



New South Wales

# Homebush Motor Racing (Sydney 400) Act 2008 No 106

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New South Wales

## **Homebush Motor Racing (Sydney 400) Act 2008 No 106**

Act No 106, 2008

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An Act to facilitate the conduct of an annual motor race at Homebush; to constitute the Homebush Motor Racing Authority and to confer functions on the Authority; and for other purposes. [Assented to 8 December 2008]

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The Legislature of New South Wales enacts:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Homebush Motor Racing (Sydney 400) Act 2008*.

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

**Advisory Board** means the Advisory Board of the Authority constituted under section 8.

**Authority** means the Homebush Motor Racing Authority constituted under section 4.

**Chief Executive Officer** means the Chief Executive Officer of the Authority holding office as such under Chapter 1A of the *Public Sector Employment and Management Act 2002*.

**declared racing area**—see section 12.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**Homebush motor race** means a V8 motor race, and any associated motor races and events, authorised under Division 1 of Part 3.

**Homebush motor racing period**—see section 12.

**race promoter**, in relation to a Homebush motor race, means the person who has approval under section 13 to apply to the Authority for an authorisation to conduct the race.

**relevant council**, in relation to a declared racing area or works area, means a local council the area of which includes the declared racing area or works area (as the case may be) or part of such an area.

**works area**—see section 17.

**works period**—see section 17.

(2) An order, authorisation or approval under this Act may be amended or revoked by further order, authorisation or approval, respectively.

(3) Notes included in this Act do not form part of this Act.

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## **Part 2 Homebush Motor Racing Authority**

### **4 Constitution of Authority**

There is constituted by this Act a corporation with the corporate name of the Homebush Motor Racing Authority.

### **5 Status of Authority**

The Authority is a NSW Government agency.

### **6 Ministerial control**

The Authority is subject to the control and direction of the Minister in the exercise of its functions.

### **7 Chief Executive Officer of Authority**

- (1) The Chief Executive Officer is responsible for the day-to-day management of the affairs of the Authority.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Authority by the Chief Executive Officer is taken to have been done by the Authority.

### **8 Advisory Board**

- (1) There is to be an Advisory Board of the Authority.
- (2) The principal function of the Advisory Board is to provide advice to the Chief Executive Officer on the following:
  - (a) the functions of the Authority under this Act,
  - (b) any matter referred to the Advisory Board by the Chief Executive Officer.
- (3) The Advisory Board is to consist of the following members:
  - (a) the Chief Executive Officer,
  - (b) such other members (not exceeding 4 members) as the Minister may appoint.
- (4) The race promoter and employees of the race promoter are not entitled to be appointed, or to hold office, as members of the Advisory Board.
- (5) One of the members of the Advisory Board (other than the Chief Executive Officer) is to be appointed as Chairperson of the Advisory Board in and by the member's instrument of appointment or a subsequent instrument executed by the Minister.

- (6) One of the other members of the Advisory Board (other than the Chief Executive Officer) may be appointed as Deputy Chairperson of the Advisory Board in and by the member's instrument of appointment or a subsequent instrument executed by the Minister.
- (7) Schedule 1 has effect with respect to the membership and procedure of the Advisory Board.

#### **9 Event Implementation Committee**

- (1) There is to be an Event Implementation Committee to provide advice to the Advisory Board on matters referred to the committee by the Advisory Board.
- (2) The committee is to consist of the following members:
  - (a) the Chief Executive Officer,
  - (b) 1 person appointed by the Minister to represent the Sydney Olympic Park Authority,
  - (c) 2 or more persons appointed by the Minister to represent government agencies,
  - (d) 1 person appointed by the Minister to represent the NSW Police Force,
  - (e) 1 person appointed by the Minister on the nomination of the race promoter to represent the race promoter.
- (3) Subject to the regulations, the term of office of appointed members of the committee, the procedure for calling meetings of the committee and the conduct of business at those meetings are to be determined by the Minister.
- (4) The members of the committee are not entitled to be paid remuneration in respect of the duties they perform as members. The members are however entitled to be reimbursed for reasonable expenses (such as for travel or accommodation) that they may incur in attending meetings of the committee.

#### **10 Functions of Authority**

- (1) The Authority has the following functions:
  - (a) such functions relating to the preparation for, and the management and conduct of and the works associated with, a Homebush motor race as are conferred on it by or under this Act,
  - (b) to liaise with the New South Wales Government, the race promoter and any other persons the Authority considers relevant to the preparation for, and the management and conduct of and the works associated with, a Homebush motor race,

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- (c) to consult with relevant government agencies on matters relating to a Homebush motor race,
  - (d) to advise the Minister in relation to the Minister's functions under this Act and in relation to any other matter relating to a Homebush motor race,
  - (e) such other functions as are conferred on it by or under this or any other Act.
- (2) The Authority may do all such supplemental, incidental or consequential acts as may be necessary or expedient for the exercise of its functions, including entering into any contract or arrangement with any person in connection with the exercise of its functions.
  - (3) The Authority may exercise its functions within or outside New South Wales.
  - (4) The Authority cannot employ any staff.

