

# Thoroughbred Racing Act 1996 No 37

[1996-37]



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**  
Thoroughbred Racing Board Act 1996  
AJC Principal Club Act 1996
- **Does not include amendments by**  
[Australian Jockey and Sydney Turf Clubs Merger Act 2010 No 93](#) (not commenced)  
[Wagering Legislation Amendment Act 2010 No 132](#) (not commenced — to commence on 31.12.2010)

### 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](#).

File last modified 17 December 2010

# Thoroughbred Racing Act 1996 No 37



New South Wales

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# Thoroughbred Racing Act 1996 No 37



New South Wales

An Act to make provision for the establishment, management and functions of Racing New South Wales as the representative body to control thoroughbred horse racing in the State; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Thoroughbred Racing Act 1996*.

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

**AJC** means Australian Jockey Club Limited (ACN 130 406 852).

**Appeal Panel** means the Appeal Panel provided for by Part 4.

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

**Australian Rules of Racing** means the Australian Rules of Racing as adopted by the Australian Conference of Principal Racing Clubs.

**Chief Executive** means the Chief Executive of Racing NSW from time to time.

**eligible industry body** means a body determined to be an eligible industry body for the time being under section 31 (2).

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

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

**GRNSW** means Greyhound Racing New South Wales constituted under the *Greyhound Racing Act 2009*.

**horse racing** means the racing of galloping horses as referred to in the Australian Rules of Racing.

**HRNSW** means Harness Racing New South Wales constituted under the [Harness Racing Act 2009](#).

**IA Committee** means the Integrity Assurance Committee established under this Act.

**race club** includes any body or other association of persons, whether incorporated or unincorporated, that promotes, conducts or controls, or that is formed for promoting, conducting or controlling, a horse racing meeting or meetings.

**racing association** means an association of race clubs.

**Racing NSW** means Racing New South Wales.

**racing official** means a member of Racing NSW, the Chief Executive or a steward appointed by Racing NSW or other member of staff of Racing NSW.

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

**Rules of Racing** means the rules for the time being governing and relating to horse racing under the control of Racing NSW (being an amalgamation of the Australian Rules of Racing and the local rules of racing of Racing NSW, together with the regulations made under those rules).

**Selection Panel** means the Selection Panel established under section 7.

(2) Notes included in this Act are explanatory notes and do not form part of this Act.

## Part 2 Racing NSW

### 4 Establishment of Racing NSW

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

### 5 Racing NSW independent of Government

Racing NSW does not represent the Crown and is not subject to direction or control by or on behalf of the Government.

### 6 Membership

- (1) Racing NSW is to consist of the Chief Executive and 5 appointed members appointed as follows:

- (a) 5 members recommended for appointment by the Selection Panel under section 7 and appointed by the Minister to give effect to the recommendation of the Selection Panel, unless the appointment is to fill a casual vacancy under paragraph (b),
  - (b) the appointment of a member to fill a casual vacancy (a vacancy in the office of an appointed member occurring other than by reason of the completion of the member's term of office) is to be made by the Minister on the nomination of Racing NSW.
- (2) A person is not eligible to be an appointed member of Racing NSW if the person:
- (a) is an employee of a race club or racing association, or
  - (b) is a member of the governing body of a race club or eligible industry body, or
  - (c) holds a licence issued by Racing NSW or by a racing association, or
  - (d) is registered by or with GRNSW under the *Greyhound Racing Act 2009* or HRNSW under the *Harness Racing Act 2009*, or
  - (e) is currently, or during the previous 10 years has been, warned off, disqualified or named on the Forfeits List under the Australian Rules of Racing, or
  - (f) during the previous 10 years has been convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more, or convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (g) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankruptcy, or
  - (h) is a mentally incapacitated person.
- (3) A person is not eligible to be appointed as a member of Racing NSW if the person is a member of the Selection Panel at the time the Selection Panel makes its recommendation for the appointment concerned.
- (4) A person is not eligible to hold office as an appointed member of Racing NSW for more than 8 years in total (whether or not involving consecutive terms of office).
- (5) The Chief Executive does not have a vote at meetings of Racing NSW.
- (6) While a person is an appointed member of Racing NSW, any entitlement of the person to vote as a member of a race club or of an eligible industry body is suspended.

## **7 Selection Panel**

- (1) The Minister is to establish a Selection Panel to recommend persons for appointment



as members of Racing NSW and to recommend the term of office of appointed members.

- (2) The Selection Panel must recommend only the number of persons required to be appointed (no more and no fewer) and must recommend a term of office for each person recommended.
- (3) The Selection Panel must not recommend a person for appointment as a member of Racing NSW unless the Panel is satisfied that the person has experience in a senior administrative role or experience at a senior level in one or more of the fields of business, finance, law, marketing, technology, commerce, regulatory administration or regulatory enforcement.
- (4) Before recommending a person for appointment as a member of Racing NSW, the Selection Panel must conduct a probity check of the person (with the level of scrutiny as determined by the Minister). The Minister is to appoint a Probity Adviser to assist the Selection Panel to conduct probity checks.
- (5) The Selection Panel is to choose between candidates for recommendation for appointment as a member of Racing NSW on the basis of merit, with merit to be determined on the basis of a candidate's abilities, qualifications, experience and personal qualities that are relevant to the performance of the duties of membership of Racing NSW.

## **8 Term of office of members**

- (1) An appointed member of Racing NSW is to be appointed to hold office (subject to this Act) for a period of up to 4 years recommended by the Selection Panel under section 7, unless the appointment is to fill a casual vacancy.
- (2) An appointed member appointed to fill a casual vacancy (a vacancy in the office of an appointed member occurring other than by reason of the completion of the member's term of office) is to be appointed for the balance of the term of office of the member's predecessor.

## **9 Review of appointments process**

- (1) The Minister is to review the operation of sections 6–8 to determine whether their policy objectives remain valid and whether their terms remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the date of assent to the *Thoroughbred Racing Further Amendment Act 2008*.
- (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 3 years.

## 10 Remuneration

- (1) An appointed member of Racing NSW 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 occurring after the determination or redetermination of the base amount takes effect, and
  - (b) allowances to reimburse the member for expenses that he or she may incur (for travel or accommodation, for example).
- (1A) The Statutory and Other Offices Remuneration Tribunal may, on the application of Racing NSW, redetermine the base amount from time to time, with effect from the date of the redetermination or such later date as the Tribunal may specify.

- (2) In this section:

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

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

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

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

### 11A Code of conduct

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

## 12 Personal liability

- (1) A matter or thing done or omitted to be done by Racing NSW, the Chief Executive, or a member of Racing NSW or the Selection Panel or any person acting under the direction of Racing NSW does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this Act, subject the Chief Executive, the member or a person so acting personally to any action, liability, claim or demand.

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

### 13 Functions of Racing NSW

- (1) Racing NSW has the following functions:
- (a) all the functions of the principal club for New South Wales and committee of the principal club for New South Wales under the Australian Rules of Racing,
  - (b) to control, supervise and regulate horse racing in the State,
  - (b1) such functions in relation to the business, economic development and strategic development of the horse racing industry in the State as are conferred or imposed by this Act,
  - (c) to initiate, develop and implement policies considered conducive to the promotion, strategic development and welfare of the horse racing industry in the State and the protection of the public interest as it relates to the horse racing industry,
  - (d) functions with respect to the insuring of participants in the horse racing industry, being functions of the kind exercised by the AJC on the commencement of this section, and such other functions with respect to insurance in the horse racing industry as may be prescribed by the regulations,
  - (e) such functions as may be conferred or imposed on Racing NSW by or under the Australian Rules of Racing or any other Act,
  - (f) such functions with respect to horse racing in New South Wales as may be prescribed by the regulations.
- (2) The functions of Racing NSW are not limited by the Australian Rules of Racing and are to be exercised independently of the Australian Racing Board.
- (3) The AJC ceases to have the functions that are solely the functions of the principal club for New South Wales or committee of the principal club for New South Wales under the Australian Rules of Racing.

