

Harness Racing Act 2009 No 20

[2009-20]



New South Wales

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New South Wales

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Harness Racing Act 2009 No 20



New South Wales

An Act to make provision with respect to the control and regulation of harness racing; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Harness Racing Act 2009*.

2 Commencement

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

2A Objects of Act

The objects of this Act are as follows—

- (a) to provide for the efficient and effective regulation of the harness racing industry,
- (b) to protect the interests of the harness racing industry and its stakeholders,
- (c) to facilitate the development and operation of a sustainable and viable harness racing industry,
- (d) to ensure the integrity of harness racing and associated wagering in the public interest,
- (e) to provide for the functions and the powers of regulatory bodies,
- (f) to ensure harness racing industry stakeholder engagement and participation in the strategic development of the harness racing industry as a whole,
- (g) to protect and promote the welfare of harness racing horses.

3 Definitions

(1) In this Act—

eligible industry body means a body determined to be an eligible industry body for

the time being under section 32(2).

exercise a function includes perform a duty.

function includes a power, authority or duty.

harness racing means pacing or trotting.

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

harness racing meeting has the same meaning as meeting for harness racing has in section 4 of the [Betting and Racing Act 1998](#).

HRICG means the Harness Racing Industry Consultation Group established by this Act.

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

Integrity Auditor means the Harness Racing Integrity Auditor appointed under this Act.

racing official means the following—

- (a) a member of HRNSW,
- (b) the chief executive officer of HRNSW,
- (c) a steward appointed by HRNSW,
- (d) a member of staff of HRNSW,
- (e) a member of the HRICG.

recommended members list—see section 7(1)(a).

rule means a rule made under this Act.

Selection Panel means the Selection Panel established under section 7.

Note—

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) A reference in this Act to a **person associated with harness racing** is a reference to the following—
 - (a) a person who handles horses at a harness race,

- (b) a bookmaker's clerk,
 - (c) a breeder of horses for harness racing,
 - (d) a person who is an officer or employee of a harness racing club or is otherwise concerned in the management or control of any such club,
 - (e) any other person of a class prescribed by the regulations for the purposes of this subsection.
- (3) Unless the regulations otherwise provide, a reference in any provision of this Act—
- (a) to registration includes a reference to licence, and
 - (b) to register includes a reference to license, and
 - (c) to registered includes a reference to licensed.
- (4) Notes included in this Act do not form part of this Act.

Part 2 Harness Racing New South Wales

4 Constitution of Harness Racing New South Wales

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

5 HRNSW independent of Government

HRNSW or any of its subsidiaries—

- (a) does not represent the Crown and is not subject to direction or control by or on behalf of the Government, and
- (b) cannot render the State liable for any debts, liabilities or other obligations of HRNSW or its subsidiaries,

unless this or any other Act expressly provides otherwise.

6 Membership

- (1) HRNSW is to consist of the chief executive officer of HRNSW and 5 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 a 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 HRNSW.

(2) A person is not eligible to be a member of HRNSW if the person—

(a) during the previous 12 months has been an employee, or a member of the governing body, of—

- (i) a harness racing club, or
- (ii) an eligible industry body, or

(b) (Repealed)

(c) is registered by or with HRNSW under this Act, or

(d) is registered by the Greyhound Welfare and Integrity Commission under the [Greyhound Racing Act 2017](#), or

(e) holds a licence issued by Racing New South Wales, or

(f) is currently, or during the previous 10 years has been, warned off, disqualified or named on the Unpaid Forfeit List under the rules, or

(g) 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

(h) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankruptcy, or

(i) is a mentally incapacitated person.

(3) A person is not eligible to be appointed as a member of HRNSW 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 a member of HRNSW for more than 10 years in total (whether or not involving consecutive terms of office).

(4A) The chief executive officer of HRNSW does not have a vote at meetings of HRNSW.

(5) While a person is a member of HRNSW, any entitlement of the person to vote as a

member of a harness racing club or of an eligible industry body is suspended.

(6) Schedule 1 contains provisions relating to members of HRNSW.

7 Selection Panel

(1) The Minister must establish a Selection Panel—

(a) to prepare and give to the Minister a list of persons recommended for appointment as members of HRNSW (a ***recommended members list***), and

(b) to recommend the term of office for each person recommended.

(2) A member of the Selection Panel must consider the interests of the harness racing industry as a whole when exercising the functions of a member.

(3) The Selection Panel must consider the balance and diversity of the skills and experience of the members of HRNSW when preparing the recommended members list.

(4) The Selection Panel must recommend more than the number of persons required to be appointed.

(5) The Minister may appoint a person for a term of office that is different from the term of office recommended by the Selection Panel.

8 Eligibility to be included on recommended members list

(1) The Selection Panel must not include a person in the recommended members list if—

(a) the person is not eligible to be a member of HRNSW, or

Note—

See section 6.

(b) the Panel is satisfied the person has a direct or indirect pecuniary interest in a matter that gives rise, or is likely to give rise, to a conflict of interest of a nature that is incompatible with membership of HRNSW.

(2) The Selection Panel may include a person in the recommended members list only if the Panel is satisfied—

(a) the person has experience in a senior administrative role, or at a senior level, in 1 or more of the following fields—

(i) business,

(ii) finance,

(iii) law,

- (iv) marketing,
- (v) technology,
- (vi) commerce,
- (vii) regulatory administration,
- (viii) regulatory enforcement, and

(b) the person's skills and experience are relevant to the functions of HRNSW.

- (3) The Selection Panel must choose between persons for inclusion in the recommended members list on the basis of merit.
- (4) The merit of a person is to be decided on the basis of the person's abilities, qualifications, experience and personal qualities that are relevant to the exercise of the functions of HRNSW.

8A Probity checks of persons to be included on recommended members list

- (1) Before including a person in the recommended members list, the Selection Panel must conduct a probity check of the person.
- (2) The level of scrutiny of a probity check is to be decided by the Minister.
- (3) The Minister must appoint a Probity Adviser to assist the Selection Panel to conduct probity checks.