**Note.** Staff may be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable the Authority to exercise its functions.

#### **11 Delegation of Authority's functions**

- (1) The Authority may delegate to an authorised person the exercise of any of its functions other than this power of delegation.
- (2) In this section, ***authorised person*** means:
  - (a) a member of staff of the Authority, or
  - (b) a government agency or member of staff of a government agency, or
  - (c) a person, or committee of persons, of a class prescribed by the regulations.

## **Part 3 Conduct of Homebush motor racing**

### **Division 1 Authorisations**

#### **12 Minister may declare racing area and racing period**

- (1) The Minister may, by order, declare any area within Sydney Olympic Park as the area within which a Homebush motor race may be conducted (the *declared racing area*).
- (2) The Minister may, by order, designate the period during which a Homebush motor race may be conducted (the *Homebush motor racing period*).
- (3) In this section, *Sydney Olympic Park* has the same meaning as it has in the *Sydney Olympic Park Authority Act 2001*, but does not include any area that is subject to a lease on the date of assent to this Act and has not ceased to be subject to a lease at the time the order is made.

#### **13 Approval of person who may apply for authorisation to conduct race (the race promoter)**

- (1) The Minister may, by order, approve the person who is entitled to apply to the Authority for an authorisation under section 15 to conduct a V8 motor race (and other associated motor races and events) within the declared racing area during the Homebush motor racing period.
- (2) Any such application must be made in the manner, and lodged with the Authority within the time, determined by the Minister in the order under subsection (1).

#### **14 Provisions relating to Ministerial orders**

- (1) An order made under this Division may only be made to enable the conduct of the Homebush motor race during a single period each year.
- (2) An order under this Division remains in force until the end of the period of 5 years from the date that it took effect unless sooner revoked.
- (3) An order made under this Division must be published in the Gazette.
- (4) The Minister is to seek the advice of the Authority before making an order under this Division.

#### **15 Conduct of race requires authorisation by Authority**

- (1) A V8 motor race (and other associated motor races and events) are not authorised to be conducted under this Act unless the Authority authorises the conduct of the race (and associated races and events) under this section.

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- (2) The Authority may authorise the race promoter to conduct a V8 motor race (and other associated motor races and events) subject to and in accordance with this Act.
- (3) Any such authorisation may be given for a period not exceeding 5 years.
- (4) Any such authorisation may be given subject to such conditions as the Authority considers it reasonable to impose, including (but not limited to) conditions relating to any of the following:
- (a) public safety,
  - (b) environmental protection,
  - (c) insurance,
  - (d) reporting requirements,
  - (e) transport arrangements,
  - (f) reinstatement of land,
  - (g) consultation requirements,
  - (h) financial arrangements (including the provision of security),
  - (i) event and works planning requirements,
  - (j) engineering certification requirements.
- The race promoter must, in conducting the Homebush motor race, comply with any such conditions.
- (5) Before imposing a condition of an authorisation, the Authority must advise the race promoter of the condition by notice in writing and allow the race promoter 14 days within which the race promoter may make submissions to the Authority in relation to the proposed condition.
- (6) The conditions of an authorisation may be amended (including by introducing additional conditions) or revoked at any time by notice in writing to the race promoter.
- (7) The Authority must, within 4 months from the end of the declared racing period, review the conditions of any authorisation that remains in force and determine whether the conditions of that authorisation remain appropriate.
- (8) The Authority may revoke an authorisation given under this section, on the grounds that a condition of the authorisation has not been complied with, only if the Authority is satisfied that:
- (a) the failure to comply with the condition is of a serious or continuing nature, and
  - (b) it is appropriate to do so in the circumstances.

- (9) If any condition of an authorisation given under this section relating to public safety, environmental protection or insurance is contravened, the race promoter is guilty of an offence.
- Maximum penalty:
- (a) in the case of an individual—\$250,000, or
  - (b) in the case of a corporation—\$1,000,000.
- (10) It is a defence in any proceedings against a person for an offence under subsection (9) if the person establishes:
- (a) that the commission of the offence was due to causes over which the person had no control, and
  - (b) that the person took reasonable precautions and exercised due diligence to prevent the commission of the offence.