- (4) In this section:

**AJC** means the club known as the Australian Jockey Club as referred to in the [Australian Jockey Club Act 1873](#) on the commencement of this section.

### 14 Powers of Racing NSW

- (1) Racing NSW has power to do all things that may be necessary or convenient to be done for or in connection with the exercise of its functions.
- (2) Without limiting subsection (1), Racing NSW has power to do the following:

- (a) investigate and report on proposals for the construction of new racecourses, and inspect new racecourses or alterations or renovations to existing racecourses,
- (b) register or licence, or refuse to register or licence, or cancel or suspend the registration or licence of, a race club, or an owner, trainer, jockey, stablehand, bookmaker, bookmaker's clerk or another person associated with racing, or disqualify or suspend any of those persons permanently or for a specified period,
- (c) supervise the activities of race clubs, persons licensed by Racing NSW and all other persons engaged in or associated with racing,
- (d) inquire into and deal with any matter relating to racing and to refer any such matter to stewards or others for investigation and report and, without limiting the generality of this power, to inquire at any time into the running of any horse on any course or courses, whether or not a report concerning the matter has been made or decision arrived at by any stewards,
- (e) allocate to registered race clubs the dates on which they may conduct race meetings,
- (f) direct and supervise the dissolution of a race club that ceases to be registered by Racing NSW,
- (g) appoint an administrator to conduct the affairs of a race club,
- (h) register and identify galloping horses,
- (i) disqualify a horse from participating in a race,
- (j) exclude from participating in a race a horse not registered under the Rules of Racing,
- (k) prohibit a person from attending at or taking part in a race meeting,
- (l) impose a penalty on a person licensed by it or on an owner of a horse for a contravention of the Rules of Racing,
- (m) impose fees for registration of a person or horse,
- (n) require registered race clubs to pay to it such fees and charges (including fees for registration of a race club) as are required for the proper performance of its functions, calculated on the basis of criteria notified to race clubs by Racing NSW,
- (o) consult, join, affiliate and maintain liaison with other associations or bodies, whether in the State or elsewhere, concerned with the breeding or racing of galloping horses,
- (p) enter into contracts,

- (q) acquire, hold, take or lease and dispose of real and personal property whether in its own right or as trustee,
- (r) borrow money,
- (s) order an audit of the books and accounts of a race club by an auditor who is a registered company auditor nominated by Racing NSW,
- (t) scrutinise the constitutions of race clubs to ensure they conform to any applicable Act and the Rules of Racing and that they clearly and concisely express the needs and desires of the clubs concerned and of racing generally,
- (u) publish material, including periodical publications, to inform and keep informed the public concerning matters relating to racing, whether in the State or elsewhere,
- (v) undertake research and investigation into all aspects of the breeding of horses and of racing generally,
- (w) take such steps and do such acts and things as are incidental or conducive to the exercise of its powers and the performance of its functions.

#### **14AA Registration and licensing functions of Racing NSW—general**

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

- (4) In this section:

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

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

#### **14A Licensing of bookmakers**

- (1) An application for a bookmaker licence may be made:

- (a) by a natural person of or over the age of 18 years, or
  - (b) by a proprietary company.
- (2) Racing NSW must refuse to licence a proprietary company as a bookmaker unless satisfied that the company is an eligible company.
- (3) For the purposes of this section, an **eligible company** means a proprietary company that is registered under the *Corporations Act 2001* of the Commonwealth and in which:
- (a) each director, shareholder and person concerned in the management of the company is of or over the age of 18 years, and
  - (b) each director is licensed as an individual as a bookmaker under this Act, and
  - (c) each director is a shareholder and person concerned in the management of the company, and
  - (d) each shareholder who is not a director is a close family member of a director, and
  - (e) each shareholder or person concerned in the management of the company who is not a director is, in the opinion of Racing NSW, a fit and proper person to be licensed as an individual as a bookmaker under this Act, and
  - (f) subject to the regulations, no person (other than a shareholder) has any interest in the shares or assets of the company.
- (4) It is a condition of a bookmaker licence granted to a company that:
- (a) the company continues to be an eligible company, and
  - (b) no shareholder or person concerned in the management of the company, other than a director, is licensed as an individual as a bookmaker under this Act, and
  - (c) no director, shareholder or person concerned in the management of the company:
    - (i) carries on the business of a bookmaker, otherwise than on behalf of the company, in relation to any horse, harness or greyhound race, at a meeting for horse racing in New South Wales, or
    - (ii) carries on the business of an authorised sports betting bookmaker, otherwise than on behalf of the company, at a racecourse licensed for horse racing, or
    - (iii) is a director, shareholder or person concerned in the management of, or is an employee or agent of, any other company that is licensed as a bookmaker under this Act, or
    - (iv) has a financial interest in any business of a bookmaker that is carried on by

any such other company under the authority of its licence under this Act, and

(d) (Repealed)

(e) no director, shareholder or person concerned in the management of the company:

(i) is licensed or otherwise authorised as an individual to carry on, or carries on, the business of a bookmaker, bookmaker's clerk or turf commission agent, or a totalizator business, or any other kind of betting, wagering, gambling or gaming business, in another country, or

(ii) is a director, shareholder or person concerned in the management of a corporation, or is a member of a partnership, that is licensed or otherwise authorised to carry on, or that carries on, any such business in another country, or

(iii) is an employee or agent of any individual, partnership or corporation referred to in the preceding subparagraphs, or

(iv) has a financial interest in the business of a bookmaker or turf commission agent, or a totalizator business, or any other kind of betting, wagering, gambling or gaming business, that is authorised to be carried on or is carried on in another country.

(5) In subsection (4) (c) and (e), a reference to carrying on the business of a bookmaker, or the business of a bookmaker's clerk or turf commission agent, includes a reference to acting as a bookmaker, or a bookmaker's clerk or turf commission agent.

(6) (Repealed)

(7) Racing NSW may suspend or cancel a bookmaker licence granted to a company if satisfied that any condition referred to in subsection (4) is contravened in respect of the company. This does not limit the powers of Racing NSW to suspend or cancel the registration of a company as a bookmaker under section 14.

(8) Any debt that is incurred by a company in carrying on business as a bookmaker licensed under this Act is enforceable jointly and severally against all persons who are directors of the company at the time the debt is incurred (whether or not they are directors at the time the debt is sought to be enforced).

(9) In this section:

**authorised sports betting bookmaker** has the same meaning as in section 4 of the [Racing Administration Act 1998](#).

**close family member of a director** means:

(a) a spouse, de facto partner, parent, child, brother or sister of the director, or

- (b) a person who has a relationship with the director that is prescribed by the regulations for the purposes of this definition.

**Note—**

“De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).

**financial interest** in a bookmaking business means an entitlement to receive any of the income from the business.

**meeting for horse racing** has the same meaning as in section 4 of the [Racing Administration Act 1998](#).

**racecourse licensed for horse racing** means a racecourse in respect of which a licence for meetings for horse racing granted under section 7 of the [Racing Administration Act 1998](#) is in force.

#### **14B Consultation and planning**

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

#### **15 Vacation of office**

- (1) The office of an appointed member of Racing NSW becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not reappointed, or
  - (c) resigns the office by instrument in writing addressed to Racing NSW, or
  - (d) is absent from 4 consecutive meetings of Racing NSW of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by Racing NSW or unless, before the expiration of 4 weeks after



the last of those meetings, the member is excused by Racing NSW for having been absent from those meetings, or

(e) becomes a person who is not eligible to be a member, or

(f) is removed from office under subsection (2).

