

Racing and Other Legislation Amendment Bill 2010

Explanatory Notes

General Outline

Policy Objectives

The policy objectives of the Bill are to:

- Amend the *Racing Act 2002* (Racing Act) to:
 - establish one control body for the three codes of racing (thoroughbred, harness and greyhound);
 - ensure that the control body has the necessary powers to manage the three codes of racing;
 - abolish entities established under the Racing Act that can be established administratively by the control body;
 - provide stability and reduce the administrative burden and costs to a control body;
 - clarify provisions relating to taking and dealing with samples from licensed animals for analysis.
- Amend the *Wagering Act 1998* (Wagering Act) and the *Gaming Machine Act 1991* (Gaming Machine Act) to enable the payment of monies out of the Community Investment Fund to fund a scheme for providing capital works for the racing industry.
- Amend the *Racing Regulation 2003* (Racing Regulation) to make necessary consequential amendments.
- Amend the *Wagering Regulation 1999* (Wagering Regulation) to prescribe the percentage of wagering tax to be paid into the Community Investment Fund’.

Reasons for the Bill

Amendments to the Racing Act

The current multiple control body structure results in duplication of effort and prevents coordinated decision-making in the best interests of the entire Queensland racing industry.

The establishment of one control body for the thoroughbred, harness and greyhound codes of racing is expected to provide a unified commercial focus that will facilitate more effective decision-making and the commercial development of the Queensland racing industry as a whole. The one control body model is expected to significantly reduce control body administrative overheads and drive efficiencies.

The Bill will facilitate the establishment of one control body by transferring the staff, assets, liabilities and responsibilities of the current thoroughbred, harness and greyhound control bodies to one control body, Racing Queensland Limited.

The Government requested the directors of the former three control bodies, Queensland Racing Limited (Queensland Racing), Queensland Harness Racing Limited (Harness Racing Queensland), and Greyhounds Queensland Limited (Greyhounds Queensland) to indicate whether the companies were agreeable to the establishment of one control body for the thoroughbred, harness and greyhound codes of racing. To ensure that no liability attaches to the directors as a result of their response to that request from government, the Bill includes a provision with retrospective effect which specifically authorises a director of Queensland Racing, Harness Racing Queensland or Greyhounds Queensland (a former control body) to agree to the establishment of one control body for the thoroughbred, harness and greyhound codes of racing by providing that each former control body's constitution is taken to include, and to have always included, a provision allowing a director to give the former control body's agreement to the enactment of provisions in chapter 10, part 6 of the Racing Act.

The Bill omits provisions that establish country racing associations and the Queensland Country Racing Committee. These entities are unique to the thoroughbred code and have an advisory role, providing advice and recommendations to the current thoroughbred control body on non-TABQ racing matters. In the context of an amalgamated control body, it is inconsistent to have non-TABQ entities for only one code of racing

established by legislation. The new control body will have the power to establish advisory committees for non-TAB racing.

The expiration of a control body approval every six years results in unnecessary costs and an administrative burden to control bodies. The granting of an approval for an indefinite period rather than for a period of six years will provide stability, avoid unnecessary costs and reduce the administrative burden for control bodies.

To ensure that a control body has the necessary powers to manage the codes of racing for which it is responsible, a number of amendments clarify existing powers of a control body and put it beyond doubt that the control body has certain powers necessary to effectively operate in a highly competitive wagering environment. A race club will be required to obtain the approval of its control body to deal with its assets. This amendment puts it beyond doubt that a control body has the power to make policies and give directions in relation to how a club is to deal with its assets, including its real property and intellectual property rights.

As a result of a recent court decision, it is necessary to clarify what constitutes substantial compliance with the Sample Collection Procedures developed by the Racing Animal Welfare and Integrity Board under section 115(3) of the Racing Act, and when non-compliance with the Sample Collection Procedures will have the effect of invalidating an analysis result.

Amendments to the Wagering Act and Gaming Machine Act

Wagering reform was achieved with the privatisation of the TAB in 1999. However, while progress has been made by the control bodies in improving the operational and financial performance of the racing industry through operational reforms such as changes to the racing and wagering programs, the ability of the industry to maintain and enhance necessary infrastructure to maintain the industry's competitiveness and longer term viability has been limited.

