

#### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

#### Overview of Bill

The object of this Bill is to amend the Thoroughbred Racing Act 1996 (the Principal Act):

- (a) to reconstitute Racing NSW so that it will have 6 members consisting of the Chief Executive of Racing NSW (who is to be a non-voting member) and 5 appointed members nominated by an Appointments Panel, and
- (b) to establish an Appointments Panel consisting of representatives of industry participants that is to have responsibility for nominating persons for appointment to membership of Racing NSW, and
- (c) to provide for a fresh recruitment process for the entire membership of Racing NSW if a 75% majority of the Appointments Panel decide that the Panel should be convened for that purpose, and
- (d) to require proposed members of Racing NSW to be subject to a probity check before being appointed to membership, and
- (e) to empower Racing NSW to set minimum standards in connection with the conduct of races and race meetings by registered race clubs, and
- (f) to empower Racing NSW to give directions to registered race clubs requiring the provision of documents or information in connection with the policy making functions of Racing NSW, and
- (g) to empower Racing NSW to impose sanctions against a race club that has failed to comply with a minimum standard set by Racing NSW or failed to provide required documents or information, and
- (h) to provide a mechanism for Racing NSW to amend the Intra-Code agreement for the distribution of thoroughbred racing TAB payments if the parties to the agreement have not reached unanimous agreement on a change to the distribution arrangements, and
- (i) to require the approval of Racing NSW before a racing body can enter into a race broadcasting arrangement in the future, and
- (j) to establish the Racing Industry Consultation Group (RICG) as a replacement for the Racing Industry Participants Advisory Committee (RIPAC) to consult with and make recommendations to Racing NSW with regard to horse racing in the State, and
- (k) to require the adoption of a code of conduct by Racing NSW to be observed by members and staff of Racing NSW, and
- (l) to make it clear that Racing NSW has functions as provided in the Principal Act in relation to the business, economic development and strategic development of the horse racing industry in the State, and
- (m) to require that Racing NSW must undertake regular formal consultation with RICG and other industry stakeholders, and
- (n) to require Racing NSW to prepare a strategic plan for the horse racing industry in consultation with RICG and other industry stakeholders, and
- (o) to make it clear that the functions of Racing NSW are not limited by the Australian Rules of Racing and are to be exercised independently of the Australian Racing Board, and
- (p) to provide that Racing NSW may nominate the auditor when it orders an audit of a race club, and
- (q) to make it clear that the circulation of papers and the passing of a resolution for the transaction of business by Racing NSW may be done by email, and
- (r) to repeal provisions relating to the custody and affixing of the corporate seal of Racing NSW, and
- (s) to repeal the requirement that any profits of Racing NSW must be distributed to the Consolidated Fund, and

(t) to require the Minister to undertake a review of the Principal Act within 5 years after the date of assent to the proposed Act, and  
(u) to make minor and consequential amendments.

#### Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation or (in the case of savings and transitional provisions) the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the Thoroughbred Racing Act 1996 set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

#### Reconstitution of Racing NSW

Schedule 1 [3] (proposed sections 6–8) reconstitutes Racing NSW and provides for an Appointments Panel that will nominate the persons who are to be appointed as members of Racing NSW. Racing NSW will consist of the Chief Executive of Racing NSW and 5 appointed members nominated by the Appointments Panel.

The nomination of persons for appointment will be on the basis of skills based criteria that will require appointed members to have experience in a senior administrative role or experience at a senior level in one or more of the fields of business, finance, law, marketing, technology, commerce, regulatory administration or regulatory enforcement.

The Appointments Panel is required to conduct a probity check before nominating a person for appointment as a member of Racing NSW.

The Bill provides a mechanism in proposed section 8 for the members of the Appointments Panel to request the Minister to convene the Panel for the purpose of a fresh recruitment process for the membership of Racing NSW, thereby providing a means by which the membership of Racing NSW can be replaced if a 75% majority of the Appointments Panel decide (after calling on the existing membership to show cause why fresh appointments should not be made) that a new membership should be appointed.

Schedule 1 [4] provides for a term of office of up to 4 years for appointed members of Racing NSW. Appointed members will be limited to a maximum of 8 years in office but a person holding office as a member of Racing NSW on the commencement of the proposed amendments will be able to be appointed for a further term of 4 years even if that further term would result in the person exceeding the 8-year maximum that would otherwise apply.

