



New South Wales

Harness Racing Act 2002 No 39

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New South Wales

Harness Racing Act 2002 No 39

Act No 39, 2002

An Act to repeal the *Harness Racing New South Wales Act 1977*; to constitute Harness Racing New South Wales and the Harness Racing Authority; to make provision with respect to the control and regulation of harness racing; to amend various Acts consequentially; and for other purposes. [Assented to 25 June 2002]

See also the *Greyhound Racing Act 2002*.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Harness Racing Act 2002*.

2 Commencement

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

3 Definitions

(1) In this Act:

Advisory Committee means the Harness Racing Industry Participants Advisory Committee established under Part 5.

Benevolent Fund means the Harness Racing Benevolent Fund established under section 52.

exercise a function includes perform a duty.

function includes a power, authority or duty.

harness racing means pacing or trotting.

harness racing association means an association of harness racing clubs.

harness racing club includes any body or other association of persons, whether incorporated or unincorporated and whether registered or not, promoting, conducting or controlling, or formed for promoting, conducting or controlling, a harness racing meeting or harness racing meetings.

HRNSW means Harness Racing New South Wales constituted by section 6.

rule means a rule made under this Act.

the Authority means the Harness Racing Authority constituted by section 14.

Tribunal means the Harness Racing Appeals Tribunal established by section 34.

- (2) A reference in this Act to a *person associated with harness racing* is a reference to the following:
- (a) a person who handles horses at a harness race,
 - (b) a bookmaker's clerk,
 - (c) a breeder of horses for harness racing,
 - (d) a person who is an officer or employee of a harness racing club or harness racing association or is otherwise concerned in the management or control of any such club or association,
 - (e) any other person prescribed by the regulations for the purposes of this subsection.

4 Notes

Notes in the text of this Act do not form part of this Act.

5 Determination of appropriate body to carry out functions

- (1) The Minister may, by order in writing, determine whether HRNSW or the Authority is to be the appropriate body to carry out a function under this Act in relation to the harness racing industry.
- (2) Subsection (1) does not apply to a function that a provision of this Act provides is to be carried out by HRNSW or the Authority.
- (3) However, if a dispute arises as to whether a function is to be exercised under this Act by HRNSW or the Authority, the Minister may resolve the dispute.
- (4) The Minister's determination is final and conclusive of the matter.

Part 2 Harness Racing NSW and Harness Racing Authority

Division 1 Harness Racing New South Wales

6 Constitution of Harness Racing New South Wales

- (1) There is constituted by this Act a body corporate with the corporate name of Harness Racing New South Wales.
- (2) HRNSW may use another name approved by the Minister by order published in the Gazette.
- (3) Without limiting subsection (2), HRNSW may use that other name when entering into any agreement or in relation to any other dealings of HRNSW.
- (4) Schedule 1 has effect with respect to HRNSW.

7 HRNSW independent of Government

HRNSW or any of its subsidiaries:

- (a) does not represent the Crown and is not subject to direction or control by or on behalf of the Government, and
 - (b) cannot render the State liable for any debts, liabilities or other obligations of HRNSW or its subsidiaries,
- unless this or any other Act otherwise expressly provides.

8 Membership of HRNSW

- (1) HRNSW consists of the following members:
 - (a) one person nominated by New South Wales Harness Racing Club Ltd,
 - (b) two persons nominated by harness racing clubs (other than New South Wales Harness Racing Club Ltd), with one of those nominees being nominated as a representative of TAB clubs and the other being nominated as a representative of country racing,

- (c) one person nominated by participants in the harness racing industry (being owners, trainers, drivers, bookmakers or other persons involved with harness racing),
 - (d) one person selected by the nominated members of HRNSW, who is to be the Chairperson.
- (2) HRNSW may decide to appoint the same person to both the position of Chairperson and the position of Chief Executive Officer.
- (3) The nominated members of HRNSW are to select, by majority vote, the Chairperson from among candidates identified by a recruitment agency or recruitment agencies as having suitable expertise to hold the office of Chairperson and, if the successful candidate is to be appointed to the position of Chief Executive Officer, as having suitable expertise to fill that office also.
- (4) HRNSW must commission at least one recruitment agency to identify candidates from whom the selection is to be made.
- (5) The Minister is to determine, by order published in the Gazette, the manner in which, and the criteria on which, persons are to be nominated for the purposes of subsection (1), including the time at which such a nomination is taken to have effect.
- (6) The following persons are not eligible to be nominated under subsection (1) (c) as a member of HRNSW:
- (a) a person who is, or has been at any time in the year immediately preceding the time of nomination, a member of the committee of a harness racing club or harness racing association,
 - (b) an employee of a harness racing club or harness racing association.
- (7) The following persons are not eligible to be selected as Chairperson of HRNSW:
- (a) a person who is, or has been at any time in the year immediately preceding the time of selection, a member of the committee of a harness racing club or harness racing association,
 - (b) a member or employee of a harness racing club or harness racing association.

- (8) For the purposes of this section, a **TAB club** is a harness racing club on a majority of whose race meetings TAB Limited conducts an off-course totalizator (within the meaning of the *Totalizator Act 1997*).

9 Functions of HRNSW

- (1) HRNSW has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) Without limiting subsection (1), the functions of HRNSW include the following:
- (a) to register harness racing clubs and harness racing associations,
 - (b) to initiate, develop and implement policies considered conducive to the promotion, strategic development and welfare of the harness racing industry in the State,
 - (c) to distribute money received as a result of commercial arrangements required by the *Totalizator Act 1997*,
 - (d) to allocate to harness racing clubs and harness racing associations the dates on which they may conduct harness racing meetings and harness races,
 - (e) to develop and review policy in relation to the breeding and handicapping of harness racing horses.
- (3) HRNSW may affiliate with such organisations, whether in or out of New South Wales, as HRNSW considers appropriate.
- (4) Nothing in this Act confers on HRNSW power to conduct harness racing meetings on its own behalf.

10 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.

11 Chief executive officer of HRNSW

- (1) Subject to section 8 (2) and (3), HRNSW may employ a chief executive officer of HRNSW.
- (2) The chief executive officer is responsible for the day-to-day management of HRNSW.
- (3) The *Public Sector Management Act 1988* does not apply to or in respect of the chief executive officer.

12 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 staff employed under subsection (1) (including the chief executive officer of HRNSW) in so far as they are not fixed by or under any other Act or law.
- (3) The *Public Sector Management Act 1988* does not apply to or in respect of staff employed under subsection (1).
- (4) HRNSW may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of the Authority.
- (5) For the purposes of this Act, a person whose services are made use of under subsection (4) is taken to be a member of staff of HRNSW.
- (6) HRNSW may engage consultants for the purposes of getting expert advice.

13 Annual report of HRNSW

- (1) HRNSW must, as soon as practicable after 30 June and in any case before 1 November in each year prepare and forward to the Minister a report of its work and activities for the 12 months ending on that 30 June.
- (2) The report must include copies of the financial statements of HRNSW for the 12-month period to which the report relates together with an auditor's report on those statements prepared by an independent auditor.
- (3) The Minister is to table the report or cause it to be tabled in both Houses of Parliament as soon as practicable after the report is forwarded to the Minister.

- (4) HRNSW is to make copies of the report available to the public at a reasonable price.

Division 2 Harness Racing Authority

14 Constitution of Harness Racing Authority

- (1) There is constituted by this Act a body corporate with the corporate name of the Harness Racing Authority.
- (2) The Authority is subject to the direction and control 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.
- (3) The Authority is, for the purposes of any Act, a statutory body representing the Crown.
- (4) Schedule 2 has effect with respect to the Authority.

15 Membership of Authority

- (1) The Authority is to consist of three members appointed by the Governor, on the recommendation of the Minister.
- (2) The Minister must ensure that at least one of the persons recommended for appointment as a member has, in the opinion of the Minister, suitable legal qualifications and at least two of the persons so recommended have, in the opinion of the Minister, one or more of the following qualifications:
 - (a) experience in management or administration,
 - (b) experience in enforcement or policing of regulatory schemes,
 - (c) veterinary qualifications,
 - (d) knowledge of the racing or wagering industries.
- (3) The following persons are not eligible to be appointed as members of the Authority:
 - (a) a person who is, or has been at any time in the year immediately preceding the time of appointment, a member of the committee of a harness racing club or harness racing association,

- (b) a member or employee of a harness racing club or harness racing association,
- (c) a person licensed or registered under this Act, the *Greyhound Racing Authority Act 1985* or the *Thoroughbred Racing Board Act 1996*,
- (d) a person with a financial interest in an animal intended for racing under this Act.

16 Chairperson and deputy chairperson

- (1) The Governor is to appoint one of the members of the Authority as chairperson of the Authority by the instrument appointing the person as member or by a subsequent instrument executed by the Governor.
- (2) The Governor is to appoint one of the members of the Authority as the deputy chairperson of the Authority by the instrument appointing the person as member or by a subsequent instrument executed by the Governor.

17 Functions of Authority

- (1) The Authority has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) The Authority may affiliate with such organisations, whether in or out of New South Wales, as the Authority considers appropriate.
- (3) Nothing in this Act confers on the Authority power to conduct harness racing meetings on its own behalf.