In essence, a quantum of revenue is required to both maintain prize money relative to other states, and maintain and improve the industry's asset base. The Government has agreed to provide funding for capital works to assist the industry to maintain the industry's existing assets and infrastructure and to fund significant necessary capital improvements.

The Bill provides for 50% of the net wagering tax collected to be available for capital works for the racing industry (the percentage amount is actually

45.75% of wagering tax paid to the chief executive under Part 9, Division 2 of the Wagering Act. The amount is equivalent to 50% of wagering tax paid to the chief executive, after the 8.5% is paid into the Community Investment Fund under s169(1)(a) of the Wagering Act). The amount will be paid into the Community Investment Fund, which will provide the industry with an estimated total in excess of approximately \$80 million over the four years to 2013-2014. The new control body, Racing Queensland Limited, will submit business cases on priority capital works to be funded from the fund and identify sources of additional funding if the funds collected for this purpose fall short of expected program expenditure.

Achievement of the Objectives

Racing Act

The objectives will achieve the following:

- cancel the three control body approvals for the thoroughbred, harness and greyhound codes of racing;
- approve one control body, Racing Queensland Limited, as the control body for the thoroughbred, harness and greyhound codes of racing;
- transfer all of the staff, assets, liabilities and responsibilities of the thoroughbred, harness and greyhound control bodies to Racing Queensland Limited;
- clarify the powers of a control body;
- omit provisions establishing country racing associations and the Queensland Country Racing Committee, which are advisory bodies for non-TABQ thoroughbred racing;
- provide that a control body approval is granted for an indefinite period rather than for a period of six years; and
- ensure consistency in, and clarity of, a number of provisions of the Act and make other related and consequential amendments to the Racing Act.

Wagering Act and Gaming Machine Act

The objectives will achieve the establishment and the operation of a scheme for providing capital works funding for the racing industry.

Alternatives to the Bill

The objectives can only be achieved by legislative enactment.

Estimated Cost for Government Implementation

Racing Act

The Bill will not impose any significant administrative cost to government in implementing the proposed amendments to the Racing Act.

Wagering Act and Gaming Machine Act

The scheme providing funding for capital works for the racing industry will amount to an estimated total in excess of approximately \$80 million over the four years to 2013-2014, being paid by the State.

Consistency with Fundamental Legislative Principles

The Bill is generally consistent with fundamental legislative principles.

The Bill provides for the transfer of all employees of the three control bodies to the amalgamated control body. Employees with a total remuneration of up to \$100,000 per annum must be employed on terms and conditions of employment at least equivalent to those applying before the amalgamation, for a period of at least two years (390 of a total of 409 employees). Therefore, 96% of employees will not be disadvantaged with some provided greater certainty of employment than they currently have. Those employees who do not wish to be employed by the new control body and those employees with a total remuneration of up to \$100,000 who are surplus to requirements will be offered redundancy packages by the new control body. The employees are not public servants.

The Bill will transfer the assets and liabilities of the current control bodies to the new control body without compensation. However, as the assets are to be transferred to a new control body which replaces the three current control bodies, and will have the same functions and powers, it is considered that the legislation does have regard to fundamental legislative principles.

A provision with retrospective effect specifically authorises a director of Queensland Racing, Harness Racing Queensland or Greyhounds Queensland (a former control body) to agree to the establishment of one control body for the thoroughbred, harness and greyhound codes of racing by providing that each former control body's constitution is taken to

include, and to have always included, a provision allowing a director to give the former control body's agreement to the enactment of provisions in chapter 10, part 6 of the Racing Act. While this provision has retrospective effect, as it provides a benefit to the directors of the former control bodies, it is considered that the legislation does have regard to fundamental legislative principles.

