



## Thoroughbred Racing Legislation Amendment Bill.

### Second Reading

**The Hon. HENRY TSANG** [Parliamentary Secretary] [4.37 p.m.]: I move:

That this bill be now read a second time.

The object of the Thoroughbred Racing Legislation Amendment Bill is to amend the Thoroughbred Racing Board Act and the Racing Appeals Tribunal Act to address the matters raised in the statutory five-year review of the Thoroughbred Racing Board Act. As the second reading speech is lengthy, I seek leave to incorporate the remainder in *Hansard*.

#### Leave granted.

Additionally, the Bill provides for a change of name of the New South Wales Thoroughbred Racing Board to Racing New South Wales, and to change the name of the Act from the Thoroughbred Racing Board Act to the Thoroughbred Racing Act.

The change of name was requested recently by the Board to bring its formal name into alignment with its adopted usage of Racing New South Wales. The formal change of name will be accompanied by the renaming of NSW Racing Pty Ltd, the company which represents the three codes of racing in its dealings with TAB Ltd, to a name which will avoid confusion with Racing NSW.

Accordingly, the Bill principally arises from the requirement in section 53 of the Thoroughbred Racing Board Act that there should be a review within 12 months of the fifth anniversary of the commencement of the Act. Such reviews are a standard part of modern practice which envisages a regular review of legislation .

Honourable Members will recall that following the recommendations of the Temby Review, legislation was introduced in 1996 which transferred the control and regulation of thoroughbred racing from the Australian Jockey Club to the newly created New South Wales Thoroughbred Racing Board.

Essentially, the "controlling body" functions were transferred from the Australian Jockey Club to the New South Wales Thoroughbred Racing Board to overcome the perception of any possible conflict of interest, and also to provide greater industry representation in respect of the membership of the body responsible for the governance of the thoroughbred racing industry in this State.

The five-year review was conducted during the latter part of 2001 and the review report was tabled in Parliament in June 2002.

Twenty-two submissions were received following a public invitation to participate in the review process, which was limited to:

- (a) Whether the policy objectives of the Act remain valid; and
- (b) Whether the terms of the Act remain appropriate for securing those objectives .

The statutory five-year review requirement was an opportunity for interested parties to comment on the operation of the Act, and to propose any improvements.

The Review Report concluded that the existing structure and composition of the Thoroughbred Racing Board should be retained.

The Review Report also recommended that there should be certain amendments to the relevant legislation.

Taking the legislative proposals in the Bill in turn, they relate to the following matters.

Schedule 1 of the Bill proposes amendments to the Thoroughbred Racing Board Act. The first matter dealt with is the change of name from the New South Wales Thoroughbred Racing Board to Racing New South Wales.

The second matter dealt with relates to the Thoroughbred Racing Board's registration and licensing functions to ensure that persons so registered or licensed are, in the opinion of the Board, fit and proper persons to be so registered or licensed.

Persons in that category essentially include a trainer, jockey, stablehand, bookmaker and bookmaker's clerk.

As a result of submissions to the review process, the relevant provision has been strengthened so that a person with a criminal conviction will not be registered or licensed if, in the opinion of the Board, the circumstances of the offence concerned are such as to render the person unfit to be so licensed or registered.

For example, a person with a non-spent conviction involving sexual assault would be given close scrutiny by the Board if they were involved in a workplace which included young persons.

The third matter dealt with in Schedule 1 relates to the membership and functions of the Racing Industry Participants Advisory Committee. The RIPAC, as the advisory committee is known, is a statutory body established to advise the Board on industry policy and strategic direction.

At present one of the members of RIPAC is a person nominated by the Public Interest Advocacy Centre to represent consumers of racing and betting services.

The proposed amendment provides that the Public Interest Advocacy Centre should submit three nominations to the other members of RIPAC to select the consumer representative.

The proposed amendments further provide for improved communications between the Board and RIPAC by:

- (a) requiring recommendations made by RIPAC to the Board to be tabled at the next meeting of the Board;
- (b) requiring the Board to respond in writing to those recommendations; and
- (c) requiring the minutes of any joint meeting of RIPAC and the Board to be circulated among the members of both bodies.

These proposed amendments arise from the review process and are in the nature of minor but necessary improvements to the operation of the relevant parts of the Act.

A finetuning of the Act, if you will.

The fourth matter dealt with in Schedule 1 is to clarify that the Board has a right of appeal to the Appeal Panel against various decisions of a racing authority.

For these purposes a racing authority consists of the stewards of the Board, or of a race club, or of a regional racing association.

At this stage it is appropriate to indicate that in New South Wales there is an independent two-tier system of appeal for persons aggrieved by decisions of a racing authority.

The initial body is the Appeal Panel constituted under the Thoroughbred Racing Board Act, and headed by Peter Capelin QC.

A further appeal is possible to the Racing Appeals Tribunal constituted under the Racing Appeals Tribunal Act 1983.