18 Dealings with property on trust or condition

The Authority 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.

19 Restriction on dealings with land

The powers of the Authority 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.

20 Chief executive officer of Authority

- (1) The Authority may, in consultation with the Minister, employ a chief executive officer of the Authority.
- (2) The chief executive officer is responsible for the day-to-day management of the Authority.

21 Staff of Authority

- (1) The Authority may employ such other staff as it requires to exercise its functions.
- (2) The Authority may fix the salary, wages and other conditions of staff employed under subsection (1) (including the chief executive officer of the Authority) 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 staff employed under subsection (1) (including the chief executive officer of the Authority).
- (4) The Authority may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of HRNSW.
- (5) For the purposes of this Act, a person whose services are made use of under subsection (4) is taken to be a member of staff of the Authority.
- (6) The Authority may engage consultants for the purposes of getting expert advice.

Part 3 Control and regulation of harness racing

Division 1 Registration

22 Registration of clubs and associations

- (1) HRNSW may, in accordance with the rules, register or refuse to register:
 - (a) any harness racing club, or
 - (b) any harness racing association.
- (2) HRNSW must not refuse to register a harness racing club or a harness racing association under this section unless it is of the opinion that:
 - (a) the racing club or association is not, or will not be, financially viable in relation to participation in the harness racing industry, or
 - (b) it would be in the best interests of the harness racing industry to do so.
- (3) HRNSW may not refuse any registration under this section for the purpose of taking disciplinary action.
- (4) Despite subsection (1), HRNSW may not register a harness racing club or harness racing association the registration of which has previously been cancelled under section 26 unless the Authority has given approval in writing to the registration.

23 Suspension or cancellation of registration of clubs and associations on commercial grounds

- (1) HRNSW may, in accordance with the rules, suspend or cancel the registration of:
 - (a) any harness racing club, or
 - (b) any harness racing association.
- (2) HRNSW must not suspend or cancel any registration under this section unless it is of the opinion that:
 - (a) the racing club or association is not, or will not be, financially viable in relation to participation in the harness racing industry, or

- (b) it would be in the best interests of the harness racing industry to do so.
- (3) HRNSW may not suspend or cancel any registration under this section for the purpose of taking disciplinary action or for the purposes of occupational health and safety.

24 Registration of harness racing horses, owners, trainers, drivers, bookmakers, and associated persons

- (1) The Authority may, in accordance with the rules, register or refuse to register:
 - (a) any harness racing horse, or
 - (b) any owner, trainer or driver of harness racing horses, or bookmaker or other person associated with harness racing.
- (2) The Authority must not refuse to register any harness racing horse or person under this section unless it is of the opinion that it would be in the best interests of the harness racing industry to do so.

25 Registration of bookmakers

- (1) An application for registration as a bookmaker may be made:
 - (a) by a natural person of or over the age of 18 years, or
 - (b) by a proprietary company.
- (2) Despite section 24 (2), the Authority must refuse to grant an application for registration of a proprietary company as a bookmaker unless satisfied that the company is an eligible company.
- (3) For the purposes of this section, an *eligible company* means a proprietary company that is taken to be registered in New South Wales for the purposes of the *Corporations Act 2001* of the Commonwealth and in which:
 - (a) each director, shareholder and person concerned in the management of the company is of or over the age of 18 years, and
 - (b) each director is registered as an individual as a bookmaker under this Act, and
 - (c) each director is a shareholder and person concerned in the management of the company, and

- (d) each shareholder who is not a director is a close family member of a director, and
 - (e) each shareholder or person concerned in the management of the company who is not a director is, in the opinion of the Authority, a fit and proper person to be registered as an individual as a bookmaker under this Act, and
 - (f) subject to the regulations, no person (other than a shareholder) has any interest in the shares or assets of the company.
- (4) It is a condition of a company's registration as a bookmaker that:
- (a) the company continues to be an eligible company, and
 - (b) no shareholder or person concerned in the management of the company, other than a director, is registered as an individual as a bookmaker under this Act, and
 - (c) no director, shareholder or person concerned in the management of the company:
 - (i) carries on the business of a bookmaker, otherwise than on behalf of the company, in relation to any harness, horse or greyhound race, at a meeting for harness racing in New South Wales, or
 - (ii) carries on the business of an authorised sports betting bookmaker, otherwise than on behalf of the company, at a racecourse licensed for harness racing, or
 - (iii) is a director, shareholder or person concerned in the management of, or is an employee or agent of, any other company that is registered as a bookmaker under this Act, or
 - (iv) has a financial interest in any business of a bookmaker that is carried on by any such other company under the authority of its registration under this Act, and
 - (d) no director, shareholder or person concerned in the management of the company:
 - (i) is registered or otherwise authorised as an individual to carry on, or carries on, the business of a bookmaker, bookmaker's clerk or turf commission agent, or a totalizator business, in another Australian State or Territory, or

- (ii) is a director, shareholder or person concerned in the management of a corporation, or is a member of a partnership, that is registered or otherwise authorised to carry on, or that carries on, any such business in another Australian State or Territory, or
 - (iii) is an employee or agent of any individual, partnership or corporation referred to in the preceding subparagraphs, or
 - (iv) has a financial interest in the business of a bookmaker or turf commission agent, or a totalizator business, that is authorised to be carried on or is carried on in another Australian State or Territory, and
 - (e) no director, shareholder or person concerned in the management of the company:
 - (i) is registered or otherwise authorised as an individual to carry on, or carries on, the business of a bookmaker, bookmaker's clerk or turf commission agent, or a totalizator business, or any other kind of betting, wagering, gambling or gaming business, in another country, or
 - (ii) is a director, shareholder or person concerned in the management of a corporation, or is a member of a partnership, that is registered or otherwise authorised to carry on, or that carries on, any such business in another country, or
 - (iii) is an employee or agent of any individual, partnership or corporation referred to in the preceding subparagraphs, or
 - (iv) has a financial interest in the business of a bookmaker or turf commission agent, or a totalizator business, or any other kind of betting, wagering, gambling or gaming business, that is authorised to be carried on or is carried on in another country.
- (5) In subsection (4) (c), (d) and (e), a reference to carrying on the business of a bookmaker, or the business of a bookmaker's clerk or turf commission agent, includes a reference to acting as a bookmaker, or a bookmaker's clerk or turf commission agent.

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- (6) The condition set out in subsection (4) (d) does not extend to a person who is a director of a company that is registered as a bookmaker under this Act if:
- (a) the person is the sole director of the company, and
 - (b) the relevant matters referred to in subsection (4) (d) (i), (ii), (iii) or (iv) are disclosed in writing to the Authority at the time the company applies for registration as a bookmaker under this Act or, if they do not occur until after that time, within 2 working days after they occur.
- (7) The Authority may suspend or cancel the registration of a company as a bookmaker if satisfied that any condition referred to in subsection (4) is contravened in respect of the company. This does not limit the powers of the Authority to suspend or cancel the registration of a company as a bookmaker under section 26.
- (8) Any debt that is incurred by a company in carrying on business as a bookmaker registered under this Act is enforceable jointly and severally against all persons who are directors of the company at the time the debt is incurred (whether or not they are directors at the time the debt is sought to be enforced).
- (9) In this section:
- authorised sports betting bookmaker*** has the same meaning as in section 4 of the *Racing Administration Act 1998*.
- close family member of a director*** means:
- (a) a spouse, de facto partner, parent, child, brother or sister of the director, or
 - (b) a person who has a relationship with the director that is prescribed by the regulations for the purposes of this definition.
- financial interest*** in a bookmaking business means an entitlement to receive any of the income from the business.
- meeting for harness racing*** has the same meaning as in section 4 of the *Racing Administration Act 1998*.
- racecourse licensed for harness racing*** means a racecourse in respect of which a licence for meetings for harness racing granted under section 7 of the *Racing Administration Act 1998* is in force.

26 Disciplinary and occupational health and safety action may be taken by Authority

- (1) The Authority may, in accordance with the rules, do any of the following:
- (a) cancel the registration of:
 - (i) any harness racing club, or
 - (ii) any harness racing association, or
 - (iii) any harness racing horse, or
 - (iv) any owner, trainer or driver of harness racing horses, or bookmaker or other person associated with harness racing,
 - (b) disqualify, either permanently or temporarily any owner, trainer or driver of harness racing horses, or bookmaker or other person associated with harness racing,
 - (c) prohibit any person from participating in or associating with harness racing in any specified capacity,
 - (d) prohibit any horse from competing in any harness race,
 - (e) prohibit any person from attending or taking part in a harness racing meeting,
 - (f) impose fines, not exceeding 200 penalty units, on any harness racing club or harness racing association or on any owner, trainer or driver of harness racing horses, or bookmaker or other person associated with harness racing for breaches of the rules,
 - (g) suspend, for such term as the Authority thinks fit, any right or privilege conferred by this Act or the rules on any owner, trainer or driver of harness racing horses, or bookmaker or other person associated with harness racing, and
 - (h) prohibit any person registered under the rules from taking part in any meeting for harness racing held by any harness racing club or harness racing association which is not registered under the rules.
- (2) Any fine imposed under subsection (1) (f) is to be paid to and be the property of the Authority.
- (3) The Authority may only take action under this section for disciplinary purposes or for the purposes of occupational health and safety.

