

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

Overview of Bill

The objects of this Bill are:

- (a) to amend the Racing Administration Act 1998 to make further provision with respect to the publication of certain information (whether in New South Wales or elsewhere) about intended races of horses or greyhounds to be held at race meetings on licensed racecourses in New South Wales, and
- (b) to amend the Greyhound and Harness Racing Administration Act 2004 and the Thoroughbred Racing Act 1996 to omit certain provisions of those Acts that have been held to be invalid by the Full Court of the Federal Court.

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 (other than Schedule 1.1 and 1.3) on a day or days to be appointed by proclamation. Schedule 1.1 and 1.3 commence on the date of assent to the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the Acts 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.

Schedule 1 Amendment of Acts

Publication of NSW race fields

Schedule 1.2 [1] and [3] insert Division headings in Part 4 of the Racing Administration Act 1998 to facilitate the insertion of a discrete Division in that Part containing provisions relating to the publication of NSW race fields.

Schedule 1.2 [2] amends section 27 of the Racing Administration Act 1998 to insert definitions of certain expressions used in the new provisions relating to the publication of NSW race fields. In particular, NSW race field is defined to mean information that identifies, or is capable of identifying, the names or numbers of the horses or dogs:

- (a) that have been nominated for, or that will otherwise take part in, an intended race to be held at any race meeting on a licensed racecourse in New South Wales, or
- (b) that have been scratched or withdrawn from an intended race to be held at any race meeting on a licensed racecourse in New South Wales.

The term relevant racing control body is defined to mean:

- (a) in relation to horse racing other than harness racing—Racing New South Wales, and
- (b) in relation to harness racing—Harness Racing New South Wales, and
- (c) in relation to greyhound racing—Greyhound Racing New South Wales.

Schedule 1.2 [4] inserts a new Division 3 in Part 4 of the Racing Administration Act 1998 dealing with the publication of NSW race fields. The new Division replaces section 33 of that Act, which currently deals with the publication of such information. The new Division contains the following provisions:

Proposed section 33 makes it an offence for a person to publish a NSW race field (whether in New South Wales or elsewhere) unless the person:

- (a) is authorised to do so by a race field publication approval and complies with the conditions (if any) to which the approval is subject, or
- (b) is authorised to do so by or under the regulations.

The maximum penalty for an offence against the proposed section by a corporation will be 500 penalty units (currently, \$55,000). The maximum penalty for offences

committed by other persons will be:

(a) for a first offence—50 penalty units (currently, \$5,500) or imprisonment for 12 months (or both), and

(b) for a second or subsequent offence—100 penalty units (currently, \$11,000) or imprisonment for 2 years (or both).

Proposed section 33A enables the relevant racing control body in relation to an intended race (or class of races) to be held at any race meeting on a licensed racecourse in New South Wales to grant approval to a person to publish a NSW race field (a race field publication approval) in respect of that race or class of races if the person has duly made an application for that approval under the new Division. Any such approval may (but need not) specify conditions to which the approval will be subject. The kinds of conditions that may be imposed are limited to:

(a) a condition that the holder of the approval pay a fee or a series of fees of an amount or amounts and in the manner specified in the approval (being a fee or fees imposed in accordance with any requirements prescribed by the regulations), and

(b) such other conditions as may be specified in the approval (being conditions of a kind that are prescribed as permissible conditions by the regulations).

Proposed section 33B makes provision for the making and determination of applications for race field publication approvals.

Proposed section 33C authorises certain conduct in connection with the collection of fees for the publication of NSW race fields that might otherwise contravene Part IV of the Trade Practices Act 1974 of the Commonwealth and the Competition Code of New South Wales.

Proposed section 33D enables a person to appeal to the Minister against any of the following kinds of decisions of a relevant racing control body:

(a) a decision of the body to reject an application by the person for a race field publication approval,

(b) a decision of the body to impose a condition under proposed section 33A (2) (other than a condition relating to the payment of a fee or series of fees) on a race field publication approval,

(c) a decision of the body to cancel a race field publication approval held by the person,

(d) a decision of the body to vary any term of a race field publication approval held by the person (other than a term relating to the payment of a fee or series of fees).

Proposed section 33E enables an appellant or respondent in an appeal to the Minister under proposed section 33D to apply to the Administrative Decisions Tribunal for a review of the decision of the Minister in the appeal.

Proposed section 33F makes it clear that the extent of the approval conferred by a race field publication approval is limited to the publication of NSW race fields. The approval does not authorise the holder to do (or omit to do) anything else in relation to races to be held at any race meeting on a licensed racecourse in New South Wales. Schedule 1.2 [5] inserts a new section 36C in the Racing Administration Act 1998 to make provision for the manner of giving or serving notices or other documents under that Act.

Schedule 1.2 [6] amends clause 1 of Schedule 1 to the Racing Administration Act 1998 to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1.2 [7] inserts a new Part in Schedule 1 to the Racing Administration Act 1998 containing savings and transitional provisions consequent on the enactment of the proposed Act. In particular, the new Part provides that offences committed under the repealed section 33 may be taken into account in determining whether a person has committed a second or subsequent offence for the purposes of the new section 33.

Omission of invalid provisions

In *Sportodds Systems Pty Limited v State of New South Wales* [2003] FCAFC 237 (29 October 2003), the Full Court of the Federal Court held that certain provisions in section 14A of the *Thoroughbred Racing Act 1996* relating to the licensing of bookmakers were invalid because they infringed section 92 of the *Commonwealth Constitution*.

Similar provisions in the *Greyhound Racing Act 2002* and *Harness Racing Act 2002* were also held to be invalid. These provisions are now located in the *Greyhound and Harness Racing Administration Act 2004*.

Schedule 1.3 amends section 14A of the *Thoroughbred Racing Act 1996* to omit the provisions that were held to be invalid by the Full Court of the Federal Court.

Schedule 1.1 makes similar amendments to section 13 of the *Greyhound and Harness Racing Administration Act 2004*.