## **Division 2 Carrying out works**

### **16 Plans of proposed works**

- (1) The race promoter must make the following information available for public inspection:
- (a) the information specified in section 17 (2) (a), (b) and (c),
  - (b) any other information relating to the proposed works that the regulations, or the Authority by written notice, requires.
- (2) Such information must be made available for public inspection at a place designated by the Authority during the period commencing on the date the application under section 17 to carry out the works is made and ending on the date that the works are completed.

### **17 Authorisation to carry out works**

- (1) The race promoter may apply to the Authority for authorisation to carry out works associated with a Homebush motor race.
- (2) Any such application must be in writing and include the following information:
- (a) a description of the proposed works,
  - (b) a description of the land on which the works are to be carried out (including any land required to be used in order to carry out the works),
  - (c) the period during which the works are proposed to be carried out,
  - (d) details of the outcome of consultation with the persons and bodies specified in section 18 (a) in relation to the proposed

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works and the period during which the works are proposed to be carried out,

- (e) any other information relating to the proposed works that the regulations, or the Authority by written notice, requires to be included.
- (3) Subject to this Division, the Authority may authorise the race promoter to carry out specified works associated with a Homebush motor race (and do any other things on the land that are reasonably necessary for or incidental to such works) on the land within a specified area (the **works area**) during a specified period (the **works period**).
- (4) An authorisation may be granted subject to such conditions as the Authority considers it reasonable to impose, including (but not limited to) conditions relating to any of the following:
- (a) public safety,
  - (b) environmental protection,
  - (c) insurance,
  - (d) reporting requirements,
  - (e) reinstatement of land,
  - (f) consultation requirements,
  - (g) financial arrangements (including the provision of security),
  - (h) event and works planning requirements,
  - (i) engineering certification requirements.
- The race promoter must, in carrying out any work authorised by the Authority under this section, comply with any such conditions.
- (5) Before granting an authorisation under this section, the Authority must consult with the Sydney Olympic Park Authority.
- (6) A different works period may be specified in respect of different categories of work or different works areas.
- (7) A works area may be within or outside of the declared racing area and a works period may fall within or outside of the Homebush motor racing period.
- (8) The race promoter is taken to be the owner of a works area during the relevant works period (to the exclusion of any other person):
- (a) for the purposes of the appointment of a principal contractor (in respect of an area that is a place of work) in accordance with the regulations under the *Occupational Health and Safety Act 2000*, and
  - (b) for any other purpose prescribed by the regulations.

- (9) The race promoter must comply with any direction of the Authority:
- (a) to ensure compliance with this section, or
  - (b) to rectify any matter that the Authority considers to constitute a breach of the conditions of an authorisation under this section.

### **18 Community and other consultation**

Before granting an authorisation under section 17, the Authority must be satisfied that the race promoter has:

- (a) taken all reasonable steps to consult with:
  - (i) any person having a right of occupation of land within the works area, and
  - (ii) any person occupying land immediately adjacent to the works area, and
  - (iii) the Sydney Olympic Park Authority, and
  - (iv) any relevant council, and
  - (v) any other person nominated by the Authority (by notice in writing to the race promoter) as a person whose business or financial interests might be affected by the works, and
- (b) taken into account any representations made by any person or body referred to in paragraph (a), and
- (c) demonstrated that it will take adequate steps to prevent or minimise any harm to the environment, and disruption of other lawful activities, at Sydney Olympic Park and in those areas adjacent to Sydney Olympic Park.

### **19 Other authorisations to carry out works not permitted**

- (1) The Authority may direct the Sydney Olympic Park Authority or a council to refuse to consider an application to carry out specified works, or to refuse to approve or authorise the carrying out of specified works, under a relevant provision if the Authority believes that the carrying out of the works are or should be authorised under section 17.
- (2) In this section, *relevant provision* means a provision of an Act that would otherwise enable the Sydney Olympic Park Authority or a council to consider an application for, or approve or authorise, the carrying out of specified works.

## **Division 3 General provisions**

### **20 Control of declared racing area during Homebush motor racing period**

- (1) The race promoter is (subject to, and in accordance with, this Act and any authorisation given under this Act) responsible for the care, control,

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management and use of land within the declared racing area during the Homebush motor racing period and the rights or obligations of any other person in or in relation to the care, control, management and use of the land are suspended for the Homebush motor racing period.

- (2) Subsection (1) does not suspend the rights or obligations of a person to the extent that an agreement between that person and the race promoter so provides.

