

**FIVE YEAR STATUTORY
REVIEW OF THE
*HARNESS RACING ACT 2009***

REVIEW REPORT
May 2015



REVIEW REPORT

Five Year Statutory Review of the *Harness Racing Act 2009*

TABLE OF CONTENTS

EXECUTIVE SUMMARY	2
1. INTRODUCTION	4
1.1 Purpose of the Review	4
1.2 Terms of Reference	4
1.3 Consultation to Inform the Review	4
1.4 About this Report	5
2. BACKGROUND	6
2.1 Regulation of the Racing Industry: An Overview	6
2.2 History of NSW Harness Racing Governance Arrangements	6
2.3 Related Reviews	7
3. THEMES RAISED IN THE REVIEW	9
3.1 Theme 1: Governance Framework – Economic Development and Future Viability	9
3.1.1 Objectives of the Act	9
3.1.2 Constitution of Harness Racing NSW	9
3.1.3 Functions of Harness Racing NSW	10
3.1.4 Powers of Harness Racing NSW	11
3.1.5 Composition of Harness Racing NSW	13
3.1.6 Harness Racing NSW Strategic Plan	16
Findings in relation to theme 1	16
3.2 Theme 2: Governance Framework - Integrity	19
3.2.1 Harness Racing NSW Code of Conduct	19
3.2.2 Harness Racing Integrity Auditor	19
Findings in relation to theme 2	22
3.3 Theme 3: Consultation and Reporting	24
3.3.1 Harness Racing Industry Consultation Group	24
3.3.2 Reporting Requirements	25
Findings in relation to theme 3	26
3.4 Theme 4: Animal Welfare	27
Findings in relation to theme 4	28
ANNEXURE A – List of Submissions	29

Executive Summary

The NSW Office of Liquor, Gaming and Racing (OLGR) has conducted a review of the *Harness Racing Act 2009* (the Act). The purpose of, and terms of reference for, the review are set out in section 49 of the Act. The Act requires that the review determine whether the policy objectives of the Act (which are currently unstated) remain valid and whether its terms remain appropriate for securing those objectives.

The review has been informed by 35 submissions that were made in response to a public call for submissions. The submission process and review has been assisted by a discussion paper prepared by OLGR and released in December 2014.

In brief, the review found that there are a number of changes that could be made to the Act to accommodate issues raised in submissions and to address some current anomalies in the legislation.

The review also recognises that work underway in relation to the greyhound racing industry, in particular the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales (the Inquiry) which is due to report to the Government by 30 September 2015, may also have some relevance to the legislative structure for the harness racing industry in NSW. This is particularly so as the Inquiry is examining the legislative framework for the greyhound racing industry, and that framework mirrors the legislative framework established by the Act for the harness racing industry.

The review therefore considers that it would be inappropriate at this time to recommend major structural change to the harness racing industry or to recommend legislative change that could be seen to pre-empt the outcomes of the Inquiry. It is for this reason that the review has not recommended any change at this time in relation to the constitution of HRNSW, the structure or composition of its board, issues of future integrity and reporting structures, and the issue of animal welfare. These issues will be canvassed in the Government response to this review report, which will be developed once the recommendations of the Special Commission of Inquiry are made available.

The recommendations made by the review are as follows.

Recommendation 1

That the Government's response to the findings of this review be delivered within six months of the release of the final report of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales so that the outcomes of that Inquiry can be considered where they are relevant to the harness racing industry.

Recommendation 2

That the Act be amended so that it includes specific policy objectives that:

- a) provide for the efficient and effective regulation of the NSW harness racing industry
- b) protect the interests of the harness racing industry and its stakeholders
- c) facilitate the development and operation of a sustainable and viable industry
- d) ensure the integrity of harness racing and associated wagering in the public interest
- e) provide for the functions and the powers of regulatory bodies
- f) ensure industry stakeholder engagement and participation in the strategic development of the harness racing industry as a whole

The objectives should also address any other relevant issues arising from the outcomes of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales.

Recommendation 3

That the Act be amended to differentiate the appointment of an administrator by the racing controlling body to conduct the affairs of a race club from the appointment of an administrator under the Corporations Law.

Recommendation 4

That the selection process for, and the structure, composition and skills required of, the board of Harness Racing NSW be considered in light of the outcomes of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales, having regard to the issues raised in this review.

Recommendation 5

That the appointment process for membership of Harness Racing NSW be strengthened by including a statutory requirement that the selection panel must give consideration to whether a proposed appointee's skills and experience align with the functions of the racing controlling body.

Recommendation 6

That section 33(1)(a) of the Act be amended to permit a member of the Harness Racing Industry Consultation Group to be appointed as a member of the selection panel for the purpose of recommending the appointment of members of Harness Racing NSW.

Recommendation 7

That section 12 of the Act be strengthened by providing that Harness Racing NSW must develop and initiate a formal program of consultation with industry stakeholders consistent with the existing requirements of section 12 of the Act, and that the program be published on the Harness Racing NSW website.

Recommendation 8

That the eligibility and conflict of interest requirements for appointment as a member of Harness Racing NSW be strengthened by being brought into line with those which apply to membership of Racing NSW, and that the Code of Conduct for staff of Harness Racing NSW be publicly available.

Recommendation 9

That subject to consideration of the recommendations and findings of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales and other racing industry integrity related reviews, the Government should progress work to

- a) Provide the three racing controlling bodies with certain powers over unlicensed persons, where no parallel licensing regime exists; and
- b) incorporate compliance with requirements to provide evidence to Stewards inquiries into relevant existing licensing and certification frameworks, such as that provided for by the *Veterinary Practice Act 2003*.

Recommendation 10

That the provisions in the Act relating to the integrity of the harness racing industry, including provisions governing the appointment and functions of the Integrity Auditor, be considered in light of the outcomes of the Working Party to be established to examine the corruption prevention and integrity arrangements for the whole of NSW racing industry, and of the outcomes of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales.

Recommendation 11

That the issue of the autonomy of HRNSW and its relationship with government be considered in light of the outcomes of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales.

Recommendation 12

That the Act be amended to require Harness Racing NSW to implement methods and procedures (which must be published on its website) for communicating industry developments and policy decisions to ensure there is timely and comprehensive understanding by all industry participants and stakeholders.

Recommendation 13

That the issue of animal welfare in the harness racing industry and the legal arrangements to protect the welfare of animals in the industry be considered in light of the outcomes of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales.

1. INTRODUCTION

1.1 Purpose of the Review

The NSW Office of Liquor, Gaming and Racing (OLGR) has conducted a review of the *Harness Racing Act 2009* (the Act). The review is a statutory requirement under section 49 of the Act. The purpose of the review is to determine whether the policy objectives of the Act remain valid and whether its terms remain appropriate for securing those objectives.

The Act does not have provisions which expressly state its objectives. However, it principally provides for:

- the constitution of Harness Racing NSW as the harness racing industry's controlling body,
- the functions and the powers of that body,
- the constitution of an industry consultation group – the Harness Racing Industry Consultation Group (HRICG), and
- the appointment of a Harness Racing Integrity Auditor.

A discussion paper was prepared and circulated in December 2014 to assist submission makers with the preparation of their contribution to the review.

While the discussion paper posed questions in relation to matters of specific interest, submission makers were advised that comments or suggestions could be made on any aspect of the harness racing industry. Importantly, it was highlighted that the questions, suggestions and prompts contained in the discussion paper were merely to provoke discussion on various issues and that they were not intended to restrict discussion in any way or construed or interpreted as a reflection of future government policy. Many of the submissions received by the review included comment focusing on issues raised in the discussion paper.

Submission makers were advised that their contribution may be referred to in this review report, and would – except where a substantiated claim for confidentiality was made, or where the review determined that confidentiality is appropriate – be published on the OLGR website alongside this report.

1.2 Terms of Reference

The terms of reference for the review are specified in section 49 of the *Harness Racing Act 2009*, which provides:

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of five years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of five years [that is, before 15 May 2015].

1.3 Consultation to Inform the Review

Harness racing industry stakeholders and other interested groups were provided with a copy of the discussion paper and were invited to make written submissions to the review. In addition, persons interested in making a submission to the review were invited to do so via various forms of media, including industry and government websites.

The closing date for submissions was initially set as 31 January 2015, and was later extended to 13 February 2015 to provide additional time for submission makers.

There were 35 submissions received by the amended closing date of Friday 13 February 2015. A list of submission makers is attached at Annexure A to this report.

The review appreciates the contributions made by submission makers through the review consultation process. The review notes that further consultation with stakeholders may be necessary in progressing the work to flow from the recommendations made in this report.

1.4 About this Report

This report is divided into the following themes which reflect the issues raised in submissions to the review:

1. Governance framework for the sustainable economic development and future viability of the harness racing industry.
2. Governance framework for the integrity of the conduct of harness racing and associated wagering on harness racing.
3. Consultation and reporting.
4. Animal welfare.

