

Passed by both Houses



New South Wales

Thoroughbred Racing Legislation Amendment Bill 2004

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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, , 2004*



New South Wales

Thoroughbred Racing Legislation Amendment Bill 2004

Act No , 2004

An Act to amend the *Thoroughbred Racing Board Act 1996* and other racing legislation to change the name of the NSW Thoroughbred Racing Board and to make further provision with respect to licensing and registration, appeals and the Racing Industry Participants Advisory Committee; to make consequential amendments to other Acts; and for other purposes.

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

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Thoroughbred Racing Legislation Amendment Act 2004*.

2 Commencement

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

3 Amendment of Thoroughbred Racing Board Act 1996 No 37

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

4 Amendment of Racing Appeals Tribunal legislation

The Act and statutory instrument specified in Schedule 2 are amended as set out in that Schedule.

5 Consequential amendments

The Acts specified in Schedule 3 are amended as set out in that Schedule.

Schedule 1 Amendment of Thoroughbred Racing Board Act 1996

(Section 3)

[1] Long title

Omit “the NSW Thoroughbred Racing Board”.

Insert instead “Racing New South Wales”.

[2] Section 1 Name of Act

Omit “*Board*”.

[3] The whole Act (except section 6 (1) (d) and Schedule 1 and except as otherwise amended)

Omit “the Board”, “The Board” and “NSW Thoroughbred Racing Board” wherever occurring.

Insert instead “Racing NSW”.

[4] Section 3 Definitions

Omit the definition of *Board* from section 3 (1).

[5] Section 3 (1)

Insert in alphabetical order:

Racing NSW means Racing New South Wales.

[6] Section 4

Omit the section. Insert instead:

4 Establishment of Racing NSW

- (1) There is established by this Act a body corporate with the corporate name of Racing New South Wales.
- (2) Racing New South Wales may, in the exercise of its functions, use the name “Racing NSW”.

[7] Section 14AA

Insert after section 14:

14AA Registration and licensing functions of Racing NSW—general

- (1) Racing NSW is to exercise its registration and licensing functions so as to ensure that any individuals registered or licensed by Racing NSW are persons who, in the opinion of Racing NSW, are fit and proper persons to be so registered or licensed (having regard in particular to the need to protect the public interest as it relates to the horse racing industry).
- (2) Without limiting subsection (1), a person is not to be so registered or licensed if the person has a conviction and Racing NSW is of the opinion that the circumstances of the offence concerned are such as to render the person unfit to be so registered or licensed.
- (3) This section does not limit any provisions of the Rules of Racing relating to the exercise of the registration and licensing functions of Racing NSW.
- (4) In this section:

conviction has the meaning given by the *Criminal Records Act 1991* but does not include a conviction that is spent under that Act.

registration and licensing functions means the functions referred to in section 14 (2) (b).

[8] Section 23 Integrity Assurance Committee

Omit “the Board’s functions” from section 23 (1).

Insert instead “the functions of Racing NSW”.

[9] Section 31 Membership

Omit section 31 (1) (c). Insert instead:

- (c) 1 member nominated by the other members of RIPAC to represent consumers of racing and betting services, being a person selected from a panel of 3 persons nominated by the Public Interest Advocacy Centre.

[10] Section 31 (3A)

Insert after section 31 (3):

- (3A) The member referred to in subsection (1) (c) is to be nominated by the other members of RIPAC at a meeting of RIPAC at which a quorum is present.

[11] Section 31 (5)

Omit the note at the end of section 31. Insert as section 31 (5):

- (5) The nomination by the Public Interest Advocacy Centre referred to in subsection (1) (c) is to be made by notice in writing to RIPAC.

[12] Section 35 Functions of RIPAC

Insert at the end of the section:

- (2) Recommendations made by RIPAC to Racing NSW are to be made in writing and tabled at the next meeting of Racing NSW.
- (3) Racing NSW is to respond to RIPAC in writing in relation to any such recommendations within a reasonable time after they are received.

[13] Section 40 Procedure

Insert after section 40 (3):

- (3A) The minutes of any joint meeting are to be circulated among both the members of RIPAC and the members of Racing NSW.

