

2022-23

# Annual Performance Report



# Racing Appeals Panel

## About this report

This report has been prepared under section 252BP of the *Racing Integrity Act 2016* (the Act). It describes the work of the Racing Appeals Panel in hearing and deciding applications for review of a racing decision of a steward and other functions under part 252AZ of the Act.

The Queensland Racing Appeals Panel (the Panel) is an independent statutory authority established on 31 March 2023 to provide quick, accessible and fair reviews of stewards' decisions for all codes of racing in Queensland. These reviews aim to ensure racing decisions are finalised within prescribed timeframes and are made in accordance with the law and the Rules of Racing to maintain the integrity of the racing industry in Queensland. The Panel acts independently, impartially and fairly, observes the rules of natural justice and is not subject to direction or control by any entity, including any Minister, when performing its functions or powers.

Under section 252AX of the Act, the Panel is part of the Department of Agriculture and Fisheries (DAF) for the purposes of the *Financial Accountability Act 2009*. This means DAF is responsible for the financial and administrative functions of the Panel, without influencing the operation and independence of the Panel as outlined in section 252BA of the Act. The Panel's financial transactions are reported within the DAF Annual Report 2022-23.

## Contact for enquiries

For enquiries or further information about this annual performance report contact [enquiries@racingappealspanel.qld.gov.au](mailto:enquiries@racingappealspanel.qld.gov.au)

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25 September 2023

The Honourable Grace Grace MP  
Minister for Education, Minister for Industrial Relations and Minister for Racing  
PO Box 15033  
CITY EAST QLD 4002

Dear Minister Grace,

In accordance with section 252BP of the *Racing Integrity Act 2016*, I am pleased to provide for presentation to Parliament the 2022-23 Queensland Racing Appeals Panel Annual Performance Report, the inaugural report for this independent entity.

The Racing Appeals Panel (the Panel) commenced on 31 March 2023 and during the three month period ending 30 June 2023 has received 18 applications for review. This report details the issues identified as affecting the Panel's ability to make decisions on applications since commencement and provides insights to improve the operation of the Panel in future.

I draw your direction to section 252BP(3) of the *Racing Integrity Act 2016* which requires you to table this report to Parliament within 14 sitting days.

**Yours sincerely,**

A handwritten signature in black ink, appearing to read "K. J. O'Brien", written over a faint circular stamp.

**K. J. O'Brien AM**

*Chairperson  
Queensland Racing Appeals Panel*

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## Introduction

This is the first Annual Performance Report submitted pursuant to the requirements of section 252BP of the *Racing Integrity Act 2016*.

The report deals with the operation of the Racing Appeals Panel for the financial year ending 30 June 2023.

In the three months of the Panel's life, it has I believe functioned efficiently. The quality of the panel members is uniformly high, as is the quality of the Registry staff, and I am grateful for their involvement in the Panel's operations and grateful in particular for the assistance provided by the two deputy chairpersons, Mr Peter O'Neill and Ms Dianne Condon in ensuring smooth establishment of the Panel.

## Purpose, operation and membership

### Purpose

The Racing Appeal Panel (the Panel) is an independent statutory authority established on 31 March 2023 by way of amendments made to the *Racing Integrity Act 2016* (the Act). The functions of the Panel are to hear and decide applications for the review of racing decisions made by stewards for all racing codes in Queensland. In addition, the Panel may be requested to perform other statutory functions given to it under section 252AY of the Act.

### Panel operation

#### Structure

The primary role of the Panel is to provide for the review of stewards' decisions in a timely manner for all codes of racing in Queensland. Decisions the subject of review include decisions to take disciplinary action relating to a person's approval or licence, decisions to take exclusion action against a person, or decisions to impose a penalty, monetary or otherwise, on a person.

The application for a review must be made within three business days of notice of the racing decision being given, although the chairperson of the Panel has power to accept out of time applications. In the usual case, the Panel which decides the application must be constituted by the chairperson and two other panel members chosen by the Chairperson. For the period under review, all panel hearings were conducted in that manner. In certain cases however, the Panel may be constituted by the chairperson sitting alone. Such a hearing where possible and appropriate, would provide certain cost and efficiency advantages and it is envisaged that some cases will be heard in that way in the coming year.

In the usual case, applications are decided by holding a hearing in person. Hearings may however be conducted by remote conferencing or, in an appropriate case, by a decision made on the papers without a hearing. To date, all hearings have been conducted in person, although the Panel has been amenable to appearances by video link where appropriate.