An amendment to section 352A provides that evidence of an accredited analyst or accredited veterinary surgeon, of an accredited facility, that the method of taking and dealing with the thing for analysis was in substantial compliance with the requirements of section 143(3) is evidence of that fact and, in the absence of evidence to the contrary, conclusive evidence of that fact. This amendment may infringe fundamental legislative principles, however, the provision does not shift the onus of proof from the control body, and does not 'swear the issue', in that section 352A(3) deals with whether or not substantial compliance has occurred, not whether the ultimate decision being appealed should be upheld or not. Also, the provision gives the other party the opportunity to adduce any evidence to contradict the evidence of the accredited analyst or accredited veterinary surgeon. This amendment only applies if the other party is not able to adduce any evidence to the contrary.

Consultation

Racing Act, Wagering Act, Gaming Machine Act, Wagering Regulation and Racing Regulation

Government

Consultation has been undertaken on the amendments to the Racing Act, Wagering Act, Gaming Machine Act, *Wagering Regulation 1999* and *Racing Regulation 2003* with all relevant Government agencies and departments, including the Department of the Premier and Cabinet, Treasury Department and the Department of Justice and the Attorney General.

Industry

Consultation has been undertaken with the chairs and chief executive officers of the control bodies, Queensland Racing Limited, Queensland Harness Racing Limited and Greyhounds Queensland Limited.

Notes on Provisions

Part 1 Preliminary

Clause 1 sets out the short title by which the Act will be known.

Clause 2 states that the Act commences on 1 July 2010.

Part 2 Amendment of Racing Act 2002

Clause 3 provides that the Act amended in Part 2 is the *Racing Act 2002*.

Clause 4 amends section 7 which outlines the main purposes of chapter 2 and how the purposes are achieved. Section 7(1)(b) is amended by omitting ‘each control body’ and replacing it with ‘the control body’. Clause 4 also makes consequential amendments by omitting section 7(1)(c) and 2(f) which refer to regional interests and entities for thoroughbred racing. These provisions are now obsolete as the entities for non-TABQ thoroughbred racing are omitted from chapter 2 by clause 12. Section 7(2)(a) is amended by omitting ‘control bodies’ and inserting ‘a control body’.

Clause 5 amends section 10 by omitting section 10(4), as it is now obsolete. Subsection 10(5) is renumbered as 10(4).

Clause 6 omits section 28 which provided that a control body’s approval remained in force for six years, unless it was cancelled, and inserts a new section 28 that provides that a control body’s approval continues in force until it is cancelled. If a control body’s approval is suspended, the approval does not have effect for the period of the suspension.

Clause 7 amends section 33 to clarify that a control body’s powers are not limited to the powers stated in the Act.

Clause 8 amends subsections (1)(a), (1)(b) and (1)(f) of section 34 by removing references to the control body’s policies. Section 34(1)(f)(ii) is amended to clarify that a control body may impose conditions on any

amount that it distributes to a licensed club for a purpose relating to the operations of the club.

Clause 8 also amends section 34(1)(g) to clarify that a control body may impose conditions on any funding that it allocates for venue development and other infrastructure relevant to the code. Section 34(1)(i) is amended to correct a minor typographical error. A new section 34(1)(j) is inserted that provides that a control body may establish committees or other entities responsible for providing advice to, and carrying out administrative functions for, the control body in relation to non-TABQ races for the thoroughbred, greyhound or harness codes of racing.

Clause 8 also inserts a new section 34(5) which defines 'non-TABQ races' for the purposes of section 34.

Clause 9 inserts a new section 34A which requires a control body with an approval for more than one code of racing to make decisions that are in the best interests of all the codes of racing for which the control body holds an approval while having regard to the interests of each individual code.

Clause 10 amends section 45 by omitting the requirement for the control body's rules of racing to be authorised by its policies. This is a consequential amendment as a result of the omission of sections 92 and 93 by clause 16.

Clause 11 inserts a new section 60B which replaces section 68M which is omitted by clause 12. Section 68M imposed an obligation on the former thoroughbred control body to pay 7% of its net UNiTAB product fee for a year as prize money for non-TABQ thoroughbred races conducted by non-TABQ thoroughbred clubs. The new provision reflects that there is no longer a thoroughbred control body and the new control body, Racing Queensland Limited, must pay 5.32% of its net UNiTAB product fee for a year as prize money for non-TABQ thoroughbred races conducted by non-TABQ thoroughbred clubs. If at the end of a year, the control body has not paid 5.32% of its net UNiTAB product fee for a year as prize money, the control body must use the remaining amount of the 5.32% in supporting non-TAB thoroughbred racing. The amount of 5.32% of the new control body's net UNiTAB product fee is exactly the same amount as 7% of the former thoroughbred control body's net UNiTAB product fee.

