

# Racing Legislation Amendment (Racing Integrity Assurance) Bill 2009

## Introduction Print

### EXPLANATORY MEMORANDUM

#### Clause Notes

#### PART 1—PRELIMINARY

- Clause 1 sets out the main purposes of the Bill. The main purposes of the Bill are to amend the **Racing Act 1958** and the **Gambling Regulation Act 2003**—
- to provide for the Racing Integrity Commissioner;
  - to establish Racing Appeals and Disciplinary Boards for Greyhound Racing Victoria and Harness Racing Victoria;
  - to repeal Part IIIB of the **Racing Act 1958** which relates to the Racing Appeals Tribunal;
  - to repeal provisions of the **Gambling Regulation Act 2003** banning the transmission of betting odds from racecourses during a race meeting.
- Clause 2 provides for the commencement of the Act. Subclause (1) provides that the Act comes into operation on a day or days to be proclaimed. Subclause (2) provides that if a provision of the Act does not come into operation before 1 September 2010, it comes into operation on that day.
- Clause 3 provides that in the Bill, the **Racing Act 1958** is called the Principal Act.

## PART 2—RACING INTEGRITY COMMISSIONER

- Clause 4 inserts the definition of *Racing Integrity Commissioner* into section 3(1) of the **Racing Act 1958** and substitutes new definitions of *controlling body* and *Steward*.
- Clause 5 inserts a new Part IA in the **Racing Act 1958** which provides for the Racing Integrity Commissioner and sets out his or her powers and functions.

New section 37A provides that the Racing Integrity Commissioner is appointed by the Governor in Council on the recommendation of the Minister.

The Racing Integrity Commissioner is to hold office for a term not exceeding 5 years and is eligible for re-appointment.

New section 37B sets out the functions of the Racing Integrity Commissioner. These functions include the conduct of annual audits of, and the investigation of complaints about, the internal integrity processes and systems of each controlling body, and the conduct of other audits as requested by the controlling bodies. The Racing Integrity Commissioner will also refer complaints to other bodies as appropriate; investigate matters referred by the Minister or a controlling body; report the findings of investigations that have not been referred to other bodies; conduct own motion inquiries; make recommendations following investigations to the Minister or the relevant controlling body; and direct a Racing Appeals and Disciplinary Board to hear and determine minor matters.

New section 37C sets out the powers of the Racing Integrity Commissioner which are those conferred on him or her by the Bill and all other things necessary to be done to carry out his or her functions.

New section 37D provides that staff may be employed under Part 3 of the **Public Administration Act 2004** to enable the Racing Integrity Commissioner to perform his or her functions and exercise his or her powers.

New section 37E provides for the Racing Integrity Commissioner to disclose *integrity related information* to, as appropriate, relevant persons and bodies, including the controlling bodies, the Victorian Commission for Gambling Regulation, a Racing Appeals and Disciplinary Board, the Chief Commissioner, AUSTRAC and Commissioner of Taxation.

*Integrity related information* is information the Racing Integrity Commissioner has collected or been given in the performance of his or her functions and includes information in relation to the contravention, or the alleged contravention, of controlling body rules and the identity of persons alleged to have contravened those rules.

New section 37F requires the Racing Integrity Commissioner to submit an annual report to the Minister on the performance of his or her functions and for the Minister to lay this report before each House of Parliament within seven sitting days.

### **PART 3—RACING APPEALS AND DISCIPLINARY BOARDS**

Clause 6 inserts the following definitions into section 3(1) of the **Racing Act 1958**: *GRV Racing Appeals and Disciplinary Board, HRV Racing Appeals and Disciplinary Board, RV Racing Appeals and Disciplinary Board* and *Racing Appeals and Disciplinary Boards*.

Clause 7 inserts a new Part IIA in the **Racing Act 1958** which provides for the Racing Appeals and Disciplinary Board for Harness Racing Victoria.

New section 50A provides for definitions of *Australian lawyer, Boards Registrar, Chairperson, Deputy Chairperson, Harness Racing Victoria, HRV Racing Appeals and Disciplinary Board, investigator, penalty, rules* and *serious offence* to be inserted under Part IIA.

