



New South Wales

Racing Legislation Amendment (Probity) Bill 2000

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 *Greyhound Racing Authority Act 1985*, the *Harness Racing New South Wales Act 1977* and the *Thoroughbred Racing Board Act 1996* (*the racing legislation*) to provide for probity checks to be carried out on certain persons involved in the control and regulation of racing. There are two classes of persons who will be subject to probity checks:

- (a) **executive officers**—members or directors of the Greyhound Racing Authority (**GRA**), Harness Racing New South Wales (**HRNSW**) and the Thoroughbred Racing Board (**TRB**), the chief executives of those bodies and the Chief Stewards for those bodies, and
- (b) **key employees**—employees who hold certain responsible positions (to be identified by regulations) with GRA, HRNSW or TRB, or with racing clubs or associations.

Probity checks

The Bill provides that the Minister administering the racing legislation is responsible for carrying out probity checks on executive officers of GRA, HRNSW and TRB.

GRA, HRNSW and TRB are responsible for carrying out probity checks on key employees in greyhound racing, harness racing and thoroughbred racing respectively.

Probity checks may be carried out on persons who are proposing to take up a position as an executive officer or key employee, and on persons who hold such positions, to determine their suitability for the position. The Bill provides that a person is not eligible to be appointed as an executive officer or a key employee unless the Minister or the relevant controlling body (that is, GRA, HRNSW or TRB) is satisfied that the person is suitable to be an executive officer or key employee. The Minister or controlling body may also conduct ongoing probity checks of executive officers or key employees to determine their continuing suitability.

In carrying out a probity check, the Minister or the relevant controlling body may require the person being checked to do a number of things, including:

- consenting to having his or her photograph, fingerprints and palm prints taken,
- providing specified information or documents,
- attending before the Minister or controlling body for examination and to answer questions,
- furnishing authorities and consents that the Minister or controlling body may require for the purpose of obtaining further information from other persons and institutions.

It is an offence for an executive officer or key employee to knowingly provide false or misleading information when purporting to comply with a probity check.

Misconduct

The proposed Bill requires executive officers to report certain changes in their affairs to the Minister, and key employees to report certain changes in their affairs to the relevant controlling body.

An executive officer or key employee engages in misconduct if he or she fails to report such a change as required, or fails to comply with the requirements of a probity check.

Action against executive officers or key employees who are unsuitable or who engage in misconduct

The Bill provides that the Minister administering the racing legislation has responsibility for taking disciplinary action against members of the Board of GRA or HRNSW. If the Minister is of the opinion that the chief executive or Chief Steward for GRA or HRNSW is not or may not be a suitable person to be an executive officer, or has or may have engaged in misconduct, the Minister may make a report to the relevant controlling body. Those bodies are responsible for taking disciplinary action against the chief executive or Chief Steward for those bodies, and against key employees in greyhound racing and harness racing.

The action that the Minister, GRA or HRNSW may take against an executive officer or key employee who is unsuitable or who has engaged in misconduct includes:

- (a) in relation to an executive officer who is a director of GRA or HRNSW—admonition, suspension for up to 3 months, or recommendation to the Governor that the executive officer be removed from office,
- (b) in relation to a key employee or an executive officer who is a member of staff of GRA or HRNSW—admonition, temporary suspension, or termination of employment.

An executive officer or key employee may be temporarily suspended pending the taking of action against him or her.

TRB has responsibility for taking disciplinary action against executive officers of TRB and key employees in thoroughbred racing. If the Minister is of the opinion that an executive officer of TRB is not or may not be suitable to be an executive officer, or has or may have engaged in misconduct, the Minister may make a report to TRB.

The disciplinary actions that TRB may take against an executive officer or key employee are similar to those that may be taken against executive officers and key employees by GRA, HRNSW and the Minister. However, TRB may not suspend or recommend the removal of a member of TRB unless a majority of three-quarters of the Board votes in favour of the suspension or recommendation.

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 *Harness Racing New South Wales Act 1977* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *Thoroughbred Racing Board Act 1996* set out in Schedule 3.

Schedule 1 Amendment of Greyhound Racing Act 1985

Schedule 1 [2] makes the amendments described in the Overview of this Bill. **Schedule 1 [1], [3], [4] and [7]** make consequential amendments.

Schedule 1 [5] inserts a power to make regulations for or with respect to the method or manner in which a person is to comply with a requirement or direction by the Minister or the GRA relating to probity checks or reports of changes in a person's state of affairs.

Schedule 1 [6] gives the Governor the power to remove a director from the office of chairperson or deputy chairperson of GRA, and provides for the vacation of office of the chairperson or deputy chairperson.

Schedule 1 [8] inserts savings and transitional provisions. These provisions exclude current executive officers and key employees from the requirements dealing with initial assessment of suitability to be an executive officer or key employee. The provisions dealing with ongoing probity checks and reports of changes in a person's state of affairs are to apply to current executive officers and key employees.

Schedule 2 Amendment of Harness Racing New South Wales Act 1977

Schedule 1 [2] makes the amendments described in the Overview of this Bill. **Schedule 1 [1], [3], [4] and [7]** make consequential amendments.

Schedule 1 [5] inserts a power to make regulations for or with respect to the method or manner in which a person is to comply with a requirement or direction by the Minister or HRNSW relating to probity checks or reports of changes in a person's state of affairs.

Schedule 1 [6] gives the Governor the power to remove a director from the office of deputy chairperson of HRNSW, and provides for the vacation of office of the deputy chairperson.

Schedule 1 [8] inserts savings and transitional provisions. These provisions exclude current executive officers and key employees from the requirements dealing with initial assessment of suitability to be an executive officer or key employee. The provisions dealing with on-going probity checks and reports of changes in a person's state of affairs are to apply to current executive officers and key employees.

Schedule 3 Amendment of Thoroughbred Racing Board Act 1996

Schedule 1 [7] makes the amendments described in the Overview of this Bill. **Schedule 1 [1]–[6]** and **[8]** make consequential amendments.

Schedule 1 [9] inserts a power to make regulations for or with respect to the method or manner in which a person is to comply with a requirement or direction by the Minister or the TRB relating to probity checks or reports of changes in a person's state of affairs.

Schedule 1 [10] inserts savings and transitional provisions. These provisions exclude current executive officers and key employees from the requirements dealing with initial assessment of suitability to be an executive officer or key employee. The provisions dealing with ongoing probity checks and reports of changes in a person's state of affairs are to apply to current executive officers and key employees.



New South Wales

Racing Legislation Amendment (Probity) Bill 2000

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Greyhound Racing Authority Act 1985 No 119	2
4 Amendment of Harness Racing New South Wales Act 1977 No 57	2
5 Amendment of Thoroughbred Racing Board Act 1996 No 37	2
Schedules	
1 Amendment of Greyhound Racing Authority Act 1985	3
2 Amendment of Harness Racing New South Wales Act 1977	17
3 Amendment of Thoroughbred Racing Board Act 1996	30



New South Wales

Racing Legislation Amendment (Probity) Bill 2000

No , 2000

A Bill for

An Act to amend the *Greyhound Racing Authority Act 1985*, the *Harness Racing New South Wales Act 1977* and the *Thoroughbred Racing Board Act 1996* to make provision for probity checks of certain persons involved in the control and regulation of racing; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Racing Legislation Amendment (Probity) Act 2000*.

2 Commencement

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

3 Amendment of Greyhound Racing Authority Act 1985 No 119

The *Greyhound Racing Authority Act 1985* is amended as set out in Schedule 1.

4 Amendment of Harness Racing New South Wales Act 1977 No 57

The *Harness Racing New South Wales Act 1977* is amended as set out in Schedule 2.

5 Amendment of Thoroughbred Racing Board Act 1996 No 37

The *Thoroughbred Racing Board Act 1996* is amended as set out in Schedule 3.