(2) The Minister may, on the recommendation of Racing NSW, remove an appointed member of Racing NSW from office for incapacity, incompetence, misbehaviour or a contravention of the code of conduct adopted by Racing NSW under section 11A.

(3), (4) (Repealed)

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

(1) The appointed members of Racing NSW are to elect a Chairperson and Deputy Chairperson from among the appointed members. Racing NSW may remove a person from office as Chairperson or Deputy Chairperson of Racing NSW at any time.

(2) A person ceases to hold office as Chairperson or Deputy Chairperson if he or she:

(a) resigns the office by instrument in writing addressed to Racing NSW, or

(b) is removed from that office by Racing NSW, or

(c) ceases to hold office as a member of Racing NSW.

(3) The Chairperson or Deputy Chairperson does not cease to be a member of Racing NSW merely because he or she ceases to be Chairperson or Deputy Chairperson.

### **17 Member vacancies to be filled**

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

### **18 The Chief Executive and other staff**

(1) Racing NSW is to employ a Chief Executive and may employ such other staff as it considers necessary for the exercise of its functions. A person is disqualified from being employed as Chief Executive if the person is or becomes an employee of a race club or racing association.

(2) Racing NSW may fix the salary, wages and other conditions of employment of the Chief Executive and its other staff, 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 the Chief Executive and the other members of staff of Racing NSW.

### **18A Arrangements for use of staff and facilities of HRNSW or GRNSW**

- (1) Racing NSW may arrange for the use of the services of any staff or facilities of HRNSW or GRNSW.
- (2) For the purposes of this Act, a person whose services are utilised by Racing NSW under this section is taken to be a member of staff of Racing NSW in the exercise of functions by the person under this Act.
- (3) Without limiting subsection (1), Racing NSW may arrange for a steward appointed by HRNSW or GRNSW to perform the functions of a steward under this Act. Any such person is taken to have been appointed by Racing NSW as a steward for the purposes of this Act while exercising functions under this Act in accordance with those arrangements.
- (4) Without limiting subsection (1), Racing NSW may arrange to share with HRNSW or GRNSW any equipment, information technology (such as computer software) or office, or any administrative system relating to licensing or registration.
- (5) Racing NSW is not authorised to enter into an arrangement under this section in relation to stewards, licensing or registration without the consent of the Minister.
- (6) The consent of the Minister under subsection (5):
  - (a) may be given in relation to a particular arrangement or a class of arrangements, and
  - (b) may be subject to conditions, and
  - (c) may be amended from time to time.

### **19 Procedure**

- (1) Racing NSW may regulate its proceedings as it considers appropriate, subject to this section.
- (1A) Proceedings in respect of an inquiry conducted by Racing NSW may be conducted in public or in private, or partly in public and partly in private, as Racing NSW may decide.
- (1B) In conducting an inquiry, Racing NSW may examine any witness on oath or affirmation, or by use of a statutory declaration.
- (2) The quorum for a meeting of Racing NSW is a majority of the appointed members of Racing NSW as constituted for the time being.
- (3) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson is to preside at a meeting of Racing NSW. If neither the Chairperson nor Deputy Chairperson is present at a meeting, the members present may elect one of their

number to preside at the meeting. The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

- (4) A decision supported by a majority of the votes cast at a meeting of Racing NSW at which a quorum is present is the decision of Racing NSW.
- (5), (6) (Repealed)

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

- (1) Racing NSW 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 appointed members is taken to be a decision of Racing NSW.

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

- (2) Racing NSW 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 subsection (1), or
  - (b) a meeting held in accordance with subsection (2),the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of Racing NSW.
- (4) A resolution approved under subsection (1) is to be recorded in the minutes of the meetings of Racing NSW.
- (5) Papers may be circulated among members for the purposes of subsection (1) by facsimile or other transmission of the information in the papers concerned.

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

- (1) If:
  - (a) a member of Racing NSW or of a committee of Racing NSW has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of Racing NSW 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 Racing NSW or the committee.

- (2) A disclosure by a member at a meeting of Racing NSW or a committee of Racing NSW 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 subsection (1).
- (3) Particulars of any disclosure made under this section must be recorded by Racing NSW or the committee 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 the reasonable fee determined by Racing NSW.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless Racing NSW otherwise determines:
  - (a) be present during any deliberation of Racing NSW or the committee with respect to the matter, or
  - (b) take part in any decision of Racing NSW or the committee with respect to the matter.
- (5) For the purpose of the making of a determination by Racing NSW under subsection (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of Racing NSW for the purpose of making the determination, or
  - (b) take part in the making by Racing NSW of the determination.
- (6) A contravention of this section does not invalidate any decision of Racing NSW or a committee.

## **22 Committees**

- (1) Racing NSW may establish committees to assist it in connection with the exercise of any of its functions.

- (2) A person may be appointed to be a member of such a committee whether or not the person is a member of Racing NSW.
- (3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by Racing NSW or (subject to any determination of Racing NSW) by the committee.

### **23 Integrity Assurance Committee**

- (1) Racing NSW must establish a committee to be known as the Integrity Assurance Committee (“the IA Committee”). The IA Committee is to have primary oversight of those aspects of the functions of Racing NSW that relate to race stewards, drug testing and control, licensing, handicapping and horse racing appeals. The IA Committee has such other functions as Racing NSW may confer on it or as are conferred on it by this Act.
- (2) The IA Committee is to advise Racing NSW on the matters for which it has primary oversight.
- (3) Racing NSW is to determine the qualifications and disqualifications for membership of the IA Committee and in doing so is to have particular regard to the need to minimise conflicts of interest, such as might arise from a person’s:
  - (a) ownership of horses currently in work, or
  - (b) professional involvement in race preparation, or
  - (c) professional or commercial dealings with any person who holds a licence issued by Racing NSW or by a racing association.

### **23A Inquiries and investigations by Integrity Assurance Committee in relation to complaint**

- (1) A person may make a complaint to the IA Committee in respect of the exercise of functions by a racing official relating to horse racing.
- (2) On receiving a complaint from a person under this section, the IA Committee must investigate the complaint with due diligence unless the Committee considers that the complaint:
  - (a) is frivolous, vexatious or not made in good faith, or
  - (b) is trivial, or
  - (c) does not relate to the exercise of functions by a racing official in a corrupt, improper or unethical manner.
- (3) If the IA Committee decides to investigate a complaint, the Committee must inform the racing official concerned of the substance of the complaint and give the racing

official a reasonable opportunity to respond to it.

- (4) The IA Committee may, by notice in writing, require a racing official who is the subject of an investigation under this section to do one or more of the following things:
- (a) provide, in accordance with directions in the notice, such information verified by statutory declaration as, in the opinion of the Committee, is relevant to the investigation and is specified in the notice,
  - (b) produce, in accordance with directions in the notice, such records as, in the opinion of the Committee, are relevant to the investigation and permit examination of the records, the taking of extracts from them and the making of copies of them,
  - (c) authorise a person described in the notice to comply with a requirement of the kind referred to in paragraph (a) or (b),
  - (d) furnish to the Committee such authorisations and consents as the Committee requires for the purpose of enabling the Committee to obtain information (including financial and other confidential information) from other persons concerning the person under investigation.
- (5) A person who complies with a requirement of a notice under subsection (4) does not on that account incur a liability to another person.
- (6) A person must not fail to comply with a requirement of the IA Committee contained in a notice under subsection (4).

Maximum penalty (subsection (6)): 20 penalty units.