[14] Section 42 Right of appeal

Insert after section 42 (1):

- (1A) Racing NSW has a right of appeal to the Appeal Panel against the following decisions of a racing authority:
- (a) a decision referred to in subsection (1) (a)–(d),
- (b) a decision to dismiss a charge against a person for contravention of the Rules of Racing.

[15] Section 43 Procedure on an appeal

Omit section 43 (1). Insert instead:

- (1) An appeal to the Appeal Panel is to be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence on which the decision appealed against was made, may be given on the appeal.

[16] Section 44

Omit the section. Insert instead:

44 Determination of appeal

- (1) The Appeal Panel may do any of the following in respect of an appeal:
 - (a) dismiss the appeal,
 - (b) confirm the decision appealed against or vary the decision by substituting any decision that could have been made by the racing authority,
 - (c) refer any matter relating to the decision appealed against to the racing authority for rehearing (in accordance with directions given by the Appeal Panel),
 - (d) make such other order in relation to the disposal of the appeal as the Appeal Panel thinks fit.
- (2) The decision of the Appeal Panel is to be given effect to.

[17] Schedule 1 Savings and transitional provisions

Insert at the end of clause 3 (1):

Thoroughbred Racing Legislation Amendment Act 2004

[18] **Schedule 1, Part 8**

Insert after Part 7:

**Part 8 Provisions consequent on enactment of
Thoroughbred Racing Legislation
Amendment Act 2004**

29 Definition

In this Part:

amending Act means the *Thoroughbred Racing Legislation Amendment Act 2004*.

30 Change of Act name

In any Act (other than this Act) or instrument, a reference to the *Thoroughbred Racing Board Act 1996* is to be read as a reference to the *Thoroughbred Racing Act 1996*.

31 Change of name of NSW Thoroughbred Racing Board

- (1) The substitution of section 4 by the amending Act effects the alteration of the name of the NSW Thoroughbred Racing Board in terms of section 53 of the *Interpretation Act 1987* and accordingly that section applies.
- (2) A reference in Parts 1 to 7 of this Schedule to the Board is to be read as a reference to Racing NSW, except in relation to matters that occurred before that alteration took place.

Note. Section 53 of the *Interpretation Act 1987* provides that if an Act alters the name of a body or office:

- (a) the body or office continues in existence under its new name so that its identity is not affected, and
- (b) a reference in any Act or instrument, or in any other document, to the body or office under its former name is to be read as a reference to the body or office under its new name (except in relation to matters that occurred before the alteration took place).

32 Registration and licensing functions of Racing NSW

In section 14AA, as inserted by the amending Act, a reference to a conviction includes a reference to:

- (a) a conviction that occurred before the commencement of that section, and

- (b) a conviction for an offence committed before the commencement of that section.

33 Membership of RIPAC

The amendments to section 31 made by the amending Act do not affect the office of a member of RIPAC holding office under section 31 (1) (c) of the Act immediately before its substitution by the amending Act and do not take effect with respect to RIPAC until that member vacates office under this Act.

34 Appeals

- (1) Section 42 (1A), as inserted by the amending Act, does not apply in respect of decisions referred to in that subsection that were made before the commencement of that subsection.
- (2) This Act continues to apply in respect of an appeal made to the Appeal Panel before the commencement of an amendment made by the amending Act as if the amendment had not been enacted.

Schedule 2 Amendment of Racing Appeals Tribunal legislation

(Section 4)

2.1 Amendment of Racing Appeals Tribunal Act 1983 No 199

[1] Long title and section 4 (1), definition of "Appeal Panel"

Omit "*Board*" wherever occurring.

[2] Section 4 (1)

Omit the definition of *Board*.

[3] Section 4 (1)

Insert in alphabetical order:

racine association has the meaning given by the *Thoroughbred Racing Act 1996*.

Racing NSW means Racing New South Wales.

[4] Section 7 Appointment of acting Tribunal

Omit section 7 (1) (b). Insert instead:

- (b) another qualified person to act as the Tribunal in the circumstances described in paragraph (a), but to act only during the illness or absence of the person appointed to act as the Tribunal under paragraph (a).