Schedule 1 Amendment of Greyhound Racing Authority Act 1985

(Section 3)

[1] Section 6 Constitution of Board

Insert at the end of section 6 (1):

Note. Part 3A provides that a person is not eligible to be appointed as a director of the Board unless the Minister has determined for the purposes of the appointment that the person is a suitable person.

[2] Part 3A

Insert after Part 3:

Part 3A Probity checking of executive officers and key employees

15A Definitions

(1) In this Part:

director executive officer means a person who is a director or who is acting as a director.

executive officer means each of the following:

- (a) a director or a person acting as a director,
- (b) a person who holds or is acting in the position of chief executive officer,
- (c) a person who holds or is acting in the position on the Authority's staff of Chief Steward (or such other position on the Authority's staff as may be prescribed by the regulations for the purposes of this paragraph as exercising the functions of Chief Steward).

key employee means a person who holds or is acting in a position that is prescribed by the regulations for the purposes of this definition as a key employee position, being a position on the staff of:

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- (a) the Authority, or 1
- (b) a greyhound racing club that is registered with the 2
Authority. 3
- misconduct under this Part*—see subsection (2). 4
- staff executive officer* means a person referred to in paragraph 5
(b) or (c) of the definition of *executive officer*. 6
- (2) A contravention of any of the following provisions of this Part 7
constitutes *misconduct under this Part*: 8
- (a) section 15E (2) or (3) (How probity checks are made), 9
- (b) section 15G (Obligation to report change in state of 10
affairs). 11
- 15B Suitability for appointment as executive officer or key employee** 12
- (1) A person is not eligible to be appointed as an executive officer 13
unless the Minister has determined for the purposes of the 14
appointment that the person is a suitable person to be an 15
executive officer. 16
- (2) A person is not eligible to be appointed as a key employee 17
unless the Authority has determined for the purposes of the 18
appointment that the person is a suitable person to be a key 19
employee. 20
- (3) The Minister may carry out a probity check of a person to 21
determine the person's suitability to be an executive officer. 22
- (4) The Authority may carry out a probity check of a person to 23
determine the person's suitability to be a key employee. 24
- (5) For the purposes of this section, *appointed* includes employed 25
or engaged, and *appointment* has a corresponding meaning. 26
- 15C Ongoing probity checks of executive officers and key employees** 27
- (1) The Minister may from time to time carry out a probity check 28
of a person who is an executive officer to determine whether 29
the person is a suitable person to be an executive officer. 30
- (2) The Authority may from time to time carry out a probity check 31
of a person who is a key employee to determine whether the 32
person is a suitable person to be a key employee. 33

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- (3) The Minister may from time to time request the Authority to conduct a probity check of a person who is a key employee to determine whether the person is a suitable person to be a key employee. The Authority must comply with the Minister's request.
- 15D Determination of suitability**
- In determining for the purposes of this Part the suitability of a person to be an executive officer or a key employee, the Minister or the Authority is to assess:
- (a) the integrity, responsibility and personal background of the person, and
 - (b) the general reputation of the person having regard to character, honesty and integrity.
- The Minister or the Authority may also have regard to the financial stability of the person, and the person's suitability to exercise the functions of the executive officer or key employee position.
- 15E How probity checks are made**
- (1) For the purposes of carrying out a probity check, the Minister or the Authority may conduct such investigations and inquiries as the Minister or the Authority thinks fit and may, by notice in writing served on the person concerned, require the person to do any one or more of the following:
- (a) to consent, in accordance with directions in the notice, to having his or her photograph, fingerprints and palm prints taken,
 - (b) to provide, in accordance with directions in the notice, the information (verified by statutory declaration) relevant to him or her that is specified in the notice,
 - (c) to produce, in accordance with directions in the notice, the documents relevant to him or her that are specified in the notice and to permit examination of the documents and the taking of extracts from, and the making of copies of, them,

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| <p>(d) to attend before the Minister or the Authority, or a specified person, for an examination in relation to any matters relevant to him or her and to answer any questions relating to those matters,</p> <p>(e) to furnish the authorities and consent that the Minister or the Authority may require for the purpose of obtaining further information (including financial and other confidential information) from other persons and institutions.</p> <p>(2) An executive officer or key employee must not fail to comply with a requirement of a notice under this section.</p> <p>Note. Failure to comply with this subsection is not a criminal offence, but constitutes misconduct under this Part under section 15A (2) (a).</p> <p>(3) A person must not, in purported compliance with a requirement of a notice under this section, provide information that the person knows is false or misleading in a material particular.</p> <p>Maximum penalty: 50 penalty units.</p> <p>(4) A person who complies with a requirement of a notice under this section does not on that account incur a liability to another person.</p> <p>(5) The Authority is to bear the costs of a probity check, whether the check is carried out by the Authority or by the Minister. The Minister may certify as to the costs of a probity check carried out by the Minister and the Minister's certificate is evidence of the matters certified.</p> <p>15F Privileges</p> <p>(1) Except as provided by this section, a person is not excused from complying with a notice under section 15E on the ground that compliance may incriminate or tend to incriminate the person, or on any other ground of privilege, or on the ground of duty of secrecy or other restriction on disclosure, or on any other ground.</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> |
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| <p>(2) If the person claims, before complying with the notice, that compliance may tend to incriminate the person, information provided in compliance with the notice is not admissible in evidence against the person in criminal proceedings except proceedings under this Part for the offence of providing false or misleading information in purported compliance with the notice.</p> <p>(3) A person is excused from complying with a notice under section 15E if:</p> <p style="padding-left: 40px;">(a) the person would not in court proceedings be required to comply with a similar requirement on the grounds of legal professional privilege or other privilege, and</p> <p style="padding-left: 40px;">(b) the person does not have authority to waive the privilege.</p> <p>15G Obligation to report change in state of affairs</p> <p>(1) Whenever a change of a kind prescribed by the regulations for the purposes of this section takes place in relation to an executive officer, the executive officer must notify the Minister in writing of the prescribed particulars relating to the change within 14 days after it takes place.</p> <p style="padding-left: 40px;">Maximum penalty: 20 penalty units.</p> <p>(2) Whenever a change of a kind prescribed by the regulations for the purposes of this section takes place in relation to a key employee, the key employee must notify the Authority in writing of the prescribed particulars relating to the change within 14 days after it takes place.</p> <p style="padding-left: 40px;">Maximum penalty: 20 penalty units.</p> <p>(3) A person must not furnish information in purported compliance with this section that the person knows is false or misleading in a material particular.</p> <p style="padding-left: 40px;">Maximum penalty: 50 penalty units.</p> <p>15H Report by the Minister regarding probity and misconduct</p> <p>(1) The Minister may make a report in writing to the Authority on any matter that, in the opinion of the Minister, suggests or indicates that:</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> |
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| <p>(a) a staff executive officer is not or may not be a suitable person to be an executive officer, or</p> <p>(b) a staff executive officer has or may have engaged in misconduct under this Part.</p> <p>(2) The Minister's report may include details of any probity check on which the report is based.</p> <p>(3) The Authority is to decide what action to take in respect of the Minister's report and is to inform the Minister of the Authority's decision within one month after the Authority receives the report from the Minister (or within such other time as may be specified by the Minister).</p> <p>(4) The Minister may make a report under this section even if the Minister had previously determined that the staff executive officer was a suitable person to be an executive officer (whether before or after the staff executive officer became an executive officer).</p> <p>151 Powers of Minister and Authority to deal with unsuitable persons and misconduct</p> <p>(1) The Minister may take special disciplinary action against a director executive officer if the Minister determines (whether or not based on the findings of a probity check under this Part) that:</p> <p style="padding-left: 20px;">(a) the director executive officer is not a suitable person to be an executive officer, or</p> <p style="padding-left: 20px;">(b) the director executive officer has engaged in misconduct under this Part.</p> <p>(2) The Authority may take special disciplinary action against a staff executive officer or key employee if the Authority determines (whether or not based on the findings of a probity check under this Part) that:</p> <p style="padding-left: 20px;">(a) the staff executive officer or key employee is not a suitable person to be an executive officer or key employee, or</p> <p style="padding-left: 20px;">(b) the staff executive officer or key employee has engaged in misconduct under this Part.</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> |
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- (3) The special disciplinary action that the Minister may take against a director executive officer is as follows:
- (a) the Minister may admonish the officer,
 - (b) the Minister may suspend the officer from the Board for a specified period of up to 3 months,
 - (c) the Minister may recommend to the Governor the removal from office of the officer.
- Note.** Clause 6 (3) of Schedule 1 provides for the removal from office of a director by the Governor on such recommendation.
- (4) The special disciplinary action that the Authority may take against a staff executive officer or a key employee is as follows:
- (a) the Authority may admonish the officer or employee,
 - (b) the Authority may temporarily suspend the officer or employee (or direct that the officer or employee be temporarily suspended), with or without payment of salary,
 - (c) the Authority may terminate the employment of the officer or employee (or direct that the officer or employee's employment be terminated).
- Note.** Section 15K provides for the Authority to direct a greyhound racing club to suspend or dismiss a key employee.
- (5) The Minister may temporarily suspend a director executive officer pending the taking of special disciplinary action against the officer under this section.
- (6) The Authority may temporarily suspend a staff executive officer or key employee (or direct that the officer or employee be temporarily suspended) pending the taking of special disciplinary action against the officer or employee under this section. The suspension may be with or without salary.
- (7) Special disciplinary action may be taken against an executive officer or key employee whether or not the officer or employee has been prosecuted, convicted or penalised for any contravention that constitutes misconduct under this Part.
- (8) This section does not:
- (a) limit the power of the Governor to remove a director from office, or

