

# Racing and Other Legislation Amendment Bill 2012

## Explanatory Notes

### Short title

The short title of the Act is the Racing and Other Legislation Amendment Act 2012.

### Policy objectives

The policy objectives of the Bill are to:

1. Amend the *Racing Act 2002* (Racing Act) to:
  - remove Racing Queensland Limited (Racing Queensland) as the control body for the thoroughbred, harness and greyhound codes of racing;
  - establish the Queensland All Codes Racing Industry Board as a body with responsibilities for strategic issues across the three codes of racing and as the control body for the thoroughbred, harness and greyhound codes of racing;
  - establish a separate code-specific control board for each of the three codes of racing;
  - transfer appropriate integrity functions currently undertaken by the control body to government, to be paid for by the industry;
  - permit bookmakers to use the internet to conduct bookmaking;
  - ensure that the control body has the necessary powers to manage the three codes of racing;
  - ensure the code-specific control boards have the necessary powers to assist the control body in managing the three codes of racing;
  - ensure that the Minister responsible for racing has more involvement in, and power over, the operations of the control body; and
  - make other related and consequential amendments.

2. Amend the *Wagering Act 1998* (Wagering Act) to extend the funding for the Racing Industry Capital Development Scheme (the Scheme) for one year until 30 June 2015. Currently, section 169(1)(b) of the Wagering Act provides funding for the Scheme from 1 July 2010 to 30 June 2014.
3. Amend the *Interactive Gambling (Player Protection) Act 1998* (Interactive Gambling Act) to provide that bookmaking conducted under a racing bookmakers' licence under the Racing Act is not an interactive game as defined in the Interactive Gambling Act.

## **Reasons for the Bill**

### **Amendments to the Racing Act**

The Racing Act currently establishes Racing Queensland as the single racing control body responsible for managing and administering the thoroughbred, harness and greyhound codes of racing in Queensland and provides the legislative framework for the regulation of racing bookmakers in Queensland.

The government's election commitment to remove Racing Queensland as the single control body and establish a separate racing control board for each code of racing, establish an over-arching body with responsibilities for strategic issues across the three codes of racing, establish and transfer appropriate racing integrity functions to government and provide a competitive environment for Queensland bookmakers will be implemented through the amendments contained in the Bill.

#### New control boards

The Queensland Thoroughbred Racing Board, the Queensland Harness Racing Board and the Queensland Greyhound Racing Board will be established as individual code-specific control boards and will be provided the powers and functions required to assist the Queensland All Codes Racing Industry Board to manage the three codes of racing.

#### Queensland All Codes Racing Industry Board

The Bill establishes the Queensland All Codes Racing Industry Board (all-codes board) that will be the successor control body to Racing Queensland. All employees, assets and liabilities of Racing Queensland will be transferred to the all-codes board.

The all-codes board will become the control body for the three codes of racing – thoroughbred, harness and greyhound. In addition to its control body functions, it will also provide advice to the government on strategic issues impacting on the racing industry and facilitate negotiations in regard to strategic ‘whole of industry’ issues and agreements such as major capital expenditure priorities, funding distributions and the administration and conduct of racing.

The all-codes board will be provided the necessary powers to manage the three codes of racing and carry out its control body functions including the power to license clubs, venues, participants and animals for the relevant code, and make decisions regarding the allocation of race dates, prize money and other funding to licensed clubs.

#### Racing Disciplinary Board

To address criticisms of there being no independent appeal mechanisms outside the operation and control of the racing industry control body, at a level below appeal to the Queensland Civil and Administrative Tribunal (QCAT), the Racing Disciplinary Board (disciplinary board) will be established to replace the existing appeals committees established by Racing Queensland.

The disciplinary board will be responsible for the initial hearing of all appeals from administrative and disciplinary decisions of the control bodies and stewards’ inquiries. Appeals initiated by aggrieved persons against decisions of the disciplinary board will be heard by QCAT in the same manner as currently exists with decisions of appeal committees. To ensure a control body does not use its resources to prosecute cases regardless of the public interest or overall merits involved, a control body will be able to appeal a decision of the disciplinary board to QCAT only on a question of law.

#### Racing Integrity Commissioner

A Racing Integrity Commissioner will be established as a part-time role to provide independent oversight of integrity issues across the racing industry and conduct integrity-related investigations.

While the government will be responsible for the operations of the disciplinary board and Racing Integrity Commissioner, the costs associated with their operation will be met by the control body.

### Queensland bookmakers

Under the current provisions of the Racing Act, Queensland bookmakers may only take bets while present at a race meeting and are restricted to using approved telephones to take bets from customers who are not physically present at the race meeting. This restriction has eroded their competitiveness with interstate-based bookmakers who conduct bookmaking via the internet. The Bill provides that bookmakers will be able to use internet-based technologies to conduct their business, both at the racecourse and at other offcourse premises and at the times, approved by the Minister. The control body that licenses the bookmaker will continue to have responsibility for approving an appropriate telecommunications system and monitoring it, as currently occurs with telephone bookmaking under the Racing Act. Any system for bookmaking approved by the control body will be required to demonstrate appropriate integrity safeguards to protect both the bookmaker and customers.

### **Amendments to the Wagering Act**

The Government has agreed to provide funding for capital works to assist the racing industry to maintain its existing infrastructure and to fund necessary capital improvements through the Racing Industry Capital Development Scheme (the Scheme). The Scheme provides funding for priority infrastructure upgrades at racing venues across the State.

Amendments to the Wagering Act will extend the funding (payment of 50% of the net tax collected under the Wagering Act) for the Scheme from 2014 to 2015. While the extension of the Scheme from 2014 to 2015 was previously approved, the necessary amendments to the Wagering Act were not enacted.

### **Amendments to the Interactive Gambling Act**

Amendments to the Interactive Gambling Act will ensure that bookmaking conducted by racing bookmakers via internet-based technologies are not classified as an interactive game and thereby will not attract the 50% tax rate that applies to such games.

### **Achievement of policy objectives**

#### **Amendments to the Racing Act**

The objectives will be achieved by:

- cancelling the existing control body approval held by Racing Queensland;
- establishing three boards, the Queensland Thoroughbred Racing Board, the Queensland Harness Racing Board and the Queensland Greyhound Racing Board to assist the all-codes board to manage and administer the three codes of racing;
- establishing a statutory body, the Queensland All Codes Racing Industry Board (all-codes board), that:
  - has the primary function of being the control body for the thoroughbred, harness and greyhound codes of racing; and
  - will have on-going responsibilities including, but not limited to:
    - identifying, assessing, developing and implementing responses to strategic issues and challenges relevant to the Queensland racing industry;
    - leading and facilitating negotiations between two or more control boards about strategic issues and agreements that affect the relevant codes of racing individually or as a whole;
    - leading and undertaking negotiations with other entities about strategic issues and agreements that affect the Queensland racing industry;
    - identifying priorities for major capital expenditure for the relevant codes of racing and the Queensland racing industry;
    - managing the redevelopment of existing, and the construction of new, racing infrastructure required by the Queensland racing industry;
    - developing and implementing plans and strategies for developing, promoting and marketing the relevant codes of racing and the Queensland racing industry;
    - assisting control boards by providing staff required by control boards for the performance of the control boards' functions;
    - funding the cost of the performance of a control board's functions; and

- making recommendations to the Minister about the administration and conduct of the relevant codes of racing.
- transferring all of the staff, assets, liabilities and responsibilities of Racing Queensland to the all-codes board;
- establishing the disciplinary board to replace appeal committees appointed by a control body to hear appeals from administrative and disciplinary decisions of a control body and/or its stewards;
- establishing a Racing Integrity Commissioner to provide independent oversight of integrity issues, with the power to investigate integrity related complaints;
- enabling the government to charge control bodies for the establishment and operational costs of the disciplinary board and the Racing Integrity Commissioner;
- removing restrictions on the use of the internet by bookmakers; and
- making other related and consequential amendments to the Racing Act.

### **Amendments to the Wagering Act**

The objectives will be achieved by extending the funding of the Racing Industry Capital Development Scheme from 30 June 2014 to 30 June 2015.

### **Amendments to the Interactive Gambling Act**

The objectives will be achieved by ensuring that internet-based bookmaking activities undertaken by racing bookmakers are not classified as an interactive game and, thereby, do not attract the 50% tax rate that applies to such games.

### **Alternative ways of achieving policy objectives**

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. The Government, as part of its election commitments, stated that all costs

associated with implementing new racing governance and integrity arrangements would be funded by the racing industry itself.

### **Wagering Act**

The Racing Industry Capital Development Scheme (the Scheme) is funded by the reallocation of 50% of the net wagering tax collected by the Queensland Government. A one year extension of funding from 2014 to 2015 for the Scheme will amount to an estimated \$20 million (depending on total wagering tax collected).