Division 2 Rules

27 Authority may make rules

- (1) The Authority may make rules, not inconsistent with this Act, for or with respect to the control and regulation of harness racing.
- (2) Without limiting the generality of subsection (1), the Authority may make rules for or with respect to the following:
 - (a) any of the matters referred to in section 22, 23, 24 or 26 (1),
 - (b) the effect of a disqualification of, or other penalty imposed on, a person or harness racing horse under section 26,
 - (c) the allocation to harness racing clubs and harness racing associations of dates on which they may conduct harness racing meetings and harness races,
 - (d) the holding and conduct of harness racing meetings and of races at any such meeting,
 - (e) the keeping of horses which are in the care or custody of persons registered under the rules,
 - (f) the breeding of harness racing horses,
 - (g) the naming and identification of harness racing horses,
 - (h) the appointment of stewards by the Authority and the functions of those stewards (including functions that do not relate to meetings for harness racing),
 - (i) conferring on stewards appointed by the Authority the same functions as are exercisable by the Authority under Division 1,
 - (j) the extent to which and the circumstances in which stewards appointed by the Authority may exercise their functions to the exclusion of stewards of harness racing clubs or harness racing associations,
 - (k) the fees and charges referred to in section 49.
- (3) A provision of a rule may:
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
 - (b) apply differently according to different factors of a specified kind, or

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Division 2 Rules

(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(4) The following rules may be made only on the recommendation of HRNSW:

(a) a rule for or with respect to any of the matters referred to in section 22 or 23,

(b) a rule for or with respect to any of the matters referred to in subsection (2) (c) or (f),

(c) a rule for or with respect to any other matter prescribed by the regulations for the purposes of this paragraph.

(5) 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 (section 62 (1) (b) excepted).

Part 4 Appeals and disciplinary inquiries

Division 1 Rights and procedures concerning appeals and inquiries

28 Definitions

In this Part:

appeal means an appeal under this Part.

disciplinary inquiry means a special inquiry under section 31 or any other inquiry by the Authority for the purpose of taking disciplinary action.

29 Appeals

- (1) Any person who is aggrieved by a decision of a committee of a harness racing club or harness racing association may, in accordance with the regulations, appeal against the decision to the Authority.
- (2) Any person who, or any harness racing club or harness racing association that, is aggrieved by:
 - (a) a decision of stewards of the Authority, or
 - (b) a decision of the Authority (including a decision in respect of an appeal under subsection (1)),may, in accordance with the regulations, appeal against the decision to the Tribunal.
- (3) The decision of the Authority or the Tribunal on appeal under this section is final and conclusive and is taken to be a decision of the person or body whose decision is the subject of the appeal.
- (4) Subsection (3) does not preclude the operation of section 31.

30 Proceedings on appeal and disciplinary inquiries

- (1) Proceedings on an appeal to the Authority under section 29 are to be held as in open court at a meeting of the Authority at which a quorum is present.
- (2) Proceedings on an appeal to the Tribunal under section 29 are to be held as in open court before the Tribunal.

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Part 4	Appeals and disciplinary inquiries
Division 1	Rights and procedures concerning appeals and inquiries

- (3) Proceedings in respect of a disciplinary inquiry of the Authority may be conducted in public or in private, or partly in public and partly in private, as the Authority may decide.
- (4) In conducting a disciplinary inquiry, the Authority may examine any witness on oath or affirmation, or by use of a statutory declaration.

31 Special inquiry following appeal to Tribunal

- (1) The Authority may institute a special inquiry into a matter decided on appeal to the Tribunal under section 29 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.
- (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 29 (2) does not apply to a decision made under this section.

32 Regulations concerning appeals

- (1) The regulations may make provision for or with respect to the following:
 - (a) appeals to the Authority or the Tribunal under this Act,
 - (b) special inquiries instituted under section 31,
 - (c) the procedures at or in connection with any appeals under this Act and special inquiries under section 31,

- (d) the suspension of a decision appealed against under this Act, or the subject of a special inquiry under section 31, pending the determination of the appeal or inquiry,
 - (e) the payment of fees and costs in respect of appeals under this Act and special inquiries under section 31, and
 - (f) any matters incidental to or connected with appeals under this Act and special inquiries under section 31.
- (2) Without affecting the generality of subsection (1), the regulations may:
- (a) prescribe classes of matters in respect of which appeals may not be made under this Act, or
 - (b) provide that no appeals may be made under this Act except in respect of prescribed classes of matters.

Division 2 **Harness Racing Appeals Tribunal**

33 **Definitions**

In this Part:

assessor means a person appointed as an assessor of the Tribunal under section 37.

court includes the Industrial Relations Commission.

judge includes a judicial member of the Industrial Relations Commission.

qualified person means a judge of any court in New South Wales, a retired judge of any court (whether or not in New South Wales) or a person qualified to be appointed as a Judge of the District Court.

34 **Harness Racing Appeals Tribunal**

For the purposes of this Act, there is established a Tribunal to be known as the Harness Racing Appeals Tribunal.

35 **Appointment of Tribunal**

The Minister may, on the recommendation of the Attorney General, appoint a qualified person as the Tribunal.

36 Appointment of acting Tribunal

- (1) The Minister may from time to time, on the recommendation of the Attorney General, appoint:
 - (a) a qualified person to act as the Tribunal:
 - (i) during the illness or absence of the person appointed as the Tribunal, or
 - (ii) during a vacancy in the office of the Tribunal, or
 - (iii) on such occasions or in respect of such appeals as the person appointed as the Tribunal directs, and
 - (b) another qualified person to act as the Tribunal in accordance with paragraph (a) but only during the illness or absence of the person appointed to act as the Tribunal under paragraph (a).
- (2) A qualified person is taken to be the Tribunal while acting as the Tribunal.
- (3) More than one sitting of the Tribunal may be held at the same time, but the person appointed as the Tribunal and a person appointed to act as the Tribunal must not sit on the same appeal.

37 Appointment of assessors

The Minister may, for the purposes of this Act, appoint persons the Minister believes have special knowledge of, and experience in, the harness racing industry to be assessors of the Tribunal.

38 Functions of assessors

- (1) The Tribunal may, in hearing appeals under this Act, be assisted by one or more assessors.
- (2) An assessor assisting the Tribunal as referred to in subsection (1) may assist and advise the Tribunal, but must not adjudicate on any matter before the Tribunal.

39 Provisions relating to Tribunal

Schedule 3 has effect.

Part 5 Harness Racing Industry Participants Advisory Committee

40 Establishment of Advisory Committee

- (1) There is established by this Act a committee called the Harness Racing Industry Participants Advisory Committee.
- (2) Schedule 4 has effect with respect to the members and procedure of the Advisory Committee.

41 Membership

- (1) The Advisory Committee is to consist of 5 members of which:
 - (a) 4 are to be nominated by relevant industry bodies to represent each of the following categories of participants in the harness racing industry:
 - (i) owners,
 - (ii) breeders,
 - (iii) licensed trainers and drivers,
 - (iv) licensed bookmakers and bookmakers' clerks, and
 - (b) one member is to be selected by the members referred to in paragraph (a) to represent consumers of racing and betting services.
- (2) The Minister is to determine, by order published in the Gazette, the relevant industry bodies that may nominate members under subsection (1) (a) and the manner in which persons are to be nominated by those bodies, including the time at which such a nomination is taken to have effect.

42 Certain persons not eligible for membership

- (1) A person is not eligible to be a member of the Advisory Committee if the person:
 - (a) is currently warned off or disqualified under the rules, or is a person whose name is currently on the Unpaid Forfeit List kept under the rules, or

- (b) during the previous 10 years has been convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or more, or convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable, or
 - (c) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankruptcy, or
 - (d) is a mentally incapacitated person.
- (2) A person is not eligible to be a member of the Advisory Committee for more than 4 consecutive terms of office, but there is no limit on the number of non-consecutive terms for which a person can be a member. A term of office is counted for the purposes of this subsection even if the member did not serve out the full period of that term of office.

43 Functions of Advisory Committee

The Advisory Committee has the following functions:

- (a) to provide advice to HRNSW and the Authority on industry policy and strategic direction,
- (b) to serve as a channel for communication between the industry stakeholders that it represents and HRNSW and the Authority,
- (c) to provide a forum for discussion of issues of concern and the making of recommendations to HRNSW and the Authority,
- (d) at the request of HRNSW or the Authority, to nominate members to serve on committees or working groups established by HRNSW or the Authority.

Part 6 Administration

44 Records

- (1) The Authority is to keep records for the purposes of this Act relating to its own functions and the registration functions of HRNSW.
- (2) HRNSW is to ensure that the relevant information is passed on to the Authority to enable it to perform its record-keeping functions under this section.
- (3) The Authority is to allow HRNSW access to the records kept under this section that relate to the registration functions of HRNSW.

