

## TASMANIAN RACING APPEAL BOARD

### Appeal No 25 of 2015/16 – SCOTT FORD

<b>Panel:</b>	<b>Mr Tom Cox (Chair) Mrs Kate Brown Ms Kate Cuthbertson</b>	<b>Appellant:</b>	<b>Mr Scott Ford</b>
<b>Appearances:</b>	<b>Mr Todd Kovacic on behalf of the appellant  Mr Paul Turner on behalf of the Director of Racing</b>	<b>Decision to which this appeal relates:</b>	<b>Revocation of licence</b>
<b>Heard at:</b>	<b>Hobart</b>		
<b>Hearing Date:</b>	<b>7 July 2016</b>	<b>Result:</b>	<b>No jurisdiction to hear appeal</b>

### REASONS FOR DECISION

1. The appellant has appealed against a decision of the Director of Racing dated 9 June 2016 to revoke the appellant's harness driver's licence on the basis that the appellant is not a fit and proper person to be licensed in the harness industry. The decision was made in accordance with the Director's powers to grant or revoke a harness licence under s.6(2)(f) of the *Racing Regulation Act 2004* (the Act) and r.90(6) of the *Australian Harness Rules of Racing* (the Rules of Racing). The relevant parts of the Act and the Rules of Racing are as follows:

Section 6(2)(f) of the Act states that:

*"The Director is also responsible for – granting licences under the Rules of Racing."*

AHRR 90(6) states that:

*"A licence may be suspended or cancelled:*

- (a) *By the Controlling Body or the Stewards for breach of a term or condition of the licence; or*
  - (b) *By the Controlling Body where the Controlling Body is satisfied that the person holding the licence is not a fit and proper person to be associated with harness racing."*
2. As part of the Director's decision he found that the appellant was not a fit and person for the purpose of r.90(6).
  3. A preliminary issue has arisen as to whether this Board has jurisdiction to hear and determine the appeal pursuant to s.28 or 28A of the Act.
  4. On 7 July 2016 I convened the Board to hear, as part of the appeal proceedings, whether or not the appeal was competent and to determine, as the presiding member pursuant to s.30(6A) of the Act, whether the Board had jurisdiction to hear the appellant's appeal.
  5. For the reasons that follow, I have determined that the jurisdiction of the Board provided by ss.28 or 28A of the Act does not extend to a person in the appellant's position who is aggrieved by a decision of the Director to revoke that person's harness driver's licence.

6. Sections 28 and 28A of the Act set out the jurisdiction of the Board to hear appeals. It is necessary to set out those sections in full:

***“Persons may appeal to TRAB about certain matters***

- (1) *A person may appeal to the TRAB if the person is –*
- (a) *aggrieved by the decision of Tasracing or a registered club to issue the person with a warning-off notice under section 54; or*
- (b) *aggrieved by the decision of the stewards to –*
- (i) *impose a fine on the person; or*
- (ii) *impose a suspension or disqualification on the person or on a horse or greyhound owned, leased or trained by the person.*
- (2) *However, an appeal does not lie to the TRAB in respect of a stewards' decision which alters the result of a horse race or greyhound race if the decision was made before the declaration of "correct weight" or "all clear".*
- (3) *If a person has a right of appeal under this section against a decision of Tasracing or a registered club, no appeal against that decision lies to Tasracing or that club, as the case may be.*
- (4) *If a person has a right of appeal under this section against a stewards' decision, no appeal against that decision lies to Tasracing or a registered club.*
- (5) *Subsections (3) and (4) have effect notwithstanding anything to the contrary that may be contained in –*
- (a) *the Rules of Racing; or*
- (b) *the constitution, rules or articles of the registered club; or*
- (c) *the constitution of Tasracing.*

***28A. Other rights of appeal to TRAB***

- (1) *A person may appeal to the TRAB if the person is aggrieved by a decision of the Director to –*
- (a) *refuse to grant a licence, or approve a registration, under the Rules of Racing, of the person or a horse or greyhound owned, leased or trained by the person; or*
- (b) *refuse to register the person as a bookmaker or bookmaker's agent; or*
- (c) *cancel or suspend the person's registration as a bookmaker or bookmaker's agent; or*
- (d) *refuse to endorse the person's certificate of registration as a bookmaker with a telephone betting endorsement; or*
- (e) *cancel or suspend the person's telephone betting endorsement; or*

