



New South Wales

Harness Racing New South Wales Amendment Act 1998 No 95

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New South Wales

Harness Racing New South Wales Amendment Act 1998 No 95

Act No 95, 1998

An Act to amend the *Harness Racing New South Wales Act 1977* to reconstitute the corporation known as Harness Racing New South Wales and to provide for its management: to amend the *Defamation Act 1974* in relation to defences for a publication with respect to proceedings or reports of inquiries and appeals conducted by Harness Racing New South Wales and the Harness Racing Appeals Tribunal; and for related purposes. [Assented to 13 October 1998]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Harness Racing New South Wales Amendment Act 1998*.

2 Commencement

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

3 Amendment of Harness Racing New South Wales Act 1977 No 57

The *Harness Racing New South Wales Act 1977* is amended as set out in Schedule 1.

4 Amendment of Defamation Act 1974 No 18

The *Defamation Act 1974* is amended as set out in Schedule 2.

Schedule 1 Amendment of Harness Racing New South Wales Act 1977

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order in section 4:

Board means the Board of HRNSW as established by section 6.

Chairperson means the Chairperson of HRNSW appointed under section 7D.

chief executive officer means the chief executive officer of HRNSW employed by HRNSW under section 7F.

Deputy Chairperson means the Deputy Chairperson of HRNSW appointed under section 7D.

director means a director of the Board, and includes a director in his or her capacity as a member of the Regulatory Committee.

exercise a function includes perform a duty.

Regulatory Committee means the Regulatory Committee of HRNSW as established by section 7B.

regulatory functions—see section 7A.

[2] Section 4, definitions of “Chairperson”, “Fund” and “member”

Omit the definitions.

[3] Parts 2 and 3

Omit the Parts. Insert instead:

Part 2 Harness Racing New South Wales

Division 1 Constitution of HRNSW

5 Constitution of HRNSW

- (1) There is constituted by this Act a body corporate with the corporate name of Harness Racing New South Wales.

- (2) HRNSW has the functions conferred or imposed on it by or under this or any other Act or law.
- (3) HRNSW is, for the purposes of any Act, a statutory body representing the Crown.

Division 2 Board of HRNSW

6 Constitution of Board

- (1) HRNSW is to have a Board consisting of 7 directors appointed by the Governor.
- (2) Of the directors:
 - (a) one is to be nominated by New South Wales Harness Racing Club Limited, and
 - (b) two are to be nominated by harness racing clubs (other than the club referred to in paragraph (a)), with at least one of those nominees being nominated as a representative of TAB clubs, and
 - (c) one is to be nominated by participants in the harness racing industry (being owners, trainers, bookmakers or other persons involved with harness racing), and
 - (d) three are to be nominated by the Minister.
- (3) The Chairperson of HRNSW is to be the Chairperson of the Board and the Deputy Chairperson of HRNSW is to be the Deputy Chairperson of the Board.
- (4) The Minister is to determine, by order published in the Gazette, the manner in which, and the criteria on which, the persons referred to in subsection (2) (b) and (c) are to be nominated.
- (5) For the purposes of subsection (2) (b), a **TAB club** is a harness racing club at a majority of whose race meetings TAB Limited conducts an off-course totalizator (within the meaning of the *Totalizator Act 1997*).

7 Role of Board

- (1) The Board is responsible for exercising the functions of HRNSW other than its regulatory functions.

- (2) Any act, matter or thing done in the name of, or on behalf of, HRNSW by, or with the authority of, the Board is taken to have been done by HRNSW.
- (3) The Board is not subject to the control or direction of the Minister.

