

**HARNESS RACING AUTHORITY (APPEALS) AMENDMENT
ACT 1991 No. 78**

NEW SOUTH WALES

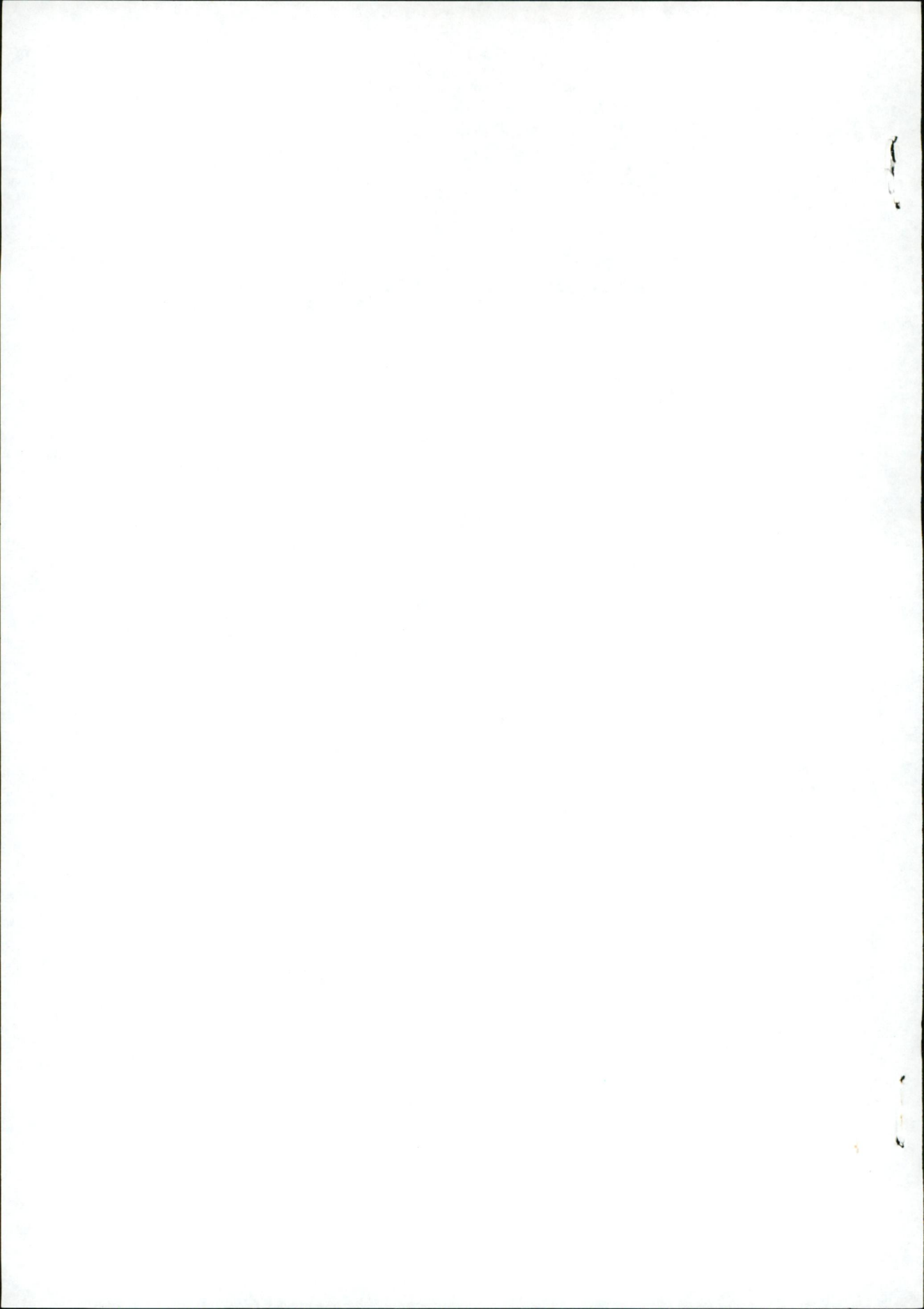


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2. Commencement
3. Amendment of Harness Racing Authority Act 1977 No. 57

SCHEDULE 1—AMENDMENTS RELATING TO APPEALS

SCHEDULE 2—AMENDMENTS RELATING TO DELEGATIONS



**HARNESS RACING AUTHORITY (APPEALS) AMENDMENT
ACT 1991 No. 78**

NEW SOUTH WALES



Act No. 78, 1991

An Act to amend the Harness Racing Authority Act 1977 to enable an inquiry to be conducted, in certain circumstances, into a matter decided on appeal to the Harness Racing Appeals Tribunal; and for other purposes. [Assented to 17 December 1991]