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| <p>(b) limit the action that the Authority can take against an executive officer or key employee.</p> <p>15J Procedure for exercise of powers</p> <p>(1) Before taking special disciplinary action against a person under section 15I, the Minister or the Authority is to give the person a reasonable opportunity to make oral or written submissions to the Minister or the Authority about the matter.</p> <p>(2) The Minister or the Authority is required to give a reasonable opportunity for a person making oral submissions to be legally represented.</p> <p>15K Power to terminate employment of key employee at Authority's direction</p> <p>(1) This section applies in respect of a direction given by the Authority under section 15I to a greyhound racing club to suspend or terminate the employment of a key employee or any other arrangement by reason of which a key employee is a key employee.</p> <p>(2) It is taken to be a condition of any agreement or other arrangement entered into between a greyhound racing club and a key employee that the club has the rights required to enable the club to give effect to a direction to which this section applies.</p> <p>(3) The suspension or termination of employment or an arrangement in accordance with this section has effect despite any other Act or law, or any contract, award or enterprise or other agreement, and the State does not incur any liability because of such a termination.</p> <p>15L Police assistance</p> <p>(1) The Minister or the Authority may refer to the Commissioner of Police copies of photographs, fingerprints and palm prints obtained in respect of a person under this Part and any supporting information that the Minister or the Authority considers should be referred to the Commissioner.</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> |
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| <p>(2) The Commissioner of Police is to inquire into, and report to the Minister or the Authority on, any matters concerning a person who is the subject of a probity check under this Part that the Minister or the Authority may request.</p> <p>(3) The Minister may enter into arrangements for the supply to the Minister or the Authority of information contained in the records of the Police Service, to assist in the effectual administration of this Act.</p> <p>(4) Those arrangements are sufficient authority for the supply of that information.</p> <p>15M Destruction of fingerprints and palm prints</p> <p>(1) Any fingerprints or palm prints obtained by the Minister or the Authority under this Act, and any copies of them, must be destroyed as soon as the Minister or the Authority (as the case may be) has no further use for them.</p> <p>(2) The Minister or the Authority is to be considered to have no further use for them if the person concerned does not become, or ceases to be, an executive officer or key employee.</p> <p>(3) A person:</p> <p style="padding-left: 20px;">(a) who has possession of fingerprints or palm prints obtained by the Minister or the Authority under this Part, or copies of them, and</p> <p style="padding-left: 20px;">(b) who fails to deliver them to the Minister or the Authority, in accordance with the written directions of the Minister or the Authority to enable subsection (1) to be complied with,</p> <p style="padding-left: 20px;">is guilty of an offence.</p> <p style="padding-left: 20px;">Maximum penalty (subsection (3)): 100 penalty units.</p> <p>15N Secrecy</p> <p>(1) A person who acquires information in the exercise of a function under this Part must not directly or indirectly make a record of the information or divulge it to another person, except in the exercise of a function under this Part.</p> <p style="padding-left: 20px;">Maximum penalty: 50 penalty units.</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> |
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| (2) Despite subsection (1), information may be divulged: | 1 |
| (a) to a particular person or persons, if the Minister certifies | 2 |
| that it is necessary in the public interest that the | 3 |
| information be divulged to the person or persons, or | 4 |
| (b) to a person who is expressly or impliedly authorised to | 5 |
| obtain it by the person to whom the information relates, | 6 |
| or | 7 |
| (c) to the Authority, Harness Racing New South Wales or | 8 |
| the Thoroughbred Racing Board, or | 9 |
| (d) to a person or authority prescribed by the regulations. | 10 |
| (3) A person cannot be required: | 11 |
| (a) to produce in any court any document or other thing that | 12 |
| has come into the person's possession, custody or | 13 |
| control by reason of, or in the course of, the exercise of | 14 |
| the person's functions under this Part, or | 15 |
| (b) to divulge to any court any information that has come to | 16 |
| the person's notice in the exercise of the person's | 17 |
| functions under this Part. | 18 |
| (4) Despite subsection (3), a person may be required to produce a | 19 |
| document or other thing in court or to divulge information to a | 20 |
| court if: | 21 |
| (a) the Authority certifies that it is necessary in the public | 22 |
| interest to do so, or | 23 |
| (b) a person to whom the information relates (or to whom | 24 |
| the information contained in the document or thing | 25 |
| relates) has expressly authorised it to be divulged to or | 26 |
| produced in the court. | 27 |
| (5) An authority or person to whom information is divulged under | 28 |
| this section, and a person or employee under the control of that | 29 |
| authority or person, are, in respect of that information, subject | 30 |
| to the same rights, privileges and duties under this section as | 31 |
| they would be if that authority, person or employee were a | 32 |
| person exercising functions under this Part and had acquired | 33 |
| the information in the exercise of those functions. | 34 |

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| (6) This section does not apply to the divulging of information to any of the following: | 1
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| (a) the Independent Commission Against Corruption, | 3 |
| (b) the National Crime Authority, | 4 |
| (c) the New South Wales Crime Commission, | 5 |
| (d) the Ombudsman, | 6 |
| (e) the Police Integrity Commission, | 7 |
| (f) the Inspector of the Police Integrity Commission, | 8 |
| (g) the Commissioner of Police of New South Wales, the Commissioner of the Australian Federal Police or a Commissioner (however designated) of the police force of another State or Territory, | 9
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| (h) any other person or body prescribed for the purposes of this subsection. | 13
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| (7) This section does not prevent a person being given access to a document in accordance with the <i>Freedom of Information Act 1989</i> unless the document: | 15
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| (a) contains matter the disclosure of which could reasonably be expected to do any of the following: | 18
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| (i) prejudice the investigation of any contravention or possible contravention of the law (including any revenue law) whether generally or in a particular case, | 20
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| (ii) enable the existence or identity of any confidential source of information, in relation to the enforcement or administration of the law, to be ascertained, | 24
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| (iii) prejudice the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law (including any revenue law), or | 28
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| (b) is a document the disclosure of which would disclose any of the following information: | 33
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| (i) information concerning the business, commercial, professional or financial affairs of an executive officer or a key employee, | 35
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(ii)	information obtained in the course of an investigation of an executive officer or a key employee.	1 2 3
(8)	In this section, a reference to the divulging of information includes a reference to the production of a document or other thing and the provision of access to the document or other thing.	4 5 6 7
(9)	In this section: <i>court</i> includes any tribunal, authority or person having power to require the production of documents or the answering of questions.	8 9 10 11
[3]	Section 18A Appeals	12
	Omit section 18A (2). Insert instead:	13
(2)	A person who is aggrieved by a decision of the Authority may, in accordance with the regulations, appeal against the decision to the Tribunal, except:	14 15 16
(a)	a decision in respect of an appeal under subsection (1), or	17 18
(b)	a decision of the Authority under Part 3A.	19
[4]	Section 18B Proceedings on appeal and disciplinary inquiries	20
	Insert after section 18B (4):	21
(5)	Subsections (3) and (4) do not apply to a probity check or special disciplinary action under Part 3A.	22 23
[5]	Section 25 Regulations	24
	Insert after section 25 (1):	25
(1A)	In particular, regulations may be made for or with respect to the method or manner in which a person or class of persons is to comply with a requirement or direction by the Minister or the Authority relating to probity checks or reports of changes in a person's state of affairs under Part 3A.	26 27 28 29 30