Clause 12 omits chapter 2, part 5. The provisions of chapter 2, part 5:

- established country racing associations and specified their functions and how members were appointed;

- established the Queensland Country Racing Committee, specified its functions, composition, and role in providing advice to the former thoroughbred control body on the allocation of non-TABQ thoroughbred race dates and associated matters;
- specified requirements for the conduct of meetings of the country racing associations and Queensland Country Racing Committee; and
- required the former thoroughbred control body to pay 7% of its net UNiTAB product fee for a year as prize money for non-TABQ thoroughbred races conducted by non-TABQ thoroughbred.

Clause 13 amends section 78(2)(b) by omitting ‘about things dealt with in a policy’. This is a consequential amendment as a result of the omission of sections 92 and 93 by clause 16.

Clause 14 amends section 81(h) by omitting the reference to a control body’s rules of racing being authorised by its policies. This is a consequential amendment as a result of the omission of sections 92 and 93 by clause 16.

Clause 15 omits section 91(4) and inserts a new provision which requires a control body’s rules of racing to be consistent with the Act and if the control body has a rule of racing about a matter for which it has a policy, the rule must be consistent with the policy. This is a consequential amendment as a result of the omission of sections 92 and 93 by clause 16.

Clause 16 omits sections 92 and 93. Section 92 provided that a control body’s rules of racing for its code of racing may provide for a matter only if the control body, in a policy, authorises the making of rules of racing in relation to the matter. Section 93 permitted a control body to make urgent rules of racing for a matter that the control body had not authorised in a policy. The requirement to make a policy about a matter that authorises the making of a rule of racing, prior to making a rule of racing, is considered to place an unnecessary burden on the control body without any benefit.

Clause 17 amends section 100 by inserting a new provision requiring a control body to publish details of all decisions of an appeal committee on the control body’s website. The purpose of this requirement is to improve transparency in decision-making.

Clause 18 amends section 111 by inserting a new definition of ‘deal with’ an asset which includes granting a right in relation to the asset, mortgaging, lending, leasing or registering a charge over the asset, but does not include

disposal of the asset. This definition is applicable to the new section 113AA inserted by clause 20.

Clause 19 inserts a new subsection 5 in section 113 which clarifies that a control body has the power to impose conditions on an approval it grants to a non-proprietary entity to dispose of an interest in real property under section 113(4)(b). A condition may include requiring a stated portion of the proceeds of the disposal of the asset to be paid to the control body for use by the control body for the benefit of its code of racing. The basis of the amendment is that the State has transferred the freehold title to a number of pieces of land upon which racecourses are located to the race clubs that were the tenants at the venue. Also, over many years, public money and control body money has been invested in improvements to freehold land owned by race clubs. The amendment ensures that the proceeds of the sale of race club land provides the best economic benefit to the Queensland racing industry.

Clause 20 inserts a new section 113AA which clarifies that a control body has the power to require a non-proprietary entity to obtain the control body's approval prior to dealing with its assets. Section 113AA provides that a non-proprietary entity must not deal with its assets other than under a policy of the relevant control body or the written approval of the relevant control body, obtained before the dealing. 'Deal with' an asset includes granting a right in relation to the asset, mortgaging, lending, leasing or registering a charge over the asset, but does not include disposal of the asset. Asset is defined in the *Acts Interpretation Act 1954*.

Clause 21 amends section 351(1) by omitting subsection (c) which is a reference to 'a thoroughbred entity'. This is a consequential amendment as a result of the omission of chapter 2, part 5 by clause 12.

