



New South Wales

# Thoroughbred Racing Further Amendment Act 2008 No 90

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New South Wales

# **Thoroughbred Racing Further Amendment Act 2008 No 90**

Act No 90, 2008

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An Act to amend the *Thoroughbred Racing Act 1996* to make further provision for the membership of Racing NSW; and for other purposes. [Assented to 19 November 2008]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Thoroughbred Racing Further Amendment Act 2008*.

**2 Commencement**

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) The following provisions of this Act commence on the date of assent to this Act:
  - (a) Schedule 1 [6] and [7],
  - (b) Schedule 2.

**3 Amendment of Thoroughbred Racing Act 1996 No 37**

The *Thoroughbred Racing Act 1996* is amended as set out in Schedule 1.

**4 Amendment of Thoroughbred Racing Amendment Act 2008 No 63**

The *Thoroughbred Racing Amendment Act 2008* is amended as set out in Schedule 2.

**5 Repeal of Act**

- (1) This Act is repealed on the day following the day on which all of the provisions of the Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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## Schedule 1      **Amendment of Thoroughbred Racing Act 1996**

(Section 3)

### [1]    **Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

***appointed member*** means a member of Racing NSW other than the Chief Executive.

***eligible industry body*** means a body determined to be an eligible industry body for the time being under section 31 (2).

***RICG*** means the Racing Industry Consultation Group established by this Act.

***Selection Panel*** means the Selection Panel established under section 7.

### [2]    **Sections 6–9**

Omit the sections. Insert instead:

#### **6    Membership**

- (1) Racing NSW is to consist of the Chief Executive and 5 appointed members appointed as follows:
  - (a) 5 members recommended for appointment by the Selection Panel under section 7 and appointed by the Minister to give effect to the recommendation of the Selection Panel, unless the appointment is to fill a casual vacancy under paragraph (b),
  - (b) the appointment of a member to fill a casual vacancy (a vacancy in the office of an appointed member occurring other than by reason of the completion of the member's term of office) is to be made by the Minister on the nomination of Racing NSW.
- (2) A person is not eligible to be an appointed member of Racing NSW if the person:
  - (a) is an employee of a race club or racing association, or
  - (b) is a member of the governing body of a race club or eligible industry body, or
  - (c) holds a licence issued by Racing NSW or by a racing association, or

- (d) is registered by or with the Greyhound and Harness Racing Regulatory Authority under the *Greyhound and Harness Racing Administration Act 2004*, or
  - (e) is currently, or during the previous 10 years has been, warned off, disqualified or named on the Forfeits List under the Australian Rules of Racing, or
  - (f) during the previous 10 years has been convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more, or convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (g) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankruptcy, or
  - (h) is a mentally incapacitated person.
- (3) A person is not eligible to be appointed as a member of Racing NSW if the person is a member of the Selection Panel at the time the Selection Panel makes its recommendation for the appointment concerned.
  - (4) A person is not eligible to hold office as an appointed member of Racing NSW for more than 8 years in total (whether or not involving consecutive terms of office).
  - (5) The Chief Executive does not have a vote at meetings of Racing NSW.
  - (6) While a person is an appointed member of Racing NSW, any entitlement of the person to vote as a member of a race club or of an eligible industry body is suspended.

## **7 Selection Panel**

- (1) The Minister is to establish a Selection Panel to recommend persons for appointment as members of Racing NSW and to recommend the term of office of appointed members.
- (2) The Selection Panel must recommend only the number of persons required to be appointed (no more and no fewer) and must recommend a term of office for each person recommended.
- (3) The Selection Panel must not recommend a person for appointment as a member of Racing NSW unless the Panel is satisfied that the person has experience in a senior administrative role or experience at a senior level in one or more of the fields of business, finance, law, marketing, technology, commerce, regulatory administration or regulatory enforcement.

- (4) Before recommending a person for appointment as a member of Racing NSW, the Selection Panel must conduct a probity check of the person (with the level of scrutiny as determined by the Minister). The Minister is to appoint a Probity Adviser to assist the Selection Panel to conduct probity checks.
- (5) The Selection Panel is to choose between candidates for recommendation for appointment as a member of Racing NSW on the basis of merit, with merit to be determined on the basis of a candidate's abilities, qualifications, experience and personal qualities that are relevant to the performance of the duties of membership of Racing NSW.

#### **8 Term of office of members**

- (1) An appointed member of Racing NSW is to be appointed to hold office (subject to this Act) for a period of up to 4 years recommended by the Selection Panel under section 7, unless the appointment is to fill a casual vacancy.
- (2) An appointed member appointed to fill a casual vacancy (a vacancy in the office of an appointed member occurring other than by reason of the completion of the member's term of office) is to be appointed for the balance of the term of office of the member's predecessor.

#### **9 Review of appointments process**

- (1) The Minister is to review the operation of sections 6–8 to determine whether their policy objectives remain valid and whether their terms remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the date of assent to the *Thoroughbred Racing Further Amendment Act 2008*.
- (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 3 years.

#### **[3] Section 12 Personal liability**

Insert "or the Selection Panel" after "a member of Racing NSW".

**[4] Section 15 Vacation of office**

Omit section 15 (2)–(4). Insert instead:

- (2) The Minister may, on the recommendation of Racing NSW, remove an appointed member of Racing NSW from office for incapacity, incompetence, misbehaviour or a contravention of the code of conduct adopted by Racing NSW under section 11A.

**[5] Section 19 Procedure**

Omit section 19 (5) and (6).