Harness Racing Authority (Appeals) Amendment 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Harness Racing Authority (Appeals) Amendment Act 1991.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Harness Racing Authority Act 1977 No. 57

3. The Harness Racing Authority Act 1977 is amended as set out in Schedules 1 and 2.

SCHEDULE 1—AMENDMENTS RELATING TO APPEALS

(Sec. 3)

(1) Section 19 (**Appeals to Tribunal**):

After section 19 (3), insert:

(4) This section does not preclude the operation of section 19A.

(2) Section 19A:

After section 19, insert:

Special inquiry following appeal to Tribunal

19A. (1) The Authority may institute a special inquiry into a matter decided on appeal to the Tribunal under section 19 if the Authority:

- (a) receives information that was not available as evidence at the hearing of the appeal; and
- (b) is satisfied that the information may have resulted in a substantially different decision if it had been given in evidence at the hearing of the appeal.

(2) In instituting a special inquiry, the Authority is to determine whether the inquiry is to be held by the Authority, by stewards of the Authority or by a person appointed by the Authority for the purpose, and the inquiry is to be held in accordance with the determination.

Harness Racing Authority (Appeals) Amendment 1991

SCHEDULE 1—AMENDMENTS RELATING TO APPEALS—
continued

(3) If a special inquiry is held by the stewards or a person appointed by the Authority, the result of the inquiry is to be reported in writing to the Authority by the stewards or appointed person.

(4) After considering the result of a special inquiry, the Authority may:

- (a) decide to take no further action; or
- (b) make a decision that differs from the decision of the Tribunal on the matter the subject of the inquiry, in which case the different decision has effect instead of the decision of the Tribunal.

(5) Section 19 does not apply to a decision made under this section.

(3) Section 20 (**Regulations respecting appeals and inquiries**):

(a) After section 20 (1) (b), insert:

(b1) special inquiries instituted by the Authority under section 19A;

(b) After “this Act” wherever occurring in section 20 (1) (c), (d) and (e), insert “and special inquiries under section 19A”.

(c) After “this Act” in section 20 (1) (c1), insert “, or the subject of a special inquiry under section 19A,”.

(d) After “appeal” in section 20 (1) (c1), insert “or inquiry”.

SCHEDULE 2—AMENDMENTS RELATING TO
DELEGATIONS

(Sec. 3)

(1) Section 13C:

Omit the section, insert instead:

Delegation by Minister

13C. The Minister may delegate to the Authority the power of the Minister to give an approval or direction under section 13A (4) (a) or 13B (4) (a).

Harness Racing Authority (Appeals) Amendment 1991

SCHEDULE 2—AMENDMENTS RELATING TO DELEGATIONS—
continued

(2) Section 21:

Omit the section, insert instead:

Delegation by Authority

21. The Authority may delegate to a person any of its functions, other than:

- (a) this power of delegation; and
- (b) a function exercisable under section 8 (2) (d); and
- (c) a function delegated to the Authority by the Minister under section 13C; and
- (d) a function exercisable under section 19A.

[*Minister's second reading speech made in—
Legislative Assembly on 14 November 1991
Legislative Council on 10 December 1991*]

FIRST PRINT

**HARNESS RACING AUTHORITY (APPEALS) AMENDMENT
BILL 1991**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Harness Racing Authority Act 1977 by inserting new section 19A to enable an inquiry into a matter to be held even if there has been a "final and conclusive" decision on an appeal to the Harness Racing Appeals Tribunal in relation to the matter.

The Bill also modernises the powers of delegation at present conferred by the Principal Act on the Minister and the Harness Racing Authority.

Clause 1 states the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 provides for the amendment of the Principal Act as set out in Schedules 1 and 2.

SCHEDULE 1—AMENDMENTS RELATING TO APPEALS

Schedule 1 (1) amends section 19 to draw attention to the fact that, even though that section provides for the decision of the Tribunal on an appeal to be final and conclusive, an inquiry may be held under the proposed section 19A into the effect of the decision.

Schedule 1 (2) inserts new section 19A which enables the Authority to hold, or to arrange for the stewards or a specially appointed person to hold, an inquiry into a matter the subject of an appeal decided by the Tribunal. Such an inquiry is not to be instituted unless the Authority is satisfied that fresh evidence is available and might have resulted in a substantially different decision if it had been available to the Tribunal at the hearing of the appeal.