**21 Control of parts of declared racing area outside Homebush motor racing period**

- (1) The race promoter may, with the authorisation of the Authority, fence or cordon off a part of the declared racing area for the purposes of a Homebush motor race for a period not falling within the Homebush motor racing period. The Authority may only provide authorisation under this subsection if it considers that the fencing or cordoning off is reasonably necessary for or incidental to the exercise of the race promoter's functions under this Act.
- (2) Section 20 applies in relation to land that is fenced or cordoned off by the race promoter in accordance with this section in the same way that it applies to land within the declared racing area. Accordingly, any reference to the Homebush motor racing period in that section is taken to include a reference to the period during which the land is fenced or cordoned off.
- (3) For the purposes of this section, cordoning off an area includes the erection of signs indicating that the area is subject to restricted access.

**22 Removal of unattended motor vehicles**

- (1) At any time during the Homebush motor racing period, a police officer or a SOPA officer may, and must at the request of the Authority, remove any unattended motor vehicle or trailer from the declared racing area.
- (2) At any time during the Homebush motor racing period, the race promoter may direct an authorised officer to remove an unattended motor vehicle or trailer from the declared racing area if the race promoter is of the opinion that it is necessary to do so.
- (3) The provisions of section 76 (2)–(8A) of the *Road Transport (Safety and Traffic Management) Act 1999* apply to the removal of an unattended motor vehicle or trailer in accordance with this section in the same way as they apply to the removal of an unattended motor vehicle or trailer in accordance with that section.
- (4) However, it is not necessary that the unattended motor vehicle or trailer is standing unlawfully.

(5) In this section:

**authorised officer** has the same meaning as in section 76 of the *Road Transport (Safety and Traffic Management) Act 1999*, but does not include a police officer.

**SOPA officer** means a person authorised by the Sydney Olympic Park Authority to exercise the functions of an authorised officer under section 78 of the *Sydney Olympic Park Authority Act 2001*.

### 23 Reinstatement of land

(1) The race promoter must, within a reasonable time after the Homebush motor racing period:

- (a) repair any damage to land (including any fixtures) caused by the activities of the race promoter in connection with the Homebush motor race, and
- (b) remove any rubbish from land within the declared racing area and works area, and
- (c) reinstate any land affected by the activities of the race promoter in connection with the Homebush motor race, so far as is practicable, to the condition it was in before the carrying out of works by the race promoter and the conduct of the Homebush motor race,

unless the race promoter and the Authority have otherwise agreed.

(2) If the race promoter fails to carry out the work required to comply with subsection (1) within a reasonable time, the Authority:

- (a) may cause the work to be carried out, and
- (b) may, by proceedings brought in a court of competent jurisdiction, recover from the race promoter as a debt the cost of carrying out the work.

(3) A document signed by the Chief Executive Officer certifying the cost of carrying out work in accordance with subsection (2) is admissible in any proceedings and is evidence of that cost.

### 24 Co-ordination and co-operation of government agencies

(1) A NSW Government agency has the following obligations in respect of a Homebush motor race:

- (a) to co-operate with the Authority in the exercise of the Authority's functions, including complying with any reasonable request of the Authority for information to enable the Authority to exercise its functions,
- (b) to provide resources and assistance in accordance with any request of the Authority that is authorised by or under this Act,

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- (c) to notify the Authority of any proposed exercise of the agency's functions that may impact adversely on the Homebush motor race, any works authorised under section 17 or the exercise of the Authority's functions.
- (2) A NSW Government agency is authorised to exercise any of its functions in order to comply with a request, direction or decision of the Minister or the Authority made or given under this Act.
- (3) The Minister may, by notice in writing given to a prescribed government agency, direct the agency to comply with a request, direction or decision of the Authority made or given under this Act. However, if another Minister is responsible for the prescribed government agency, the Minister must consult with that Minister before making such a direction.
- (4) In this section, *prescribed government agency* means a NSW Government agency prescribed by the regulations for the purposes of subsection (3).

**25 Race promoter to comply with directions of Authority**

- (1) The Authority may direct the race promoter to do or not to do such things, and to provide such information, in relation to public safety and environmental protection matters associated with a Homebush motor race as the Authority considers reasonable in the circumstances.
- (2) The race promoter is to comply in every respect with a direction given under subsection (1) and is not to authorise any act or omission by any person contrary to the direction.
- (3) A direction given by the Authority under subsection (1) is taken to be a condition of the authorisation given to the race promoter to conduct the Homebush motor race.

## **Part 4 Application of other laws**

### **26 Application of Environmental Planning and Assessment Act 1979**

- (1) Part 5 of the *Environmental Planning and Assessment Act 1979* does not apply in respect of the conduct of a Homebush motor race during the Homebush motor racing period, or the carrying out of works as authorised under this Act.
- (2) An environmental planning instrument under the *Environmental Planning and Assessment Act 1979* cannot prohibit, require development consent for or otherwise restrict the conduct of a Homebush motor race during the Homebush motor racing period, or the carrying out of works as authorised under this Act.
- (3) The conduct of a Homebush motor race during the Homebush motor racing period, or the carrying out of works as authorised under this Act, cannot be declared to be a project under Part 3A of the *Environmental Planning and Assessment Act 1979*.
- (4) An order under Division 2A of Part 6 of the *Environmental Planning and Assessment Act 1979* does not have effect to the extent that it prevents or interferes with the conduct of a Homebush motor race during the Homebush motor racing period, or the carrying out of works as authorised under this Act.
- (5) Subsection (2) applies to an environmental planning instrument made before or after the commencement of this section.

