



## Legislation Review Committee

Correspondence received in response to the Legislation Review  
Committee Digest No. 3/57 – 20 August 2019



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The Honourable Kevin Anderson MP  
Minister for Better Regulation and Innovation

Ref: DF19/014282

Ms Felicity Wilson MP  
Chair, Legislation Review Committee  
Parliament of New South Wales  
Macquarie Street  
SYDNEY NSW 2000



Dear Ms Wilson

A handwritten signature in black ink that reads 'Felicity'.

Thank you for your letter of 21 August 2019 on behalf of the Legislation Review Committee (**Committee**) in relation to the *Racing Legislation Amendment Bill 2019 (the Bill)* and the *Greyhound Racing Amendment (Transition Period) Regulation 2019 (the Amending Regulation)*. I acknowledge the matters raised by the Committee and have responded to each below.

#### **Amending Regulation**

The Amending Regulation commenced on 28 June 2019 and was repealed by the *Greyhound Racing Regulation 2019* on 1 September 2019. As the Committee notes, the Amending Regulation amended savings and transitional clauses in the *Greyhound Racing Act 2017 (the GR Act)*. I note that this is consistent with Parliament's acknowledgement of the need for flexibility in transitional arrangements, reflected in Schedule 4 of the GR Act, which provides for the making of Regulations that amend savings and transitional provisions.

#### **Racing Legislation Amendment Bill 2019**

The Bill was introduced to the Legislative Assembly on 7 August 2019 to, amongst other things, give effect to key recommendations in the *Report on the Powers of Racing NSW over Unlicensed Persons (the Report)* commissioned by the NSW Government and previously tabled in Parliament.

The Bill was passed by the Parliament on 16 October 2019 without amendment.

I note below the following in response to the matters raised by the Committee in relation to the Bill:

#### Right to silence and right against self-incrimination

While acknowledging that compulsion powers in the Bill support investigation into integrity matters, the Committee noted that these powers impact compelled individuals' right to silence and right against self-incrimination.

I note that the Bill includes a number of safeguards to balance the potential for harm that may arise from requiring a compelled person to provide information and/or produce documents or things to special inquiries conducted by Racing NSW or Harness Racing NSW, including:

#### *Supreme Court oversight*

The use by racing controlling bodies of compulsion powers will be subject to authorisation by the Supreme Court. In seeking this authorisation, a racing controlling body must:

- be reasonably satisfied that a person has relevant information and is unwilling to provide that information to a special inquiry
- adequately demonstrate to the Court that there is a threat to the integrity of racing
- comply with legislated requirements in making each application.

In making its determination, the Court must consider factors including the nature of the threat, the value of the information, the likelihood that the person has and would be unwilling to provide this information and the potential harm if a person is required to provide self-incriminating evidence.

*Right to legal representation*

The Bill provides that a compelled person is entitled to legal representation when attending a special inquiry.

*Requirement for legal assistance*

The Bill also requires that stewards presiding over a special inquiry hearing are assisted by a lawyer of at least seven years standing. Importantly, that lawyer is required to inform the compelled person of the effect of the compulsion powers.

*Use immunity*

Any information provided by a compelled person is not admissible in other disciplinary, civil or criminal proceedings against that person.

Freedom of movement, procedural fairness and administrative review rights

The Committee stated that the Bill creates restrictions on freedom of movement by providing the NSW Police Commissioner with authority to exclude persons from racecourses in NSW.

The proposed exclusion order model is a reasonable measure to protect public safety and safeguard the integrity of the racing industry. Similar exclusion orders are already in place with respect to the State's casinos under the Casino Control Act 1992 (**Casino Control Act**).

It is important to note that a racecourse exclusion order only applies for the duration of a race meeting at a licensed racecourse within New South Wales, and would not apply to other non-racing events at such venues. That is, any restriction placed on the freedom of movement of a person as a result of racecourse exclusion orders is limited in duration.

A person subject to a racecourse exclusion order can seek an administrative review in the NSW Civil and Administrative Tribunal. It is noted that exclusion orders issued under the Casino Control Act do not provide any review mechanism.

The introduction of racecourse exclusion orders creates consistency with Victoria, where relevant authorities can issue exclusion orders for both casinos and racecourses. Unlike in Victoria, however, the Bill does not impose an obligation on the NSW Police Commissioner to automatically exclude persons from NSW racecourses where they have been excluded from a NSW casino and vice versa, with each decision to be made independently.

Commencement by proclamation

The Committee states that the Bill inappropriately delegates legislative powers as the majority of provisions commence by proclamation. Commencement by proclamation is both practical and responsible given the administrative work to be undertaken by a number of government agencies and other organisations to effectively implement the initiatives in the Bill.

Thank you to the Committee for bringing these matters to my attention.

Yours sincerely



**Kevin Anderson MP**

Minister for Better Regulation and Innovation

18.11.2019