



New South Wales

Thoroughbred Racing Further Amendment Bill 2008

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Thoroughbred Racing Act 1996* (the ***Principal Act***) and the *Thoroughbred Racing Amendment Act 2008* (the ***earlier amending Act***):

- (a) to require the 5 appointed members of Racing NSW to be persons recommended for appointment by a Selection Panel established by the Minister (instead of being appointed on the nomination of the Appointments Panel currently provided for by the earlier amending Act), and
- (b) to require the Minister to review the new appointments process within 3 years of the date of assent to the proposed Act, and
- (c) to require the Selection Panel to make its recommendations based on the merit of candidates for appointment and on the basis of skills-based criteria (as currently required for appointments by the Appointments Panel under the earlier amending Act), and
- (d) to continue the requirement under the earlier amending Act for the conduct of a probity check of candidates for appointment with the assistance of a Probity Adviser, and

- (e) to repeal the requirement of the earlier amending Act for a recruitment consultant in connection with the appointment of members of Racing NSW, and
- (f) to dissolve the Appointments Panel established under the earlier amending Act and set aside any decisions or nominations made by it, and
- (g) to enact consequential savings and transitional provisions (including provisions for the establishment of the Selection Panel to enable the making of recommendations and appointments for reconstituting Racing NSW pursuant to the new appointment process).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation with the exception of transitional provisions and the amendments made to the earlier amending Act, which are to commence on the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the *Thoroughbred Racing Act 1996* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Thoroughbred Racing Amendment Act 2008* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Thoroughbred Racing Act 1996

Schedule 1 [1] carries forward definitions from the earlier amending Act with changes to reflect the proposed new appointment process provided for by **Schedule 1 [2]**.

Schedule 1 [2] provides a new appointment process for the appointment of members of Racing NSW to replace the existing appointment process provided for by the earlier amending Act. Under the existing appointment process, appointed members of Racing NSW were to have been appointed on the nomination of an Appointments Panel consisting of representatives of industry participants. Under the new appointment process, appointments will be made on the recommendation of a Selection Panel established by the Minister. The new appointment process provides for the Selection Panel's recommendations to be made on the basis of merit and in accordance with the skills-based criteria currently provided for under the existing appointment process. The new appointment process provides for the term of an appointment to be for a period of up to 4 years as recommended by the Selection

Panel (rather than for the period recommended by the Appointments Panel under the existing appointment process). The requirement under the existing appointment process for the Appointments Panel to engage a recruitment consultant is repealed.

The amendment also provides for the Minister to review the new appointment process after 3 years and for a report on the review to be tabled in Parliament.

Schedule 1 [3] makes a consequential amendment.

Schedule 1 [4] and [5] carry forward amendments made by the earlier amending Act (with consequential changes resulting from the repeal of provisions for the fresh recruitment process provided for by the earlier amending Act).

Schedule 1 [6] inserts a savings and transitional regulation-making power.

Schedule 1 [7] carries forward the transitional arrangements made by the earlier amending Act, subject to the following:

- (a) provisions for convening the Appointments Panel under the earlier amending Act are replaced with provisions for establishing the Selection Panel, to facilitate the reconstitution of the membership of Racing NSW in accordance with the amendments,
- (b) the Appointments Panel provided for under the earlier amending Act will be dissolved and the exercise of any function of the Appointments Panel (including any nomination of a person for appointment as a member of Racing NSW) is declared to be of no effect.

Schedule 2 Amendment of Thoroughbred Racing Amendment Act 2008

Schedule 2 makes consequential amendments to the earlier amending Act.

First print



New South Wales

Thoroughbred Racing Further Amendment Bill 2008

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New South Wales

Thoroughbred Racing Further Amendment Bill 2008

No. , 2008

A Bill for

An Act to amend the *Thoroughbred Racing Act 1996* to make further provision for the membership of Racing NSW; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Thoroughbred Racing Further Amendment Act 2008</i> .	3
2 Commencement	4
(1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).	5 6
(2) The following provisions of this Act commence on the date of assent to this Act:	7 8
(a) Schedule 1 [6] and [7],	9
(b) Schedule 2.	10
3 Amendment of Thoroughbred Racing Act 1996 No 37	11
The <i>Thoroughbred Racing Act 1996</i> is amended as set out in Schedule 1.	12 13
4 Amendment of Thoroughbred Racing Amendment Act 2008 No 63	14
The <i>Thoroughbred Racing Amendment Act 2008</i> is amended as set out in Schedule 2.	15 16
5 Repeal of Act	17
(1) This Act is repealed on the day following the day on which all of the provisions of the Act have commenced.	18 19
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	20 21