9 Functions of HRNSW

- (1) HRNSW has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) Without limiting subsection (1), the functions of HRNSW include the following—
 - (a) to control, supervise and regulate harness racing in the State,
 - (b) to register harness racing clubs, harness racing horses, owners, trainers and drivers of harness racing horses, bookmakers for harness racing and other persons associated with harness racing,
 - (c) to initiate, develop and implement policies considered conducive to the promotion, strategic development and welfare of the harness racing industry in the State,
 - (d) to distribute money received as a result of commercial arrangements required by the *Totalizator Act 1997*,
 - (e) to allocate to harness racing clubs the dates on which they may conduct harness racing meetings,

- (f) to initiate, develop and implement policies relating to the welfare of harness racing horses.
- (3) HRNSW may affiliate with such organisations, whether in or out of New South Wales, as HRNSW considers appropriate.
- (4) The functions of HRNSW are not limited by the rules and are to be exercised independently of Harness Racing Australia or any successor.

10 Powers of HRNSW

- (1) HRNSW 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), HRNSW 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) supervise the activities of harness racing clubs, persons registered by HRNSW and all other persons engaged in or associated with harness racing,
 - (c) inquire into and deal with any matter relating to harness 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 harness racing horse on any course or courses, whether or not a report concerning the matter has been made or decision arrived at by any stewards,
 - (d) direct and supervise the dissolution of a harness racing club that ceases to be registered by HRNSW,
 - (e) appoint an administrator to conduct the affairs of a harness racing club,
 - (f) disqualify a harness racing horse from participating in a race,
 - (g) exclude from participating in a race a harness racing horse not registered under the rules,
 - (h) prohibit a person from attending or taking part in a harness racing meeting,
 - (i) impose a penalty on a person registered by it or on an owner of a harness racing horse for a contravention of the rules,
 - (j) consult, join, affiliate and maintain liaison with other associations or bodies, whether in the State or elsewhere, concerned with harness racing,
 - (k) enter into contracts,
 - (l) acquire, hold, take or lease and dispose of real and personal property whether in

its own right or as trustee,

(m) borrow money,

(n) order an audit of the books and accounts of a harness racing club by an auditor who is a registered company auditor nominated by HRNSW,

(o) scrutinise the constitutions of harness racing clubs to ensure they conform to any applicable Act and the rules and that they clearly and concisely express the needs and desires of the clubs concerned and of harness racing generally,

(p) publish material, including periodical publications, to inform the public about matters relating to harness racing, whether in the State or elsewhere,

(q) undertake research and investigation into all aspects of the breeding of harness racing horses and of harness racing generally,

(r) 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.

(3) Nothing in this Act confers on HRNSW power to conduct harness racing meetings on its own behalf.

11 Registration functions of HRNSW—general

(1) HRNSW is to exercise its registration functions so as to ensure that any individuals registered by HRNSW are persons who, in the opinion of HRNSW, are fit and proper persons to be so registered (having regard in particular to the need to protect the public interest as it relates to the harness racing industry).

(2) Without limiting subsection (1), a person is not to be so registered if the person has a conviction and HRNSW is of the opinion that the circumstances of the offence concerned are such as to render the person unfit to be so registered.

(3) This section does not limit any provisions of the rules relating to the exercise of the registration functions of HRNSW.

(4) In this section—

conviction has the same meaning as in the *Criminal Records Act 1991* but does not include a conviction that is spent under that Act.

registration functions means the functions referred to in Division 1 of Part 3.

12 Consultation and planning

(1) HRNSW is to prepare strategic plans for its activities from time to time.

(2) HRNSW must prepare and publish a plan (a **stakeholder engagement plan**) setting

out—

- (a) the stakeholders to be engaged by HRNSW, and
 - (b) the nature of the engagement, and
 - (c) the times at which the engagement will occur.
- (3) HRNSW is to prepare an initial strategic plan for the harness racing industry within 12 months after the commencement of this section and is to prepare a further strategic plan for the harness racing industry at least every 3 years after the initial strategic plan is prepared. Each such strategic plan must be prepared in consultation with HRICG and other harness racing industry stakeholders.
- (4) The strategic plans under subsections (1) and (3) may be combined into a single strategic plan for HRNSW and the harness racing industry.

13 Chief executive officer of HRNSW

- (1) HRNSW may employ a chief executive officer of HRNSW.
- (2) The chief executive officer is responsible for the day-to-day management of HRNSW.
- (3) The [Government Sector Employment Act 2013](#) does not apply to or in respect of the chief executive officer.

14 Staff of HRNSW

- (1) HRNSW may employ such other staff as it requires to exercise its functions.
- (2) HRNSW may fix the salary, wages and other conditions of staff employed under subsection (1) (including the chief executive officer of HRNSW) in so far as they are not fixed by or under any other Act or law.
- (3) The [Government Sector Employment Act 2013](#) does not apply to or in respect of staff employed under subsection (1).
- (4) HRNSW may engage consultants for the purposes of obtaining expert advice.

15 Arrangements for use of staff and facilities of Racing New South Wales

- (1) HRNSW may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of Racing New South Wales.
- (2) For the purposes of this Act, a person whose services are made use of under subsection (1) is taken to be a member of staff of HRNSW.
- (3) Without limiting subsection (1), HRNSW may arrange for a steward appointed by Racing New South Wales to perform the functions of a steward of HRNSW under this Act. Any such person is taken to have been appointed by HRNSW 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), HRNSW may arrange to share with Racing New South Wales any equipment, information technology (such as computer software) or office or any administrative system relating to licensing or registration.
- (5) HRNSW is not authorised to enter into an arrangement under this section in relation to stewards, 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.

16 Annual report of HRNSW

- (1) HRNSW must, as soon as practicable after 30 June and in any case before 1 November in each year prepare and forward to the Minister a report of its work and activities for the 12 months ending on that 30 June.
- (2) The report must include copies of the financial statements of HRNSW for the 12-month period to which the report relates together with an auditor's report on those statements prepared by an independent auditor.
- (2A) The report must also include the following—
 - (a) for the period to which the annual report relates—progress reports on the implementation, in accordance with section 12, of—
 - (i) the strategic plan of HRNSW and the harness racing industry, and
 - (ii) the stakeholder engagement plan under section 12,
 - (b) the report provided by the Integrity Auditor under section 27AA,
 - (c) the report provided by the Chairperson of HRICG under section 34(4).
- (3) The Minister is to table the report or cause it to be tabled in both Houses of Parliament as soon as practicable after the report is forwarded to the Minister.
- (4) HRNSW is to make copies of the report available to the public free of charge.