45 Meetings of HRNSW and Authority

HRNSW and the Authority are to meet with each other at least twice a year to co-ordinate the carrying out of their functions under this Act.

Part 7 Finance

46 Financial year

- (1) Subject to subsections (2) and (3), the financial year of HRNSW and the Authority is the year commencing on 1 July.
- (2) A different financial year for HRNSW may be determined by the Minister by order published in the Gazette.
- (3) A different financial year for the Authority may be determined by the Treasurer under section 4 (1A) of the *Public Finance and Audit Act 1983*.

47 Expenses

- (1) HRNSW is liable for all expenses (including remuneration and allowances payable to members of HRNSW, the chief executive officer of HRNSW and the other staff of HRNSW) incurred by HRNSW in the exercise of its functions.
- (2) The Authority is liable for the following expenses:
 - (a) all expenses (including remuneration and allowances payable to members of the Authority, the chief executive officer of the Authority and the other staff of the Authority) incurred by the Authority in the exercise of its functions,
 - (b) all expenses (including remuneration and allowances payable under clause 3 of Schedule 3) incurred by the Tribunal in the exercise of its functions under this Act.

48 Accounts

- (1) HRNSW may establish such accounts as it thinks appropriate for the money received and expended by HRNSW.
- (2) The Authority may establish such accounts as it thinks appropriate for the money received and expended by the Authority.

49 Fees and charges

- (1) If a steward appointed by the Authority acts at a harness racing meeting held by a harness racing club or harness racing association, the Authority may charge the club or association for the services of the steward.

- (2) HRNSW may determine the fees and charges payable for registration or for the transaction of other business with HRNSW.
- (3) The Authority may determine the fees and charges payable for registration or for the transaction of other business with the Authority.

50 Approval required for certain loans by HRNSW

HRNSW must not borrow:

- (a) an amount exceeding \$1,000,000 (or exceeding such other amount as is prescribed by the regulations), or
- (b) amounts totalling in excess of a prescribed amount within a prescribed period,

unless the Minister has approved of HRNSW doing so.

51 Funding of Authority

- (1) The Authority is to submit a draft annual budget to the Minister before the beginning of each of its financial years.
- (2) After considering the draft annual budget of the Authority, the Minister is to determine an amount, in writing, that is to be the total amount to be allowed for the funding of the Authority for the financial year concerned.
- (3) Notice in writing of the amount determined under subsection (2) is to be given to HRNSW.
- (4) HRNSW is to provide annual funding to the Authority equal to the amount determined under subsection (2).
- (5) The amount is to be paid to the Authority in the manner and at the times directed by the Minister.
- (6) The amount is:
 - (a) to be provided from money to be distributed by HRNSW under the intra-code agreement, and
 - (b) to be deducted from that money before it is distributed as referred to in paragraph (a).
- (7) Unless otherwise agreed to by the parties to the intra-code agreement, the amount to be distributed to HRNSW under that agreement is not to exceed 2 per cent of the total amount to be distributed under that agreement before any amount is deducted in accordance with subsection (6).

- (8) Any amendment to the inter-code agreement that affects the way in which money is distributed to the harness racing industry under that agreement has no effect unless it is approved in writing by the Authority.
- (9) This section has effect despite any provision of the inter-code agreement or the intra-code agreement.
- (10) As soon as practicable after HRNSW is constituted, HRNSW is to meet with the other parties to the intra-code agreement (except Harness Racing New South Wales as constituted under the *Harness Racing New South Wales Act 1977*) to determine the manner in which HRNSW will be funded under that agreement.
- (11) In this section, ***inter-code agreement*** means:
- (a) the Racing Inter-Code Deed made on 27 February 1998 between the following:
 - (i) NSW Racing Pty Ltd,
 - (ii) NSW Thoroughbred Racing Board,
 - (iii) Harness Racing New South Wales,
 - (iv) the Greyhound Racing Authority (NSW), or
 - (b) any agreement with HRNSW for the purposes of making commercial arrangements required by the *Totalizator Act 1997* that replaces the agreement referred to in paragraph (a) (whether or not the other parties to the agreement have changed).
- (12) In this section, ***intra-code agreement*** means:
- (a) the Agreement for NSW Harness Racing TAB Clubs Intra Code Arrangements made on 26 February 1998 between the following:
 - (i) Harness Racing New South Wales,
 - (ii) NSW Harness Racing Club Ltd,
 - (iii) Bankstown Harness Racing and Agricultural Club,
 - (iv) Bathurst Harness Racing Club Ltd,
 - (v) Bulli Harness Racing Club Ltd,
 - (vi) Fairfield Harness Racing Club Ltd,
 - (vii) Maitland Harness Racing Club Ltd,
 - (viii) Menangle Paceway, c/- NSW Harness Racing Club Ltd,
 - (ix) Penrith District A H and I Society Ltd,
 - (x) Newcastle Harness Racing Club Ltd,
 - (xi) Orange Harness Racing Club Ltd,

- (xii) Dubbo Harness Racing Club Ltd,
- (xiii) Young Harness Racing Club Inc, or
- (b) any agreement with HRNSW for the purposes of making commercial arrangements required by the *Totalizator Act 1997* that replaces the agreement referred to in paragraph (a) (whether or not the other parties to the agreement have changed).

52 Harness Racing Benevolent Fund

- (1) There is to be established by HRNSW, in an authorised deposit-taking institution in New South Wales, a fund to be called the “Harness Racing Benevolent Fund”.
- (2) There is to be paid into the Benevolent Fund:
 - (a) any money received by HRNSW for payment into the Benevolent Fund, and
 - (b) any money acquired by HRNSW on trust or subject to a condition that it be applied in or towards the assistance of a person to whom subsection (4) (a) applies, and
 - (c) any money received by HRNSW:
 - (i) in respect of any loan advanced from money within the Benevolent Fund, and
 - (ii) in payment of interest on any such loan, and
 - (iii) in payment of any charges, costs and expenses incurred in respect of any such loan, and
 - (d) the income derived from the investment of any money within the Benevolent Fund.
- (3) If money in the Benevolent Fund:
 - (a) was paid into the Fund under subsection (2) (b), and
 - (b) is, under the terms of a trust, or by virtue of a condition, to which HRNSW has agreed, required to be applied in or towards the assistance of a specified person or a specified class or description of persons, being a person or persons from within the class of persons to whom subsection (4) (a) applies,

that money (together with any interest or income derived from the investment of that money) is to be carried to a separate account in the Fund established for the purpose of the trust or of fulfilling the condition.

- (4) There may be paid out of the Benevolent Fund:
- (a) in respect of money that has not been carried to a separate account in the Benevolent Fund, grants or loans (whether with or without interest) to any person who is in indigent circumstances and who is or has, at any time, been:
 - (i) an owner, trainer or driver of harness racing horses, or
 - (ii) a person employed in a stable of harness racing horses, or
 - (iii) a person who has rendered valuable service to harness racing, or
 - (iv) a dependant of a person referred to in subparagraph (i), (ii) or (iii), and
 - (b) in respect of money which has been carried to a separate account within the Benevolent Fund, that money (and any interest or income derived from the investment of that money) subject to the trust or condition on which that money is held.

Part 8 Miscellaneous

53 Reports and recommendations by Authority

The Authority must, when so directed by the Minister, or may, of its own motion, investigate and furnish to the Minister a report and recommendation with respect to any matter relevant to harness racing, including any matter with respect to which rules may be made.

54 Production of club records to HRNSW and Authority

(1) In this section:

records includes:

- (a) documents, registers and other records of information, and
- (b) invoices, receipts, orders for the payment of money, bills of exchange, promissory notes, vouchers and other records of transactions, and
- (c) such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up,

however compiled, recorded or stored.

(2) HRNSW or the Authority may at any time, by notice in writing, give a direction to:

- (a) a harness racing club or harness racing association, or
- (b) a person who is or has been an officer or employee of, or an agent, banker, solicitor, auditor or other person acting in any capacity for or on behalf of, a harness racing club or harness racing association (including such a club or association that is in the course of being wound up or has been dissolved),

requiring the production, at such time and place as are specified in the direction, of such records relating to the affairs of the harness racing club or harness racing association as are so specified.

(3) Where any records relating to the affairs of a harness racing club or harness racing association are compiled, recorded or stored by means of a mechanical, electronic or other device, a direction under subsection (2) may require the production of a document containing a clear reproduction in writing of the whole or any part of those records.

(4) A person must not, when required under subsection (2) to produce a record:

- (a) refuse or neglect to produce the record, or
- (b) produce a record that contains information that to the person's knowledge is false or misleading in a material particular unless the person discloses that fact when producing the record.

Maximum penalty: 5 penalty units.

(5) A reference in this section to the affairs of a harness racing club or harness racing association is a reference to the affairs of the club or association that relate, directly or indirectly, to harness racing.

55 Secrecy

(1) A person who:

- (a) acquires information in the exercise of a function under this Act, and
- (b) directly or indirectly makes a record of the information or divulges it to another person,

is guilty of an offence unless the information is recorded or divulged in the exercise of functions under this Act.