Clause 22 omits section 352A(2) and (3) and inserts new subsections (2) and (3) that make it clear that the requirements of section 143(3) are satisfied (notwithstanding some form of non-compliance with the Sample Collection Procedures) when the integrity of the analysis has not been adversely affected. The amendments also provide that evidence of an accredited analyst or an accredited veterinary surgeon, of an accredited facility, that substantial compliance with the procedures developed by the Racing Animal Welfare and Integrity Board has not adversely affected the integrity of the analysis, is evidence of that fact and, in the absence of evidence to the contrary, conclusive evidence of that fact.

Clause 23 inserts a new chapter 10, part 6 and the heading 'Transitional provisions for the Racing and Other Legislation Amendment Act 2010'.

A new section 427 is inserted which provides definitions for part 6. 'Commencement' means 1 July 2010. 'Former control body' is defined to mean each of Queensland Racing Limited, Greyhounds Queensland Limited and Queensland Harness Racing Limited. 'New control body' is defined as Racing Queensland Limited, ACN 142 786 874.

New section 428 provides that the control body approvals held by the former control bodies are cancelled at midnight on 30 June 2010. The Minister must give Racing Queensland Limited a control body approval for the thoroughbred, harness and greyhound codes of racing from 1 July 2010 and may impose conditions on the approval.

New section 429 provides that on the commencement:

- All assets and liabilities of a former control body immediately before the commencement become assets and liabilities of the new control body;
- Any agreement or arrangement in force immediately before the commencement between a former control body and another entity becomes an agreement or arrangement between the new control body and the entity;
- Any property held by a former control body on trust or subject to conditions, immediately before the commencement continues to be held by the new control body subject to the same trusts or conditions.

New section 429 also provides that the registrar of titles or other person responsible for keeping a register of dealings in property must, on request by the new control body, record the vesting of property in the new control body.

New section 430 is inserted which has retrospective effect and specifically authorises a director of Queensland Racing, Harness Racing Queensland or Greyhounds Queensland (a former control body) to agree to the establishment of one control body for the thoroughbred, harness and greyhound codes of racing by providing that each former control body's constitution is taken to include, and to have always included, a provision allowing a director to give the former control body's agreement to the enactment of provisions in chapter 10, part 6 of the Racing Act.

New section 431 declares sections 429 and 430 to be Corporations legislation displacement provisions for section 5G of the *Corporations Act*

2001 (Cth) to avoid any inconsistency between sections 429 and 430 and the Corporations Act.

New section 432 provides that on the commencement, employees of the former control bodies immediately before the commencement, become employees of the new control body. Those employees who, immediately before the commencement were entitled to a total remuneration package of not more than \$100,000 per annum must be employed on terms and conditions of employment at least equivalent to those applying immediately before the commencement. These employees have all rights of employment, accrued or existing, immediately before the commencement.

New section 433 provides that on the commencement:

- Any proceeding that could have been started by or against a former control body before the commencement may be started by or against the new control body; and
- Any existing proceeding by or against a former control body (or a member of a former control body in their capacity as a member of a former control body) may be continued and finished by or against the new control body.

New section 434 provides that anything done by a former control body under the Act, including current policies, rules of racing, licences or a racing calendar made or issued by a former control body:

- continues to have effect; and
- from the commencement, is taken to have been done by the new control body.

New section 435 provides that a right or obligation of a former control body immediately before the commencement becomes a right or obligation of the new control body.

New section 436 provides that from the commencement, a program for assessing the suitability of a former control body to manage its code of racing, approved by the Minister under section 46(3) for 2010, applies to the new control body to the extent it is stated to apply to a former control body.

New section 437 provides that, for section 68M of the Act, amounts of the former thoroughbred control body's net UNiTAB product fee paid before the commencement by the former thoroughbred control body are, on the

commencement, taken to have been paid by the new control body under section 60B.

New section 438 provides that, for an appeal committee established by a former control body and in existence on the commencement:

- The appeal committee continues only for the purpose of dealing with an appeal under consideration immediately before the commencement; and
- Must deal with the appeal under the relevant former control body's rules of racing in existence before the commencement.

New section 438 also provides that an appeal against a reviewable decision made before the commencement and started after the commencement may be dealt with by an appeal committee established by the new control body.

