

[Act 1998 No 95]



New South Wales

Harness Racing New South Wales Amendment Bill 1998

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Harness Racing New South Wales Act 1977* for the following purposes:
 - (i) to reconstitute Harness Racing New South Wales (HRNSW) as a statutory corporation,
 - (ii) to constitute a Board of HRNSW to exercise its commercial and other non-regulatory functions and to establish a Regulatory Committee of HRNSW to exercise its regulatory functions,
 - (iii) to allow HRNSW in conducting certain inquiries to examine witnesses on oath.
 - (iv) to clarify that HRNSW has a discretion in deciding whether to conduct proceedings in respect of its inquiries in public or in private.
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- (b) to amend the *Defamation Act 1974* to clarify that certain defences (including absolute privilege) are available in defamation actions that concern:
- (i) publications in the course of proceedings with respect to certain inquiries conducted by HRNSW, and
 - (ii) reports published in respect of such inquiries.

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.

Clause 3 is a formal provision giving effect to the amendments to the *Harness Racing New South Wales Act 1977* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Defamation Act 1974* set out in Schedule 2.

Schedule 1 Amendment of Harness Racing New South Wales Act 1977

Schedule 1 [1] inserts certain definitions into the *Harness Racing New South Wales Act 1977*.

Schedule 1 [2] is a consequential amendment concerning definitions.

Schedule 1 [3] inserts a new Part 2 (proposed sections 5–7G, dealing with the constitution and organisation of HRNSW) and a new Part 3 (proposed sections 8–10G, dealing with the functions of HRNSW).

Proposed section 5 provides for the reconstitution of HRNSW as a statutory corporation.

Proposed section 6 provides for the constitution of the Board of HRNSW. The Board is to consist of 7 directors to be appointed by the Governor from nominations made by harness racing clubs, participants in the harness racing industry and the Minister.

Proposed section 4 provides that the Board is responsible for exercising all non-regulatory functions of HRNSW. These include the commercial functions of HRNSW conferred by the Act or any other law (for example, the functions of HRNSW conferred by proposed sections 10 and 16 of the Act, and clauses 14 and 15 of Schedule 2 to the *Totalizator Act 1997*).

Proposed section 7A defines the *regulatory functions* of HRNSW for the purposes of the Act, as follows:

- (a) functions relating to the control and regulation of harness racing as specified in section 9 (including the holding of inquiries in relation to those functions, and associated decision-making and disciplinary functions),
- (b) the functions under sections 10B (policy-making), 10C (affiliating), 10D (research and investigations), 10G (reports and recommendations) and 21 (delegation) to the extent they are exercised in relation to the regulatory functions of HRNSW,
- (c) the function of making rules under the Act,
- (d) the functions of hearing and deciding appeals to HRNSW and holding special inquiries under the Act,
- (e) such functions as the Board may allocate to the Regulatory Committee or as are determined by the regulations,
- (f) such functions as the Minister determines are regulatory functions.

Proposed section 7A also allows the Minister to determine conclusively the nature of a function if there is a dispute on the matter.

Proposed section 7B establishes a Regulatory Committee, to consist of the 3 directors of the Board nominated by the Minister.

Proposed section 7C provides that the Regulatory Committee is responsible for exercising the regulatory functions of HRNSW. In so doing, the Committee is subject to the control and direction of the Minister except in relation to the contents of a report or recommendation made by it to the Minister and its decisions on appeal or other disciplinary proceedings.

Proposed section 7D provides for the appointment of a chairperson and deputy chairperson of HRNSW (who hold those positions on the Board and Regulatory Committee).

Proposed section 7E is a formal provision giving effect to Schedules 1 and 2 to the Act (which contain administrative provisions relating to directors and procedural provisions relating to the Board and Regulatory Committee).

Proposed section 7F provides for the employment of a chief executive officer by HRNSW in consultation with the Minister.

Proposed section 7G provides for the employment of staff by HRNSW.

Proposed sections 8, 10B–10D and 10G restate certain functions of HRNSW as they currently appear in the Act. Proposed section 10G extends the function relating to the furnishing of reports and recommendations by HRNSW to include reports and recommendations relating to the administration of harness racing.

Proposed sections 9 and 10 restate certain existing functions of HRNSW but reorganise them. The effect of this reorganisation is as follows:

- (a) the functions of registering or refusing to register harness racing clubs or associations is a non-regulatory function to be exercised by the Board, while the function of registering or refusing to register owners, trainers or drivers of harness racing horses, or bookmakers, bookmakers' clerks or other persons associated with the harness racing industry, is a regulatory function to be exercised by the Regulatory Committee,
- (b) the function of cancelling registration in relation to each of these matters is a regulatory function to be exercised by the Regulatory Committee,
- (c) the function of allocating to harness racing clubs or associations the dates on which they may conduct races and race meetings is a non-regulatory function to be exercised by the Board.

Proposed section 10A restates the existing rule-making function of HRNSW but removes the requirement that rules must be approved by the Minister. The proposed section also separates out certain of the subject matters with respect to which rules may be made, with the effect that if rules are required to be made in relation to the following non-regulatory functions:

- (a) registration of harness racing clubs and associations,
- (b) allocation to harness racing clubs and associations the dates on which they may conduct races and race meetings,
- (c) charging for services provided by HRNSW and determining fees and charges for registration and for the transaction of other business with HRNSW.

then that rule-making is a regulatory function to be exercised by the Regulatory Committee.