Although there is limited right to make application for a hearing to be held in private, the primary rule is that all applications must be held in public. The Panel has made use of a virtual, or online gallery to achieve this important requirement of openness. In high profile cases, which can attract significant public interest, this can cause administrative difficulties. However, the importance of public hearings is a paramount consideration.

If the application for a review relates to a decision by stewards to take disqualification action against a person, the Panel must decide the application within 20 business days of the application being made. In all other cases, the decision must be made within seven business days. During the period under the review, the Panel has managed to comply with these timeframes in all cases. It is however inevitable that problems will arise with compliance in the future and the need for greater flexibility with time limits will be dealt with later in this report.

#### Venues

The Panel has power to conduct hearings at any place within Queensland. During the period under review however, all hearings have been conducted in Brisbane. The legislation does permit the use of remote conferencing and it should be noted that one panel member resides in Mackay and others at Toowoomba, the Sunshine Coast and the Gold Coast.

#### Human rights

The *Human Rights Act 2019* (HRA) places obligations on public entities to be compatible with human rights when acting on making a decision. Under the HRA compatible with human rights means an act or decision does not limit a human right, or limit a human right only to the extent that is 'reasonable and demonstrably justifiable'.

The penalty guidelines for each of the racing formats which fall within the jurisdiction of the Panel require that, in determining penalty, regard must be had to the fact that certain penalty outcomes may impact adversely on a persons human rights, particularly the right to own property, namely a licence, and the right to privacy and reputation.

The Panel must comply with the requirements of the HRA in determining whether any limitation on a human right which may attach to a particular penalty is reasonable and justifiable in the circumstances of the particular case. The Panel has been compliant in this regard.

## Membership of the Panel

The Panel established under the legislation must consist of the chairperson, at least two deputy chairpersons and at least three other members. Appointments to the Panel are made by the Governor in Council on the recommendation of the Minister. To be eligible for appointment to the position of chairperson or deputy chairperson, the person must be a lawyer of at least five years standing. Eligibility for appointment as a panel member is dependent upon professional experience in fields of animal chemistry, law, racing or veterinary science.

Appointment to the Panel is for a period not longer than three years although a person remains eligible for reappointment at the end of that term. The responsibilities of the chairperson, the deputy chairpersons, and the panel members are set out in section 252BG of the Legislation. Panel members are appointed under the terms of the *Racing Integrity Act 2016* and not under the *Public Sector Act 2022*. All members are required to act independently, impartially, and fairly and they are not subject to direction or control by any entity, including any Minister.

There are presently 15 panel members including the chairperson and two deputy chairpersons. The appointment of additional panel members, including another from the field of veterinary science, should be considered. The one panel member who possess that particular expertise resides in Hong Kong and has only limited availability.

The legislation also makes provision for the establishment of a Registry and for the appointment of Registry staff to provide administrative assistance in the Panel's operations.

| Panel member         | Role               | Area of expertise                   |
|----------------------|--------------------|-------------------------------------|
| Kerry O'Brien AM     | Chairperson        | Lawyer of at least 5 years standing |
| Peter O'Neill        | Deputy Chairperson | Lawyer of at least 5 years standing |
| Dianne Condon        | Deputy Chairperson | Lawyer of at least 5 years standing |
| Skye Bogenhuber      | Panel member       | Expertise in racing                 |
| Martin Einfeld KC    | Panel member       | Expertise in legal practice         |
| Darren Guppy         | Panel member       | Expertise in legal practice         |
| Lyndsey Hicks        | Panel member       | Expertise in racing                 |
| Daryl Kays           | Panel member       | Expertise in racing                 |
| John McCoy OAM       | Panel member       | Expertise in racing                 |
| Julieanne Overell    | Panel member       | Expertise in racing                 |
| Ken Waller           | Panel member       | Expertise in racing                 |
| Edwin Wilkinson      | Panel member       | Expertise in racing                 |
| Patrick Cullinane KC | Panel member       | Expertise in legal practice         |
| Juanita Maiden       | Panel member       | Expertise in legal practice         |
| Brian Stewart        | Panel member       | Veterinary science                  |

## Overview of applications reviewed

In the relatively short period between the establishment of the Panel and 30 June 2023, a total of 18 applications for a review of decisions made by stewards have been lodged with the Registry. It is not possible to make any accurate prediction of future workloads based on such a limited time period of operation.

