

Harness Racing New South Wales Act 1977 No 57

[1977-57]



New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Previously named**
Harness Racing Authority Act 1977
Trotting Authority Act 1977
- **Does not include amendments by**
[Racing Legislation Amendment \(Bookmakers\) Act 2002 No 15](#) (not commenced — to commence on 8.7.2002)
- **Note**
The Act is to be repealed on the commencement of sec 63 (1) of the [Harness Racing Act 2002 No 39](#).

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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Harness Racing New South Wales Act 1977 No 57



New South Wales

An Act to constitute Harness Racing New South Wales; to provide for the control and regulation of harness racing; and to confer and impose on Harness Racing New South Wales certain responsibilities, powers, authorities, duties and functions with respect to harness racing.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Harness Racing New South Wales Act 1977*.

2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3 (Repealed)

4 Definitions

In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

assessor means a person appointed as an assessor of the Tribunal under section 17A (4).

Assistance Fund means the Harness Racing Assistance Fund established under section 13A.

Benevolent Fund means the Harness Racing Benevolent Fund established under section 13B.

Board means the Board of HRNSW as established by section 6.

Chairperson means the Chairperson of HRNSW appointed under section 7D.

chief executive officer means the chief executive officer of HRNSW employed by HRNSW under section 7F.

Deputy Chairperson means the Deputy Chairperson of HRNSW appointed under section 7D.

director means a director of the Board, and includes a director in his or her capacity as a member of the Regulatory Committee.

exercise a function includes perform a duty.

functions includes responsibilities, powers, authorities and duties.

harness racing means pacing or trotting.

harness racing association means an association of harness racing clubs.

harness racing club includes any body or other association of persons, whether incorporated or unincorporated and whether registered or not, promoting, conducting or controlling, or formed for promoting, conducting or controlling, a harness racing meeting or harness racing meetings.

HRNSW means Harness Racing New South Wales constituted by this Act.

prescribed means prescribed by the regulations.

regulation means a regulation made under this Act.

Regulatory Committee means the Regulatory Committee of HRNSW as established by section 7B.

regulatory functions—see section 7A.

rule means a rule made under this Act.

Tribunal means the Harness Racing Appeals Tribunal constituted by this Act.

Part 2 Harness Racing New South Wales

Division 1 Constitution of HRNSW

5 Constitution of HRNSW

- (1) There is constituted by this Act a body corporate with the corporate name of Harness Racing New South Wales.
- (2) HRNSW has the functions conferred or imposed on it by or under this or any other Act or law.
- (3) HRNSW is, for the purposes of any Act, a statutory body representing the Crown.

Division 2 Board of HRNSW

6 Constitution of Board

- (1) HRNSW is to have a Board consisting of 7 directors appointed by the Governor.
- (2) Of the directors:
 - (a) one is to be nominated by New South Wales Harness Racing Club Limited, and
 - (b) two are to be nominated by harness racing clubs (other than the club referred to in paragraph (a)), with at least one of those nominees being nominated as a representative of TAB clubs, and
 - (c) one is to be nominated by participants in the harness racing industry (being owners, trainers, bookmakers or other persons involved with harness racing), and
 - (d) three are to be nominated by the Minister.
- (3) The Chairperson of HRNSW is to be the Chairperson of the Board and the Deputy Chairperson of HRNSW is to be the Deputy Chairperson of the Board.
- (4) The Minister is to determine, by order published in the Gazette, the manner in which, and the criteria on which, the persons referred to in subsection (2) (b) and (c) are to be nominated.
- (5) For the purposes of subsection (2) (b), a **TAB club** is a harness racing club at a majority of whose race meetings TAB Limited conducts an off-course totalizator (within the meaning of the [Totalizator Act 1997](#)).

7 Role of Board

- (1) The Board is responsible for exercising the functions of HRNSW other than its regulatory functions.
- (2) Any act, matter or thing done in the name of, or on behalf of, HRNSW by, or with the authority of, the Board is taken to have been done by HRNSW.
- (3) The Board is not subject to the control or direction of the Minister.

Division 3 Regulatory Committee of HRNSW

7A Meaning of “regulatory functions”

- (1) For the purposes of this Act, the **regulatory functions** of HRNSW are the following functions of HRNSW:
 - (a) the functions relating to the control and regulation of harness racing as specified in section 9 (including the functions of initiating or conducting inquiries in relation

to the control and regulation of harness racing, and any disciplinary or decision-making functions with respect to such inquiries),

- (b) the function under section 10B (to the extent that the function is exercised for the purpose of protection of the public interest),
- (c) the functions under sections 10C, 10D and 10G (to the extent that the functions are exercised for the purpose of the regulatory functions of HRNSW),
- (d) the function of making rules under this Act,
- (e) the functions of hearing and deciding appeals to HRNSW and of holding special inquiries under section 19A,
- (f) the function under section 21 (to the extent that the function is exercised to delegate regulatory functions),
- (g) such functions as the Board may allocate to the Regulatory Committee,
- (h) such functions as are determined or designated to be regulatory functions in accordance with subsection (2) or the regulations.