### **Interactive Gambling Act**

The Bill will not impose any cost to government in implementing the proposed amendments to the Interactive Gambling Act.

### **Consistency with Fundamental Legislative Principles**

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

**Legislation should not confer immunity from proceeding or prosecution without adequate justification – *Legislative Standards Act 1992*, section 4(3)(h)**

#### Clauses 11 and 46 (Protection from liability)

Clause 11 inserts new sections 9BL and 9CN that protect a member or chief executive officer of the all-codes board and a member of a control board from civil liability for an act done or omission made, honestly and without negligence. Clause 46 inserts new section 113AS that protects the Racing Integrity Commissioner from civil liability for an act done or omission made, honestly and without negligence.

While these provisions could be considered to infringe fundamental legislative principles, these are standard clauses in Queensland legislation where there is a need to protect a public official from liability. The protection is limited to actions taken honestly and without negligence in the course of the official's duties, and continues to provide an avenue for redress for any affected individuals by providing that the liability attaches to the all-codes board or in the case of the Racing Integrity Commissioner to the State.

Clause 48 (Protections and immunities)

Clause 48 inserts new section 149ZZJ which provides a member of the disciplinary board with the same protections and immunity that apply to a District Court judge in the performance of the judge's functions. A party to an appeal has the same protection and immunity as a party in a proceeding in the District Court. A person appearing before the disciplinary board as a representative of a party has the same protection and immunity as a barrister appearing for a party in a proceeding in the District Court. A witness appearing before the disciplinary board has the same protection and immunity as a witness in a proceeding in the District Court and an expert appearing before the disciplinary board has the same protection and immunity as an expert in a proceeding in the District Court.

It is considered that persons participating in a quasi-judicial process should be free from personal attack as a result of performing their roles. The immunity will provide that members of the disciplinary board can act with appropriate confidence in carrying out their respective roles without litigation being taken against them personally for their actions in the disciplinary board's proceedings. This provision provides a similar level of protection as was provided to members and persons involved in proceedings of the former Racing Appeals Tribunal.

**Legislation should be consistent with the principles of natural justice – *Legislative Standards Act 1992, section 4(3)(b)***

Clauses 11 and 46 (Removal provisions)

Clause 11 inserts new sections 9AK, 9AM, 9BD, 9BW and 9BY which provide that the Governor in Council may remove a member, chairperson and deputy chairperson or chief executive of the all-codes board, and a member, chairperson and deputy chairperson of a control board, for any reason or none. Clause 46 inserts new section 113AR that provides that the Governor in Council may suspend or remove the Racing Integrity Commissioner from office for any reason or none. It is noted that a traditional element of natural justice is the 'prior hearing rule', which requires before a decision is made that adversely affects a person's right, interest or legitimate expectation, a decision maker will give the person prior notice that the decision may be made, the information, particularly adverse information on which the decision may be based, and the person's right to make a submission in reply.

While there is no requirement under the Bill for the Governor in Council to comply with the 'prior hearing rule' before removing a person from the

offices referred to above, it would depend upon the circumstances of each case as to whether an individual would be afforded the benefits of this rule. All relevant appointments that may be impacted by the relevant provisions are on a fixed-term basis and any person who accepts an appointment outlined above, would be aware that their appointment may be terminated at any time without reason.

**Whether legislation is consistent with principles of natural justice—*Legislative Standards Act 1992, section s4(3)(b)***

Clause 48 (Member of disciplinary board may be present if the member has a conflict of interest)

Clause 48 inserts new section 149ZC that provides that a member of the constituted disciplinary board for an accepted appeal may be present and take part in a decision on the appeal, even if the member has declared a conflict of interest in relation to the accepted appeal, provided that in the case of the chairperson, the parties to the appeal agree, and in the case of a member, the appeal chairperson agrees. There is an obligation on the appeal chairperson and a member to disclose the conflict of interest as soon as they become aware of it.

The requirement for the appeal chairperson to obtain the consent of the parties to an appeal to continue to hear and decide the appeal is considered appropriate. The parties have the option of deciding whether the appeal chairperson continues to hear and decide the appeal. There is no obligation on the parties to agree to the appeal chairperson continuing to hear and decide the appeal. The requirement for at least one of the members of the constituted board to have a thorough knowledge of the rules of racing for the relevant code of racing has the potential, however remote, for a member to have a conflict of interest as they are likely to have, or have had, some involvement in a code of racing. While the member may not have a direct conflict, a member is expected to err on the side of caution and declare any potential conflict that in some cases may be quite remote. The appeal chairperson, who must be a lawyer, is considered to be the appropriate person to decide whether the conflict disclosed by a member would prevent the member hearing and deciding the appeal without bias or the perception of bias. Also, as the Bill gives effect to the policy intention that parties to an appeal are to represent themselves, it is likely that parties will not be legally qualified or represented and will not have a full understanding of what constitutes a conflict of interest that would preclude a member from participating in an appeal. If the member or appeal chairperson, who has declared a conflict, does not believe that they can continue to hear and

decide the appeal without bias or the perception of bias, they would stand aside and the issue of obtaining agreement would not arise.

Clauses 11, 46, 48, 54 – 57, 59 and 62 (New offences and appropriateness of penalties for offence)

Clause 11 inserts new section 9CM which creates an offence for a member of a control board to fail to disclose an ownership interest in a licensed animal and imposes a maximum penalty of 40 penalty units. Section 9CM replicates current section 60A of the Act which applies to an executive officer of a control body. If a member of a control board is an owner or becomes an owner of a licensed animal, whether or not the member derives a financial benefit from the ownership interest, they must disclose specified information to a meeting of the control board and the chief executive officer of the all-codes board. This provision, including the offence and penalty, is consistent with existing section 60A and is considered necessary to ensure a member of control board who has an ownership interest in a licensed animal discloses the interest.

Clause 46 inserts new section 113AW that creates a new offence for a person to fail to give evidence or produce a document or thing to the Racing Integrity Commissioner relevant to the conduct of an audit of or investigation into an integrity process of a control body. The offence carries a maximum penalty of 100 penalty units.

Clause 48 also creates new offences relating to appeal hearings of the disciplinary board, including compliance with directions, witnesses' obligations, contravening the board's decisions, misleading the board, influencing participants in appeals and disrupting appeal hearings. With one exception, (new section 149ZH – 50 penalty units), each of these new offences impose a maximum penalty of 100 penalty units. The penalties imposed are considered appropriate to the offence and are consistent with penalties for similar offences in legislation relating to courts and tribunals.

Clauses 54-57, 59 and 62 create new offences in sections 194 to 197, 200A and 248I which relate to offcourse approvals granted to racing bookmakers. Currently, a racing bookmaker may carry on bookmaking only while they are present at a licensed venue during a race meeting and can only take bets with a person not present at the venue by use of an approved telephone. The new offences in sections 194 to 197 replicate the offences currently contained in those sections in regard to bookmaking conducted at a licensed venue during a race meeting. New section 200A applies to racing bookmakers who hold an offcourse approval and replicates the intent and

penalty imposed under section 200 which applies to bookmaking carried on at a licensed venue. The penalties imposed under the amended sections range from 40 to 600 penalty units and reflect the penalties currently provided for the similar offences related to bookmaking carried on at a licensed venue under the Racing Act.

New section 248I creates an offence of failing to comply with a direction to return an offcourse approval after cancellation with a maximum penalty of 40 penalty units. This provision replicates section 237 which relates to an eligibility certificate for a racing bookmaker's licence.

While it is acknowledged that the maximum penalties are high, they replicate the penalties currently imposed under the Act and are considered justified and necessary to ensure public confidence in the Queensland racing industry by deterring a racing bookmaker who is granted an offcourse approval from not complying with the requirements placed upon them. Unlawful bookmaking has traditionally been the purview of organised crime and has been central to most major racing integrity issues throughout the history of the racing industry. Licensed bookmakers taking bets illegally undermines the economic viability and the integrity controls of the racing industry and is a serious breach of trust.

**Whether legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is subject to appropriate review— *Legislative Standards Act 1992*, section, s4(3)(a)**

Clause 53 (Control body may only appeal disciplinary board's decisions on a question of law)

Clause 53 inserts new section 155 that provides that a control body may appeal to the Queensland Civil and Administrative Tribunal (QCAT) against a decision of the disciplinary board only on a question of law. This restriction narrows current section 150 of the Racing Act, which allows control bodies to appeal to QCAT on the merits, against decisions of appeal committees against monetary penalties or other decisions of stewards.

The purpose of restricting a control body to appealing only on a question of law is to address an inequality that exists between the legal and financial resources of a control body and those of an individual licensee of a control body. In general, licensees of a control body do not have access to the financial resources to engage legal representation to participate in an appeal instituted by the control body against a decision of an appeal committee established by the control body.

