

# Harness Racing Act 2002 No 39

[2002-39]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **See also**
  - [Miscellaneous Acts \(Local Court\) Amendment Bill 2007](#)
  - [Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2007](#)

### 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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# Harness Racing Act 2002 No 39



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# Harness Racing Act 2002 No 39



New South Wales

An Act to repeal the *Harness Racing New South Wales Act 1977*; to constitute Harness Racing New South Wales; to make provision with respect to the control and regulation of harness racing; to amend various Acts consequentially; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Harness Racing Act 2002*.

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

**Advisory Committee** means the Harness Racing Industry Participants Advisory Committee established under Part 5.

**Benevolent Fund** means the Harness Racing Benevolent Fund established under section 52.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**harness racing** means pacing or trotting.

**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 section 6.

**rule** means a rule in relation to harness racing made under section 16 of the *Greyhound and Harness Racing Administration Act 2004*.

**the Authority** means the Greyhound and Harness Racing Regulatory Authority constituted by Part 2 of the *Greyhound and Harness Racing Administration Act 2004*.

**Tribunal** means the Greyhound and Harness Racing Appeals Tribunal constituted by Part 4 of the *Greyhound and Harness Racing Administration Act 2004*.

(2) (Repealed)

#### **4 Notes**

Notes in the text of this Act do not form part of this Act.

#### **5 Determination of appropriate body to carry out functions**

- (1) The Minister may, by order in writing, determine whether HRNSW or the Authority is to be the appropriate body to carry out a function under this Act or the *Greyhound and Harness Racing Administration Act 2004* in relation to the harness racing industry.
- (2) Subsection (1) does not apply to a function that a provision of this Act or the *Greyhound and Harness Racing Administration Act 2004* provides is to be carried out by HRNSW or the Authority.
- (3) However, if a dispute arises as to whether a function is to be exercised under this Act or the *Greyhound and Harness Racing Administration Act 2004* by HRNSW or the Authority, the Minister may resolve the dispute.
- (4) The Minister's determination is final and conclusive of the matter.

## **Part 2 Harness Racing New South Wales**

### **6 Constitution of Harness Racing New South Wales**

- (1) There is constituted by this Act a body corporate with the corporate name of Harness Racing New South Wales.
- (2) HRNSW may use another name approved by the Minister by order published in the Gazette.
- (3) Without limiting subsection (2), HRNSW may use that other name when entering into any agreement or in relation to any other dealings of HRNSW.
- (4) Schedule 1 has effect with respect to HRNSW.

### **7 HRNSW independent of Government**

HRNSW or any of its subsidiaries:

- (a) does not represent the Crown and is not subject to direction or control by or on behalf of the Government, and

- (b) cannot render the State liable for any debts, liabilities or other obligations of HRNSW or its subsidiaries,

unless this or any other Act otherwise expressly provides.

## **8 Membership of HRNSW**

- (1) HRNSW consists of the following members:

- (a) one person nominated by New South Wales Harness Racing Club Ltd,
- (b) two persons nominated by harness racing clubs (other than New South Wales Harness Racing Club Ltd), with one of those nominees being nominated as a representative of TAB clubs and the other being nominated as a representative of country racing,
- (c) one person nominated by participants in the harness racing industry (being owners, trainers, drivers, bookmakers or other persons involved with harness racing),
- (d) one person selected by the nominated members of HRNSW, who is to be the Chairperson.

- (2) HRNSW may decide to appoint the same person to both the position of Chairperson and the position of Chief Executive Officer.

- (3) The nominated members of HRNSW are to select, by majority vote, the Chairperson from among candidates identified by a recruitment agency or recruitment agencies as having suitable expertise to hold the office of Chairperson and, if the successful candidate is to be appointed to the position of Chief Executive Officer, as having suitable expertise to fill that office also.

- (4) HRNSW must commission at least one recruitment agency to identify candidates from whom the selection is to be made.

- (5) The Minister is to determine, by order published in the Gazette, the manner in which, and the criteria on which, persons are to be nominated for the purposes of subsection (1), including the time at which such a nomination is taken to have effect.

- (6) The following persons are not eligible to be nominated under subsection (1) (c) as a member of HRNSW:

- (a) a person who is, or has been at any time in the year immediately preceding the time of nomination, a member of the committee of a harness racing club,
- (b) an employee of a harness racing club.

- (7) The following persons are not eligible to be selected as Chairperson of HRNSW:

- (a) a person who is, or has been at any time in the year immediately preceding the time of selection, a member of the committee of a harness racing club,
  - (b) a member or employee of a harness racing club.
- (8) For the purposes of this section, a **TAB club** is a harness racing club on a majority of whose race meetings TAB Limited conducts an off-course totalizator (within the meaning of the *Totalizator Act 1997*).

## 9 Functions of HRNSW

- (1) HRNSW has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) Without limiting subsection (1), the functions of HRNSW include the following:
- (a) to register harness racing clubs,
  - (b) to initiate, develop and implement policies considered conducive to the promotion, strategic development and welfare of the harness racing industry in the State,
  - (c) to distribute money received as a result of commercial arrangements required by the *Totalizator Act 1997*,
  - (d) to allocate to harness racing clubs the dates on which they may conduct harness racing meetings and harness races,
  - (e) to develop and review policy in relation to the breeding and handicapping of harness racing horses.
- (3) HRNSW may affiliate with such organisations, whether in or out of New South Wales, as HRNSW considers appropriate.
- (4) Nothing in this Act confers on HRNSW power to conduct harness racing meetings on its own behalf.