- (f) refuse to register a club of which the person is a member; or*
  - (g) cancel or suspend the registration of a club of which the person is a member; or*
  - (h) impose conditions on the person's licence, or registration, granted or approved under the Rules of Racing; or*
  - (i) impose conditions on the person's registration as a bookmaker or bookmaker's agent; or*
  - (j) impose conditions on the person's telephone betting endorsement; or*
  - (k) impose conditions on the registration of a club of which the person is a member; or*
  - (l) issue the person with a warning-off notice under section 54; or*
  - (m) impose a fine on the person.*
- (2)** *A wagering operator may appeal to the TRAB if the wagering operator is aggrieved by a decision of Tasracing to –*
- (a) refuse to grant approval to the wagering operator to publish Tasmanian race field information; or*
  - (b) impose conditions, other than conditions referred to in section 54B(2)(a) and section 54B(2)(b)(i), in respect of a race field information publication approval; or*
  - (c) cancel a race field information publication approval; or*
  - (d) vary the conditions, other than conditions referred to in section 54B(2)(a) and section 54B(2)(b)(i), in respect of a race field information publication approval.*
- (3)** *A person may also appeal to the TRAB if the person is –*
- (a) in dispute with a bookmaker regarding the placement, acceptance, payment, non-payment or amount of a bet; or*
  - (b) aggrieved, as a registered bookmaker or bookmaker's agent, by the decision of a registered club to withdraw its permission for the person to engage in bookmaking on a racecourse under its control.*
- (4)** *If a person has a right of appeal under this section against a decision of the Director, no appeal against that decision lies to the Director.*
- (5)** *If a person has a right of appeal under this section against a decision of Tasracing or a registered club, no appeal against that decision lies to Tasracing or that club, as the case may be.*
- (6)** *Subsections (4) and (5) have effect despite anything to the contrary that may be contained in –*
- (a) the Rules of Racing; or*

*(b) the constitution, rules or articles of the registered club; or*

*(c) the constitution of Tasracing.*

7. It is apparent from the text of these sections that an appeal lies against the decision of the Director to refuse to grant a person a licence - S28A(1)(a). It is also apparent that the sections are silent as to whether an appeal lies against a decision of the Director to revoke or cancel a person's licence.
8. In every case where the issue is that of the duty and function of an appellate court or tribunal, the only safe starting point is a careful examination of the language and context of the statutory provisions affording the appellate right, together with a consideration of the powers enjoyed by, and duties imposed on, the body to which the appeal lies. (*Coal and Allied Operations Pty Ltd v Australian Industrial Relations Commission & Ors* [\[2000\] HCA 47](#); [\(2000\) 203 CLR 194](#) per Kirby J at 223 [69].).
9. As observed in *A & Another v The Law Society of Tasmania* [\[2001\] TASSC 55](#); [\(2001\) 10 Tas R 152](#) [8] by Underwood J (as he then was):

"It is trite law that an appeal is not a common law proceeding. Its existence, nature and scope are all dependent upon the terms of the statute that confers the right of appeal. See *Victorian Stevedoring and General Contracting Co Pty Ltd v Dignan* [\[1931\] HCA 34](#); [\(1931\) 46 CLR 73](#) at 108; *Commissioner for Railways (NSW) v Cavanough* [\[1935\] HCA 45](#); [\(1935\) 53 CLR 220](#) at 225."