(2) If a dispute arises as to whether a function is a regulatory function, the Minister may resolve the dispute. The Minister's determination is final and conclusive of the matter.

7B Establishment of Regulatory Committee

- (1) There is established a committee of HRNSW known as the Regulatory Committee.
- (2) The Regulatory Committee is to consist of the 3 directors appointed on the nomination of the Minister.
- (3) The Chairperson of HRNSW is to be the Chairperson of the Committee and the Deputy Chairperson of HRNSW is to be the Deputy Chairperson of the Committee.

7C Role of Regulatory Committee

- (1) The Regulatory Committee is responsible for exercising the regulatory functions of HRNSW.
- (2) Any act, matter or thing done in the name of, or on behalf of, HRNSW by, or with the authority of, the Regulatory Committee is taken to have been done by HRNSW.
- (3) The Regulatory Committee is subject to the control and direction of the Minister except in relation to the following matters:
 - (a) the contents of a report or recommendation made by it to the Minister,
 - (b) the decision on any appeal or other disciplinary proceedings.

- (4) Subsection (1) does not limit the functions of stewards appointed by HRNSW under the rules.

Division 4 Officers and staff of HRNSW

7D Chairperson and Deputy Chairperson

- (1) One of the directors appointed on the nomination of the Minister is to be appointed as the Chairperson of HRNSW by the instrument appointing the person as director or by a subsequent instrument executed by the Governor.
- (2) One of the directors appointed on the nomination of the Minister is to be appointed as the Deputy Chairperson of HRNSW by the instrument appointing the person as director or by a subsequent instrument executed by the Governor.

7E Provisions relating to directors and procedure of Board and Regulatory Committee

- (1) Schedule 1 has effect with respect to the directors.
- (2) Schedule 2 has effect with respect to the procedure of the Board and the Regulatory Committee.

7F Chief executive officer of HRNSW

- (1) HRNSW may, in consultation with the Minister, employ a chief executive officer of HRNSW.
- (2) The chief executive officer is responsible for the day-to-day management of HRNSW subject to, and in accordance with, the policies and other decisions of:
 - (a) the Regulatory Committee, with respect to the day-to-day management of HRNSW concerning its regulatory functions, and
 - (b) the Board, with respect to the day-to-day management of HRNSW concerning its other functions.

7G Staff of HRNSW

- (1) HRNSW may employ such other staff as it requires to exercise its functions.
- (2) HRNSW may fix the salary, wages and other conditions of its staff (including the chief executive officer) in so far as they are not fixed by or under any other Act or law.
- (3) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the staff (including the chief executive officer) of HRNSW.
- (4) HRNSW may engage consultants for the purposes of getting expert advice.
- (5) Schedule 3 has effect with respect to officers and employees of HRNSW.

Part 3 Functions of Harness Racing New South Wales

8 General

- (1) HRNSW has, and may exercise, the functions conferred or imposed on it by or under this or any other Act.
- (2) Nothing in this Act confers on HRNSW power to conduct harness racing meetings or harness races on its own behalf.

9 Control and regulation of harness racing

- (1) HRNSW is responsible for the control and regulation of harness racing.
- (2) HRNSW may, in accordance with the rules, do the following:
 - (a) register or refuse to register any owner, trainer or driver of harness racing horses, or any bookmaker or bookmaker's clerk associated with the harness racing industry, or any other person associated with the industry,
 - (b) cancel the registration of, or supervise the actions of, any harness racing club or harness racing association, or any owner, trainer or driver of harness racing horses, or any bookmaker or bookmaker's clerk associated with the harness racing industry, or any other person associated with the industry,
 - (c) register and identify horses in association with Australian Harness Racing Council Incorporated,
 - (d) disqualify permanently or temporarily any owner, trainer or driver of harness racing horses, or any bookmaker or bookmaker's clerk, or any other person, from participating in or being associated with the harness racing industry,
 - (e) disqualify either permanently or temporarily any horse from participating in harness racing meetings,
 - (f) exclude from participating in harness racing any horse not registered under the rules,
 - (g) prohibit any person registered under the rules from taking part in any harness racing meeting held by any club or association not registered under the rules,
 - (h) prohibit a person from attending or taking part in a harness racing meeting,
 - (i) impose a fine (not exceeding 200 penalty units) for breaches of the rules, on any owner, trainer or driver of harness racing horses, or any bookmaker or bookmaker's clerk associated with the harness racing industry, or any other person associated with the industry,
 - (j) suspend for such term as HRNSW thinks fit any right or privilege conferred by this

Act or the rules on any owner, trainer or driver of harness racing horses, or on any bookmaker or bookmaker's clerk associated with the harness racing industry, or any other person associated with the industry.

10 Registration of clubs and associations and allocation of meeting and racing dates

- (1) HRNSW may, in accordance with the rules:
 - (a) register or refuse to register any harness racing club or harness racing association, and
 - (b) allocate to harness racing clubs and harness racing associations the dates on which they may conduct harness racing meetings and harness races.
- (2) HRNSW may not refuse to register a club or association under this section for the purpose of taking disciplinary action.