### **27 Application of National Parks and Wildlife Act 1974**

For the purposes of Part 8A of the *National Parks and Wildlife Act 1974*, any act that is authorised or permitted by or under this Act is taken to be an act that is essential for the carrying out of development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*.

### **28 Application of Local Government Act 1993**

- (1) A person who is authorised or permitted to do anything by or under this Act may do that thing despite the fact that the doing of it is not authorised (when required to be) by the *Local Government Act 1993*.
- (2) A person who is authorised or permitted to do anything by or under this Act may do that thing despite the fact that the doing of it is contrary to, or inconsistent with, the terms or conditions of an approval granted under the *Local Government Act 1993*.

- (3) A person does not breach the terms or conditions of an approval relating to:
- (a) the management of waste, being an approval under item 1, 2, 3 or 4 of Part C of the Table to section 68 of the *Local Government Act 1993*, or
  - (b) the hours during which an activity may take place, or
  - (c) the means of access to land or premises, or
  - (d) the emission of noise, including permissible noise levels, or
  - (e) the effect of an activity on the amenity of the locality,
- by the doing of anything that is reasonably necessary to be done by or under, or as a consequence of the operation of, this Act.
- (4) A person who is exempt from the requirement to obtain an approval under section 68 of the *Local Government Act 1993* does not cease to be exempt from the requirement by the doing of anything that is reasonably necessary to be done under, or as a consequence of the operation of, this Act.

### **29 Application of Sydney Olympic Park Authority Act 2001**

A person who is authorised or permitted to do anything by or under this Act may do that thing despite the fact that the doing of it is not authorised (when it is required to be) by, or is contrary to, or inconsistent with, the provisions of the *Sydney Olympic Park Authority Act 2001* or any regulations made under that Act.

### **30 Suspension of certain Acts**

- (1) Except to the extent that the regulations otherwise provide and subject to any modifications specified in the regulations, the provisions of:
- (a) the *Motor Vehicle Sports (Public Safety) Act 1985*, and
  - (b) section 40 of the *Road Transport (Safety and Traffic Management) Act 1999*,
- do not apply in respect of a Homebush motor race during a Homebush motor racing period.
- (2) Except to the extent that the regulations otherwise provide and subject to any modifications specified in the regulations, the provisions of the *Roads Act 1993* do not apply within the declared racing area during a Homebush motor racing period.
- (3) Except to the extent that the regulations otherwise provide and subject to any modifications specified in the regulations, the provisions of the *Protection of the Environment Operations Act 1997* (being those provisions of that Act that relate to noise) do not apply in respect of any

activity that is carried out in accordance with any authorisation given under this Act or the regulations during the Homebush motor racing period.

**31 No liability in nuisance**

Anything done or omitted to be done by any person:

- (a) in the exercise of functions under this Act or the regulations, or
- (b) pursuant to any of the provisions of this Act or the regulations, or
- (c) in accordance with any authorisation given under this Act or the regulations,

does not constitute a nuisance.

**32 Compensation not payable in respect of Homebush motor race-related matters**

(1) Compensation is not payable by or on behalf of:

- (a) the State or an authority of the State, or
- (b) the Authority, or
- (c) a local council, or
- (d) an officer, employee or agent of the State, an authority of the State, the Authority or a local council,

for an act or omission that is a Homebush motor race-related matter or that arises (directly or indirectly) from a Homebush motor race-related matter.

(2) Subsection (1):

- (a) applies only in respect of acts done or omitted to be done in good faith, and
- (b) does not apply to acts or omissions that cause personal injury to a person or the death of a person.

(3) Subsection (1) does not affect compensation payable under any indemnity given, or other agreement made, by the State, an authority of the State, the Authority, a local council or a person referred to in subsection (1), that expressly relates to a Homebush motor race-related matter.

(4) In this section:

**compensation** includes damages and any other form of monetary compensation.

**Homebush motor race-related matter** means the following:

- (a) the conduct of a Homebush motor race,

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- (b) works conducted or other things done under an authorisation given under this Act or the regulations,
  - (c) the administration or purported administration of this Act,
  - (d) the exercise or purported exercise of functions under this Act or the regulations.