Division 3 Regulatory Committee of HRNSW

7A Meaning of “regulatory functions”

- (1) For the purposes of this Act, the *regulatory functions* of HRNSW are the following functions of HRNSW:
 - (a) the functions relating to the control and regulation of harness racing as specified in section 9 (including the functions of initiating or conducting inquiries in relation to the control and regulation of harness racing, and any disciplinary or decision-making functions with respect to such inquiries),
 - (b) the function under section 10B (to the extent that the function is exercised for the purpose of protection of the public interest),
 - (c) the functions under sections 10C, 10D and 10G (to the extent that the functions are exercised for the purpose of the regulatory functions of HRNSW),
 - (d) the function of making rules under this Act,
 - (e) the functions of hearing and deciding appeals to HRNSW and of holding special inquiries under section 19A,
 - (f) the function under section 21 (to the extent that the function is exercised to delegate regulatory functions),
 - (g) such functions as the Board may allocate to the Regulatory Committee,
 - (h) such functions as are determined or designated to be regulatory functions in accordance with subsection (2) or the regulations.

- (2) If a dispute arises as to whether a function is a regulatory function, the Minister may resolve the dispute. The Minister's determination is final and conclusive of the matter.

7B Establishment of Regulatory Committee

- (1) There is established a committee of HRNSW known as the Regulatory Committee.
- (2) The Regulatory Committee is to consist of the 3 directors appointed on the nomination of the Minister.
- (3) The Chairperson of HRNSW is to be the Chairperson of the Committee and the Deputy Chairperson of HRNSW is to be the Deputy Chairperson of the Committee.

7C Role of Regulatory Committee

- (1) The Regulatory Committee is responsible for exercising the regulatory functions of HRNSW.
- (2) Any act, matter or thing done in the name of, or on behalf of, HRNSW by, or with the authority of, the Regulatory Committee is taken to have been done by HRNSW.
- (3) The Regulatory Committee is subject to the control and direction of the Minister except in relation to the following matters:
 - (a) the contents of a report or recommendation made by it to the Minister.
 - (b) the decision on any appeal or other disciplinary proceedings.
- (4) Subsection (1) does not limit the functions of stewards appointed by HRNSW under the rules.

Division 4 Officers and staff of HRNSW

7D Chairperson and Deputy Chairperson

- (1) One of the directors appointed on the nomination of the Minister is to be appointed as the Chairperson of HRNSW by the instrument appointing the person as director or by a subsequent instrument executed by the Governor.

- (2) One of the directors appointed on the nomination of the Minister is to be appointed as the Deputy Chairperson of HRNSW by the instrument appointing the person as director or by a subsequent instrument executed by the Governor.

7E Provisions relating to directors and procedure of Board and Regulatory Committee

- (1) Schedule 1 has effect with respect to the directors.
- (2) Schedule 2 has effect with respect to the procedure of the Board and the Regulatory Committee.

7F Chief executive officer of HRNSW

- (1) HRNSW may, in consultation with the Minister, employ a chief executive officer of HRNSW.
- (2) The chief executive officer is responsible for the day-to-day management of HRNSW subject to, and in accordance with, the policies and other decisions of:
 - (a) the Regulatory Committee, with respect to the day-to-day management of HRNSW concerning its regulatory functions, and
 - (b) the Board, with respect to the day-to-day management of HRNSW concerning its other functions.

7G Staff of HRNSW

- (1) HRNSW may employ such other staff as it requires to exercise its functions.
- (2) HRNSW may fix the salary, wages and other conditions of its staff (including the chief executive officer) in so far as they are not fixed by or under any other Act or law.
- (3) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the staff (including the chief executive officer) of HRNSW.

- (4) HRNSW may engage consultants for the purposes of getting expert advice.
- (5) Schedule 3 has effect with respect to officers and employees of HRNSW.

Part 3 Functions of Harness Racing New South Wales

8 General

- (1) HRNSW has, and may exercise, the functions conferred or imposed on it by or under this or any other Act.
- (2) Nothing in this Act confers on HRNSW power to conduct harness racing meetings or harness races on its own behalf.

