



RACING APPEALS TRIBUNAL

PROCEDURES AND GUIDELINES (MAY 2019)

JURISDICTION OF TRIBUNAL

The ACT Racing Tribunal is established by the *Racing Act 1999*. It hears appeals from certain decisions of the Canberra Racing Club, the Harness Racing Club and persons conducting a race meeting.

The decisions that can be appealed are:

- disqualification or suspension of a person or animal from participating in races;
- imposition of a fine;
- requiring a person not to enter a racecourse or training track.

HOW TO APPEAL

An appeal must be lodged with the Registrar of the Tribunal within 7 days of the appellant being informed of the decision unless the Tribunal grants an extension of time to appeal.

The Registrar's postal address is:

ACT Gambling and Racing Commission
GPO Box 158
CANBERRA ACT 2601

Telephone: 02 6207 0382

Email: grc@act.gov.au

The appellant must complete the Notice of Appeal form and attach the information requested. A bond of \$350, required by the Tribunal Rules, must also be lodged with the Registrar when making an application.

SUSPENSION OF DECISION PENDING APPEAL

If the appellant wants the decision appealed against to be suspended pending the appeal, the appellant must indicate this in the appeal application form and provide detailed grounds for the request. The President or Deputy President of the Tribunal may order that the operation of the decision appealed against be suspended until the Tribunal determines otherwise.

PARTIES TO APPEAL

The parties to an appeal are:

- the appellant;

- the body that made the decision appealed against, that is the Controlling Body of the Club or the person who conducted the race meeting; or
- any other person whom the Tribunal considers is directly affected by or interested in the subject matter of the appeal.

A person, other than the appellant or the body that made the decision appealed against, who wishes to be made a party to an appeal must lodge a written submission with the Tribunal before the date set for the hearing of the appeal.

HEARING OF APPEAL

The Tribunal will hear the appeal as soon as practicable after it has been lodged. The Tribunal will send to the parties to the appeal a notice setting out the time and place of the hearing. It will also provide each party with any written material that it has received from another party.

If a party fails to appear, either in person or by representative, at the time set down for the hearing of an appeal, the Tribunal is permitted to proceed to hear the appeal in that party's absence. Unless there is good reason for the party not appearing that has been communicated to the Tribunal in advance of the hearing, the Tribunal will ordinarily proceed with the hearing.

REPRESENTATION

A party to an appeal may be represented by a legal practitioner or, with the consent of the Tribunal, by another person. The Notice of Appeal form requires an appellant who is to be represented to nominate that representative.

An appellant who wishes to nominate a representative who is not a legal practitioner will need to indicate to the Tribunal why that person is being nominated. The person so nominated will not be able to act on behalf of the appellant until the President or Deputy President acting on behalf of the Tribunal has approved him or her as a representative.

PROCEDURE AT HEARING

Hearings are to be in public unless the Tribunal determines otherwise. A party who wishes the Tribunal to proceed in private will have to make a submission to that effect to the Tribunal in public session and will have to show good reason why a private hearing is necessary or desirable.

The Tribunal may adjourn a hearing at any time but the Tribunal will need to be persuaded that an adjournment is necessary as the Tribunal considers that appeals should be dealt with quickly and a hearing once started should be completed as soon as is practicable.

A record is kept of the proceedings of a hearing and will be made available to the parties on request as soon as practicable after it has been produced on payment of the cost of its production.

EVIDENCE AT HEARING

The Tribunal has before it the evidence given at the hearing leading to the decision under appeal. It will also receive fresh evidence. That fresh evidence will usually be given orally but the Tribunal can take evidence supported by a statutory declaration.

The Tribunal is entitled to inform itself in any way it thinks fit.

The parties to a hearing may make submissions to the Tribunal, give evidence, call witnesses and examine and cross-examine witnesses.

A party who gives evidence to the Tribunal will be treated as if he or she were a witness.

If video evidence is before the Tribunal, it will usually be viewed first and the parties invited to comment on it.

WITNESSES

Witnesses may be summoned by the Tribunal to attend and give evidence to the Tribunal or to produce documents. The Tribunal may inspect or make copies of any documents so produced and may retain the documents for a reasonable time.

Witnesses will usually be required to take an oath or make an affirmation.

A failure to attend, answer questions, produce documents or be sworn when directed to do so by the Tribunal is an offence. However, a witness can decline to answer a question or produce documents if to do so would be likely to incriminate the person of an offence or would require the disclosure of information that is legally privileged, eg is the subject of legal professional privilege.

A party should not make any attempt to contact a witness who may be summoned to give evidence and should not attempt to influence the evidence to be given by a witness.

ONUS AND STANDARD OF PROOF

The hearing of an appeal is a rehearing on the original evidence and any fresh evidence. Accordingly it is for the person who was responsible for the adverse finding against the appellant to make out its case. For this reason evidence should be presented first by the party against whose decision the appeal is being brought.

The standard of proof is that of the balance of probabilities, taking into account the seriousness of the allegations made against the appellant and the effect on the livelihood and reputation of the appellant that would flow from an adverse finding.

WITHDRAWAL OF APPEALS

An appeal lodged with the Tribunal may not be withdrawn except with the leave of the Tribunal. In granting or refusing such leave, the Tribunal may impose such conditions as it thinks fit, including the payment of costs. In granting or refusing such leave, the Tribunal must order that the bond be forfeited or refunded, either in full or in part.

DECISIONS BY TRIBUNAL

In arriving at a decision, the Tribunal must act according to equity and good conscience and the substantial merits of the case, without regard to technicalities and legal forms.

The Tribunal will usually give written reasons for its decision.

ORDERS OF THE TRIBUNAL

The Tribunal may make any of the following orders:

- Affirm, vary or quash the decision or order appealed against;
- Substitute, or make in addition to the original order, any order that could have been made by the body whose decision is being appealed;
- Remit the matter to the body that made the decision being appealed for further hearing or consideration;
- Return or forfeiture of the bond, either in full or in part;
- Any other order that it thinks the case requires.

If the Tribunal is satisfied that an order should be made which requires the imposition of a penalty upon a party, it may conduct a separate hearing to determine that penalty.

COSTS

Each party will usually be expected to bear its own costs of an appeal. However, the Tribunal can order a party to pay the costs of another if it considers that it would be unjust to expect that other party to pay his or her own costs. It could be expected that the Tribunal may make such an order if it considers that an appeal has not been brought in good faith or if a party has, by his or her conduct, improperly prolonged a hearing.

APPEAL

There is no right of appeal from a decision of the Tribunal.