10. In the absence of any express provision providing for an appeal against a decision by the Director to revoke or cancel a licence, the appellant calls in aid the application of S.22A of the *Acts Interpretation Act 1936* which provides:

**22A. Power to grant right includes power to vary or revoke**

*"A power in an Act to grant a right includes a power exercisable in a like manner and subject to the same consent and conditions, if any, to vary or revoke the right."*

11. It is contended that the application of s.22A extends the meaning of "refuse to grant a licence" in s28A(1)(a) to include the revocation of a licence, and, as a result, invest in the Board the power to hear an appeal against the Director's decision to revoke or cancel a licence (the right).
12. In our view, such a construction impermissibly strains the express words of s.28A(1)(a).
13. To explain that conclusion it is necessary to consider some general principles of statutory interpretation. In *Dodge v Snell* [\[2011\] TASSC 19](#) Wood J at [251-266] said this:

***Principles of statutory interpretation***

251 I will commence the task of ascertaining the meaning of [s19](#) by considering the principles of statutory interpretation that apply to that task. In *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* [\[2009\] HCA 41](#); [\(2009\) 239 CLR 27](#), Hayne, Heydon, Crennan and Kiefel JJ said, at par[47]:

*"This Court has stated on many occasions that the task of statutory construction must begin with a consideration of the text itself. Historical considerations and extrinsic materials cannot be relied on to displace the clear meaning of the text. The language which has actually been employed in the text of legislation is the surest guide to legislative intention. The meaning of the text may require consideration of*

*the context, which includes the general purpose and policy of a provision, in particular the mischief it is seeking to remedy."*

252 As stated by Brennan CJ, Dawson, Toohey and Gummow JJ in *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 187 CLR 384, at 408, instances of general words in a statute being constrained by their context are numerous. Such words may "wear a very different appearance" when read in light of the "mischief which the statute was designed to overcome and of the objects of the legislation". Further, inconvenience or improbability of result may assist the court in preferring to the literal meaning an alternative construction which is reasonably open and more closely conforms to the legislative intent."

253 The process of construction must begin with a consideration of the context. The assistance provided by context does not only arise at some later stage of the process in the event of ambiguity: (*CIC Insurance Ltd v Bankstown Football Club Ltd* at 408, *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28; (1998) 194 CLR 355, at 381).

254 In *Project Blue Sky Inc v Australian Broadcasting Authority* (supra) McHugh, Gummow, Kirby and Hayne JJ said at par[78]:

*"However, the duty of a court is to give the words of a statutory provision the meaning that the legislature is taken to have intended them to have. Ordinarily, that meaning (the legal meaning) will correspond with the grammatical meaning of the provision. But not always. The context of the words, the consequences of a literal or grammatical construction, the purpose of the statute or the canons of construction may require the words of a legislative provision to be read in a way that does not correspond with the literal or grammatical meaning."*

255 It is necessary to prefer a construction that would promote the purpose or object of [s19](#) of the Act: [Acts Interpretation Act 1931, s8A](#).

256 It is permissible to have regard to extrinsic material such as the Final Report or Second Reading speech to provide an interpretation of the provision if the provision is ambiguous or obscure, or to confirm the interpretation conveyed by the ordinary meaning of the provision: [Acts Interpretation Act, s8B\(1\)\(a\)](#) and (c).

14. With these considerations in mind, it is clear, in this case, that the words of the statute (s.28 and 28A) do not provide for a right of appeal against a decision of the Director to revoke or cancel a licence. Indeed, the Act specifically limits the matters that may be the subject of appeal. A consideration of the text of s28A weighs in favour of a conclusion that Parliament did not intend to confer a right of appeal against the Director's decision to revoke or cancel a licence. Section 28A provides for a right of appeal against a decision of the Director to refuse to register a person as a bookmaker, to endorse such registration with a telephone betting endorsement or to refuse to register a club. The section also expressly provides for rights of appeal against decisions of the Director cancelling or suspending such registration or endorsements. No such express provision has been provided in respect of the cancellation or suspension of a licence.
15. The absence of certain provisions is also informative. For example, the Act does not confer a "catch all" right of appeal against any decision of the Director. Similarly, the Act does not refer to or provide a definition of a "fit and proper person", which might be expected in statutes where disciplinary proceedings may be brought and which would also include corresponding provisions for appellate review.
16. There is some merit in the argument that an interpretation of s.28A(1)(a) that included the right to review the Director's decision to revoke or cancel a licence better promotes the

purpose of the Act. The argument gains some support from the proposition that such an interpretation would guard against the mischief that the Director may unfairly cancel a licence. However, the practical reality is that the appellant could simply reapply for his licence and, if refused, appeal.

17. As there is no jurisdiction for the Board to hear the appeal I will direct the Secretary to return the appellant's deposit to him.