### **23B Action after investigation of complaint**

- (1) The IA Committee must provide a report in writing of the results of the investigation of a complaint to Racing NSW and the Minister if satisfied that those results indicate that there has been a contravention of this or any other Act in relation to the conduct of horse racing or a contravention of the code of conduct adopted by Racing NSW under section 11A.
- (2) If such a report identifies any racing official in an adverse manner, the IA Committee must also give a copy of the report to the racing official.
- (3) The IA Committee must inform the person who made the complaint of whether a report has been made under this section or whether the Committee considers that the complaint does not warrant such a report being made.

### **24 Delegation of functions**

- (1) Racing NSW may delegate to an authorised person or body any of its functions, other

than this power of delegation.

- (2) A delegate may sub-delegate to an authorised person or body any function delegated by Racing NSW if the delegate is authorised in writing to do so by Racing NSW.
- (3) In this section, **authorised person or body** means:
  - (a) the Chief Executive or any other member of Racing NSW, or
  - (b) a committee of Racing NSW or any member of such a committee, or
  - (c) a race club or racing association.

## **25 (Repealed)**

## **26 Authentication of documents**

Any document requiring authentication by Racing NSW is sufficiently authenticated without the seal of Racing NSW if signed by the Chairperson.

## **27 Recovery of money**

Any charge, fee or other money due to Racing NSW may be recovered as a debt in a court of competent jurisdiction.

## **28 (Repealed)**

## **29 Annual report**

- (1) Racing NSW 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 Racing NSW 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) Racing NSW is to make copies of the report available to the public at a reasonable price.

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

## **Division 1 Directions and minimum standards**

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

- (1) Racing NSW may set minimum standards in connection with the conduct by registered

race clubs of races and race meetings, including minimum standards with respect to the following:

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

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

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



(1) (b), (b1) or (c) or 29A.

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

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

## **Division 2 Race broadcasting arrangements**

### **29D Definitions**

In this Division:

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

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

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

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

and includes the marketing and distribution of any such broadcast.

**racing body** means:

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

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

- (1) A racing body must not enter into a broadcasting arrangement unless Racing NSW has given its prior approval in writing to the proposed arrangement. Racing NSW may refuse to approve of a proposed broadcasting arrangement if of the opinion that the arrangement is not in the best interests of the horse racing industry as a whole in New South Wales.
- (2) A broadcasting arrangement entered into in contravention of this section is void.
- (3) No compensation is payable by Racing NSW or the State in connection with the refusal by Racing NSW to approve of a proposed broadcasting arrangement.
- (4) This section does not apply to the entering into of a broadcasting arrangement before the commencement of this section but does apply to the extension after that commencement of the term of a broadcasting arrangement entered into before that commencement (as if the extension of the term of the arrangement constituted the

entering into of a new broadcasting arrangement).

- (5) A racing body may authorise Racing NSW to negotiate and enter into broadcasting arrangements on behalf of the racing body. Except as provided by any such authorisation, this section does not authorise Racing NSW to exercise any function of a racing body with respect to the negotiation or entering into of broadcasting arrangements by the racing body.

**Note—**

This section has no effect on ownership of broadcasting rights.

- (6) Any conduct of Racing NSW authorised under this section is specifically authorised for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*.

**29F Procedure for approvals**

- (1) A proposed broadcasting arrangement must be submitted to Racing NSW for approval not less than 30 days before the broadcasting arrangement is proposed to be entered into, unless Racing NSW otherwise determines in a particular case.
- (2) A racing body must provide Racing NSW with such documents and information as Racing NSW directs in connection with a proposed broadcasting arrangement submitted for approval under this section.
- (3) Racing NSW is to consult with a racing body in relation to a proposed broadcasting arrangement that the racing body submits for approval under this Division and in the course of that consultation must give the racing body a reasonable opportunity to be heard and to make submissions on the proposal.
- (4) If Racing NSW refuses to approve of a proposed broadcasting arrangement, Racing NSW must provide the racing body concerned with a statement in writing of the reasons for the refusal.
- (5) The statement of reasons for the refusal must include the following:
  - (a) a statement of the reasons why the proposed broadcasting arrangement is not in the best interests of the horse racing industry as a whole in New South Wales,
  - (b) if the refusal will have the effect of lessening competition—a statement of the reasons why that lessening of competition is in the best interests of the horse racing industry as a whole in New South Wales.

**29G Mediation of disputes**

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

**Note—**

Mediation is a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.

- (2) Racing NSW must refer the dispute for mediation before a neutral and independent person within 14 days after the request is made and must participate in good faith in the mediation.
- (3) Racing NSW is not bound by any decision or finding of the mediator.
- (4) Mediation under this section is to be at the expense of Racing NSW.

### **Division 3 Totalizator distribution arrangements**

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

In this Division:

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

- (a) the agreement titled “Intra-Code Deed” dated 3 March 1998 between the NSW Thoroughbred Racing Board, AJC, Sydney Turf Club, Provincial Association of New South Wales and NSW County Racing Council, as in force from time to time, or
- (b) any other agreement to which Racing NSW is a party that is prescribed by the regulations and that provides for the distribution of money payable under commercial arrangements for facilitating the conduct of totalizator betting authorised by the [Totalizator Act 1997](#).

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

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

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

- (1) If the parties (including Racing NSW) to the Intra-Code agreement have not

unanimously agreed to changes to the agreement in response to a review proposal within 6 months after the invitation to submit a review proposal is made, Racing NSW may make a determination of the changes to the agreement that Racing NSW considers to be necessary or desirable for ensuring that the agreement remains in the best interests of the horse racing industry as a whole in New South Wales.

- (2) Racing NSW may then notify its determination to the other parties to the Intra-Code agreement and direct that the changes to the agreement specified in the determination are to have effect. Those changes then have effect for all purposes as if the Intra-Code agreement had been amended as provided in the determination by agreement of the parties, but do not take effect until the beginning of the next financial year.
- (3) This section does not limit or otherwise affect the ability of the parties to the Intra-Code agreement to agree to make changes to the agreement.

## Division 4 Appeal and review

### 29K Definition

In this Division:

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

### 29L Appeal or review on procedural grounds

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

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

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

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

Administrative Decisions Tribunal for a review of the decision on procedural grounds.

**Note—**

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

**29N Procedure on appeal or review**

- (1) Despite any provision of the *Administrative Decisions Tribunal Act 1997* or the *Racing Appeals Tribunal Act 1983*, the jurisdiction of the appeal body on an appeal or review under this Division is limited to an appeal or review on procedural grounds.
- (2) On the appeal or review, the appeal body may set aside the decision concerned if satisfied that any of the grounds of appeal or review are made out.
- (3) The appeal body does not have jurisdiction on the appeal or review to substitute its own decision for that of Racing NSW.

**Part 3 Racing Industry Consultation Group**

**30 Establishment of RICG**

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

**31 Membership**

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

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

### **32 Eligibility for membership**

- (1) A person is not eligible to be a member of RICG if the person:
  - (a) is a member of the Selection Panel, or
  - (b) is currently, or during the previous 10 years has been, warned off, disqualified or named on the Forfeits List under the Australian Rules of Racing, or
  - (c) during the previous 10 years has been convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more, or convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (d) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankruptcy, or
  - (e) is a mentally incapacitated person.
- (2) A person is not eligible to be appointed as a member of RICG unless the person has been the subject of a probity check by Racing NSW.

### **33 Membership is honorary**

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

### **34 Functions of RICG**

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

### **35 Vacation of office**

- (1) The office of a member of RICG becomes vacant if the member:
  - (a) dies, or
  - (b) resigns the office by instrument in writing addressed to Racing NSW and RICG, or
  - (c) is absent from 2 consecutive meetings of RICG of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by RICG or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by RICG for having been absent from those meetings, or
  - (d) becomes a person who is not eligible to be a member, or
  - (e) is a member on the nomination of a body and that nomination is withdrawn by the body or the body ceases to exist, or
  - (f) is removed from office under subsection (2).
- (2) The Minister may, on the recommendation of RICG, remove a member of RICG from office for incapacity, incompetence or misbehaviour.