## 10 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.

### **11 Chief executive officer of HRNSW**

- (1) Subject to section 8 (2) and (3), HRNSW may employ a chief executive officer of HRNSW.
- (2) The chief executive officer is responsible for the day-to-day management of HRNSW.
- (3) The *Public Sector Management Act 1988* does not apply to or in respect of the chief executive officer.

### **12 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 staff employed under subsection (1) (including the chief executive officer of HRNSW) in so far as they are not fixed by or under any other Act or law.
- (3) The *Public Sector Management Act 1988* does not apply to or in respect of staff employed under subsection (1).
- (4) HRNSW may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of the Authority.
- (5) For the purposes of this Act, a person whose services are made use of under subsection (4) is taken to be a member of staff of HRNSW.
- (6) HRNSW may engage consultants for the purposes of getting expert advice.

### **13 Annual report of HRNSW**

- (1) HRNSW must, as soon as practicable after 30 June and in any case before 1 November in each year prepare and forward to the Minister a report of its work and activities for the 12 months ending on that 30 June.
- (2) The report must include copies of the financial statements of HRNSW for the 12-month period to which the report relates together with an auditor's report on those statements prepared by an independent auditor.
- (3) The Minister is to table the report or cause it to be tabled in both Houses of Parliament as soon as practicable after the report is forwarded to the Minister.
- (4) HRNSW is to make copies of the report available to the public at a reasonable price.

### **14-21 (Repealed)**

## **Part 3 Control and regulation of harness racing**

### **22 Registration of clubs**

- (1) HRNSW may, in accordance with the rules, register or refuse to register any harness racing club.
- (2) HRNSW must not refuse to register a harness racing club under this section unless it is of the opinion that:
  - (a) the racing club is not, or will not be, financially viable in relation to participation in the harness racing industry, or
  - (b) it would be in the best interests of the harness racing industry to do so.
- (3) HRNSW may not refuse any registration under this section for the purpose of taking disciplinary action.
- (4) Despite subsection (1), HRNSW may not register a harness racing club, the registration of which has previously been cancelled under section 14 of the *Greyhound and Harness Racing Administration Act 2004*, unless the Authority has given approval in writing to the registration.

### **23 Suspension or cancellation of registration of clubs on commercial grounds**

- (1) HRNSW may, in accordance with the rules, suspend or cancel the registration of any harness racing club.
- (2) HRNSW must not suspend or cancel any registration under this section unless it is of the opinion that:
  - (a) the racing club is not, or will not be, financially viable in relation to participation in the harness racing industry, or
  - (b) it would be in the best interests of the harness racing industry to do so.
- (3) HRNSW may not suspend or cancel any registration under this section for the purpose of taking disciplinary action or for the purposes of occupational health and safety.

### **24-27 (Repealed)**

## **Part 4**

### **28-39 (Repealed)**

## **Part 5 Harness Racing Industry Participants Advisory Committee**

### **40 Establishment of Advisory Committee**

- (1) There is established by this Act a committee called the Harness Racing Industry

Participants Advisory Committee.

- (2) Schedule 4 has effect with respect to the members and procedure of the Advisory Committee.

#### **41 Membership**

- (1) The Advisory Committee is to consist of 5 members of which:
- (a) 4 are to be nominated by relevant industry bodies to represent each of the following categories of participants in the harness racing industry:
    - (i) owners,
    - (ii) breeders,
    - (iii) licensed trainers and drivers,
    - (iv) licensed bookmakers and bookmakers' clerks, and
  - (b) one member is to be selected by the members referred to in paragraph (a) to represent consumers of racing and betting services.
- (2) The Minister is to determine, by order published in the Gazette, the relevant industry bodies that may nominate members under subsection (1) (a) and the manner in which persons are to be nominated by those bodies, including the time at which such a nomination is taken to have effect.

#### **42 Certain persons not eligible for membership**

- (1) A person is not eligible to be a member of the Advisory Committee if the person:
- (a) is currently warned off or disqualified under the rules, or is a person whose name is currently on the Unpaid Forfeit List kept under the rules, or
  - (b) during the previous 10 years has been convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or more, or convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable, or
  - (c) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankruptcy, or
  - (d) is a mentally incapacitated person.
- (2) A person is not eligible to be a member of the Advisory Committee for more than 4 consecutive terms of office, but there is no limit on the number of non-consecutive terms for which a person can be a member. A term of office is counted for the purposes of this subsection even if the member did not serve out the full period of

that term of office.

### **43 Functions of Advisory Committee**

The Advisory Committee has the following functions:

- (a) to provide advice to HRNSW and the Authority on industry policy and strategic direction,
- (b) to serve as a channel for communication between the industry stakeholders that it represents and HRNSW and the Authority,
- (c) to provide a forum for discussion of issues of concern and the making of recommendations to HRNSW and the Authority,
- (d) at the request of HRNSW or the Authority, to nominate members to serve on committees or working groups established by HRNSW or the Authority.

