

# Racing Legislation Amendment Act 2019 No 12

[2019-12]



New South Wales

## Status Information

### Currency of version

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

### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

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

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# Racing Legislation Amendment Act 2019 No 12



New South Wales

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# Racing Legislation Amendment Act 2019 No 12



New South Wales

An Act to make miscellaneous amendments to various Acts and an instrument that relate to racing and associated matters.

## 1 Name of Act

This Act is the *Racing Legislation Amendment Act 2019*.

## 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedules 5 and 6 commence on the date of assent to this Act.

## Schedule 1 Amendment of **Harness Racing Act 2009 No 20**

### [1] Section 23 Rules generally

Insert after section 23(3)—

- (4) HRNSW may amend or repeal a rule made under this Division.

### [2] Part 3, Division 4

Insert after Division 3—

## Division 4 Special inquiries

### 27A Definitions

In this Division—

**compulsion order** and **compulsion powers** have the same meanings as in section 27C.

**information** includes a document or thing that contains information.

**provide information** includes answering a question.

**special inquiry** means a special inquiry established under section 27B.

**threat** to harness racing means a threat to—

- (a) the integrity of harness racing, or
- (b) public confidence in the conduct of harness racing.

## **27B Special inquiry**

- (1) HRNSW may, when conducting an inquiry, decide to treat the inquiry as a special inquiry if HRNSW is reasonably satisfied that the inquiry raises a threat to harness racing.
- (2) If a person attending a hearing of a special inquiry is attending because of a compulsion order—
  - (a) the person is entitled to be represented by an Australian legal practitioner, and
  - (b) the person presiding at the hearing is to be assisted by an Australian legal practitioner who has been practising in the State for at least 7 years, and
  - (c) the Australian legal practitioner assisting the person presiding must explain to the person the subject of the compulsion order—
    - (i) the effect of the compulsion powers specified in the order, and
    - (ii) the effect of section 27E.
- (3) The rules may make further provision for the conduct of a special inquiry, including the procedures to be followed at a hearing of the special inquiry.
- (4) Nothing in this section limits the power of HRNSW to otherwise inquire into any matter.

## **27C Compulsion orders**

- (1) HRNSW may apply to the Supreme Court for an order (a **compulsion order**) authorising HRNSW to use the following powers (**compulsion powers**) on a person for the purposes of obtaining information of relevance to a special inquiry (**relevant information**)—
  - (a) the power to order the person to attend a hearing of the special inquiry on the days specified in the order,
  - (b) the power to order the person to provide the relevant information at a hearing,

- (c) the power to order the person to otherwise provide the relevant information to the special inquiry.
- (2) HRNSW may apply for the compulsion order only if it is reasonably satisfied that—
    - (a) the person has relevant information and the person is unwilling to provide the relevant information to the special inquiry, or
    - (b) the person has relevant information and exceptional circumstances exist that require a compulsion power to be used without first asking the person to voluntarily provide the relevant information.
  - (3) For the purposes of subsection (2)(b), exceptional circumstances include circumstances in which there is a very high likelihood that relevant information essential to the special inquiry will be lost.
  - (4) The Supreme Court is to decide the application for the compulsion order in the absence of the person and without conducting a hearing unless it is satisfied that the interests of justice require the person to be present.
  - (5) The Supreme Court is, when deciding if the interests of justice require the person to be present, to take into account—
    - (a) the risk that the relevant information may be lost if the person is given advance notice of the proposed exercise of compulsion powers, and
    - (b) any other matter the Court considers relevant.
  - (6) The Supreme Court is, when deciding whether to grant the compulsion order, to take into account the following—
    - (a) the nature of the threat to harness racing that the special inquiry is considering,
    - (b) the value to the special inquiry of the relevant information sought,
    - (c) the likelihood the person has the relevant information,
    - (d) the likelihood the person would be unwilling to provide the relevant information,
    - (e) if the application was made on the basis of HRNSW being satisfied that exceptional circumstances exist, the nature of the exceptional circumstances,
    - (f) the harm likely to be caused to the person if the order is granted and the person is required to provide relevant information that may incriminate the person,