Schedule 1	Amendment of Thoroughbred Racing Act 1996	1
		2
	(Section 3)	3
[1] Section 3 Definitions		4
Insert in alphabetical order in section 3 (1):		5
	<i>appointed member</i> means a member of Racing NSW other than the Chief Executive.	6
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	<i>eligible industry body</i> means a body determined to be an eligible industry body for the time being under section 31 (2).	8
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	<i>RICG</i> means the Racing Industry Consultation Group established by this Act.	10
		11
	<i>Selection Panel</i> means the Selection Panel established under section 7.	12
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[2] Sections 6–9		14
Omit the sections. Insert instead:		15
	6 Membership	16
	(1) Racing NSW is to consist of the Chief Executive and 5 appointed members appointed as follows:	17
		18
	(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),	19
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	(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.	24
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	(2) A person is not eligible to be an appointed member of Racing NSW if the person:	29
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	(a) is an employee of a race club or racing association, or	31
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	(b) is a member of the governing body of a race club or eligible industry body, or	33
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	(c) holds a licence issued by Racing NSW or by a racing association, or	35

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- (d) is registered by or with the Greyhound and Harness Racing Regulatory Authority under the *Greyhound and Harness Racing Administration Act 2004*, or 1
 - (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 4
 - (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 7
 - (g) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankruptcy, or 13
 - (h) is a mentally incapacitated person. 15
- (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. 16
 - (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). 20
 - (5) The Chief Executive does not have a vote at meetings of Racing NSW. 23
 - (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. 25
- 7 Selection Panel** 28
- (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. 29
 - (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. 32
 - (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. 35

(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.	1 2 3 4 5
(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.	6 7 8 9 10 11
8	Term of office of members	12
(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.	13 14 15 16
(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.	17 18 19 20 21
9	Review of appointments process	22
(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.	23 24 25 26
(2)	The review is to be undertaken as soon as possible after the period of 3 years from the date of assent to the <i>Thoroughbred Racing Further Amendment Act 2008</i> .	27 28 29
(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.	30 31 32
[3]	Section 12 Personal liability	33
	Insert "or the Selection Panel" after "a member of Racing NSW".	34

[4] Section 15 Vacation of office	1
Omit section 15 (2)–(4). Insert instead:	2
(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.	3 4 5 6
[5] Section 19 Procedure	7
Omit section 19 (5) and (6).	8
[6] Schedule 1 Savings and transitional provisions	9
Insert at the end of clause 3 (1):	10
<i>Thoroughbred Racing Further Amendment Act 2008</i>	11
[7] Schedule 1, Part 9	12
Omit the Part. Insert instead:	13
Part 9 Provisions consequent on 2008 amendments	14 15
35 Definitions	16
In this Part:	17
2008 amending Act means the <i>Thoroughbred Racing Amendment Act 2008</i> .	18 19
2008 further amending Act means the <i>Thoroughbred Racing Further Amendment Act 2008</i> .	20 21
36 Transitional arrangements for appointment of new membership of Racing NSW	22 23
(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:	24 25 26 27 28
(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	29 30 31 32 33 34

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| (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 | 1
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| (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. | 7
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| (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. | 12
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| (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). | 17
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| (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. | 23
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| 37 | Transitional arrangements for appointment of membership of RICG | 30
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| (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. | 32
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| (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. | 39
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38	Former members of Racing NSW	1
(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 3 4 5
(2)	A person who ceases to hold office pursuant to this clause is not entitled to compensation because of that loss of office.	6 7
(3)	Neither this clause nor the substitution of section 6 by the 2008 further amending Act affects:	8 9
(a)	the continuity of existence of Racing NSW as a body corporate established by this Act, or	10 11
(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	12 13 14
(c)	the continuity of employment of the Chief Executive and other members of staff of Racing NSW.	15 16
39	Dissolution of RIPAC	17
(1)	On the commencement of Part 3 (as substituted by the 2008 amending Act):	18 19
(a)	the Racing Industry Participants Advisory Committee is dissolved, and	20 21
(b)	the persons holding office as members of that committee cease to hold office as members.	22 23
(2)	A person who ceases to hold office pursuant to this clause is not entitled to compensation because of that loss of office.	24 25
40	Distribution of profits to Consolidated Fund	26
	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.	27 28 29 30
41	Functions of members during caretaker period	31
(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.	32 33 34 35 36 37 38

(2)	This clause is taken to have operated from that date of introduction.	1 2
41A	Dissolution of Appointments Panel	3
(1)	On the date of assent to the 2008 further amending Act:	4
(a)	the Appointments Panel is dissolved, and	5
(b)	the persons holding office as members of the Appointments Panel cease to hold office as members.	6 7
(2)	A person who ceases to hold office pursuant to this clause is not entitled to compensation because of that loss of office.	8 9
(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.	10 11 12 13

Schedule 2	Amendment of Thoroughbred Racing Amendment Act 2008	1
		2
	(Section 4)	3
[1] Schedule 1 Amendments		4
	Omit Schedule 1 [2]–[4], [10], [19], [23] and [33].	5
[2] Schedule 1 [29]		6
	Omit “Appointments Panel” from proposed section 32 (1) (a).	7
	Insert instead “Selection Panel”.	8