This section also provides that a reference to a member of the HRV Racing Appeals and Disciplinary Board includes a reference to the Chairperson and the Deputy Chairperson, unless the contrary intention appears.

New section 50B provides for the establishment of a Racing Appeals and Disciplinary Board for Harness Racing Victoria.

New section 50C sets out the functions of the HRV Racing Appeals and Disciplinary Board which are to hear and determine: appeals in relation to decisions made under the rules to impose penalties on a person; charges made against persons for serious offences; appeals referred by the Racing Integrity Commissioner; and any matter referred by Harness Racing Victoria.

New section 50D sets out the composition of the HRV Racing Appeals and Disciplinary Board. The Board consists of a Chairperson, Deputy Chairperson and not less than 5 and not more than 15 other members. Members other than the Chairperson and Deputy Chairperson are to be appointed by

Harness Racing Victoria and, to avoid any conflict of interest, may not hold an office in Racing Victoria, Harness Racing Victoria or Greyhound Racing Victoria. Members are appointed for no more than three years and are eligible for reappointment.

New section 50E provides for the Minister to appoint an eligible person as Chairperson of the HRV Racing Appeals and Disciplinary Board. To be eligible, a person must be an Australian lawyer of no less than 7 years standing and have no conflict of interest. The Chairperson is appointed for no more than 3 years and is eligible for reappointment.

New section 50F provides for the Minister, on the recommendation of Harness Racing Victoria, to appoint an eligible person as Deputy Chairperson of the HRV Racing Appeals and Disciplinary Board. To be eligible, a person must be an Australian lawyer of no less than 7 years standing and have no conflict of interest. The Deputy Chairperson is appointed for no more than 3 years and is eligible for reappointment.

New section 50G provides for the Deputy Chairperson to act as Chairperson if the office of Chairperson is vacant or if the Chairperson is absent from Victoria, or is unable to perform the duties of the office.

New section 50H provides for the Minister to remove a member of the HRV Racing Appeals and Disciplinary Board from office under certain circumstances, including when a member is not avoiding any conflict of interest.

New section 50I sets out the required constitution of the HRV Racing Appeals and Disciplinary Board for the purposes of hearing and determining an appeal or charge.

New section 50J provides for a person to appeal to the HRV Racing Appeals and Disciplinary Board against a decision made under the rules to impose a penalty if the penalty is a suspension, disqualification, warning off or a fine of more than \$250.

New section 50K provides for the Racing Integrity Commissioner to direct the HRV Racing Appeals and Disciplinary Board to hear an appeal made by a person against a decision made under the rules to impose a fine of less than \$250 if the Racing Integrity Commissioner considers that it is in the public interest for the appeal to be heard.

New section 50L provides for the HRV Racing Appeals and Disciplinary Board to grant leave to a person to appeal out of time.

New section 50M provides for the HRV Racing Appeals and Disciplinary Board to hear and determine serious offences.

New section 50N sets out the procedure for hearings conducted by the HRV Racing Appeals and Disciplinary Board.

New section 50O sets out how the HRV Racing Appeals and Disciplinary Board may make decisions and what actions it may take in determining an appeal.

New section 50P provides for reasons for decision made by the HRV Racing Appeals and Disciplinary Board to be given orally or in writing. If reasons are given orally then a party to the hearing may request that the Board give written reasons for the decision and these written reasons must be provided within 28 days.

New section 50Q sets out the actions that would constitute contempt of the HRV Racing Appeals and Disciplinary Board and provides for a penalty of 10 penalty units for a breach of this section.

New section 50R provides for the Governor in Council to make regulations with respect to matters or things required to be prescribed for the purpose of new Part IIA.

Clause 8 inserts a new Part IIIA in the **Racing Act 1958** which provides for the Racing Appeals and Disciplinary Board for Greyhound Racing Victoria.

New section 83A provides for definitions of *Australian lawyer, Boards Registrar, Chairperson, Deputy Chairperson, Greyhound Racing Victoria, GRV Racing Appeals and Disciplinary Board, investigator, penalty, rules and serious offence* to be inserted under Part IIIA.

This section also provides that a reference to a member of the GRV Racing Appeals and Disciplinary Board includes a reference to the Chairperson and the Deputy Chairperson, unless the contrary intention appears.