Some submission makers raised other matters in the review process which are not reported on as they are outside the terms of reference of this review. For example, *Submission No. 24* included experiences with another code of racing, while *Submission No. 33* focused several of its arguments on matters that were dealt with under the rules of harness racing and were the subject of ongoing appeals and representations. The review has noted the terms of *Submission No. 35* by the Australian Wagering Council that encourages a national approach to industry regulation.

A number of submissions (*Submission Nos. 1 to 21*) were worded on a similar basis, suggesting that:

- It is inappropriate and unacceptable for the board appointments selection panel to provide a list of names and for the Minister to choose persons to appoint from that list.
- It is inappropriate and unacceptable for the Minister to appoint the Chair and Deputy Chair of the board.
- The government should not be involved in the selection of members of HRNSW.

These submissions did not provide material or evidence in support of the above statements. Nevertheless, the submission makers have focused on certain questions posed in the discussion paper that relate to these matters and have submitted their opinion on these issues.

Submission Nos. 22 to 35 comprise industry organisations, industry participants and other interested groups and are referred to in this report where there is discussion of the relevant provisions of the Act.

2. BACKGROUND

2.1 Regulation of the Racing Industry: An Overview

As was noted in the review discussion paper, in broad terms, successive NSW Governments have adopted an approach to racing industry policy which can be summarised as:

- providing for the sustainable economic development and future viability of the racing industry, and
- ensuring the integrity of the conduct of racing and associated wagering on racing and declared betting events (including sports).

The racing industry is responsible for its business and strategic management through 'racing controlling bodies' (i.e. Harness Racing NSW, Racing NSW and Greyhound Racing NSW). The controlling bodies do not represent the Crown, are independent of government and are not subject to Ministerial direction. They are also responsible for the regulation and control of their respective code of racing.

The Government is not directly involved in managing the business affairs of the racing industry. The racing industry, since the inception of organised racing in NSW, has expressly sought and been granted autonomy so that it can manage its affairs. The role of government has been to establish a statutory framework which addresses points 1 and 2 above.

It is noted that there is currently ongoing consideration of the most appropriate statutory framework for the greyhound racing industry via the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales. Given the similarities in the statutory frameworks under which the three codes of racing operate, the outcomes of this process will likely have some relevance to the statutory framework for the harness racing and thoroughbred racing codes.

2.2 History of NSW Harness Racing Governance Arrangements

Harness racing was conducted as a pastime in NSW from the early days of the colony, with private horse and buggy races being conducted in the streets. Over time, organised trotting races became the norm and the *Gambling and Betting Act 1906* recognised trotting races as a 'sport'.

Around this time, the NSW Trotting Club (later to become the NSW Harness Racing Club Limited) was established and in 1911 the club purchased land at Forest Lodge, Glebe which was developed into a trotting venue to become known as Harold Park.

Much like the Australian Jockey Club did for thoroughbred racing in this state, the NSW Trotting Club became the 'principal club' for trotting and pacing in NSW. As the principal club, it registered trotting and pacing clubs, horses and participants and formulated rules for the conduct of race meetings.

By 1977 the Government of the day saw a need for the control of the industry to be transferred from the principal club to a statutory authority. The *Trotting Authority Act 1977* established the Trotting Authority of NSW as the body responsible for the control, regulation and development of the State's harness racing industry. In 1985 the name of the Act and Authority were changed to the *Harness Racing Authority Act 1985* and the Harness Racing Authority of NSW respectively.

The *Harness Racing Act 2002* later replaced the Harness Racing Authority with two new bodies called Harness Racing New South Wales (HRNSW) and the Harness Racing Authority (HRA). HRNSW, which was comprised of industry representatives, became responsible for the commercial functions of the industry including its promotion, strategic development and welfare, while the HRA, whose members were appointed by the Governor on the recommendation of the Minister, exercised regulation and control over the industry as a statutory body.

The 2002 changes represented the first stage of the reform and restructure of the governance of the harness racing and greyhound racing industries in NSW.

Stage two of the reform and restructure of the governance of the harness and greyhound racing industries envisaged the merger of the regulatory functions for the two industries into the one statutory body. Following a feasibility study in 2003, the amalgamation of the harness and greyhound racing regulatory functions was formalised with the enactment of the *Greyhound and Harness Racing Administration Act 2004* which established the Greyhound and Harness Racing Regulatory Authority (GHRRA). The make up and functions of HRNSW remained unchanged.

In 2007/08 the activities of the GHRRA were the subject of a performance audit by the Internal Audit Bureau and an audit of the amalgamation process by the NSW Audit Office. The audits were set in train at the request of the then Minister following industry concern about the cost and delay of the amalgamation process.

Following the release of The Malcolm Scott Report (Independent Review of the Regulatory Oversight of the NSW Racing Industry) and the statutory Five Year Review of the *Harness Racing Act 2002* and the *Greyhound Racing Act 2002* in June 2008, the GHRRA was wound up and HRNSW was established as an independent board responsible for both the commercial and regulatory functions for the harness racing industry. A corresponding arrangement was put in place for the greyhound racing industry.

These arrangements were part of a legislative package which included the *Harness Racing Act 2009*, *Greyhound Racing Act 2009* and the *Racing Legislation Act 2009*. They provided the harness racing industry with its current governance arrangements.

2.3 Related Reviews

The three statutes that establish the controlling bodies of racing – Racing NSW, Harness Racing NSW and Greyhound Racing NSW, share similar policy objectives and, in the case of the *Greyhound Racing Act 2009* and *Harness Racing Act 2009*, contain essentially the same provisions. These two Acts provide for identical governance and integrity arrangements for the respective codes, and in particular identical provisions relating to:

- the composition of and manner of appointment as a member of the controlling body,
- the commercial functions and regulatory powers of the controlling body.

Appointment Process Review

On 27 March 2014 the report of a review by OLGR of the appointment process for Harness Racing NSW and Greyhound Racing NSW was tabled in the Parliament. This was a specific purpose statutory review and was a requirement additional to the five year statutory reviews provided for elsewhere in the *Harness Racing Act 2009* and *Greyhound Racing Act 2009*.

The conclusion of the review was that the policy objectives in regard to the appointments processes in the two Acts remained valid and that the terms of the legislation were (with enhancements) appropriate for securing those objectives.

The enhancements recommended by the review include strengthening the eligibility and disclosure of interest requirements in the legislation.

Given that the full statutory five year reviews of the Acts were to commence in the second half of 2014 and the first report of the findings and recommendations of the Legislative Council Select Committee on greyhound racing required appropriate consideration, implementation of these recommendations has been delayed.

Thoroughbred Racing Act 1996 Five Year Review

The report of the five year statutory review of the *Thoroughbred Racing Act 1996* was tabled in the Parliament on 6 August 2014. The thoroughbred legislation review supported the continuation of the current provisions for the appointment of members of Racing NSW and recommended that consideration be given in the future to aligning the appointment processes of Racing NSW, Harness Racing NSW and Greyhound Racing NSW.

It was also noted that the provisions in the *Thoroughbred Racing Act 1996* that deal with conflicts of interest at the time of (and arising after) appointment of members of Racing NSW were strengthened in 2011. That review recommended that it would, as a matter of good governance, be appropriate for a similar strengthening of the conflict of interest provisions in relation to the Acts that establish Harness Racing NSW and Greyhound Racing NSW.

As suggested above, it was anticipated that proposals for strengthening the eligibility and disclosure of interest requirements for members of HRNSW in the *Harness Racing Act 2009* would be given further consideration during this review.

On 4 March 2015 the NSW Government established a Special Commission of Inquiry to consider governance, integrity and animal welfare issues in the State's greyhound racing industry. The Inquiry has extensive terms of reference which include providing findings and recommendations about the future of the sport in NSW. The Inquiry is to provide its final report by 31 September 2015.

Given the terms of reference for the Inquiry, its findings and recommendations will necessarily relate to broader industry policy than those of any statutory review. It is expected that the findings and recommendations of the Inquiry into greyhound racing will have relevance to the governance and integrity arrangements for the harness racing industry. It would therefore be appropriate for the Government's response to the findings and recommendations of this review to take into account the outcomes of the Special Commission of Inquiry. A response prior to the Inquiry finishing its work would risk pre-empting its findings and the Government's response to the Inquiry.

Recommendation 1

That the Government's response to the findings of this review be delivered within six months of the release of the final report of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales so that the outcomes of that Inquiry can be considered where they are relevant to the harness racing industry.

3. THEMES RAISED IN THE REVIEW

As noted earlier, the issues raised in submissions to the review can be divided into four general themes. These themes also reflect the questions that were included in the review discussion paper to assist those making a submission. The four themes are discussed in the following sections.

3.1. Theme 1: Governance Framework – Economic Development and Future Viability

3.1.1 Objectives of the Harness Racing Act

Overview

The policy objectives of an Act are essentially the outcomes that were sought to be achieved by the enactment of the legislation by the Parliament.

The *Harness Racing Act 2009* currently does not have provisions which expressly state its objectives.

The Act principally provides for the constitution of Harness Racing NSW as the industry's controlling body, the functions and the powers of that body, the constitution of an industry consultation group (HRICG) and the appointment of a Harness Racing Integrity Auditor.