[5] Section 15

Omit the section. Insert instead:

15 Appeals to Tribunal

- (1) A person who is aggrieved by any of the following decisions may, in accordance with the regulations, appeal against the decision to the Tribunal:
 - (a) a decision of the Appeal Panel on an appeal under the *Thoroughbred Racing Act 1996*,
 - (b) a decision of a racing association on an appeal heard by virtue of a delegation of Racing NSW under the *Thoroughbred Racing Act 1996*,

- (c) a decision in respect of which an appeal is made to the Appeal Panel or a racing association under the *Thoroughbred Racing Act 1996* but that the Appeal Panel or racing association neglects or refuses to hear and determine,
 - (d) a decision of Racing NSW.
- (2) Racing NSW may, in accordance with the regulations, appeal to the Tribunal against the following decisions:
- (a) a decision of the Appeal Panel on an appeal under the *Thoroughbred Racing Act 1996*,
 - (b) a decision of a racing association on an appeal heard by virtue of a delegation by Racing NSW under the *Thoroughbred Racing Act 1996*,
 - (c) a decision in respect of which an appeal is made to the Appeal Panel or a racing association under the *Thoroughbred Racing Act 1996* but that the Appeal Panel or racing association neglects or refuses to hear and determine.

[6] Sections 16 and 16A

Omit section 16. Insert instead:

16 Procedure on appeal

- (1) An appeal to the Tribunal is to be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence on which the decision appealed against was made, may be given on the appeal.
- (2) Proceedings on an appeal are to be held as in open court before the Tribunal.

16A Persons required to attend hearings or produce documents

- (1) The Tribunal may, by written notice served on any person, require the person to attend at a time, date and place specified in the notice for the purpose of:
 - (a) giving evidence relating to an appeal being heard or to be heard by the Tribunal, or
 - (b) producing any document, relating to such an appeal, specified in the notice that is in the person's possession or under the person's control.

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- (2) A person who is served with a notice under this section must not, without reasonable excuse, fail or refuse to comply with the requirements of the notice.

Maximum penalty: 5 penalty units.

- (3) A person who is served with a notice under this section is to be given at the time of service an amount sufficient to cover the travelling and any other expenses likely to be incurred by the person in attending at the time, date and place specified in the notice.

[7] Section 17

Omit the section. Insert instead:

17 Determination of appeal

- (1) The Tribunal may do any of the following in respect of an appeal:
- (a) dismiss the appeal,
 - (b) confirm the decision appealed against or vary the decision by substituting any decision that could have been made by the Appeal Panel, the racing association or Racing NSW (as the case requires),
 - (c) refer any matter relating to the decision appealed against to the Appeal Panel, the racing association or Racing NSW for rehearing (in accordance with directions given by the Tribunal),
 - (d) make such other order in relation to the disposal of the appeal as the Tribunal thinks fit.
- (2) The decision of the Tribunal is final and is taken (except for the purposes of an appeal against the decision under this Act or the *Thoroughbred Racing Act 1996*) to be the decision of the Appeal Panel, the racing association or Racing NSW (as the case requires).

[8] Sections 19 and 20

Omit “the Board” and “The Board” wherever occurring.

Insert instead “Racing NSW”.

[9] Section 21

Insert after section 20:

21 Service of instruments

Any instrument to be served on any person under this Act or the regulations may be served:

- (a) personally, or
- (b) by leaving it, at the place of residence or business of the person last known to the person serving the instrument, with some other person apparently over the age of 16 years, or
- (c) by post addressed to the person at the place of residence or business of the person last known to the person serving the instrument.

[10] Schedule 1 Savings and transitional provisions

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Thoroughbred Racing Board Amendment Act 1998

Thoroughbred Racing Legislation Amendment Act 2004

[11] Schedule 1, clause 1 (2)

Omit “to that Act”. Insert instead “to the Act concerned”.

[12] Schedule 1, clause 3

Insert after clause 2:

3 Amendments made by Thoroughbred Racing Legislation Amendment Act 2004

- (1) Section 15, as in force immediately before its substitution by the *Thoroughbred Racing Legislation Amendment Act 2004*, continues to apply in respect of decisions referred to in that section that were made before that substitution.

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- (2) The provisions of Part 3 of this Act, and the regulations made under Part 3, continue to apply in respect of an appeal made to the Tribunal before the commencement of an amendment made to those provisions by the *Thoroughbred Racing Legislation Amendment Act 2004* as if the amendment had not been enacted.
- (3) The amendments made to clause 1 of this Schedule by the *Thoroughbred Racing Legislation Amendment Act 2004* do not affect the operation of any regulations made under that clause before the commencement of those amendments.