Maximum penalty: 50 penalty units.

(2) Despite subsection (1), information may be divulged:

- (a) to a particular person or persons, if the Minister certifies that it is necessary in the public interest that the information be divulged to the person or persons, or
- (b) to a person who is expressly or impliedly authorised to obtain it by the person to whom the information relates, or
- (c) to HRNSW, the Authority, the Greyhound Racing Authority (NSW) or the NSW Thoroughbred Racing Board, or
- (d) to the Director-General of the Department of Gaming and Racing, or
- (e) to a person or authority prescribed by the regulations.

(3) It is not an offence under this section if, in legal proceedings, a person:

- (a) divulges information in answer to a question that the person is compellable to answer, or

- (b) produces a document or other thing that the person is compellable to produce.
- (4) A body or person to whom information is divulged under this section, and a person or employee under the control of that body or person, are, in respect of that information, subject to the same rights, privileges and duties under this section as they would be if that body, person or employee were a person exercising functions under this Act and had acquired the information in the exercise of those functions.
- (5) This section does not apply to the divulging of information to any of the following:
 - (a) the Independent Commission Against Corruption,
 - (b) the National Crime Authority,
 - (c) the New South Wales Crime Commission,
 - (d) the Ombudsman,
 - (e) the Police Integrity Commission,
 - (f) the Inspector of the Police Integrity Commission,
 - (g) any other person or body prescribed by the regulations for the purposes of this subsection.
- (6) This section does not prevent a person being given access to a document in accordance with the *Freedom of Information Act 1989*.
- (7) In this section, a reference to the divulging of information includes a reference to the production of a document or other thing and the provision of access to the document or other thing.

56 Delegation

- (1) Subject to subsection (2), HRNSW may delegate the exercise of its functions to:
 - (a) a member of HRNSW or the chief executive officer of HRNSW, or
 - (b) a committee comprised of, or a combination of, those persons.
- (2) HRNSW must not delegate a function relating to registration, or the suspension or cancellation of registration, under this Act.

- (3) Subject to subsection (4), the Authority may delegate the exercise of its functions to:
- (a) a member of the Authority or the chief executive officer of the Authority, or
 - (b) a committee comprised of, or a combination of, those persons.
- (4) The Authority must not delegate a function relating to the suspension or cancellation of registration under this Act or the taking of any other disciplinary action under this Act.

Note. The functions of the Authority under Division 1 of Part 3 may be conferred on stewards appointed by the Authority by rules made under section 27 (2) (i).

57 Protection from personal liability

Anything done or omitted to be done by:

- (a) HRNSW, the Authority or the Advisory Committee, or
- (b) a member of HRNSW, the Authority or the Advisory Committee, or
- (c) the chief executive officer of HRNSW or the Authority, or
- (d) any steward appointed by the Authority, or
- (e) any person acting under the direction of HRNSW, the Authority or the Advisory Committee,

does not subject the member, chief executive officer, 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.

58 Authentication of certain documents

- (1) Any summons, process, demand, order, notice, statement, direction or other document requiring authentication by HRNSW is sufficiently authenticated without the seal of HRNSW if signed by the chairperson of HRNSW, the chief executive officer of HRNSW or another member of staff of HRNSW authorised to do so by the chief executive officer.
- (2) Any summons, process, demand, order, notice, statement, direction or other document requiring authentication by the Authority is sufficiently authenticated without the seal of the Authority if signed by the chairperson of the Authority, the chief executive officer of the Authority, or any other member of staff of the Authority authorised to do so by the chief executive officer.

59 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 HRNSW or the Authority,
- (b) any resolution of HRNSW or the Authority,
- (c) the appointment of, or the holding of office by, any member of HRNSW or the Authority,
- (d) the presence of a quorum at any meeting of HRNSW or the Authority.

60 Recovery of money

- (1) Any charge, fee or other money due to HRNSW may be recovered by HRNSW as a debt in a court of competent jurisdiction.
- (2) Any charge, fee, fine (as referred to in section 26 (1) (f)) or other money due to the Authority may be recovered by the Authority as a debt in a court of competent jurisdiction.

61 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court.

62 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to:
 - (a) any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act, and
 - (b) any matter for or with respect to which rules may be made.
- (2) If there is any inconsistency between the regulations and the rules, the regulations prevail.
- (3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.
- (4) A reference in Division 1 of Part 3 to the rules includes a reference to regulations in so far as the regulations make provision for or with respect to any of the matters mentioned in that Division.

63 Repeal of Harness Racing New South Wales Act 1977 No 57

- (1) The *Harness Racing New South Wales Act 1977* is repealed.
- (2) Different days may be appointed for the repeal of different provisions of the *Harness Racing New South Wales Act 1977*.

64 Amendment of other Acts

Each Act specified in Schedule 5 is amended as set out in that Schedule.

65 Savings, transitional and other provisions

Schedule 6 has effect.

66 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Provisions relating to HRNSW

(Section 6)

1 Definitions

In this Schedule:

Chairperson means the Chairperson of HRNSW.

member means a member of HRNSW.

nominated member means a member of HRNSW referred to in section 8 (1) (a)–(c).

2 Deputies of members

- (1) A nominated member of HRNSW may from time to time appoint a person to be the deputy of the member, and may at any time revoke any such appointment.
- (2) A person cannot be appointed as a deputy of a nominated member if the person is not eligible to be a member of HRNSW.
- (3) In the absence of a nominated member due to illness or other reasonable cause, the member's deputy may, if available, act in the place of the member and while so acting has all the functions of the member and is taken to be the member.
- (4) HRNSW may at any time revoke a person's appointment as deputy of a nominated member.

3 Term of office of members

- (1) The term of office of a member is, unless the member sooner ceases to hold the office, 3 years, but the member is eligible (if otherwise qualified) for re-nomination or re-selection to the position of member.
- (2) The term of office of a member begins:
 - (a) in the case of a nominated member, on the date on which the relevant nomination takes effect, and
 - (b) in the case of the Chairperson, on a date determined by resolution of HRNSW.

4 Remuneration

- (1) A member of HRNSW is entitled to be paid:
- (a) remuneration consisting of a base amount adjusted annually in accordance with the annual percentage increase (if any) in the Consumer Price Index, and
 - (b) allowances to reimburse the member for expenses that the member may incur (for travel or accommodation, for example).

- (2) In this clause:

base amount means an amount determined for the purposes of this clause by the Statutory and Other Offices Remuneration Tribunal (which determination, whenever made, is taken to be effective on the commencement of this subclause).

Consumer Price Index means the number appearing in the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

5 Vacation of office

- (1) The office of a member becomes vacant if the member:
- (a) dies, or
 - (b) completes a term of office and is not re-nominated or re-selected, as the case may be, or
 - (c) resigns the office by instrument in writing addressed to HRNSW, or
 - (d) is absent from 4 consecutive meetings of HRNSW of which reasonable notice has been given to the member personally or by post, except on leave granted by HRNSW or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by HRNSW for having been absent from those meetings, or
 - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (f) becomes a mentally incapacitated person, or

- (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (h) becomes a person who is not eligible to be a member, or
 - (i) is removed from office under subclause (2).
- (2) The Governor may, on the recommendation of HRNSW, remove a member from office for incapacity, incompetence or misbehaviour.

6 Member vacancies to be filled

- (1) When the office of a nominated member becomes vacant, a person is to be nominated to fill the vacancy in the same way as the person whose office has become vacant was nominated.
- (2) When the office of the Chairperson becomes vacant, a person is to be selected to fill the vacancy in accordance with section 8 (3).
- (3) A person nominated or selected to fill a casual vacancy under this clause is to hold office for the balance of the term of office of the person's predecessor or until the person sooner vacates the office. Such a person is eligible for re-nomination or re-selection, as the case may be, if otherwise qualified.

7 Presiding member

- (1) The Chairperson or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of HRNSW.
- (2) The person presiding at a meeting of HRNSW has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

8 Voting

A decision supported by a majority of the votes cast at a meeting of HRNSW at which a quorum is present is the decision of HRNSW.

9 Transaction of business outside meetings or by telephone

- (1) HRNSW may, if it thinks fit, transact any of its business by the circulation of papers among all of its members, and a resolution in writing approved in writing by a majority of the voting members is taken to be a decision of HRNSW.

- (2) HRNSW may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if a member who speaks on a matter at the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of HRNSW.
- (4) A resolution approved under subclause (1) is to be recorded in the minutes of the meetings of HRNSW.
- (5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

10 Disclosure of pecuniary interests by members

- (1) If:
 - (a) a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of HRNSW or the committee, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of HRNSW or the committee.
- (2) A disclosure by a member at a meeting of HRNSW that the member:
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by HRNSW in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of a reasonable fee determined by HRNSW.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless HRNSW otherwise determines:
 - (a) be present during any deliberation of HRNSW with respect to the matter, or
 - (b) take part in any decision of HRNSW with respect to the matter.
- (5) For the purpose of the making of a determination by HRNSW under subclause (4), a member who has a pecuniary interest in a matter to which the disclosure relates must not:
 - (a) be present during any deliberation of HRNSW for the purpose of making the determination, or
 - (b) take part in the making by HRNSW of the determination.
- (6) A contravention of this clause does not invalidate any decision of HRNSW.