For the purposes of the review, the objectives of the Act were broadly categorised as follows:

- To provide a statutory governance framework for the sustainable economic development and future viability of the harness racing industry.
- To provide a statutory framework for the integrity of the conduct of harness racing and associated wagering on harness racing.
- To provide autonomy to the harness racing industry in relation to both commercial and regulatory decision making.

The Review invited comments on whether the above policy objectives are, or remain, valid.

Summary of submissions

Submissions were silent on the actual terms of the provisions which would state the policy objectives of the Act, with contributors focusing on the intent of the Act itself.

3.1.2 Constitution of Harness Racing NSW

Overview

Harness Racing NSW (HRNSW) is a body corporate established as the independent controlling body for harness racing in NSW (section 4 of the Act). The legislation specifically provides that HRNSW does not represent the Crown and is not subject to direction or control by or on behalf of the Government (section 5 of the Act).

Historically, the NSW racing industry has expressly sought and been granted autonomy so that it can manage its affairs. The independent controlling body model is common to all three codes of racing in NSW. As mentioned previously, this issue is the subject of ongoing consideration in relation to the greyhound racing industry.

In the current structure, the controlling bodies are not immune to scrutiny. HRNSW is required by the Act to provide an annual report to the Minister on its activities and its financial statements which must be tabled in both Houses of Parliament.

In addition, any person aggrieved by a decision of HRNSW, stewards of HRNSW or of a harness racing club may appeal to the independent Racing Appeals Tribunal. The Tribunal is a qualified person appointed by the Minister for on the recommendation of the Attorney General.

The Act also provides for the appointment of a Harness Racing Integrity Auditor who is responsible for receiving and investigating complaints about the conduct of racing officials in relation to their responsibilities and obligations under the legislation.

Summary of submissions

The majority of submission makers who commented on the constitution of HRNSW expressly support the retention of the current structure of HRNSW. While some suggested that there may be certain areas of administration that require more focus or strengthening, the general view was that the current statutory provisions that constitute HRNSW as the industry's controlling body are appropriate.

The true independence of HRNSW was questioned by one submission maker based on the fact that HRNSW still reports to the Minister. *[Submission No. 33 - confidential]*

No submission makers suggest that the harness racing industry should be deregulated – i.e. permitted to formulate its own governance and economic arrangements without any form of statutory framework.

3.1.3 Functions of HRNSW

Overview

Section 9 of the Act provides that the functions of HRNSW include the following:

- (a) to control, supervise and regulate harness racing in the State,
- (b) to register harness racing clubs, harness racing horses, owners, trainers and drivers of harness racing horses, bookmakers for harness racing and other persons associated with harness racing,
- (c) to initiate, develop and implement policies considered conducive to the promotion, strategic development and welfare of the harness racing industry in the State,
- (d) to distribute money received as a result of commercial arrangements required by the *Totalizator Act 1997*, and
- (e) to allocate to harness racing clubs the dates on which they may conduct harness racing meetings.

The three racing controlling bodies for the thoroughbred, harness and greyhound racing sectors were established with almost identical functions under their respective legislation.

While the three racing codes have their unique features, they share the need for a governance structure that provides for the sustainable economic development and future viability of the racing industry, and which ensures the integrity of and public interest in, the conduct of racing and associated wagering.

The 2008 reform of the *Thoroughbred Racing Act 1996* was undertaken to introduce best practice and modern structures to the governance arrangements for the NSW thoroughbred racing industry. The centrepiece of the arrangements is an independent controlling board selected on merit using skills-based criteria. It was considered this approach was appropriate to provide for leadership to manage the future development and viability of the industry and provide for effective regulation of the industry.

In his 2008 review, Malcolm Scott reported that he could not find a reason that "supports any recommendation to change the current combination of both commercial and regulatory responsibilities within the single organisation, Racing New South Wales." In its response to the Malcolm Scott report, the then government expressed the view that the Racing NSW arrangements were considered an appropriate model for all three codes of racing.

The 2008 Five Year Review of the *Harness Racing Act 2002* and the *Greyhound Racing Act 2002* was of the opinion that an independent board structure provides a suitable basis to assume responsibility for both regulatory and commercial governance responsibilities. The view at that time was that as a matter of principle, separate controlling bodies for the 'commercial' and 'regulatory' functions do not necessarily enhance the achievement of best practice and that, as a general rule, Australian racing jurisdictions prefer a single industry board approach.

Notwithstanding this, the question remains as to whether this duality of purpose is appropriate and serves the best interests of the industry.

It is timely to revisit the question of whether a racing controlling body can objectively and effectively undertake the responsibilities as the regulator of the industry, while at the same time dedicate itself to the promotion and economic development of the industry as a whole.

Summary of submissions

The majority of submission makers who commented on the functions of HRNSW expressly support the retention of the current functions of HRNSW as provided for in the Act, whereby there is one board responsible for both the regulatory and commercial control of the harness racing industry. It was generally felt that the economic viability of the industry may be challenged if there were to be separate boards established with responsibility for these two functions.

There were suggestions made that while it is appropriate for one body to run both regulatory and commercial functions for the industry, it should be the "commercial function" that runs the "regulatory function". *[Submission Nos. 26 and 28]*

On the other hand, one submission maker suggested that there should be two separate boards – one for regulatory functions and one for commercial functions – claiming that it is inappropriate for one board to perform both sets of functions. *[Submission No. 31]*

The idea of establishing a separate commercial board responsible for commercial management functions including industry promotion was put forward by one submission maker.
[Submission No. 31]

There was a strong suggestion by two submission makers that the functions of the Board should be focussed more on commercial than regulatory with the regulatory side to report to the commercial side which should then report to the industry. *[Submission Nos. 26 and 28]*

It is suggested by a submission maker that it should be a requirement that any proposed capital expenditure by HRNSW must be approved by the industry first. *[Submission No. 28]*

In its submission, the current controlling body has suggested that an explicit power be introduced under the functions for HRNSW to distribute moneys received from commercial arrangements (other than those existing in relation to TAB distribution). *[Submission No. 29]*

One submission maker suggested that the functions provided for in the Act are inadequate and that the oversight of the current functions is also inadequate. This view appears to be based on the experiences of the submission maker in respect of disciplinary proceedings against them by HRNSW
[Submission No. 33 - confidential]

3.1.4 Powers of HRNSW

Overview

Under section 10 of the Act, HRNSW has power to do all things that may be necessary or convenient to be done for or in connection with the exercise of its functions, including power to do the following:

- (a) investigate and report on proposals for the construction of new racecourses, and inspect new racecourses or alterations or renovations to existing racecourses,
- (b) supervise the activities of harness racing clubs, persons registered by HRNSW and all other persons engaged in or associated with harness racing,
- (c) inquire into and deal with any matter relating to harness racing and to refer any such matter to stewards or others for investigation and report and, without limiting the generality of this power, to inquire at any time into the running of any harness racing horse on any course or courses, whether or not a report concerning the matter has been made or decision arrived at by any stewards,
- (d) direct and supervise the dissolution of a harness racing club that ceases to be registered by HRNSW,
- (e) appoint an administrator to conduct the affairs of a harness racing club,

- (f) disqualify a harness racing horse from participating in a race,
- (g) exclude from participating in a race a harness racing horse not registered under the rules,
- (h) prohibit a person from attending or taking part in a harness racing meeting,
- (i) impose a penalty on a person registered by it or on an owner of a harness racing horse for a contravention of the rules,
- (j) consult, join, affiliate and maintain liaison with other associations or bodies, whether in the State or elsewhere, concerned with harness racing,
- (k) enter into contracts,
- (l) acquire, hold, take or lease and dispose of real and personal property whether in its own right or as trustee,
- (m) borrow money,
- (n) order an audit of the books and accounts of a harness racing club by an auditor who is a registered company auditor nominated by HRNSW,
- (o) scrutinise the constitutions of harness racing clubs to ensure they conform to any applicable Act and the rules and that they clearly and concisely express the needs and desires of the clubs concerned and of harness racing generally,
- (p) publish material, including periodical publications, to inform the public about matters relating to harness racing, whether in the State or elsewhere,
- (q) undertake research and investigation into all aspects of the breeding of harness racing horses and of harness racing generally,
- (r) take such steps and do such acts and things as are incidental or conducive to the exercise of its powers and the performance of its functions.

The above powers place beyond doubt HRNSW's legal right to undertake certain actions in the performance of its regulatory and commercial functions.

Irrespective of any suggested changes to the current governance structure for the industry, in the interests of good governance, there would remain a need for provisions of the type replicated above.

Summary of Submissions

The majority of submission makers who commented on the powers of HRNSW agree that the majority of powers provided to HRNSW in the Act are appropriate and necessary for HRNSW to perform its functions.