### 33 Compensation not payable by race promoter in certain circumstances

- (1) Compensation is not payable by or on behalf of the race promoter, or an officer, employee or agent of the race promoter, for an act or omission that is a Homebush motor race-related matter or that arises (directly or indirectly) from a Homebush motor race-related matter.
- (2) Subsection (1):
  - (a) applies only to the extent that the claim for compensation is a claim for economic loss, and
  - (b) applies only in respect of acts done or omitted to be done in good faith, and
  - (c) applies only in respect of anything done or omitted to be done in accordance with any authorisation given under this Act or the regulations, and
  - (d) does not apply to acts or omissions that cause personal injury to a person or the death of a person, and
  - (e) does not apply to acts or omissions that cause property damage.
- (3) Subsection (1) does not affect compensation payable under any indemnity given, or other agreement made, by the race promoter or a person referred to in subsection (1), that expressly relates to a Homebush motor race-related matter.
- (4) In this section:
  - compensation** includes damages and any other form of monetary compensation.
  - Homebush motor race-related matter** means the following:
    - (a) the conduct of a Homebush motor race,
    - (b) works conducted or other things done under an authorisation given under this Act or the regulations.

### 34 Protection of exercise of certain functions

- (1) This section applies to a function (*a protected function*) conferred or imposed on any of the following persons (*a protected person*) by or under Part 3:
  - (a) the Minister (including a delegate of the Minister),

- (b) the Authority (including a delegate of the Authority).
  - (2) The exercise by any protected person of any protected function may not be:
    - (a) challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings, or
    - (b) restrained, removed or otherwise affected by any proceedings.
  - (3) Without limiting subsection (2), that subsection applies whether or not the proceedings relate to any question involving compliance or non-compliance, by a protected person, with the provisions of Part 3 or the rules of natural justice (procedural fairness).
  - (4) Accordingly, no court of law or administrative review body has jurisdiction or power to consider any question involving compliance or non-compliance, by the protected person, with those provisions or with those rules so far as they apply to the exercise of any protected function.
  - (5) This section has effect despite any provision of this Act or other legislation or any other law (whether written or unwritten).
  - (6) In this section:
    - exercise** of functions includes:
      - (a) the purported exercise of functions, and
      - (b) the non-exercise or improper exercise of functions, and
      - (c) the proposed, apprehended or threatened exercise of functions.
    - proceedings** includes:
      - (a) proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, and
      - (b) without limiting paragraph (a), proceedings in the exercise of the inherent jurisdiction of the Supreme Court or the jurisdiction conferred by section 23 of the *Supreme Court Act 1970*,
- but does not include any investigation or proceedings under the *Independent Commission Against Corruption Act 1988*.

## Part 5 Miscellaneous

### 35 Use of official title and official insignia

- (1) A person, other than the race promoter, must not use any official title or official insignia for a commercial purpose without the written consent of the race promoter.  
Maximum penalty: 200 penalty units.
- (2) A consent under this section:
  - (a) may be given with or without conditions (including conditions requiring payment to the race promoter), and
  - (b) may be revoked by the race promoter for breach of a condition by notice in writing given personally or by post to a person who has the benefit of the consent.
- (3) In this section:

*official insignia* means a logo, symbol or other design approved by the Authority for the purposes of this section by notice published in the Gazette.

*official title* means Sydney 400 (where the expression can reasonably be taken to refer to a motor race) or any other title approved by the Authority for the purposes of this section by notice published in the Gazette.

### 36 Race promoter may control and charge fee for filming

- (1) Except with the consent of the race promoter, a person is not entitled to film, for the purpose of profit or gain, the Homebush motor race, or any part of the race, whether or not the filming takes place within the declared racing area.
- (2) The race promoter may, if the race promoter thinks fit, charge a fee for giving consent under subsection (1), being a fee of the prescribed amount or such other amount as the race promoter considers appropriate in a particular case.
- (3) If a person films the Homebush motor race, for the purpose of profit or gain, without the consent of the race promoter, the race promoter may recover, as a debt due to the race promoter, by proceedings in a court of competent jurisdiction, the fee of a prescribed amount referred to in subsection (2).
- (4) In this section, *film* means make a sound recording or a record of moving images (or both), whether on film or video tape or electronically or by other means.

**37 Prohibition of certain advertising on buildings and structures**

- (1) The Minister may, by order published in the Gazette, designate any area to be an *advertising controlled site* for the period (if any) specified in the order.
- (2) An area is an advertising controlled site for the purposes of this section only for:
  - (a) the period specified in the order, or
  - (b) if no period is specified in the order—the Homebush motor racing period or, if the Homebush motor race has already commenced, the remainder of that period.
- (3) A person who is the owner or occupier or the holder of a lease or licence relating to a building or structure that is (or is part of) an advertising controlled site must not, while the land is an advertising controlled site, cause or permit any advertising material to be fixed to or placed on, or to remain on, the building or structure, except as authorised or permitted by the Authority.

