

Thoroughbred Racing Legislation Amendment Bill 2004

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Thoroughbred Racing Board Act 1996* and certain other racing legislation for the following purposes:

- (a) to change the name of the NSW Thoroughbred Racing Board to Racing New South Wales (**Racing NSW**) and to change the name of the *Thoroughbred Racing Board Act 1996* consequentially,
- (b) to require Racing NSW to ensure that persons registered or licensed by it are fit and proper persons to be so registered or licensed,
- (c) to make further provision with respect to the membership and functions of the Racing Industry Participants Advisory Committee,
- (d) to make it clear that Racing NSW has a right of appeal to the Appeal Panel and the Racing Appeals Tribunal with respect to certain decisions,
- (e) to provide that appeals heard by the Appeal Panel and the Racing Appeals Tribunal are new hearings and that fresh evidence may be heard,
- (f) to make further provision with respect to the functions of the Appeal Panel and the Racing Appeals Tribunal on an appeal,
- (g) to make other amendments of a minor, consequential or transitional nature.

The Bill also amends other Acts as a consequence of the change of name of the NSW Thoroughbred Racing Board.

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 that gives effect to the amendments to the *Thoroughbred Racing Board Act 1996* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Racing Appeals Tribunal Act 1983* and the *Racing Appeals Tribunal Regulation 1999* set out in Schedule 2.

Clause 5 is a formal provision that gives effect to the consequential amendments to the other Acts set out in Schedule 3.

Schedule 1 Amendment of Thoroughbred Racing Board Act 1996

Change of name of Board and Act

The name of the NSW Thoroughbred Racing Board is changed to Racing New South Wales. Racing New South Wales may also use the name Racing NSW. As a consequence the name of the *Thoroughbred Racing Board Act 1996* is changed to the *Thoroughbred Racing Act 1996*. The long title of the Act is also amended consequentially. See **Schedule 1 [1]–[6] and [8]**.

Registration and licensing functions of Racing NSW

The Act currently empowers Racing NSW to register or license, or refuse to register or license, or cancel or suspend the registration or licence of, a race club, or an owner, trainer, jockey, stablehand, bookmaker, bookmaker's clerk or another person associated with racing, or to disqualify or suspend any of those persons permanently or for a specified period.

The amendments provide that Racing NSW is to exercise its registration and licensing functions so as to ensure that any individuals registered or licensed are persons who, in the opinion of Racing NSW, are fit and proper persons to be so

registered or licensed. A person is not to be so registered or licensed if the person has a criminal conviction and Racing NSW is of the opinion that the circumstances of the offence concerned are such as to render the person unfit to be so registered or licensed. See **Schedule 1 [7]**.

Racing Industry Participants Advisory Committee

The Racing Industry Participants Advisory Committee (**RIPAC**) is a statutory body established to advise Racing NSW on industry policy and strategic direction (among other things).

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 amendments provide that the consumer representative is to be selected by the other members of RIPAC from a panel of 3 persons nominated by the Public Interest Advocacy Centre. See **Schedule 1 [9]–[11]**.

The amendments make further provision for communication between RIPAC and Racing NSW by:

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

See **Schedule 1 [12] and [13]**.

Appeals to Appeal Panel

At present, certain decisions of a racing authority (such as the stewards of Racing NSW, or the committee or stewards of a race club) may be appealed against to the Appeal Panel established under the Act.

The amendments make it clear that Racing NSW has a right of appeal to the Appeal Panel against various decisions of a racing authority, including a decision to dismiss a charge against a person for contravention of the Rules of Racing. See **Schedule 1 [14]**.

Nature of appeals

The amendments clarify that a hearing by the Appeal Panel under the Act is in the nature of a new hearing, and that fresh evidence, or evidence in addition to or in substitution for the evidence on which the decision appealed against was made, may be given on the appeal. See **Schedule 1 [15]**.

The amendments 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. See **Schedule 1 [16]**.

Other amendments

Provision is made for transitional matters, including savings and transitional regulations. See **Schedule 1 [17] and [18]**.

Schedule 2 Amendments of Racing Appeals Tribunal legislation

Change of name of Board

The amendments to the *Racing Appeals Tribunal Act 1983* set out in **Schedule 2.1 [1]–[3] and [8]** are consequential on the change of name of the NSW Thoroughbred Racing Board.

Appeals to Racing Appeals Tribunal

The Racing Appeals Tribunal is currently established to hear appeals against decisions of the Appeal Panel made under the *Thoroughbred Racing Board Act 1996* and against decisions of the NSW Thoroughbred Racing Board (now referred to as Racing NSW).

The amendments make it clear that Racing NSW has a right of appeal to the

Racing Appeals Tribunal against decisions of the Appeal Panel.

Under the provisions of the *Thoroughbred Racing Board Act 1996* some decisions may be appealed against and heard by a racing association instead of by the Appeal Panel. The amendments to the *Racing Appeals Tribunal Act 1983* make it clear that those decisions may be appealed against to the Tribunal (by Racing NSW or any other aggrieved person) in the same way as decisions of the Appeal Panel.

See **Schedule 2.1 [3] and [5]**. **Schedule 2.2 [1]–[5]** contain consequential amendments to the *Racing Appeals Tribunal Regulation 1999*.

Nature of appeals

The amendments provide that a hearing by the Racing Appeals Tribunal under the *Racing Appeals Tribunal Act 1983* is in the nature of a new hearing, and that fresh evidence, or evidence in addition to or in substitution for the evidence on which the decision appealed against was made, may be given on the appeal. See **Schedule 2.1 [6]**. The new provisions replace provisions in the *Racing Appeals Tribunal Regulation 1999* that limit the power of the Tribunal to hear new evidence. See **Schedule 2.2 [6]**.

The amendments to the *Racing Appeals Tribunal Act 1983* set out the powers of the Tribunal with respect to the determination of appeals. The amendments make it clear that the Tribunal may vary the decision appealed against by substituting any decision that could have been made by the body that made the decision appealed against. The new provisions replace provisions that are currently set out in the *Racing Appeals Tribunal Regulation 1999*. See **Schedule 2.1 [7] and 2.2 [7]**.

The *Racing Appeals Tribunal Act 1983* is also amended 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. As a consequence, provisions in the regulations relating to the service of instruments are also transferred to the Act. See **Schedule 2.1 [6] and [9] and Schedule 2.2 [8] and [9]**.

Appointment of acting Tribunal

The *Racing Appeals Tribunal Act 1983* allows the Minister to appoint one person as the Tribunal and a second person to act as the Tribunal on specified occasions. It also allows the Minister to appoint a third person to act as the Tribunal during the illness or absence of the second person. The amendment makes it clear that the appointment of the third person may be made at any time (including by way of a standing appointment), as long as that third person acts as the Tribunal only during the illness or absence of the second person. See **Schedule 2.1 [4]**.

Other amendments

Provision is made for transitional matters, and for the making of savings and transitional regulations. See **Schedule 2.1 [10]–[12]**.

Schedule 3 Consequential amendments

The amendments set out in Schedule 3 are consequential on the change of name of the NSW Thoroughbred Racing Board and the *Thoroughbred Racing Board Act 1996*.