### **36 Chairperson and Deputy Chairperson of RICG**

- (1) RICG is to elect a Chairperson from among its members. RICG may also elect a Deputy Chairperson from among its members. RICG may remove a person from office as Chairperson or Deputy Chairperson of RICG at any time.
- (2) A person ceases to hold office as Chairperson or Deputy Chairperson if he or she:



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

### **37 Member vacancies to be filled**

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

### **38 Procedure**

- (1) RICG may regulate its proceedings as it considers appropriate, subject to this section.
- (2) The quorum for a meeting of RICG is a majority in number of the members for the time being.
- (3) RICG must meet at least 12 times in each year unless RICG otherwise determines.
- (4) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson is to preside at a meeting of RICG. If neither the Chairperson nor Deputy Chairperson is present at a meeting, the members present may elect one of their number to preside at the meeting. The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.
- (5) A decision supported by a majority of the votes cast at a meeting of RICG at which a quorum is present is the decision of RICG.

### **39 Meetings with Racing NSW**

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

#### **40 Administrative support**

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

#### **41 Personal liability**

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

### **Part 4 Appeal Panel**

#### **42 Right of appeal**

- (1) A person aggrieved by any of the following decisions of a racing authority has a right of appeal against the decision to the Appeal Panel:
  - (a) a decision to disqualify or warn off any person,
  - (b) a decision to disqualify any horse,
  - (c) a decision to revoke the licence or registration of any person or suspend (for any period) any such licence or registration,
  - (d) a decision to fine any person a sum of \$10 or more,
  - (e) a decision that Racing NSW determines, by order published in the racing calendar published by Racing NSW, to be a decision that may be appealed against to the Appeal Panel.
- (1A) Racing NSW has a right of appeal to the Appeal Panel against the following decisions of a racing authority:
  - (a) a decision referred to in subsection (1) (a)-(d),
  - (b) a decision to dismiss a charge against a person for contravention of the Rules of Racing.
- (2) A **racing authority** means:
  - (a) the stewards of Racing NSW,
  - (b) (Repealed)
  - (c) the committee or stewards of any race club or race meeting registered by Racing

NSW under the Rules of Racing,

(d) a racing association.

- (3) Racing NSW may delegate to a racing association the function of hearing and determining appeals against decisions of the committee or stewards of any club over which the association has jurisdiction. Any such delegation may be general or limited to a particular class or classes of appeals.
- (4) If an appeal against a decision can be heard by a racing association by virtue of such a delegation, an appellant against the decision has the choice of appealing to the Appeal Panel or to the racing association (but cannot appeal to both).
- (5) A decision of a racing association on an appeal heard by the racing association by virtue of a delegation under this section, or on an appeal under the Rules of Racing, cannot be appealed against to the Appeal Panel.
- (6) If the Rules of Racing confer on a person a right of appeal against a decision to the principal club for New South Wales, or the committee of the principal club, and the person has a right of appeal against the decision under this section, the person does not have a right of appeal to Racing NSW (despite the provisions of the Rules of Racing). The function of hearing and determining appeals against decisions that may be appealed against under this section is to be exercised by the Appeal Panel or by a racing association to which that function is delegated under this section, and not by Racing NSW.
- (7) An appeal is to be made in accordance with the local rules of racing of Racing NSW.

### **43 Procedure on an appeal**

- (1) An appeal to the Appeal Panel is to be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence on which the decision appealed against was made, may be given on the appeal.
- (2) The Appeal Panel may subject to this Act and the local rules of racing of Racing NSW determine its own procedure.
- (3) On an appeal the Appeal Panel:
  - (a) is not bound to act in a formal manner, and
  - (b) is not bound by the rules of evidence and may inform itself on any matter in any way that it considers to be just, and
  - (c) is to make its decision on the real merits and justice of the case and is not bound to follow strict legal precedent.
- (4) The Appeal Panel is to sit as in open court when hearing the appeal but may sit in

private if the Appeal Panel considers it necessary to do so in the public interest or to protect the safety of any person.

- (5) For the purpose of the exercise of the Appeal Panel's functions on an appeal, the person presiding at the hearing of the appeal has the powers, authorities, protections and immunities conferred by the *Royal Commissions Act 1923* on a Commissioner appointed under Division 1 of Part 2 of that Act. That Act (except section 13 and Division 2 of Part 2) applies, with any necessary modifications, to a witness summoned by, or appearing before, the Appeal Panel.
- (6) When an appeal is to a racing association pursuant to a delegation to the association by Racing NSW under this Part, the following provisions have effect:
  - (a) the committee of the association has the function of hearing and determining the appeal, and
  - (b) the members of the committee of the association and the person presiding at the hearing of the appeal have the same powers, authorities, protections and immunities as the members of the Appeal Panel and the person presiding at the hearing of an appeal by the Appeal Panel, and
  - (c) references in this section to the Appeal Panel and to the person presiding at the hearing of an appeal include a reference to the committee and to the person presiding at the hearing of the appeal by the committee, and
  - (d) the same right of appeal as exists under the *Racing Appeals Tribunal Act 1983* in respect of a decision of the Appeal Panel also exists in respect of a decision of the committee of the association (and for that purpose references in that Act to a decision of the Appeal Panel are to be read as including a reference to a decision of the committee of a racing association).

#### **44 Determination of appeal**

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

#### **45 Membership of Appeal Panel**

- (1) Racing NSW is to appoint suitably qualified persons to be members of the Appeal Panel. A member of Racing NSW cannot be a member of the Appeal Panel.
- (2) Racing NSW is (subject to this section) to determine the qualifications and disqualifications for membership of the Appeal Panel and for that purpose is to have particular regard to the need to minimise conflicts of interest, such as might arise from a person's:
  - (a) ownership of horses currently in work, or
  - (b) professional involvement in race preparation, or
  - (c) professional or commercial dealings with any person who holds a licence issued by Racing NSW or by a racing association.
- (3) At least one member of the Appeal Panel is to be an Australian lawyer of at least 7 years standing.
- (4) A person is not eligible to be appointed as a member of the Appeal Panel if the person:
  - (a) holds a licence issued by Racing NSW or by a racing association, or
  - (b) is currently warned off or disqualified, or is a person whose name is currently on the Forfeits List, under the Australian Rules of Racing, or
  - (c) during the previous 10 years has been convicted in New South Wales of an offence 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
  - (d) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankruptcy, or
  - (e) is a mentally incapacitated person.
- (5) A member of the Appeal Panel holds office for 4 years from appointment and is eligible (if otherwise qualified) to be reappointed.
- (6) The office of a member of the Appeal Panel becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not reappointed, or
  - (c) resigns the office by instrument in writing addressed to Racing NSW, or
  - (d) is removed from office under subsection (7), or

(e) becomes a person who is not eligible to be a member of the Appeal Panel.

(7) The Governor may, on the recommendation of Racing NSW, remove a member of the Appeal Panel from office for incapacity, incompetence or misbehaviour.

#### **46 Appointment of Principal Member**

(1) Racing NSW is to appoint one of the members of the Appeal Panel as Principal Member. The person appointed must be an Australian lawyer of at least 7 years standing.

(2) The person appointed holds office as Principal Member for a period of 2 years and is eligible (if otherwise qualified) for reappointment.

(3) A person ceases to hold office as Principal Member if the person ceases to hold office as a member of the Appeal Panel.