9 Control and regulation of harness racing

- (1) HRNSW is responsible for the control and regulation of harness racing.
- (2) HRNSW may, in accordance with the rules, do the following:
 - (a) register or refuse to register any owner, trainer or driver of harness racing horses, or any bookmaker or bookmaker's clerk associated with the harness racing industry, or any other person associated with the industry,
 - (b) cancel the registration of, or supervise the actions of, any harness racing club or harness racing association, or any owner, trainer or driver of harness racing horses, or any bookmaker or bookmaker's clerk associated with the harness racing industry, or any other person associated with the industry.
 - (c) register and identify horses in association with Australian Harness Racing Council Incorporated.
 - (d) disqualify permanently or temporarily any owner, trainer or driver of harness racing horses. or any bookmaker or bookmaker's clerk. or any other person. from participating in or being associated with the harness racing industry.

- (e) disqualify either permanently or temporarily any horse from participating in harness racing meetings,
- (f) exclude from participating in harness racing any horse not registered under the rules,
- (g) prohibit any person registered under the rules from taking part in any harness racing meeting held by any club or association not registered under the rules,
- (h) prohibit a person from attending or taking part in a harness racing meeting,
- (i) impose a fine (not exceeding 200 penalty units) for breaches of the rules, on any owner, trainer or driver of harness racing horses, or any bookmaker or bookmaker's clerk associated with the harness racing industry, or any other person associated with the industry,
- (j) suspend for such term as HRNSW thinks fit any right or privilege conferred by this Act or the rules on any owner, trainer or driver of harness racing horses, or on any bookmaker or bookmaker's clerk associated with the harness racing industry, or any other person associated with the industry.

10 Registration of clubs and associations and allocation of meeting and racing dates

- (1) HRNSW may, in accordance with the rules:
 - (a) register or refuse to register any harness racing club or harness racing association, and
 - (b) allocate to harness racing clubs and harness racing associations the dates on which they may conduct harness racing meetings and harness races.
- (2) HRNSW may not refuse to register a club or association under this section for the purpose of taking disciplinary action.

10A HRNSW may make rules

- (1) HRNSW may make rules, not inconsistent with this Act, for or with respect to:
 - (a) the control and regulation of harness racing, including (but not limited to) the following matters:
 - (i) any of the matters referred to in section 9,
 - (ii) the appointment of stewards of HRNSW and the functions of those stewards,
 - (iii) conferring on stewards so appointed the same powers as are exercisable by HRNSW under section 9,
 - (iv) the extent to which, and the circumstances in which, stewards so appointed may exercise or perform their functions to the exclusion of stewards of harness racing clubs or harness racing associations, and
 - (b) the allocation to harness racing clubs and harness racing associations of dates on which they may conduct harness racing meetings and harness races, and
 - (c) the registration of harness racing clubs or associations, and
 - (d) the fees and charges referred to in section 16.
- (2) A rule may not be made for or with respect to any of the matters for or with respect to which regulations may be made by virtue of this Act.

10B HRNSW may make and implement policies

HRNSW may initiate, develop and implement such policies as it considers are conducive to the development and welfare of the harness racing industry and protection of the public interest.

10C HRNSW may affiliate with other organisations

HRNSW may affiliate with such organisations, whether in or out of New South Wales, as it considers appropriate.

10D HRNSW may undertake research and investigations

HRNSW may undertake research, and carry out investigations, into any aspect of the harness racing industry and recommend to the Minister any action that ought to be taken as a result of that research and investigation.

10E Dealings with property on trust or condition

HRNSW may accept, hold and administer property on trust or subject to a condition that the property be applied for or towards any one or more of the following purposes:

- (a) the promotion or advancement of harness racing,
- (b) the development and welfare of the harness racing industry,
- (c) the assistance of persons who are or have, at any time, been associated with the harness racing industry,
- (d) the assistance of persons who are or have, at any time, been the dependants of persons associated with the harness racing industry.

10F Restriction on dealings with land

The powers of HRNSW to purchase, exchange, take on lease, hold, dispose of, and otherwise deal with land must not be exercised except with the consent of the Minister and subject to such conditions as the Minister may, in giving his or her consent, impose.