[6] Schedule 1 Provisions relating to directors	1
Insert after clause 1A:	2
1B Chairperson and deputy chairperson	3
(1) The Governor may remove a director from the office of chairperson or deputy chairperson.	4
	5
(2) A person who is a director and chairperson or deputy chairperson is taken to have vacated office as chairperson or deputy chairperson if the person:	6
	7
(a) is removed from that office by the Governor under subclause (1), or	8
	9
(b) resigns that office by instrument in writing addressed to the Minister, or	10
	11
(c) ceases to be a director.	12
	13
[7] Schedule 1, clause 6	14
Omit clause 6 (3). Insert instead:	15
(3) Without limiting the generality of subclause (2), the Governor may:	16
	17
(a) remove from office a director who contravenes the provisions of clause 7, or	18
	19
(b) remove from office a director on the recommendation of the Minister under section 15I (Powers of Minister and Authority to deal with unsuitable persons and misconduct).	20
	21
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	23

[8] Schedule 3 Savings, transitional and other provisions	1
Insert at the end of the Schedule:	2
 Part 3 Provisions consequent on enactment of Racing Legislation Amendment (Probity) Act 2000	3 4 5
 16 Definitions	6
In this Part:	7
<i>current executive officer</i> means a person who, on the commencement of section 15B, is an executive officer within the meaning of section 15A.	8 9 10
<i>current key employee</i> means a person who, on the commencement of section 15B, is a key employee within the meaning of section 15A.	11 12 13
 17 Suitability of current executive officers and current key employees	14 15
(1) Section 15B (1) and (2) does not apply to any current executive officers or current key employees.	16 17
(2) Part 3A extends to current executive officers and current key employees, except as provided by subclause (1).	18 19

Schedule 2	Amendment of Harness Racing New South Wales Act 1977	1
		2
	(Section 4)	3
[1]	Section 6 Constitution of Board	4
	Insert at the end of section 6 (1):	5
	Note. Part 3A provides that a person is not eligible to be appointed as a director of the Board unless the Minister has determined for the purposes of the appointment that the person is a suitable person.	6 7 8
[2]	Part 3A	9
	Insert after Part 3:	10
	Part 3A Probity checking of executive officers and key employees	11 12
10H	Definitions	13
	(1) In this Part:	14
	<i>director executive officer</i> means a person who is a director or who is acting as a director.	15 16
	<i>executive officer</i> means each of the following:	17
	(a) a director or a person acting as a director,	18
	(b) a person who holds or is acting in the position of chief executive officer,	19 20
	(c) a person who holds or is acting in the position on the staff of HRNSW of Chief Steward (or such other position on the staff of HRNSW as may be prescribed by the regulations for the purposes of this paragraph as exercising the functions of Chief Steward).	21 22 23 24 25
	<i>key employee</i> means a person who holds or is acting in a position that is prescribed by the regulations for the purposes of this definition as a key employee position, being a position on the staff of:	26 27 28 29

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- (a) HRNSW, or 1
- (b) a harness racing club, or harness racing association, that 2
is registered with the HRNSW. 3
- misconduct under this Part*—see subsection (2). 4
- staff executive officer* means a person referred to in paragraph 5
(b) or (c) of the definition of *executive officer*. 6
- (2) A contravention of any of the following provisions of this Part 7
constitutes *misconduct under this Part*: 8
- (a) section 10L (2) or (3) (How probity checks are made), 9
- (b) section 10N (Obligation to report change in state of 10
affairs). 11
- 10I Suitability for appointment as executive officer or key employee** 12
- (1) A person is not eligible to be appointed as an executive officer 13
unless the Minister has determined for the purposes of the 14
appointment that the person is a suitable person to be an 15
executive officer. 16
- (2) A person is not eligible to be appointed as a key employee 17
unless HRNSW has determined for the purposes of the 18
appointment that the person is a suitable person to be a key 19
employee. 20
- (3) The Minister may carry out a probity check of a person to 21
determine the person's suitability to be an executive officer. 22
- (4) HRNSW may carry out a probity check of a person to 23
determine the person's suitability to be a key employee. 24
- (5) For the purposes of this section, *appointed* includes employed 25
or engaged, and *appointment* has a corresponding meaning. 26
- 10J Ongoing probity checks of executive officers and key employees** 27
- (1) The Minister may from time to time carry out a probity check 28
of a person who is an executive officer to determine whether 29
the person is a suitable person to be an executive officer. 30
- (2) HRNSW may from time to time carry out a probity check of a 31
person who is a key employee to determine whether the person 32
is a suitable person to be a key employee. 33

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- (3) The Minister may from time to time request HRNSW to
conduct a probity check of a person who is a key employee to
determine whether the person is a suitable person to be a key
employee. HRNSW must comply with the Minister's request.
- 10K Determination of suitability**
- In determining for the purposes of this Part the suitability of a
person to be an executive officer or a key employee, the
Minister or HRNSW is to assess:
- (a) the integrity, responsibility and personal background of
the person, and
 - (b) the general reputation of the person having regard to
character, honesty and integrity.
- The Minister or HRNSW may also have regard to the financial
stability of the person, and the person's suitability to exercise
the functions of the executive officer or key employee position.
- 10L How probity checks are made**
- (1) For the purposes of carrying out a probity check, the Minister
or HRNSW may conduct such investigations and inquiries as
the Minister or HRNSW thinks fit and may, by notice in
writing served on the person concerned, require the person to
do any one or more of the following:
- (a) to consent, in accordance with directions in the notice,
to having his or her photograph, fingerprints and palm
prints taken,
 - (b) to provide, in accordance with directions in the notice,
the information (verified by statutory declaration)
relevant to him or her that is specified in the notice,
 - (c) to produce, in accordance with directions in the notice,
the documents relevant to him or her that are specified
in the notice and to permit examination of the
documents and the taking of extracts from, and the
making of copies of, them,
 - (d) to attend before the Minister or HRNSW, or a specified
person, for an examination in relation to any matters
relevant to him or her and to answer any questions
relating to those matters,