#### **47 How Appeal Panel is constituted for particular appeal**

(1) When the Appeal Panel is required to hear an appeal, the Principal Member is to establish the Appeal Panel in accordance with this section. More than one Appeal Panel may be established to exercise the functions of the Appeal Panel at any one time.

(2) The Appeal Panel is to be constituted for the purposes of an appeal by not less than 3 members, one of whom must be the Principal Member (who is to be Convenor of the Appeal Panel for the purposes of the appeal).

(3) If the Principal Member is unavailable to act (including as a result of being a member of the Appeal Panel for another appeal), one of the members is to be appointed Convenor by the Principal Member when the Appeal Panel is established. The member appointed Convenor must be an Australian lawyer of at least 7 years standing.

(4) The Convenor is to preside at the hearing of an appeal.

(5) The Principal Member must, if practicable, consult with the Chief Executive before establishing an Appeal Panel under this section, or appointing a Convenor when the Principal Member is unavailable to act.

(6) The Chief Executive may exercise the functions of the Principal Member under this section of establishing an Appeal Panel and appointing a Convenor during any period in which the Principal Member is unavailable to exercise those functions (for example, because of absence or incapacity).

#### **48 Remuneration of members**

The members of the Appeal Panel are entitled to be paid such fees and expenses in connection with the hearing and determination of an appeal as Racing NSW determines

from time to time.

#### **49 How Appeal Panel makes decisions**

A decision supported by a majority of the members of the Appeal Panel hearing an appeal is the decision of the Panel. If the members of the Appeal Panel are evenly split on a question, the decision of the Convenor of the Panel is the decision of the Panel.

#### **49A Local rules of racing may provide for appeals**

The local rules of racing of Racing NSW may make provision for or with respect to appeals under this Part, including the manner of making an appeal and the procedure for hearing and determining an appeal.

### **Part 5 General**

#### **50 Savings and transitional provisions**

Schedule 1 has effect.

#### **51 (Repealed)**

#### **52 Regulations**

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.

#### **53 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) A review under this section is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *Thoroughbred Racing Amendment Act 2008*.
- (3) A report of 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 Savings and transitional provisions**

(Section 50)

### **Part 1 General**

#### **1 Definitions**

In this Schedule:

**AJC** means the club known as the Australian Jockey Club as referred to in the [Australian Jockey Club Act 1873](#).

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**instrument** means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

**liabilities** means any liabilities, debts and obligations (whether present or future and whether vested or contingent).

**rights** means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent).

**transfer day** means:

- (a) in relation to any asset, right or liability transferred by or under this Schedule, the day on which the transfer occurs, or
- (b) in relation to an employee of the AJC who becomes an employee of the AJCPC by operation of this Schedule, the day on which that occurs.

## 2 Orders to authorise AJCPC to assume functions

- (1) The AJCPC is not authorised to exercise any of its functions under this Act until the Minister has by order published in the Gazette authorised it to assume those functions. Such an order takes effect on the day it is published in the Gazette or on such later day as may be specified in the order.
- (2) More than one order may be made under this clause at different times so as to authorise the AJCPC to assume different functions at different times.
- (3) The operation of the whole of Part 4 (Appeal Panel) of this Act is deferred until the AJCPC is authorised (as provided by this clause) to exercise its functions under that Part. The repeal by this Act of section 32 (Appeals) of the [Australian Jockey Club Act 1873](#) does not have effect until the AJCPC is authorised (as provided by this clause) to exercise its functions under Part 4 of this Act.
- (4) Until any particular function is authorised to be exercised by the AJCPC, the function (to the extent that it is a function of the AJC immediately before the commencement of this clause) remains a function of the AJC and may continue to be exercised by the AJC until the AJCPC is authorised to assume it by order under this clause.
- (5) An amendment made by Schedule 2 that operates to confer a function on the AJCPC or remove a function from the AJC does not have effect until that function is



authorised (as provided by this clause) to be exercised by the AJCPC.

- (6) The AJC does not cease to have a function under section 13 (3) while the function may, under this clause, continue to be exercised by the AJC.

### **3 Savings and transitional regulations**

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

this Act

*AJC Principal Club Amendment Act 1997*

*Thoroughbred Racing Board Amendment Act 1998*

*Thoroughbred Racing Board Further Amendment Act 1999*

*Racing Legislation Amendment (Bookmakers) Act 2002*

*Thoroughbred Racing Legislation Amendment Act 2004*

*Thoroughbred Racing Amendment Act 2008*

*Thoroughbred Racing Further Amendment Act 2008*

- (2) In particular, the regulations may include provision to delay or defer the operation of any specified provisions of this Act in relation to specified matters or matters of a specified kind.
- (3) A provision of a regulation authorised by this clause may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (4) 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 First members of the AJCPC and RIPAC**

### **4 Minister to call for nominations**

- (1) As soon as practicable after the commencement of this clause, the Minister is to call

for nominations for the first membership of the AJCPC and RIPAC.

- (2) Nominations are to be in writing addressed to the Minister.
- (3) The Minister may give directions generally for facilitating the constitution of the first membership of the AJCPC and RIPAC.
- (4) The AJCPC and RIPAC are formally constituted for the purposes of this Act on a day (***the constitution day***) appointed by the Minister by notice published in the Gazette. The Minister can appoint a day as the constitution day even if all the members of the AJCPC or RIPAC have not been nominated by that day.

**Editorial note—**

Constitution day appointed for AJCPC: 18.10.1996—see Gazette No 117 of 18.10.1996, p 7065. Constitution day appointed for RIPAC: 23.8.1996—see Gazette No 97 of 23.8.1996, p 4932.

- (5) The terms of office of the first members of the AJCPC and RIPAC 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 day appointed by the Minister under subclause (6).
- (6) The Minister may by notice published in the Gazette appoint a day as the day on which the AJCPC is fully operational for the purposes of this Act (even if the AJCPC has not assumed all of its functions by that date).

## **5 Shortened term of office for half of first members of Board**

The term of office of the first members of the Board who, under this clause as in force before its repeal by the *Thoroughbred Racing Board Amendment Act 1999*, were nominated to hold office for 2 years is extended so as to expire instead at midnight on a date to be determined by order of the Minister, being no later than 30 June 2001, and notified in the Gazette.

## **Part 3 Transfer of assets, rights, liabilities and employees**

### **6 Meaning of “principal club functions”**

In this Part:

***principal club functions*** means functions of the kind referred to in section 13 (1).

### **7 Object of Part**

The object of this Part is to facilitate the transfer to the AJCPC of assets, rights, liabilities and employees of the AJC that are concerned with the exercise of principal club functions, while ensuring that:

- (a) the proprietary interests of the AJC are preserved or justly compensated (to the extent that those interests are beneficially owned by the AJC), and

- (b) employees of the AJC whose employment is concerned with the exercise of principal club functions are treated fairly.

## **8 Duty to facilitate transition**

It is the duty of the AJC to do everything necessary to facilitate the operation of this Part. That duty includes the duty to give the AJCPC information and access to records, documents and any other source of information however compiled, recorded or stored.

