

Passed by both Houses



New South Wales

# Thoroughbred Racing Amendment Bill 2008

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2008*



New South Wales

## **Thoroughbred Racing Amendment Bill 2008**

Act No , 2008

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

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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

**1 Name of Act**

This Act is the *Thoroughbred Racing 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 amendments made by this Act to Schedule 1 to the *Thoroughbred Racing Act 1996* commence on the date of assent to this Act.

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

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

**4 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- (1) This Act is repealed on the day following the day on which all of the provisions of the Act have commenced.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 Amendments

(Section 3)

**[1] Section 3 Definitions**

Omit the definitions of *additional member*, *Chairperson*, *eligible industry body*, *nominated members*, *RIPAC* and *voting members* from section 3 (1).

**[2] Section 3 (1)**

Insert in alphabetical order:

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

*Appointments Panel* or *the Panel* means the Appointments Panel established by section 7.

*eligible industry body* means a body determined to be an eligible industry body for the time being under clause 1 (3) of Schedule 2.

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

**[3] Sections 6–8**

Omit the sections. Insert instead:

**6 Membership**

- (1) Racing NSW is to consist of the following members:
  - (a) 5 members nominated for appointment by the Appointments Panel and appointed by the Minister to give effect to their nomination by the Appointments Panel,
  - (b) the Chief Executive.
- (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, at the time the person is recommended for appointment by the Appointments Panel, the person is a member of the Appointments Panel.
  - (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 Establishment and functions of Appointments Panel**

- (1) An Appointments Panel is established for the purposes of this Act. Schedule 2 has effect with respect to the members and procedure of the Appointments Panel.
- (2) The Appointments Panel has the function of nominating persons for appointment as members of Racing NSW and for that purpose must nominate no more and no less than the number of persons required to make the appointments for which the Appointments Panel is convened.
- (3) An appointed member of Racing NSW can (if otherwise eligible) be considered for nomination for reappointment as a member of Racing NSW.
- (4) The Appointments Panel must not nominate 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

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business, finance, law, marketing, technology, commerce, regulatory administration or regulatory enforcement.

- (5) Before nominating a person for appointment as a member of Racing NSW, the Appointments Panel must conduct a probity check of the person (with the level of scrutiny as determined by Racing NSW).
- (6) The Appointments Panel is to choose between candidates for nomination 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.
- (7) The Appointments Panel must engage a recruitment consultant to assist it in the exercise of its functions. The recruitment consultant is to be selected by the Minister from a panel of 3 persons chosen by Racing NSW on the basis of a competitive tender process conducted for the purpose by Racing NSW.
- (8) The Appointments Panel may by agreement with Racing NSW, make use of any staff and facilities of Racing NSW in connection with the exercise of the Panel's functions.

## **8 Convening the Appointments Panel**

- (1) The Minister must, as and when required for the purposes of the appointment of persons as members of Racing NSW, convene the Appointments Panel for the purpose of nominating persons for appointment.
- (2) The Minister must also convene the Appointments Panel if 7 or more members of the Panel petition the Minister to convene the Panel to consider conducting a fresh recruitment process for the membership of Racing NSW.
- (3) When the Panel is convened to consider conducting a fresh recruitment process for the membership of Racing NSW, the following process applies:
  - (a) the Panel may call on Racing NSW to show cause why, for the reasons specified by the Panel, a fresh recruitment process for the nomination of new members of Racing NSW should not be conducted,
  - (b) the Panel must notify the Minister if it calls upon Racing NSW to show cause,
  - (c) if Racing NSW has been called upon to show cause and the Panel determines by a majority comprising at least 75% of

the members of the Panel to conduct a fresh recruitment process, the Panel is taken to have been convened for that purpose and is to proceed to nominate persons for appointment to membership of Racing NSW in place of the existing membership,

- (d) the Panel must notify Racing NSW and the Minister of the reasons for its decision to conduct the fresh recruitment process,
- (e) existing members of Racing NSW can (if otherwise eligible) be considered for nomination in the fresh recruitment process,
- (f) the Minister must then appoint the persons nominated by the Appointments Panel as members of Racing NSW in place of the existing membership.

**[4] Section 9**

Omit the section. Insert instead:

**9 Term of office of members**

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 Appointments Panel when nominating the member for appointment.

**[5] Section 10 Remuneration**

Omit “A voting member” from section 10 (1).