Harness Racing Authority (Appeals) Amendment 1991

Schedule 1 (3) enables regulations to be made in relation to inquiries under proposed section 19A. The power conferred is similar to that relating to procedure and other matters in connection with appeals.

SCHEDULE 2—AMENDMENTS RELATING TO DELEGATIONS

Schedule 2 (1) replaces section 13C which enables the Minister to delegate certain functions. The substituted section has the effect of adopting in relation to those functions section 49 of the Interpretation Act 1987 which deals with the delegation of statutory functions.

Schedule 2 (2) makes a similar amendment in relation to delegations by the Authority.

FIRST PRINT

**HARNESS RACING AUTHORITY (APPEALS) AMENDMENT
BILL 1991**

NEW SOUTH WALES

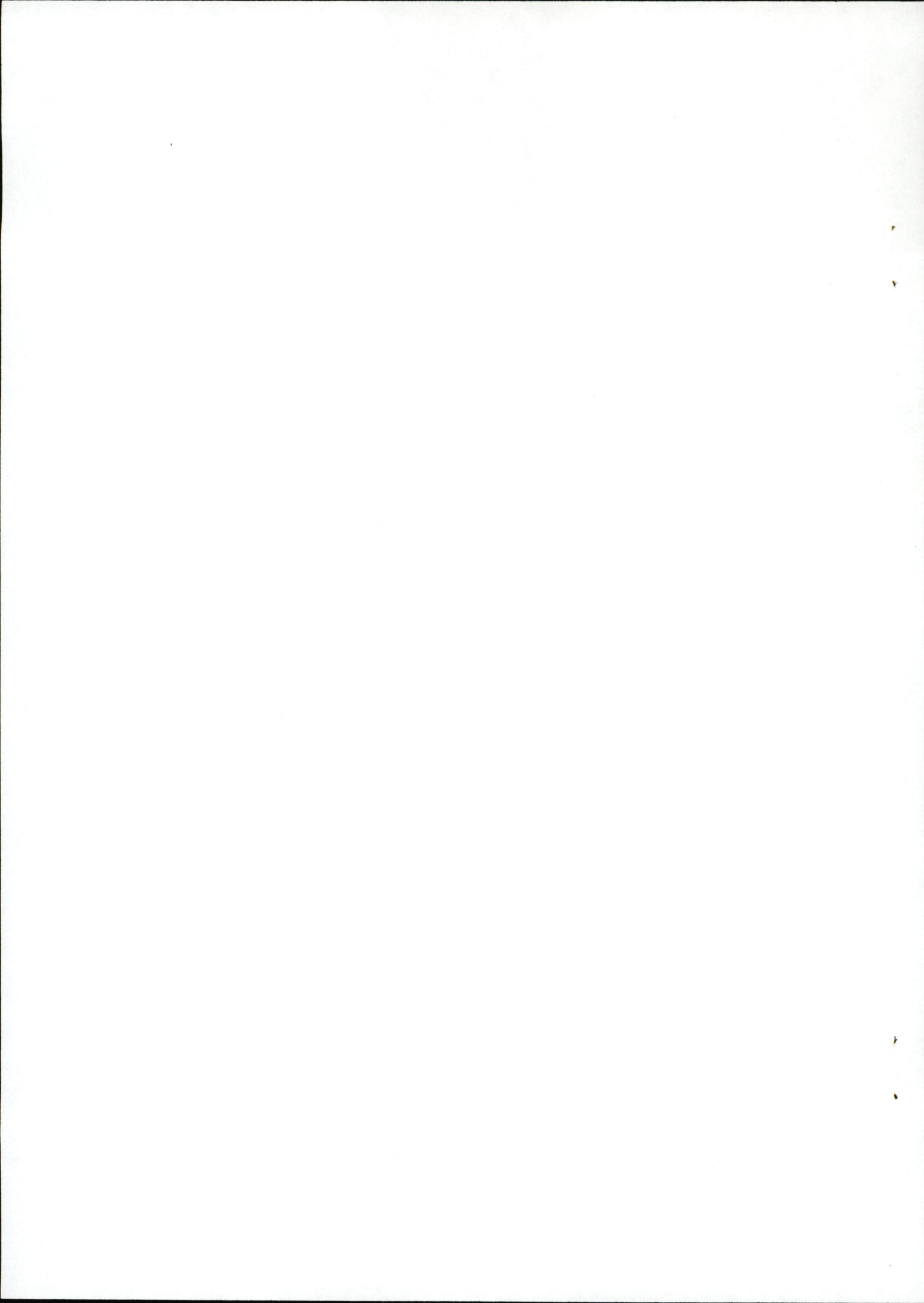


TABLE OF PROVISIONS

1. Short title
2. Commencement
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SCHEDULE 1—AMENDMENTS RELATING TO APPEALS