- (g) any other matter the Court considers relevant.
- (7) If the Court decides to grant the compulsion order, it must specify the following in the order—
  - (a) the name of the person the subject of the order,
  - (b) the compulsion powers HRNSW is authorised to use,
  - (c) any limitation to which the use of the compulsion powers is subject,
  - (d) the day on which the order expires.
- (8) The Court must give reasons for its decision to grant or refuse to grant the compulsion order.
- (9) A reference in this section to relevant information being **lost** includes a reference to the relevant information being concealed, altered, destroyed or otherwise being made unavailable to a special inquiry.

**27D HRNSW may exercise compulsion powers in accordance with order**

- (1) HRNSW may, in accordance with a compulsion order, exercise a compulsion power on the person the subject of the compulsion order.
- (2) Before exercising the compulsion power on the person, HRNSW must inform the person in writing of the following—
  - (a) that a compulsion order has been made in relation to the person,
  - (b) what the compulsion power requires the person to do,
  - (c) the reasonable time within which the person must comply with the requirement,
  - (d) the penalty for failing to comply with the requirement.
- (3) A person must not fail to comply with a requirement imposed on the person by the exercise of a compulsion power.

Maximum penalty—100 penalty units or 6 months imprisonment, or both.

**27E Provisions relating to requirements to provide information**

- (1) **Warning to be given on each occasion** A person is not guilty of an offence of failing to comply with a requirement under this Division to provide information unless the person was warned on that occasion that a failure to comply is an offence.
- (2) **Self-incrimination not an excuse** A person is not excused from a requirement under this Division to provide information on the ground that the information

might incriminate the person or make the person liable to a penalty.

- (3) **Information not admissible in other proceedings** However, any information provided by a natural person in compliance with a requirement under this Division is not admissible in evidence against the person in disciplinary, civil or criminal proceedings (except for proceedings under this Act).
- (4) **Further information** Further information obtained as a result of information provided in compliance with a requirement under this Division is not inadmissible on the ground—
  - (a) that the information had to be provided, or
  - (b) that the information might incriminate the person.

## **27F Review of penalty for offence**

- (1) The Minister is to review the penalty imposed by section 27D(3) to determine whether the level of the penalty remains valid and appropriate for securing the objectives of this Division.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the commencement of that section.
- (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.

### **[3] Section 49 Review of Act**

Omit the section.

## **Schedule 2 Amendment of [Thoroughbred Racing Act 1996 No 37](#)**

### **[1] Part 2A, Divisions 5 and 6**

Insert after Division 4—

## **Division 5 Rules**

### **290 Rules in relation to horse racing**

Racing NSW may make rules, not inconsistent with this Act or the regulations, for or with respect to—

- (a) the control and regulation of horse racing, or
- (b) the exercise of the functions of Racing NSW.

## 29P Rules generally

- (1) A provision of a rule made under this Division may—
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,or may do any combination of those things.
- (2) A rule made under this Division may apply, adopt or incorporate any publication as in force at a particular time or as in force from time to time.
- (3) A rule made under this Division may not be made for or with respect to any of the matters for or with respect to which regulations may be made by virtue of this Act.
- (4) Racing NSW may amend or repeal a rule made under this Division.

## Division 6 Special inquiries

### 29Q Definitions

In this Division—

**compulsion order** and **compulsion powers** have the same meanings as in section 29S.

**information** includes a document or thing that contains information.

**provide information** includes answering a question.

**special inquiry** means a special inquiry established under section 29R.

**threat** to horse racing means a threat to—

- (a) the integrity of horse racing, or
- (b) public confidence in the conduct of horse racing.