Insert instead “An appointed member”.

**[6] Section 10 (1) (a)**

Omit the paragraph. Insert instead:

- (a) remuneration consisting of a base amount adjusted annually in accordance with the annual percentage increase (if any) in the Consumer Price Index occurring after the determination or redetermination of the base amount takes effect, and

**[7] Section 10 (1A)**

Insert after section 10 (1):

- (1A) The Statutory and Other Offices Remuneration Tribunal may, on the application of Racing NSW, redetermine the base amount from time to time, with effect from the date of the redetermination or such later date as the Tribunal may specify.

**[8] Section 11**

Omit the section. Insert instead:

**11 Duty of members to act in interests of public and industry**

It is the duty of each appointed member of Racing NSW to act in the public interest and in the interests of the horse racing industry as a whole in New South Wales.

**[9] Section 11A**

Insert after section 11:

**11A Code of conduct**

- (1) Racing NSW must, within 3 months after the commencement of this section, adopt a code of conduct to be observed by members and staff of Racing NSW.
- (2) The code of conduct must include a statement of the duty of members of Racing NSW under sections 11 (Duty of members to act in interests of public and industry) and 21 (Disclosure of pecuniary interests by members) and the obligations of Racing NSW under section 21 in connection with disclosures under that section.
- (3) Racing NSW must review its code of conduct at least every 3 years and make such changes to it as it considers appropriate.

**[10] Section 12 Personal liability**

Insert “or the Appointments Panel” after “a member of Racing NSW”.

**[11] Section 12 (2)**

Insert at the end of section 12:

- (2) If this section prevents liability attaching to a person, the liability attaches instead to Racing NSW.

**[12] Section 13 Functions of Racing NSW**

Insert after section 13 (1) (b):

- (b1) such functions in relation to the business, economic development and strategic development of the horse racing industry in the State as are conferred or imposed by this Act,

**[13] Section 13 (2)**

Omit the subsection. Insert instead:

- (2) The functions of Racing NSW are not limited by the Australian Rules of Racing and are to be exercised independently of the Australian Racing Board.

**[14] Section 13, note**

Omit the note to the section.

**[15] Section 14 Powers of Racing NSW**

Insert “nominated by Racing NSW” after “registered company auditor” in section 14 (2) (s).

**[16] Section 14B**

Insert after section 14A:

**14B Consultation and planning**

- (1) Racing NSW is to prepare business plans for its activities from time to time.
- (2) Racing NSW is to undertake formal consultation on a regular basis with RICG and other horse racing industry stakeholders in connection with the initiation, development and implementation of policies for the promotion, strategic development and welfare of the horse racing industry.
- (3) Racing NSW is to prepare an initial strategic plan for the horse racing industry within 12 months after the commencement of this section and is to prepare a further strategic plan for the horse racing industry every 3 years after the initial strategic plan is prepared. Each strategic plan must be prepared in consultation with RICG and other horse racing industry stakeholders.
- (4) The annual report of Racing NSW is to include a progress report on implementation of the business plan of Racing NSW and the strategic plan for the horse racing industry over the period to which the annual report relates.

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

Omit “a voting member” from section 15 (1).

Insert instead “an appointed member”.

**[18] Section 15 (1) (b)**

Omit the paragraph. Insert instead:

- (b) completes a term of office and is not reappointed, or

**[19] Section 15 (2) and (3)**

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.
- (3) The office of an appointed member of Racing NSW also becomes vacant on the appointment by the Minister of new members of Racing NSW on the nomination of the Appointments Panel convened for the purpose of conducting a fresh recruitment process for the membership of Racing NSW.

**[20] Section 16**

Omit the section. Insert instead:

**16 Chairperson and Deputy Chairperson of Racing NSW**

- (1) The appointed members of Racing NSW are to elect a Chairperson and Deputy Chairperson from among the appointed members. Racing NSW may remove a person from office as Chairperson or Deputy Chairperson of Racing NSW at any time.
- (2) A person ceases to hold office as Chairperson or Deputy Chairperson if he or she:
  - (a) resigns the office by instrument in writing addressed to Racing NSW, or
  - (b) is removed from that office by Racing NSW, or
  - (c) ceases to hold office as a member of Racing NSW.
- (3) The Chairperson or Deputy Chairperson does not cease to be a member of Racing NSW merely because he or she ceases to be Chairperson or Deputy Chairperson.