## **Part 6**

### **44, 45 (Repealed)**

## **Part 7 Finance**

### **46 Financial year**

- (1) Subject to subsection (2), the financial year of HRNSW is the year commencing 1 July.
- (2) A different financial year for HRNSW may be determined by the Minister by order published in the Gazette.
- (3) (Repealed)

### **47 Expenses**

- (1) HRNSW is liable for all expenses (including remuneration and allowances payable to members of HRNSW, the chief executive officer of HRNSW and the other staff of HRNSW) incurred by HRNSW in the exercise of its functions.
- (2) (Repealed)

### **48 Accounts**

- (1) HRNSW may establish such accounts as it thinks appropriate for the money received and expended by HRNSW.
- (2) (Repealed)

### **49 Fees and charges**

- (1) (Repealed)

(2) HRNSW may determine the fees and charges payable for registration or for the transaction of other business with HRNSW.

(3) (Repealed)

#### **50 Approval required for certain loans by HRNSW**

HRNSW must not borrow:

(a) an amount exceeding \$1,000,000 (or exceeding such other amount as is prescribed by the regulations), or

(b) amounts totalling in excess of a prescribed amount within a prescribed period,

unless the Minister has approved of HRNSW doing so.

#### **51 Funding of Authority**

(1) This section applies to an amount that is required to be paid to the Authority by HRNSW under section 38 of the *Greyhound and Harness Racing Administration Act 2004*.

(2)-(5) (Repealed)

(6) The amount is:

(a) to be provided from money to be distributed by HRNSW under the intra-code agreement, and

(b) to be deducted from that money before it is distributed as referred to in paragraph (a).

(7) (Repealed)

(8) Any amendment to the inter-code agreement that affects the way in which money is distributed to the harness racing industry under that agreement has no effect unless it is approved in writing by the Authority.

(9) This section has effect despite any provision of the inter-code agreement or the intra-code agreement.

(10) As soon as practicable after HRNSW is constituted, HRNSW is to meet with the other parties to the intra-code agreement (except Harness Racing New South Wales as constituted under the *Harness Racing New South Wales Act 1977*) to determine the manner in which HRNSW will be funded under that agreement.

(11) In this section, ***inter-code agreement*** means:

(a) the Racing Inter-Code Deed made on 27 February 1998 between the following:

- (i) NSW Racing Pty Ltd,
  - (ii) NSW Thoroughbred Racing Board,
  - (iii) Harness Racing New South Wales,
  - (iv) the Greyhound Racing Authority (NSW), or
- (b) any agreement with HRNSW for the purposes of making commercial arrangements required by the *Totalizator Act 1997* that replaces the agreement referred to in paragraph (a) (whether or not the other parties to the agreement have changed).

(12) In this section, ***intra-code agreement*** means:

- (a) the Agreement for NSW Harness Racing TAB Clubs Intra Code Arrangements made on 26 February 1998 between the following:
- (i) Harness Racing New South Wales,
  - (ii) NSW Harness Racing Club Ltd,
  - (iii) Bankstown Harness Racing and Agricultural Club,
  - (iv) Bathurst Harness Racing Club Ltd,
  - (v) Bulli Harness Racing Club Ltd,
  - (vi) Fairfield Harness Racing Club Ltd,
  - (vii) Maitland Harness Racing Club Ltd,
  - (viii) Menangle Paceway, c/- NSW Harness Racing Club Ltd,
  - (ix) Penrith District A H and I Society Ltd,
  - (x) Newcastle Harness Racing Club Ltd,
  - (xi) Orange Harness Racing Club Ltd,
  - (xii) Dubbo Harness Racing Club Ltd,
  - (xiii) Young Harness Racing Club Inc, or
- (b) any agreement with HRNSW for the purposes of making commercial arrangements required by the *Totalizator Act 1997* that replaces the agreement referred to in paragraph (a) (whether or not the other parties to the agreement have changed).

## **52 Harness Racing Benevolent Fund**

- (1) There is to be established by HRNSW, in an authorised deposit-taking institution in New South Wales, a fund to be called the “Harness Racing Benevolent Fund”.

(2) There is to be paid into the Benevolent Fund:

- (a) any money received by HRNSW for payment into the Benevolent Fund, and
- (b) any money acquired by HRNSW 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, and
- (c) any money received by HRNSW:
  - (i) in respect of any loan advanced from money within the Benevolent Fund, and
  - (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
- (d) the income derived from the investment of any money within the Benevolent Fund.

(3) If money in the Benevolent Fund:

- (a) was paid into the Fund under subsection (2) (b), and
- (b) 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,

that money (together with any interest or income derived from the investment of that money) is to be carried to a separate account in the 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 that 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, or
  - (ii) a person employed in a stable of harness racing horses, or
  - (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.

## Part 8 Miscellaneous

### 53 (Repealed)

### 54 Production of club records to HRNSW

(1) In this section:

**records** includes:

- (a) documents, registers and other records of information, and
- (b) invoices, receipts, orders for the payment of money, bills of exchange, promissory notes, vouchers and other records of transactions, and
- (c) such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up,

however compiled, recorded or stored.