Importantly, it should be noted, the number of applications lodged provides no indication of the complexity of the cases with which the Panel is required to deal. Cases which involve disqualification action, or which involve considerations such as animal welfare and substance abuse can be expected to require longer hearing times and to involve greater complexity of issues. Hearings can involve the resolution of complex legal argument and the preparation of detailed and carefully considered written decisions.

### Matters as at 30 June 2023

| Panel matters                                | Number |
|--|--------|
| Application for review of steward's decision | 18     |
| Appeal against Panel's decision              | 0      |
| Applications decided                         | 13     |

Note: One matter was still under consideration by the Panel.

Two matters were ineligible for review.

Two matters were withdrawn.

| Review outcomes                           | Number |
|---|--------|
| Stay order                                | 2      |
| Support person application                | 5      |
| Private hearing application               | 2      |
| Application refused                       | 2      |
| Application ineligible                    | 2      |
| Application withdrawn                     | 2      |
| Racing Decision confirmed                 | 4      |
| Racing Decision varied                    | 6      |
| Racing Decision set aside and substituted | 2      |

Note: One application had two decision made by the Panel.

One matter was still pending a decision as at 30 June 2023.

| Statutory timeframe | Number received | Decisions outside timeframe |
|---------------------|-----------------|-----------------------------|
| 7 business days     | 13              | 0                           |
| 20 business days    | 3               | 0                           |

Note: Two applications were ineligible for review by the Panel.



## Appeals

In cases in which the Panel's decision on a review application includes the taking of disqualification action, a dissatisfied party has a right of appeal to the Queensland Civil and Administrative Appeals Tribunal (QCAT) on a question of law relating to the extent of the disqualification action. No appeal has been initiated during the period under review.

## Enhancing decision-making

### Issues affecting the Panel and proposals for improved operation

Since the Panel's establishment, a number of policies and procedures have been developed dealing with administrative issues associated with the appointment of panel members in particular cases and the listing of applications. Section 252BG(1)(c) of the Act enables the chairperson to give directions about practices and procedures 'to promote the making of high quality and consistent decision by the panel'. The precise extent of this provision, and the extent to which it can be utilised to deal with some of the problems that will confront the Panel, is unclear. The wording of this section may need to be reviewed. However I envisage that, in the next financial year, I will issue directions under this provision in relation to such matters as applications to call further evidence under section 252AK of the Act and the provision of outlines of argument in review applications. Although matters such as these would be within the scope of the section, there are other important matters, such as the entitlement to representation and the resolution of interlocutory issues including urgent stay applications by the chairperson sitting alone, where the position is far from certain.

A matter of some real concern is the issue of timeframes within which hearings must be decided. It is clearly desirable that applications that come before the Panel are dealt with expediently. However it is of no less importance that they be dealt with justly and only after proper consideration. At present, all applications must be dealt with within seven business days of lodgement or, if the application relates to disqualification action, within 20 business days of lodgement. The timeframes permit no flexibility and make no allowance for the complexity of the issues involved or for the problems that inevitably arise in litigation at all levels. It can be said with certainty that there will be cases which, through no fault whatever on the part of the Panel, simply cannot be dealt with within these timeframes. The rigidity of such mandatory time limits has the potential for real injustice to occur. There is, in my view, an urgent need for the legislation to be amended to allow for an extension of time where required in the interests of justice.

This short discussion should indicate that there are certain areas of the legislation which are in need of amendment if the Panel is to continue to function effectively. Some of these matters might be easily resolved, others may require more detailed consideration. I would suggest that they could be best identified and dealt with through consultation with me and the other senior members of the Panel, the deputy chairpersons.

A Panel such as this cannot function without appropriate administrative support. The Act makes provision for the appointment of a Registrar and other staff to assist the Panel in the effective performance of its functions. As at 30 June 2023, the Registry comprises a registrar and a deputy registrar both of whom has performed commendably during the period under review. It should not however be assured the present staffing levels are adequate to meet the needs of the Panel and this situation should continue to be monitored closely.

Finally I would like to acknowledge the assistance rendered to the Panel during its establishment phase by the former Director-General of the Department of Agriculture and Fisheries Mr Robert Gee, and his successor Dr Chris Sarra and by other members of the department who were necessarily involved.