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| <p>(e) to furnish the authorities and consent that the Minister or HRNSW may require for the purpose of obtaining further information (including financial and other confidential information) from other persons and institutions.</p> <p>(2) An executive officer or key employee must not fail to comply with a requirement of a notice under this section.</p> <p>Note. Failure to comply with this subsection is not a criminal offence, but constitutes misconduct under this Part under section 10H (2) (a).</p> <p>(3) A person must not, in purported compliance with a requirement of a notice under this section, provide information that the person knows is false or misleading in a material particular.</p> <p>Maximum penalty: 50 penalty units.</p> <p>(4) A person who complies with a requirement of a notice under this section does not on that account incur a liability to another person.</p> <p>(5) HRNSW is to bear the costs of a probity check, whether the check is carried out by HRNSW or by the Minister. The Minister may certify as to the costs of a probity check carried out by the Minister and the Minister's certificate is evidence of the matters certified.</p> <p>10M Privileges</p> <p>(1) Except as provided by this section, a person is not excused from complying with a notice under section 10L on the ground that compliance may incriminate or tend to incriminate the person, or on any other ground of privilege, or on the ground of duty of secrecy or other restriction on disclosure, or on any other ground.</p> <p>(2) If the person claims, before complying with the notice, that compliance may tend to incriminate the person, information provided in compliance with the notice is not admissible in evidence against the person in criminal proceedings except proceedings under this Part for the offence of providing false or misleading information in purported compliance with the notice.</p> <p>(3) A person is excused from complying with a notice under section 10L if:</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p> |
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| <p>(a) the person would not in court proceedings be required to comply with a similar requirement on the grounds of legal professional privilege or other privilege, and</p> <p>(b) the person does not have authority to waive the privilege.</p> <p>10N Obligation to report change in state of affairs</p> <p>(1) Whenever a change of a kind prescribed by the regulations for the purposes of this section takes place in relation to an executive officer, the executive officer must notify the Minister in writing of the prescribed particulars relating to the change within 14 days after it takes place.</p> <p>Maximum penalty: 20 penalty units.</p> <p>(2) Whenever a change of a kind prescribed by the regulations for the purposes of this section takes place in relation to a key employee, the key employee must notify HRNSW in writing of the prescribed particulars relating to the change within 14 days after it takes place.</p> <p>Maximum penalty: 20 penalty units.</p> <p>(3) A person must not furnish information in purported compliance with this section that the person knows is false or misleading in a material particular.</p> <p>Maximum penalty: 50 penalty units.</p> <p>100 Report by the Minister regarding probity and misconduct</p> <p>(1) The Minister may make a report in writing to HRNSW on any matter that, in the opinion of the Minister, suggests or indicates that:</p> <p style="padding-left: 20px;">(a) a staff executive officer is not or may not be a suitable person to be an executive officer, or</p> <p style="padding-left: 20px;">(b) a staff executive officer has or may have engaged in misconduct under this Part.</p> <p>(2) The Minister's report may include details of any probity check on which the report is based.</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> |
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| (3) | HRNSW is to decide what action to take in respect of the Minister's report and is to inform the Minister of HRNSW's decision within one month after HRNSW receives the report from the Minister (or within such other time as may be specified by the Minister). | 1
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| (4) | The Minister may make a report under this section even if the Minister had previously determined that the staff executive officer was a suitable person to be an executive officer (whether before or after the staff executive officer became an executive officer). | 6
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| 10P | Powers of Minister and HRNSW to deal with unsuitable persons and misconduct | 11
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| (1) | The Minister may take special disciplinary action against a director executive officer if the Minister determines (whether or not based on the findings of a probity check under this Part) that: | 13
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| (a) | the director executive officer is not a suitable person to be an executive officer, or | 17
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| (b) | the director executive officer has engaged in misconduct under this Part. | 19
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| (2) | HRNSW may take special disciplinary action against a staff executive officer or key employee if HRNSW determines (whether or not based on the findings of a probity check under this Part) that: | 21
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| (a) | the staff executive officer or key employee is not a suitable person to be an executive officer or key employee, or | 25
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| (b) | the staff executive officer or key employee has engaged in misconduct under this Part. | 28
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| (3) | The special disciplinary action that the Minister may take against a director executive officer is as follows: | 30
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| (a) | the Minister may admonish the officer, | 32 |
| (b) | the Minister may suspend the officer from the Board for a specified period of up to 3 months, | 33
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- (c) the Minister may recommend to the Governor the removal from office of the officer. 1
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- Note.** Clause 8 (3) of Schedule 1 provides for the removal from office of a director by the Governor on such recommendation. 3
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- (4) The special disciplinary action that HRNSW may take against a staff executive officer or a key employee is as follows: 5
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- (a) HRNSW may admonish the officer or employee, 7
- (b) HRNSW may temporarily suspend the officer or employee (or direct that the officer or employee be temporarily suspended), with or without payment of salary, 8
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- (c) HRNSW may terminate the employment of the officer or employee (or direct that the officer or employee's employment be terminated). 12
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- Note.** Section 10R provides for HRNSW to direct a harness racing club or harness racing association to suspend or dismiss a key employee. 15
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- (5) The Minister may temporarily suspend a director executive officer pending the taking of special disciplinary action against the officer under this section. 17
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- (6) HRNSW may temporarily suspend a staff executive officer or key employee (or direct that the officer or employee be temporarily suspended) pending the taking of special disciplinary action against the officer or employee under this section. The suspension may be with or without salary. 20
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- (7) Special disciplinary action may be taken against an executive officer or key employee whether or not the officer or employee has been prosecuted, convicted or penalised for any contravention that constitutes misconduct under this Part. 25
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- (8) This section does not: 29
- (a) limit the power of the Governor to remove a director from office, or 30
31
- (b) limit the action that HRNSW can take against an executive officer or key employee. 32
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10Q	Procedure for exercise of powers	1
(1)	Before taking special disciplinary action against a person under section 1OP, the Minister or HRNSW is to give the person a reasonable opportunity to make oral or written submissions to the Minister or HRNSW about the matter.	2 3 4 5
(2)	The Minister or HRNSW is required to give a reasonable opportunity for a person making oral submissions to be legally represented.	6 7 8
10R	Power to terminate employment of key employee at direction of HRNSW	9 10
(1)	This section applies in respect of a direction given by HRNSW under section 1OP to a harness racing club to suspend or terminate the employment of a key employee or any other arrangement by reason of which a key employee is a key employee.	11 12 13 14 15
(2)	It is taken to be a condition of any agreement or other arrangement entered into between a harness racing club and a key employee that the club has the rights required to enable the club to give effect to a direction to which this section applies.	16 17 18 19
(3)	The suspension or termination of employment or an arrangement in accordance with this section has effect despite any other Act or law, or any contract, award or enterprise or other agreement, and the State does not incur any liability because of such a termination.	20 21 22 23 24
(4)	In this section, <i>harness racing club</i> includes a harness racing association.	25 26
10S	Police assistance	27
(1)	The Minister or HRNSW may refer to the Commissioner of Police copies of photographs, fingerprints and palm prints obtained in respect of a person under this Part and any supporting information that the Minister or HRNSW considers should be referred to the Commissioner.	28 29 30 31 32
(2)	The Commissioner of Police is to inquire into, and report to the Minister or HRNSW on, any matters concerning a person who is the subject of a probity check under this Part that the Minister or HRNSW may request.	33 34 35 36