Under the proposed model, the disciplinary board will be independent of the control body and constituted by persons appointed by the Governor in Council. A control body is not prevented from appealing if the disciplinary board makes an error of law. The decisions that may be reviewed by the disciplinary board include the refusal of a control body to grant or renew a licence, a conviction and penalty imposed for an offence under the rules of racing, including behaviour related offences and the presentation of a licensed animal for racing that tests positive to a prohibited substance.

While the control body may be aggrieved if the disciplinary board overturns a conviction or varies a penalty imposed by stewards employed by the control body, it should be noted that a stewards' inquiry is an informal hearing and there is no requirement that those imposing the penalty hold any legal qualification. The allegation that there has been a breach of the rules of racing, the collection of the evidence, presentation of the prosecution case, the conduct of the hearing and the determination of either innocence or guilt and/or imposition of a penalty are all carried out by stewards employed by the control body. The establishment of the disciplinary board, independent of the control body, will be better placed to assess the merits of each case and make an arm's length determination of the case. A control body is not prevented from appealing to QCAT if the disciplinary board makes an error of law.

**Legislation should make rights and liberties, or obligations, dependent on administrative power, only if the power is sufficiently defined and subject to appropriate review – *Legislative Standards Act 1992*, section 4(3)(a)**

Clause 62 (Application for offcourse approval)

Clause 62 inserts new section 243 that allows a racing bookmaker to apply to the Minister for an offcourse approval. Under section 247, the Minister must consider an application and decide to either grant or refuse to grant the offcourse approval. Currently, a racing bookmaker may only conduct bookmaking while present at a licensed venue, during a race meeting. An offcourse approval permits a bookmaker to conduct bookmaking at a place approved by the Minister (that is not open to the public) and at the times specified in the approval.

While the Bill does not provide for a merits based review of the Minister's decision, appeal rights are not excluded under the Bill. It is considered appropriate for the Supreme Court to review an offcourse approval decision under the *Judicial Review Act 1991* by assessing, for example, whether the

Minister has taken all relevant considerations into account and excluded irrelevant considerations when making the decision, and that the decision making process was free from bias. The disciplinary board is considered an inappropriate forum to undertake a review of the Minister's decision, as the members of the disciplinary board are appointed by the Minister and the key function of the disciplinary board is to hear appeals from decisions of a racing control body.

**Whether legislation is consistent with principles of natural justice and provides for the compulsory acquisition of property only with fair compensation— *Legislative Standards Act 1992, s4(3)(b) and (i)***

Clause 73 (Compulsory redistribution of Racing Queensland's assets)

Clause 73 inserts new section 447 that provides that once Racing Queensland's approval as the control body is cancelled, all assets, employees, instruments, authorisations or liabilities of Racing Queensland will be transferred to the all-codes board.

While the transfer of the assets and liabilities of the current control body to the new all-codes board without compensation is a possible breach of fundamental legislative principles, it should be noted that the all-codes board is replacing Racing Queensland as the control body and will have similar functions and powers. Racing Queensland was transferred the majority of its assets and employees from previous control bodies under a similar provision in previous amendments to the Racing Act. Accordingly, it is considered that the legislation does have regard to fundamental legislative principles.

**Legislation should have sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992, section 4(3)(a)***

Clause 73 (Directors of Racing Queensland)

Clause 73 inserts new section 446 which cancels the approval held by Racing Queensland at midnight on the day before the commencement. The amendments to the Racing Act will not remove the directors of Racing Queensland Limited from office. They will remain as directors of Racing Queensland until the company is deregistered. However, from the date that Racing Queensland ceases to be a control body and all assets transferred to the all-codes board, they will not be paid director fees. The current four directors of Racing Queensland are entitled to apply for appointment as a member of one of the three new control boards or the all-codes board. While any director not appointed as a member to any of the new entities

will not be compensated, all current directors of Racing Queensland are part-time with limited terms. As the current directors of Racing Queensland were appointed in 2012 to fill casual vacancies that resulted from the resignation of directors, they are appointed only until the next Annual General Meeting.

## **Consultation**

### **Government**

Consultation has been undertaken on the amendments to the *Racing Act*, *Wagering Act*, and the *Interactive Gambling Act* with all relevant Government agencies and departments, including the Department of the Premier and Cabinet, Queensland Treasury and Trade, the Public Service Commission, the Office of the Queensland Parliamentary Counsel, the Department of Justice and the Attorney General and the Queensland Police Service.

The Racing Animal Welfare and Integrity Board was consulted on relevant aspects of the Bill.

### **Industry**

Consultation was undertaken with the Chief Executive Officer of the Australian Racing Board and the Board of Racing Queensland Limited and its legal advisors. Consultation with the Queensland Bookmakers' Association has been ongoing over a number of years. The Minister has met with stakeholders across the three codes of racing, including the Australian Trainers Association (Qld Branch), the Queensland Racehorse Owners Association, the Queensland Jockeys Association, the Greyhound Breeders Owners and Trainers Association and numerous race clubs throughout Queensland regarding the government's election commitments.

## **Consistency with legislation of other jurisdictions**

While each jurisdiction has similar racing industry structures and has enacted legislation to appoint and empower control bodies to manage the thoroughbred, harness and greyhound codes of racing, the exact details of the model established in each jurisdiction reflect the particular circumstances in each jurisdiction. As each control body or principal racing authority in each state is a member of the national peak body for the relevant code of racing, racing structures must comply with the requirements of the peak national bodies.

The removal of the restrictions on Queensland racing bookmakers to permit them to use the internet to conduct bookmaking, is consistent with legislation in other states and territories which currently permits bookmakers to use the internet to conduct bookmaking.

## Notes on Provisions

### Part 1 Preliminary

Clause 1 states that the short title of the Act is the *Racing and Other Legislation Amendment Act 2012*.

Clause 2 provides that sections 10 and 13 commence on assent and all other sections commence on proclamation.

### Part 2 Amendment of Interactive Gambling (Player Protection) Act 1998

Clause 3 states that this part amends the *Interactive Gambling (Player Protection) Act 1998* (Interactive Gambling Act).

Clause 4 amends section 6(2)(a) of the Interactive Gambling Act by omitting the existing section and inserting a new section that specifies that wagering conducted under the *Racing Act 2002* (the Act) is not an interactive game if a person places a wager with a racing bookmaker using a telecommunication system approved for use under the Act while the bookmaker is conducting bookmaking at a race meeting or another place approved for offcourse bookmaking under the Act.

## **Part 3                      Amendment of Racing Act 2002**

Clause 5 states that this part amends the *Racing Act 2002* (the Act).

Clause 6(1) and (2) amends section 4(2) which sets out the main purposes of the Act and how they are achieved by inserting new subsections that relate to:

- the establishment of the Queensland All Codes Racing Industry Board (all-codes board) as the control body for the thoroughbred, harness and greyhound codes of racing;
- the establishment of control boards to assist the all-codes board;
- the appointment of the Racing Integrity Commissioner
- the establishment of the disciplinary board to hear and decide appeals against appellable decisions; and
- the process for granting offcourse approvals to racing bookmakers.

Clause 6(3) renumbers subsections in the amended section 4(2).

Clause 7 replaces the heading of Chapter 2, part 1 by inserting a new heading.

## **Part 1                      Preliminary**

Clause 8 amends section 7. Clause 8(1) renumbers section 7(1)(a) and (b) as section 7(1)(c) and (d). Clause 8(2) inserts new subsections (1)(a) and (b) that identifies that one of the main purposes of Chapter 2 is to establish a control body and control boards for the thoroughbred, harness and greyhound codes of racing. Clause 8(3) omits subsection (2) by replacing it with a new subsection (2) that reflects the amendments to chapter 2 and outlines how the main purposes of the chapter are achieved.

Clause 9 omits the Chapter 2, part 2 heading, and the division 1 heading.

Clause 10 amends section 9(e)(ii) by providing that a person is an ‘eligible individual’ if they are a member of a committee, or employee of an association formed to promote the interests of 1 or more participants in a code of racing so long as such an organisation is not formed in Australia.

This provision clarifies that a person who is a member of a committee, or employee of an association formed to promote the interests of 1 or more participants in a code of racing outside of Australia is an eligible individual. It is considered that a person's employment or membership in such entities outside of Australia would not give rise to a conflict of interest with a person's position as an executive officer of a control body in Queensland.

Clause 11 inserts new parts 1A and 1B in Chapter 2 and part 2 heading in Chapter 2.

## **Part 1A                      Queensland All Codes Racing Industry Board**

### **Division 1                      Establishment and status of all-codes board**

New section 9AA establishes the Queensland All Codes Racing Industry Board ('the all-codes board').

New section 9AB provides that the all-codes board is the control body for the thoroughbred, harness and greyhound codes of racing, which are each referred to as a 'board code of racing'. The all-codes board will replace Racing Queensland Limited as the control body for the thoroughbred, harness and greyhound codes of racing.