It was suggested by one submission maker that in order to ensure the integrity of harness racing, the powers of HRNSW should be extended to include unlicensed persons. This would provide that an unlicensed person connected to the harness racing industry could be made to give evidence in integrity matters if required. *[Submission No. 25]*

This issue was also broached during the statutory review of the *Thoroughbred Racing Act 1996*, when the then Minister engaged the Racing Appeals Tribunal to provide specialist advice to the review on the subject. That review supported the recommendations of the Tribunal that Racing NSW be provided with powers over non-licensed persons.

There was concern expressed by three submission makers that HRNSW's powers under section 10(1) of the Act to do all things that may be necessary or convenient to be done for or in connection with the exercise of its functions is too broad, particularly in relation to the issue of liability. They were concerned with HRNSW having the power to do all things necessary or convenient in exercising its functions and suggested that there should be prescribed circumstances for HRNSW to utilise certain powers. *[Submission Nos. 26, 28 and 30]*

One submission maker *[Submission No. 30]* suggested that, to ensure appropriate oversight, HRNSW should be required to advise government prior to invoking certain powers it has under the Act, including its powers to:

- direct and supervise the dissolution of a harness racing club
- appoint an administrator to conduct the affairs of a harness racing club, and
- order an audit of the books of a harness racing club.

It was also suggested in one submission that the power for HRNSW to borrow money under section 10(2)(m) of the Act should be deleted, although no specific reasons are provided in the submission in support of this view. [Submission No. 27]

In its submission, the current controlling body states that the term 'administrator' as referred to in section 10(2)(e) is a broad term usually used in relation to a company or independent administrator. To take away any doubt, the controlling body suggests that this section should be amended to use the term 'interim industry administrator' to provide for the use of a HRNSW employee or suitably qualified persons to undertake the administrator functions to assist in minimising costs to the industry. [Submission No. 29]

HRNSW also submits that the legislation does not provide it with any express power to distribute revenue other than money received as a result of commercial arrangements required by the *Totalizator Act 1997*. HRNSW argues that the treatment of revenue derived from other sources in the same manner as money received under the Racing Distribution Agreement with Tabcorp could result in inequity of distribution throughout the industry. Therefore an express power to distribute other revenue, such as that derived from race fields information use approval fees, should be provided for in the Act. [Submission No. 29]

One submission maker suggests that the powers provided for in the Act are inappropriate believing that HRNSW has too much power over industry participants. The same submission maker suggests that the oversight of the current powers is inadequate. [Submission No. 33 - confidential]

3.1.5 Composition of Harness Racing NSW

Overview

HRNSW consists of five members recommended by a selection panel appointed by the Minister. The Minister also appoints a probity adviser to assist the selection panel. The selection process and eligibility requirements for appointment are set out in sections 6 and 7 of the Act.

Selection is based on merit, with merit to be determined on the basis of a candidate's abilities, qualifications, experience and personal qualities that are relevant to the performance of the duties of membership of HRNSW.

The selection panel must not recommend a person for appointment as a member of HRNSW unless the Panel is satisfied that the person has experience in a senior administrative role or experience at a senior level in one or more of the fields of business, finance, law, marketing, technology, commerce, regulatory administration or regulatory enforcement.

A person is not eligible to be a member of HRNSW if the person:

- (a) is an employee of a harness racing club,
- (b) is a member of the governing body of a harness racing club or eligible industry body,
- (c) is registered by or with HRNSW under the Act,
- (d) is registered or licensed by or with Greyhound Racing NSW (GRNSW) under the *Greyhound Racing Act 2009*,
- (e) holds a licence issued by Racing New South Wales,
- (f) is currently, or during the previous 10 years has been, warned off, disqualified or named on the Defaulters List under the rules,
- (g) during the previous 10 years has been convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more, or convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable,
- (h) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankruptcy,
- (i) is a mentally incapacitated person.

In addition, a person is not eligible to hold office as a member of HRNSW for more than 8 years in total (whether or not involving consecutive terms of office).

Schedule 1 of the Act sets out the provisions relating to members of HRNSW which include the following.

- Terms of office are for up to four years and the members elect a Chairperson from among themselves.
- The office of a member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not reappointed, or
 - (c) resigns the office by instrument in writing addressed to HRNSW, or
 - (d) is absent from four consecutive meetings of HRNSW of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by HRNSW or unless, before the expiration of four weeks after the last of those meetings, the member is excused by HRNSW for having been absent from those meetings, or
 - (e) becomes a person who is not eligible to be a member, or
 - (f) is removed from office.
- The Minister may, on the recommendation of HRNSW, remove a member from office for incapacity, incompetence, misbehaviour or a contravention of the code of conduct adopted by HRNSW.

On 27 March 2014 the report of a special purpose review undertaken by OLGR of the appointment process for HRNSW and GRNSW was tabled in Parliament. The review recommended enhancements that included strengthening the eligibility and disclosure of interest requirements in the legislation. Specifically, the review recommended that the appointments process arrangements for HRNSW and GRNSW should be altered to:

- (a) provide for the Minister to appoint five members of the controlling body based on selections made from lists of persons recommended for appointment that have been provided to the Minister by a specially established selection panel,
- (b) provide that the Minister must select persons to fill casual vacancies in the membership of the controlling body from lists of persons recommended for appointment provided by the controlling body,
- (c) provide that a person is not eligible to be appointed as a member of the controlling body if the person is currently, or during the previous 12 months has been, either an employee or member of a governing body of a race club, racing association or eligible industry body,
- (d) provide that the selection panel cannot include a person in a list of persons recommended for appointment as members of the controlling body if the panel is satisfied that a relevant pecuniary conflict of interest will result, and
- (e) provide for the Chairperson and Deputy Chairperson of the controlling body to be appointed by the Minister based on selections made from a list of persons recommended for appointment provided by the selection panel.

In addition, the review recommended that members of the controlling body should not participate in the making of decisions in which they have a pecuniary conflict of interest, and provision should be made to enable the Minister to remove a member who participates in the making of a decision where he or she has such a conflict of interest or has a relevant continuing conflict of interest.

In effect, the implementation of these recommendations would bring the requirements for membership of HRNSW and GRNSW into line with that of Racing NSW.

The report of the five year statutory review of the *Thoroughbred Racing Act 1996*, tabled in the NSW Parliament on 6 August 2014, also recommended that consideration be given to aligning the appointment processes of Racing NSW, HRNSW and GRNSW.

That review also noted that the provisions in the *Thoroughbred Racing Act 1996* dealing with conflicts of interest at the time of (and arising after) appointment of members of Racing NSW were strengthened in 2011. The review report recommended that it would, as a matter of good governance, be appropriate for similar strengthening of the conflict of interest provisions in relation to the Acts that establish HRNSW and GRNSW.

The shift to an independent board model for HRNSW and GRNSW in 2009 was considered best practice at that time. This reform was aimed at removing questions around a representative member's ability to manage real and perceived conflicts of interest between their duty to the board and to the NSW harness industry as a whole, as opposed to the interests of the stakeholder group or race club by whom they were nominated/elected for appointment.

The recent reviews build on that policy position and recommend strengthening the eligibility and conflict of interest provisions of the Acts. Consideration of implementing these recommendations was deferred pending this review and the statutory review of the *Greyhound Racing Act 2009*.

Summary of Submissions

Submissions Nos. 1 to 21 are the same form letter signed by 21 different people. The letter suggested that it would be inappropriate and unacceptable for the board appointments selection panel to provide a list of names and for the Minister to choose persons to appoint from that list. It also suggested that it would be inappropriate and unacceptable for the Minister to appoint the Chairperson and Deputy Chairperson of the board. In addition, it suggested the government should not be involved in the selection of members to HRNSW. The submissions did not provide material or evidence in support of these statements.

The majority of other submission makers requested that the composition of the board of HRNSW be amended to include at least one representative of industry participants to ensure the Board has access to appropriate industry expertise. There was a general feeling that a Harness Racing Industry Consultation Group representative would be an appropriate avenue to achieve this.

Similarly, the NSW Harness Racing Club Ltd (NSWHRC) submitted that there should be industry representation on the board and that it should also have a separate representative on the Board. *[Submission No. 30]*

There was a suggestion by three submission makers that all persons appointed as a member of HRNSW should have industry knowledge. *[Submission Nos. 23, 27, 28]*

The current controlling body submitted that the current structure is considered appropriate and that, should the Government wish to have greater involvement, an option could be for the Minister to directly appoint one person to the board. *[Submission No. 29]*

In order to provide for a younger fresh approach to the future direction of the industry, one submission maker suggested the selection criteria should be 'loosened' to give younger and less experienced people the opportunity to apply to be a member of HRNSW. *[Submission No. 22]*

A number of submission makers suggested that the eligibility restrictions should be 'loosened' to allow industry employees and appointed persons to apply to be a member of HRNSW, and if successful to step down from their industry position. *[Submission Nos. 22, 23, 26, 28 and 30]*

Included in the list of skills criteria for board appointments should be Sports marketing suggested one submission maker, while the controlling body suggested the inclusion of a requirement for rural and equine business experience. *[Submission Nos. 27 and 29 respectively]*

A number of submission makers suggested that a member of the Harness Racing Industry Consultation Group (general consensus was the Chair) should be included in the selection panel for appointment of members to HRNSW. *[Submission Nos. 22, 23, 26, 27 and 28]*. However, the controlling body suggested that HRICG should not be involved in the selection process for members of HRNSW due to potential for conflicts of interest. *[Submission No. 29]*

The current controlling body suggested that, in order to assist the board in functioning at its optimum, the selection panel should bear in mind the makeup of the HRNSW Board at the time and attempt to ensure that the broadest cross section of skills sets is achieved when recommending appointments to the board *[Submission No. 29]*.