Part 3 Control and regulation of harness racing

Division 1 Registration

17 Registration of harness racing clubs

- (1) HRNSW may, in accordance with the rules, register or refuse to register any harness racing club.
- (2) HRNSW must not refuse to register a harness racing club under this section unless it is of the opinion that—
 - (a) the racing club is not, or will not be, financially viable in relation to participation in the harness racing industry, or
 - (b) the registration of the harness racing club (whether under this or another Act) has previously been cancelled, or
 - (c) it would be in the best interests of the harness racing industry to do so.

18 Registration of harness horses and persons associated with harness racing

- (1) HRNSW may, in accordance with the rules, register or refuse to register any harness racing horse, or any owner, trainer or driver of harness racing horses, bookmaker or other person associated with harness racing.
- (2) HRNSW must not refuse to register any harness racing horse or any person under subsection (1) unless it is of the opinion that it would be in the best interests of the harness racing industry to do so.

19 Registration of bookmakers

- (1) An individual over the age of 18 years or a proprietary company may apply to HRNSW for registration as a bookmaker in relation to harness racing.
- (2) Despite section 18(2), HRNSW must refuse to grant an application for registration of a proprietary company as a bookmaker unless satisfied that the company is an eligible company.
- (3) For the purposes of this section, **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 registered 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 HRNSW, a fit and proper person to be registered as an individual as a bookmaker under this Act, and
 - (f) no shareholder or person concerned in the management of the company, other than a director, is registered as an individual as a bookmaker under this Act, and
 - (g) 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 company's registration as a bookmaker under this Act that—
- (a) the company continues to be an eligible company, and
 - (b) no director, shareholder or person concerned in the management of the company—
 - (i) is a director, shareholder or person concerned in the management of, or is an employee or agent of, any other company that is registered as a bookmaker under this Act, or
 - (ii) has a financial interest in any business of a bookmaker that is carried on by any such other company under the authority of its registration under this Act, or
 - (iii) is registered 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
 - (iv) is a director, shareholder or person concerned in the management of a corporation, or is a member of a partnership, that is registered or otherwise authorised to carry on, or that carries on, any such business in another country, or
 - (v) is an employee or agent of any individual, partnership or corporation referred to in subparagraph (iii) or (iv), or
 - (vi) 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) It is a condition of a company's registration as a bookmaker under this Act that no

director, shareholder or person concerned in the management of the company—

(a) carries on the business of a bookmaker, otherwise than on behalf of the company, in relation to any greyhound, horse or harness race, at a harness racing meeting in New South Wales, or

(b) carries on, at a racecourse licensed for harness racing, the business of a bookmaker in respect of a declared betting event otherwise than on behalf of the company.

(6) In subsection (4)(b), 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.

(7) HRNSW may suspend or cancel the registration of a company as a bookmaker if satisfied that any condition referred to in subsection (4) or (5) is contravened in respect of the company. This does not limit the powers of HRNSW to suspend or cancel the registration of a company as a bookmaker under section 21.

(8) Any debt that is incurred by a company in carrying on business as a bookmaker registered 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—

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](#).

declared betting event has the same meaning as it has in the [Betting and Racing Act 1998](#).

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

proprietary company has the same meaning as in the [Corporations Act 2001](#) of the Commonwealth.

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

20 Suspension or cancellation of registration of harness racing clubs on commercial grounds

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

21 Disciplinary and work health and safety action may be taken by HRNSW

- (1) HRNSW may, in accordance with the rules, do any of the following—
 - (a) cancel the registration under this Act of—
 - (i) any harness racing club, or
 - (ii) any harness racing horse, or
 - (iii) any owner, trainer or driver of harness racing horses, or bookmaker or other person associated with harness racing,
 - (b) disqualify, either permanently or temporarily, any owner, trainer or driver of harness racing horses, or bookmaker or other person associated with harness racing,
 - (c) prohibit any person from participating in or associating with harness racing in any specified capacity,
 - (d) prohibit any horse from competing in any harness race,
 - (e) prohibit any person from attending or taking part in a harness racing meeting,
 - (f) impose fines, not exceeding 200 penalty units, on any harness racing club or on any owner, trainer or driver of harness racing horses, or bookmaker or other person associated with harness racing for breaches of the rules,
 - (g) suspend, for such term as HRNSW thinks fit, any right or privilege conferred by this Act or the rules on any owner, trainer or driver of harness racing horses, or bookmaker or other person associated with harness racing,
 - (h) prohibit any person registered under the rules from taking part in any harness

racing meeting held by any harness racing club that is not registered under the rules.

- (2) Any fine imposed under subsection (1)(f) is to be paid to and be the property of HRNSW.
- (3) HRNSW may only take action under this section for disciplinary purposes or for the purposes of work health and safety.

Division 2 Rules

22 Rules in relation to harness racing

- (1) HRNSW may make rules, not inconsistent with this Act or the regulations, for or with respect to the control and regulation of harness racing.
- (2) Without limiting the generality of subsection (1), HRNSW may make rules for or with respect to the following—
 - (a) any matter that by this Act is required or permitted to be prescribed by the rules,
 - (b) any of the matters referred to in Division 1,
 - (c) the effect of a disqualification of, or other penalty imposed on, a person or harness racing horse under section 21(1),
 - (d) the allocation to harness racing clubs of dates on which they may conduct harness racing meetings and harness races,
 - (e) the holding and conduct of harness racing meetings and of races at any such meeting,
 - (f) the keeping of horses that are in the care or custody of persons registered under the rules,
 - (g) the breeding of harness racing horses,
 - (h) the naming and identification of harness racing horses,
 - (i) the appointment of stewards by HRNSW and the functions of those stewards (including functions that do not relate to harness racing meetings),
 - (j) conferring on stewards appointed by HRNSW the same functions as are exercisable by HRNSW under Division 1,
 - (k) the extent to which and the circumstances in which stewards appointed by HRNSW may exercise their functions to the exclusion of stewards of harness racing clubs,

(l) the fees and charges referred to in section 38.

23 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 (section 48(1)(b) excepted).
- (4) HRNSW may amend or repeal a rule made under this Division.

Division 3 Harness Racing Integrity Auditor

24 Appointment of Integrity Auditor

- (1) HRNSW is to appoint a person who, in the opinion of HRNSW, has suitable legal qualifications to hold the office of Harness Racing Integrity Auditor.
- (2) HRNSW is to conduct a probity check of a person (with the level of scrutiny to be determined by the Minister) before appointing a person to the office of Harness Racing Integrity Auditor.
- (3) An appointment of a Harness Racing Integrity Auditor has no effect unless the Minister approves of the appointment.
- (4), (5) (Repealed)

25 Functions of Integrity Auditor

- (1) The Integrity Auditor has the following functions—
 - (a) the primary oversight of those aspects of the functions of HRNSW that relate to stewards, drug testing and control and registration,
 - (b) providing advice to HRNSW on the matters referred to in paragraph (a),

- (c) receiving and investigating complaints against racing officials in respect of the exercise of functions relating to harness racing,
- (d) such other functions as are conferred or imposed on the Integrity Auditor by or under this or any other Act.