New section 83B provides for the establishment of a Racing Appeals and Disciplinary Board for Greyhound Racing Victoria.

New section 83C sets out the functions of the GRV Racing Appeals and Disciplinary Board which are to hear and determine appeals in relation to decisions made under the rules to impose penalties on a person; charges made against persons for serious offences; appeals referred by the Racing Integrity Commissioner; and any matter referred by Greyhound Racing Victoria.

New section 83D sets out the composition of the GRV Racing Appeals and Disciplinary Board. The Board consists of a Chairperson, Deputy Chairperson and not less than 5 and not more than 15 other members. Members other than the Chairperson and Deputy Chairperson are to be appointed by Greyhound Racing Victoria and, to avoid any conflict of interest, may not hold an office in Racing Victoria, Harness Racing Victoria or Greyhound Racing Victoria. Members are appointed for no more than three years and are eligible for reappointment.

New section 83E provides for the Minister to appoint an eligible person as Chairperson of the GRV Racing Appeals and Disciplinary Board. To be eligible, a person must be an Australian lawyer of no less than 7 years standing and have no conflict of interest. The Deputy Chairperson is appointed for no more than 3 years and is eligible for reappointment.

New section 83F provides for the Minister, on the recommendation of Greyhound Racing Victoria, to appoint an eligible person as Deputy Chairperson of the GRV Racing Appeals and Disciplinary Board. To be eligible, a person must be an Australian lawyer of no less than 7 years standing and have no conflict of interest. The Deputy Chairperson is appointed for no more than 3 years and is eligible for reappointment.

New section 83G provides for the Deputy Chairperson to act as Chairperson if the office of Chairperson is vacant or if the Chairperson is absent from Victoria, or is unable to perform the duties of the office.

New section 83H provides for the Minister to remove a member of the GRV Racing Appeals and Disciplinary Board from office under certain circumstances, including when a member is not avoiding any conflict of interest.

New section 83I sets out the required constitution of the GRV Racing Appeals and Disciplinary Board for the purposes of hearing and determining an appeal or charge.

New section 83J provides for a person to appeal to the GRV Racing Appeals and Disciplinary Board against a decision made under the rules to impose a penalty if the penalty is a suspension, disqualification, warning off or a fine of more than \$250.

New section 83K provides for the Racing Integrity Commissioner to direct the GRV Racing Appeals and Disciplinary Board to hear an appeal made by a person against a decision made under the rules to impose a fine of less than \$250 if the Racing Integrity Commissioner considers that it is in the public interest for the appeal to be heard.

New section 83L provides for the GRV Racing Appeals and Disciplinary Board to grant leave to a person to appeal out of time.

New section 83M provides for the GRV Racing Appeals and Disciplinary Board to hear and determine serious offences.

New section 83N sets out the procedure for hearings conducted by the GRV Racing Appeals and Disciplinary Board.

New section 83O sets out how the GRV Racing Appeals and Disciplinary Board may make decisions and what actions it may take in determining an appeal.

New section 83OA provides for reasons for decision made by the GRV Racing Appeals and Disciplinary Board to be given orally or in writing. If reasons are given orally then a party to the hearing may request that the Board give written reasons for the decision and these written reasons must be provided within 28 days.

New section 83OB sets out the actions that would constitute contempt of the GRV Racing Appeals and Disciplinary Board and provides for a penalty of 10 penalty units for a breach of this section.

New section 83OC provides for the Governor in Council to make regulations with respect to matters or things required to be prescribed for the purposes of new Part IIIA.

Clause 9 substitutes a new Part IIIB and inserts a new Part IIIBA in the **Racing Act 1958** which provides for a common Boards Registrar for all Racing Appeals and Disciplinary Boards.

New section 83OD provides for the definition of a *serious offence* to be inserted under Part IIIB.

New section 83OE provides that, for the purposes of assisting in the administration of the Racing Appeals and Disciplinary Boards for Greyhound Racing Victoria, Harness Racing Victoria and Racing Victoria, a Boards Registrar is to be appointed. The Registrar will be appointed by a controlling body on the agreement of the controlling bodies.