Schedule 1 [6] and [7] provide that the base amount of the remuneration of members of Racing NSW (which is determined by the Statutory and Other Offices Remuneration Tribunal) can be redetermined by the Tribunal from time to time.

Schedule 1 [23] provides the members of Racing NSW to act in a caretaker mode if the Appointments Panel is convened for the purpose of conducting a fresh recruitment process.

Schedule 1 [33] provides for the membership and procedure of the Appointments Panel.

Schedule 1 [1], [2], [5], [8], [10], [11], [14], [17]–[22] and [24] make minor and consequential amendments.

#### Special functions of Racing NSW

Schedule 1 [28] inserts a new Part 2A into the Principal Act that provides for the following proposed new functions of Racing NSW:

(a) Proposed section 29A gives Racing NSW the power to set minimum standards in connection with the conduct by registered race clubs of races and race

meetings.

(b) Proposed section 29B gives Racing NSW the power to direct a registered race club to provide Racing NSW with specified documents or information to assist Racing NSW in connection with its various policy making functions.

(c) Proposed section 29C gives Racing NSW power to impose various sanctions against a race club that fails to comply with a minimum standard set under proposed section 29A or a direction under proposed section 29B.

(d) Proposed sections 29D–29G prevent race clubs and other racing bodies from entering into race broadcasting arrangements without the prior approval of Racing NSW. Racing NSW may refuse to approve of a proposed arrangement if of the opinion that the arrangement is not in the best interests of the horse racing industry in NSW as a whole. Provision is made for the mediation of disputes about a decision to refuse approval for a race broadcasting arrangement.

(e) Proposed sections 29H–29J provide a mechanism for the review of the Intra-Code agreement to which Racing NSW is a party that deals with the distribution of thoroughbred racing TAB payments. Following a review, Racing NSW can invite the other parties to submit proposals for changes to the agreement to ensure that the agreement remains in the best interests of the horse racing industry as a whole. If the parties to the agreement have not agreed to changes within 6 months after the invitation, Racing NSW can direct changes to the agreement.

(f) Proposed sections 29K–29N provide for an appeal on limited grounds against certain decisions of Racing NSW under the proposed new provisions.

#### Replacement of RIPAC with RICG

Schedule 1 [29] constitutes the Racing Industry Consultation Group to replace RIPAC as the industry representative body with the function of consulting with and making recommendations to Racing NSW on matters concerning horse racing in the State. Racing NSW is required to respond to RICG recommendations and to provide reasons for not supporting a RICG recommendation. RICG is required to meet at least 12 times each year with the Chairperson or the Chief Executive of Racing NSW. A report on the activities of RICG is to be included in the Racing NSW annual report.

#### Other functions of Racing NSW

Schedule 1 [12] makes it clear that the functions of Racing NSW extend to the business, economic development and strategic development of the horse racing industry.

Schedule 1 [13] makes it clear that the functions of Racing NSW are not limited by the Australian Rules of Racing and are to be exercised independently of the Australian Racing Board.

Schedule 1 [16] requires Racing NSW to prepare a business plan for its activities from time to time and to undertake formal consultation with RICG and other industry stakeholders. Racing NSW is also required to prepare a strategic plan for the industry in consultation with RICG and other industry stakeholders within 12 months and thereafter every 3 years.

#### Miscellaneous amendments

Schedule 1 [9] requires Racing NSW to adopt a code of conduct to be observed by members and staff of Racing NSW.

Schedule 1 [15] provides for Racing NSW to nominate the registered company auditor who is to conduct the audit of a race club that Racing NSW has ordered be carried out.

Schedule 1 [25] provides for the use of email as a means of the circulation of papers among and the approval of resolutions by Racing NSW members.

Schedule 1 [26] removes a provision that deals with the custody and affixing of the corporate seal of Racing NSW.

Schedule 1 [27] removes the provision that requires any profit of Racing NSW to be paid to the Consolidated Fund.

Schedule 1 [30] requires the Minister to review the Principal Act after 5 years from the date of assent to the proposed Act.

Schedule 1 [31] and [32] enact consequential savings and transitional provisions, including a savings and transitional regulation-making power.