**[6] Schedule 1 Savings and transitional provisions**

Insert at the end of clause 3 (1):

*Thoroughbred Racing Further Amendment Act 2008*

**[7] Schedule 1, Part 9**

Omit the Part. Insert instead:

**Part 9 Provisions consequent on 2008 amendments**

**35 Definitions**

In this Part:

*2008 amending Act* means the *Thoroughbred Racing Amendment Act 2008*.

*2008 further amending Act* means the *Thoroughbred Racing Further Amendment Act 2008*.

**36 Transitional arrangements for appointment of new membership of Racing NSW**

- (1) For the purpose of facilitating the appointment of the members of Racing NSW in accordance with section 6 as substituted by the 2008 further amending Act (referred to in this clause as the *new members of Racing NSW*) with effect from the commencement of that section:
  - (a) the Selection Panel provided for by section 7 (as substituted by the 2008 further amending Act) may be established, and any function of the Selection Panel may be exercised, before that commencement as if the whole of the 2008 further amending Act had commenced on the date of assent to that Act, and

- (b) the Minister may appoint a Probity Adviser under section 7 (as substituted by the 2008 further amending Act), and any function of the Probity Adviser may be exercised, before that commencement as if the whole of the 2008 further amending Act had commenced on the date of assent to that Act, and
  - (c) the Minister may, pursuant to a recommendation made by the Selection Panel before that commencement, appoint the new members of Racing NSW before that commencement, with the appointments to take effect on that commencement.
- (2) As soon as practicable after the commencement of this clause, the Minister is to establish the Selection Panel for the purpose of recommending persons for appointment as the new members of Racing NSW as provided by this clause and recommending their term of office.
- (3) Any period of office as a voting member of Racing NSW before the substitution of section 6 by the 2008 further amending Act counts as a period of office as an appointed member of Racing NSW for the purposes of section 6 (4) (which provides that a person is not eligible to hold office as an appointed member of Racing NSW for more than 8 years in total).
- (4) Despite subclause (3) and section 6 (4), a person holding office as a member of Racing NSW on the commencement of this clause can (if otherwise eligible) be appointed as a new member of Racing NSW for a period of up to 4 years. This subclause does not limit the operation of section 6 (4) in relation to any subsequent appointment of the person as a member of Racing NSW.

**37 Transitional arrangements for appointment of membership of RICG**

- (1) For the purpose of facilitating the appointment of the members of RICG in accordance with Part 3 (as substituted by the 2008 amending Act) with effect from the commencement of that Part, determinations and nominations may be made under and for the purposes of section 31 (as substituted by the 2008 amending Act), before that commencement as if the whole of the 2008 amending Act had commenced on the date of assent to that Act.
- (2) As soon as practicable after the commencement of this clause, the Minister is to call for nominations for the purpose of nominating persons for appointment as members of RICG as provided by this clause.



**38 Former members of Racing NSW**

- (1) On the commencement of section 6 (as substituted by the 2008 further amending Act) the persons holding office as members of Racing NSW immediately before that commencement cease to hold office as members.
- (2) A person who ceases to hold office pursuant to this clause is not entitled to compensation because of that loss of office.
- (3) Neither this clause nor the substitution of section 6 by the 2008 further amending Act affects:
  - (a) the continuity of existence of Racing NSW as a body corporate established by this Act, or
  - (b) the continuity of operation of any decision made or other action taken by the members of Racing NSW before ceasing to hold office under this clause, or
  - (c) the continuity of employment of the Chief Executive and other members of staff of Racing NSW.

**39 Dissolution of RIPAC**

- (1) On the commencement of Part 3 (as substituted by the 2008 amending Act):
  - (a) the Racing Industry Participants Advisory Committee is dissolved, and
  - (b) the persons holding office as members of that committee cease to hold office as members.
- (2) A person who ceases to hold office pursuant to this clause is not entitled to compensation because of that loss of office.

**40 Distribution of profits to Consolidated Fund**

Any profits of Racing NSW not distributed to the Consolidated Fund in compliance with section 28 before the repeal of that section by the 2008 amending Act are not required to be distributed to the Consolidated Fund.

**41 Functions of members during caretaker period**

- (1) On and from the date of introduction into Parliament of the Bill for the 2008 amending Act, the members of Racing NSW who hold office before the substitution of section 6 by the 2008 further amending Act are entitled to exercise their functions in a manner that is consistent with any convention or practice as to the exercise of functions by members of a body pending the appointment of a new membership of the body.

- (2) This clause is taken to have operated from that date of introduction.

**41A Dissolution of Appointments Panel**

- (1) On the date of assent to the 2008 further amending Act:
- (a) the Appointments Panel is dissolved, and
  - (b) the persons holding office as members of the Appointments Panel cease to hold office as members.
- (2) A person who ceases to hold office pursuant to this clause is not entitled to compensation because of that loss of office.
- (3) The exercise of any function of the Appointments Panel before the date of assent to the 2008 further amending Act (including the nomination of any person for appointment as a member of Racing NSW) is of no effect.

## **Schedule 2      Amendment of Thoroughbred Racing Amendment Act 2008**

(Section 4)

**[1]      Schedule 1 Amendments**

Omit Schedule 1 [2]–[4], [10], [19], [23] and [33].

**[2]      Schedule 1 [29]**

Omit “Appointments Panel” from proposed section 32 (1) (a).

Insert instead “Selection Panel”.

[Agreement in principle speech made in Legislative Assembly on 30 October 2008  
Second reading speech made in Legislative Council on 12 November 2008]

BY AUTHORITY