**[21] Section 17**

Omit the section. Insert instead:

**17 Member vacancies to be filled**

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

**[22] Section 19 Procedure**

Omit “voting members” from section 19 (2).

Insert instead “appointed members”.

**[23] Section 19 (5)**

Omit section 19 (5) and (6). Insert instead:

- (5) If the Appointments Panel is convened for the purpose of conducting a fresh recruitment process for the membership of Racing NSW, the appointed members of Racing NSW 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.

**[24] Section 20 Transaction of business outside meetings or by telephone**

Omit “voting members” from section 20 (1).

Insert instead “appointed members”.

**[25] Section 20 (1)**

Insert at the end of the subsection:

Email may be used to circulate papers among members and a resolution approved by email is taken to have been approved in writing.

**[26] Section 25 Custody and affixing of seal**

Omit the section.

**[27] Section 28 Distribution of profit**

Omit the section.

**[28] Part 2A**

Insert after Part 2:

**Part 2A Special functions of Racing NSW**

**Division 1 Directions and minimum standards**

**29A Power to set minimum standards for conduct of races and race meetings**

- (1) Racing NSW may set minimum standards in connection with the conduct by registered race clubs of races and race meetings, including minimum standards with respect to the following:
  - (a) racecourse design and construction,
  - (b) racecourse facilities and amenities (including facilities and amenities to be provided for patrons, such as grandstands and other patron amenities),
  - (c) racehorse training facilities,
  - (d) the financial management of race meetings, including the management of the costs of conducting race meetings,
  - (e) the fees and charges imposed by a race club in connection with races conducted by the race club,
  - (f) prize money paid on races conducted by a race club,
  - (g) starters, appearance and other fees paid by a race club,
  - (h) such other matters relating to the conduct of races and race meetings as may be prescribed by the regulations.
- (2) Racing NSW may set minimum standards under this section in any one or more (or any combination) of the following ways:
  - (a) by a direction in writing to race clubs,
  - (b) as a condition of the registration of race clubs,
  - (c) as a condition of the allocation of the dates on which race clubs may conduct race meetings.
- (3) Racing NSW is to consult with registered race clubs in relation to any proposal to set minimum standards under this section and in the course of that consultation must give a registered race club a reasonable opportunity to be heard and to make submissions on the proposal.
- (4) Minimum standards may be set under this section even if they are inconsistent with a provision of a by-law under any Act. In the event of an inconsistency between minimum standards set under

this section and a provision of such a by-law, those minimum standards prevail to the extent of the inconsistency.

**29B Race clubs to provide information and documents**

Racing NSW may give a direction in writing to a registered race club requiring the club to provide specified documents or furnish specified information to Racing NSW within a time specified in the direction, being documents or information that Racing NSW considers will be of assistance in connection with the exercise of its functions referred to in section 13 (1) (b), (b1) or (c) or 29A.

**29C Sanctions for non-compliance by race club with directions and minimum standards**

- (1) Racing NSW may impose any sanction authorised by this section on a registered race club that Racing NSW is satisfied has:
  - (a) failed without reasonable excuse to comply with a minimum standard set under section 29A, or
  - (b) failed without reasonable excuse to comply with a direction given to the race club under section 29B.
- (2) Each of the following sanctions is a sanction that Racing NSW may impose under this section:
  - (a) a public admonishment of the race club,
  - (b) a requirement that the race club pay to Racing NSW a civil penalty of up to 50 penalty units (or up to 100 penalty units if the contravention or failure is the second or a subsequent contravention or failure for which a civil penalty has been imposed on the race club under this section),
  - (c) suspension or cancellation of the race club's registration.
- (3) Racing NSW is not to impose a sanction under this section without first giving the registered race club concerned notice in writing of the proposed sanction and a reasonable opportunity to be heard and to make submissions about the matter.
- (4) Subsection (3) does not apply in respect of the imposition of a sanction if Racing NSW is satisfied that the sanction must be imposed as a matter of urgency because the contravention or failure concerned poses a significant threat:
  - (a) to public health or safety, or
  - (b) to the financial wellbeing of the horse racing industry as a whole in New South Wales.
- (5) A sanction is imposed by giving notice in writing of the decision to impose the sanction to the race club concerned.

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- (6) A civil penalty imposed under this section may be recovered by Racing NSW as a debt.