SCHEDULE 2—AMENDMENTS RELATING TO DELEGATIONS



**HARNESS RACING AUTHORITY (APPEALS) AMENDMENT
BILL 1991**

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to amend the Harness Racing Authority Act 1977 to enable an inquiry to be conducted, in certain circumstances, into a matter decided on appeal to the Harness Racing Appeals Tribunal; and for other purposes.

Harness Racing Authority (Appeals) Amendment 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Harness Racing Authority (Appeals) Amendment Act 1991.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Harness Racing Authority Act 1977 No. 57

3. The Harness Racing Authority Act 1977 is amended as set out in Schedules 1 and 2.

SCHEDULE 1—AMENDMENTS RELATING TO APPEALS

(Sec. 3)

(1) Section 19 (**Appeals to Tribunal**):

After section 19 (3), insert:

(4) This section does not preclude the operation of section 19A.

(2) Section 19A:

After section 19, insert:

Special inquiry following appeal to Tribunal

19A. (1) The Authority may institute a special inquiry into a matter decided on appeal to the Tribunal under section 19 if the Authority:

- (a) receives information that was not available as evidence at the hearing of the appeal; and
- (b) is satisfied that the information may have resulted in a substantially different decision if it had been given in evidence at the hearing of the appeal.

(2) In instituting a special inquiry, the Authority is to determine whether the inquiry is to be held by the Authority, by stewards of the Authority or by a person appointed by the Authority for the purpose, and the inquiry is to be held in accordance with the determination.

Harness Racing Authority (Appeals) Amendment 1991

SCHEDULE 1—AMENDMENTS RELATING TO APPEALS—
continued

(3) If a special inquiry is held by the stewards or a person appointed by the Authority, the result of the inquiry is to be reported in writing to the Authority by the stewards or appointed person.

(4) After considering the result of a special inquiry, the Authority may:

- (a) decide to take no further action; or
- (b) make a decision that differs from the decision of the Tribunal on the matter the subject of the inquiry, in which case the different decision has effect instead of the decision of the Tribunal.

(5) Section 19 does not apply to a decision made under this section.

(3) **Section 20 (Regulations respecting appeals and inquiries):**

- (a) After section 20 (1) (b), insert:
 - (b1) special inquiries instituted by the Authority under section 19A;
- (b) After “this Act” wherever occurring in section 20 (1) (c), (d) and (e), insert “and special inquiries under section 19A”.
- (c) After “this Act” in section 20 (1) (c1), insert “, or the subject of a special inquiry under section 19A,”.
- (d) After “appeal” in section 20 (1) (c1), insert “or inquiry”.

**SCHEDULE 2—AMENDMENTS RELATING TO
DELEGATIONS**

(Sec. 3)

(1) **Section 13C:**

Omit the section, insert instead:

Delegation by Minister

13C. The Minister may delegate to the Authority the power of the Minister to give an approval or direction under section 13A (4) (a) or 13B (4) (a).

Harness Racing Authority (Appeals) Amendment 1991

SCHEDULE 2—AMENDMENTS RELATING TO DELEGATIONS—
continued

(2) Section 21:

Omit the section, insert instead:

Delegation by Authority

21. The Authority may delegate to a person any of its functions, other than:

- (a) this power of delegation; and
 - (b) a function exercisable under section 8 (2) (d); and
 - (c) a function delegated to the Authority by the Minister under section 13C; and
 - (d) a function exercisable under section 19A.
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HARNESS RACING AUTHORITY (APPEALS)
AMENDMENT BILL, 1991
SECOND READING SPEECH - LEGISLATIVE COUNCIL