10A HRNSW may make rules

- (1) HRNSW may make rules, not inconsistent with this Act, for or with respect to:
 - (a) the control and regulation of harness racing, including (but not limited to) the following matters:
 - (i) any of the matters referred to in section 9,
 - (ii) the appointment of stewards of HRNSW and the functions of those stewards,
 - (iii) conferring on stewards so appointed the same powers as are exercisable by HRNSW under section 9,
 - (iv) the extent to which, and the circumstances in which, stewards so appointed may exercise or perform their functions to the exclusion of stewards of harness racing clubs or harness racing associations, and
 - (b) the allocation to harness racing clubs and harness racing associations of dates on which they may conduct harness racing meetings and harness races, and
 - (c) the registration of harness racing clubs or associations, and
 - (d) the fees and charges referred to in section 16.
- (2) A rule may not be made for or with respect to any of the matters for or with respect to which regulations may be made by virtue of this Act (section 27 (2) excepted).

10B HRNSW may make and implement policies

HRNSW may initiate, develop and implement such policies as it considers are conducive to the development and welfare of the harness racing industry and protection of the public interest.

10C HRNSW may affiliate with other organisations

HRNSW may affiliate with such organisations, whether in or out of New South Wales, as it considers appropriate.

10D HRNSW may undertake research and investigations

HRNSW may undertake research, and carry out investigations, into any aspect of the harness racing industry and recommend to the Minister any action that ought to be taken as a result of that research and investigation.

10E Dealings with property on trust or condition

HRNSW may accept, hold and administer property on trust or subject to a condition that the property be applied for or towards any one or more of the following purposes:

- (a) the promotion or advancement of harness racing,
- (b) the development and welfare of the harness racing industry,
- (c) the assistance of persons who are or have, at any time, been associated with the harness racing industry,
- (d) the assistance of persons who are or have, at any time, been the dependants of persons associated with the harness racing industry.

10F Restriction on dealings with land

The powers of HRNSW to purchase, exchange, take on lease, hold, dispose of, and otherwise deal with land must not be exercised except with the consent of the Minister and subject to such conditions as the Minister may, in giving his or her consent, impose.

10G Reports and recommendations by HRNSW

HRNSW must, if so directed by the Minister, or may, of its own initiative, furnish to the Minister a report and recommendation with respect to any matter relating to harness racing or the administration of harness racing.

Part 4 Finance

11-13 (Repealed)

13A Harness Racing Assistance Fund

- (1) There shall be established by HRNSW, in a bank building society or credit union in New South Wales, a fund to be called the "Harness Racing Assistance Fund".
- (2) There shall be paid into the Assistance Fund:
 - (a) (Repealed)

- (b) any money received by HRNSW for payment into the Assistance Fund,
 - (c) any money acquired by HRNSW pursuant to section 13E, not being money so acquired on trust or subject to a condition that it be applied in or towards the assistance of a person to whom section 13B (4) (a) applies,
 - (d) any money received by HRNSW:
 - (i) in respect of any loan advanced from money within the Assistance Fund,
 - (ii) in payment of interest on any such loan, and
 - (iii) in payment of any charges, costs and expenses incurred in respect of any such loan, and
 - (e) the income derived from the investment of any money within the Assistance Fund.
- (3) Where any money authorised to be paid into the Assistance Fund pursuant to subsection (2) (c) is subject to a trust or condition to which HRNSW has agreed, the money (and any interest or income derived from the investment of that money) shall be carried to a separate account in the Assistance Fund established for the purpose of the trust or of fulfilling the condition.
- (4) There may be paid out of the Assistance Fund:
- (a) in respect of money that has not been carried to a separate account in the Assistance Fund, grants or loans (whether with or without interest) to any person for or towards any one or more of the purposes referred to in section 10E, and
 - (b) in respect of money which has been carried to a separate account in the Assistance Fund, that money (and any interest or income derived from the investment of that money) subject to the trust or condition on which that money is held, and
 - (c) (Repealed)

13B Harness Racing Benevolent Fund

- (1) There shall be established by HRNSW, in a bank building society or credit union in New South Wales, a fund to be called the "Harness Racing Benevolent Fund".
- (2) There shall be paid into the Benevolent Fund:
- (a) (Repealed)
 - (b) any money received by HRNSW for payment into the Benevolent Fund,
 - (c) any money acquired by HRNSW pursuant to section 13E on trust or subject to a condition that it be applied in or towards the assistance of a person to whom

subsection (4) (a) applies,

(d) any money received by HRNSW:

(i) in respect of any loan advanced from money within the Benevolent Fund,

(ii) in payment of interest on any such loan, and

(iii) in payment of any charges, costs and expenses incurred in respect of any such loan, and

(e) the income derived from the investment of any money within the Benevolent Fund.

(3) Where any money authorised to be paid into the Benevolent Fund pursuant to subsection (2) (c) is, under the terms of a trust, or by virtue of a condition, to which HRNSW has agreed, required to be applied in or towards the assistance of a specified person or a specified class or description of persons, being a person or persons from within the class of persons to whom subsection (4) (a) applies, the money (and any interest or income derived from the investment of that money) shall be carried to a separate account in the Benevolent Fund established for the purpose of the trust or of fulfilling the condition.