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| <p>(3) The Minister may enter into arrangements for the supply to the Minister or HRNSW of information contained in the records of the Police Service, to assist in the effectual administration of this Act.</p> <p>(4) Those arrangements are sufficient authority for the supply of that information.</p> <p>10T Destruction of fingerprints and palm prints</p> <p>(1) Any fingerprints or palm prints obtained by the Minister or HRNSW under this Act, and any copies of them, must be destroyed as soon as the Minister or HRNSW (as the case may be) has no further use for them.</p> <p>(2) The Minister or HRNSW is to be considered to have no further use for them if the person concerned does not become, or ceases to be, an executive officer or key employee.</p> <p>(3) A person:</p> <p style="padding-left: 20px;">(a) who has possession of fingerprints or palm prints obtained by the Minister or HRNSW under this Part, or copies of them, and</p> <p style="padding-left: 20px;">(b) who fails to deliver them to the Minister or HRNSW, in accordance with the written directions of the Minister or HRNSW to enable subsection (1) to be complied with,</p> <p>is guilty of an offence.</p> <p>Maximum penalty (subsection (3)): 100 penalty units.</p> <p>10U Secrecy</p> <p>(1) A person who acquires information in the exercise of a function under this Part must not directly or indirectly make a record of the information or divulge it to another person, except in the exercise of a function under this Part.</p> <p>Maximum penalty: 50 penalty units.</p> <p>(2) Despite subsection (1), information may be divulged:</p> <p style="padding-left: 20px;">(a) to a particular person or persons, if the Minister certifies that it is necessary in the public interest that the information be divulged to the person or persons, or</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> |
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| <p>(b) to a person who is expressly or impliedly authorised to obtain it by the person to whom the information relates, or</p> <p>(c) to HRNSW, the Greyhound Racing Authority or the Thoroughbred Racing Board, or</p> <p>(d) to a person or authority prescribed by the regulations.</p> <p>(3) A person cannot be required:</p> <p>(a) to produce in any court any document or other thing that has come into the person's possession, custody or control by reason of, or in the course of, the exercise of the person's functions under this Part, or</p> <p>(b) to divulge to any court any information that has come to the person's notice in the exercise of the person's functions under this Part.</p> <p>(4) Despite subsection (3), a person may be required to produce a document or other thing in court or to divulge information to a court if:</p> <p>(a) HRNSW certifies that it is necessary in the public interest to do so, or</p> <p>(b) a person to whom the information relates (or to whom the information contained in the document or thing relates) has expressly authorised it to be divulged to or produced in the court.</p> <p>(5) An authority or person to whom information is divulged under this section, and a person or employee under the control of that authority or person, are, in respect of that information, subject to the same rights, privileges and duties under this section as they would be if that authority, person or employee were a person exercising functions under this Part and had acquired the information in the exercise of those functions.</p> <p>(6) This section does not apply to the divulging of information to any of the following:</p> <p>(a) the Independent Commission Against Corruption,</p> <p>(b) the National Crime Authority,</p> <p>(c) the New South Wales Crime Commission,</p> <p>(d) the Ombudsman,</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> |
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| (e) | the Police Integrity Commission, | 1 |
| (f) | the Inspector of the Police Integrity Commission, | 2 |
| (g) | the Commissioner of Police of New South Wales, the
Commissioner of the Australian Federal Police or a
Commissioner (however designated) of the police force
of another State or Territory, | 3
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6 |
| (h) | any other person or body prescribed for the purposes of
this subsection. | 7
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| (7) | This section does not prevent a person being given access to a
document in accordance with the <i>Freedom of Information Act</i>
<i>1989</i> unless the document: | 9
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| (a) | contains matter the disclosure of which could
reasonably be expected to do any of the following: | 12
13 |
| (i) | prejudice the investigation of any contravention
or possible contravention of the law (including
any revenue law) whether generally or in a
particular case, | 14
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| (ii) | enable the existence or identity of any
confidential source of information, in relation to
the enforcement or administration of the law, to
be ascertained, | 18
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21 |
| (iii) | prejudice the effectiveness of any lawful method
or procedure for preventing, detecting,
investigating or dealing with any contravention
or possible contravention of the law (including
any revenue law), or | 22
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24
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26 |
| (b) | is a document the disclosure of which would disclose
any of the following information: | 27
28 |
| (i) | information concerning the business,
commercial, professional or financial affairs of
an executive officer or a key employee, | 29
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31 |
| (ii) | information obtained in the course of an
investigation of an executive officer or a key
employee. | 32
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34 |
| (8) | In this section, a reference to the divulging of information
includes a reference to the production of a document or other
thing and the provision of access to the document or other
thing. | 35
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(9) In this section:	1
<i>court</i> includes any tribunal, authority or person having power to require the production of documents or the answering of questions.	2 3 4
[3] Section 19 Appeals to Tribunal	5
Insert after section 19 (1):	6
(1A) Subsection (1) does not apply to a decision of HRNSW under Part 3A.	7 8
[4] Section 19B Proceedings of disciplinary inquiries	9
Insert “(but does not include a probity check or special disciplinary action under Part 3A)” after “disciplinary action” in section 19B (3).	10 11
[5] Section 27 Regulations	12
Insert after section 27 (1):	13
(1A) In particular, regulations may be made for or with respect to the method or manner in which a person or class of persons is to comply with a requirement or direction by the Minister or HRNSW relating to probity checks or reports of changes in a person’s state of affairs under Part 3A.	14 15 16 17 18
[6] Schedule 1 Provisions relating to directors	19
Insert “or Deputy Chairperson” after “Chairperson” wherever occurring in clause 3 (including the heading to the clause).	20 21
[7] Schedule 1, clause 8	22
Omit clause 8 (3). Insert instead:	23
(3) Without limiting the generality of subclause (2), the Governor may:	24 25
(a) remove from office a director who contravenes the provisions of clause 9, or	26 27
(b) remove from office a director on the recommendation of HRNSW under section 10P (Powers of Minister and HRNSW to deal with unsuitable persons and misconduct).	28 29 30 31

[8] Schedule 5 Savings and transitional provisions	1
Insert at the end of the Schedule:	2
 Part 4 Provisions consequent on enactment of Racing Legislation Amendment (Probity) Act 2000	 3 4 5
 15 Definitions	 6
In this Part:	7
<i>current executive officer</i> means a person who, on the commencement of section 10I, is an executive officer within the meaning of section 10H.	8 9 10
<i>current key employee</i> means a person who, on the commencement of section 10I, is a key employee within the meaning of section 10H.	11 12 13
 16 Suitability of current executive officers and current key employees	 14 15
(1) Section 10I (1) and (2) does not apply to any current executive officers or current key employees.	16 17
(2) Part 3A extends to current executive officers and current key employees, except as provided by subclause (1).	18 19

Schedule 3	Amendment of Thoroughbred Racing Board Act 1996	1
		2
	(Section 5)	3
[1] Section 6 Membership		4
Insert at the end of section 6 (1):		5
Note. Part 2A provides that a person is not eligible to be appointed as a member of the Board unless the Minister has determined for the purposes of the appointment that the person is a suitable person.		6 7 8
[2] Section 13 Functions of Board		9
Insert after section 13 (1) (c):		10
(c1) probity checking under Part 2A,		11
[3] Section 15 Vacation of office		12
Insert “under section 7” after “member” in section 15 (1) (e).		13
[4] Section 15		14
Insert after section 15 (2):		15
(2A) The Governor may, on the recommendation of the Board under section 29I (Board’s powers to deal with unsuitable persons and misconduct), remove a nominated member or the Chairperson from office.		16 17 18 19
[5] Section 18 The Chief Executive and other staff		20
Insert after section 18 (1):		21
Note. Part 2A provides that a person is not eligible to be employed in certain positions on the staff of the Board unless the Board has determined that the person is a suitable person.		22 23 24
[6] Section 23 Integrity Assurance Committee		25
Insert “probity checks,” after “control,” in section 23 (1).		26

[7] Part 2A	1
Insert after Part 2:	2
 Part 2A Probity checking of executive officers and key employees	 3 4
 29A Definitions	 5
(1) In this Part:	6
<i>executive officer</i> means each of the following:	7
(a) a member of the Board,	8
(b) a deputy of a member of the Board,	9
(c) a person who holds or is acting in the position of Chief Executive,	10 11
(d) a person who holds or is acting in the position on the Board's staff of Chief Steward (or such other position on the Board's staff as may be prescribed by the regulations for the purposes of this paragraph as exercising the functions of Chief Steward).	12 13 14 15 16
<i>key employee</i> means a person who holds or is acting in a position that is prescribed by the regulations for the purposes of this definition as a key employee position, being a position on the staff of:	17 18 19 20
(a) the Board, or	21
(b) a race club that is registered with the Board, or	22
(c) a racing association that is affiliated with the Board.	23
<i>member executive officer</i> means a member of the Board or a deputy of a member of the Board, but does not include the Chief Executive or a person acting as Chief Executive.	24 25 26
<i>misconduct under this Part</i> —see subsection (2).	27
<i>staff executive officer</i> means a person referred to in paragraph (c) or (d) of the definition of <i>executive officer</i> .	28 29