MR PRESIDENT,

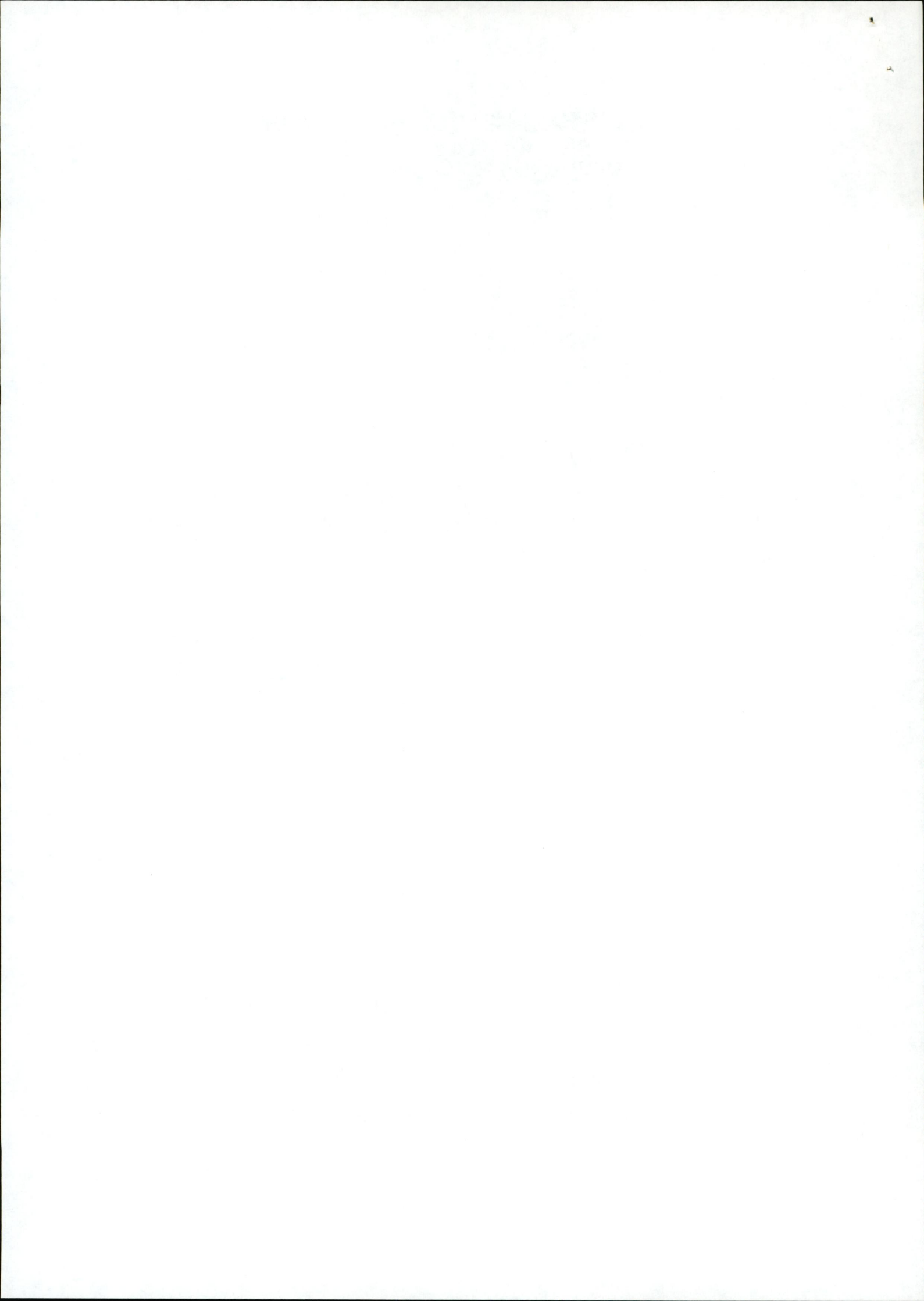
THE MINISTER MOVED THAT THIS BILL BE NOW READ A SECOND TIME.

DURING 1983 THE HARNESS RACING AUTHORITY ACT WAS AMENDED FOR A NUMBER OF PURPOSES, INCLUDING THE RESTRUCTURING OF THE APPEALS SYSTEM FOR THE HARNESS RACING INDUSTRY.

THE LEGISLATION CURRENTLY PROVIDES THAT PERSONS AGGRIEVED BY CERTAIN DECISIONS OF RACE CLUBS, THE HARNESS RACING AUTHORITY OR STEWARDS OF THE AUTHORITY MAY APPEAL TO THE HARNESS RACING APPEALS TRIBUNAL.

THE PRESENT APPEALS SYSTEM HAS BEEN WELL ACCEPTED IN ALL QUARTERS OF THE HARNESS RACING INDUSTRY AND IS WIDELY RECOGNISED AS BEING AN OUTSTANDING SUCCESS.