(2) The functions of the Integrity Auditor are to be exercised independently of HRNSW.

26 Inquiries and investigations by Integrity Auditor in relation to complaint

- (1) A person may make a complaint to the Integrity Auditor in respect of the exercise of functions by a racing official relating to harness racing.
- (2) On receiving a complaint from a person under this section, the Integrity Auditor must investigate the complaint with due diligence unless the Integrity Auditor 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 Integrity Auditor decides to investigate a complaint, the Integrity Auditor 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 Integrity Auditor 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—
 - (a) provide, in accordance with directions in the notice, such information verified by statutory declaration as, in the opinion of the Integrity Auditor, 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 Integrity Auditor, 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 Integrity Auditor such authorisations and consents as the Integrity Auditor requires for the purpose of enabling the Integrity Auditor 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 Integrity Auditor contained in a notice under subsection (4).

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

27 Action after investigation of complaint

- (1) The Integrity Auditor must prepare a written report of the results of the investigation of a complaint.
- (2) The Integrity Auditor must give a copy of the report to the following—
- (a) the racing official who was the subject of the investigation,
 - (b) HRNSW,
 - (c) the Minister.
- (3) The Integrity Auditor must inform the person who made the complaint that the report has been prepared and provided as required by this section.

27AA Summary of investigations undertaken

The Integrity Auditor must provide a report for inclusion in the annual report of HRNSW that summarises the outcomes of investigations undertaken by the Integrity Auditor during the period to which the annual report relates.

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.

Part 4 Directions and minimum standards

28 Power to set minimum standards for conduct of races and harness racing meetings

- (1) HRNSW may set minimum standards in connection with the conduct by harness racing clubs of harness races and harness racing 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) harness racing training facilities,
 - (d) the financial management of harness racing meetings, including the management of the costs of conducting harness racing meetings,
 - (e) the fees and charges imposed by a harness racing club in connection with races conducted by the club,
 - (f) prize money paid on races conducted by a harness racing club,
 - (g) starters, appearance and other fees paid by a harness racing club,
 - (h) such other matters relating to the conduct of harness races and harness racing meetings as may be prescribed by the regulations.
- (2) HRNSW 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 harness racing clubs,
 - (b) as a condition of the registration of harness racing clubs,
 - (c) as a condition of the allocation of the dates on which harness racing clubs may conduct harness racing meetings.
- (3) HRNSW is to consult with harness racing clubs in relation to any proposal to set minimum standards under this section and in the course of that consultation must give a harness racing 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.

29 Harness racing clubs to provide information and documents

HRNSW may give a direction in writing to a harness racing club requiring the club to provide specified documents or furnish specified information to HRNSW within a time specified in the direction, being documents or information that HRNSW considers will be of assistance in connection with the exercise of its functions referred to in section 9(2)(a) or (c) or 28.

30 Sanctions for non-compliance by harness racing club with directions and minimum standards

- (1) HRNSW may impose any sanction authorised by this section on a harness racing club that HRNSW is satisfied has—
- (a) failed without reasonable excuse to comply with a minimum standard set under section 28, or
 - (b) failed without reasonable excuse to comply with a direction given to the harness racing club under section 29.
- (2) Each of the following sanctions is a sanction that HRNSW may impose under this section—
- (a) a public admonishment of the harness racing club,
 - (b) a requirement that the harness racing club pay to HRNSW 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 club under this section),
 - (c) suspension or cancellation of the harness racing club's registration.
- (3) HRNSW is not to impose a sanction under this section without first giving the harness racing 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 HRNSW 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 harness 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 harness racing club concerned.

(6) A civil penalty imposed under this section may be recovered by HRNSW as a debt.

Part 5 Harness Racing Industry Consultation Group

31 Establishment of Harness Racing Industry Consultation Group

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

32 Membership

(1) HRICG is to consist of the following members—

(a) 1 person nominated by the New South Wales Harness Racing Club,

(b) 1 person nominated by harness racing clubs that conduct more than 6 meetings in a calendar year,

(c) 1 person nominated by harness racing clubs that conduct 6 or fewer meetings in a calendar year,

(d) no more than 3 persons, each to be nominated by a different eligible industry body.

(2) The Minister must decide, following consultation with HRNSW, which industry bodies (***eligible industry bodies***) may nominate members for the purposes of subsection (1)(d).

(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.

(7) Schedule 2 contains provisions relating to members of HRICG.

(8) In this section—

industry body means a body representing 1 or more of the following—

- (a) breeders of harness racing horses,
- (b) owners of harness racing horses,
- (c) trainers of harness racing horses,
- (d) harness racing drivers,
- (e) stablehands for harness racing horses.

33 Eligibility for membership

- (1) A person is not eligible to be a member of HRICG if the person—
 - (a) resides outside New South Wales, or
 - (b) is a member of HRNSW, or
 - (c) is currently, or during the previous 10 years has been, warned off, disqualified or named on the Unpaid Forfeit List under the rules, or
 - (d) 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
 - (e) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankruptcy, or
 - (f) is a mentally incapacitated person.
- (2) A person is not eligible to be appointed as a member of HRICG unless the person has been the subject of a probity check by HRNSW.

33A Code of conduct

- (1) HRICG must prepare a code of conduct for its members.
- (2) HRICG must make the code of conduct publicly available.

34 Functions of HRICG

- (1) HRICG has the function of consulting with and making recommendations to HRNSW on matters concerning harness racing in the State.
- (2) Recommendations made by HRICG to HRNSW are to be made in writing and tabled at the next meeting of HRNSW or may be presented in person at that meeting by the Chairperson of HRICG.

- (3) HRNSW is to respond to HRICG in writing in relation to any such recommendations within a reasonable time after they are received. If HRNSW does not support a recommendation made by HRICG, the response by HRNSW is to include its reasons for not supporting the recommendation.
- (4) The Chairperson of HRICG is to provide a report on the work and activities of HRICG for inclusion in the annual report of HRNSW.