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| <p>(2) A contravention of any of the following provisions of this Part constitutes <i>misconduct under this Part</i>:</p> <p style="padding-left: 20px;">(a) section 29E (2) or (3) (How probity checks are made),</p> <p style="padding-left: 20px;">(b) section 29G (Obligation to report change in state of affairs).</p> <p>29B Suitability for appointment as executive officer or key employee</p> <p>(1) A person is not eligible to be appointed as an executive officer unless the Minister has determined for the purposes of the appointment that the person is a suitable person to be an executive officer.</p> <p>(2) A person is not eligible to be appointed as a key employee unless the Board has determined for the purposes of the appointment that the person is a suitable person to be a key employee.</p> <p>(3) The Minister may carry out a probity check of a person to determine the person's suitability to be an executive officer.</p> <p>(4) The Board may carry out a probity check of a person to determine the person's suitability to be a key employee.</p> <p>(5) For the purposes of this section, <i>appointed</i> includes nominated, selected, employed or engaged, and <i>appointment</i> has a corresponding meaning.</p> <p>29C Ongoing probity checks of executive officers and key employees</p> <p>(1) The Minister may from time to time carry out a probity check of a person who is an executive officer to determine whether the person is a suitable person to be an executive officer.</p> <p>(2) The Board may from time to time carry out a probity check of a person who is a key employee to determine whether the person is a suitable person to be a key employee.</p> <p>(3) The Minister may from time to time request the Board to conduct a probity check of a person who is a key employee to determine whether the person is a suitable person to be a key employee. The Board must comply with the Minister's request.</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> |
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29D Determination of suitability

In determining for the purposes of this Part the suitability of a person to be an executive officer or a key employee, the Minister or the Board is to assess:

- (a) the integrity, responsibility and personal background of the person, and
- (b) the general reputation of the person having regard to character, honesty and integrity.

The Minister or the Board may also have regard to the financial stability of the person, and the person's suitability to exercise the functions of the executive officer or key employee position.

29E How probity checks are made

- (1) For the purposes of carrying out a probity check, the Minister or the Board may conduct such investigations and inquiries as the Minister or the Board thinks fit and may, by notice in writing served on the person concerned, require the person to do any one or more of the following:

- (a) to consent, in accordance with directions in the notice, to having his or her photograph, fingerprints and palm prints taken,
- (b) to provide, in accordance with directions in the notice, the information (verified by statutory declaration) relevant to him or her that is specified in the notice,
- (c) to produce, in accordance with directions in the notice, the documents relevant to him or her that are specified in the notice and to permit examination of the documents and the taking of extracts from, and the making of copies of, them,
- (d) to attend before the Minister or the Board, or a specified person, for an examination in relation to any matters relevant to him or her and to answer any questions relating to those matters,
- (e) to furnish the authorities and consent that the Minister or the Board may require for the purpose of obtaining further information (including financial and other confidential information) from other persons and institutions.

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| (2) An executive officer or key employee must not fail to comply with a requirement of a notice under this section. | 1
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| Note. Failure to comply with this subsection is not a criminal offence, but constitutes misconduct under this Part under section 29A (2) (a). | 3
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| (3) A person must not, in purported compliance with a requirement of a notice under this section, provide information that the person knows is false or misleading in a material particular. | 5
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| Maximum penalty: 50 penalty units. | 8 |
| (4) A person who complies with a requirement of a notice under this section does not on that account incur a liability to another person. | 9
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| (5) The Board is to bear the costs of a probity check, whether the check is carried out by the Board or by the Minister. The Minister may certify as to the costs of a probity check carried out by the Minister and the Minister's certificate is evidence of the matters certified. | 12
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| 29F Privileges | 17 |
| (1) Except as provided by this section, a person is not excused from complying with a notice under section 29E on the ground that compliance may incriminate or tend to incriminate the person, or on any other ground of privilege, or on the ground of duty of secrecy or other restriction on disclosure, or on any other ground. | 18
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| (2) If the person claims, before complying with the notice, that compliance may tend to incriminate the person, information provided in compliance with the notice is not admissible in evidence against the person in criminal proceedings except proceedings under this Part for the offence of providing false or misleading information in purported compliance with the notice. | 24
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| (3) A person is excused from complying with a notice under section 29E if: | 31
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| (a) the person would not in court proceedings be required to comply with a similar requirement on the grounds of legal professional privilege or other privilege, and | 33
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| (b) the person does not have authority to waive the privilege. | 36
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29G Obligation to report change in state of affairs

- (1) Whenever a change of a kind prescribed by the regulations for the purposes of this section takes place in relation to an executive officer, the executive officer must notify the Minister in writing of the prescribed particulars relating to the change within 14 days after it takes place.

Maximum penalty: 20 penalty units.

- (2) Whenever a change of a kind prescribed by the regulations for the purposes of this section takes place in relation to a key employee, the key employee must notify the Board in writing of the prescribed particulars relating to the change within 14 days after it takes place.

Maximum penalty: 20 penalty units.

- (3) A person must not furnish information in purported compliance with this section that the person knows is false or misleading in a material particular.

Maximum penalty: 50 penalty units.

29H Report by the Minister regarding probity and misconduct

- (1) The Minister may make a report in writing to the Board on any matter that, in the opinion of the Minister, suggests or indicates that:

- (a) an executive officer is not or may not be a suitable person to be an executive officer, or
(b) an executive officer has or may have engaged in misconduct under this Part.

- (2) The Minister's report may include details of any probity check on which the report is based.

- (3) The Board is to decide what action to take in respect of the Minister's report and is to inform the Minister of the Board's decision within one month after the Board receives the report from the Minister (or within such other time as may be specified by the Minister).

- (4) The Minister may make a report under this section even if the Minister had previously determined that the executive officer was a suitable person to be an executive officer (whether before or after the executive officer became an executive officer).

29I Board's powers to deal with unsuitable persons and misconduct

(1) The Board may take special disciplinary action against an executive officer or key employee if the Board determines (whether or not based on the findings of a probity check under this Part) that:

- (a) the executive officer or key employee is not a suitable person to be an executive officer or key employee, or
- (b) the executive officer or key employee has engaged in misconduct under this Part.

(2) The special disciplinary action that the Board may take against a member executive officer is as follows:

- (a) the Board may admonish the member,
- (b) the Board may suspend the member from membership of the Board for a specified period of up to 3 months (but only by special decision of the Board under section 29J),
- (c) in the case of a nominated member or the Chairperson, the Board may recommend to the Governor the removal from office of the member (but only by special decision of the Board under section 29J).

Note. Section 15 (2A) provides for the removal from office of a nominated member or the Chairperson pursuant to such a recommendation. Section 15 (4) authorises the Board to remove an additional member of the Board from office at any time.

(3) The special disciplinary action that the Board may take against a staff executive officer or a key employee is as follows:

- (a) the Board may admonish the officer or employee,
- (b) the Board may temporarily suspend the officer or employee (or direct that the officer or employee be temporarily suspended), with or without payment of salary,
- (c) the Board may terminate the employment of the officer or employee (or direct that the officer or employee's employment be terminated).

Note. Section 29L provides for the Board to direct a race club to suspend or dismiss a key employee.