(4) There may be paid out of the Benevolent Fund:

(a) in respect of money which has not been carried to a separate account in the Benevolent Fund, grants or loans (whether with or without interest) to any person who is in indigent circumstances and who is or has, at any time, been:

(i) an owner, trainer or driver of harness racing horses,

(ii) a person employed in a stable of harness racing horses,

(iii) a person who has rendered valuable service to harness racing, or

(iv) a dependant of a person referred to in subparagraph (i), (ii) or (iii), and

(b) in respect of money which has been carried to a separate account within the Benevolent Fund, that money (and any interest or income derived from the investment of that money) subject to the trust or condition on which that money is held, and

(c) (Repealed)

13C Financial year

(1) The financial year of HRNSW is the year commencing on 1 July.

(2) A different financial year may be determined by the Treasurer under section 4 (1A) of

the *Public Finance and Audit Act 1983*.

13D Expenses

HRNSW is liable for the following expenses:

- (a) all expenses (including remuneration and allowances payable to directors, the chief executive officer and other staff of HRNSW) incurred by HRNSW in the exercise of its functions,
- (b) all expenses (including remuneration and allowances payable under clause 4 of Schedule 4) incurred by the Tribunal in the exercise of its functions under this Act.

13E (Repealed)

14 Accounts

- (1) HRNSW must keep full and accurate accounts for the Harness Racing Assistance Fund and the Harness Racing Benevolent Fund.
- (2) HRNSW may establish such other accounts as it thinks appropriate for the money received and expended by HRNSW.

15 Power to accept gifts

- (1) HRNSW may acquire by gift, bequest or devise any property for a purpose referred to in section 10E and may agree to a trust or condition on which the property is required to be held.
- (2) The rule of law against remoteness of vesting does not apply to or in respect of any such trust or condition to which HRNSW has agreed.
- (3) If HRNSW acquires property under subsection (1):
 - (a) an instrument that effects the acquisition and any agreement pursuant to which the property is acquired is not chargeable with duty under the *Duties Act 1997*, and
 - (b) the property, or the value of the property, is not included in the dutiable estate of the donor or testator for the purposes of assessing death duty under that Act.

16 Fees and charges

- (1) HRNSW may charge a harness racing club or harness racing association for services it provides to the club or association.
- (2) HRNSW may determine the fees and charges payable for registration or for the transaction of other business with HRNSW.

Part 5 Appeals and disciplinary inquiries

17 Harness Racing Appeals Tribunal

- (1) There is hereby constituted a tribunal under the name of the “Harness Racing Appeals Tribunal”.
- (2) (Repealed)

17A Provisions relating to Tribunal

- (1) In this section and Schedule 4:

court includes the Industrial Relations Commission.

judge includes a judicial member of the Industrial Relations Commission.

qualified person means a judge of any court in New South Wales, a retired judge of any court (whether or not in New South Wales) or a person qualified to be appointed as a Judge of the District Court.

- (2) The Minister may, upon the recommendation of the Attorney General, appoint a qualified person as the Tribunal.
- (3) The Minister may from time to time, upon the recommendation of the Attorney General, appoint:
 - (a) a qualified person to act as the Tribunal:
 - (i) during the illness or absence of the person appointed as the Tribunal,
 - (ii) during a vacancy in the office of the Tribunal, or
 - (iii) on such occasions or in respect of such appeals as the person appointed as the Tribunal directs, and
 - (b) another qualified person to act as the Tribunal in accordance with paragraph (a) but only during the illness or absence of the person appointed to act as the Tribunal under paragraph (a).
- (3A) A qualified person while acting as the Tribunal shall be deemed to be the Tribunal.
- (3B) More than one sitting of the Tribunal may be held at the same time, but the person appointed as the Tribunal and a person appointed to act as the Tribunal shall not sit on the same appeal.
- (4) The Minister may, for the purposes of this Act, appoint persons who, in the opinion of the Minister, have special knowledge of, and experience in, the harness racing industry to be assessors of the Tribunal.
- (5) The Tribunal may, in hearing appeals under this Act, be assisted by one or more assessors.

- (6) An assessor assisting the Tribunal as referred to in subsection (5) may assist and advise the Tribunal, but shall not adjudicate on any matter before the Tribunal.
- (7) Schedule 4 has effect with respect to the Tribunal.

18 Appeals to HRNSW

- (1) Any person who is aggrieved by a decision of a committee of a harness racing club or harness racing association may, in accordance with the regulations, appeal against the decision to HRNSW, which shall be the only body to which an appeal against the decision shall lie.
- (2) Proceedings on an appeal under this section shall be held as in open court at a meeting of the Regulatory Committee at which a quorum is present.
- (3) The decision of HRNSW in respect of an appeal under this section shall be deemed to be the decision of the committee of the harness racing club or harness racing association, as the case may be.