The controlling body also submitted that the Act should include a provision to appoint a Deputy Chairperson to the board, and was strongly opposed to any proposal for the Minister to appoint the Chairperson (and Deputy Chairperson), citing that this should remain a responsibility of existing board members [Submission No. 29].

The controlling body also suggested an amendment to the Act to prescribe a date in February for the annual election of the Chairperson and Deputy Chairperson [Submission No. 29].

The NSW Harness Racing Club Ltd submitted that should there be a change to the composition of HRNSW, the Chairperson should be selected from independent members on the board, voted on by the industry members and approved by the Minister [Submission No. 30].

The idea that the board of HRNSW should comprise a representative from each industry group, be overseen by a team of three government officials with input from HRICG and be supported by a veterinary review board of three was suggested by one submission maker [Submission No. 26].

3.1.6 Harness Racing NSW Strategic Plan

Overview

In broad terms the corporate responsibilities of the Board of HRNSW include:

- promoting ethical and responsible decision-making by harness racing officials,
- ensuring compliance with laws, regulations, appropriate accounting standards and corporate policies,
- approving the annual operating budget and monitoring financial performance of the industry in general,
- approving and monitoring capital expenditure,
- monitoring risk management to ensure that the interests of industry stakeholders and the public are protected,
- recognising the legitimate interests of stakeholders and ensuring that the industry is kept fully informed of all material developments in relation to harness racing, and
- setting and reviewing the strategic direction of the industry,

Summary of Submissions

Many submission makers did not comment on the issue of a HRNSW Strategic Plan. Those that did agreed that it is a necessary function but were critical that HRNSW generally did not complete it in a timely manner, nor communicate it effectively to the industry.

Findings in relation to theme 1

To provide a statutory governance framework for the sustainable economic development and future viability of the harness racing industry

The review notes that the general consensus in the submissions received is that there is a need for the NSW harness racing industry to continue to be regulated, and that the current Act provides an appropriate basis for the industry to sustain the economic development and future viability of the harness racing industry.

There are a number of suggestions for improvements to the Act.

The review considers that the policy objectives of the Act should be specified to provide additional clarity and guidance to decision makers and those exercising responsibilities under the legislation. This would also help to promote consistency and establish benchmarks against which the success or otherwise of the operation of the Act can be evaluated. The policy objectives should be sufficiently broad to capture all of the outcomes sought to be achieved through the operation of the Act.

Suggestions that relate to the economic development and future viability include matters such as placing more importance on the commercial functions of HRNSW with the regulatory functions reporting to the commercial side of the controlling body.

Other suggestions are that it should be a requirement that any proposed capital expenditure by HRNSW should be approved by the industry first.

The current controlling body suggests that an explicit power be introduced under the functions for HRNSW to distribute moneys received from sources other than those derived from the TAB distribution, such as race fields information use approval. The review is not convinced that there is a need for the Act to provide HRNSW with an express power to distribute or otherwise deal with revenue received outside of the racing industry's commercial arrangements with Tabcorp.

Section 9(2)(d) of the Act provides that it is a function of HRNSW to distribute money received as a result of commercial arrangements required by the *Totalizator Act 1997*. That Act ensures the NSW racing industry's major source of income, as it requires the Minister to be satisfied that there are appropriate commercial arrangements in place with Tabcorp that are satisfactory to the racing industry.

Prior to TAB privatisation, the TAB (then a statutory authority) distributed revenue to the racing controlling bodies and individual race clubs. Section 9(2)(d) of the *Harness Racing Act 2009* and its identical provision in the *Greyhound Racing Act 2009*, together with similar provisions in the *Thoroughbred Racing Act 1996*, provide the racing controlling bodies with the responsibility for distributing that revenue to race clubs in accordance with their own 'intra code' policies.

As corporate bodies and pursuant to their general powers under the legislation, the racing controlling bodies are free to deal with any additional income derived from sources such as race fields information use approval fees, sponsorship and the sale of industry assets. Accordingly, the review does not see a need for an express provision to be included in the Act to deal with individual revenue streams other than that from Tabcorp.

HRNSW has also suggested an amendment to section 10(e) of the Act to differentiate the appointment of an administrator by the racing controlling body to conduct the affairs of a race club, as opposed to the appointment of an administrator under Corporations Law. This is also a provision that is common to the legislation for all three racing controlling bodies.

The review notes that in recent times both Racing NSW and Greyhound Racing NSW have had cause to exercise this power. While the review is unaware of any difficulties faced by those bodies because of the construct of the provision, it would be a relatively simple matter to amend the Act to provide clarity on this issue.

Some submission makers suggest that the Act currently gives HRNSW powers that are too broad by giving the controlling body the power to do all things that may be necessary or convenient to be done for or in connection with the exercise of its functions. It has also been suggested that HRNSW should be required to advise government prior to invoking certain powers it has under the Act.

The review notes that it is clear that industry participants want assurance that members of HRNSW not only have the skills and experience required for membership, but are also appropriate to enhance the performance of the functions of the controlling body.

The selection panel would be expected to give due regard to a person's suitability for the role as a member of HRNSW and whether they would be committed to the functions of the controlling body as set out in the Act. However, the review suggests that the appointment process could be strengthened by including a statutory requirement that the selection panel must give consideration to whether a proposed appointee's skills and experience align with the functions of the controlling body.

The role of the selection panel is paramount in ensuring that the industry is provided with strong leadership. Under the present arrangements, the Minister is to establish the selection panel. There is no impediment to the Minister appointing a harness racing industry participant or stakeholder representative as a member of the selection panel.

Concerns that industry stakeholders have little input into the composition of HRNSW might be addressed by a statutory requirement that the selection panel must include an industry participant or

stakeholder representative. Under such an arrangement, the HRICG could be given the responsibility of nominating the industry stakeholder representative on the selection panel. Alternatively, the Act could provide that the Chairperson of HRICG is to be a member of the selection panel.

Given the similarities in regulatory frameworks between the harness racing and greyhound racing sectors, it is likely that the findings of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales will have some relevance to the economic development and future viability issues for the harness racing sector discussed above. This is particularly the case in regard to the selection process for, and the structure, composition and skills required of, the board of HRNSW. It would therefore be appropriate to consider the outcomes from the Special Commission of Inquiry in determining the best way forward in relation to these issues.

In any event, the review is of the opinion that the current restriction in section 33 of the Act that effectively prevents a member of HRICG from being appointed a member of the selection panel should be removed.

Section 12 of the Act requires that HRNSW is to prepare a strategic plan at least every three years and that the strategic plan must be prepared in consultation with HRICG and other harness racing industry stakeholders.

This requirement is intended to ensure that harness racing clubs, registered participants and other industry stakeholders have an input into the future direction and sustainability of the industry. The harness racing industry is self funded and independent of government. In the past it has asserted its right to manage its own affairs and section 12 of the Act provides industry participants with the opportunity to take part in that process.

The review considers that section 12 could be strengthened by providing that Harness Racing NSW must develop and initiate a formal program of consultation with industry stakeholders in connection with the initiation, development and implementation of policies for the promotion, strategic development and welfare of the harness racing industry (such as the development of strategic plans). The program should be published on the Harness Racing NSW website as a transparency requirement to ensure stakeholders are aware of the opportunities provided by the consultation program.

Recommendation 2

That the Act be amended so that it includes specific policy objectives that:

- a) provide for the efficient and effective regulation of the NSW harness racing industry
- b) protect the interests of the harness racing industry and its stakeholders
- c) facilitate the development and operation of a sustainable and viable industry
- d) ensure the integrity of harness racing and associated wagering in the public interest
- e) provide for the functions and the powers of regulatory bodies
- f) ensure industry stakeholder engagement and participation in the strategic development of the harness racing industry as a whole

The objectives should also address any other relevant issues arising from the outcomes of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales.

Recommendation 3

That the Act be amended to differentiate the appointment of an administrator by the racing controlling body to conduct the affairs of a race club from the appointment of an administrator under the Corporations Law.

Recommendation 4

That the selection process for, and the structure, composition and skills required of, the board of Harness Racing NSW be considered in light of the outcomes of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales, having regard to the issues raised in this review..

Recommendation 5

That the appointment process for membership of Harness Racing NSW be strengthened by including a statutory requirement that the selection panel must give consideration to whether a proposed appointee's skills and experience align with the functions of the racing controlling body.

Recommendation 6

That section 33(1)(a) of the Act be amended to permit a member of the Harness Racing Industry Consultation Group to be appointed as a member of the selection panel for purpose of recommending the appointment of members of Harness Racing NSW.