10G Reports and recommendations by HRNSW

HRNSW must, if so directed by the Minister, or may, of its own initiative, furnish to the Minister a report and recommendation with respect to any matter relating to harness racing or the administration of harness racing.

[4] Section 11 Harness Racing Fund

Omit the section.

[5] Section 13A Harness Racing Assistance Fund

Omit section 13A (2) (a).

[6] Section 13A (4) (a)

Omit the paragraph. Insert instead:

- (a) in respect of money that has not been carried to a separate account in the Assistance Fund, grants or loans (whether with or without interest) to any person for or towards any one or more of the purposes referred to in section 10E, and

[7] Section 13A (4) (c)

Omit the paragraph.

[8] Section 13B Harness Racing Benevolent Fund

Omit section 13B (2) (a).

[9] Section 138 (4) (a)

Omit “with the approval of the Minister,”.

[10] Section 13B (4) (a) (iv)

Insert ”and“ at the end of the subparagraph.

[11] Section 13B (4) (c)

Omit the paragraph.

[12] Sections 13C–14

Omit the sections. Insert instead:

13C Financial year

- (1) The financial year of HRNSW is the year commencing on 1 July.
- (2) A different financial year may be determined by the Treasurer under section 4 (1A) of the *Public Finance and Audit Act 1983*.

13D Expenses

HRNSW is liable for the following expenses:

- (a) all expenses (including remuneration and allowances payable to directors, the chief executive officer and other staff of HRNSW) incurred by HRNSW in the exercise of its functions,
- (b) all expenses (including remuneration and allowances payable under clause 4 of Schedule 4) incurred by the Tribunal in the exercise of its functions under this Act.

14 Accounts

- (1) HRNSW must keep full and accurate accounts for the Harness Racing Assistance Fund and the Harness Racing Benevolent Fund.
- (2) HRNSW may establish such other accounts as it thinks appropriate for the money received and expended by HRNSW.

15 Power to accept gifts

- (1) HRNSW may acquire by gift, bequest or devise any property for a purpose referred to in section 10E and may agree to a trust or condition on which the property is required to be held.

- (2) The rule of law against remoteness of vesting does not apply to or in respect of any such trust or condition to which HRNSW has agreed.
- (3) If HRNSW acquires property under subsection (1):
 - (a) an instrument that effects the acquisition and any agreement pursuant to which the property is acquired is not chargeable with duty under the *Duties Act 1997*, and
 - (b) the property, or the value of the property, is not included in the dutiable estate of the donor or testator for the purposes of assessing death duty under that Act.

16 Fees and charges

- (1) HRNSW may charge a harness racing club or harness racing association for services it provides to the club or association.
- (2) HRNSW may determine the fees and charges payable for registration or for the transaction of other business with HRNSW.

[13] Part 5, heading

Omit the heading. Insert instead:

Part 5 Appeals and disciplinary inquiries

[14] Section 18 Appeals to HRNSW

Omit "HRNSW" from section 18 (2).
Insert instead "the Regulatory Committee".

[15] Section 19B

Insert after section 19A:

19B Proceedings of disciplinary inquiries

- (1) Proceedings in respect of a disciplinary inquiry of HRNSW may be conducted in public or in private, or partly in public and partly in private, as HRNSW may decide.

- (2) In conducting a disciplinary inquiry, HRNSW may examine any witness on oath or affirmation, or by use of a statutory declaration.
- (3) For the purposes of this section, a *disciplinary inquiry* means a special inquiry under section 19A or any other inquiry by HRNSW for the purpose of taking disciplinary action.

[16] Sections 21–21C

Omit section 21. Insert instead:

21 Delegation

- (1) Subject to subsection (2), HRNSW may delegate the exercise of its functions to:
 - (a) a director, the chief executive officer or other member of the staff of HRNSW, or
 - (b) a committee comprised of, or a combination of, those persons.
- (2) HRNSW may not delegate the following of its functions:
 - (a) the power of delegation conferred by subsection (1),
 - (b) the regulatory functions of HRNSW (other than those referred to in section 9 (2) (a)).
- (3) Subsection (2) does not limit the functions of stewards appointed by HRNSW under the rules.