Part 5A Appeal Panel

34A Definitions

In this Part—

convenor, of the Appeal Panel for an appeal, means the principal member or other member appointed as convenor under section 34G.

principal member means the principal member appointed under section 34F.

racing authority means—

- (a) HRNSW, or
- (b) a racing official, or
- (c) a harness racing club.

34B Right of appeal

- (1) A person aggrieved by any of the following decisions of a racing authority may appeal against the decision to the Appeal Panel—
 - (a) a decision to disqualify or warn off a person,
 - (b) a decision to disqualify a harness racing horse,
 - (c) a decision to revoke or suspend the registration of a person,
 - (d) a decision to fine a person a sum of \$200 or more,
 - (e) a decision specified in the rules for the purposes of this section.
- (2) HRNSW 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.

34C Procedure on an appeal

- (1) An appeal to the Appeal Panel is to be conducted as a new hearing.
- (2) 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.
- (3) The Appeal Panel may, subject to this Act and the rules, decide its own procedure.
- (4) On an appeal, the Appeal Panel—
 - (a) is not required to act formally, and
 - (b) may inform itself on a matter in a way it considers to be just and is not bound by the rules of evidence, and
 - (c) must make its decision on the merits and justice of the case and is not required to follow legal precedent.
- (5) 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 a person.
- (6) In the exercise of the Appeal Panel's functions on an appeal—
 - (a) the convenor of the Appeal Panel has the powers, authorities, protections and immunities conferred by the *Royal Commissions Act 1923* on a Commissioner appointed under that Act, Part 2, Division 1, and
 - (b) the *Royal Commissions Act 1923*, except section 13 and Part 2, Division 2, applies, with any necessary modifications, to a witness summoned by, or appearing before, the Appeal Panel.

34D Decisions on appeal

- (1) The Appeal Panel may do any of the following in relation to an appeal—
 - (a) dismiss the appeal,
 - (b) confirm the decision appealed against,
 - (c) vary the decision by substituting a decision that could have been made by the racing authority,
 - (d) refer a matter relating to the decision to the racing authority for rehearing in accordance with directions given by the Appeal Panel,
 - (e) make another order in relation to the disposal of the appeal as the Appeal Panel thinks appropriate.

- (2) A decision of the Appeal Panel must be given effect.

34E Membership of Appeal Panel

- (1) HRNSW must appoint suitably qualified persons to be members of the Appeal Panel.
- (2) A member of HRNSW cannot be a member of the Appeal Panel.
- (3) HRNSW must, subject to this section, decide the qualifications and disqualifications for membership of the Appeal Panel.
- (4) In making its decision, HRNSW must consider the need to minimise conflicts of interest, including conflicts arising from a person's—
- (a) ownership of a harness racing horse, or
 - (b) professional involvement in race preparation, or
 - (c) professional or commercial dealings with a person who holds a registration under this Act.
- (5) At least 1 member of the Appeal Panel must be an Australian lawyer of at least 7 years standing.
- (6) A person is not eligible to be appointed as a member of the Appeal Panel if the person—
- (a) holds a registration under this Act, or
 - (b) is currently warned off or disqualified, or
 - (c) is a person whose name is currently on the Unpaid Forfeits List, under the Australian Harness Racing Rules, or
 - (d) during the previous 10 years has been convicted—
 - (i) in New South Wales of an offence which is punishable by imprisonment for 12 months or more, or
 - (ii) in another jurisdiction of an offence which, if committed in New South Wales, would be an offence punishable by imprisonment for 12 months or more, or
 - (e) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankruptcy, or
 - (f) is a mentally incapacitated person.
- (7) A member of the Appeal Panel holds office for 4 years from appointment and is eligible, if otherwise qualified, to be reappointed.

- (8) 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 written instrument addressed to HRNSW, or
 - (d) is removed from office under subsection (9), or
 - (e) becomes a person who is not eligible to be a member of the Appeal Panel.
- (9) The Minister may, on the recommendation of HRNSW, remove a member of the Appeal Panel from office for incapacity, incompetence or misbehaviour.

34F Appointment of principal member

- (1) HRNSW must appoint a member of the Appeal Panel as the principal member.
- (2) The person appointed must be an Australian lawyer of at least 7 years standing.
- (3) The person appointed holds office as principal member for a period of 2 years and is eligible, if otherwise qualified, to be reappointed.
- (4) A person ceases to hold office as principal member if the person ceases to hold office as a member of the Appeal Panel.

34G Constitution of Appeal Panel

- (1) If the Appeal Panel is required to hear an appeal, the principal member must constitute the Appeal Panel in accordance with this section.
- (2) More than 1 Appeal Panel may be constituted at the same time.
- (3) The Appeal Panel must comprise—
 - (a) the convenor of the Appeal Panel, and
 - (b) at least 2 other members.
- (4) The convenor must be—
 - (a) the principal member, or
 - (b) if the principal member is not available—a member who is—
 - (i) appointed by the principal member, and
 - (ii) an Australian lawyer of at least 7 years standing.
- (5) The convenor must preside at the hearing of an appeal.

- (6) The principal member must, if practicable, consult with the chief executive officer of HRNSW before—
 - (a) convening an Appeal Panel, or
 - (b) appointing a convenor.
- (7) The chief executive officer of HRNSW may, if the principal member is not available—
 - (a) convene the Appeal Panel, or
 - (b) appoint a convenor.

34H Remuneration of members

- (1) The members of the Appeal Panel are entitled to be paid fees and expenses for hearing and deciding appeals.
- (2) The amount of the fees and expenses must be decided by HRNSW.

34I How Appeal Panel makes decisions

- (1) A decision supported by a majority of the members of the Appeal Panel hearing an appeal is the decision of the Panel.
- (2) 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.

34J Rules may provide for appeals

The rules may make provision about appeals under this Part, including—

- (a) the way to make an appeal, and
- (b) the procedure for hearing and determining an appeal.

Part 6 Finance

35 Financial year

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

36 Expenses

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

37 Accounts

HRNSW may establish such accounts as it thinks appropriate for the money received and expended by HRNSW.

38 Fees and charges

- (1) HRNSW may determine the fees and charges payable for registration or for the transaction of other business with HRNSW.
- (2) If a steward appointed by HRNSW acts at a harness racing meeting held by a harness racing club, HRNSW may charge the club for the services of the steward.