## **Division 2 Race broadcasting arrangements**

### **29D Definitions**

In this Division:

**broadcasting arrangement** means a contract, understanding or other arrangement that:

- (a) facilitates a racing body engaging in race broadcasting or otherwise confers functions on a racing body in connection with race broadcasting, or
- (b) authorises or permits a person (other than a racing body) to engage in race broadcasting or otherwise facilitates such a person engaging in race broadcasting, or
- (c) makes provision in respect of race broadcasting and is prescribed by the regulations as a broadcasting arrangement for the purposes of this Division.

**race broadcasting** means the broadcast, by means of a broadcasting service (within the meaning of the *Broadcasting Services Act 1992* of the Commonwealth) or any other telecommunications medium, of:

- (a) the visual images or sound (or both) of any horse race promoted, conducted or controlled by a racing body, or
- (b) the call of any such horse race,

and includes the marketing and distribution of any such broadcast.

**racing body** means:

- (a) a race club, and
- (b) the Provincial Association of New South Wales, Racing NSW Country Limited or any other association or group of race clubs, and
- (c) such other body or group as may be prescribed by the regulations.

### **29E Racing NSW approval required for race broadcasting arrangements**

- (1) A racing body must not enter into a broadcasting arrangement unless Racing NSW has given its prior approval in writing to the proposed arrangement. Racing NSW may refuse to approve of a proposed broadcasting arrangement if of the opinion that the

arrangement is not in the best interests of the horse racing industry as a whole in New South Wales.

- (2) A broadcasting arrangement entered into in contravention of this section is void.
- (3) No compensation is payable by Racing NSW or the State in connection with the refusal by Racing NSW to approve of a proposed broadcasting arrangement.
- (4) This section does not apply to the entering into of a broadcasting arrangement before the commencement of this section but does apply to the extension after that commencement of the term of a broadcasting arrangement entered into before that commencement (as if the extension of the term of the arrangement constituted the entering into of a new broadcasting arrangement).
- (5) A racing body may authorise Racing NSW to negotiate and enter into broadcasting arrangements on behalf of the racing body. Except as provided by any such authorisation, this section does not authorise Racing NSW to exercise any function of a racing body with respect to the negotiation or entering into of broadcasting arrangements by the racing body.  
**Note.** This section has no effect on ownership of broadcasting rights.
- (6) Any conduct of Racing NSW authorised under this section is specifically authorised for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*.

**29F Procedure for approvals**

- (1) A proposed broadcasting arrangement must be submitted to Racing NSW for approval not less than 30 days before the broadcasting arrangement is proposed to be entered into, unless Racing NSW otherwise determines in a particular case.
- (2) A racing body must provide Racing NSW with such documents and information as Racing NSW directs in connection with a proposed broadcasting arrangement submitted for approval under this section.
- (3) Racing NSW is to consult with a racing body in relation to a proposed broadcasting arrangement that the racing body submits for approval under this Division and in the course of that consultation must give the racing body a reasonable opportunity to be heard and to make submissions on the proposal.

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- (4) If Racing NSW refuses to approve of a proposed broadcasting arrangement, Racing NSW must provide the racing body concerned with a statement in writing of the reasons for the refusal.
  - (5) The statement of reasons for the refusal must include the following:
    - (a) a statement of the reasons why the proposed broadcasting arrangement is not in the best interests of the horse racing industry as a whole in New South Wales,
    - (b) if the refusal will have the effect of lessening competition—a statement of the reasons why that lessening of competition is in the best interests of the horse racing industry as a whole in New South Wales.

### **29G Mediation of disputes**

- (1) If a person aggrieved by a decision of Racing NSW to refuse to approve of a proposed broadcasting arrangement disputes the decision, the person may request Racing NSW to refer the dispute for mediation.

**Note.** Mediation is a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.
- (2) Racing NSW must refer the dispute for mediation before a neutral and independent person within 14 days after the request is made and must participate in good faith in the mediation.
- (3) Racing NSW is not bound by any decision or finding of the mediator.
- (4) Mediation under this section is to be at the expense of Racing NSW.

## **Division 3 Totalizator distribution arrangements**

### **29H Definition of “Intra-Code agreement”**

In this Division:

***Intra-Code agreement*** means:

- (a) the agreement titled “Intra-Code Deed” dated 3 March 1998 between the NSW Thoroughbred Racing Board, AJC, Sydney Turf Club, Provincial Association of New South Wales and NSW County Racing Council, as in force from time to time, or

- (b) any other agreement to which Racing NSW is a party that is prescribed by the regulations and that provides for the distribution of money payable under commercial arrangements for facilitating the conduct of totalizator betting authorised by the *Totalizator Act 1997*.