19 Appeals to Tribunal

- (1) Any person who, or any harness racing club or harness racing association that, is aggrieved by:
 - (a) a decision of stewards of HRNSW, or
 - (b) a decision of HRNSW (including a decision in respect of an appeal under section 18),may, in accordance with the regulations, appeal against the decision to the Tribunal, which shall be the only body to which an appeal against the decision shall lie.
- (2) Proceedings on an appeal under this section shall be held as in open court before the Tribunal.
- (3) The decision of the Tribunal in respect of an appeal under this section shall be final and conclusive and shall be deemed to be:
 - (a) in the case of an appeal against a decision of stewards of HRNSW—the decision of the stewards, or
 - (b) in the case of an appeal against a decision of HRNSW—the decision of HRNSW.
- (4) This section does not preclude the operation of section 19A.

19A Special inquiry following appeal to Tribunal

- (1) HRNSW may institute a special inquiry into a matter decided on appeal to the Tribunal under section 19 if HRNSW:

- (a) receives information that was not available as evidence at the hearing of the appeal, and
 - (b) is satisfied that the information may have resulted in a substantially different decision if it had been given in evidence at the hearing of the appeal.
- (2) In instituting a special inquiry, HRNSW is to determine whether the inquiry is to be held by HRNSW, by stewards of HRNSW or by a person appointed by HRNSW for the purpose, and the inquiry is to be held in accordance with the determination.
- (3) If a special inquiry is held by the stewards or a person appointed by HRNSW, the result of the inquiry is to be reported in writing to HRNSW by the stewards or appointed person.
- (4) After considering the result of a special inquiry, HRNSW may:
- (a) decide to take no further action, or
 - (b) make a decision that differs from the decision of the Tribunal on the matter the subject of the inquiry, in which case the different decision has effect instead of the decision of the Tribunal.
- (5) Section 19 does not apply to a decision made under this section.

19B Proceedings of disciplinary inquiries

- (1) Proceedings in respect of a disciplinary inquiry of HRNSW may be conducted in public or in private, or partly in public and partly in private, as HRNSW may decide.
- (2) In conducting a disciplinary inquiry, HRNSW may examine any witness on oath or affirmation, or by use of a statutory declaration.
- (3) For the purposes of this section, a **disciplinary inquiry** means a special inquiry under section 19A or any other inquiry by HRNSW for the purpose of taking disciplinary action.

20 Regulations respecting appeals

- (1) The regulations may make provision for or with respect to:
- (a) appeals to HRNSW under section 18,
 - (b) appeals to the Tribunal under section 19,
 - (b1) special inquiries instituted by HRNSW under section 19A,
 - (c) the procedures to be followed at or in connection with any appeals under this Act and special inquiries under section 19A,
 - (c1) the suspension of a decision appealed against under this Act, or the subject of a

special inquiry under section 19A, pending the determination of the appeal or inquiry,

- (d) the payment of fees and costs in respect of appeals under this Act and special inquiries under section 19A, and
- (e) any matters incidental to or connected with appeals under this Act and special inquiries under section 19A.

(2) Without affecting the generality of subsection (1), the regulations may:

- (a) prescribe classes of matters in respect of which appeals may not be made under this Act, or
- (b) provide that no appeals may be made under this Act except in respect of prescribed classes of matters.

Part 6 General

21 Delegation

(1) Subject to subsection (2), HRNSW may delegate the exercise of its functions to:

- (a) a director, the chief executive officer or other member of the staff of HRNSW, or
- (b) a committee comprised of, or a combination of, those persons.

(2) HRNSW may not delegate the following of its functions:

- (a) the power of delegation conferred by subsection (1),
- (b) the regulatory functions of HRNSW (other than those referred to in section 9 (2) (a)).

(3) Subsection (2) does not limit the functions of stewards appointed by HRNSW under the rules.

21A Protection from personal liability

Anything done or omitted to be done by:

- (a) HRNSW, or
- (b) the Board, or
- (c) the Regulatory Committee, or
- (d) any director, or
- (e) the chief executive officer, or

(f) any steward appointed by HRNSW, or

(g) any person acting under the direction of HRNSW,

does not subject a director, the chief executive officer, a steward, or a person so acting, personally to any action, liability, claim or demand if the thing was done or omitted to be done in good faith for the purposes of executing this or any other Act or the rules.

21B Proof of certain matters not required

In any legal proceedings, proof is not required (until evidence is given to the contrary) of the following matters:

(a) the constitution of the Board or the Regulatory Committee,

(b) any resolution of the Board or the Regulatory Committee,

(c) the appointment of, or the holding of office by, any director,

(d) the presence of a quorum at any meeting of the Board or the Regulatory Committee.

21C No challenge on ground that function exercised by wrong body

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.

22 Authentication of process

Every summons, process, demand, order, notice, statement, direction or document requiring authentication by HRNSW may be sufficiently authenticated without the seal of HRNSW if signed by the Chairperson or chief executive officer, or by any other member of staff authorised to do so by the chief executive officer.

23 Service of process

Any notice, summons, writ or other proceeding to be served on HRNSW may be served:

(a) by being left, or

(b) in the case of a notice, by posting it addressed to HRNSW,

at its office (or, if it has more than one office, at one of its offices).