11 Pecuniary interests required to be disclosed

- (1) For the purposes of clause 10, a pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated as provided by subclauses (3)–(5).
- (2) A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter.
- (3) For the purposes of clause 10, a person has a pecuniary interest in a matter if the pecuniary interest is the interest of:
 - (a) the person, or
 - (b) another person with whom the person is associated as provided by this clause.

- (4) A person is taken to have a pecuniary interest in a matter if:
- (a) the person's spouse or de facto partner or a relative of the person, or a partner or employer of the person, has a pecuniary interest in the matter, or
 - (b) the person, or a nominee, partner or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.
- (5) However, a person is not taken to have a pecuniary interest in a matter as referred to in subclause (4):
- (a) if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
 - (b) just because the person is a member of, or is employed by, a statutory body or is employed by the Crown, or
 - (c) just because the person is a member of a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

12 Duty of members to act in interests of public and industry

It is the duty of each member of HRNSW to act in the public interest and in the interests of the harness racing industry as a whole. (For example, in the case of a nominated member, this duty requires the member to put the interest to which the duty relates before the interests of the body that nominated the member).

13 General procedure

The procedure for the calling of meetings of HRNSW and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by HRNSW.

14 Quorum

The quorum for a meeting of HRNSW is a majority of its members.

15 First meeting

The Minister may call the first meeting of HRNSW in such manner as the Minister thinks fit.

16 Code of conduct

- (1) HRNSW must adopt a code of conduct to be observed by members, delegates and staff of HRNSW.
- (2) HRNSW must review its code of conduct at least every 3 years and make such changes to it as it considers appropriate.

17 Effect of certain other Acts

- (1) The *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

Schedule 2 Provisions relating to Authority

(Section 14)

1 Definitions

In this Schedule:

Chairperson means the Chairperson of the Authority.

Deputy Chairperson means Deputy Chairperson of the Authority.

member means any member of the Authority.

2 Terms of office of members

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

3 Remuneration

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

4 Deputies

- (1) The Governor may, from time to time, appoint persons to be the deputies of members, and the Governor may revoke any such appointment.
- (2) In the absence of a member, a deputy appointed under subclause (1) may act in the place of the member.
- (3) The Chairperson may determine which deputy appointed under subclause (1) may act in the place of an absent member.
- (4) While acting in the place of a member, a person:
 - (a) has all the functions of the member and is taken to be a member, and
 - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (5) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

5 Vacancy in office of member

- (1) The office of a member becomes vacant if the member:
- (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is absent from 4 consecutive meetings of the Authority of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
 - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (f) becomes a mentally incapacitated person, or
 - (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (h) becomes a person who is not eligible to be a member, or
 - (i) is removed from office by the Minister under subclause (2).
- (2) The Minister may at any time remove a member from office.

6 Filling of vacancy in office of member

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

7 Presiding member

- (1) The Chairperson is to preside at a meeting of the Authority, or in the absence of the Chairperson, the Deputy Chairperson.
- (2) The person presiding at any meeting of the Authority has a deliberative vote and, in the event of an equality of votes, a second or casting vote.

8 Voting

A decision supported by a majority of the votes cast at a meeting of the Authority at which a quorum is present is the decision of the Authority.

9 Transaction of business outside meetings or by telephone

- (1) The Authority may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Authority for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Authority.
- (2) The Authority may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Authority.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Authority.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

10 Disclosure of pecuniary interests

- (1) If:
 - (a) a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of the Authority, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Authority.

- (2) A disclosure by a member at a meeting of the Authority that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Authority in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of a reasonable fee determined by the Authority.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Authority otherwise determines:
- (a) be present during any deliberation of the Authority with respect to the matter, or
 - (b) take part in any decision of the Authority with respect to the matter.
- (5) For the purposes of the making of a determination by the Authority under subclause (4), a member who has a pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Authority for the purpose of making the determination, or
 - (b) take part in the making by the Authority of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Authority.

11 Pecuniary interests required to be disclosed

- (1) For the purposes of clause 10, a pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated as provided by subclauses (3)–(5).

- (2) A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter.
- (3) For the purposes of clause 10, a person has a pecuniary interest in a matter if the pecuniary interest is the interest of:
 - (a) the person, or
 - (b) another person with whom the person is associated as provided by this clause.
- (4) A person is taken to have a pecuniary interest in a matter if:
 - (a) the person's spouse or de facto partner or a relative of the person, or a partner or employer of the person, has a pecuniary interest in the matter, or
 - (b) the person, or a nominee, partner or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.
- (5) However, a person is not taken to have a pecuniary interest in a matter as referred to in subclause (4):
 - (a) if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
 - (b) just because the person is a member of, or is employed by, a statutory body or is employed by the Crown, or
 - (c) just because the person is a member of a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

12 General procedure

The procedure for the calling of meetings of the Authority and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Authority.

13 Quorum

The quorum for a meeting of the Authority is a majority of its members.

14 First meeting

The Minister may call the first meeting of the Authority in such manner as the Minister thinks fit.

15 Code of conduct

- (1) The Authority must adopt a code of conduct to be observed by members, delegates and staff of the Authority.
- (2) The code of conduct must be approved by the Minister before it is adopted.
- (3) The Authority must review its code of conduct at least every 3 years and make such changes to it as it considers appropriate.
- (4) Any changes proposed to the code of conduct must be approved by the Minister.

16 Effect of certain other Acts

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

Schedule 3 Provisions relating to Tribunal

(Section 39)

1 Term of office

Subject to this Act, a person appointed as:

- (a) the Tribunal, or
- (b) an assessor,

is to hold office for such period, not exceeding 3 years, as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

2 Effect of appointment of a judge as Tribunal

- (1) A person's tenure of the office of judge of a court, or the person's rank, title, status, precedence, salary or other rights or privileges as a holder of that office, is or are not affected by:
 - (a) the appointment of the person as, or to act as, the Tribunal, or
 - (b) the person's service as the Tribunal.
- (2) A judge of any court may exercise the functions of a judge of that court despite holding office as, or acting as, the Tribunal.
- (3) The service, as the Tribunal, of a judge of any court is, for all purposes, taken to be service as a judge of that court.

3 Remuneration

A person (not being a judge of any court) holding office as, or acting as, the Tribunal and an assessor are entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of each of them.

4 Vacation of office

- (1) A person (being a judge of any court) holding office as the Tribunal is taken to have vacated that office if the person:
 - (a) ceases to be a judge of that court, or
 - (b) resigns that office by instrument in writing addressed to the Minister.

- (2) A person (not being a judge of any court) holding office as the Tribunal or a person holding office as an assessor is taken to have vacated that office if the person:
- (a) dies, or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration, or
 - (c) becomes a mentally incapacitated person, or
 - (d) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or upwards, or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (e) resigns that office by instrument in writing addressed to the Minister, or
 - (f) is removed from office by the Minister under subclause (3).
- (3) The Minister may remove from office:
- (a) a person (not being a judge of any court) holding office as, or appointed to act as, the Tribunal, or
 - (b) an assessor.

5 Effect of Public Sector Management Act 1988

The *Public Sector Management Act 1988* does not apply to or in respect of the appointment of:

- (a) a person as, or to act as, the Tribunal, or
- (b) an assessor,

and a person holding office as, or acting as, the Tribunal or an assessor is not, as the Tribunal or an assessor, subject to that Act.

6 Staff to assist Tribunal

For the purposes of this Act, and if the Minister so approves, the Tribunal may make use of the services of:

- (a) any staff of the Authority, or
- (b) any staff of a Department in the Minister's administration.

Schedule 4 Provisions relating to Advisory Committee

(Section 40)

1 Definition

In this Schedule, *member* means a member of the Advisory Committee.

2 Term of office of members

The members of the Advisory Committee each hold office for a period of 2 years.

3 Membership is honorary

The members of the Advisory Committee are honorary members and no remuneration is payable to them in respect of the duties they perform as members. The members are however entitled to be reimbursed by HRNSW for reasonable expenses (such as for travel or accommodation) that they may incur in attending meetings of the Advisory Committee.

4 Vacation of office

- (1) The office of a member of the Advisory Committee becomes vacant if the member:
- (a) dies, or
 - (b) completes a term of office and is not re-nominated or re-selected, or
 - (c) resigns the office by instrument in writing addressed to the Minister and the Advisory Committee, or
 - (d) is absent from 2 consecutive meetings of the Advisory Committee of which reasonable notice has been given to the member personally or by post, except on leave granted by the Advisory Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Advisory Committee for having been absent from those meetings, or

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- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (f) becomes a mentally incapacitated person, or
 - (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (h) becomes a person who is not eligible to be a member, or
 - (i) is removed from office under subclause (2).
- (2) The Minister may, on the recommendation of the Advisory Committee, remove a member of the Advisory Committee from office for incapacity, incompetence or misbehaviour.
 - (3) A member of the Advisory Committee does not vacate office merely because of the withdrawal of his or her nomination by the body that nominated the member.