(2) HRNSW may at any time, by notice in writing, give a direction to:

- (a) a harness racing club, or
- (b) a person who is or has been an officer or employee of, or an agent, banker, Australian legal practitioner, auditor or other person acting in any capacity for or on behalf of, a harness racing club (including such a club that is in the course of being wound up or has been dissolved),

requiring the production, at such time and place as are specified in the direction, of such records relating to the affairs of the harness racing club as are so specified.

(3) Where any records relating to the affairs of a harness racing club are compiled, recorded or stored by means of a mechanical, electronic or other device, a direction under subsection (2) may require the production of a document containing a clear reproduction in writing of the whole or any part of those records.

(4) A person must not, when required under subsection (2) to produce a record:

- (a) refuse or neglect to produce the record, or
- (b) produce a record that contains information that to the person's knowledge is false or misleading in a material particular unless the person discloses that fact when producing the record.

Maximum penalty: 5 penalty units.

(5) A reference in this section to the affairs of a harness racing club is a reference to the affairs of the club that relate, directly or indirectly, to harness racing.



**55 (Repealed)**

**56 Delegation**

- (1) Subject to subsection (2), HRNSW may delegate the exercise of its functions to:
  - (a) a member of HRNSW or the chief executive officer of HRNSW, or
  - (b) a committee comprised of, or a combination of, those persons.
- (2) HRNSW must not delegate a function relating to registration, or the suspension or cancellation of registration, under this Act.
- (3), (4) (Repealed)

**57 Protection from personal liability**

Anything done or omitted to be done by:

- (a) HRNSW or the Advisory Committee, or
- (b) a member of HRNSW or the Advisory Committee, or
- (c) the chief executive officer of HRNSW, or
- (d) any steward appointed under this Act by the Authority, or
- (e) any person acting under the direction of HRNSW or the Advisory Committee,

does not subject the member, chief executive officer, 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.

**58 Authentication of certain documents**

- (1) Any summons, process, demand, order, notice, statement, direction or other document requiring authentication by HRNSW is sufficiently authenticated without the seal of HRNSW if signed by the chairperson of HRNSW, the chief executive officer of HRNSW or another member of staff of HRNSW authorised to do so by the chief executive officer.
- (2) (Repealed)

**59 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 HRNSW,
- (b) any resolution of HRNSW,

- (c) the appointment of, or the holding of office by, any member of HRNSW,
- (d) the presence of a quorum at any meeting of HRNSW.

#### **60 Recovery of money**

- (1) Any charge, fee or other money due to HRNSW may be recovered by HRNSW as a debt in a court of competent jurisdiction.
- (2) (Repealed)

#### **61 Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court.

#### **62 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) If there is any inconsistency between the regulations and the rules, the regulations prevail.
- (3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.
- (4) A reference in Division 1 of Part 3 to the rules includes a reference to regulations in so far as the regulations make provision for or with respect to any of the matters mentioned in that Division.

#### **63 Repeal of [Harness Racing New South Wales Act 1977 No 57](#)**

- (1) The [Harness Racing New South Wales Act 1977](#) is repealed.
- (2) Different days may be appointed for the repeal of different provisions of the [Harness Racing New South Wales Act 1977](#).

#### **64 (Repealed)**

#### **65 Savings, transitional and other provisions**

Schedule 6 has effect.

#### **66 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Provisions relating to HRNSW**

(Section 6)

### **1 Definitions**

In this Schedule:

**Chairperson** means the Chairperson of HRNSW.

**member** means a member of HRNSW.

**nominated member** means a member of HRNSW referred to in section 8 (1) (a)-(c).

### **2 Deputies of members**

- (1) A nominated member of HRNSW may from time to time appoint a person to be the deputy of the member, and may at any time revoke any such appointment.
- (2) A person cannot be appointed as a deputy of a nominated member if the person is not eligible to be a member of HRNSW.
- (3) In the absence of a nominated member due to illness or other reasonable cause, the member's deputy may, if available, act in the place of the member and while so acting has all the functions of the member and is taken to be the member.
- (4) HRNSW may at any time revoke a person's appointment as deputy of a nominated member.

### **3 Term of office of members**

- (1) The term of office of a member is, unless the member sooner ceases to hold the office, 3 years, but the member is eligible (if otherwise qualified) for re-nomination or re-selection to the position of member.
- (2) The term of office of a member begins:
  - (a) in the case of a nominated member, on the date on which the relevant nomination takes effect, and
  - (b) in the case of the Chairperson, on a date determined by resolution of HRNSW.

### **4 Remuneration**

- (1) A member of HRNSW is entitled to be paid:

- (a) remuneration consisting of a base amount adjusted annually in accordance with the annual percentage increase (if any) in the Consumer Price Index, and
- (b) allowances to reimburse the member for expenses that the member may incur (for travel or accommodation, for example).

(2) In this clause:

**base amount** means an amount determined for the purposes of this clause by the Statutory and Other Offices Remuneration Tribunal (which determination, whenever made, is taken to be effective on the commencement of this subclause).