24 Recovery of money

Any charge, fee, fine (as referred to in section 9 (2) (i)) or money due to HRNSW may be recovered as a debt or liquidated demand in a court of competent jurisdiction.

25 Penalties

Any penalty imposed by or under this Act may be recovered in a summary manner before

a Local Court constituted by a Magistrate sitting alone.

26 (Repealed)

27 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Regulations may also be made for or with respect to any matter for or with respect to which rules may be made.
- (3) A regulation may impose a penalty not exceeding 20 penalty units for any offence against the regulation.
- (4) A reference in sections 9 and 10 to the rules shall be deemed to include a reference to the regulations so far as the regulations make provision for or with respect to any of the matters mentioned in sections 9 and 10.

28 General provisions as to regulations and rules

- (1) If there is an inconsistency between the regulations and the rules, the regulations shall prevail.
- (2) (Repealed)
- (3) A regulation or rule may be made so as to apply differently according to such factors as may be specified therein.
- (4) A regulation or rule may authorise any matter or thing to be from time to time determined, applied or regulated by any person or body specified therein.
- (5) (Repealed)

29 Savings and transitional provisions

Schedule 5 has effect.

Schedule 1 Provisions relating to directors

(Section 7E)

1 Employee of club etc not eligible

A person who is an employee of a harness racing club or harness racing association is not eligible to be appointed as a director.

2 Person disqualified or warned off not eligible

A person who is disqualified under section 9 (2) (d) or who is warned off under section 9

(2) (h) is not eligible to be nominated or appointed as a director while the disqualification or warning off remains in force.

3 Chairperson of HRNSW

- (1) The Governor may remove a director from the office of Chairperson.
- (2) A person who is a director and Chairperson shall be deemed to have vacated office as Chairperson if the person:
 - (a) is removed from that office by the Governor under subclause (1),
 - (b) resigns that office by instrument in writing addressed to the Minister, or
 - (c) ceases to be a director.

4 Acting directors and acting Chairperson

- (1) The Governor may appoint a person to act in the office of a director during the illness or absence of the director, and the person, while so acting, shall have and may exercise and perform all the functions of the director.
- (2) Such an acting director is to be appointed from the same category of nomination (as specified in section 6 (2)) as the person he or she is replacing.
- (3) The Governor may appoint a director to act in the office of Chairperson during the illness or absence of the Chairperson, and the director, while so acting, shall have and may exercise and perform all the functions of the Chairperson.
- (4) The Governor may remove any person from any office to which the person was appointed under subclause (1) or (3).
- (5) A person while acting in the office of a director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (6) For the purposes of this clause, a vacancy in the office of a director or the Chairperson shall be deemed to be an absence from office of the director or Chairperson, as the case may be.
- (7) In subclause (3), clauses 1, 2, 9, 10, 11 and 12 and Schedule 2:
 - (a) a reference to a director includes a reference to a person acting in the office of a director,
 - (b) a reference to the appointment of a director includes a reference to the appointment of a person to act in the office of a director, and
 - (c) a reference to the office of a director includes a reference to the office of a person

appointed to act in the office of a director.

5 Term of office

Subject to this Schedule, a director shall hold office for such period not exceeding 3 years as may be specified in the instrument of appointment of the director, but is eligible (if otherwise qualified) for re-appointment.

6 Remuneration

A director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the director.

7 Filling of vacancy in office of director

In the event of the office of any director becoming vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

8 Casual vacancies

(1) A director shall be deemed to have vacated office if the director:

- (a) dies,
- (b) absents himself or herself from 3 consecutive ordinary meetings of the Board or the Regulatory Committee of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the Board or the Regulatory Committee (which leave the Board or the Regulatory Committee is hereby authorised to grant) or unless, before the expiration of 4 weeks after the last of those meetings, the director is excused by the Board or the Regulatory Committee for being absent from those meetings,
- (c) 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,
- (d) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the [Mental Health Act 1958](#) or a person under detention under Part 7 of that Act,
- (e) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards, or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable,
- (f) is an employee of a harness racing club or harness racing association,
- (f1) is disqualified under section 9 (2) (d) or warned off under section 9 (2) (h),

(g) resigns the office by instrument in writing addressed to the Minister, or

(h) (Repealed)

(i) is removed from office by the Governor under subclause (2) or (3).

(2) The Governor may remove a director from office.

(3) Without affecting subclause (2), the Governor may remove from office a director who contravenes the provisions of clause 9.

9 Disclosure of pecuniary interests

(1) A director who has a direct or indirect pecuniary interest in a matter that is being considered, or is about to be considered, at a meeting of the Board or the Regulatory Committee shall, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the Board or the Regulatory Committee.

(2) A disclosure by a director at a meeting of the Board or the Regulatory Committee that the director:

(a) is a member, or is in the employment, of a specified company or other body,

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or a specified person,

shall be deemed to be a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The Board or the Regulatory Committee shall cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Board or the Regulatory Committee from time to time.

(4) After a director has, or is deemed to have, disclosed the nature of an interest in any matter pursuant to subclause (1) or (2), the director shall not, unless the Minister otherwise determines, be present during any deliberation of the Board or the Regulatory Committee, or take part in any decision of the Board or the Regulatory Committee, with respect to that matter.