Proposed sections 10E and 10F reinsert existing provisions that relate to the power of HRNSW to deal with certain property. The requirement of Ministerial approval is removed in relation to the power of HRNSW to accept, hold and administer property on trust or subject to a condition that it be applied for specified purposes.

Schedule 1 [4] repeals a provision establishing the Harness Racing Fund. Proposed clause 14 of Schedule 5 to the Act provides that money in the fund is to be paid into an account established by HRNSW.

Schedule 1 [5], [7], [8], [10] and [11] are consequential amendments.

Schedule 1 [6] and [9] remove the requirement of Ministerial approval currently required before certain grants and loans may be paid out of the Harness Racing Assistance Fund and the Harness Racing Benevolent Fund.

Schedule 1 [12] inserts proposed sections 13C, 13D and 14–16 as follows:

Proposed section 13C describes the financial year of HRNSW as the year commencing on 1 July.

Proposed section 13D provides that HRNSW is liable for all expenses incurred by HRNSW, and by the Harness Racing Appeals Tribunal in the exercise of its functions under the Act.

Proposed section 14 provides that HRNSW must keep accounts for the Harness Racing Assistance Fund and the Harness Racing Benevolent Fund and may establish such other accounts as it thinks fit.

Proposed section 15 restates the current power of HRNSW to accept gifts, but without the requirement of Ministerial approval.

The effect of proposed section 16 is that the charging of harness racing clubs and associations for services it provides, and the determination of fees and charges for registration and for the transaction of other business with HRNSW, are non-regulatory functions to be exercised by the Board.

Schedule 1 [13] and [14] are consequential amendments.

Schedule 1 [15] inserts proposed section 19B which provides that HRNSW may decide whether to conduct its disciplinary inquiries in public or in private, or partly in public and partly in private, and may examine witnesses on oath in conducting such inquiries. A *disciplinary inquiry* means a special inquiry (as provided for in the Act) following an appeal, or any other inquiry by HRNSW for the purposes of taking disciplinary action.

Schedule 1 [16] substitutes section 21 which deals with the delegation of HRNSW's functions. Under proposed section 21 the only regulatory functions of HRNSW that are delegable are those concerning the registering of, or refusal to register, owners, trainers and drivers of harness racing horses, and bookmakers' clerks and other persons associated with the harness racing industry. All other functions of HRNSW are delegable except the power of delegation conferred by the section.

The item also consequentially amends and reinserts current provisions relating to protection from personal liability and proof of certain matters in legal proceedings, and inserts proposed section 21C which provides that the exercise of a function of HRNSW by the Board or the Regulatory Committee cannot be challenged on the ground that it should have been exercised by the other body.

Schedule 1 [17] and [18] are consequential amendments.

Schedule 1 [19] removes an obsolete provision relating to annual reporting requirements.

Schedule 1 [20]–[22], [24], [25] and [27] are consequential amendments.

Schedule 1 [23] provides that a person is not eligible for nomination or appointment as a director during any period in which the person is disqualified or warned off under the Act.

Schedule 1 [26] provides that a vacancy in the office of a director occurs if the director is disqualified or warned off under the Act.

Schedule 1 [28] substitutes Schedule 2 which provides for various procedural matters relating to the Board and the Regulatory Committee.

Schedule 1 [29] is a consequential amendment.

Schedule 1 [30] amends Schedule 5 to enable regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [31] inserts a new Part 3 into Schedule 5, containing provisions of a savings or transitional nature consequent on the enactment of the proposed amending Act. In particular:

- (a) clause 9 provides that the new HRNSW is a continuation of the old HRNSW. and
- (b) clause 10 provides that members of the old HRNSW cease to hold that office on the commencement of the proposed provisions relating to the reconstitution of HRNSW. and
- (c) clause 11 provides that the existing General Manager is to continue in office as chief executive officer for the balance of his or her appointment. and
- (d) clause 12 provides for transitional arrangements in relation to fees and charges for registration or for the transaction of other business with HRNSW.

Schedule 2 Amendment of Defamation Act 1974

Schedule 2 [1] substitutes section 17E of the *Defamation Act 1974* which currently provides that a defence of absolute privilege is available to a claim for defamation involving a publication in the course of an appeal under the *Harness Racing New South Wales Act 1977* or a publication by HRNSW or the Harness Racing Appeals Tribunal in an official report of such an appeal. The proposed section 17E restates this position and also provides for the availability of the defence in relation to a publication in the course of proceedings in respect of an inquiry that HRNSW conducts in exercise of its regulatory functions, or a publication by HRNSW in a report it makes in respect of such an inquiry.

Currently, a publication may occur by reports, articles, letters, notes, pictures, spoken words, or any other thing, to any recipient.

Schedule 2 [2] substitutes clause 2 (13) of Schedule 2 to the Act which currently provides that proceedings on an appeal to HRNSW or the Tribunal are included in the definition of *protected report*. Proposed clause 2 (13) restates this position and also includes proceedings at an inquiry conducted by HRNSW in the exercise of its regulatory functions in the definition. The Act provides a defence to a claim for defamation in relation to the fair publication of a protected report. The defence extends to the later publication of a copy of the report and an extract or summary of the report.