**29I Review of Intra-Code agreement**

- (1) Racing NSW may from time to time undertake a review of the Intra-Code agreement for the purpose of ensuring that the agreement is in the best interests of the horse racing industry as a whole in New South Wales.
- (2) Following such a review, Racing NSW may invite the other parties to the Intra-Code agreement to submit a proposal (a *review proposal*) for such changes to the agreement as may be necessary or desirable for ensuring that the agreement remains in the best interests of the horse racing industry as a whole in New South Wales.
- (3) The first review of the Intra-Code agreement under this section is to be commenced within 6 months after the commencement of this section. An invitation to submit a review proposal cannot be made less than 3 years after any previous invitation for the submission of a review proposal has been made under this section.

**29J Amendment of Intra-Code agreement**

- (1) If the parties (including Racing NSW) to the Intra-Code agreement have not unanimously agreed to changes to the agreement in response to a review proposal within 6 months after the invitation to submit a review proposal is made, Racing NSW may make a determination of the changes to the agreement that Racing NSW considers to be necessary or desirable for ensuring that the agreement remains in the best interests of the horse racing industry as a whole in New South Wales.
- (2) Racing NSW may then notify its determination to the other parties to the Intra-Code agreement and direct that the changes to the agreement specified in the determination are to have effect. Those changes then have effect for all purposes as if the Intra-Code agreement had been amended as provided in the determination by agreement of the parties, but do not take effect until the beginning of the next financial year.
- (3) This section does not limit or otherwise affect the ability of the parties to the Intra-Code agreement to agree to make changes to the agreement.

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## Division 4 Appeal and review

### 29K Definition

In this Division:

**appeal body** means the Administrative Decisions Tribunal or the Racing Appeals Tribunal, as appropriate to an appeal or review provided for by this Division.

### 29L Appeal or review on procedural grounds

For the purposes of this Division, an appeal against, or a review of, a decision **on procedural grounds** is an appeal or review:

- (a) on the grounds that any procedure required to be followed by this Act in connection with the making of the decision was not properly followed, or
- (b) on the grounds of denial of procedural fairness in connection with the making of the decision.

### 29M Appeal or review by Racing Appeals Tribunal or ADT

- (1) A person aggrieved by a decision of Racing NSW to impose a sanction under section 29C (2) (a) or (b) may appeal against the decision to the Racing Appeals Tribunal under section 15 of the *Racing Appeals Tribunal Act 1983* on procedural grounds.
- (2) No appeal lies to the Racing Appeals Tribunal against a decision of Racing NSW to impose a sanction under section 29C (2) (c), despite section 15 of the *Racing Appeals Tribunal Act 1983*.
- (3) A person aggrieved by a decision of Racing NSW under Division 2 (Race broadcasting arrangements) or 3 (Totalizator distribution arrangements) may apply to the Administrative Decisions Tribunal for a review of the decision on procedural grounds.

**Note.** This section does not prevent the taking of administrative review proceedings in the Supreme Court.

### 29N Procedure on appeal or review

- (1) Despite any provision of the *Administrative Decisions Tribunal Act 1997* or the *Racing Appeals Tribunal Act 1983*, the jurisdiction of the appeal body on an appeal or review under this Division is limited to an appeal or review on procedural grounds.

- (2) On the appeal or review, the appeal body may set aside the decision concerned if satisfied that any of the grounds of appeal or review are made out.
- (3) The appeal body does not have jurisdiction on the appeal or review to substitute its own decision for that of Racing NSW.

**[29] Part 3**

Omit the Part. Insert instead:

### **Part 3 Racing Industry Consultation Group**

#### **30 Establishment of RICG**

There is established by this Act a committee called the Racing Industry Consultation Group. The committee may also be called RICG.