New section 9AC(1) provides that the all-codes board is a:

- statutory body under the *Financial Accountability Act 2009*;
- statutory body under the *Statutory Bodies Financial Arrangements Act 1982*; and
- unit of public administration under the *Crime and Misconduct Act 2001*.

Section 9AC(2) provides that the *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the all-codes board's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

## **Division 2            All-codes board's functions and powers**

New section 9AD(1) states that the primary function of the all-codes board is to be the control body for the thoroughbred, harness and greyhound codes of racing. Subsection (2) outlines other functions of the all-codes board which include:

- identifying, assessing, developing and implementing responses to strategic issues and challenges relevant to the thoroughbred, harness and greyhound codes of racing individually or as a whole;
- leading and undertaking negotiations with other entities about strategic issues and agreements that affect the thoroughbred, harness and greyhound codes of racing individually or as a whole; and
- identifying priorities for major capital expenditure for the relevant codes of racing and the thoroughbred, harness and greyhound codes of racing individually or as a whole.

New section 9AE (1) and (2) outlines the powers of the all-codes board. The board has the powers listed in section 34 and all powers necessary for performing its functions, including the powers of an individual. Subsection (3) provides that the all-codes board may exercise a power in relation to the thoroughbred, harness and greyhound codes of racing either individually or in relation to those codes of racing as a whole.

New section 9AF provides that the all-codes board must perform a function in the way that is in the best interests of the thoroughbred, harness and greyhound codes of racing as a whole, while having regard to the interests of each individual code.

New section 9AG replicates section 60B which required Racing Queensland Limited to 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. Section 9AG places this obligation on the all-codes board. If at the end of a year, the all-codes board has not paid 5.32% of its net UNiTAB product fee for a year as prize money, the all-codes board must use the remaining amount of the 5.32% in supporting non-TAB thoroughbred racing.

New section 9AH provides that the all-codes board may delegate its powers to an appropriately qualified person.

### **Division 3            Membership of all-codes board**

New section 9AI (1) provides that the all-codes board is to consist of five (5) members, namely, the chairperson of the Queensland Thoroughbred Racing Board, the chairperson of the Queensland Harness Racing Board; the chairperson of the Queensland Greyhound Racing Board; and two (2) other members appointed by the Governor in Council. Subsection (2) provides that if the position of chairperson of a control board is vacant, the deputy chairperson of the control board will replace the chairperson of the control board on the all-codes board for the period of the vacancy. Subsections (3) and (4) provide that the members of the all-codes board appointed by the Governor in Council hold office for a term of not more than 3 years and may be reappointed.

New section 9AJ identifies the criteria for eligibility as a member of the all-codes board. This provision ensures that persons appointed to the all-codes board have the necessary skills and experience and are fit and proper for appointment and do not have any real, or perceived conflicts of interest between their role on the all-codes board and other activities within the Queensland racing industry.

New section 9AK outlines the conditions under which the office of a member of the all-codes board becomes vacant and provides that the Governor in Council may remove a member of the all-codes board from the office as member for any reason or none.

New section 9AL provides that the Governor in Council must appoint a chairperson and a deputy chairperson of the all-codes board.

New section 9AM outlines the conditions under which the office of a chairperson and deputy chairperson of the all-codes board becomes vacant and provides that the Governor in Council may remove a person from the office of chairperson or deputy chairperson of the all-codes board for any reason or none.

New section 9AN allows the Governor in Council to appoint a person who is eligible for appointment to fill a casual vacancy in the office of a member, chairperson or deputy chairperson. A person who fills a casual vacancy completes the rest of the term of appointment of the person they are replacing. The person is eligible for reappointment.

New section 9AO provides that despite sections 9AI(1) or 9AL(1) or (2), the performance of a function, or exercise of a power, by the all-codes

board is not affected merely because of a vacancy in the office of a member, the chairperson or the deputy chairperson of the all-codes board.

New section 9AP provides that a member of the all-codes board is to be paid the fees and allowances that the Governor in Council determines.

## **Division 4            All-codes board business and meetings**

New section 9AQ provides that subject to this Act, the all-codes board may conduct its business, including its meetings, in the way it considers appropriate.

New section 9AR allows the all-codes board flexibility in when and where it holds its meetings and provides that the all-codes board may hold its meetings when and where the chairperson decides. Subsection (2) requires the chairperson to call a meeting of the all-codes board if asked by at least one (1) other member of the all-codes board.

New section 9AS provides that a quorum for a meeting of the all-codes board is least 3 members of the all-codes board.

New section 9AT provides that the chairperson of the all-codes board is to preside at all meetings of the all-codes board at which the chairperson is present. However, if the chairperson is absent, the deputy chairperson presides.

New section 9AU(1) allows the all-codes board to conduct its meetings using technology allowing reasonably contemporaneous and continuous communications between persons taking part in the meetings. Subsection (2) provides that a member taking part in a meeting of the all-codes board under subsection (1) is taken to be present at the meeting. Subsection (3) specifies that a question at a meeting of the all-codes board is decided by the majority of votes of members present. Subsection (4) provides that the chairperson of the all-codes board has a casting vote in the event of votes being equal. Subsection (5) specifies that a resolution of the all-codes board is valid, even though not passed at a meeting if at least half of the members give written agreement to the resolution and notice of the resolution is given in accordance with procedures approved by the all-codes board. This provision is intended to allow the all-codes board to

utilise ‘flying minutes’ to transact its business without the need and expense associated with convening a meeting.

New section 9AV provides that within 2 months after its annual report being tabled in the Legislative Assembly, the all-codes board must hold an annual meeting that members of the public may attend. The all-codes board must give 4 weeks notice of the meeting on its website.

New section 9AW enables the Minister to direct the all-codes board to convene a meeting in order to consider a matter specified by the Minister and requires the all-codes board to comply with such a direction.

New section 9AX requires the all-codes board to keep minutes of its meetings and a record of its decisions and resolutions.

New section 9AY provides that a member attending a meeting of the all-codes board who objects to a decision made at the meeting in relation to the provision of advice to the Minister on a matter may require their objection, and their reasons for the objection, to be recorded in the minutes of the meeting and reported in writing to the Minister when the advice is provided by the all-codes board. This provision ensures the Minister is fully informed of any dissenting views, or difference of opinion, held by members of the all-codes board.

## **Division 5            Chief executive officer**

New section 9AZ(1) and (2) requires the all-codes board to have a chief executive officer who must be appointed by the Governor in Council. Subsection (3) specifies the eligibility criteria for a person to be appointed as the chief executive officer of the all-codes board. Subsection (4) specifies matters that the Governor in Council must have regard to in determining a person’s suitability for appointment as the chief executive officer of the all-codes board.

New section 9BA states that the chief executive officer of the all-codes board holds office for a three (3) year term and may be reappointed.

New section 9BB outlines the main functions of the chief executive officer of the all-codes board.

New section 9BC provides that the chief executive officer of the all-codes board is employed under the Racing Act and not the *Public Service Act 2008* and is to be paid the remuneration decided by the Governor in

Council. The chief executive officer holds office on the terms and conditions, not provided by the Racing Act, that are decided by the all-codes board.

New section 9BD(1) specifies the grounds on which the office of chief executive officer of the all-codes board becomes vacant. Subsection (2) states that the chief executive officer of the all-codes board may be removed by the Governor in Council for any reason or none.

New section 9BE allows the all-codes board to appoint an acting chief executive officer for a period of not more than 3 months in any one year, if the chief executive officer is absent or unable to perform the functions of the office.

New section 9BF allows the chief executive officer of the all-codes board to delegate a function of the chief executive officer to an appropriately qualified person.

## **Division 6                    Information to be collected about potential member and chief executive officer of all-codes board**

New section 9BG(1) requires that before a person (a candidate) can be appointed, they must give their written consent for both personal and background information about them to be collected by or for the chief executive, and for a report on their criminal history to be obtained. Subsection (2) specifies that the chief executive may require a candidate for appointment as a member or a chief executive officer of the all-codes board to give further information, or a document, relating to the candidate within a reasonable time.

New section 9BH enables the chief executive to ask the police commissioner for a written report on a candidate's criminal history and a brief description of the circumstances of a conviction mentioned in the person's criminal history. Subsection (2) specifies that, after receiving a request from the chief executive, the police commissioner must give the chief executive a report on the candidate's criminal history. Subsection (3) clarifies that the duty imposed on the police commissioner applies only to information in the commissioner's possession or to which the commissioner has access.

