

[STATE ARMS]

New South Wales

Greyhound Racing Authority Amendment Bill 1998

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Greyhound Racing Authority Act 1985* for the following purposes:
 - (i) to reconstitute the Greyhound Racing Authority as a statutory corporation,
 - (ii) to constitute a Board of the Authority to exercise its commercial and other non-regulatory functions and to establish a Regulatory Committee of the Authority to exercise its regulatory functions,
 - (iii) to establish a Greyhound Racing Appeals Tribunal, and to provide for a right of appeal to the Tribunal from certain decisions of the Authority, stewards and committees of greyhound racing clubs,
 - (iv) to allow the Authority in conducting certain inquiries to examine witnesses on oath,
 - (v) to clarify that the Authority has a discretion in deciding whether to conduct proceedings in respect of its inquiries in public or in private,
- (b) to amend the *Defamation Act 1974* to clarify that certain defences (including absolute privilege) are available in defamation actions that concern:
 - (i) publications in the course of proceedings with respect to appeals under the *Greyhound Racing Authority Act 1985* and certain inquiries conducted by the Authority, and
 - (ii) reports published in respect of such appeals and inquiries.

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.

Clause 3 is a formal provision giving effect to the amendments to the *Greyhound Racing Authority Act 1985* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Defamation Act 1974* set out in Schedule 2.

Schedule 1 Amendment of Greyhound Racing Authority Act 1985

Schedule 1 [1] inserts certain definitions into the *Greyhound Racing Authority Act 1985*.

Schedule 1 [2]–[4] are consequential amendments concerning definitions.

Schedule 1 [5] inserts a new Part 2 (proposed sections 5–8F) dealing with the constitution and organisation of the Authority.

Proposed section 5 provides for the re-constitution of the Greyhound Racing Authority (NSW) as a statutory corporation.

Proposed section 6 provides for the constitution of the Board of the Authority. The Board is to consist of 7 directors to be appointed by the Governor from nominations made by greyhound racing clubs, participants in the greyhound racing industry and the Minister.

Proposed section 7 provides that the Board is responsible for exercising all non-regulatory functions of the Authority. These include the commercial functions of the Authority conferred by the Act or any other law (for example, the Authority's functions conferred by proposed sections 9A and 17B of the Act, and clauses 14 and 15 of Schedule 2 to the *Totalizator Act 1997*).

Proposed section 8 defines the *regulatory functions* of the Authority for the purposes of the Act, as follows:

- (a) functions relating to the control and regulation of greyhound racing as specified in section 9 (including the holding of inquiries in relation to those functions, and associated decision-making and disciplinary functions),
- (b) the function of making rules under the Act,
- (c) the functions of hearing and deciding appeals to the Authority and holding special inquiries under the Act,
- (d) the functions under sections 14 (reports and recommendations), 15 (production of club records) and 19 (delegation) to the extent they are exercised in relation to the regulatory functions of the Authority,
- (e) such functions as the Board may allocate to the Regulatory Committee or as are determined by the regulations,
- (f) such functions as the Minister determines are regulatory functions. (Proposed section 8 allows the Minister to conclusively determine the nature of a function if there is a dispute on the matter.)

Proposed section 8A establishes a Regulatory Committee, to consist of the 3 directors of the Board nominated by the Minister.

Proposed section 8B provides that the Regulatory Committee is responsible for exercising the regulatory functions of the Authority. In so doing, the Committee is subject to the control and direction of the Minister except in relation to the contents of a report or recommendation made by it to the Minister and its decisions on appeal or other disciplinary proceedings.

Proposed section 8C provides for the appointment of a chairperson and deputy chairperson of the Authority (who hold those positions on the Board and Regulatory Committee).

Proposed section 8D is a formal provision giving effect to Schedules 1 and 2 to the Act (which contain

administrative provisions relating to directors and procedural provisions relating to the Board and Regulatory Committee).

Proposed section 8E provides for the employment of a chief executive officer by the Authority in consultation with the Minister.

Proposed section 8F provides for the employment of staff by the Authority.

The effect of the amendments made by **Schedule 1 [6]** and **[8]** is that the function of registering or refusing to register a greyhound racing club or trial track is a non-regulatory function to be exercised by the Board, while the function of registering or refusing to register a greyhound or an owner, trainer, bookmaker or other person associated with greyhound racing, is a regulatory function to be exercised by the Regulatory Committee.

The function of cancelling registration in relation to all of these subjects is a regulatory function to be exercised by the Regulatory Committee.

Schedule 1 [7], [9] and [10] are consequential amendments.

The effect of the amendment made by **Schedule 1 [11]** is that if rules are required to be made in relation to the non-regulatory functions of:

- (a) the registration of greyhound racing clubs and trial tracks, and
- (b) the charging for services of stewards appointed by the Authority and the determination of fees and charges for registration and for the transaction of other business with the Authority,

that rule-making is a regulatory function to be exercised by the Regulatory Committee.

Schedule 1 [12] removes the requirement that rules must be approved by the Governor.

Schedule 1 [13] and **[14]** are consequential amendments.

Schedule 1 [15] substitutes Part 4 (proposed sections 16–17B) dealing with matters relating to the Authority's finances.

Proposed section 16 describes the financial year of the Authority as the year commencing on 1 July.

Proposed section 17 provides that the Authority is liable for all expenses incurred by the Authority, and by the Tribunal in the exercise of its functions under the Act.