Maximum penalty:

  - (a) in the case of an individual—250 penalty units, or
  - (b) in the case of a corporation—500 penalty units.
- (4) A person authorised by the Authority for the purposes of this subsection may obliterate or remove any advertising material that is on a building or structure in contravention of this section.
- (5) A person authorised under subsection (4) may enter:
  - (a) an advertising controlled site to undertake the obliteration or removal referred to in that subsection, and
  - (b) other adjacent premises, if necessary, to undertake that obliteration or removal.
- (6) A person is not entitled under this section to enter a part of premises used only for residential purposes, except with the consent of the occupier of the part.
- (7) In exercising functions under subsection (4), the person must:
  - (a) cause as little damage as possible, and
  - (b) produce to any person apparently in charge of the premises who requests its production the person's authorisation under that subsection.

- (8) This section does not apply to the following advertising material:
- (a) any advertising material:
    - (i) that has an area of not more than one square metre, or
    - (ii) comprising a series of related advertisements that together have an area of not more than one square metre,
  - (b) any advertising material that was fixed or placed on a building or structure with the permission of the Sydney Olympic Park Authority (but only if the permission was provided before the area within which the material is situated became an advertising controlled site),
  - (c) any advertising material that is exempted from this section by the regulations.

### **38 Prohibition of certain aerial advertising**

- (1) For the purposes of this section, *advertising controlled airspace* means airspace that is within unaided sight of the following places:
- (a) the declared racing area,
  - (b) such other areas as may be prescribed by the regulations for the purposes of this section,
- but only during such periods as are prescribed by the regulations in relation to the place.
- (2) A person must not display an advertisement, or cause an advertisement to be displayed, in advertising controlled airspace, except with the authorisation of the Authority.  
Maximum penalty: 1,000 penalty units.
- (3) An application for the authorisation of the Authority under this section may be made in such form and manner as is determined by the Authority.
- (4) The Authority may determine an application by granting the application, unconditionally or subject to conditions, or by refusing the application.
- (5) Before determining an application, the Authority must advise the race promoter of the details of the application by notice in writing and allow the race promoter 14 days within which the race promoter may make submissions to the Authority in relation to the application.
- (6) For the purposes of this section, the Authority may grant authorisation to a person, or to classes or descriptions of persons, only if in its opinion the display of the advertisement will not adversely affect the organisation or conduct of the Homebush motor race.

- (7) The determination of the Authority with respect to an application for authorisation is final.
- (8) For the purposes of this section:  
**advertisement** includes the following:
- (a) skywriting or signwriting by an aircraft,
  - (b) a banner, or other sign, towed by or attached to an aircraft,
  - (c) matter displayed on an aircraft, other than its normal markings and livery,
  - (d) matter displayed on a hang glider, parachute, paraglider or similar device, other than its normal markings, or on a banner or sign attached to a hang glider, parachute, paraglider or similar device,
  - (e) a banner, or other sign, attached to a person suspended from a hang glider, parachute, paraglider or similar device,
  - (f) matter displayed by the projection of a laser light or other light source.

**aircraft** includes an airship or a balloon.

**39 Authority taken to be part of Department of State and Regional Development for certain purposes**

The Authority is, for the purposes of the *Public Finance and Audit Act 1983*, the *Annual Reports (Departments) Act 1985*, or any other Act prescribed by the regulations, taken to be part of the Department of State and Regional Development.

**40 Effect of Act on contracts, instruments and related matters**

- (1) The operation of this Act is not to be regarded as:
- (a) a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) a breach of any instrument, or
  - (c) an event of default under any contract or other instrument, or
  - (d) giving rise to any remedy by a party to a contract or other instrument, or as causing or permitting the termination of, or exercise of rights under, any contract or other instrument.
- (2) In this section, **instrument** does not include a statutory instrument.

**41 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation

is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

#### **42 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations may be dealt with:
  - (a) summarily before a Local Court, or
  - (b) summarily before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought in a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 100 penalty units or such other amount as may be prescribed by the regulations, despite any higher maximum monetary penalty provided in respect of the offence.