## **Division 7                    Duties of executive officers and employees of all-codes board**

New section 9BI(1) imposes a duty on an executive officer of the all-codes board to act honestly and with reasonable care and diligence when performing their functions and exercising their powers. Subsection (2) specifies that a current or former executive officer of the all-codes board must not make improper use of information acquired as a result of their position to gain an advantage, either directly or indirectly, for themselves or any other person, or to cause detriment to either the all-codes board or a control board. Subsection (3) specifies that an executive officer of the all-codes board must not make improper use of their position as an executive officer to gain an advantage, either directly or indirectly, for themselves or any other person, or to cause detriment to either the all-codes board or a control board. Subsection (4) specifies that section 9BK has effect in addition to any other law relating to the civil or criminal liability of an executive officer of the all-codes board and does not prevent the starting of civil or criminal proceedings.

New section 9BJ establishes the concept of ‘the interested member’. It outlines the requirements and process to be followed if a member (the interested member) of the all-codes board has a direct or indirect pecuniary interest, or other interest, in a matter being considered or about to be considered at a meeting of the all-codes board, and the interest appears to raise a conflict with the proper performance of the member’s duties in relation to the consideration of the matter. In particular, the provision requires that in such circumstances, the member must as soon as possible disclose the interest at a meeting of the all-codes board. A member who has disclosed such an interest must not be present during deliberations of the all-codes board concerning the impact of the declaration made by the member. It also provides that the interested member may not take part in any deliberations or decision of the all-codes board about the matter, unless the all-codes board directs otherwise. While a contravention of this section does not invalidate any decision of the all-codes board, should a contravention be identified, the all-codes board must reconsider the matter in accordance with the requirements of the section.

Section 9BK(1) requires a person employed by the all-codes board, other than as a member, who has an interest that conflicts, or may conflict, with the discharge of their duties to disclose the nature of the conflict to the all-codes board as soon as practicable. The person must not take any action

related to the matter that is, or may be, the subject of the conflict unless authorised by the all-codes board. Subsection (2) enables the all-codes board to direct a person employed by the body to resolve a conflict, or possible conflict, between an interest and the person's duties. Subsection (3) specifies that for the interpretation of a reference to an interest or a conflict of interest, reference should be made to section 9BJ(10).

## **Division 8                    Immunity of members and chief executive officer of all-codes board**

Section 9BL prevents a member, or chief executive of the all-codes board incurring civil liability for any act, or omission, made honestly and without negligence under the Act and provides that if any liability attaches, it attaches to the all-codes board.

## **Division 9                    Ministerial direction to all-codes board**

Section 9BM empowers the Minister to give a direction to the all-codes board in regard to the performance of its functions or the exercise of its powers if the Minister is satisfied such a direction is in the best interests of the Queensland racing industry. However, it specifies that a direction may not be given in relation to:

- the allocation of race days and the provision of funding to clubs to hold race meetings;
- the prizemoney for races held for a control body's code of racing;
- a decision of the all-codes board for which there is a right of appeal to the disciplinary board or right of review by QCAT; or
- decisions contained in section 149S(2). (These decisions are currently not, and will be not appellable and includes a decision relating to the eligibility of an animal to race and decisions that must be made on race day.)

The all-codes board must comply with a Ministerial direction and must include in its annual report details of any direction given by the Minister

and may also provide a comment on the effect of any such direction. The purpose of this provision is to enable the Minister to intervene should the Minister form the view that it is in the best interests of the Queensland racing industry for the all-codes board to exercise its functions or powers in a particular way.

## **Division 10      Other matters**

New section 9BN empowers the all-codes board to establish committees to assist it in performing its functions and enables the all-codes board to decide the membership and functions of such committees. The all-codes board may decide how a committee will conduct its proceedings or may allow the committee to decide.

## **Part 1B            Control boards**

### **Division 1            Establishment, functions and powers**

New section 9BO establishes the control boards, the Queensland Thoroughbred Racing Board, the Queensland Harness Racing Board and the Queensland Greyhound Racing Board.

New section 9BP states that the Queensland Thoroughbred Racing Board, the Queensland Harness Racing Board and the Queensland Greyhound Racing Board is the control board for their respective code of racing.

New section 9BQ(1) provides that a control board's function is to assist the all-codes board to manage its code of racing and do anything it is asked to do by the all-codes board for its code of racing. Subsection (2) lists other functions of a control board, which includes, but is not limited to reviewing and making recommendations about the allocation of race dates by the all-codes board, reviewing and making recommendations about the allocation of prizemoney by the all-codes board for the code of racing to the all-codes board and consulting with industry stakeholders.

New section 9BR provides that a document is sufficiently made if it is signed by the chairperson, or other person authorised by the control board.

New section 9BS enables a control board to delegate any of its powers to an appropriately qualified person if that person is approved by the all-codes board.

## **Division 2            Members of control board**

New section 9BT provides that a control board is to consist of three (3) members appointed by the Governor in Council.

New section 9BU(1) outlines the eligibility criteria for appointment as a member of a control board. Subsection (2) identifies matters to which the Governor in Council must have regard in considering a person's suitability for appointment to a control board.

New section 9BV(1) specifies that at the end of the initial term, two (2) of the original members appointed to a control board must stand down from the board. Subsection (2) specifies that at the year after the end of the initial term, the remaining original member must stand down. The effect of these provisions is that four (4) years after the establishment of the control board, all three (3) original members will have stood down. Subsection (3) specifies that a member appointed after the initial term is appointed for a period of three (3) years. Subsection (4) provides that a person can not be appointed as a member of a control board for more than two (2) consecutive terms. Subsection (5) defines 'initial term' as three (3) years after the control board is established.

New section 9BW(1) outlines the circumstances in which the office of a member of a control board may become vacant. Subsection (2) provides that the Governor in Council may remove a member for any reason or none. Subsection (3) requires the control board to give notice of the resignation of a member to the Minister and to the chief executive officer of the all-codes board. Subsection (4) specifies the requirements of the notice to be given under subsection (3).

New section 9BX provides that the Governor in Council must appoint a member of each control board as the chairperson and a member as the deputy chairperson.

New section 9BY(1) specifies the circumstances in which a person appointed as a chairperson or deputy chairperson of a control board ceases to hold such appointment. Subsection (2) provides that the Governor in

Council may remove a member from the office of chairperson or deputy chairperson.

New section 9BZ(1) provides that the Governor in Council may appoint a person who is eligible for appointment as a member to fill a casual vacancy in the office of a member. Subsection (2) provides that a person appointed under subsection (1) completes the remainder of the term of the person they are replacing and is eligible to be reappointed only for one (1) additional term at the end of their term.

New section 9CA provides that a vacancy in the office of a member, the chairperson or deputy chairperson of a control board does not affect the performance of a function or exercise of a power by the control board.

New section 9CB provides that a person appointed as a member of a control board is paid the remuneration decided by the Governor in Council and they hold office on the terms and conditions, not specified in the Racing Act, as decided by the Governor in Council.

### **Division 3            Control board business and meetings**

New section 9CC states that, subject to the requirements of the Act, a control board may conduct its meetings and business in the way it considers appropriate.

New section 9CD(1) specifies that a control board may hold its meetings when and where the chairperson decides. Subsection (2) requires the chairperson to call a meeting if requested, in writing, by at least two (2) members.

New section 9CE specifies that a quorum for a meeting of a control board is two (2) members.

New section 9CF(1) provides that the chairperson of a control board presides at all meetings at which they are present. Subsection (2) specifies that if the chairperson is not present, the deputy chairperson is to preside at a meeting of a control board.

New section 9CG(1) allows a control board to conduct its meetings using technology allowing reasonably contemporaneous and continuous communications between persons taking part in the meeting. Subsection (2) provides that a member taking part under subsection (1) is taken to be present at the meeting. Subsection (3) specifies that a question at a meeting

of a control board is decided by the majority of votes of members present. Subsection (4) provides that the chairperson of a control board has a casting vote in the event of votes being equal. Subsection (5) specifies that a resolution of a control board is valid, even though not passed at a meeting if at least half of the members give written agreement to the resolution and notice of the resolution is given in accordance with procedures approved by the control board. This provision is intended to allow a control board to utilise ‘flying minutes’ to transact control board business without the need and expense associated with convening a meeting.

New section 9CH requires a control board to keep minutes of its meetings and a record of any decisions and resolutions. It must give a copy of its minutes of its meetings to the chief executive officer of the all-codes board.

#### **Division 4                    Information to be collected about potential member of control board**

New section 9CI requires that before appointment as a member of a control board, the candidate must give consent to the collection of their personal information, background information and their criminal history. Subsection (2) provides that the chief executive may require a candidate for appointment as a member of a control board to give further information, or a document, relating to the candidate within a reasonable time.

New section 9CJ(1) enables the chief executive to ask the police commissioner for a written report on a candidate’s criminal history and a brief description of the circumstances of a conviction mentioned in the person’s criminal history. Subsection (2) specifies that, after receiving a request from the chief executive, the police commissioner must give the chief executive a report on the candidate’s criminal history. Subsection (3) clarifies that the duty imposed on the police commissioner applies only to information in the commissioner’s possession or to which the commissioner has access.