## **9 Agreements and regulations for transfer of assets, rights, liabilities and employees**

- (1) The AJCPC may enter into an agreement or agreements with the AJC providing for the transfer from the AJC to the AJCPC of assets, rights, liabilities and employees of the AJC that are concerned with the exercise of principal club functions. Such an agreement is referred to in this Part as a transfer agreement and operates to transfer the assets, rights, liabilities and employees concerned in accordance with the terms of the transfer agreement.
- (2) The regulations can direct the transfer from the AJC to the AJCPC of assets, rights, liabilities and employees of the AJC that are concerned with the exercise of principal club functions. Such a regulation operates to transfer the assets, rights, liabilities or employees concerned in accordance with the terms of the regulation.
- (3) A transfer effected by a transfer agreement or by regulation under this clause is without consideration or compensation except such consideration or compensation as may be provided for by the transfer agreement or regulation.
- (4) The AJC must not transfer or otherwise deal with any asset that is concerned with the exercise of principal club functions, except with the consent of the AJCPC. Consent may be given under this subclause on a case by case basis or for a class of cases, as the AJCPC thinks fit.
- (5) A regulation under this clause takes effect on the day following the last day on which it is capable of being disallowed under section 41 of the *Interpretation Act 1987* (as modified by subclause (6)) or on such later day as may be specified in the regulation.
- (6) Despite section 41 of the *Interpretation Act 1987*, a resolution by a House of Parliament to disallow a regulation under this clause does not have effect unless the resolution is passed within 15 sitting days of the House after written notice of the making of the regulation is laid before that House under section 40 of that Act.

## **10 Effect of transfer of assets, rights and liabilities**

- (1) The following provisions have effect with respect to any asset, right or liability transferred by operation of this Part:
  - (a) the asset vests in the AJCPC by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,

- (b) the right or liability becomes by virtue of this clause the right or liability of the AJCPC,
  - (c) all proceedings relating to the asset, right or liability commenced before the transfer day by or against the AJC and pending immediately before the transfer day are taken to be proceedings pending by or against the AJCPC,
  - (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 AJC is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the AJCPC,
  - (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the AJC is (to the extent that it relates to the asset, right or liability but subject to any regulations under this Schedule) to be read as, or as including, a reference to the AJCPC.
- (2) The operation of this Part 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 a contract or instrument, or as causing or permitting the termination of any contract or 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 instrument.
- (3) No attornment to the AJCPC by a lessee from the AJC is required.

#### **11 Effect of transfer of staff**

- (1) An employee of the AJC who is transferred by operation of this Part is to be regarded for all purposes as having become an employee of the AJCPC, in accordance with the terms of transfer, on the transfer day.
- (2) Subject to any of the terms of transfer, the terms and conditions (including as to remuneration or duration of employment) on which a person becomes an employee of the AJCPC by operation of this Part are the same as those on which he or she was an employee of the AJC immediately before the transfer day.
- (3) Such part of the employee's remuneration as is salary or wages is subject to any adjustment necessary to give effect to any fluctuation in the applicable basic wage in force under Part 2 of Chapter 2 of the *Industrial Relations Act 1991* until the salary is, or the wages are, lawfully varied.

- (4) The employee retains any rights to annual leave, leave in the nature of long service leave and sick leave accrued or accruing to the person as an AJC employee. The employee's entitlement to any such leave is to be calculated:
  - (a) for such part of any period during which that leave accrued or was accruing as occurred before the transfer day, at the rate for the time being applicable to the person (as an AJC employee) before that day, and
  - (b) for such part of that period as occurred after the transfer day, at the rate for the time being applicable to the person (as an employee of the AJCPC) after that day.
- (5) Service with the AJC is taken to be service with the AJCPC for the purposes of the accrual of leave as an employee of the AJCPC.
- (6) An AJC employee who becomes an employee of the AJCPC by operation of this Part:
  - (a) is not entitled to receive any payment or other benefit merely because the person ceases to be an AJC employee, and
  - (b) is not entitled to claim dual benefits of the same kind for the same period of service.

## **12 Preservation of enterprise agreements**

The provisions of any enterprise agreement applicable to an AJC employee immediately before the employee is transferred by operation of this Part to employment of the AJCPC continue to apply to the employee as an employee of the AJCPC during the term of the agreement. The AJCPC is, for the purposes of this clause, taken to be a party to the enterprise agreement.

## **13 Stamp duty and 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 stamp 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.

## **Part 4 Miscellaneous**

### **14 Rules of Racing**

The continuity of the Rules of Racing is not affected by this Act. The local rules of racing made by the AJC (as in force immediately before the AJC ceases to exercise the function of making and amending local rules of racing) are taken to have been made by the AJCPC (once the AJCPC has assumed the function of making and amending those rules).

## 15 Pending appeals

Any appeal pending under section 32 of the *Australian Jockey Club Act 1873* immediately before the AJCPC assumes its functions under Part 4 (Appeal Panel) is to continue and be heard and determined and the decision on the appeal given effect to as if this Act had not been enacted.

## 16 Actions of the AJC

Anything done or commenced by or in relation to the AJC in respect of a function that the AJC ceases to exercise because of this Act has effect after the function is assumed by the AJCPC under this Act as if it had been done or commenced by or in relation to the AJCPC.

### Note—

An existing delegation to a racing association by the AJC and licences issued by the AJC are examples of matters that this clause applies to.

## Part 5 Provisions consequent on enactment of *AJC Principal Club Amendment Act 1997*

### 17 Commencement of certain amendments

- (1) The amendments made to section 13 (1) (a) and 13 (3) by the *AJC Principal Club Amendment Act 1997* are taken to have commenced on the date of assent to this Act.
- (2) Clauses 21 and 22 of this Schedule are taken to have commenced on the date of assent to this Act.
- (3) Anything done before the commencement of this clause that could have been validly done had the amendments made by the *AJC Principal Club Amendment Act 1997* been in force at the time that it was done is taken to have been validly done.

### 18 Change of name of AJC Principal Club

- (1) The substitution of section 4 by the *AJC Principal Club Amendment Act 1997* effects the alteration of the name of the AJC Principal Club in terms of section 53 of the *Interpretation Act 1987* and accordingly that section applies.
- (2) A reference in Parts 1 to 4 of this Schedule to the AJCPC is to be read as a reference to the Board, except in relation to matters that occurred before that alteration took place.

### Note—

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

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

occurred before the alteration took place).

### **19 Change in eligibility criteria for nominated members**

- (1) Section 7 (1) (b1) and (b2) (as inserted by the [AJC Principal Club Amendment Act 1997](#)) apply only to nominations of members of the Board that are made on or after the commencement of those provisions.
- (2) A member of the Board who holds office under a nomination made before the commencement of section 7 (1) (b1) or (b2) does not cease to hold office by reason of becoming a person who is not eligible to be a member because of those provisions.

### **20 Change in method of electing and removing Chairperson and Deputy Chairperson**

Section 16 (4) (as substituted by the [AJC Principal Club Amendment Act 1997](#)) applies only in respect of an election or removal from office as Chairperson or Deputy Chairperson on or after its substitution.

### **21 Functions of committee of AJC**

A reference in clauses 2, 14 and 16 of this Schedule to the AJC includes a reference to the committee of the AJC.

### **22 Appeals**

- (1) The reference in clause 15 of this Schedule to any appeal pending under section 32 of the [Australian Jockey Club Act 1873](#) includes a reference to any appeal pending under the Rules of Racing.
- (2) The [Racing Appeals Tribunal Act 1983](#) continues to apply to and in respect of a decision referred to in section 15 of that Act (as in force immediately before its amendment by Schedule 2 of this Act), whether made before or after the date of assent to this Act.

## **Part 6 Provision consequent on enactment of [Thoroughbred Racing Board Amendment Act 1998](#)**

### **23 Pending appeals**

An appeal from a decision of the Board that is pending immediately before the commencement of Schedule 1 [2] to the [Thoroughbred Racing Board Amendment Act 1998](#) is to continue to be heard and determined, and the decision on the appeal given effect to, as if that Act had not been enacted.