Recommendation 7

That section 12 of the Act be strengthened by providing that Harness Racing NSW must develop and initiate a formal program of consultation with industry stakeholders consistent with the existing requirements of section 12 of the Act, and that the program be published on the Harness Racing NSW website.

3.2 Theme 2: Governance Framework - Integrity

3.2.1 Harness Racing NSW Code of Conduct

Overview

To facilitate best practice governance, HRNSW is required by Clause 16 of Schedule 1 of the Act to have a Code of Conduct for its members and staff to provide guidance in undertaking corporate responsibilities. A Code of Conduct is an important tool in maintaining the integrity of the organisation in exercising its statutory powers and functions.

HRNSW must review its code of conduct at least every three years and make such changes to it as it considers appropriate.

Summary of Submissions

The majority of submission makers who commented on the HRNSW Code of Conduct and/or conflict of interest issues suggested that the provisions currently in the Act are appropriate.

However, strengthening of the conflict of interest provisions was suggested by two submission makers. One argued that these provisions can equally apply with board members being representative of different interest groups within the industry, while the other supported the recommendation of the statutory review of the *Thoroughbred Racing Act 1996* that the conflict of interest and disclosure figures for members of the boards of all three controlling bodies should be brought into line [*Submission Nos. 26 and 35*]. One submission maker suggested that the issue of conflicts of interest is "overstated" [*Submission No. 23*].

To enhance transparency, one submission maker suggested that the HRNSW Staff Code of Conduct should be made available for viewing by industry participants [*Submission No. 33 - confidential*]. The review notes that the Code of Conduct for members of the board of HRNSW is available for viewing on its website. It would be a simple matter for the HRNSW Staff Code of Conduct to be similarly displayed and HRNSW should be required to do so.

3.2.2 Harness Racing Integrity Auditor

Overview

The Act requires HRNSW to appoint a person who, in the opinion of HRNSW, has suitable legal qualifications to hold the office of Harness Racing Integrity Auditor. The appointment has no effect unless it is approved by the Minister.

The Integrity Auditor has the following functions:

- (a) the primary oversight of those aspects of the functions of HRNSW that relate to stewards, drug testing and control and registration,
- (b) providing advice to HRNSW on the above matters, and
- (c) receiving and investigating complaints against racing officials in respect of the exercise of functions relating to harness racing.

On receiving a complaint from a person, the Integrity Auditor must investigate the complaint with due diligence unless the Integrity Auditor considers that the complaint:

- (a) is frivolous, vexatious or not made in good faith, or
- (b) is trivial, or
- (c) does not relate to the exercise of functions by a racing official in a corrupt, improper or unethical manner.

The Act also requires the Integrity Auditor to provide a report in writing of the results of the investigation of a complaint to HRNSW and the Minister if satisfied that those results indicate that there has been a contravention of the legislation or any other Act in relation to the conduct of harness racing or a contravention of the code of conduct adopted by HRNSW. The Act does not currently require the Integrity Auditor to provide a report if no contravention is found.

Concerns were expressed to the recent Legislative Council Select Committee on Greyhound Racing in NSW by greyhound racing industry participants relating to the independence of the similar role of Greyhound Racing Integrity Auditor in place for the greyhound industry. In addition, comment has been made regarding what is perceived to be the limited scope and powers of the Greyhound Racing Integrity Auditor to undertake an inquiry of its own motion.

While the level of concern within the State's harness racing industry regarding the Harness Racing Integrity Auditor is not evident from submissions made to the review, it is noted that the Select Committee on Greyhound Racing made the following recommendations:

1. That the integrity roles of the three racing codes be reviewed, with the aim to establish a single Racing Integrity Commissioner to oversee thoroughbred racing, harness racing and greyhound racing.
2. That the proposed Racing Integrity Commissioner should have the following powers over each racing body:
 - to conduct annual audits of the internal integrity processes and systems,
 - to investigate complaints made about the integrity processes and systems,
 - to conduct own motion inquiries that do not relate to any specific complaint and may include an investigation into systematic issues in racing, and
 - to facilitate the exchange of information between the controlling bodies, the NSW Police and other law enforcement agencies, as appropriate.

The Select Committee also recommended that the proposed Racing Integrity Commissioner be funded by government, independent of the controlling bodies.

The Government has previously expressed the view that public confidence in the integrity of the racing industry is vital to the future development and sustainability of the industry as a whole. It is considered that there should be from time to time a review of the integrity assurance arrangements for the industry to ensure they reflect best practice.

In response to the Select Committee's recommendations, the Government indicated that a working party established during the first half of 2015 would examine the current corruption prevention and detection arrangements for the racing industry and the merits or otherwise of having Harness Racing NSW, Racing NSW and Greyhound Racing NSW declared public authorities for the purposes of the *Independent Commission Against Corruption Act 1988*.

It is also proposed that the working party would review the overall integrity arrangements for the NSW racing industry, including the independence and role of the Integrity Auditor.

The review notes that the recently established Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales has broad terms of reference to review the integrity arrangements for the NSW greyhound racing industry. The findings and recommendations of the Inquiry may have an impact on the future integrity arrangements for all three codes of racing.

Summary of Submissions

The majority of submission makers who commented on the Harness Racing Integrity Auditor believed that the position was not advertised or advised widely enough to industry participants and the general public. Most that commented that the role of Integrity Auditor should be further promoted to the industry.

Three submission makers suggested that the Integrity Auditor should report on all investigations and for the reports to be made public [*Submission Nos. 23, 26 and 27*].

The NSW Harness Racing Club submitted that the Integrity Auditor reports should only be made public if there is a contravention, otherwise there is a risk of tarnishing reputations with unfounded complaints [*Submission No. 30*].

The NSW Harness Racing Club also submitted that the Act should be amended to stipulate that the Integrity Auditor is independent [*Submission No. 30*].

To assist in ensuring that the role is seen as independent, two submission makers suggested that the appointment of the Integrity Auditor should be made by government rather than HRNSW. [*Submission Nos. 27 and 28*].

All racing controlling bodies should come under the purview of the Independent Commission Against Corruption (ICAC) according to one submission maker [*Submission No. 24*]. The controlling body also suggested that there is merit in a proposal for the regulatory and integrity functions of racing controlling bodies to come under the purview of ICAC [*Submission No. 29*].

The current Integrity Auditor submitted that he believes participants' awareness of the Integrity Auditor role has increased in recent times and that it is his current practice to report monthly to HRNSW on all complaints received [*Submission No. 34*].

Another issue raised by the Integrity Auditor in his submission was the concern if he were to be required to make all reports public. He sees this as a confidentiality issue if there are no contraventions. In addition, he suggested that matters before him that require referral to other enforcement agencies or the courts are required to be kept confidential [*Submission No. 34*].

Further, the current Integrity Auditor submitted that he believes 'own motion' powers should relate to matters identified by the Integrity Auditor "in consultation with the controlling body" [*Submission No. 34*]. In addition, the Integrity Auditor submitted that the requirement to share information between the Integrity Auditor, the controlling bodies and the NSW Police would be best formalised in the Act [*Submission No. 34*].

Finally, it is the view of the current Integrity Auditor that future appointments of Integrity Auditors should be made following selection by a panel comprising representatives of HRNSW, Greyhound Racing NSW, the Minister (independent representative) and appropriate industry groups [*Submission No. 34*].

The issue of the establishment of an Independent Racing Integrity Commissioner to oversee the three codes of racing, in line with the Legislative Council Select Committee on Greyhound Racing's recent recommendation on this issue was supported to two submission makers [*Submission Nos. 24 and 32*].

Findings in relation to theme 2

To provide a statutory framework for the integrity of the conduct of harness racing and associated wagering on harness racing

Conflict of Interest and Disclosure

The review supports the recommendations of the Special Purpose Review of the HRNSW and GRNSW appointments process and of the statutory review of the *Thoroughbred Racing Act 1996* that the conflict of interest and disclosure provisions for members of HRNSW and GRNSW should be brought into line with those that apply to members of Racing NSW.

It is expected, however, that the findings and recommendations of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales will have some relevance to the governance and integrity arrangements for the harness racing industry, and quite possibly the thoroughbred racing industry. Accordingly the review recommends that further consideration be given to this important issue after the findings and recommendations of the Special Commission of Inquiry are known.

Code of Conduct

The review notes that HRNSW duly makes available on its website the Code of Conduct for board members. However it does not display its Code of Conduct for Staff. This is an anomaly, particularly when industry participants are required to acknowledge and sign a Code of Conduct for Licensees prior to being issued with a licence to participate in harness racing in this State. HRNSW should be required to make its Staff Code of Conduct available for viewing on its website.

Harness Racing Integrity Auditor

The review appreciates that there are a range of opinions about the optimal process for the appointment of the Integrity Auditor. The review sees merit in changing the way the Integrity Auditor is appointed, as there is the potential for a perception of a lack of independence where the appointment to the position is made by the controlling body.