(5) Notwithstanding that a director contravenes the provisions of this clause, that contravention does not invalidate any decision of the Board or the Regulatory Committee.

- (6) Nothing in this clause applies to or in respect of an interest of a director in a matter which arises by reason only that the director is:
- (a) concerned in the management of a harness racing club or harness racing association, or
 - (b) the owner, trainer or driver of harness racing horses.

10 Effect of certain other Acts

- (1) The provisions of Part 2 of the *Public Sector Management Act 1988* do not apply to or in respect of the appointment of a director and a director is not, as a director, subject to the provisions of that Act.
- (2) Where by or under any other Act provision is made requiring a person who is the holder of an office specified therein to devote the whole of his or her time to the duties of that office, or prohibiting the person from engaging in employment outside the duties of that office, that provision shall not operate to disqualify the person from holding that office and also the office of a director or from accepting and retaining any remuneration payable to the person under this Act as a director.
- (3) The office of a director shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

11, 12 (Repealed)

Schedule 2 Provisions relating to procedure of Board and Regulatory Committee

(Section 7E)

1 General procedure

The procedure for the calling of meetings of the Board or the Regulatory Committee and for the conduct of business at those meetings is, subject to this Act, to be determined by the Board or the Committee.

2 Failure to nominate

A failure to nominate a person to a category of nomination specified in section 6 (2) does not affect the appointment of the directors who are nominated in accordance with that section.

3 Quorum

The quorum:

- (a) for a meeting of the Board is a majority of directors for the time being, and
- (b) for a meeting of the Regulatory Committee is 2 members.

4 Person presiding at Board meetings

- (1) The Chairperson is to preside at a meeting of the Board, or in the absence of the Chairperson, the Deputy Chairperson, or in the absence of both, another director elected to chair the meeting by the directors present.
- (2) The Chairperson is to preside at a meeting of the Regulatory Committee, or in the absence of the Chairperson, the Deputy Chairperson.
- (3) The person presiding at a meeting of the Board or the Regulatory Committee has a deliberative vote and, if the votes cast at the meeting are equal in number, has a second or casting vote.

5 Voting

A decision supported by a majority of the votes at a meeting of the Board or the Regulatory Committee at which a quorum is present is the decision of the Board or the Committee.

Schedule 3 Provisions relating to officers and employees of Harness Racing New South Wales

(Section 7G)

1 Preservation of rights of certain servants previously public servants etc

- (1) In this clause:

servant means an officer or employee of HRNSW.

statutory body means any body declared under clause 2 to be a statutory body for the purposes of this Schedule.

superannuation scheme means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act but, in relation to a person who is appointed as a servant on or after the commencement of the [Miscellaneous Acts \(State Superannuation Fund\) Amendment Act 1984](#), does not include the State Superannuation Fund.

- (2) Subject to subclause (3) and to the terms of appointment, where a servant was, immediately before being appointed as a servant:
 - (a) an officer of the Public Service or a Teaching Service,
 - (b) a contributor to a superannuation scheme,
 - (c) an officer employed by a statutory body, or
 - (d) a person in respect of whom provision was made by any Act for the retention of

any rights accrued or accruing to the person as an officer or employee,

he or she:

- (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person,
- (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as a servant, and
- (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as a servant and:

- (h) his or her service as a servant shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred, and
- (i) he or she shall be deemed to be an officer or employee, and HRNSW shall be deemed to be the employer, for the purpose of the superannuation scheme to which he or she is entitled to contribute under this clause.

(3) If a servant would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme, he or she shall not be so entitled upon becoming (whether upon appointment as a servant or at any later time while holding office as a servant) a contributor to any other superannuation scheme, and the provisions of subclause (2) (i) cease to apply to or in respect of him or her and HRNSW in any case where he or she becomes a contributor to any such other superannuation scheme.

(4) Subclause (3) does not prevent the payment to a servant upon his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.

(5) A servant shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

2 Declaration of statutory bodies

The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

Schedule 4 Provisions relating to the Tribunal

(Section 17A (7))

1 (Repealed)

2 Terms of office

Subject to this Schedule, a person appointed as:

- (a) the Tribunal, or
- (b) an assessor,

shall hold office for such period, not exceeding 3 years, as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

3 Effect of appointment of a judge of any court as the Tribunal

- (1) The appointment of a person who is a judge of any court as, or to act as, the Tribunal shall not, nor shall the person's service as the Tribunal, affect the person's tenure of the office of judge of that court or the person's rank, title, status, precedence, salary or other rights or privileges as a holder of that office.
- (2) A judge of any court may, notwithstanding that he or she holds office as, or acts as, the Tribunal, exercise and perform the functions of a judge of that court.
- (3) The service, as the Tribunal, of a judge of any court shall, for all purposes, be taken to be service as a judge of that court.

4 Remuneration

A person (not being a judge of any court) holding office as, or acting as, the Tribunal and an assessor are entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of each of them.