HOWEVER, IT HAS BEEN DRAWN TO THE GOVERNMENT'S ATTENTION THAT THE APPEALS LEGISLATION IS NOT BROAD ENOUGH TO PROVIDE FOR AN OCCASION WHERE FURTHER EVIDENCE COMES TO LIGHT FOLLOWING AN INITIAL APPEAL HEARING.

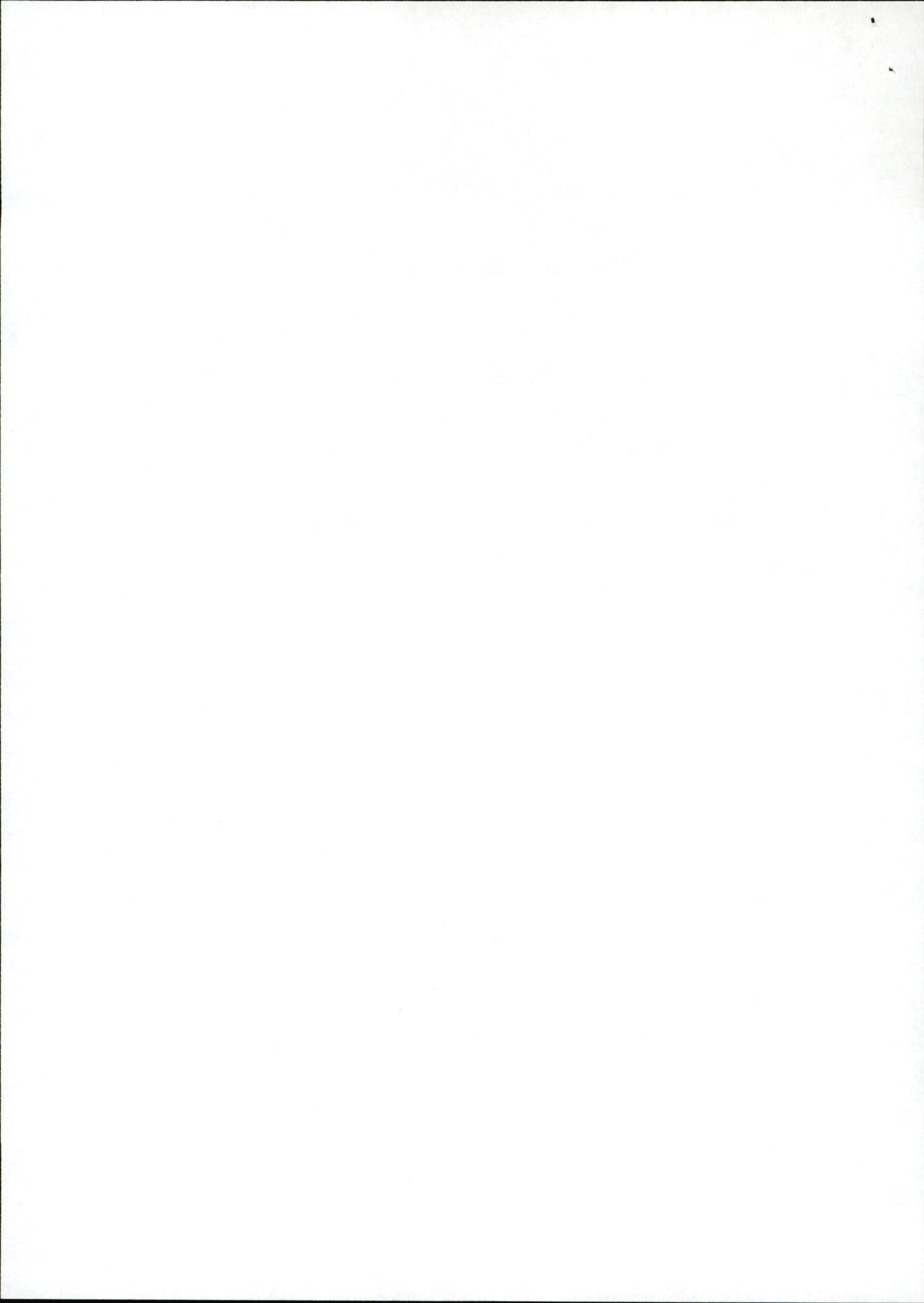


IN THIS REGARD, THE HARNESS RACING AUTHORITY ACT PROVIDES THAT THE DECISION OF THE TRIBUNAL IS FINAL AND CONCLUSIVE. LEGAL ADVICE HAS BEEN RECEIVED THAT THIS WOULD PRECLUDE THE TRIBUNAL, AND FOR THAT MATTER THE HARNESS RACING AUTHORITY OR ITS STEWARDS, FROM RE-HEARING A CASE IRRESPECTIVE OF ANY FRESH EVIDENCE SUBSEQUENTLY COMING TO LIGHT WHICH MIGHT PROVE A PERSON'S INNOCENCE.