New section 439 provides that if, before the commencement, a former control body gave a licensed club a show cause notice under chapter 3, part 4 (Control bodies may take certain action against licensed clubs) but has not decided whether to take action under the part in relation to the club, from its commencement chapter 3, part 4 applies in relation to the show cause notice as if the notice had been given by the new control body.

New section 440 provides that nothing done under chapter 10, part 6 (Transitional provisions for Racing and Other Legislation Amendment Act 2010) in relation to a former control body:

- Places the new control body in breach of a contract, trust or confidence or makes it guilty of a civil wrong;
- Makes the new control body in breach of any instrument;
- Is taken to fulfil a condition or otherwise constitute an event:
 - allowing a person to terminate an instrument or be released in any way from an obligation or modify the operation or effect of an instrument or obligation; or
 - requiring money to be paid, or anything else to be done, before its stated maturity; or
- Releases a surety or other obligee, in any way, from an obligation.

New section 441 provides that on the commencement, the Queensland Country Racing Committee and the country racing associations are dissolved and the members go out of office. No compensation is payable to

a member as a result of the dissolution of the entities or by reason of the members going out of office.

New section 442 provides that no compensation is payable to any person for the cancellation of a control body approval or the vesting or divesting of assets and liabilities or rights and obligations or for anything else done under part 6 of chapter 10.

New section 443 provides that, in an Act or document, a reference to the former control body may, if the context permits, be taken as a reference to the new control body.

New section 444 provides that even though the Racing Regulation is to be amended by an Act of the Legislative Assembly, this does not affect the power of the Governor in Council to further amend the regulation or repeal it.

Clause 24 amends schedule 3 by omitting and inserting relevant definitions.

Part 3 **Amendment of Racing Regulation 2003**

Clause 25 provides that Part 3 amends the *Racing Regulation 2003*.

Clause 26 omits parts 3 and 6 which provided for the composition of, and appointment of members to country racing associations. These provisions are now obsolete as the provisions that provided for the establishment of country racing associations have been omitted from the Racing Act.

Clause 27 omits Schedule 1 which is now obsolete.

Part 4 **Amendment of Gaming Machine Act 1991**

Clause 28 provides that the Act amended in Part 4 is the *Gaming Machine Act 1991*.

Clause 29 amends section 322(5) by inserting a new subsection (ea) which will allow the Minister to cause amounts to be paid out of the Community Investment Fund for a scheme for capital works for the racing industry. Clause 29 also inserts section 322(5A) which ensures that any money paid out of the Community Investment Fund for capital works does not exceed the money paid into the Community Investment Fund under a proposed new provision under the *Wagering Act 1998* (section 169(1)(b)) intended to provide funding for the scheme.

Part 5 **Amendment of Wagering Act 1998**

Clause 30 provides that the Act amended in Part 5 is the *Wagering Act 1998*.

Clause 31 amends section 169 to provide for the funding of the capital works scheme. Under s169(1)(b) a percentage of wagering tax will be paid into the Community Investment Fund. The percentage will be 45.75%, prescribed in a regulation, of wagering tax paid to the chief executive under Part 9, Division 2 of the *Wagering Act*. The amount is equivalent to 50% of wagering tax paid to the chief executive, after 8.5% is paid into the Community Investment Fund under s169(1)(a) of the *Wagering Act*.

Clause 32 inserts a transitional provision being Part 17 Division 4 to provide that even though the *Wagering Regulation 1999* is to be amended by an Act of the Legislative Assembly, this does not affect the power of the Governor in Council to further amend the regulation or repeal it.

Part 6 **Amendment of Wagering Regulation 1999**

Clause 33 provides that Part 6 amends the *Wagering Regulation 1999*.

Clause 34 amends section 9 to prescribe the percentage amount of the wagering tax paid to the chief executive under Part 9, Division 2 of the *Wagering Act*, which is to be paid into the Community Investment Fund

under s169 of the Wagering Act. The percentage amount is 45.75% of the wagering tax paid to the chief executive under Part 9, Division 2 of the Wagering Act. The amount is equivalent to 50% of the wagering tax paid to the chief executive, after 8.5% is paid into the Community Investment Fund under s169(1)(a) of the Wagering Act.

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