2.2 Amendment of Racing Appeals Tribunal Regulation 1999

[1] Clause 6 Decisions from which an appeal lies to Tribunal

Omit “section 15 (a) or (b)” from clause 6 (1).

Insert instead “section 15 (1) (a), (b) or (c)”.

[2] Clause 6 (2)

Omit “section 15 (c)”. Insert instead “section 15 (1) (d)”.

[3] Clause 7 Procedure for initiating and hearing appeals

Omit “section 15 (a) or (c)” from clause 7 (1) (a).

Insert instead “section 15 (1) (a), (b) or (d)”.

[4] Clause 7 (1) (b)

Omit “section 15 (b)”. Insert instead “section 15 (1) (c)”.

[5] Clause 7 (1) (b)

Insert “or racing association” after “Appeal Panel”.

[6] Clause 12 Evidence on appeal

Omit clause 12 (1).

[7] Clause 15 Determination of appeal

Omit the clause.

[8] Clause 17 Service of instruments

Omit the clause.

[9] Clause 19 Persons required to attend hearings or produce documents

Omit the clause.

Schedule 3 Consequential amendments

(Section 5)

3.1 Defamation Act 1974 No 18

[1] Section 17DB Matters arising under Thoroughbred Racing Act 1996

Omit “the NSW Thoroughbred Racing Board” from section 17DB (a).

Insert instead “Racing New South Wales”.

[2] Section 17DB (b)

Omit “the Board”. Insert instead “Racing New South Wales”.

[3] Schedule 2 Proceedings of public concern and official and public documents and records

Omit “*Board*” from clause 2 (8).

[4] Schedule 2, clause 2 (13A)

Omit “the NSW Thoroughbred Racing Board under the *Thoroughbred Racing Board Act 1996*”.

Insert instead “Racing New South Wales under the *Thoroughbred Racing Act 1996*”.

3.2 Liquor Act 1982 No 147

[1] Section 4 Definitions

Omit “the NSW Thoroughbred Racing Board” from the definition of *racine club* in section 4 (1).

Insert instead “Racing New South Wales”.

[2] Section 19 Governor’s licences

Omit “the NSW Thoroughbred Racing Board” from section 19 (1) (d).

Insert instead “Racing New South Wales”.

3.3 Lotteries and Art Unions Act 1901 No 34

Section 4D Sweepstakes in relation to Melbourne Cup and other events

Omit “the NSW Thoroughbred Racing Board” from paragraph (e) of the definition of *prescribed organisation* in section 4D (1).

Insert instead “Racing New South Wales”.

3.4 Racing Administration Act 1998 No 114

[1] Section 4 Definitions

Omit “the NSW Thoroughbred Racing Board” from paragraph (a) of the definition of *controlling body*.

Insert instead “Racing New South Wales”.

[2] Section 26C Bookmakers Revision Committee

Omit “the NSW Thoroughbred Racing Board” from section 26C (1) (b).

Insert instead “Racing New South Wales”.

3.5 Registered Clubs Act 1976 No 31

Section 30 Rules of registered clubs

Omit “the NSW Thoroughbred Racing Board” from section 30 (5A) (a).

Insert instead “Racing New South Wales”.

3.6 Sydney Turf Club Act 1943 No 22

[1] Section 7 Objects and functions of Club

Omit “the NSW Thoroughbred Racing Board” from section 7 (2).

Insert instead “Racing New South Wales”.

[2] Section 25 Exclusion of undesirable persons

Omit “the NSW Thoroughbred Racing Board” wherever occurring in section 25 (1).

Insert instead “Racing New South Wales”.

[3] First Schedule Regulations for the Sydney Turf Club

Omit “the NSW Thoroughbred Racing Board” from the definition of *Rules of Racing* in clause 1 (a).

Insert instead “Racing New South Wales”.

[4] First Schedule, clauses 16 (a), 42 (1) and 48 (1) (i)

Omit “the NSW Thoroughbred Racing Board” wherever occurring.

Insert instead “Racing New South Wales”.

3.7 Totalizator Act 1997 No 45

Section 6A Controlling bodies

Omit “the NSW Thoroughbred Racing Board” wherever occurring in section 6A (1) and (2) (a).

Insert instead “Racing New South Wales”.