21A Protection from personal liability

Anything done or omitted to be done by:

- (a) HRNSW. or
- (b) the Board. or
- (c) the Regulatory Committee. or
- (d) any director. or
- (e) the chief executive officer. or

- (f) any steward appointed by HRNSW, or
 - (g) any person acting under the direction of HRNSW,
- does not subject a director, the chief executive officer, a steward, or a person so acting, personally to any action, liability, claim or demand if the thing was done or omitted to be done in good faith for the purposes of executing this or any other Act or the rules.

21B Proof of certain matters not required

In any legal proceedings, proof is not required (until evidence is given to the contrary) of the following matters:

- (a) the constitution of the Board or the Regulatory Committee,
- (b) any resolution of the Board or the Regulatory Committee,
- (c) the appointment of, or the holding of office by, any director,
- (d) the presence of a quorum at any meeting of the Board or the Regulatory Committee.

21C No challenge on ground that function exercised by wrong body

The exercise of a function of HRNSW by the Board or the Regulatory Committee cannot be challenged on the ground that it should have been exercised by the other body.

[17] Section 22 Authentication of process

Insert “or chief executive officer, or by any other member of staff authorised to do so by the chief executive officer” after “Chairperson”.

[18] Section 24 Recovery of money

Omit “section 8 (2) (d) (ix)”. Insert instead “section 9 (2) (i)”.

[19] Section 26 Annual report

Omit the section.

[20] Section 27 Regulations

Omit “section 8 (2) (d)” from section 27 (4) wherever occurring.
Insert instead “sections 9 and 10”.

[21] Schedule 1, heading

Omit the heading. Insert instead:

Schedule 1 Provisions relating to directors

(Section 7E)

[22] Schedule 1

Omit “member” and “members” wherever occurring except clause 9 (2) (a).
Insert instead “director” and “directors”, respectively.

[23] Schedule 1, clause 2

Insert after clause 1:

2 Person disqualified or warned off not eligible

A person who is disqualified under section 9 (2) (d) or who is warned off under section 9 (2) (h) is not eligible to be nominated or appointed as a director while the disqualification or warning off remains in force.

[24] Schedule 1, clause 4

Omit clause 4 (2). Insert instead:

- (2) Such an acting director is to be appointed from the same category of nomination (as specified in section 6 (2)) as the person he or she is replacing.

[25] Schedule 1, clauses 8 and 9

Omit “HRNSW” wherever occurring.

Insert instead “the Board or the Regulatory Committee”.

[26] Schedule 1, clause 8 (1) (f1)

Insert after clause 8 (1) (f):

(f1) is disqualified under section 9 (2) (d) or warned off under section 9 (2) (h),

[27] Schedule 1, clauses 11 and 12

Omit the clauses.

[28] Schedule 2

Omit the Schedule. Insert instead:

Schedule 2 Provisions relating to procedure of Board and Regulatory Committee

(Section 7E)

1 General procedure

The procedure for the calling of meetings of the Board or the Regulatory Committee and for the conduct of business at those meetings is, subject to this Act, to be determined by the Board or the Committee.

2 Failure to nominate

A failure to nominate a person to a category of nomination specified in section 6 (2) does not affect the appointment of the directors who are nominated in accordance with that section.

3 Quorum

The quorum:

- (a) for a meeting of the Board is a majority of directors for the time being, and
- (b) for a meeting of the Regulatory Committee is 2 members.

4 Person presiding at Board meetings

- (1) The Chairperson is to preside at a meeting of the Board, or in the absence of the Chairperson, the Deputy Chairperson, or in the absence of both, another director elected to chair the meeting by the directors present.
- (2) The Chairperson is to preside at a meeting of the Regulatory Committee, or in the absence of the Chairperson, the Deputy Chairperson.
- (3) The person presiding at a meeting of the Board or the Regulatory Committee has a deliberative vote and, if the votes cast at the meeting are equal in number, has a second or casting vote.