39 Harness Racing Benevolent Fund

- (1) There is to be established by HRNSW, in an authorised deposit-taking institution in New South Wales, a fund to be called the "Harness Racing Benevolent Fund".
- (2) There is to be paid into the Benevolent Fund—
 - (a) any money received by HRNSW for payment into the Benevolent Fund, and
 - (b) any money acquired by HRNSW on trust or subject to a condition that it be applied in or towards the assistance of a person to whom subsection (4)(a) applies, and
 - (c) any money received by HRNSW—
 - (i) in respect of any loan advanced from money within the Benevolent Fund, and
 - (ii) in payment of interest on any such loan, and
 - (iii) in payment of any charges, costs and expenses incurred in respect of any such loan, and
 - (d) the income derived from the investment of any money within the Benevolent Fund.
- (3) If money in the Benevolent Fund—
 - (a) was paid into the Benevolent Fund under subsection (2)(b), and
 - (b) is, under the terms of a trust, or by virtue of a condition, to which HRNSW has agreed, required to be applied in or towards the assistance of a specified person or a specified class or description of persons, being a person or persons from within the class of persons to whom subsection (4)(a) applies,

that money (together with any interest or income derived from the investment of that money) is to be carried to a separate account in the Benevolent Fund established for the purpose of the trust or of fulfilling the condition.

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

- (a) in respect of money that has not been carried to a separate account in the Benevolent Fund, grants or loans (whether with or without interest) to any person who is in indigent circumstances and who is or has, at any time, been—
 - (i) an owner, trainer or driver of harness racing horses, or
 - (ii) a person employed in a stable of harness racing horses, or
 - (iii) a person who has rendered valuable service to harness racing, or
 - (iv) a dependant of a person referred to in subparagraph (i), (ii) or (iii), and
- (b) in respect of money which has been carried to a separate account within the Benevolent Fund, that money (and any interest or income derived from the investment of that money) subject to the trust or condition on which that money is held.

Part 7 Miscellaneous

40 Records

HRNSW is to keep records for the purposes of this Act relating to its functions.

41 Production of records to HRNSW

(1) In this section—

records includes—

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

however compiled, recorded or stored.

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

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

requiring the production, at such time and place as are specified in the direction, of

such records relating to the affairs of the harness racing club as are so specified.

- (3) Where any records relating to the affairs of a harness racing club are compiled, recorded or stored by means of a mechanical, electronic or other device, a direction under subsection (2) may require the production of a document containing a clear reproduction in writing of the whole or any part of those records.
- (4) A person must not, when required under subsection (2) to produce a record—
 - (a) refuse or neglect to produce the record, or
 - (b) produce a record that contains information that to the person's knowledge is false or misleading in a material particular unless the person discloses that fact when producing the record.

Maximum penalty—5 penalty units.

- (5) A reference in this section to the affairs of a harness racing club is a reference to the affairs of the club that relate, directly or indirectly, to harness racing.
- (6) A power of HRNSW to give a direction under this section does not affect any power of HRNSW to give a direction under section 29. However, a person is not liable to a penalty under both section 30 and this section in respect of a direction to the person that relates to the same records or information.

42 Delegation

- (1) Subject to subsection (2), HRNSW may delegate the exercise of its functions to—
 - (a) a member of HRNSW or the chief executive officer of HRNSW, or
 - (b) a committee comprised of, or a combination of, those persons, or
 - (c) a member of staff of HRNSW.
- (2) HRNSW must not delegate a function relating to the registration of a harness racing club, or the suspension or cancellation of such registration, under this Act.

43 Protection from personal liability

Anything done or omitted to be done by—

- (a) HRNSW or HRICG, or
- (b) a member of HRNSW or HRICG, or
- (c) the chief executive officer of HRNSW, or
- (d) any steward appointed under this Act by HRNSW, or

(e) any person acting under the direction of HRNSW or HRICG,

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

44 Authentication of certain documents

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

45 Proof of certain matters not required

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

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

46 Recovery of money

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

47 Proceedings for offences

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

48 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to—
 - (a) 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, and
 - (b) any matter for or with respect to which rules may be made under Division 2 of Part 3.
- (2) If there is any inconsistency between the regulations and the rules made under Division 2 of Part 3, the regulations prevail to the extent of the inconsistency.

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

49 (Repealed)

Schedule 1 Provisions relating to members of HRNSW

1 Definitions

In this Schedule—

Chairperson means the Chairperson of HRNSW.

member means a member of HRNSW.

2 Chairperson

- (1) The members are to elect a Chairperson from among themselves. HRNSW may remove a person from office as Chairperson at any time.
- (2) A person ceases to hold office as Chairperson if he or she—
 - (a) resigns the office by instrument in writing addressed to HRNSW, or
 - (b) is removed from that office by HRNSW, or
 - (c) ceases to hold office as a member.
- (3) The Chairperson does not cease to be a member merely because he or she ceases to be Chairperson.

3 Term of office of members

- (1) A member of HRNSW 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) A member appointed to fill a casual vacancy (a vacancy in the office of a 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.

4 Remuneration

- (1) A member of HRNSW is entitled to be paid—
 - (a) remuneration consisting of a base amount adjusted annually in accordance with the annual percentage increase (if any) in the Consumer Price Index 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).

(2) The Statutory and Other Offices Remuneration Tribunal may, on the application of HRNSW, 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.

(3) In this clause—

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

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

5 Vacation of office

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

(a) dies, or

(b) completes a term of office and is not reappointed, or

(c) resigns the office by instrument in writing addressed to HRNSW, or

(d) is absent from 4 consecutive meetings of HRNSW of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by HRNSW or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by HRNSW for having been absent from those meetings, or

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

(f) is removed from office under this clause.

(2) The Minister may, on the recommendation of HRNSW, remove a member from office for incapacity, incompetence, misbehaviour or a contravention of the code of conduct adopted by HRNSW under clause 16.

(3) The Minister may also remove a member from office if the Minister is satisfied the member has—

(a) contravened clause 10, or

(b) a pecuniary interest that is incompatible with continued membership.

(4) The Minister may not remove a member from office under subclause (3) unless the

Minister has first given the member an opportunity to show cause why the member should not be removed from office.

6 Member vacancies to be filled

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

7 Presiding member

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

8 Voting

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

9 Transaction of business outside meetings or by telecommunication

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

10 Disclosure of pecuniary interests by members

- (1) If—

(a) a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of HRNSW or a committee of HRNSW, and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

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

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

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

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

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

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

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

(4) After a member has disclosed the nature of an interest in any matter, the member must not—

(a) be present during any deliberation of HRNSW with respect to the matter, or

(b) take part in any decision of HRNSW with respect to the matter.