#### **43 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to 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.
- (2) In particular, regulations may be made for or with respect to the following:
  - (a) the fees and charges that may be imposed for the purposes of this Act,
  - (b) the fees that may be charged or collected by the race promoter for admission to the declared racing area or part of the declared racing area,
  - (c) the procedures of the Authority,
  - (d) regulating the provision of services by the race promoter,
  - (e) regulating access to the declared racing area or part of a declared racing area,
  - (f) regulating the conduct of persons in the declared racing area and the exclusion or expulsion of persons from the declared racing area,

- (g) regulating, restricting or prohibiting the bringing of liquor into, or consumption of liquor within, the declared racing area during a Homebush motor racing period,
  - (h) the driving or parking of motor vehicles within the declared racing area (including, but not limited to enabling the Authority to issue notices, with the concurrence of the Roads and Traffic Authority, to remove specified restrictions on parking within the declared racing area),
  - (i) conferring on the Authority any function that may be exercised by a local council in relation to a public place.
- (3) The regulations may modify the application of the regulations made under the *Sydney Olympic Park Authority Act 2001* within the declared racing area during the Homebush motor racing period.
  - (4) The regulations may create an offence punishable by a maximum penalty of 50 penalty units.

#### **44 Savings, transitional and other provisions**

Schedule 2 has effect.

#### **45 Amendment of Subordinate Legislation Act 1989 No 146**

The *Subordinate Legislation Act 1989* is amended by inserting the following at the end of Schedule 3 (Matters not requiring regulatory impact statements):

- 10** A regulation under the *Homebush Motor Racing (Sydney 400) Act 2008*.

#### **46 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 within 6 months from the end of the Homebush motor racing period in 2010.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 6 months from the end of the Homebush motor racing period in 2010.

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## **Schedule 1      Membership and procedure of Advisory Board**

(Section 8 (7))

### **Part 1      General**

#### **1      Definitions**

In this Schedule:

*appointed member* means a person who is appointed by the Minister as a member of the Advisory Board.

*Chairperson* means the Chairperson of the Advisory Board.

*Deputy Chairperson* means the Deputy Chairperson of the Advisory Board.

*member* means any member of the Advisory Board.

### **Part 2      Members**

#### **2      Terms of office of members**

Subject to this Schedule and the regulations, an appointed member holds office for such period as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### **3      Part-time appointments**

Appointed members hold office as part-time members.

#### **4      Remuneration**

An appointed 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.

#### **5      Vacancy in office of member**

- (1) The office of an appointed 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 removed from office by the Minister under this clause, or

- (e) is absent from 3 consecutive meetings of the Advisory Board 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
- (f) 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
- (g) becomes a mentally incapacitated person, or
- (h) 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.

(2) The Minister may remove an appointed member from office at any time.

#### **6 Filling of vacancy in office of appointed member**

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

#### **7 Chairperson and Deputy Chairperson**

- (1) The Chairperson or Deputy Chairperson vacates office as Chairperson or Deputy Chairperson if he or she:
  - (a) is removed from that office by the Minister under this clause, or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a member of the Advisory Board.
- (2) The Minister may at any time remove the Chairperson or Deputy Chairperson from office as Chairperson or Deputy Chairperson.

#### **8 Disclosure of pecuniary interests**

- (1) If:
  - (a) a member has a direct or indirect pecuniary interest or other interest in a matter being considered or about to be considered at a meeting of the Advisory Board, 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 Advisory Board.
- (2) A disclosure by a member at a meeting of the Advisory Board 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) Subclause (1) does not apply to an interest that the member has as:
- (a) a member of any local authority, or
  - (b) an office bearer of any statutory body, or
  - (c) a member of the Government Service or an employee of a statutory body.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Advisory Board otherwise determines:
- (a) be present during any deliberation of the Advisory Board with respect to the matter, or
  - (b) take part in any decision of the Advisory Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Advisory Board under subclause (4), a member who has a direct or indirect pecuniary interest or other interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Advisory Board for the purpose of making the determination, or
  - (b) take part in the making by the Advisory Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Advisory Board.

**9 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of an appointed 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 an appointed member or from accepting and retaining any remuneration payable to the person under this Act as a member.

**Part 3 Procedure**

**10 General procedure**

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

**11 Quorum**

The quorum for a meeting of the Advisory Board is a majority of its members for the time being.

**12 Presiding member**

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

**13 Voting**

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

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**14 Transaction of business outside meetings or by telephone**

- (1) The Advisory Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Advisory Board 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 Advisory Board.
- (2) The Advisory Board 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 Advisory Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Advisory Board.
- (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.

**15 Minutes**

- (1) The Advisory Board must keep minutes of proceedings at its meetings.
- (2) The Advisory Board must furnish to the Chief Executive Officer a copy of the minutes of each meeting within 14 days after the meeting was held.

**16 First meeting**

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

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## **Schedule 2 Savings, transitional and other provisions**

(Section 44)

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (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.

[Second reading speech made in Legislative Council on 27 November 2008  
Agreement in principle speech made in Legislative Assembly on 3 December 2008]

BY AUTHORITY