#### **31 Membership**

- (1) RICG is to consist of the following members:
  - (a) one person to represent the AJC, being the chief executive officer of the AJC,
  - (b) one person to represent the Sydney Turf Club, being the chief executive officer of the Sydney Turf Club,
  - (c) one person who is an elected official of and nominated by Unions NSW,
  - (d) one person to represent the Provincial Association of New South Wales, being the Chairperson of the Provincial Association of New South Wales,
  - (e) one person to represent the Country Racing Council Limited, being the chairperson of the Board of Directors of the Country Racing Council Limited,
  - (f) one person who is an elected official of and nominated by an eligible industry body to represent the interests of owners of thoroughbred racehorses,
  - (g) one person who is an elected official of and nominated by an eligible industry body to represent the interests of breeders of thoroughbred racehorses,

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- (h) one person who is an elected official of and nominated by an eligible industry body to represent the interests of licensed trainers,
  - (i) one person who is an elected official of and nominated by an eligible industry body to represent the interests of licensed jockeys and apprentice jockeys.
- (2) The Minister is to determine from time to time the body that is the eligible industry body for the purposes of subsection (1) (f), (g), (h) or (i). The Minister is to consult with Racing NSW on determinations made by the Minister under this subsection.
  - (3) A person may be appointed as an alternate of a member, to act as that member during the absence or illness of, or during a vacancy in the office of, the member.
  - (4) An alternate is to be appointed by the body that the member represents or (in the case of a member who is nominated by a body) appointed by the nominating body.
  - (5) An alternate, while acting as a member, is taken to be a member and has and may exercise the functions of the member for whom he or she is the alternate.
  - (6) If a body referred to in subsection (1) changes its name or ceases to exist, the Minister may, by order published in the Gazette, direct that a reference in this section to the body is to be read as a reference to the body under its changed name or to a specified body that appears to the Minister to be the body's successor.

### **32 Eligibility for membership**

- (1) A person is not eligible to be a member of RICG if the person:
  - (a) is a member of the Appointments Panel, or
  - (b) 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
  - (c) 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
  - (d) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankruptcy, or
  - (e) is a mentally incapacitated person.

- (2) A person is not eligible to be appointed as a member of RICG unless the person has been the subject of a probity check by Racing NSW.

**33 Membership is honorary**

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

**34 Functions of RICG**

- (1) RICG has the function of consulting with and making recommendations to Racing NSW on matters concerning horse racing in the State.
- (2) Recommendations made by RICG to Racing NSW are to be made in writing and tabled at the next meeting of Racing NSW or may be presented in person at that meeting by the Chairperson of RICG.
- (3) Racing NSW is to respond to RICG in writing in relation to any such recommendations within a reasonable time after they are received. If Racing NSW does not support a recommendation made by RICG the response by Racing NSW is to include its reasons for not supporting the recommendation.
- (4) The Chairperson of RICG is to provide a report on the work and activities of RICG for inclusion in the annual report of Racing NSW.

**35 Vacation of office**

- (1) The office of a member of RICG becomes vacant if the member:
- (a) dies, or
  - (b) resigns the office by instrument in writing addressed to Racing NSW and RICG, or
  - (c) is absent from 2 consecutive meetings of RICG of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by RICG or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by RICG for having been absent from those meetings, or
  - (d) becomes a person who is not eligible to be a member, or

- (e) is a member on the nomination of a body and that nomination is withdrawn by the body or the body ceases to exist, or
  - (f) is removed from office under subsection (2).
- (2) The Minister may, on the recommendation of RICG, remove a member of RICG from office for incapacity, incompetence or misbehaviour.

**36 Chairperson and Deputy Chairperson of RICG**

- (1) RICG is to elect a Chairperson from among its members. RICG may also elect a Deputy Chairperson from among its members. RICG may remove a person from office as Chairperson or Deputy Chairperson of RICG at any time.
- (2) A person ceases to hold office as Chairperson or Deputy Chairperson if he or she:
  - (a) resigns the office by instrument in writing addressed to Racing NSW and RICG, or
  - (b) is removed from that office by RICG, or
  - (c) ceases to hold office as a member of RICG.
- (3) To be elected or removed from office as Chairperson or Deputy Chairperson requires a simple majority of the members present and voting at a meeting of RICG at which a quorum is present.
- (4) The Chairperson or Deputy Chairperson does not cease to be a member of RICG merely because he or she ceases to be Chairperson or Deputy Chairperson.

**37 Member vacancies to be filled**

When the office of a member of RICG becomes vacant, a person is to be nominated to fill the vacancy in the same way as the person whose office has become vacant was nominated.