SUCH AN INCIDENT ACTUALLY OCCURRED DURING 1990 WHEN THREE HARNESS RACING TRAINERS WERE DISQUALIFIED FOR PRESENTING HORSES FOR RACING WITH A PROHIBITED DRUG IN THEIR SYSTEM. IT WAS SUBSEQUENTLY DISCOVERED THAT THE DRUG WAS ACCIDENTLY ADMINISTERED TO THE HORSES THROUGH POPPY SEEDS CONTAMINATING THEIR FEED.

ALTHOUGH IT WAS APPARENT THAT THE TRAINERS HAD NO KNOWLEDGE OF THE CONTAMINATED FEED, IT WAS HELD THAT THE APPEALS LEGISLATION DID NOT ENABLE A FURTHER HEARING OF THEIR RESPECTIVE CASES.

CLEARLY THE INABILITY OF THE TRAINERS TO HAVE THEIR CASES REHEARD WAS AN UNSATISFACTORY SITUATION AND THE THEN MINISTER FOR RACING, THE HON. BOB ROWLAND SMITH, TOOK ACTION TO ADDRESS THESE OBVIOUS INJUSTICES BY AUTHORISING THE CONDUCT OF INDEPENDENT INQUIRIES INTO EACH OF THE CASES.

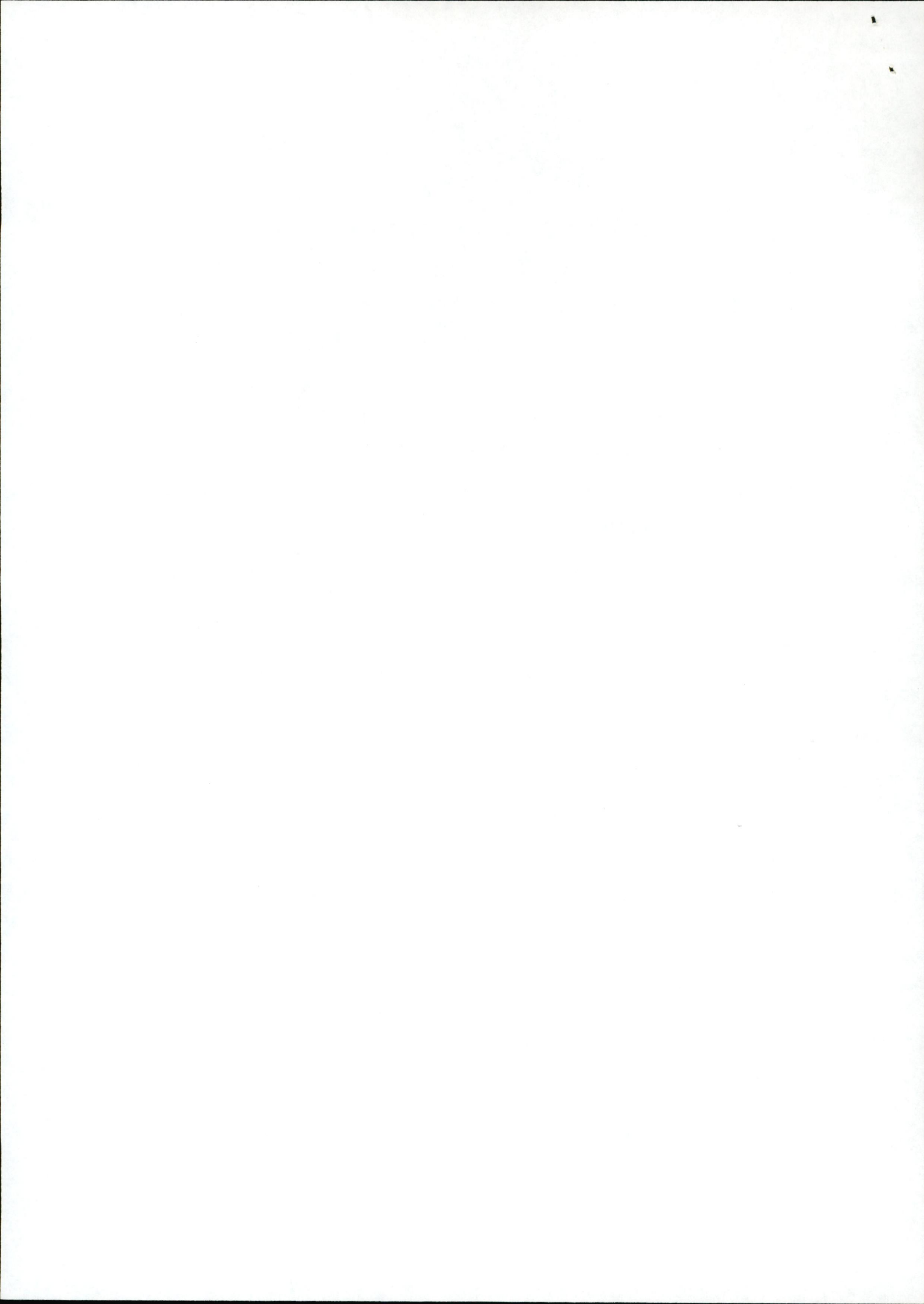


THESE INQUIRIES WERE CONDUCTED BY HIS HONOUR JUDGE GORAN AND BASED ON HIS FINDINGS, MR. ROWLAND SMITH DIRECTED THE HARNESS RACING AUTHORITY TO QUASH THE GUILTY FINDINGS AGAINST EACH OF THE TRAINERS.

ALTHOUGH THIS ACTION ENABLED THE SITUATION TO BE RECTIFIED, IT WAS RECOGNISED AT THE TIME THAT IT WAS INAPPROPRIATE FOR THE MINISTER TO INVOLVE HIMSELF IN MATTERS OF A JUDICIAL NATURE.

IN FACT, IN REPORTING ON THE FINDINGS OF HIS INQUIRY, JUDGE GORAN RECOMMENDED THAT LEGISLATION BE PUT IN PLACE TO ALLOW FOR INDEPENDENT INQUIRIES TO BE CONDUCTED IN CASES OF THIS NATURE AS A MATTER OF COURSE.