#### **Division 5                    Duties of members of control boards**

New section 9CK(1) provides that a member of a control board must act honestly and with reasonable care and diligence when performing their

functions and exercising their powers. Subsection (2) provides that a current or former member of a control board must not make improper use of information acquired as a result of their position to gain an advantage, either directly or indirectly, for themselves or any other person, or to cause detriment to either the control board or the relevant code of racing. Subsection (3) states that a member of a control board must not make improper use of their position as a member to gain an advantage, either directly or indirectly, for themselves or any other person, or to cause detriment to either the control board or the relevant code of racing. Subsection (4) states that the section has effect in addition to, any other law relating to the civil or criminal liability of a member of the control board and does not prevent the starting of civil or criminal proceedings.

New section 9CL establishes the concept of ‘the interested member’. It outlines the requirements and process to be followed if a member (the interested member) of a control board has a direct or indirect pecuniary interest, or other interest, in a matter being considered or about to be considered at a meeting of the control board, and the interest appears to raise a conflict with the proper performance of the member’s duties in relation to the consideration of the matter. In particular, the provision requires that in such circumstances, the member must as soon as possible disclose the interest at a meeting of the control board. A member who has disclosed such an interest must not be present during deliberations of the control board concerning the impact of the declaration made by the member. It also provides that the interested member may not take part in any deliberations or decision of the control board about the matter, unless the control board directs otherwise. While a contravention of this section does not invalidate any decision of the control board, should a contravention be identified, the control board must reconsider the matter in accordance with the requirements of the section and disclose the contravention to the chief executive officer of the all-codes board.

Section 9CM replicates current section 60A of the Act and provides that if a member of a control board is an owner or becomes an owner of a licensed animal, whether or not the member derives a financial benefit from the ownership interest, they must disclose specified information to a meeting of the control board and the chief executive officer of the all-codes board. A member who is found guilty of failing to disclose an ownership interest is liable to a maximum penalty of 40 penalty units. The all-codes board must make the disclosed information available to any person on request. If the member who disclosed the information is no longer a member, the all-codes board is not required to make the information available. The

all-codes board may charge a fee that is no more than the reasonable cost of providing the information.

## **Division 6            Immunity for members of control board**

New section 9CN prevents a member of a control board incurring civil liability for any act, or omission, made honestly and without negligence under the Act and provides that if any liability attaches, it attaches to the all-codes board.

## **Division 7            Ministerial direction to control board**

New section 9CO empowers the Minister to give a written direction to a control board in regard to the performance of its functions or the exercise of its powers if the Minister is satisfied such a direction is in the best interests of the Queensland racing industry. However, it specifies that a Ministerial direction may not be given in relation to a recommendation to be given by a control board to the all-codes board about the allocation of race days and the prizemoney for races held for a control body's code of racing. The control board must comply with a Ministerial direction.

The purpose of this provision is to enable the Minister to intervene should the Minister form the view that it is in the best interests of the Queensland racing industry for a control board to exercise its functions or powers in a particular way.

## **Division 8            Investigating a control board**

New section 9CP empowers the chief executive to investigate a control board to determine whether it is suitable to carry out its functions as a control board.

## **Part 2                      Approved control bodies**

Clause 12 amends Chapter 2, part 2, divisions 2 to 7 by renumbering as divisions 1 to 6.

Clause 13 amends section 11 which outlines the matters that must accompany a control body approval application. Clause 13(1) omits section 11(1)(d) and replaces it with a new section 11(1)(d) which removes the requirement for a business associate or executive associate to have their fingerprints taken. This is a consequential amendment as a result of the amendment to section 22. The provision now requires that an application for a control body approval be accompanied by a consent signed by each person the approval applicant considers is a business associate or executive associate that gives the person's consent for the collection of personal and background information by or for the chief executive and a criminal history check to be undertaken.

Clause 13(2) omits section 11(2)(h) which is no longer required as a control body will not have the power to establish an appeal committee to hear appeals. An appeal against a stewards' decision will be heard by the disciplinary board established under the Act.

Clause 13(3) amends section 11(4) to provide that should an applicant for a control body approval believe that its proposals for the policies and procedures it intends to implement are not capable of being implemented within 18 months after approval, the plans mentioned in subsection (1)(f) must include an estimate of when the policies and procedures would be able to be implemented. The purpose of this amendment is to provide flexibility to the Minister in deciding control body approval applications, as some proposals for the policies and procedures may not be able to be implemented within a strict 18 month timeframe.

Clause 14 makes a consequential amendment which replaces the section 16 heading 'div 4' with 'div 3'.

Clause 15 omits section 22 which provided for the taking of a person's fingerprints. As a result of consultation with the Queensland Police Service, it was determined that the taking of fingerprints is not required prior to requesting a person's criminal history report. A new section 22 is inserted that provides that if a business or executive associate of a control body approval applicant is an individual, and their consent for the chief executive to obtain their criminal history was not included with the

approval application, the chief executive must ask the approval applicant for the written consent of each of its business and executive associates for the chief executive to obtain their criminal history. If consent is not provided, or withdrawn, the approval application is taken to be withdrawn.

Clause 16 amends section 23 to reflect advice provided by the Queensland Police Service. Clause 16(1) amends section 23(1) to reflect that it is no longer necessary to obtain an individual's fingerprints. If the chief executive has the written consent of an individual to obtain the individual's criminal history, the chief executive may ask the police commissioner for a written report on the individual's criminal history and a brief description of the circumstances of a conviction mentioned in the person's criminal history. Clause 16(2) amends section 23(3) to clarify that the duty imposed on the police commissioner applies only to information in the commissioner's possession or to which the commissioner has access.

Clause 17 omits section 32 which provided for the destruction of fingerprints. This is a consequential amendment as a person's fingerprints will not be taken.

Clause 18 inserts a new Chapter 2, part 2, division 7 and division 8 heading.

## **Division 7                    Requirements for approved control body after approval**

Clause 18 also inserts a new section 32 which provides that within 14 days after each anniversary day for an approved control body, the control body must give a notice to the chief executive about whether the control body has been an eligible corporation for the previous year and whether it still is. The notice must be in an approved form. This requirement was previously contained in section 41(2) which has been omitted by clause 24.

## **Division 8                    Disciplinary action against approved control bodies**

Clause 19 omits section 33(2) as this provision has been included in section 34 so that all powers of a control body are contained in the one section.

Clause 20 amends section 34 to ensure that a control body has all the powers necessary to manage its code of racing. Clause 20(1) inserts a new section 34(1A) which was previously contained in section 33(2) and provides that a control body has all the powers necessary for performing its functions under section 33 as well as all other powers necessary for discharging its obligations as a control body. Clause 20(2) amends subsection (1) to provide that without limiting the powers specified in section 34(1A) a control body may do any of the things specified in section 34. Clause 20(3) amends subsection 34(1) by inserting new subsection (aa) that provides a control body has the power to allocate race dates and inserts new subsection (ea) that clarifies that a control body may conduct research and investigation into breeding of animals and racing of licensed animals for the relevant code of racing. Clause 20(4) amends section 34(1)(g) to clarify that in addition to making decisions about matters identified in section 34(1)(g), a control body may also investigate such matters.

Clause 20(5) amends section 34(1) by inserting new subsections (ga) to (ge) to clarify that a control body may supervise construction of new venues or alterations or renovations to existing venues; examine a licensed club's constitution to determine compliance with the Act and relevant rules of racing; publish material to inform the public; prepare reports or recommendations about a matter relating to the relevant code of racing and order the audit of the books and accounts of a licensed club. Clause 20(6) makes a consequential amendment to section 34(1)(i).

Clause 20(7) omits section 34(1)(j) and inserts a new subsection (1)(j) that includes the power for a control body to establish a committee or other entity to assist the control body to perform its functions and replicates the current section 34(1)(j) that specifies that a control body may establish a committee or other entity that assists the control body carry out its function and provides advice and/or assistance to the control body in relation to non-TABQ races. This provision ensures that the all-codes board has the power to establish country racing associations and the Country Racing Committee for the thoroughbred code. These entities are currently established under the constitution of the control body, Racing Queensland.

Clause 20(8) renumbers section 34(1)(a) to (j) as section 34(1)(a) to (q). Clause 20(9) renumbers section 34(1A) to (5) as section 34(1) to (6).

Clause 21 renumbers section 34A as section 27A and relocates it in chapter 2, part 2, division 5 which relates to approved control bodies. Section 34A provides that a control body that has an approval for more than one code of racing must 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. Section 9AF is a similar provision that applies to the all-codes board.

Clause 22 renumbers section 36 as section 32A and relocates it in chapter 2, part 2, division 7 as this provision only applies to an approved control body.

