,687	\$3,652
Stay of Proceedings Fees	\$300	\$200	\$200
GST Refund from ATO	\$0	\$4	\$0
Interest	\$3,500	\$325	\$1,200
Transcription Fees	\$0	\$0	\$0
Other Revenue	\$0	\$0	\$0
<b>TOTAL TRIBUNAL REVENUE</b>	<b>\$238,272</b>	<b>\$232,984</b>	<b>\$269,913</b>
<b>BALANCE OF TRIBUNAL</b>	<b>\$11,347</b>	<b>\$19,731</b>	<b>\$12,377</b>

APPROVED:


  
 CHAIRPERSON


  
 DATE

**Racing Penalties Appeal Tribunal**  
**Statement of Comprehensive Income**  
*Estimates for the year ending 30 June 2022*

	ANNUAL BUDGET 2020-21 \$	ESTIMATED ACTUAL 2020-21 \$	ANNUAL BUDGET 2021-22 \$
<b>COST OF SERVICES</b>			
Operating expenses			
Fee expenses to tribunal members	25,000	21,757	46,563
Superannuation	2,375	2,067	4,423
Services & contracts expense (professional services)	180,027	180,027	180,027
Other operating expenses	19,523	12,687	16,523
Total cost of services	<u>226,925</u>	<u>216,538</u>	<u>247,536</u>
Operating revenues			
Funding from Racing & Wagering WA	154,925	154,925	235,130
Operating income	4,005	2,675	3,852
Interest	3,500	273	1,200
Total operating revenue	<u>162,430</u>	<u>157,873</u>	<u>240,182</u>
Net cost of services	<u>64,495</u>	<u>58,665</u>	<u>7,354</u>
<b>CHANGE IN NET ASSETS RESULTING FROM OPERATIONS</b>	<b>(64,495)</b>	<b>(58,665)</b>	<b>(7,354)</b>
Add Opening balance of accumulated surplus/(deficit)	77,482	76,695	18,030
Closing balance of accumulated surplus/(deficit)	<u>12,987</u>	<u>18,030</u>	<u>10,676</u>

## Racing Penalties Appeal Tribunal

### Statement of Financial Position

Estimates as at 30 June 2022

	ANNUAL BUDGET 2020-21 \$	ESTIMATED ACTUAL 2020-21 \$	ANNUAL BUDGET 2021-22 \$
<b>CURRENT ASSETS</b>			
Cash resources	11,347	19,731	12,377
GST receivable	1,506	1,503	1,503
Interest receivable	250	81	81
<b>Total current assets</b>	<b>13,103</b>	<b>21,315</b>	<b>13,961</b>
<b>Total assets</b>	<b>13,103</b>	<b>21,315</b>	<b>13,961</b>
<b>CURRENT LIABILITIES</b>			
Accrued tribunal members fees	0	3,000	3,000
Accrued superannuation	0	285	285
<b>Total current liabilities</b>	<b>0</b>	<b>3,285</b>	<b>3,285</b>
<b>Total liabilities</b>	<b>0</b>	<b>3,285</b>	<b>3,285</b>
<b>Net assets</b>	<b>13,103</b>	<b>18,030</b>	<b>10,676</b>
<b>EQUITY</b>			
Accumulated surplus/(deficit)	12,987	18,030	10,676
<b>Total equity/(equity deficit)</b>	<b>12,987</b>	<b>18,030</b>	<b>10,676</b>

## Racing Penalties Appeal Tribunal

### Statement of Cash Flows

Estimates for the year ending 30 June 2022

	ANNUAL BUDGET 2020-21 \$ Inflows (Outflows)	ESTIMATED ACTUAL 2020-21 \$ Inflows (Outflows)	ANNUAL BUDGET 2021-22 \$ Inflows (Outflows)
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
Payments			
Payments to tribunal members	(25,000)	(18,757)	(46,563)
Superannuation payments to GESB	(2,375)	(1,782)	(4,423)
Payments to DLGSC	(180,027)	(180,027)	(180,027)
Other payments	(19,523)	(12,687)	(16,523)
GST paid on purchases	0	(13,223)	0
GST paid to Taxation Authority	0	(15,471)	0
Receipts			
Receipts from customers	4,005	1,887	3,852
Funding from RWWA	154,925	154,925	235,130
Interest received	3,500	325	1,200
GST receipts on sales	0	13,226	0
GST received from Tax Authority	0	15,471	0
Net cash provided by/(used in) operating activities	<u>(64,496)</u>	<u>(56,112)</u>	<u>(7,354)</u>
Cash at the beginning of the reporting period	<u>75,843</u>	<u>75,843</u>	<u>19,731</u>
Cash at the end of the reporting period	<u>11,347</u>	<u>19,731</u>	<u>12,377</u>

## Other Legal and Government Policy Requirements

### Remuneration of Members

The Chairperson of the Tribunal is entitled to a remuneration of \$126 per hour.

The members of the Racing Penalties Appeal Tribunal are entitled to payment of:

\$494 per half day (under 4 hours)

\$756 per day (for over 4 hours)

Plus:

\$105 per hour for preparation time (i.e. 1 hour per day of hearing)

\$105 per hour for decision writing time (i.e. 2 hours for up to 1 day of hearing)

During the reporting period, the following remuneration figures applied to Tribunal members.

Position	Name	Type of remuneration	Period of membership	Gross/actual remuneration 2020-21 financial year	Super-annuation
Chairperson	Karen Farley SC	Attendance / Decision Writing	12 months	\$4,066.00	\$386.28
Member	Patrick Hogan	Attendance / Decision Writing	12 months	\$2,711.00	\$257.55
Member	Andrew Monisse	Attendance / Decision Writing	12 months	\$1,198.00	\$113.81
Member	Robert Nash	Attendance / Decision Writing	12 months	\$1,303.00	\$123.79
Member	Johanna Overmars	Attendance / Decision Writing	12 months	\$210.00	\$19.95
Member	Brenda Robbins	Attendance / Decision Writing	12 months	\$1,093.00	\$103.84
Member	Emma Power	Attendance / Decision Writing	12 months	Nil	Nil
Member	Zoe Gilders	Attendance / Decision Writing	12 months	Nil	Nil
			<b>Total</b>	<b>\$10,581.00</b>	<b>\$1,005.22</b>

## Significant Issues and Trends Impacting the Tribunal

### Changes to Acts

There were no amendments to the *Racing Penalties (Appeals) Act 1990* for the year under review.

### Likely Developments and Forecast Results of Operations

It is expected that the workload of the Racing Penalties Appeal Tribunal for 2020-21 will remain steady.

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## Governance Disclosures

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### Unauthorised Use of Credit Cards

There have been no identified instances of unauthorised use of corporate credit cards.

### Advertising and Sponsorship

Section 175ZE of the *Electoral Act 1907* requires public agencies to report details of expenditure to organisations providing services in relation to advertising, market research, polling, direct mail and media advertising. The Tribunal did not incur expenditure of this nature in 2020-21.

### Other Government Policy Requirements

The Tribunal meets its requirements through arrangements with the Department of Local Government, Sport and Cultural Industries. The Department's annual report contains information on how the following requirements are met:

- Disability Access and Inclusion Plan Outcomes.
- Compliance with Public Sector Standards and Ethical Codes.
- Recordkeeping Plans.
- Substantive Equality.
- Occupational Safety, Health and Injury Management.
- Government Building Training Policy.