The review appreciates the view that it is appropriate for the Integrity Auditor, as the responsible expert, to determine which investigations or matters are necessary to be reported on and to whom, whether it be the controlling body and/or the Government. However, there is again a range of views on this issue.

Given that the appointment structure and reporting structure for the Harness Racing Integrity Auditor are mirrored in the legislation for greyhound racing, it is likely that the findings of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales will also have some relevance to integrity controls relating to harness racing. It would therefore be appropriate to consider the outcomes from the Special Commission of Inquiry in determining the most effective reforms to ensure the integrity of the conduct of harness racing and associated wagering on harness racing.

Integrity

The review notes that the Legislative Council Select Committee on Greyhound Racing recommended (recommendation 4) that the NSW Government consider amending the *Independent Commission Against Corruption Act 1988* so that the racing industry is brought within the jurisdiction of ICAC.

As mentioned previously, the Government working party established in the first half of 2015 is to examine the current corruption prevention and detection arrangements for the racing industry and the merits or otherwise of having Harness Racing NSW, Racing NSW and Greyhound Racing NSW declared public authorities for the purposes of the *Independent Commission Against Corruption Act 1988*. It is understood that the working party would review the overall integrity arrangements for the NSW racing industry, including the independence and role of the Integrity Auditor.

One submission maker suggests that the powers of HRNSW should be extended to include unlicensed persons, in line with recommendations made by the Racing Appeals Tribunal. The review sees merit in this suggestion, however is cognisant of the concerns raised by veterinary practitioners and others

that to proceed with implementation would, in effect, create a parallel licensing system and duplicate requirements. It is likely that this issue could be resolved by taking a more nuanced approach, in effect limiting the extension of powers to unlicensed persons to apply only where a parallel licensing regime does not govern the activity of the unlicensed person. Where a parallel licensing regime does exist, such as in the case of veterinary practitioners, compliance with requirements to give evidence in relevant Stewards inquiries should be made a condition of a person's licence or be dealt with as a disciplinary matter under the parallel regime, as appropriate.

The review notes the suggestion that it should be a requirement that any proposed capital expenditure by HRNSW should be approved by the industry first. However, the review considers that under the current structure of the industry, it is appropriate for the controlling body to have the power to determine capital expenditure.

The review also believes that the power under section 10(1) of the Act to do all things that may be necessary or convenient to be done for or in connection with the exercise of its functions is appropriate as there are occasions when the controlling body is required to use this provision to perform necessary functions. It is incumbent on that body to ensure that it exercises its powers appropriately.

The review notes the Select Committee's recent recommendation for the establishment of a Racing Integrity Commissioner to oversee the three codes of racing. The review considers it appropriate to await the outcome of the Working Party that is to examine the corruption prevention and integrity arrangements for the whole of NSW racing industry. The review therefore recommends that the issue is best left dealt with by that process.

It is noted that although not raised by HRNSW itself, in a submission to the review, the Racing Appeals Tribunal pointed to need for the racing controlling bodies to have powers over unlicensed persons to ensure the integrity of the racing industry as a whole. The review notes that this was a recommendation of 2014 statutory review of the *Thoroughbred Racing Act 1996* and the Tribunal was specifically engaged to provide advice on the issue to that review.

Racing NSW has sought these powers for some time and has highlighted cases such as the investigation into the run of the horse More Joyous in the Group 1 All Aged Stakes at Royal Randwick on 27 April 2013. Following allegations by prominent racehorse owner John Singleton that bookmaker Tom Waterhouse knew that More Joyous was unfit to race, Racing NSW opened an Inquiry into the matter. Mr Eddie Hayson was questioned by Stewards as part of that Inquiry, but refused to provide Stewards with the names of two persons that had provided him with confidential information concerning More Joyous before she raced in the All Aged Stakes.

Racing NSW claimed that Mr Hayson's refusal to supply this information obstructed and/or hindered the Stewards in their investigation, a situation which was taken very seriously by the controlling body, which could have been overcome if the Stewards had the power to compel the witness to provide the evidence.

In addition to a general power over unlicensed persons, Racing NSW has sought to require the registration of veterinary surgeons who undertake work within the thoroughbred racing industry, so as to be able to compel them to attend inquiries and to provide evidence. This has been strongly opposed by Australian Veterinarians Association and Racing NSW has deferred the introduction of this new requirement indefinitely.

The review considers that, subject to consideration of the findings and recommendations of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales, this is an important integrity issue for the industry that should be progressed.

Autonomy of HRNSW

To give greater autonomy to the harness racing industry in relation to both commercial and regulatory decision making

Industry governance is a “big picture” issue for the whole of the NSW racing industry. The review appreciates that the recent governance and regulatory performance issues facing the greyhound racing industry have justifiably raised questions about the adequacy and effectiveness of existing statutory frameworks. This is a particular focus of the current Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales. The outcomes of that inquiry as they relate to industry governance and regulation will be relevant to the harness racing sector given the similarities.

The review therefore considers that the issue of the autonomy of HRNSW and its relationship with government be considered once the outcomes of the Special Commission of Inquiry are known.

Recommendation 8

That the eligibility and conflict of interest requirements for appointment as a member of Harness Racing NSW be strengthened by being brought into line with those which apply to membership of Racing NSW, and that the Code of Conduct for staff of Harness Racing NSW be publicly available.

Recommendation 9

That subject to consideration of the recommendations and findings of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales and other racing industry integrity related reviews, the Government should progress work to

- a) Provide the three racing controlling bodies with certain powers over unlicensed persons, where no parallel licensing regime exists; and
- b) incorporate compliance with requirements to provide evidence to Stewards inquiries into relevant existing licensing and certification frameworks, such as that provided for by the *Veterinary Practice Act 2003*.

Recommendation 10

That the provisions in the Act relating to the integrity of the harness racing industry, including provisions governing the appointment and functions of the Integrity Auditor, be considered in light of the outcomes of the Working Party to be established to examine the corruption prevention and integrity arrangements for the whole of NSW racing industry, and of the outcomes of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales.

Recommendation 11

That the issue of the autonomy of HRNSW and its relationship with government be considered in light of the outcomes of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales.

3.3 Theme 3: Consultation and Reporting

3.3.1 Harness Racing Industry Consultation Group

Overview

The Harness Racing Industry Consultation Group (HRICG) is established by Part 5 of the *Harness Racing Act 2009*. HRICG has the function of consulting with and making recommendations to HRNSW on matters concerning harness racing in the State. Clause 6 of Schedule 2 of the Act requires that HRICG must hold a meeting with one or more members of HRNSW (one of whom must be the Chairperson or Chief Executive Officer) no less than six times per year.

HRICG is made up of:

- (a) one person nominated by the New South Wales Harness Racing Club,
- (b) one person nominated by the clubs funded by HRNSW as TAB clubs,
- (c) one person nominated by the clubs funded by HRNSW as non-TAB clubs,
- (d) no more than three persons, each to be nominated by a different eligible industry body.

The Minister, in consultation with HRNSW, determines from time to time the eligible industry bodies.

A person is not eligible to be a member of HRICG if the person:

- (a) is a member of the selection panel, or
- (b) is a member of HRNSW, or
- (c) is currently, or during the previous 10 years has been, warned off, disqualified or named on the Unpaid Forfeit List under the rules, or
- (d) during the previous 10 years has been convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more, or convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (e) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankruptcy, or
- (f) is a mentally incapacitated person.

In addition, proposed members of HRICG must undergo a probity check by HRNSW.

Summary of Submissions

The majority of submission makers who commented on the issue of consultation expressly support the retention of the Harness Racing Industry Consultation Group (HRICG) as the appropriate industry participant body, with the most suggesting it should have more powers and involvement in decision making for the harness racing industry. There is also a general feeling in the majority of submissions that there is currently not enough communication from HRNSW to industry participants and that the Act should be amended to strengthen the provisions for HRNSW to consult with the industry more often.

For example, provision should be made for the inclusion of a Trotters representative on HRICG in the view of one submission maker [*Submission No. 22*]. And more extensive written communication from HRNSW and HRICG to industry participants, along with a requirement that HRICG Meeting Minutes be made available to all participants for transparency, was suggested by one submission maker [*Submission No. 23*].

The NSW Harness Racing Club submitted that consultation between HRNSW and the industry would be improved with industry representation on the board of HRNSW [*Submission No. 30*].

The current controlling body suggested that the selection panel for appointments to HRNSW should include eminent industry persons who are not aligned with any formal industry body [*Submission No. 29*]. The controlling body also suggested that there be provision for a person with industry experience to be appointed to the board of HRNSW, so long as that person is not a member of a formal body or race club. HRNSW has also suggested a number of amendments to the manner in which HRICG members are appointed [*Submission No. 29*].

3.3.2 Reporting Requirements

Overview

Section 16 of the Act requires that HRNSW must, as soon as practicable after 30 June, and in any case before 1 November in each year, prepare and forward to the Minister a report of its work and activities for the 12 months ending on that 30 June. The report must include copies of the financial statements of HRNSW for the 12-month period to which the report relates together with an auditor's report on those statements prepared by an independent auditor.