Clause 23 replaces Chapter 2, part 3, division 3 heading.

### **Division 3            Reporting to chief executive**

Clause 24(1) amends section 41 heading by inserting a new heading 'Plan for managing code of racing'. Clause 24(2) amends section 41 by omitting subsections (2) and (3) and inserting a new subsection (2) that specifies that the plan for managing a code of racing must be attached to a notice in the approved form.

Clause 25 amends section 42. Clause 25(1) amends section 42(3) to require approved control bodies and the all-codes board to notify the chief executive of the appointment or employment of an executive officer. Clause 25(2) omits the existing subsection (4)(d) which is now obsolete as fingerprints are not required to be taken. A new subsection (4)(d) is inserted which specifies that the notice provided in subsection (3) must be accompanied by a consent signed by an executive officer that gives the person's consent for the collection of personal and background information by or for the chief executive and a criminal history check to be undertaken.

Clause 26(1) amends section 43(3) by omitting 'chief executive's power under section 53' and replacing it with 'Minister's power under section 32G. This provision corrects a drafting error as it is the Minister that has the power to issue a show cause notice under section 53, not the chief executive. Clause 26(2) relocates and renumbers section 43 as section 32B as this provision is applicable to approved control bodies only.

Clause 27 omits the Chapter 2, part 4, division 1 heading.

Clause 28 (1) amends the heading of section 45 to 'Ministerial direction to approved control body about its policies or rules'. Clause 28(2) renumbers section 45 as section 32C and relocates it to chapter 2, part 2, division 7 as this provision is applicable to approved control bodies only.

Clause 29 renumbers Chapter 2, part 4, division 2 as Chapter 2, part 4, division 1.

Clause 30 omits section 47(2) which limits the circumstances in which the chief executive may investigate a control body. The current provision has proven to be ineffective in investigating matters that do not raise a suspicion that a control body is no longer suitable to continue to manage its code of racing or falls outside a program approved by the Minister under section 46(3). This amendment will allow the investigation of such matters that warrant investigation.

Clause 31 omits section 48(2) as the current provision has proven to be ineffective in investigating matters that would not cause the chief executive to suspect the associate is no longer a suitable person to be associated with a control body's operations and fall outside the scope of a program approved by the Minister under section 46(3). This amendment will allow the investigation of such matters.

Clause 32(1) amends section 51(1) by replacing 'the commissioner of the police service' with 'the police commissioner'. Clause 32(2) amends section 51(2) to provide that the report from the police commissioner is to provide the person's criminal history and a brief description of the circumstances of a conviction mentioned in the person's criminal history. Clause 32(3) inserts new subsection (3) that clarifies that the duty imposed on the police commissioner applies only to information in the commissioner's possession or to which the commissioner has access.

Clause 33 omits the Chapter 2, part 4, division 3 heading.

Clause 34(1) makes a consequential amendment to section 52(1)(f). Clause 34(2) omits section 52(3) in order to ensure the Minister is not constrained in initiating disciplinary action against an approved control body if it is considered warranted.

Clause 35 relocates and renumbers sections 52 to 58 (which allow the Minister to take disciplinary action against a control body) as sections 32F to 32L as these provisions are applicable to approved control bodies only. It is not appropriate for the Minister to take formal disciplinary action against a control body that is a statutory body.

Clause 36 omits the existing Chapter 2, part 4, division 4 heading and replaces it with the new heading.

## **Division 2                      Executive officers of control body to disclose interest in licensed animal**

Clause 37 relocates and renumbers section 59 (which states a control body is subject to the *Crime and Misconduct Act 2001*) and section 60 (which allows the Minister to request the Auditor-General to audit a control body) as sections 32D and 32E which are applicable only to approved control bodies. Clause 11 (new section 9AC) provides that the all-codes board is a unit of public administration for the *Crime and Misconduct Act 2001*. As the all-codes board is subject to the *Financial Accountability Act 2009*, the Auditor-General has the power to audit it.

Clause 38(1) amends section 60A(1) to provide that the section applies to an executive officer of a control body who is, or becomes, an owner of a licensed animal. Clause 38(2) amends section 60A(2) by omitting a reference to disclosure being made to ‘directors’ to reflect that the all-codes board will not have directors. The use of the term ‘relevant persons’ reflects the disclosure responsibilities are placed on executive officers of the all-codes board and an approved control body. Clause 38(3) inserts a new section 60A(8) that defines ‘relevant persons’. New section 9CM places a similar obligation on a member of a control board.

Clause 39 omits section 60B as this section is replicated as section 9AG applicable to the all-codes board as the control body for the thoroughbred code of racing.

Clause 40(1) omits section 81(h) which related to a control body policy for appeals to an appeal committee. The requirement to have such a policy is no longer required because the process related to an appeal against a stewards decision is provided for in the Act with the establishment of the disciplinary board. Clause 40(2) renumbers section 81(i) to (w) as section 81(h) to (v).

Clause 41(1) renumbers section 87(6) as section 87(7). Clause 41(2) inserts a new section 87(6) which provides that a control body’s licensing scheme may also provide for matters relating to offcourse bookmaking approvals. This is a consequential amendment as a result of the inclusion of offcourse approvals for racing bookmakers in chapter 6, new part 3.

Clause 42 omits the Chapter 3, part 3, division 1 heading.

Clause 43 omits division 2 of part 3 in Chapter 3. This division enabled a control body to establish an appeal committee under its rules of racing to

hear appeals from decisions of stewards of a control body. This division has been omitted as appeal committees established by a control body have been replaced by the disciplinary board under Chapter 4A.

Clause 44 amends section 113(5) by omitting a specific condition that could be placed on a control body's approval for the disposal of an asset by a non-proprietary entity (a licensed club) under subsection (4)(b). A control body may now approve the disposal of an asset under section 113(4)(b) on the conditions it considers appropriate.

Clause 45 renumbers sections 113A to 113G as sections 113AB to 113AK.

Clause 46 inserts new Chapter 3A.

## **Chapter 3A Racing Integrity Commissioner**

New section 113AL provides that there is to be a Racing Integrity Commissioner (the commissioner). The commissioner is to be appointed by the Governor in Council on a part-time basis and for a term of not more than 3 years and may be reappointed. The commissioner is to be paid the remuneration and allowances decided by the Governor in Council. Subject to this Act, the commissioner holds office on the conditions decided by the Governor in Council and must be appointed under the Racing Act and not under the *Public Service Act 2008*.

New section 113AM states that a person is eligible for appointment as the Racing Integrity Commissioner if the person is an eligible individual and is not a member or employee of a control body or a control board.

### **Part 2 Functions and powers of Racing Integrity Commissioner**

New section 113AN(1) states that the functions of the Racing Integrity Commissioner are to conduct audits of, and investigate, the integrity

processes of a control body, to investigate complaints about an integrity process of a control body, to report the commissioner's findings of an audit or investigation undertaken, and to make recommendations arising from an audit or investigation to the Minister and the control body. Subsection (2) provides that the commissioner also has the other functions given to the commissioner under this or another Act. Subsection (3) defines 'integrity process of a control body' to mean a policy, process, system, action, decision or other matter affecting the integrity of or the public's confidence in the control body's code of racing.

New section 113AO prohibits the Racing Integrity Commissioner from investigating a matter already decided by a court, QCAT or the disciplinary board or a matter that is the subject of an unfinished proceeding before a court, QCAT or the disciplinary board that was started before the complaint was made to the commissioner. This provision is intended to ensure that the commissioner's resources are not diverted to investigating matters that are, or have been, the subject of a proceeding.

New section 113AP(1) provides that the Racing Integrity Commissioner has the powers necessary for performing the commissioner's functions, as well as all other powers necessary for discharging the obligations imposed on the commissioner. Subsection (2) provides that the commissioner also has the other powers given to the commissioner under this or another Act. The commissioner has been given wide powers to ensure that the commissioner is, as far as possible, not restrained in undertaking the functions of the office.

New section 113AQ provides the circumstances under which the office of the Racing Integrity Commissioner becomes vacant.

New section 113AR provides that the Governor in Council may remove or suspend a person from the office of the Racing Integrity Commissioner for any reason or none.

New section 113AS protects the Racing Integrity Commissioner from incurring civil liability for an act done, or omission made, honestly and without negligence under this Act, and provides that if any civil liability does arise it attaches to State, rather than the commissioner. This section ensures that the commissioner is able to undertake their functions, and exercise their powers, free from the threat of civil liability.

## **Part 3                      Audits and investigations**

New section 113AT(1) outlines the powers of the Racing Integrity Commissioner in conducting an audit or investigation, which includes acting in the absence of a person who has been given reasonable notice of the audit or investigation; and receiving evidence on oath or affirmation or by statutory declaration; and disregarding a defect, error or insufficiency in a document. Subsection (2) enables the commissioner to administer an oath or affirmation to a person appearing as a witness before the commissioner.