### 29R Special inquiry

- (1) Racing NSW may, when conducting an inquiry, decide to treat the inquiry as a special inquiry if Racing NSW is reasonably satisfied that the inquiry raises a threat to horse racing.



- (2) If a person attending a hearing of a special inquiry is attending because of a compulsion order—
  - (a) the person is entitled to be represented by an Australian legal practitioner, and
  - (b) the person presiding at the hearing is to be assisted by an Australian legal practitioner who has been practising in the State for at least 7 years, and
  - (c) the Australian legal practitioner assisting the person presiding must explain to the person the subject of the compulsion order—
    - (i) the effect of the compulsion powers specified in the order, and
    - (ii) the effect of section 29U.
- (3) The rules may make further provision for the conduct of a special inquiry, including the procedures to be followed at a hearing of the special inquiry.
- (4) Nothing in this section limits the power of Racing NSW to otherwise inquire into any matter.

## **29S Compulsion orders**

- (1) Racing NSW may apply to the Supreme Court for an order (a **compulsion order**) authorising Racing NSW to use the following powers (**compulsion powers**) on a person for the purposes of obtaining information of relevance to a special inquiry (**relevant information**)—
  - (a) the power to order the person to attend a hearing of the special inquiry on the days specified in the order,
  - (b) the power to order the person to provide the relevant information at a hearing,
  - (c) the power to order the person to otherwise provide the relevant information to the special inquiry.
- (2) Racing NSW may apply for the compulsion order only if it is reasonably satisfied that—
  - (a) the person has relevant information and the person is unwilling to provide the relevant information to the special inquiry, or
  - (b) the person has relevant information and exceptional circumstances exist that require a compulsion power to be used without first asking the person to voluntarily provide the relevant information.
- (3) For the purposes of subsection (2)(b), exceptional circumstances include

circumstances in which there is a very high likelihood that relevant information essential to the special inquiry will be lost.

- (4) The Supreme Court is to decide the application for the compulsion order in the absence of the person and without conducting a hearing unless it is satisfied that the interests of justice require the person to be present.
- (5) The Supreme Court is, when deciding if the interests of justice require the person to be present, to take into account—
  - (a) the risk that the relevant information may be lost if the person is given advance notice of the proposed exercise of compulsion powers, and
  - (b) any other matter the Court considers relevant.
- (6) The Supreme Court is, when deciding whether to grant the compulsion order, to take into account the following—
  - (a) the nature of the threat to horse racing that the special inquiry is considering,
  - (b) the value to the special inquiry of the relevant information sought,
  - (c) the likelihood the person has the relevant information,
  - (d) the likelihood the person would be unwilling to provide the relevant information,
  - (e) if the application was made on the basis of Racing NSW being satisfied that exceptional circumstances exist, the nature of the exceptional circumstances,
  - (f) the harm likely to be caused to the person if the order is granted and the person is required to provide relevant information that may incriminate the person,
  - (g) any other matter the Court considers relevant.
- (7) If the Court decides to grant the compulsion order, it must specify the following in the order—
  - (a) the name of the person the subject of the order,
  - (b) the compulsion powers Racing NSW is authorised to use,
  - (c) any limitation to which the use of the compulsion powers is subject,
  - (d) the day on which the order expires.
- (8) The Court must give reasons for its decision to grant or refuse to grant the

compulsion order.

- (9) A reference in this section to relevant information being **lost** includes a reference to the relevant information being concealed, altered, destroyed or otherwise being made unavailable to a special inquiry.

#### **29T Racing NSW may exercise compulsion powers in accordance with order**

- (1) Racing NSW may, in accordance with a compulsion order, exercise a compulsion power on the person the subject of the compulsion order.
- (2) Before exercising the compulsion power on the person, Racing NSW must inform the person in writing of the following—
- (a) that a compulsion order has been made in relation to the person,
  - (b) what the compulsion power requires the person to do,
  - (c) the reasonable time within which the person must comply with the requirement,
  - (d) the penalty for failing to comply with the requirement.
- (3) A person must not fail to comply with a requirement imposed on the person by the exercise of a compulsion power.