**Consumer Price Index** means the number appearing in the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

## 5 Vacation of office

(1) The office of a member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-nominated or re-selected, as the case may be, or
- (c) resigns the office by instrument in writing addressed to HRNSW, or
- (d) is absent from 4 consecutive meetings of HRNSW of which reasonable notice has been given to the member personally or by post, except on leave granted by HRNSW or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by HRNSW for having been absent from those meetings, or
- (e) 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
- (f) becomes a mentally incapacitated person, or
- (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more 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
- (h) becomes a person who is not eligible to be a member, or
- (i) is removed from office under subclause (2).

(2) The Governor may, on the recommendation of HRNSW, remove a member from office for incapacity, incompetence or misbehaviour.

## **6 Member vacancies to be filled**

- (1) When the office of a nominated member 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.
- (2) When the office of the Chairperson becomes vacant, a person is to be selected to fill the vacancy in accordance with section 8 (3).
- (3) A person nominated or selected to fill a casual vacancy under this clause is to hold office for the balance of the term of office of the person's predecessor or until the person sooner vacates the office. Such a person is eligible for re-nomination or re-selection, as the case may be, if otherwise qualified.

## **7 Presiding member**

- (1) The Chairperson or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of HRNSW.
- (2) The person presiding at a meeting of HRNSW has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **8 Voting**

A decision supported by a majority of the votes cast at a meeting of HRNSW at which a quorum is present is the decision of HRNSW.

## **9 Transaction of business outside meetings or by telephone**

- (1) HRNSW may, if it thinks fit, transact any of its business by the circulation of papers among all of its members, and a resolution in writing approved in writing by a majority of the voting members is taken to be a decision of HRNSW.
- (2) HRNSW may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if a member who speaks on a matter at the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of HRNSW.
- (4) A resolution approved under subclause (1) is to be recorded in the minutes of the meetings of HRNSW.

- (5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **10 Disclosure of pecuniary interests by members**

- (1) If:

- (a) a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of HRNSW or the committee, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of HRNSW or the committee.

- (2) A disclosure by a member at a meeting of HRNSW that the member:

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

is 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 and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by HRNSW in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of a reasonable fee determined by HRNSW.

- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless HRNSW otherwise determines:

- (a) be present during any deliberation of HRNSW with respect to the matter, or
- (b) take part in any decision of HRNSW with respect to the matter.

- (5) For the purpose of the making of a determination by HRNSW under subclause (4), a member who has a pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of HRNSW for the purpose of making the determination, or
- (b) take part in the making by HRNSW of the determination.

(6) A contravention of this clause does not invalidate any decision of HRNSW.

### **11 Pecuniary interests required to be disclosed**

- (1) For the purposes of clause 10, a pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated as provided by subclauses (3)–(5).
- (2) A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter.
- (3) For the purposes of clause 10, a person has a pecuniary interest in a matter if the pecuniary interest is the interest of:
  - (a) the person, or
  - (b) another person with whom the person is associated as provided by this clause.
- (4) A person is taken to have a pecuniary interest in a matter if:
  - (a) the person's spouse or de facto partner or a relative of the person, or a partner or employer of the person, has a pecuniary interest in the matter, or
  - (b) the person, or a nominee, partner or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.
- (5) However, a person is not taken to have a pecuniary interest in a matter as referred to in subclause (4):
  - (a) if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
  - (b) just because the person is a member of, or is employed by, a statutory body or is employed by the Crown, or
  - (c) just because the person is a member of a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

### **12 Duty of members to act in interests of public and industry**

It is the duty of each member of HRNSW to act in the public interest and in the interests of the harness racing industry as a whole. (For example, in the case of a nominated member, this duty requires the member to put the interest to which the duty relates before the interests of the body that nominated the member).

### **13 General procedure**

The procedure for the calling of meetings of HRNSW and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by HRNSW.

### **14 Quorum**

The quorum for a meeting of HRNSW is a majority of its members.

### **15 First meeting**

The Minister may call the first meeting of HRNSW in such manner as the Minister thinks fit.

### **16 Code of conduct**

- (1) HRNSW must adopt a code of conduct to be observed by members, delegates and staff of HRNSW.
- (2) HRNSW must review its code of conduct at least every 3 years and make such changes to it as it considers appropriate.

### **17 Effect of certain other Acts**

- (1) The *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## **Schedules 2, 3 (Repealed)**

## **Schedule 4 Provisions relating to Advisory Committee**

(Section 40)

### **1 Definition**

In this Schedule, **member** means a member of the Advisory Committee.



## **2 Term of office of members**

The members of the Advisory Committee each hold office for a period of 2 years.

## **3 Membership is honorary**

The members of the Advisory Committee 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 HRNSW for reasonable expenses (such as for travel or accommodation) that they may incur in attending meetings of the Advisory Committee.