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| (4) The Board may temporarily suspend a member executive officer pending the taking of special disciplinary action against the member under this section, but only by special decision of the Board under section 29J. | 1
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| (5) The Board may temporarily suspend a staff executive officer or a key employee (or direct that the officer or employee is to be temporarily suspended) pending the taking of special disciplinary action against the officer or employee under this section. The suspension may be with or without salary. | 5
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| (6) Special disciplinary action may be taken against an executive officer or key employee whether or not the officer or employee has been prosecuted, convicted or penalised for any contravention that constitutes misconduct under this Part. | 10
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| (7) This section does not limit the action that the Board can take against an executive officer or key employee. | 14
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| 29J Special decision to suspend, remove or dismiss member executive officer | 16
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| (1) For the purposes of section 29I, a <i>special decision</i> of the Board is a decision supported by a majority of the members present and voting at a meeting of the Board where: | 18
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| (a) that majority comprises at least three-quarters of the members present and voting at the meeting, and | 21
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| (b) the notice of that meeting included notice of the intention to discuss the taking of special disciplinary action against the member executive officer concerned. | 23
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| (2) The additional members of the Board and the Chief Executive may attend the meeting but may not vote on the motion for the decision. | 26
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| (3) A vote referred to in subsection (1) must be made at a meeting (whether by telephone, closed-circuit television or other means by which a member who speaks at the meeting can be heard by the other members) and not by circulation of papers. | 29
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| (4) This section applies despite sections 19 (Procedure) and 20 (Transaction of business outside meetings or by telephone). | 33
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29K	Procedure for exercise of powers	1
(1)	Before taking special disciplinary action against a person under section 29I, the Board is to give the person a reasonable opportunity to make oral or written submissions to the Board about the matter.	2 3 4 5
(2)	The Board is required to give a reasonable opportunity for a person making oral submissions to be legally represented.	6 7
29L	Power to terminate employment of key employee at direction of Board	8 9
(1)	This section applies in respect of a direction given by the Board under section 29I to a race club to suspend or terminate the employment of a key employee or any other arrangement by reason of which a key employee is a key employee.	10 11 12 13
(2)	It is taken to be a condition of any agreement or other arrangement entered into between a race club and a key employee that the club has the rights required to enable the club to give effect to a direction to which this section applies.	14 15 16 17
(3)	The suspension or termination of employment or an arrangement in accordance with this section has effect despite any other Act or law, or any contract, award or enterprise or other agreement, and the State does not incur any liability because of such a termination.	18 19 20 21 22
(4)	In this section, <i>race club</i> includes a racing association.	23
29M	Police assistance	24
(1)	The Minister or the Board may refer to the Commissioner of Police copies of photographs, fingerprints and palm prints obtained in respect of a person under this Part and any supporting information that the Minister or the Board considers should be referred to the Commissioner.	25 26 27 28 29
(2)	The Commissioner of Police is to inquire into, and report to the Minister or the Board on, any matters concerning a person who is the subject of a probity check under this Part that the Minister or the Board may request.	30 31 32 33

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| <p>(3) The Minister may enter into arrangements for the supply to the Minister or the Board of information contained in the records of the Police Service, to assist in the effectual administration of this Act.</p> <p>(4) Those arrangements are sufficient authority for the supply of that information.</p> <p>29N Destruction of fingerprints and palm prints</p> <p>(1) Any fingerprints or palm prints obtained by the Minister or the Board under this Act, and any copies of them, must be destroyed as soon as the Minister or the Board (as the case may be) has no further use for them.</p> <p>(2) The Minister or the Board is to be considered to have no further use for them if the person concerned does not become, or ceases to be, an executive officer or key employee.</p> <p>(3) A person:</p> <p style="padding-left: 20px;">(a) who has possession of fingerprints or palm prints obtained by the Minister or the Board under this Part, or copies of them, and</p> <p style="padding-left: 20px;">(b) who fails to deliver them to the Minister or the Board, in accordance with the written directions of the Minister or the Board to enable subsection (1) to be complied with,</p> <p>is guilty of an offence.</p> <p>Maximum penalty (subsection (3)): 100 penalty units.</p> <p>29O Secrecy</p> <p>(1) A person who acquires information in the exercise of a function under this Part must not directly or indirectly make a record of the information or divulge it to another person, except in the exercise of a function under this Part.</p> <p>Maximum penalty: 50 penalty units.</p> <p>(2) Despite subsection (1), information may be divulged:</p> <p style="padding-left: 20px;">(a) to a particular person or persons, if the Minister certifies that it is necessary in the public interest that the information be divulged to the person or persons, or</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> |
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| (b) | to a person who is expressly or impliedly authorised to obtain it by the person to whom the information relates, or | 1
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| (c) | to the Board, Harness Racing New South Wales or the Greyhound Racing Authority, or | 4
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| (d) | to a person or authority prescribed by the regulations. | 6 |
| (3) | A person cannot be required: | 7 |
| (a) | to produce in any court any document or other thing that has come into the person's possession, custody or control by reason of, or in the course of, the exercise of the person's functions under this Part, or | 8
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| (b) | to divulge to any court any information that has come to the person's notice in the exercise of the person's functions under this Part. | 12
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| (4) | Despite subsection (3), a person may be required to produce a document or other thing in court or to divulge information to a court if: | 15
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| (a) | the Board certifies that it is necessary in the public interest to do so, or | 18
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| (b) | a person to whom the information relates (or to whom the information contained in the document or thing relates) has expressly authorised it to be divulged to or produced in the court. | 20
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| (5) | An authority or person to whom information is divulged under this section, and a person or employee under the control of that authority or person, are, in respect of that information, subject to the same rights, privileges and duties under this section as they would be if that authority, person or employee were a person exercising functions under this Part and had acquired the information in the exercise of those functions. | 24
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| (6) | This section does not apply to the divulging of information to any of the following: | 31
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| (a) | the Independent Commission Against Corruption, | 33 |
| (b) | the National Crime Authority, | 34 |
| (c) | the New South Wales Crime Commission, | 35 |
| (d) | the Ombudsman, | 36 |
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- (e) the Police Integrity Commission, 1
 - (f) the Inspector of the Police Integrity Commission, 2
 - (g) the Commissioner of Police of New South Wales, the 3
Commissioner of the Australian Federal Police or a 4
Commissioner (however designated) of the police force 5
of another State or Territory, 6
 - (h) any other person or body prescribed for the purposes of 7
this subsection. 8
 - (7) This section does not prevent a person being given access to a 9
document in accordance with the *Freedom of Information Act* 10
1989 unless the document: 11
 - (a) contains matter the disclosure of which could 12
reasonably be expected to do any of the following: 13
 - (i) prejudice the investigation of any contravention 14
or possible contravention of the law (including 15
any revenue law) whether generally or in a 16
particular case, 17
 - (ii) enable the existence or identity of any 18
confidential source of information, in relation to 19
the enforcement or administration of the law, to 20
be ascertained, 21
 - (iii) prejudice the effectiveness of any lawful method 22
or procedure for preventing, detecting, 23
investigating or dealing with any contravention 24
or possible contravention of the law (including 25
any revenue law), or 26
 - (b) is a document the disclosure of which would disclose 27
any of the following information: 28
 - (i) information concerning the business, 29
commercial, professional or financial affairs of 30
an executive officer or a key employee, 31
 - (ii) information obtained in the course of an 32
investigation of an executive officer or a key 33
employee. 34
 - (8) In this section, a reference to the divulging of information 35
includes a reference to the production of a document or other 36
thing and the provision of access to the document or other 37
thing. 38
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(9) In this section:	1
<i>court</i> includes any tribunal, authority or person having power	2
to require the production of documents or the answering of	3
questions.	4
[8] Section 51	5
Insert after section 50:	6
51 Proceedings for offences	7
Proceedings for an offence under this Act or the regulations	8
may be dealt with:	9
(a) summarily before a Local Court constituted by a	10
Magistrate sitting alone, or	11
(b) summarily before the Supreme Court in its summary	12
jurisdiction.	13
[9] Section 52 Regulations	14
Insert at the end of the section:	15
(2) In particular, regulations may be made for or with respect to the	16
method or manner in which a person or class of persons is to	17
comply with a requirement or direction by the Minister or the	18
Board relating to probity checks or reports of changes in a	19
person's state of affairs under Part 2A.	20

[10] Schedule 1 Savings and transitional provisions	1
Insert at the end of the Schedule:	2
 Part 8 Provisions consequent on enactment of Racing Legislation Amendment (Probity) Act 2000	 3 4 5
 29 Definitions	 6
In this Part:	7
<i>current executive officer</i> means a person who, on the commencement of section 29B, is an executive officer within the meaning of section 29A.	8 9 10
<i>current key employee</i> means a person who, on the commencement of section 29B, is a key employee within the meaning of section 29A.	11 12 13
 30 Suitability of current executive officers and current key employees	 14 15
(1) Section 29B (1) and (2) does not apply to any current executive officers or current key employees.	16 17
(2) Part 2A extends to current executive officers and current key employees, except as provided by subclause (1).	18 19