Maximum penalty—100 penalty units or 6 months imprisonment, or both.

#### **29U Provisions relating to requirements to provide information**

- (1) **Warning to be given on each occasion** A person is not guilty of an offence of failing to comply with a requirement under this Division to provide information unless the person was warned on that occasion that a failure to comply is an offence.
- (2) **Self-incrimination not an excuse** A person is not excused from a requirement under this Division to provide information on the ground that the information might incriminate the person or make the person liable to a penalty.
- (3) **Information not admissible in other proceedings** However, any information provided by a natural person in compliance with a requirement under this Division is not admissible in evidence against the person in disciplinary, civil or criminal proceedings (except for proceedings under this Act).
- (4) **Further information** Further information obtained as a result of information provided in compliance with a requirement under this Division is not inadmissible on the ground—
- (a) that the information had to be provided, or

(b) that the information might incriminate the person.

### **29V Review of penalty for offence**

- (1) The Minister is to review the penalty imposed by section 29T(3) to determine whether the level of the penalty remains valid and appropriate for securing the objectives of this Division.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the commencement of that section.
- (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.

### **[2] Section 50A**

Insert after section 50—

#### **50A Nature of proceedings for offences**

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

### **[3] Section 53 Review of Act**

Omit the section.

## **Schedule 3 Amendment of [Betting and Racing Act 1998 No 114](#)**

### **Part 2, Division 3**

Insert after Division 2—

## **Division 3 Exclusion of persons from racecourses**

### **15A Definitions**

In this Division—

**Commissioner** means the Commissioner of Police.

**exclusion order** has the same meaning as in section 15B.

### **15B Commissioner of Police may exclude person from racecourses**

- (1) The Commissioner may, by written order (an **exclusion order**), exclude a person from licensed racecourses at any time during which there is a race meeting at the racecourse.

- (2) An exclusion order may be made only if the Commissioner is of the opinion it is necessary to do so in the public interest.
- (3) An exclusion order remains in force for the period specified in the order, unless sooner revoked by the Commissioner.
- (4) The Commissioner is to ensure that a written notice of the making of an exclusion order is given to—
  - (a) each racing controlling body, and
  - (b) if the person the subject of the exclusion order can be reasonably found by the Commissioner, that person.
- (5) The notice must set out the terms of the order and, if it is reasonably practicable to do so, include a photograph of the person the subject of the order.
- (6) Each racing controlling body that is given the notice must give a copy of the notice to each non-proprietary association that is registered as a racing club by the racing controlling body.
- (7) The copy must be given as soon as practicable after the racing controlling body receives the notice.
- (8) The Commissioner is to—
  - (a) notify the appropriate authority in each State or Territory of the making of an exclusion order and the revocation of an exclusion order, and
  - (b) provide the appropriate authorities with the name of the person the subject of the exclusion order and, if practicable, a photograph of that person.
- (9) The Commissioner is not, under this or any other Act or law, required to give any reasons for making an exclusion order if the giving of those reasons would disclose the existence or content of any criminal intelligence report or other criminal information.
- (10) In this section—

**appropriate authority** means—

  - (a) in relation to a State or Territory (other than the Australian Capital Territory)—an authority exercising, in relation to the police force of that State or Territory, functions corresponding to the functions of the Commissioner in relation to the NSW Police Force, or
  - (b) in relation to the Australian Capital Territory—the Commissioner of the Australian Federal Police.

### **15C Entering racecourse in breach of an exclusion order**

A person who is the subject of an exclusion order must not enter, or remain on, a racecourse at any time during which there is a race meeting being held at the racecourse.

Maximum penalty—50 penalty units or imprisonment for 12 months (or both).