5 Voting

A decision supported by a majority of the votes at a meeting of the Board or the Regulatory Committee at which a quorum is present is the decision of the Board or the Committee.

[29] Schedule 3, heading

Omit the heading. Insert instead:

Schedule 3 Provisions relating to officers and employees of Harness Racing New South Wales

(Section 7G)

[30] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

Harness Racing New South Wales Amendment Act 1998

[31] Schedule 5, Part 3

Insert after Part 2:

**Part 3 Provisions consequent on enactment of
Harness Racing New South Wales
Amendment Act 1998**

8 Definitions

In this Part:

amending Act means the *Harness Racing New South Wales Amendment Act 1998*.

new HRNSW means HRNSW as constituted by Schedule 1 [3] to the amending Act.

old HRNSW means HRNSW as constituted immediately before the commencement of Schedule 1 [3] to the amending Act.

9 Continuation of HRNSW

The new HRNSW is a continuation of, and the same legal entity as, the old HRNSW.

10 Members of HRNSW

- (1) On the commencement of Schedule 1 [3] to the amending Act, a person who held office as a member of the old HRNSW:
 - (a) ceases to hold that office, and
 - (b) is eligible (if otherwise qualified) to be appointed as a director.
- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.
- (3) A reference in any other Act or instrument to a member of HRNSW is taken to be a reference to a director.

11 General Manager

- (1) The person employed by HRNSW as General Manager immediately before the commencement of Schedule 1 [3] to the amending Act is taken to be duly employed as chief executive officer under section 7F for the balance of his or her term of employment as General Manager.
- (2) A reference in any other Act or instrument to the General Manager of HRNSW is taken to be a reference to the chief executive officer.

12 Fees and charges

The fees and charges for registration or for the transaction of other business with HRNSW that are prescribed by the rules (as in force immediately before the commencement of Schedule 1 [12] to the amending Act) continue in force until such time as HRNSW determines other fees and charges in accordance with this Act as amended by the amending Act.

13 Rules

The rules in force under this Act immediately before the commencement of Schedule 1 [3] to the amending Act are taken to be made under this Act as amended by the amending Act.

14 Harness Racing Fund

All money in the Harness Racing Fund immediately before the commencement of Schedule 1 [4] to the amending Act is to be paid into an account established by HRNSW in accordance with section 14.

Schedule 2 Amendment of Defamation Act 1974

(Section 4)

[1] Section 17E

Omit the section. Insert instead:

17E Matters arising under the Harness Racing New South Wales Act 1977

There is a defence of absolute privilege:

- (a) for a publication in the course of an appeal under the *Harness Racing New South Wales Act 1977*, and
- (b) for a publication by Harness Racing New South Wales (HRNSW) or the Harness Racing Appeals Tribunal in an official report of its decision in respect of any such appeal and of the reasons for that decision, and
- (c) for a publication in the course of proceedings in respect of an inquiry conducted by HRNSW in the exercise of its regulatory functions (including the exercise of any such function by a steward of HRNSW), and
- (d) for the publication by HRNSW of a report it makes in respect of such an inquiry.

[2] Schedule 2 Proceedings of public concern and official and public documents and records

Omit clause 2 (13). Insert instead:

- (13) without limiting the operation of any other subclause, proceedings:
 - (a) at an inquiry conducted by Harness Racing New South Wales (HRNSW) in the exercise of its regulatory functions (including the exercise of any such function by a steward of HRNSW). and

- (b) on an appeal to HRNSW or the Harness Racing Appeals Tribunal under the *Harness Racing New South Wales Act 1977*.

[Minister's second reading speech made in—
Legislative Assembly on 10 September 1998 a.m.
Legislative Council on 22 September 1998]