## **4 Vacation of office**

- (1) The office of a member of the Advisory Committee becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-nominated or re-selected, or
  - (c) resigns the office by instrument in writing addressed to the Minister and the Advisory Committee, or
  - (d) is absent from 2 consecutive meetings of the Advisory Committee of which reasonable notice has been given to the member personally or by post, except on leave granted by the Advisory Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Advisory Committee for having been absent from those meetings, or
  - (e) 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
  - (f) becomes a mentally incapacitated person, or
  - (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more 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
  - (h) becomes a person who is not eligible to be a member, or
  - (i) is removed from office under subclause (2).
- (2) The Minister may, on the recommendation of the Advisory Committee, remove a member of the Advisory Committee from office for incapacity, incompetence or misbehaviour.
- (3) A member of the Advisory Committee does not vacate office merely because of the withdrawal of his or her nomination by the body that nominated the member.

## **5 Chairperson and Deputy Chairperson of Advisory Committee**

- (1) The Advisory Committee is to elect a Chairperson from among its members.
- (2) The Advisory Committee may also elect a Deputy Chairperson from among its members.
- (3) The Advisory Committee may remove a person from office as Chairperson or Deputy Chairperson of the Advisory Committee at any time.
- (4) A member elected as Chairperson or Deputy Chairperson holds office as such for 1 year unless the member ceases to hold that office sooner.
- (5) A member is eligible to be re-elected as Chairperson or Deputy Chairperson but is not eligible to serve more than 3 consecutive terms as either Chairperson or Deputy Chairperson.
- (6) 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 the Minister and the Advisory Committee, or
  - (b) is removed from that office by the Advisory Committee, or
  - (c) ceases to hold office as a member of the Advisory Committee.
- (7) 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 the Advisory Committee at which a quorum is present.
- (8) The Chairperson or Deputy Chairperson does not cease to be a member of the Advisory Committee merely because he or she ceases to be Chairperson or Deputy Chairperson.

## **6 Member vacancies to be filled**

- (1) When the office of a member becomes vacant, a person is to be nominated or selected to fill the vacancy in the same way as the person whose office has become vacant was nominated or selected.
- (2) A person nominated or selected to fill a casual vacancy as a member is to hold office for the balance of the term of office of the person's predecessor or until the person sooner vacates the office. Such a person is eligible for re-nomination or re-selection if otherwise qualified.

## **7 Procedure**

- (1) The Advisory Committee may regulate its proceedings as it considers appropriate, subject to this clause.

- (2) The quorum for a meeting of the Advisory Committee is a majority of its members.
- (3) The Advisory Committee is to meet not less than 4 times a year.
- (4) The Advisory Committee is to hold at least 2 joint meetings a year with HRNSW and at least 2 joint meetings a year with the Authority. The appropriate quorum of each body is to be present at joint meetings.
- (5) The Advisory Committee may hold joint meetings for the purposes of subclause (4) with both the HRNSW and the Authority at the same time.
- (6) The Advisory Committee, HRNSW or the Authority can request the holding of further joint meetings and such a request must be complied with, up to a further 2 joint meetings in a year (without precluding the holding of further joint meetings by agreement).
- (7) Meetings of the Advisory Committee are to be held at the premises of the Committee unless the Committee approves of a meeting being held elsewhere.

#### **8 Presiding member**

- (1) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson is to preside at a meeting of the Advisory Committee.
- (2) 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.
- (3) 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.

#### **9 Decisions of Advisory Committee**

A decision supported by a majority of the votes cast at a meeting of the Advisory Committee at which a quorum is present is the decision of Advisory Committee.

#### **10 Administrative support**

The Authority is to provide the administrative support needed for the meetings of the Advisory Committee.

### **Schedule 5 (Repealed)**

## Schedule 6 Savings, transitional and other provisions

(Section 65)

### Part 1 General

#### 1 Regulations

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

    this Act

- (2) A provision of a regulation authorised by this clause may, if the regulations so provide, take effect as from the date of assent to the Act concerned or as from a later day.
- (3) To the extent to which a provision of a regulation authorised by this clause takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:
  - (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 Provisions consequent on enactment of this Act

#### Division 1 Interpretation

##### 2 Definitions

In this Part:

**former Act** means the *Harness Racing New South Wales Act 1977*.

**former Authority** means Harness Racing New South Wales constituted under the former Act.

**new Authority** means the Harness Racing Authority constituted by section 14.

#### Division 2 Dissolution of former Authority

##### 3 Dissolution of former Authority

- (1) The former Authority is dissolved.
- (2) No remuneration or compensation is payable to any director of the former Authority

as a result of its dissolution.

#### 4 References to former Authority

Regulations may be made under clause 1 that require references in any other Act, in any instrument made under another Act, or in any document of any kind, to the former Authority to be read as, or as including, a reference to HRNSW or the new Authority, or both.

#### 5 Constitution of HRNSW

- (1) HRNSW may be constituted, and may select a chairperson and a chief executive officer, in accordance with the provisions of Division 1 of Part 2 even if those provisions have not commenced.
- (2) However, HRNSW has no functions before the dissolution of the former Authority (other than a function under section 51 (10)).
- (3) As soon as practicable after the commencement of this clause, the Minister is to call for nominations for the first membership of HRNSW.
- (4) Nominations are to be in writing addressed to the Minister.
- (5) The Minister may give directions generally for facilitating the constitution of the first membership of HRNSW.
- (6) HRNSW is formally constituted for the purposes of this Act on a day (the constitution day) appointed by the Minister by notice published in the Gazette.