## **Part 7 Provisions consequent on enactment of [Thoroughbred Racing](#)**

## Board Further Amendment Act 1999

### 24 Definitions

In this Part:

**amending Act** means the *Thoroughbred Racing Board Further Amendment Act 1999*.

**new Board** means the Board as constituted by section 6, as substituted by the amending Act.

**old Board** means the Board as constituted immediately before the commencement of Schedule 1 [2] to the amending Act.

### 25 Continuation of Board

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

### 26 Arrangements regarding first members of new Board

(1) The Minister is:

- (a) to determine, by order published in the Gazette, the industry bodies that may nominate the persons who are to be the first members of the new Board referred to in section 6 (1) (e), and those that may nominate the persons referred to in section 6 (1) (f), and the criteria on which those members are to be nominated, and
- (b) to call for nominations for the first nominated members of the new Board.

(2) The nominations are to be in writing addressed to the Minister.

(3) As soon as practicable after the commencement of Schedule 1 [2] to the amending Act, the nominated members of the Board:

- (a) are to commission at least 2 recruitment agencies to identify candidates with suitable expertise to hold the office of Chairperson, and
- (b) are to hold a meeting for the purpose of selecting, by majority vote, the first Chairperson of the new Board from those candidates.

(4) Until the first Chairperson of the new Board takes office, the nominated members of the Board have and may exercise the functions of the Board and are taken to be the Board.

(5) The Minister may give directions generally for facilitating the constitution of the first membership of the new Board.



## 27 Term of office of first members of new Board

- (1) The terms of office of the first members (other than the Chairperson and any additional members) of the new Board are taken to begin on the day that Schedule 1 [2] to the amending Act commences.
- (2) Half of the first nominated members of the new Board are to be nominated to have a term of office of 2 years (instead of the 4 year term provided for by section 9).
- (3) The nominators referred to in section 6 (1) (a)–(f) are to draw lots to determine which of the members that they nominate to the first membership of the new Board are to be nominated to have a 2 year term of office.

## 28 Members of old Board

- (1) On the commencement of Schedule 1 [2] to the amending Act, a person (other than the Chief Executive) who held office as a member of the old Board:
  - (a) ceases to hold that office, and
  - (b) is eligible (if otherwise qualified) to hold office as a member of the new Board.
- (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) If a nominated member of the old Board becomes a nominated member of the new Board, any term of office served as member of the old Board is not to be counted for the purposes of section 7 (4).

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

### 29 Definition

In this Part:

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

### 30 Change of Act name

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

### 31 Change of name of NSW Thoroughbred Racing Board

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

Racing NSW, except in relation to matters that occurred before that alteration took place.

**Note—**

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

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

### **32 Registration and licensing functions of Racing NSW**

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

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

### **33 Membership of RIPAC**

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

### **34 Appeals**

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

## **Part 9 Provisions consequent on 2008 amendments**

### **35 Definitions**

In this Part:

**2008 amending Act** means the *Thoroughbred Racing Amendment Act 2008*.

**2008 further amending Act** means the *Thoroughbred Racing Further Amendment Act 2008*.

### **36 Transitional arrangements for appointment of new membership of Racing NSW**

- (1) For the purpose of facilitating the appointment of the members of Racing NSW in accordance with section 6 as substituted by the 2008 further amending Act (referred to in this clause as the ***new members of Racing NSW***) with effect from the commencement of that section:
  - (a) the Selection Panel provided for by section 7 (as substituted by the 2008 further amending Act) may be established, and any function of the Selection Panel may be exercised, before that commencement as if the whole of the 2008 further amending Act had commenced on the date of assent to that Act, and
  - (b) the Minister may appoint a Probity Adviser under section 7 (as substituted by the 2008 further amending Act), and any function of the Probity Adviser may be exercised, before that commencement as if the whole of the 2008 further amending Act had commenced on the date of assent to that Act, and
  - (c) the Minister may, pursuant to a recommendation made by the Selection Panel before that commencement, appoint the new members of Racing NSW before that commencement, with the appointments to take effect on that commencement.
- (2) As soon as practicable after the commencement of this clause, the Minister is to establish the Selection Panel for the purpose of recommending persons for appointment as the new members of Racing NSW as provided by this clause and recommending their term of office.
- (3) Any period of office as a voting member of Racing NSW before the substitution of section 6 by the 2008 further amending Act counts as a period of office as an appointed member of Racing NSW for the purposes of section 6 (4) (which provides that a person is not eligible to hold office as an appointed member of Racing NSW for more than 8 years in total).
- (4) Despite subclause (3) and section 6 (4), a person holding office as a member of Racing NSW on the commencement of this clause can (if otherwise eligible) be appointed as a new member of Racing NSW for a period of up to 4 years. This subclause does not limit the operation of section 6 (4) in relation to any subsequent appointment of the person as a member of Racing NSW.

### **37 Transitional arrangements for appointment of membership of RICG**

- (1) For the purpose of facilitating the appointment of the members of RICG in accordance with Part 3 (as substituted by the 2008 amending Act) with effect from the commencement of that Part, determinations and nominations may be made under and for the purposes of section 31 (as substituted by the 2008 amending Act), before that commencement as if the whole of the 2008 amending Act had commenced on the date of assent to that Act.

- (2) As soon as practicable after the commencement of this clause, the Minister is to call for nominations for the purpose of nominating persons for appointment as members of RICG as provided by this clause.

### **38 Former members of Racing NSW**

- (1) On the commencement of section 6 (as substituted by the 2008 further amending Act) the persons holding office as members of Racing NSW immediately before that commencement cease to hold office as members.
- (2) A person who ceases to hold office pursuant to this clause is not entitled to compensation because of that loss of office.
- (3) Neither this clause nor the substitution of section 6 by the 2008 further amending Act affects:
  - (a) the continuity of existence of Racing NSW as a body corporate established by this Act, or
  - (b) the continuity of operation of any decision made or other action taken by the members of Racing NSW before ceasing to hold office under this clause, or
  - (c) the continuity of employment of the Chief Executive and other members of staff of Racing NSW.

### **39 Dissolution of RIPAC**

- (1) On the commencement of Part 3 (as substituted by the 2008 amending Act):
  - (a) the Racing Industry Participants Advisory Committee is dissolved, and
  - (b) the persons holding office as members of that committee cease to hold office as members.
- (2) A person who ceases to hold office pursuant to this clause is not entitled to compensation because of that loss of office.

### **40 Distribution of profits to Consolidated Fund**

Any profits of Racing NSW not distributed to the Consolidated Fund in compliance with section 28 before the repeal of that section by the 2008 amending Act are not required to be distributed to the Consolidated Fund.

### **41 Functions of members during caretaker period**

- (1) On and from the date of introduction into Parliament of the Bill for the 2008 amending Act, the members of Racing NSW who hold office before the substitution of section 6 by the 2008 further amending Act are entitled to exercise their functions in a manner that is consistent with any convention or practice as to the exercise of functions by

members of a body pending the appointment of a new membership of the body.

(2) This clause is taken to have operated from that date of introduction.

#### **41A Dissolution of Appointments Panel**

(1) On the date of assent to the 2008 further amending Act:

(a) the Appointments Panel is dissolved, and

(b) the persons holding office as members of the Appointments Panel cease to hold office as members.

(2) A person who ceases to hold office pursuant to this clause is not entitled to compensation because of that loss of office.

(3) The exercise of any function of the Appointments Panel before the date of assent to the 2008 further amending Act (including the nomination of any person for appointment as a member of Racing NSW) is of no effect.

### **Part 10 Provision consequent on enactment of [Australian Jockey Club Act 2008](#)**

#### **42 Amendments made by [Australian Jockey Club Act 2008](#)**

The amendments made to this Act by the [Australian Jockey Club Act 2008](#) do not affect the nomination of a person by the Australian Jockey Club (as referred to in the [Australian Jockey Club Act 1873](#)) for the purposes of any provision of this Act and any such nomination continues to have effect despite those amendments.

### **Schedule 2 (Repealed)**