**38 Procedure**

- (1) RICG may regulate its proceedings as it considers appropriate, subject to this section.
- (2) The quorum for a meeting of RICG is a majority in number of the members for the time being.
- (3) RICG must meet at least 12 times in each year unless RICG otherwise determines.

- (4) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson is to preside at a meeting of RICG. If neither the Chairperson nor Deputy Chairperson is present at a meeting, the members present may elect one of their number to preside at the meeting. The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.
- (5) A decision supported by a majority of the votes cast at a meeting of RICG at which a quorum is present is the decision of RICG.

**39 Meetings with Racing NSW**

- (1) In addition to any other meetings that RICG may hold, RICG must hold a meeting not less than 12 times in each year with one or more members of Racing NSW at least one of whom is the Chairperson or the Chief Executive of Racing NSW.
- (2) The number of meetings required by this section can be changed by agreement between Racing NSW and RICG.
- (3) The minutes of a meeting under this section are to be circulated among both the members of RICG and the members of Racing NSW.

**40 Administrative support**

Racing NSW is to provide such reasonable administrative support as may be required to enable RICG to exercise its functions.

**41 Personal liability**

- (1) A matter or thing done or omitted to be done by RICG or a member of RICG or any person acting under the direction of RICG does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this Act, subject the member or a person so acting personally to any action, liability, claim or demand.
- (2) If this section prevents liability attaching to a person, the liability attaches instead to Racing NSW.

**[30] Section 53 Review of Act**

Omit section 53 (2). Insert instead:

- (2) A review under this section is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *Thoroughbred Racing Amendment Act 2008*.

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

Insert at the end of clause 3 (1):

*Thoroughbred Racing Amendment Act 2008*

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

Insert after Part 8 of Schedule 1:

**Part 9 Provisions consequent on enactment of  
Thoroughbred Racing Amendment Act  
2008**

**35 Definition**

In this Part:

*2008 amending Act* means the *Thoroughbred Racing 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 amending Act (referred to in this clause as *the new members of Racing NSW*) with effect from the commencement of that section:
  - (a) the Appointments Panel provided for by section 7 (as substituted by the 2008 amending Act) may be convened, and any function of the Appointments Panel may be exercised, before that commencement as if the whole of the 2008 amending Act had commenced on the date of assent to that Act, and
  - (b) the level of scrutiny for the probity check of persons to be nominated for appointment as new members of Racing NSW is to be as determined by the Minister in consultation with Racing NSW, and
  - (c) the Minister may, pursuant to a nomination made by the Appointments 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 convene the Appointments Panel for the purpose of

nominating persons for appointment as the new members of Racing NSW as provided by this clause.

- (3) Any period of office as a voting member of Racing NSW before the substitution of section 6 by the 2008 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 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 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 that 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.

**[33] Schedule 2**

Insert after Schedule 1:

**Schedule 2 Provisions relating to members and procedure of Appointments Panel**

(Section 7)

**1 Membership of Appointments Panel**

- (1) The Appointments Panel is to consist of the following members (who are to be appointed as members by the Minister):
  - (a) one person of the Minister's own choosing, who is to act as Probity Adviser to the Panel,
  - (b) one person who is an elected official of and nominated by the AJC,
  - (c) one person who is an elected official of and nominated by the Sydney Turf Club,
  - (d) one person who is an elected official of and nominated by Unions NSW,
  - (e) one person who is an elected official of and nominated by the Provincial Association of New South Wales,
  - (f) one person who is an elected official of and nominated by Country Racing Council Limited,
  - (g) one person who is an elected official of and nominated by an eligible industry body to represent the interests of owners of thoroughbred racehorses,
  - (h) one person who is an elected official of and nominated by an eligible industry body to represent the interests of breeders of thoroughbred racehorses,
  - (i) one person who is an elected official of and nominated by an eligible industry body to represent the interests of licensed trainers,
  - (j) one person who is an elected official of and nominated by an eligible industry body to represent the interests of licensed jockeys and apprentice jockeys.
- (2) The member appointed to act as Probity Adviser to the Appointments Panel does not have a vote at meetings of the Appointments Panel.