**Editorial note—**

Constitution day: 2.9.2002. See Gazette No 135 of 30.8.2002, p 7738.

- (7) The Minister can appoint a day as the constitution day even if all the members of HRNSW have not been nominated by that day.
- (8) The terms of office of the first members of HRNSW begin on the constitution day but the terms of office of those first members are extended by the period between the constitution day and the date of dissolution of the former Authority.

#### 6 Transfer of assets, rights and liabilities of former Authority

- (1) In this clause:

**transferee**, in relation to the transfer of an asset, right or liability by or under this clause, means the body to which the asset, right or liability is transferred.

**transferor**, in relation to the transfer of an asset, right or liability by or under this clause, means the body from which the asset, right or liability is transferred.

- (2) On the dissolution of the former Authority, the assets, rights and liabilities of the

former Authority are transferred to the new Authority.

- (3) The Minister may, by order in writing, transfer to HRNSW such of the assets, rights and liabilities of the new Authority that were transferred to the new Authority by subclause (2) and as are specified or referred to in the order.
- (4) One or more orders may be made under subclause (3) at the same or at different times.
- (5) An order under subclause (3) may be made on such terms and conditions as are specified in the order.
- (6) On and from the date on which any asset, right or liability is transferred by subclause (2) or under subclause (3), the following provisions have effect with respect to the transfer:
  - (a) the transferred asset vests in the transferee by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
  - (b) the transferred rights and liabilities become by virtue of this clause the rights and liabilities of the transferee,
  - (c) all proceedings relating to the asset, right or liability commenced before the transfer day by or on behalf of, or against, the transferor and pending immediately before the transfer day are taken to be proceedings pending by or against the transferee,
  - (d) any act, matter or thing done or omitted to be done in relation to the asset, right or liability before the transfer day by, to or in respect of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee.
- (7) The operation of this clause is not to be regarded:
  - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
  - (d) as an event of default under any contract or other instrument.
- (8) No attornment to the new Authority by a lessee of the former Authority is required.
- (9) No attornment to HRNSW by a lessee of the former Authority or the new Authority is

required.

## **7 Duty and other fees**

A transfer agreement or an instrument executed only for a purpose ancillary to or consequential on the operation of this Part or the purpose of giving effect to this Part:

- (a) is not chargeable with duty, and
- (b) is exempt from payment of any other fee or charge that would otherwise be payable under any other Act in respect of the registration of any such instrument.

## **8 Actions of former Authority**

Anything done by the former Authority relating to a registration, suspension, disqualification or prohibition under the former Act before the dissolution of the former Authority is, after that dissolution, taken to have been done under the relevant provisions of this Act by whichever of HRNSW or the new Authority has that function after the dissolution.

## **Division 3 Staff of former Authority transferred to new Authority**

### **9 General Manager of former Authority and stewards**

- (1) The person holding office as the General Manager of the former Authority immediately before the commencement of this clause is taken to have been appointed under this Act to the office of Chief Executive Officer of the new Authority for the remainder of the term of office, and on the same terms and conditions, that applied to the person's appointment as General Manager of the former Authority.
- (2) A person holding office as a steward under the former Act immediately before the commencement of this clause is taken to have been appointed to that office under this Act on the same terms and conditions that applied to the person's appointment as steward under the former Act.

### **10 Staff of former Authority**

- (1) On the dissolution of the former Authority, each member of staff of the former Authority is transferred to the employment of the new Authority.
- (2) Each such member of staff becomes after the transfer a member of staff of the new Authority and continues (until other provision is duly made) to be employed in accordance with the awards, agreements and determinations applying, immediately before the transfer, to members of the staff of the former Authority.
- (3) Neither the contract of employment nor the period of employment of each member of staff concerned is taken to have been broken by the operation of this Act for the purposes of any law, award or agreement relating to the employment of that member

of staff.

- (4) Without limiting this clause, this Act does not affect any accrued rights that the member of staff concerned had immediately before the transfer in relation to any kind of leave.
- (5) A member of staff concerned is not entitled to receive any payment or other benefit merely because the member ceases to be an employee of the former Authority.
- (6) A member of staff concerned is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service.

## **Division 4 Staff of new Authority transferring to HRNSW**

### **11 Interpretation**

- (1) In this Division:

**LGSS** means the local government superannuation scheme.

**relevant employee** means a person who:

- (a) is employed by HRNSW, and
  - (b) immediately before being so employed was an employee of the new Authority, and
  - (c) was, at any time while being employed by the new Authority, a member of or contributor to a SAC scheme.
- (2) Expressions used in this Schedule have the same meaning as in the [Superannuation Administration Act 1996](#).

### **12 Transfer of employees to another superannuation scheme**

- (1) The Treasurer may by order in writing transfer a relevant employee from a SAC scheme to:
  - (a) the LGSS, or
  - (b) another superannuation scheme (whether or not established under an Act) that is designated by the Treasurer for the purposes of this clause by order in writing.
- (2) The superannuation scheme to which a person is transferred under this clause is referred to in this Division as the new scheme and the person is referred to in this Division as a transferred person.
- (3) The Treasurer is not to make such an order in respect of a person unless the person has, no later than 3 months after the date on which the person ceased to be employed by the new Authority, elected, by notice in writing given to the Trustee, to transfer to



the new scheme.