5 Vacation of office

- (1) A person (being a judge of any court) holding office as the Tribunal shall be deemed to have vacated that office if the person:
 - (a) ceases to be a judge of that court, or
 - (b) resigns that office by instrument in writing addressed to the Minister.
- (2) A person (not being a judge of any court) holding office as the Tribunal or a person holding office as an assessor shall be deemed to have vacated that office if the person:
 - (a) dies,

- (b) 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,
- (c) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the *Mental Health Act 1958* or a person under detention under Part 7 of that Act,
- (d) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards, or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable,
- (e) resigns that office by instrument in writing addressed to the Minister, or
- (f) (Repealed)
- (g) is removed from office by the Minister under subclause (3).

(3) The Minister may remove from office:

- (a) a person (not being a judge or any court) holding office as the Tribunal, or
- (b) an assessor.

(4) The Minister may remove from office a person (not being a judge of any court) appointed to act as the Tribunal.

6 Effect of certain other Acts

(1) The provisions of the *Public Service Act 1979* do not apply to or in respect of the appointment of:

- (a) a person as, or to act as, the Tribunal, or
- (b) an assessor,

and a person holding office as, or acting as, the Tribunal or an assessor is not, as the Tribunal or an assessor, subject to the provisions of that Act.

(2) The office of the Tribunal shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

7 Staff to assist Tribunal

For the purposes of this Act, the Tribunal may, with the approval of the Minister, make use of the services of:

- (a) any officers or employees of the HRNSW, or

- (b) any officers or temporary employees of a Department administered by the Minister.

Schedule 5 Savings and transitional provisions

Part 1 Preliminary

1 Savings and transitional regulations

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

Harness Racing Legislation Amendment Act 1996

Harness Racing New South Wales Amendment Act 1998

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Harness Racing Legislation Amendment Act 1996

2 Meaning of “1996 Amending Act”

In this Part:

1996 Amending Act means the *Harness Racing Legislation Amendment Act 1996*.

3 Current members of Authority not affected

The amendments made to section 6 by the 1996 Amending Act do not affect the appointment or term of office of members of the Authority holding office as at the commencement of the amendments.

4 Change of name of Authority and Funds

- (1) The change of name by the 1996 Amending Act of the corporation constituted by this Act does not affect the identity or continuity of status of that corporation.
- (2) The change of name by the 1996 Amending Act of the Assistance Fund, the

Benevolent Fund and the Fund does not affect the identity or continuity of those funds.

- (3) A reference in any other Act, in any instrument made under an Act or in any document of any other kind to the Harness Racing Authority is (to the extent that it relates to acts, matters or things occurring after the change of name of that Authority) to be read as a reference to Harness Racing New South Wales constituted by this Act.

5 Change of “Chairman” to “Chairperson”

The amendments made by the 1996 Amending Act to change “Chairman” to “Chairperson” do not affect the continuity of appointment of the person holding office as Chairman at the commencement of the amendments.

6 Penalty increase

The amendment of section 8 (2) (d) (ix) by the 1996 Amending Act to increase the maximum fine that can be imposed by HRNSW under the rules does not extend to acts or omissions occurring before the commencement of the amendment.

7 Annual report

The amendment of section 26 by the 1996 Amending Act extends to the report under that section for the 12 months preceding 30 June that occurs immediately before the commencement of the amendment.

Part 3 Provisions consequent on enactment of [Harness Racing New South Wales Amendment Act 1998](#)

8 Definitions

In this Part:

amending Act means the [Harness Racing New South Wales Amendment Act 1998](#).

new HRNSW means HRNSW as constituted by Schedule 1 [3] to the amending Act.

old HRNSW means HRNSW as constituted immediately before the commencement of Schedule 1 [3] to the amending Act.

9 Continuation of HRNSW

The new HRNSW is a continuation of, and the same legal entity as, the old HRNSW.

10 Members of HRNSW

- (1) On the commencement of Schedule 1 [3] to the amending Act, a person who held office as a member of the old HRNSW:

- (a) ceases to hold that office, and

(b) is eligible (if otherwise qualified) to be appointed as a director.

- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.
- (3) A reference in any other Act or instrument to a member of HRNSW is taken to be a reference to a director.

11 General Manager

- (1) The person employed by HRNSW as General Manager immediately before the commencement of Schedule 1 [3] to the amending Act is taken to be duly employed as chief executive officer under section 7F for the balance of his or her term of employment as General Manager.
- (2) A reference in any other Act or instrument to the General Manager of HRNSW is taken to be a reference to the chief executive officer.

12 Fees and charges

The fees and charges for registration or for the transaction of other business with HRNSW that are prescribed by the rules (as in force immediately before the commencement of Schedule 1 [12] to the amending Act) continue in force until such time as HRNSW determines other fees and charges in accordance with this Act as amended by the amending Act.

13 Rules

The rules in force under this Act immediately before the commencement of Schedule 1 [3] to the amending Act are taken to be made under this Act as amended by the amending Act.

14 Harness Racing Fund

All money in the Harness Racing Fund immediately before the commencement of Schedule 1 [4] to the amending Act is to be paid into an account established by HRNSW in accordance with section 14.