The current Tribunal is His Honour Mr Barrie Thorley, who is an eminent retired District Court Judge, and the Acting Tribunal is Mr Justice Wayne Haylen QC from the bench of the Industrial Relations Commission.

The intention of the proposed amendment is to permit the Board to appeal where, in its opinion, there is a need to express its views as to the consistency of penalties.

For example, the circumstances where the Board may wish to lodge an appeal include where a charge against a person for contravention of the Rules of Racing is dismissed, or where a penalty is inconsistent with that imposed in earlier similar cases.

I will deal later with the similar proposed amendments that provide the Board with a right of appeal to the Racing Appeals Tribunal in relation to decisions of the Appeal Panel.

The fifth matter dealt with in Schedule 1 relates to the nature of appeals to the Appeal Panel.

The proposed amendments clarify that a hearing by the Appeal Panel is in the nature of a new hearing, and that fresh evidence may be given on the appeal.

The proposed amendments also set out the powers of the Appeal Panel to determine the appeal and make it clear that the Appeal Panel may vary the decision appealed against by substituting any decision that could have been made by the racing authority that made the decision appealed against.

Schedule 2 of the Bill proposes amendments to the Racing Appeals Tribunal Act 1983.

Essentially, the Racing Appeals Tribunal is established to hear appeals against decisions of the Appeal Panel and decisions of the Board.

The first matter dealt with in Schedule 2 of the Bill is to clarify that the Board has a right of appeal to the Racing Appeals Tribunal against decisions of the Appeal Panel.

Further, under the Thoroughbred Racing Board Act some decisions may be appealed against and heard by a regional association instead of the Appeal Panel.

The proposed amendments to the Racing Appeals Tribunal Act make it clear that those decisions may be appealed against to the Tribunal in the same way as decisions of the Appeal Panel. Such a right of appeal would be provided to the Board or any other aggrieved person.

The intention of the proposed amendments is the same as that for the corresponding proposal to enlarge the right of appeal to the Appeal Panel. It is to permit the Board to appeal where; in its opinion there is a need to express its views as to the consistency of penalties.

The second matter dealt with in Schedule 2 mirrors the proposed amendments to the nature of appeals to be heard by the Appeal Panel.

The proposed amendments clarify that a hearing by the Tribunal is in the nature of a new hearing and that fresh evidence may be given on the appeal.

The proposed amendments also set out the powers of the Tribunal to determine the appeal and clarify that the Tribunal may vary the decision appealed against by substituting any decision that could have been made by the body that made the original decision.

There are compelling reasons put for the proposed revisions to the appeal structure.

His Honour Mr Barrie Thorley, sitting as the Racing Appeals Tribunal, and the Thoroughbred Racing Board have argued strongly for them.

I take this opportunity to quote a passage from one of Judge Thorley's judgements as the Racing Appeals Tribunal:

*However, before leaving this appeal I again record that there is, in my opinion, a need to amend the legislation to ensure that this tribunal does have the power to increase penalties in cases that come before it, whether or not any specific appeal be lodged to that effect.*

*I reiterate also the recommendation made in a previous case that a right of appeal be conferred on the Thoroughbred Racing Board to appeal against the inadequacy of orders made either by the Stewards or the Appeal Panel.*

*Without that power there could not be said to be any true accountability within the Thoroughbred Racing Board itself.*

The third matter dealt with in Schedule 2 of the Bill is to amend the Racing Appeals Tribunal Act so that the powers of the Tribunal to compel witnesses to attend hearings and produce documents are set out in the Act rather than in the regulations to the Act.

Similarly, provisions in the regulations relating to the service of instruments are considered to be substantive matters and are transferred to the Act.

The fourth matter dealt with in Schedule 2 of the Bill provides for the Minister to be able to appoint a third person to act as the Tribunal.

At present the Racing Appeals Tribunal Act allows the Minister to appoint one person as the Tribunal and a second person to act as the Tribunal during the illness or absence of the first person.

The proposed amendment makes it clear that the appointment of the third person may be made at any time, including as a standing appointment, as long as the third person acts as the Tribunal only during the illness or absence of the second person.

The proposed arrangements have been requested by the Tribunal to assist with the management of casework.

I believe that the Bill represents an appropriate update of the provisions of the Act. That update flows from the consultation process associated with the statutory five-year review.

The Carr Government acted early to establish the Thoroughbred Racing Board as the independent non-government body responsible for the governance of the racing industry in this State.

That initiative has been well accepted, and the proposed refinements contained in this Bill respond to changing needs over time.

I note that it is now the practice that all Bills will be scrutinised by the Legislation Review Committee. The Committee's obligations are set out in the Legislation Review Act 1987 and I believe that this Bill does not contain any provisions that fall within the areas of interest to the Committee.

The Bill does not contain any provisions that make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers or upon non-reviewable decisions.

I commend the Bill to the House.

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