- (4) The Treasurer, and SAC are to take all necessary steps generally to facilitate the superannuation coverage of transferred persons by the new scheme.
- (5) For that purpose, the Treasurer may enter into arrangements with the trustee of the new scheme, including arrangements for the amendment of any relevant trust deed.
- (6) Section 127 of the *Superannuation Administration Act 1996* does not limit or otherwise affect the operation of this clause and in particular does not prevent the transfer to the LGSS of transferred persons or the superannuation coverage of transferred persons by the LGSS.
- (7) An order under this clause may be made to take effect on and from a day specified in the order, whether or not the day specified is earlier than the day of publication of the order.

### **13 Regulations**

- (1) Regulations may be made for or with respect to the transfer of a relevant employee from a SAC scheme to the new scheme in accordance with a direction of the Treasurer under this Division.
- (2) In particular, regulations may be made for or with respect to the following:
  - (a) the transfer of assets and liabilities of a SAC scheme, in respect of a transferred person, to the new scheme,
  - (b) the transfer of assets and liabilities within a SAC scheme, or between any such schemes, from any reserve in respect of the employer or former employer of a transferred person to the Crown's reserve,
  - (c) the preservation or deferral of benefits of transferred persons,
  - (d) the entitlements, rights and obligations under the new scheme of a transferred person,
  - (e) providing for the resolution, by a prescribed authority or person, of all or of any prescribed class of disputes concerning the entitlements, rights and obligations of a transferred person under the new scheme.
- (3) A regulation made under this clause has effect despite any provision of an Act under which a SAC scheme is constituted.
- (4) A provision of a regulation made under this clause may be made to take effect on and from a day on which an order under clause 12 takes effect, whether or not that day is earlier than the day of publication of the regulation.

#### **14 Mobility between new scheme and public sector schemes**

For the purposes of section 128A of the *Superannuation Administration Act 1996*, a transferred person is taken to be an employee referred to in section 128A (3) (a) of that Act.

#### **15 Employment of employees of new Authority to staff of HRNSW**

- (1) In the period of 12 months after HRNSW is constituted, HRNSW:
  - (a) must notify employees of the new Authority whenever it intends to fill a position in the staff of HRNSW, and
  - (b) give such employees a reasonable opportunity to apply for the position.
- (2) A person who:
  - (a) applies for a position to be filled as referred to in subclause (1), and
  - (b) is employed by the new Authority at the time of making the application, and
  - (c) was transferred to that employment by the operation of clause 10, and
  - (d) at the time of transfer was performing substantially the same duties for the former Authority as are required to be performed in the position to be filled,is to be considered for the position in preference to any other applicant for the position who is not such a person.
- (3) The employment of a person referred to in subclause (2) who is appointed to a position in the staff of HRNSW in accordance with this clause is not to be terminated within the period of 12 months after the commencement of the employment on the ground of redundancy arising from the operation of this Act.

### **Division 5 Appeals and disciplinary inquiries**

#### **16 Harness Racing Appeals Tribunal**

- (1) The Harness Racing Appeals Tribunal established under the former Act is taken to have been established as the Harness Racing Appeals Tribunal under this Act.
- (2) A person appointed as the Harness Racing Appeals Tribunal, or to act as that Tribunal, under the former Act and whose appointment is in force immediately before the commencement of this clause is taken to have been so appointed under this Act.
- (3) A person appointed as an assessor of the Harness Racing Appeals Tribunal under the former Act and whose appointment is in force immediately before the commencement of this clause is taken to have been so appointed under this Act.

## **17 Appeals and inquiries**

- (1) Any appeal under the former Act that has not been finally determined at the commencement of this clause may continue to be dealt with under this Act.
- (2) Despite clause 8, any decision made before the commencement of this clause by the former Authority is, for the purposes of subclause (1), taken to be a decision made by the new Authority.
- (3) Nothing in this clause enables a person to appeal under this Act against a decision if the person has appealed against the decision under the former Act and the appeal has been finally determined under that Act.
- (4) Any inquiry commenced under, but not finished before, the repeal of the former Act may be continued by the new Authority under the corresponding provisions of this Act.

## **Division 6 Miscellaneous**

### **18 References to former Act**

A reference in any other Act, in any instrument made under another Act, or in any document of any kind, to the former Act is to be read as a reference to this Act.

### **19 Accounts and funds**

- (1) Any account established under section 14 (2) of the former Act is taken to have been established under section 48 (2) of this Act.
- (2) The Harness Racing Benevolent Fund established under section 13B of the former Act is taken to have been established under section 52 of this Act.

### **20 Rules**

Any rules made under the former Act and in force immediately before the commencement of this clause are taken to have been made under, and in accordance with, this Act by the new Authority.

### **21 Regulations**

Any regulations made under the former Act and in force immediately before the commencement of this clause are taken to have been made under this Act.

### **22 Operation of Part**

The operation of this Part is subject to the regulations.