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- (3) The Minister is to determine from time to time the body that is the eligible industry body for the purposes of subclause (1) (g), (h), (i) or (j). The Minister is to consult with Racing NSW on determinations made by the Minister under this subclause.
  - (4) The Minister may give directions as to the manner in which and the time within which nominations are to be made for the purposes of the appointment of members of an Appointments Panel.
  - (5) If a body fails to make a nomination for the appointment of a person as a member of an Appointments Panel in the manner and within the time directed by the Minister, the appointment is not to be made and the Appointments Panel is nevertheless properly constituted.
  - (6) If a body required to make a nomination changes its name or ceases to exist, the Minister may permit the functions of the body under this clause to be exercised by the body under its changed name or by a body that appears to the Minister to be the body's successor.
  - (7) In this clause:  
*electd official* of a body means a person who holds an office in the body, or in the governing body of the body, to which the person has been elected.

## **2 Eligibility for membership of Panel**

- (1) A person is not eligible to be a member of the Appointments Panel if the person:
  - (a) is a member of RICG, or
  - (b) 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
  - (c) 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
  - (d) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankruptcy, or
  - (e) is a mentally incapacitated person.

- (2) A person is not eligible to be appointed as a member of the Appointments Panel unless the person has been the subject of a probity check by Racing NSW.

**3 Period for which Appointments Panel is convened**

The Appointments Panel is to be convened for such period as may be necessary for the Panel to make the nominations for which it was convened.

**4 Conditions of office**

- (1) The conditions on which a member of the Appointments Panel holds office are to be as determined by the Minister.
- (2) The members of the Appointments Panel other than the Probity Adviser are honorary members and no remuneration is payable to them in respect of the duties they perform as members. The members are however entitled to be reimbursed by Racing NSW for reasonable expenses (such as for travel or accommodation) that they may incur in attending meetings of the Appointments Panel.
- (3) The Probity Adviser is entitled to be paid remuneration as determined by the Minister.

**5 Chairperson of Panel**

- (1) The Appointments Panel is to elect a Chairperson from among its members.
- (2) The Appointments Panel may remove a person from office as Chairperson of the Panel at any time.
- (3) A person ceases to hold office as Chairperson if the person:
- (a) resigns the office by instrument in writing addressed to the Minister and the Appointments Panel, or
  - (b) is removed from that office by the Appointments Panel, or
  - (c) ceases to hold office as a member of the Appointments Panel.
- (4) To be elected or removed from office as Chairperson requires a simple majority of the members present and voting at a meeting of the Appointments Panel at which a quorum is present.
- (5) The Chairperson does not cease to be a member of the Appointments Panel merely because he or she ceases to be Chairperson.

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**6 Casual vacancies**

- (1) A member of the Appointments Panel vacates office if the member:
- (a) dies, or
  - (b) resigns the office by instrument in writing addressed to the Minister and the Panel, or
  - (c) is absent from 2 consecutive meetings of the Panel of which reasonable notice has been given to the member personally or by post, except on leave granted by the Panel or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Panel for having been absent from those meetings, or
  - (d) 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
  - (e) becomes a mentally incapacitated person, or
  - (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence that if committed in New South Wales would be an offence so punishable, or
  - (g) becomes a person who is not eligible to be a member, or
  - (h) is a member on the nomination of a body and that nomination is withdrawn by the body or the body ceases to exist, or
  - (i) is removed from office by the Minister under subclause (2).
- (2) The Minister may, on the recommendation of the Appointments Panel, remove a member of the Panel from office for incapacity, incompetence or misbehaviour.

**7 Filling of vacancy in office of member**

When the office of a member of the Appointments Panel becomes vacant, a person is to be appointed to fill the vacancy in the same way (and on the same nomination) as the person whose office has become vacant was appointed.

**8 Procedure at meetings**

- (1) The Appointments Panel may regulate its proceedings as it considers appropriate, subject to this clause.
- (2) The quorum for a meeting of the Panel is a majority of its members.
- (3) The Chairperson is to preside at a meeting of the Panel.
- (4) If the Chairperson is not present at a meeting, the members present may elect one of their number to preside at the meeting.
- (5) The person presiding at a meeting has a deliberative vote only.
- (6) A decision supported by a majority of the votes cast at a meeting of the Appointments Panel at which a quorum is present is the decision of the Panel, subject to subclause (7).
- (7) A decision of the Appointments Panel to nominate a person for appointment as a member of Racing NSW requires a decision supported by a two-thirds majority of the votes cast at a meeting of the Appointments Panel at which a quorum is present.

**9 Administrative support**

Racing NSW is to provide administrative support to the Appointments Panel including by meeting the reasonable costs of engaging a recruitment consultant to assist the Panel in the exercise of its functions.