(5) (Repealed)

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

(7) This clause applies to a member of a committee of HRNSW in relation to a meeting of the committee in the same way it applies to a member of HRNSW in relation to a meeting of HRNSW.

11 Pecuniary interests required to be disclosed

(1) For the purposes of clause 10, a pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated as provided by subclauses (3)–(5).

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

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

It is the duty of each member to act in the public interest and in the interests of the harness racing industry as a whole in the State.

13 General procedure

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

14 Quorum

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

15 First meeting

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

16 Code of conduct

- (1) HRNSW must adopt a code of conduct to be observed by members and staff of HRNSW.
- (2) The code of conduct must include a statement of the duty of members of HRNSW under clause 12 (Duty of members to act in interests of public and industry) and clause 10 (Disclosure of pecuniary interests by members) and the obligations of HRNSW under clause 10 in connection with disclosures under that clause.
- (3) HRNSW must review its code of conduct at least every 3 years and make such changes to it as it considers appropriate.
- (4) HRNSW must make the code of conduct publicly available on its website.

17 Effect of certain other Acts

- (1) The *Government Sector Employment Act 2013* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made—
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

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

Schedule 2 Provisions relating to HRICG

1 Membership is honorary

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

2 Vacation of office

- (1) The office of a member of HRICG becomes vacant if the member—
 - (a) dies, or
 - (b) resigns the office by instrument in writing addressed to HRNSW and HRICG, or
 - (c) is absent from 2 consecutive meetings of HRICG of which reasonable notice has

been given to the member personally or in the ordinary course of post, except on leave granted by HRICG or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by HRICG 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 subclause (2).

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

3 Chairperson and Deputy Chairperson of HRICG

- (1) HRICG is to elect a Chairperson from among its members. HRICG may also elect a Deputy Chairperson from among its members. HRICG may remove a person from office as Chairperson or Deputy Chairperson of HRICG 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 HRNSW and HRICG, or
 - (b) is removed from that office by HRICG, or
 - (c) ceases to hold office as a member of HRICG.
- (3) To be elected or removed from office as Chairperson or Deputy Chairperson of HRICG requires a simple majority of the members present and voting at a meeting of HRICG at which a quorum is present.
- (4) The Chairperson or Deputy Chairperson does not cease to be a member of HRICG merely because he or she ceases to be Chairperson or Deputy Chairperson.

4 Member vacancies to be filled

When the office of a member of HRICG 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.

5 Procedure

- (1) HRICG may regulate its proceedings as it considers appropriate, subject to this clause.
- (2) The quorum for a meeting of HRICG is a majority in number of the members for the time being.
- (3) HRICG must meet at least 6 times in each year unless HRICG otherwise determines.

- (4) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson is to preside at a meeting of HRICG. 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 HRICG at which a quorum is present is the decision of HRICG.

5A Transaction of business outside meetings or by telecommunication

- (1) HRICG may transact business by the circulation of papers among all its members.
- (2) The papers may be circulated by email or by other means of transmission of the information in the papers.
- (3) If business is transacted by the circulation of papers, a written resolution approved in writing by a majority of the voting members is taken to be a decision of HRICG.
- (4) The resolution must be recorded in the minutes of the meetings of HRICG.
- (5) HRICG may transact business at a meeting at which members, or some members, participate by telephone or by other means but not if a member who speaks on a matter at the meeting cannot be heard by the other members.
- (6) The Chairperson and each other member have the same voting rights as they have at an ordinary meeting of HRICG for—
 - (a) the approval of a resolution under subclause (3), or
 - (b) a meeting held in accordance with subclause (5).

6 Meetings with HRNSW

- (1) In addition to any other meetings that HRICG may hold, HRICG must hold a meeting not less than 6 times in each year with one or more members of HRNSW at least one of whom is the Chairperson or the chief executive officer of HRNSW.
- (2) The number of meetings required by this clause can be changed by agreement between HRNSW and HRICG.
- (3) The minutes of a meeting under this clause are to be circulated among both the members of HRICG and the members of HRNSW.

7 Administrative support

HRNSW is to provide such reasonable administrative support as may be required to enable HRICG to exercise its functions.

Schedule 3 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) A provision of a regulation authorised by this clause may, if the regulations so provide, take effect as from the date of assent to the Act concerned or as from a later day.
- (3) To the extent to which a provision of a regulation authorised by this clause takes effect from a date that is earlier than the date of its publication on the NSW legislation website, 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.
- (4) The provisions of this Schedule are subject to the regulations.

Part 2 Provisions consequent on enactment of this Act

Division 1 Interpretation

2 Definitions

In this Part—

former administration Act means the [Greyhound and Harness Racing Administration Act 2004](#).

former Authority means the Greyhound and Harness Racing Regulatory Authority constituted by the former administration Act.

former HRNSW Act means the [Harness Racing Act 2002](#).

Division 2 Provisions relating to HRNSW

3 Continuation of HRNSW

HRNSW is taken for all purposes (including the rules of private international law) to be a continuation of, and the same legal entity as, HRNSW constituted under the former HRNSW Act.

4 Membership of HRNSW

- (1) Despite section 6 of this Act, HRNSW is taken to be duly constituted under that section by the members of HRNSW holding office under section 8 of the former HRNSW Act immediately before the repeal of section 8 of that Act.
- (2) Subclause (1) has effect—
 - (a) until the expiration of the term of office of those members or until the date on which the first appointment of members of HRNSW in accordance with section 6 of this Act takes effect, whichever occurs first, and
 - (b) despite the vacation of office of any such member in accordance with Schedule 1.
- (3) The person holding office as Chairperson of HRNSW immediately before the repeal of section 8 of the former HRNSW Act is taken to have been elected to that office in accordance with Schedule 1.

5 Existing staff of HRNSW

- (1) The person employed under section 11 of the former HRNSW Act to the office of chief executive officer and holding that office immediately before the repeal of that section is taken to have been employed in that office under section 13 of this Act. Until other provision is duly made, that employment is taken to be on the same terms and conditions as applied to the employment under section 11 of the former HRNSW Act.
- (2) Any person employed under section 12 of the former HRNSW Act as a member of staff of HRNSW and holding that position immediately before the repeal of that section is taken to have been employed in that position under section 14 of this Act. Until other provision is duly made, that employment is taken to be on the same terms and conditions as applied to the employment under section 12 of the former HRNSW Act.