### **15D Right to seek administrative review from Civil and Administrative Tribunal**

- (1) A person may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of a decision to make an exclusion order applying to the person.
- (2) In determining the application, the Civil and Administrative Tribunal (and any Appeal Panel of the Tribunal in determining any internal appeal against the review under the *Civil and Administrative Tribunal Act 2013*)—
  - (a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose the existence or content of any criminal intelligence report or other criminal information without the approval of the Commissioner, and
  - (b) to prevent the disclosure of a criminal intelligence report or other criminal information, is to receive evidence and hear argument in the absence of the public, the applicant for the administrative review, the applicant's representative and any other interested party, unless the Commissioner approves otherwise.
- (3) If the Tribunal considers that information contained in a criminal intelligence report or other criminal information has not been properly identified, the Tribunal must ask the Commissioner whether the Commissioner wishes to withdraw the information from consideration by the Tribunal in its determination of the application.
- (4) Information that is withdrawn by the Commissioner must not be—
  - (a) disclosed to any person, or
  - (b) taken into consideration by the Tribunal in determining the application.
- (5) Section 53 (Internal reviews) of the *Administrative Decisions Review Act 1997* does not apply in relation to a decision referred to in subsection (1).

## **Schedule 4 Amendment of *Racing Appeals Tribunal Act 1983 No 199***

### **[1] Section 7 Appointment of acting Tribunal**

Omit section 7(1). Insert instead—

- (1) The Minister may from time to time, on the recommendation of the Attorney General, appoint qualified persons to act as the Tribunal—
  - (a) during the illness or absence of the person appointed as the Tribunal, or
  - (b) during a vacancy in the office of the Tribunal, or
  - (c) on the occasions or in respect of the appeals as the person appointed as the Tribunal directs.
- (1A) The Minister, when appointing a qualified person to act as the Tribunal, is to determine the person's place in the order of seniority of persons appointed under this section.

**[2] Section 8A**

Omit the section. Insert instead—

**8A Tribunal may appoint expert assessor**

- (1) The Tribunal may appoint a person with relevant knowledge, expertise and experience as an assessor to help the Tribunal in relation to a particular proceeding.
- (2) An appointment of an assessor is to be made in writing.
- (3) The *Government Sector Employment Act 2013* does not apply to or in respect of an assessor.
- (4) An assessor is entitled to be paid the remuneration (including allowances) determined by the Tribunal (in consultation with the relevant racing controlling body) and specified in the assessor's instrument of appointment.
- (5) In this section—

***racing controlling body*** has the same meaning as in the *Betting and Racing Act 1998*.

**[3] Section 16A Persons required to attend hearings or produce documents**

Omit the penalty to section 16A(2). Insert instead—

Maximum penalty—100 penalty units or imprisonment for 6 months, or both.

**[4] Section 19 Staff to assist Tribunal**

Omit “Racing NSW” from section 19(1)(a). Insert instead “a racing controlling body”.

**[5] Section 19(2)**

Omit “direct Racing NSW”. Insert instead “direct a racing controlling body”.

**[6] Section 19(2)**

Omit “of Racing NSW”. Insert instead “of the racing controlling body”.

**[7] Section 19(3)**

Omit “Racing NSW”. Insert instead “A racing controlling body”.

**[8] Section 19(4)**

Insert after section 19(3)—

(4) In this section—

***racing controlling body*** has the same meaning as in the *Betting and Racing Act 1998*.

**[9] Section 21**

Omit the section. Insert instead—

**21 Service of documents**

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods—
  - (a) in the case of an individual—by personal delivery to the person,
  - (b) by post to the address specified by the person for the service of documents of that kind,
  - (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,
  - (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,
  - (e) by email to an email address specified by the person for the service of documents of that kind,



(f) by any other method authorised by the regulations for the service of documents of that kind.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person by any other method.

(3) In this section, **serve** includes give or send.

### **Schedules 5, 6 (Repealed)**