5 Chairperson and Deputy Chairperson of Advisory Committee

- (1) The Advisory Committee is to elect a Chairperson from among its members.
- (2) The Advisory Committee may also elect a Deputy Chairperson from among its members.
- (3) The Advisory Committee may remove a person from office as Chairperson or Deputy Chairperson of the Advisory Committee at any time.
- (4) A member elected as Chairperson or Deputy Chairperson holds office as such for 1 year unless the member ceases to hold that office sooner.
- (5) A member is eligible to be re-elected as Chairperson or Deputy Chairperson but is not eligible to serve more than 3 consecutive terms as either Chairperson or Deputy Chairperson.
- (6) A person ceases to hold office as Chairperson or Deputy Chairperson if he or she:
 - (a) resigns the office by instrument in writing addressed to the Minister and the Advisory Committee, or

- (b) is removed from that office by the Advisory Committee, or
 - (c) ceases to hold office as a member of the Advisory Committee.
- (7) To be elected or removed from office as Chairperson or Deputy Chairperson requires a simple majority of the members present and voting at a meeting of the Advisory Committee at which a quorum is present.
- (8) The Chairperson or Deputy Chairperson does not cease to be a member of the Advisory Committee merely because he or she ceases to be Chairperson or Deputy Chairperson.

6 Member vacancies to be filled

- (1) When the office of a member becomes vacant, a person is to be nominated or selected to fill the vacancy in the same way as the person whose office has become vacant was nominated or selected.
- (2) A person nominated or selected to fill a casual vacancy as a member is to hold office for the balance of the term of office of the person's predecessor or until the person sooner vacates the office. Such a person is eligible for re-nomination or re-selection if otherwise qualified.

7 Procedure

- (1) The Advisory Committee may regulate its proceedings as it considers appropriate, subject to this clause.
- (2) The quorum for a meeting of the Advisory Committee is a majority of its members.
- (3) The Advisory Committee is to meet not less than 4 times a year.
- (4) The Advisory Committee is to hold at least 2 joint meetings a year with HRNSW and at least 2 joint meetings a year with the Authority. The appropriate quorum of each body is to be present at joint meetings.
- (5) The Advisory Committee may hold joint meetings for the purposes of subclause (4) with both the HRNSW and the Authority at the same time.
- (6) The Advisory Committee, HRNSW or the Authority can request the holding of further joint meetings and such a request must be complied with, up to a further 2 joint meetings in a year (without precluding the holding of further joint meetings by agreement).

- (7) Meetings of the Advisory Committee are to be held at the premises of the Committee unless the Committee approves of a meeting being held elsewhere.

8 Presiding member

- (1) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson is to preside at a meeting of the Advisory Committee.
- (2) If neither the Chairperson nor Deputy Chairperson is present at a meeting, the members present may elect one of their number to preside at the meeting.
- (3) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

9 Decisions of Advisory Committee

A decision supported by a majority of the votes cast at a meeting of the Advisory Committee at which a quorum is present is the decision of Advisory Committee.

10 Administrative support

The Authority is to provide the administrative support needed for the meetings of the Advisory Committee.

Schedule 5 Amendment of other Acts

(Section 64)

5.1 Defamation Act 1974 No 18

[1] Section 17E Matters arising under the Harness Racing Act 2002

Omit “*Harness Racing New South Wales Act 1977*” from section 17E (a).
Insert instead “*Harness Racing Act 2002*”.

[2] Section 17E (b)

Omit “*Harness Racing New South Wales (HRNSW)*”.
Insert instead “the Harness Racing Authority”.

[3] Section 17E (c) and (d)

Omit “*HRNSW*” wherever occurring.
Insert instead “the Harness Racing Authority”.

[4] 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 the Harness Racing Authority in the exercise of its functions (including the exercise of any such functions by a steward of that Authority), and
 - (b) on an appeal to that Authority or the Harness Racing Appeals Tribunal under the *Harness Racing Act 2002*,

5.2 First State Superannuation Act 1992 No 100

Schedule 1 Employers

Omit “Harness Racing New South Wales”.
Insert instead “Harness Racing Authority”.

5.3 Lotteries and Art Unions Act 1901 No 34

Section 4D Sweepstakes in relation to Melbourne Cup and other events

Omit “*Harness Racing New South Wales Act 1977*” from the definition of *prescribed organisation* in section 4D (1).
Insert instead “*Harness Racing Act 2002*”.

5.4 Public Authorities Superannuation Act 1985 No 41

Schedule 3 Employers

Omit “Harness Racing New South Wales”.
Insert instead “Harness Racing Authority”.

5.5 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Omit “Harness Racing New South Wales”.
Insert instead “Harness Racing Authority”.

5.6 Public Sector Management Act 1988 No 33

[1] Schedule 3 Declared authorities

Omit “Harness Racing New South Wales”.
Insert instead “Harness Racing Authority”.

[2] Schedule 3A Chief executive positions

Omit “General Manager of Harness Racing New South Wales” from Part 3.
Insert instead “Chief Executive of the Harness Racing Authority”.

5.7 Racing Administration Act 1998 No 114

Section 26C Bookmakers Revision Committee

Omit “Harness Racing New South Wales” from section 26C (1) (c).
Insert instead “the Harness Racing Authority”.

5.8 Racing Appeals Tribunal Act 1983 No 199

Section 8 Harness Racing Appeals Tribunal may be appointed as Tribunal

Omit “*Harness Racing New South Wales Act 1977*”.
Insert instead “*Harness Racing Act 2002*”.

5.9 State Authorities Non-contributory Superannuation Act 1987 No 212

Schedule 1 Employers

Omit “Harness Racing New South Wales”.
Insert instead “Harness Racing Authority”.

5.10 State Authorities Superannuation Act 1987 No 211

Schedule 1 Employers

Omit “Harness Racing New South Wales”.
Insert instead “Harness Racing Authority”.

5.11 Superannuation Act 1916 No 28

Schedule 3 List of employers

Omit “Harness Racing New South Wales”.
Insert instead “Harness Racing Authority”.

5.12 Thoroughbred Racing Board Act 1996 No 37

Section 7 Certain persons not eligible for membership

Omit “*Harness Racing New South Wales Act 1977*” from section 7 (1) (b2).
Insert instead “*Harness Racing Act 2002*”.

5.13 Totalizator Act 1997 No 45

[1] Section 105 Secrecy

Insert “, the Harness Racing Authority” after “Harness Racing New South Wales” in section 105 (2) (c).

[2] Schedule 2 Savings, transitional and other provisions

Insert “or the Harness Racing Authority” after “Harness Racing New South Wales” in clause 11 (5) (e).

Schedule 6 Savings, transitional and other provisions

(Section 65)

Part 1 General

1 Regulations

- (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) A provision of a regulation authorised by this clause may, if the regulations so provide, take effect as from the date of assent to the Act concerned or as from a later day.
- (3) To the extent to which a provision of a regulation authorised by this clause takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

Division 1 Interpretation

2 Definitions

In this Part:

former Act means the *Harness Racing New South Wales Act 1977*.

former Authority means Harness Racing New South Wales constituted under the former Act.

new Authority means the Harness Racing Authority constituted by section 14.

Division 2 Dissolution of former Authority

3 Dissolution of former Authority

- (1) The former Authority is dissolved.
- (2) No remuneration or compensation is payable to any director of the former Authority as a result of its dissolution.

4 References to former Authority

Regulations may be made under clause 1 that require references in any other Act, in any instrument made under another Act, or in any document of any kind, to the former Authority to be read as, or as including, a reference to HRNSW or the new Authority, or both.

5 Constitution of HRNSW

- (1) HRNSW may be constituted, and may select a chairperson and a chief executive officer, in accordance with the provisions of Division 1 of Part 2 even if those provisions have not commenced.
- (2) However, HRNSW has no functions before the dissolution of the former Authority (other than a function under section 51 (10)).
- (3) As soon as practicable after the commencement of this clause, the Minister is to call for nominations for the first membership of HRNSW.

- (4) Nominations are to be in writing addressed to the Minister.
- (5) The Minister may give directions generally for facilitating the constitution of the first membership of HRNSW.
- (6) HRNSW is formally constituted for the purposes of this Act on a day (the constitution day) appointed by the Minister by notice published in the Gazette.
- (7) The Minister can appoint a day as the constitution day even if all the members of HRNSW have not been nominated by that day.
- (8) The terms of office of the first members of HRNSW begin on the constitution day but the terms of office of those first members are extended by the period between the constitution day and the date of dissolution of the former Authority.