New section 83OF sets out the functions of the Boards Registrar.

New section 83OG provides for the Governor in Council to make regulations for or with respect to prescribing forms for the purposes of Part IIIB, the form and content of the register to be kept by the Boards Registrar and any other matter or thing necessary to give effect to Part IIIB.

New Part IIIBA provides for VCAT review of decisions made by Racing Appeals and Disciplinary Boards.

New section 83OH provides for a person whose interests are affected by a Racing Appeals and Disciplinary Board decision to apply to VCAT for a review of that decision. The section also provides for a Steward to apply to VCAT for a review of a Racing Appeals and Disciplinary Board decision that is in respect of a penalty originally imposed by the Steward.

New section 83OI provides that the time limit for making an application for review is 28 days after the later of the day the decision was made, or, if a statement of reasons for the decision is requested, the day on which the statement of reasons is given to the person or the person is informed that a statement of reasons will not be given.

Clause 10 inserts a new section 96D which sets out the transitional arrangements for Racing Appeals Tribunal proceedings. If the Racing Appeals Tribunal has begun, but not completed, hearing a matter under Part IIIB before the new Part IIIB of this Bill comes into operation, Part IIIB will continue to apply with respect to that appeal.

If an appeal under Part IIIB has been made to the Racing Appeals Tribunal before the new Part IIIB of this Bill comes into operation but no hearing has commenced, the appeal will be heard by VCAT.

#### **PART 4—CONSEQUENTIAL AMENDMENTS AND REPEALS**

Clause 11 repeals sections 49A, 49B, 49C and 50(1)(a) of the **Racing Act 1958**. Sections 49A, 49B and 49C of the **Racing Act 1958** deal with appeals to the Harness Racing Victoria Board by a person on whom a penalty has been imposed or against whom any other decision has been made by a steward under the rules and the selection of panels. These sections are no longer required as appeals will be heard by the HRV Racing Appeals and Disciplinary Board. Section 50(1)(a) of the **Racing Act 1958** gives the Governor in Council the power to make regulations for fees and costs of appeals against decisions of stewards and committees of harness racing clubs. No fees or costs will be payable for appeals under the new provisions.



- Clause 12 repeals sections 80, 81, 81A and 83(1)(c) of the **Racing Act 1958**. Sections 80, 81 and 81A of the **Racing Act 1958** deal with appeals to the Greyhound Racing Victoria Board by a person on whom a penalty has been imposed or against whom any other decision has been made by a steward under the rules and the selection of panels. These sections are no longer required as appeals will be heard by the GRV Racing Appeals and Disciplinary Board. Section 83(1)(c) of the **Racing Act 1958** gives the Governor in Council the power to make regulations for fees and costs of appeals to the Board decisions of stewards of the Board and committees of greyhound racing clubs. No fees or costs will be payable for appeals under the new provisions.
- Clause 13 This clause repeals the definition of *controlling body* in sections 83P and 84 of the **Racing Act 1958**. This is replaced by the new definition in section 3(1).
- Clause 14 This clause amends the heading of Part IIIC of the **Racing Act 1958** from "**Victorian Civil and Administrative Tribunal**" to "**VCAT—Occupational Racing and Bookmaking Licences**". This will distinguish this Part from the new Part IIIA.
- Clause 15 This clause makes consequential amendments to sections 83Q and 83R of the **Racing Act 1958**, substituting "VCAT" for "Victorian Civil and Administrative Tribunal".

#### **PART 5—AMENDMENT OF OTHER ACTS**

- Clause 16 This clause repeals section 2.5.18 of the **Gambling Regulation Act 2003**. This section creates a penalty for transmitting betting odds from racecourses while a race meeting is in progress.
- Clause 17 This clause repeals clause 10(j) of Schedule 1 to the **Confiscation Act 1997** which relates to section 2.5.18 of the **Gambling Regulation Act 2003**.

#### **PART 6—REPEAL OF AMENDING ACT**

- Clause 18 provides for the automatic repeal of this amending Bill on 1 September 2011. The repeal of this Bill does not affect in any way the operation of the amendments made by this Bill (see section 15(1) of the **Interpretation of Legislation Act 1984**).