The Minister is to table the report or cause it to be tabled in the Parliament as soon as practicable after it is forwarded to the Minister.

HRNSW is also to make copies of the report available to the public at a reasonable price. In this respect, HRNSW publishes an electronic version on the website www.harnessmediacentre.com.au which is freely accessible.

Separately to this requirement, HRNSW regularly reports on issues within the industry such as the results of stewards' inquiries and appeals to the independent Racing Appeals Tribunal, and provides notices to industry participants by way of its website.

These reporting requirements are directed at ensuring that, while HRNSW conducts its activities and exercises its functions independent of government, it is not immune from scrutiny by the Minister, Parliament and industry stakeholders.

Summary of Submissions

The majority of submission makers who commented on HRNSW reporting requirements suggested that there should be requirements for HRNSW to report to both government and industry on a more regular basis.

The controlling body submits that it is appropriate for the government to continue monitoring the three codes of racing and that, as HRNSW does not represent the government, the tabling of an annual report in Parliament is an appropriate report mechanism. *[Submission No. 29]*

Findings in relation to Theme 3

The review notes that, in considering the submissions received, the Harness Racing Industry Consultation Group (HRICG) is generally well received by the industry. However, some stakeholders are of the view that it should have greater powers and ability to influence the decisions of the controlling body.

There is also suggestion that the Act should place a stronger onus on HRNSW consulting with HRICG and other industry stakeholders and participants on more issues and more regularly.

As mentioned earlier, many submission makers suggest that to improve consultation with the industry, the board of HRNSW should include an industry representative and that HRICG was the appropriate vehicle for this to occur.

The review sees merit in the HRICG taking a more prominent role in the industry, without impinging on the powers of HRNSW. One manner in which this can occur is by permitting a member of HRICG to serve as a member of the selection panel for the appointment of members of HRNSW – see Recommendation 5. Nevertheless, it is considered that a clearer position regarding the future role of HRICG will be determined after consideration of the outcomes of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales, given that the legislation establishing the Greyhound Racing Industry Consultation Group is identical.

With regard to HRNSW Code of Conduct and HRNSW Conflicts of Interest provisions, the controlling body advises that Board members are required to declare potential conflicts of interest as part of the agenda for Board meetings. They are also required to exclude themselves from the room during discussions on an item where a conflict or potential conflict arises. The review considers that the current arrangements are in line with code of conduct and conflict of interest provisions applying to similar organisations and are appropriate.

Of those that commented on HRNSW's reporting requirements in the Act, the majority suggest that HRNSW should be required to report to both government and industry on a more regular basis. However, the review notes that the controlling body is of the view that the current reporting requirements are sufficient and appropriate.

The review again notes that there are similarities in regulatory frameworks to facilitate consultation between the harness racing and greyhound racing sectors, and that it is likely that the findings of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales may have

some relevance to this issue. It would therefore be appropriate to consider the outcomes from the Special Commission of Inquiry in determining how the statutory framework for consultation can be enhanced. The Inquiry outcomes will need to be considered along with the views noted above that were expressed in submissions.

Recommendation 12

That the Act be amended to require Harness Racing NSW to implement methods and procedures (which must be published on its website) for communicating industry developments and policy decisions, including details of its interactions with the Harness Racing Industry Consultation Group, to ensure there is timely and comprehensive understanding by all industry participants and stakeholders.

3.4 Theme 4: Animal Welfare

Overview

Persons and organisations with a close interest in the horse racing industry have previously expressed strong concerns about animal welfare issues, including the alleged mistreatment of horses either during or after their racing careers.

The oversight of animal welfare generally in NSW falls within the scope of the *Prevention of Cruelty to Animals Act 1979*. The objects of that Act are to prevent cruelty to animals in general within NSW and to promote the welfare of animals by placing certain responsibilities upon a person in charge of an animal. The legislation provides for the powers of RSPCA inspectors and NSW Police to enter land, examine animals and for the search and seizure of evidence in relation to possible breaches of that Act. It also provides for action to be taken for alleged breaches and for penalties to be imposed on a person found guilty of an offence.

The *Harness Racing Act 2009* does not specifically address animal welfare matters. However, it is accepted that as the controlling body for harness racing in this state, HRNSW has certain responsibilities regarding the welfare and protection of standardbred horses. HRNSW has in place several policies, procedures and programs relevant to equine welfare. The Australian Rules of Harness Racing also provide sanctions for cruel, abusive or inhumane treatment of a horse by a licensed participant.

The controlling body has in the past advised that as standardbred owners, trainers and drivers invest a lot of time and money in the industry, it is in their best interests to ensure that their horses are appropriately cared for. It also advises that the large majority of industry participants are very protective of their horses and consider them to be part of their family.

As previously noted, the Government has established a Special Commission of Inquiry to investigate animal welfare and integrity issues within the greyhound racing industry. The Special Commission of Inquiry will also review the management and governance of Greyhound Racing NSW and provide a final report to the Government by September 2015.

The findings and recommendations of the Inquiry may have an impact on the animal welfare arrangements for all three codes of racing. Future animal welfare requirements for the harness racing industry will need to be considered in the light of the Inquiry outcomes.

Summary of Submissions

The majority of submission makers who commented on animal welfare matters suggested that HRNSW should re-establish an animal welfare committee, implement an adoption program for re-homing standardbreds, educating trainers and owners and support re-homing centres.

The current controlling body and the NSW Harness Racing Club both suggested that it is appropriate for HRNSW to handle animal welfare matters under its current powers and in conjunction with the provisions of the *Prevention of Cruelty to Animals Act 1979* (POCTAA) and that additional provisions will likely confuse industry participants [*Submission Nos. 29 and 30 respectively*].

The controlling body added that it considers it unreasonable to expect HRNSW to have responsibility for a horse's lifecycle after it has retired and has left the industry [*Submission No. 29*].

The controlling body has suggested that the Act be amended to provide that it is a requirement for trainers to present horses free of chemicals in order to reinforce the rules and make a statement regarding the responsibilities of licensed persons [*Submission No. 29*].

One submission maker suggested a strengthening of the legislation to better safeguard horse welfare. This would include that any regulations, rules and minimum standards are subject to, do not affect the operation of and are not inconsistent with POCTAA [*Submission No. 31*]

The same submission maker suggested that HRNSW should be required to consult with the RSPCA and other animal welfare organisations when developing or amending regulations, rules and minimum standards that impact animal welfare [*Submission No. 31*]. That submission maker also suggested that HRNSW should be required to report any serious or repeated animal welfare breaches to the RSPCA or other animal welfare authorities, and to report annually to government on any animal welfare offences [*Submission No. 31*].

Findings in relation to theme 4

There has been overwhelming support both in the media and in submissions to the review for the racing industry to ensure that animal welfare practices are appropriate and acceptable to the general public.

The review notes however that there were no direct concerns raised in submissions to the review about cases of animal cruelty in the harness racing sector. The majority of suggestions centred around the harness racing industry ensuring that there are appropriate re-homing avenues in place for horses retiring from the industry.

In terms of the question of the controlling body having responsibility for a horse's entire lifecycle, the review notes that the suggestion by HRNSW that it is unreasonable to expect it to monitor each standardbred after retiring and exiting the industry.

While there are obvious differences in specific animal welfare issues between the three codes of racing, there are also animal welfare issues that encompass all three codes. The review therefore considers it appropriate to defer consideration of the need for amendments to the Act relating to animal welfare until the completion of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales. That will permit any findings and outcomes of that Inquiry, which has a particular focus on animal welfare in the greyhound racing industry, to inform consideration of the need for animal welfare reforms relating to the harness racing sector.

Recommendation 13

That the issue of animal welfare in the harness racing industry and the legal arrangements to protect the welfare of animals in the industry be considered in light of the outcomes of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales.

List of Submissions

1	Cathryn GARDNER
2	Wayne GARDNER
3	Mal MOODY
4	Robert WOODS
5	Luke WOODS
6	David O'CONNOR
7	Stephen McCLINTOCK
8	Rod WOODHOUSE
9	Roger STRONG
10	Dianne SUTHERLAND
11	Georgina SMITH
12	David FITZPATRICK
13	Thomas BIRD
14	Chris PERIGO
15	Jackie McDONALD
16	A N VAN DER VEGT
17	Donna JOHNSON
18	B L PEACHEY
19	V B SHELTON
20	David SHELTON
21	Daniel CRAKER
22	Joanne ANDERSEN
23	Harness Breeders NSW Inc – Flora ROBSON
24	(CONFIDENTIAL)
25	Racing Appeals Tribunal – David ARMATI
26	Colin McDOWELL
27	NSW Standardbred Owners Assoc – Peter NEIL
28	(CONFIDENTIAL)
29	Harness Racing NSW – John DUMESNY
30	NSW Harness Racing Club Ltd – Bruce CHRISTISON
31	RSPCA – Heather NEIL
32	Terry BROWNE
33	(CONFIDENTIAL)
34	Harness Racing Integrity Auditor – Graham GORRIE
35	Australian Wagering Council – Chris DOWNY