6 Transfer of assets, rights and liabilities of former Authority

- (1) In this clause:
 - transferee*, in relation to the transfer of an asset, right or liability by or under this clause, means the body to which the asset, right or liability is transferred.
 - transferor*, in relation to the transfer of an asset, right or liability by or under this clause, means the body from which the asset, right or liability is transferred.
- (2) On the dissolution of the former Authority, the assets, rights and liabilities of the former Authority are transferred to the new Authority.
- (3) The Minister may, by order in writing, transfer to HRNSW such of the assets, rights and liabilities of the new Authority that were transferred to the new Authority by subclause (2) and as are specified or referred to in the order.
- (4) One or more orders may be made under subclause (3) at the same or at different times.
- (5) An order under subclause (3) may be made on such terms and conditions as are specified in the order.
- (6) On and from the date on which any asset, right or liability is transferred by subclause (2) or under subclause (3), the following provisions have effect with respect to the transfer:

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- (a) the transferred asset vests in the transferee by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
 - (b) the transferred rights and liabilities become by virtue of this clause the rights and liabilities of the transferee,
 - (c) all proceedings relating to the asset, right or liability commenced before the transfer day by or on behalf of, or against, the transferor and pending immediately before the transfer day are taken to be proceedings pending by or against the transferee,
 - (d) any act, matter or thing done or omitted to be done in relation to the asset, right or liability before the transfer day by, to or in respect of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee.
- (7) The operation of this clause is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
 - (d) as an event of default under any contract or other instrument.
- (8) No attornment to the new Authority by a lessee of the former Authority is required.
- (9) No attornment to HRNSW by a lessee of the former Authority or the new Authority is required.

7 Duty and other fees

A transfer agreement or an instrument executed only for a purpose ancillary to or consequential on the operation of this Part or the purpose of giving effect to this Part:

- (a) is not chargeable with duty, and

- (b) is exempt from payment of any other fee or charge that would otherwise be payable under any other Act in respect of the registration of any such instrument.

8 Actions of former Authority

Anything done by the former Authority relating to a registration, suspension, disqualification or prohibition under the former Act before the dissolution of the former Authority is, after that dissolution, taken to have been done under the relevant provisions of this Act by whichever of HRNSW or the new Authority has that function after the dissolution.

Division 3 Staff of former Authority transferred to new Authority

9 General Manager of former Authority and stewards

- (1) The person holding office as the General Manager of the former Authority immediately before the commencement of this clause is taken to have been appointed under this Act to the office of Chief Executive Officer of the new Authority for the remainder of the term of office, and on the same terms and conditions, that applied to the person's appointment as General Manager of the former Authority.
- (2) A person holding office as a steward under the former Act immediately before the commencement of this clause is taken to have been appointed to that office under this Act on the same terms and conditions that applied to the person's appointment as steward under the former Act.

10 Staff of former Authority

- (1) On the dissolution of the former Authority, each member of staff of the former Authority is transferred to the employment of the new Authority.
- (2) Each such member of staff becomes after the transfer a member of staff of the new Authority and continues (until other provision is duly made) to be employed in accordance with the awards, agreements and determinations applying, immediately before the transfer, to members of the staff of the former Authority.

- (3) Neither the contract of employment nor the period of employment of each member of staff concerned is taken to have been broken by the operation of this Act for the purposes of any law, award or agreement relating to the employment of that member of staff.
- (4) Without limiting this clause, this Act does not affect any accrued rights that the member of staff concerned had immediately before the transfer in relation to any kind of leave.
- (5) A member of staff concerned is not entitled to receive any payment or other benefit merely because the member ceases to be an employee of the former Authority.
- (6) A member of staff concerned is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service.

Division 4 Staff of new Authority transferring to HRNSW

11 Interpretation

- (1) In this Division:
 - LGSS* means the local government superannuation scheme.
 - relevant employee* means a person who:
 - (a) is employed by HRNSW, and
 - (b) immediately before being so employed was an employee of the new Authority, and
 - (c) was, at any time while being employed by the new Authority, a member of or contributor to a SAC scheme.
- (2) Expressions used in this Schedule have the same meaning as in the *Superannuation Administration Act 1996*.

12 Transfer of employees to another superannuation scheme

- (1) The Treasurer may by order in writing transfer a relevant employee from a SAC scheme to:
 - (a) the LGSS, or
 - (b) another superannuation scheme (whether or not established under an Act) that is designated by the Treasurer for the purposes of this clause by order in writing.

- (2) The superannuation scheme to which a person is transferred under this clause is referred to in this Division as the new scheme and the person is referred to in this Division as a transferred person.
- (3) The Treasurer is not to make such an order in respect of a person unless the person has, no later than 3 months after the date on which the person ceased to be employed by the new Authority, elected, by notice in writing given to the Trustee, to transfer to the new scheme.
- (4) The Treasurer, and SAC are to take all necessary steps generally to facilitate the superannuation coverage of transferred persons by the new scheme.
- (5) For that purpose, the Treasurer may enter into arrangements with the trustee of the new scheme, including arrangements for the amendment of any relevant trust deed.
- (6) Section 127 of the *Superannuation Administration Act 1996* does not limit or otherwise affect the operation of this clause and in particular does not prevent the transfer to the LGSS of transferred persons or the superannuation coverage of transferred persons by the LGSS.
- (7) An order under this clause may be made to take effect on and from a day specified in the order, whether or not the day specified is earlier than the day of publication of the order.

13 Regulations

- (1) Regulations may be made for or with respect to the transfer of a relevant employee from a SAC scheme to the new scheme in accordance with a direction of the Treasurer under this Division.
- (2) In particular, regulations may be made for or with respect to the following:
 - (a) the transfer of assets and liabilities of a SAC scheme, in respect of a transferred person, to the new scheme,
 - (b) the transfer of assets and liabilities within a SAC scheme, or between any such schemes, from any reserve in respect of the employer or former employer of a transferred person to the Crown's reserve,
 - (c) the preservation or deferral of benefits of transferred persons,
 - (d) the entitlements, rights and obligations under the new scheme of a transferred person,

- (e) providing for the resolution, by a prescribed authority or person, of all or of any prescribed class of disputes concerning the entitlements, rights and obligations of a transferred person under the new scheme.
- (3) A regulation made under this clause has effect despite any provision of an Act under which a SAC scheme is constituted.
- (4) A provision of a regulation made under this clause may be made to take effect on and from a day on which an order under clause 12 takes effect, whether or not that day is earlier than the day of publication of the regulation.

14 Mobility between new scheme and public sector schemes

For the purposes of section 128A of the *Superannuation Administration Act 1996*, a transferred person is taken to be an employee referred to in section 128A (3) (a) of that Act.

15 Employment of employees of new Authority to staff of HRNSW

- (1) In the period of 12 months after HRNSW is constituted, HRNSW:
 - (a) must notify employees of the new Authority whenever it intends to fill a position in the staff of HRNSW, and
 - (b) give such employees a reasonable opportunity to apply for the position.
- (2) A person who:
 - (a) applies for a position to be filled as referred to in subclause (1), and
 - (b) is employed by the new Authority at the time of making the application, and
 - (c) was transferred to that employment by the operation of clause 10, and
 - (d) at the time of transfer was performing substantially the same duties for the former Authority as are required to be performed in the position to be filled,

is to be considered for the position in preference to any other applicant for the position who is not such a person.

- (3) The employment of a person referred to in subclause (2) who is appointed to a position in the staff of HRNSW in accordance with this clause is not to be terminated within the period of 12 months after the commencement of the employment on the ground of redundancy arising from the operation of this Act.

Division 5 Appeals and disciplinary inquiries

16 Harness Racing Appeals Tribunal

- (1) The Harness Racing Appeals Tribunal established under the former Act is taken to have been established as the Harness Racing Appeals Tribunal under this Act.
- (2) A person appointed as the Harness Racing Appeals Tribunal, or to act as that Tribunal, under the former Act and whose appointment is in force immediately before the commencement of this clause is taken to have been so appointed under this Act.
- (3) A person appointed as an assessor of the Harness Racing Appeals Tribunal under the former Act and whose appointment is in force immediately before the commencement of this clause is taken to have been so appointed under this Act.

17 Appeals and inquiries

- (1) Any appeal under the former Act that has not been finally determined at the commencement of this clause may continue to be dealt with under this Act.
- (2) Despite clause 8, any decision made before the commencement of this clause by the former Authority is, for the purposes of subclause (1), taken to be a decision made by the new Authority.
- (3) Nothing in this clause enables a person to appeal under this Act against a decision if the person has appealed against the decision under the former Act and the appeal has been finally determined under that Act.
- (4) Any inquiry commenced under, but not finished before, the repeal of the former Act may be continued by the new Authority under the corresponding provisions of this Act.

Division 6 Miscellaneous

18 References to former Act

A reference in any other Act, in any instrument made under another Act, or in any document of any kind, to the former Act is to be read as a reference to this Act.

19 Accounts and funds

- (1) Any account established under section 14 (2) of the former Act is taken to have been established under section 48 (2) of this Act.
- (2) The Harness Racing Benevolent Fund established under section 13B of the former Act is taken to have been established under section 52 of this Act.

20 Rules

Any rules made under the former Act and in force immediately before the commencement of this clause are taken to have been made under, and in accordance with, this Act by the new Authority.

21 Regulations

Any regulations made under the former Act and in force immediately before the commencement of this clause are taken to have been made under this Act.

22 Operation of Part

The operation of this Part is subject to the regulations.

[Second reading speech made in—
Legislative Assembly on 31 May 2002
Legislative Council on 11 June 2002]