THE BILL BEFORE THE HOUSE ADOPTS JUDGE GORAN'S RECOMMENDATIONS. IT WILL AMEND THE HARNESS RACING AUTHORITY ACT BY ESTABLISHING A MECHANISM WHICH WILL ENABLE CASES TO BE RE-HEARD WHEN ALL EXISTING AVENUES OF APPEALS HAVE BEEN EXHAUSTED AND IT IS APPARENT THROUGH THE AVAILABILITY OF FURTHER EVIDENCE NOT PREVIOUSLY ACCESSIBLE THAT AN INJUSTICE MAY HAVE OCCURRED.



HONOURABLE MEMBERS WILL NOTICE THAT THE BILL PROPOSES THAT THE POWER TO REHEAR CASES BE GIVEN TO THE HARNESS RACING AUTHORITY, OR IF SO DETERMINED BY THE AUTHORITY, ITS STEWARDS OR AN INDEPENDENT TRIBUNAL APPOINTED BY THE AUTHORITY.

IN TAKING THIS DECISION, THE GOVERNMENT WAS MINDFUL THAT THE CURRENT TRIBUNAL AND HIS PREDECESSOR HAD BOTH INDICATED THAT THEY DID NOT BELIEVE IT WOULD BE APPROPRIATE FOR THE TRIBUNAL TO RE-HEAR A CASE ONCE HE HAD HANDED DOWN A DECISION.

HOWEVER, NO OBJECTIONS WERE RAISED BY THE TRIBUNALS TO ANOTHER BODY BEING AUTHORISED TO RE-HEAR A MATTER, PARTICULARLY AS THE LEGISLATION WILL IN NO WAY ERODE THE POWER OF THE HARNESS RACING APPEALS TRIBUNAL.

THIS LEGISLATION DEMONSTRATES THE GOVERNMENT'S COMMITMENT TO MAINTAIN THE CREDIBILITY OF THE HARNESS RACING INDUSTRY'S APPEALS SYSTEM AND TO ENSURE THAT INDUSTRY PARTICIPANTS RECEIVE EVERY OPPORTUNITY TO OBTAIN A FAIR HEARING.

THE MINISTER COMMENDED THE BILL TO THE HOUSE.