Proposed section 17A provides that the Authority may establish such accounts as it thinks fit.

The effect of proposed section 17B is that the charging of greyhound racing clubs for the services of stewards appointed by the Authority, and the determination of fees and charges for registration and for the transaction of other business with the Authority, are non-regulatory functions to be exercised by the Board.

Schedule 1 [16] inserts a new Part 4A (proposed section 18–18K) dealing with disciplinary inquiries and appeals.

Proposed section 18 defines certain words and expressions for the purposes of the Part. An *appeal* means an appeal under Part 4A, and a *disciplinary inquiry* means a special inquiry (as provided for in the Act) following an appeal, or any other inquiry by the Authority for the purposes of taking disciplinary action.

Proposed section 18A provides a right of appeal to the Authority or the Tribunal from decisions of stewards or the committee of a greyhound racing club, or of a steward appointed by the Authority, as determined by the regulations. There is also a right of appeal to the Tribunal from decisions of the Authority, as determined by the regulations.

Proposed section 18B provides for matters of procedure concerning disciplinary inquiries and appeals. These include the power of the Authority to decide whether to conduct its disciplinary inquiries in public or in private, or partly in public and partly in private, and the power to examine witnesses on oath in conducting such inquiries.

Proposed section 18C provides that the Authority may conduct a special inquiry into a matter decided by the Tribunal on appeal if the Authority receives new information that may have resulted in a substantially different decision had it been given in evidence at the hearing of the appeal. After holding the special inquiry, the Authority may decide to take no further action or it may decide the matter differently from the Tribunal. If the latter, the Authority's decision replaces the Tribunal's decision and is not appealable.

Proposed section 18D contains a regulation-making power in relation to appeals and special inquiries. Proposed section 18E defines certain words and expressions for the purposes of the provisions relating to the establishment of the Greyhound Racing Appeals Tribunal.

Proposed section 18F provides for the establishment of the Tribunal.

Proposed sections 18G–18J deal with the appointment of a qualified person as the Tribunal and the appointment of assessors to assist the Tribunal. A *qualified person* is a judge of any court in NSW, a retired judge of any court, or a person qualified to be appointed as a Judge of the District Court.

Proposed section 18K is a formal provision giving effect to Schedule 2A (which contains administrative provisions relating to the Tribunal).

Schedule 1 [17] substitutes section 19 which deals with the delegation of the Authority's functions. Under proposed section 19 the only regulatory functions of the Authority that are delegable are those concerning the registering of, or refusal to register, greyhounds, owners, trainers, bookmakers or other persons associated with greyhound racing. All other functions of the Authority are delegable except the power of delegation conferred by the section.

The item also inserts section 19A which protects a director, the chief executive officer, a steward and other persons acting under the direction of the Authority, from personal liability for acts done in good faith for the purpose of executing the Act or any other Act or the rules.

Schedule 1 [18] removes an obsolete provision.

Schedule 1 [19] specifies the procedure for authenticating certain documents.

Schedule 1 [20] is a consequential amendment. The item also inserts proposed section 23A which provides that the exercise of a function of the Authority by the Board or the Committee cannot be challenged on the ground that it should have been exercised by the other body.

Schedule 1 [21]–[27] are consequential amendments.

Schedule 1 [28] substitutes Schedule 2 which provides for various procedural matters relating to the Board and the Regulatory Committee.

Schedule 1 [29] inserts a new Schedule 2A which provides for various administrative matters relating to the Tribunal.

Schedule 1 [30] and **[31]** are consequential amendments.

Schedule 1 [32] inserts a new Part 2 into Schedule 3, containing provisions of a savings or transitional nature consequent on the enactment of the proposed amending Act. In particular:

- (a) clause 9 provides that the new Authority is a continuation of the old Authority, and
- (b) clause 10 provides that members of the old Authority cease to hold that office on the commencement of the proposed provisions relating to the reconstitution of the Authority, and
- (c) clause 11 provides that the existing chief executive is to continue in office as chief executive officer for the balance of his or her appointment, and
- (d) clause 12 provides that appeals that are lodged and not yet heard, or that are partly or fully heard but not yet decided, on the commencement of the proposed provisions relating to appeals, are to be heard or reheard (as the case may be) and determined in accordance with the Act as amended by the proposed amending Act, and
- (e) clause 13 provides for transitional arrangements in relation to fees and charges for registration or for the transaction of other business with the Authority.

Schedule 2 Amendment of Defamation Act 1974

Schedule 2 [1] inserts section 17DC into the Act to clarify that a defence of absolute privilege is available to a claim for defamation involving:

- (a) a publication in the course of an appeal under the *Greyhound Racing Authority Act 1985* or in the course of proceedings in respect of an inquiry that the Authority conducts in exercise of its regulatory functions, or
- (b) a publication by the Authority or the Greyhound Racing Appeals Tribunal in an official report of such appeal or by the Authority in a report it makes in respect of such an inquiry.

Currently, a publication may occur by reports, articles, letters, notes, pictures, spoken words, or any other thing, to any recipient.

Schedule 2 [2] amends clause 2 of Schedule 2 to the Act to include proceedings at an inquiry conducted by the Authority in the exercise of its regulatory functions, and proceedings on an appeal to the Authority or the Tribunal, in the definition of *protected report*. The Act provides a defence to a claim for defamation in relation to the fair publication of such a report. The defence extends to the later publication of a copy of the report and an extract or summary of the report.