6 Delegations

Any delegation made under section 56 of the former HRNSW Act is taken to have been made under section 42 of this Act.

Division 3 Provisions relating to former Authority and its assets, rights, liabilities and staff

7 References to former Authority

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

8 Transfer of assets, rights and liabilities of former Authority

(1) In this clause—

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

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

(2) The Minister may, by order in writing, transfer to HRNSW such of the assets, rights and liabilities of the former Authority as are specified or referred to in the order.

(3) An order under this clause takes effect on the date specified in the order.

(4) An order under subclause (2) may be made on such terms and conditions as are specified in the order.

(5) On and from the date on which any asset, right or liability is transferred by subclause (2), the following provisions have effect with respect to the transfer—

- (a) the transferred asset vests in the transferee by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
- (b) the transferred rights and liabilities become by virtue of this clause the rights and liabilities of the transferee,
- (c) all proceedings relating to the asset, right or liability commenced before the transfer day by or on behalf of, or against, the transferor and pending immediately before the transfer day are taken to be proceedings pending by or against the transferee,
- (d) any act, matter or thing done or omitted to be done in relation to the asset, right or liability before the transfer day by, to or in respect of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee.

(6) The operation of this clause is not to be regarded—

- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
- (d) as an event of default under any contract or other instrument.

(7) No attornment to HRNSW by a lessee of the former Authority is required.

9 Employment of employees of former Authority by HRNSW

(1) Until 1 August 2009, HRNSW—

- (a) must notify Authority employees whenever it intends to fill a position in the staff of HRNSW, and
- (b) must give the notified employees a reasonable opportunity to apply for the position.

(2) An Authority employee who—

- (a) applies for a position to be filled as referred to in subclause (1), and
- (b) at the time of making the application is performing substantially the same duties for the former Authority as are required to be performed in the position to be filled or, if at that time the former Authority has been dissolved, was performing substantially those same duties for the former Authority immediately before its dissolution,

is to be considered for the position in preference to any other applicant for the position who is not such a person.

(3) The employment of an Authority employee who is appointed to a position in the staff of HRNSW in accordance with this clause is not to be terminated within the period of 24 months after the commencement of the employment on the ground of redundancy arising from the operation of this Act.

(4) An Authority employee who is appointed to a position in the staff of HRNSW in accordance with this clause—

- (a) is, subject to paragraphs (b) and (c), to be employed by HRNSW during the period referred to in subclause (3) at the same salary that the employee received immediately before ceasing to be an employee of the former Authority, and
- (b) if the employee is employed by HRNSW on 1 July 2009, is entitled to a 4% increase in the employee's salary at that date, and
- (c) if the employee is employed by HRNSW on 1 July 2010, is entitled to a further 4% increase in the employee's salary at that date.

(5) Subclause (4) is subject to any agreement relating to salary between HRNSW and the Authority employee concerned.

(6) An Authority employee who is appointed to a position in the staff of HRNSW in accordance with this clause is, on commencing employment in that position, entitled to be paid compensation by HRNSW calculated in accordance with Schedule 1 to the

Employment Protection Regulation 2001 (as in force at the commencement of this clause) as if the compensation payment were a severance payment referred to in that Schedule. No other payment or benefit is payable to the Authority employee merely because he or she ceases to be a member of staff of the former Authority.

(7) If HRNSW is unable to fill a position in accordance with subclause (2) within a reasonable time after the position was notified to Authority employees, nothing in this clause prevents HRNSW from filling the position in any other way.

(8) In this clause, **Authority employee** means a person who was a member of staff of the former Authority before its dissolution.

10 Duty and other fees

An instrument executed only for a purpose ancillary to or consequential on the operation of this Part or the purpose of giving effect to this Part—

(a) is not chargeable with duty, and

(b) is exempt from payment of any other fee or charge that would otherwise be payable under any other Act in respect of the registration of any such instrument.

11 Actions of former Authority

Anything done by the former Authority relating to a registration, suspension, disqualification or prohibition under the former administration Act in respect of harness racing before the dissolution of the former Authority is, after that dissolution, taken to have been done under the relevant provisions of this Act by HRNSW.

Division 4 Miscellaneous

12 References to former Act

(1) On and from the repeal of the former HRNSW Act, a reference in any other Act, in any instrument made under another Act, or in any document of any kind, to the former HRNSW Act is to be read as a reference to this Act.

(2) On and from the repeal of the former administration Act, a reference in any other Act, in any instrument made under another Act, or in any document of any kind, to the former administration Act is to be read as a reference to this Act to the extent that it relates to harness racing.

13 Dissolution of Harness Racing Industry Participants Advisory Committee

(1) On the repeal of Part 5 of the former HRNSW Act, the Harness Racing Industry Participants Advisory Committee is dissolved.

(2) No remuneration or compensation is payable to any member of that Committee as a result of its dissolution.

14 Existing rules

On the repeal of section 16 of the former administration Act, the rules made under that section and in force immediately before that repeal are taken to have been made under this Act by HRNSW and may be amended and repealed accordingly.

15 Registration

On the repeal of Part 3 of the former administration Act, any registration granted by the former Authority in relation to harness racing under that Act and in force immediately before that repeal is taken to have been granted by HRNSW under this Act.

16 Harness Racing Benevolent Fund

The Harness Racing Benevolent Fund established under section 52 of the former Act is taken to have been established under section 39 of this Act.

Part 3 Provisions consequent on enactment of [Racing and Gambling Legislation Amendment Act 2022](#)

17 Definition

In this Part—

amending Act means the [Racing and Gambling Legislation Amendment Act 2022](#).

18 Action after investigation of complaint

Section 27, as substituted by the amending Act, extends to an investigation commenced but not completed before the substitution.

19 Harness Racing Industry Consultation Group

- (1) A person who, immediately before the commencement of the amending Act, was a member of the Harness Racing Industry Consultation Group appointed under—
 - (a) section 32(1)(b)—is taken to have been nominated by harness racing clubs that conduct more than 6 meetings in a calendar year, or
 - (b) section 32(1)(c)—is taken to have been nominated by harness racing clubs that conduct 6 or fewer meetings in a calendar year.
- (2) The person continues to hold office as a member, despite the amendments made to section 32 by the amending Act, until the office of the member becomes vacant.

Note—

See Schedule 2, clause 2 for when an office of a member becomes vacant.

20 Appeal Panel

Part 5A does not apply in relation to a decision made before the commencement of the Part.