New section 113AU(1) empowers the Racing Integrity Commissioner, in conducting an audit or investigation, to give a person a written notice that requires the person to attend before the commissioner to answer questions relevant to the audit or investigation. In exercising this power the commissioner must have reason to believe that the person has information relevant to the audit or investigation. Subsection (2) outlines the matters that must be included in the written notice. Subsection (3) states that the notice may require the person to give evidence on oath or affirmation.

New section 113AV(1) empowers the Racing Integrity Commissioner, in conducting an audit or investigation, to give a person a written notice that requires the person to give information to the commissioner in writing signed by the person or, in the case of a corporation, by an officer of the corporation; or produce a document or thing to the commissioner. In exercising this power the commissioner must have reason to believe that the person has information, the document or thing relevant to the audit or investigation. Subsection (2) outlines the matters that must be included in the written notice. The purpose of this provision is to ensure that the commissioner is able to progress an audit or investigation in a timely manner, with access to all relevant information.

New section 113AW(1) makes it an offence for a person who has been provided notice under section 113AU or 113AV to fail to attend as required by the notice; or fail to continue to attend as required by the Racing Integrity Commissioner until excused from further attendance; or fail to produce a document or thing the person is required to produce by a notice. It is a defence if the person has a reasonable excuse. Subsection (2) makes it an offence for a person appearing as a witness at an audit or investigation to fail to take an oath or make an affirmation when required by the commissioner; or answer a question the person is required to answer by the

commissioner. It is a defence if the person has a reasonable excuse. Subsection (3) makes it an offence for a person appearing as a witness at an audit or investigation to give the commissioner information or a document that is false or misleading. Subsection (4) makes it an offence for a person who is given notice under section 113AV to give the commissioner information or a document containing information the person knows is false or misleading in a material particular. Subsection (5) provides that subsections (3) or (4) do not apply to a person who tells the commissioner how the information is false or misleading and if the person has, or can reasonably get the correct information, they give the information to the commissioner. Subsection (6) defines 'giving' information to a person to include stating information to the person.

A maximum penalty of 100 penalty units applies to each offence created under section 113AW. A reasonable excuse for failing to comply with this provision includes the situation where complying with the provision might tend to incriminate the person or the document required to be produced is subject to legal professional privilege.

New section 113AX(1) enables the Racing Integrity Commissioner to refuse to investigate a complaint about an integrity process of a control body or, having started to investigate a complaint, may refuse to continue the investigation if the matter is being investigated by another entity or the commissioner is reasonably satisfied it is appropriate for another entity to investigate the matter. Subsection (2) provides that if the Racing Integrity Commissioner refuses to investigate, or continue to investigate, a complaint under subsection (1), the commissioner must prepare a report which includes reasons for the commissioner's decision and other specified matters. Subsection (3) requires the commissioner to provide a copy of the report to the Minister. The purpose of this provision is to allow the commissioner to refuse to investigate a complaint of a minor nature that does not affect the integrity of, or public confidence in, a code of racing. It also allows the commissioner to redirect complainants to a more appropriate body to investigate the complaint if the commissioner considers it appropriate. For example, a complaint of serious criminal activity may be more appropriately investigated by the Queensland Police Service, rather than the commissioner.

New section 113AY requires the Racing Integrity Commissioner after undertaking an audit or investigation to prepare a report for the Minister that includes the commissioner's findings, the commissioner's recommendations, if any, based on the findings and any other matter the

commissioner considers reasonable to include in the report. The commissioner may also give a copy of the report to another person approved by the Minister.

## **Part 4 Administration**

New section 113AZ provides that the chief executive of the department may appoint or assign staff to assist the commissioner in performing their functions. The purpose of this provision is to ensure that the commissioner has access to authorised officers appointed under the Act to assist the commissioner. However, should the commissioner require staff with other specialist skills or abilities, the chief executive may appoint such persons to assist the commissioner. A public service officer appointed or assigned by the chief executive officer of the department holds the office concurrently with any other appointment the officer holds in the public service.

New section 113BA provides that the cost of the performance of the Racing Integrity Commissioner's functions are to be funded by the control bodies. The chief executive of the department is responsible for funding the operations of the office of the Racing Integrity Commissioner and is able to recover such costs from a control body. Recovery of the costs will be achieved by the chief executive giving a control body an invoice for the amount owing which is payable 28 days after the control body receives the invoice. As the office of the Racing Integrity Commissioner is established solely to deal with issues in the Queensland racing industry, this provision ensures that the Government does not incur any costs associated with the operation of the office of the Racing Integrity Commissioner.

New section 113BB provides that if a control body does not pay an amount payable under section 113BA(3), the State may recover it from the control body as a debt.

## **Part 5 Reporting**

New section 113BC(1) requires the Racing Integrity Commissioner to prepare an annual report about the operations of the commissioner during

each financial year and give it to the Minister. Subsection (2) outlines the matters that must be included in the report, namely a review of the work undertaken by the commissioner during the financial year; proposals, if any, for improving the operations of the commissioner; and a forecast of the work of the commissioner for the following financial year. Under subsection (3), the report is to be given to the Minister by 31 August in the following financial year.

New section 113BD requires that if the Racing Integrity Commissioner is reasonably satisfied, according to the circumstances, that a control body has failed to implement a recommendation of the commissioner or otherwise reasonably act on a recommendation of the commissioner, the commissioner must report the failure of the control body to the Minister. This provision ensures that the Minister is made aware of any failure to act on the part of a control body.

Clause 47 amends section 147. Clause 47(1) amends section 147(3)(b) by omitting existing subsection (b) and replacing it with a new subsection which reflects that the analysis of a thing may take place over a period of time rather than on a specific date. Clause 47(2) inserts a new section 147(4) which provides that a notice of results under section 147(2) is not required to be provided if a drug or code substance was identified at a level which was below the level agreed between the accredited facility and the control body or below the level stated in the control body's rules of racing.

Clause 48 inserts new chapter 4A after section 149.

## **Chapter 4A Racing Disciplinary Board proceedings**

### **Part 1 Racing Disciplinary Board**

#### **Division 1 Establishment and functions**

New section 149A establishes the Racing Disciplinary Board (the disciplinary board).

Section 149B details the functions of the disciplinary board which includes hearing and deciding appeals by aggrieved persons against appellable decisions.

#### **Division 2 Membership of disciplinary board**

New section 149C provides that the disciplinary board must consist of at least five (5) members, appointed by the Minister by gazette notice and must include:

- one lawyer of at least five (5) years standing;
- another lawyer; and
- at least three (3) other persons, each of whom must be a lawyer or have a thorough knowledge of the rules of racing of a control body.

Members are to be appointed for three (3) years and may be reappointed. Members, who are not public service officers, are appointed under the Racing Act and not the *Public Service Act 2008*. The definition of ‘lawyer’ is contained in the *Acts Interpretation Act 1954* and includes a barrister, solicitor, barrister and solicitor or legal practitioner of the High Court or the Supreme Court of a State.

New section 149D requires the Minister to appoint a chairperson, who must be a lawyer of at least five (5) years standing and a deputy chairperson, who is a lawyer.

New section 149E states that a person is eligible to be a member of the disciplinary board if the person is an eligible individual and is not a member of a control body or a control board.

New section 149F provides that a member of the disciplinary board may resign by signed notice to the Minister.

New section 149G(1) empowers the Minister to end the appointment of a member of the disciplinary board by providing a written notice to the member. The Minister may exercise this power if the Minister considers the member is not performing the member's functions satisfactorily; or the member is guilty of misconduct of a kind that could warrant dismissal from the public service if the member were an officer of the public service. Subsection (2) requires a notice to contain the Minister's reasons for ending the appointment of a disciplinary board member. Subsection (3) defines 'misconduct'.

New section 149H outlines the circumstances in which the office of a member of the disciplinary board becomes vacant and also states that the Minister may appoint another person to fill any vacancy on the disciplinary board.

New section 149I provides that despite section 149C(1) or 149D(1) or (2), the performance of a function, or the exercise of a power, by the disciplinary board is not affected merely because of a vacancy in the membership of the disciplinary board.

New section 149J provides that a member of the disciplinary board is entitled to the remuneration and allowances as decided by the Minister.

New section 149K provides that if an officer of the public service is appointed as a member of the disciplinary board, the public service officer holds the appointment as a member of the disciplinary board concurrently with any appointment the officer holds in the public service. This provision clarifies that public service officers, with the appropriate skills, may be appointed to the disciplinary board, which may reduce the remuneration costs of the disciplinary board, and ensures that the public service officers do not suffer any detriment or reduction in public service entitlements as a result of their appointment to the disciplinary board.

New section 149L(1) protects a member of the disciplinary board from civilly liability for an act done, or omission made, honestly and without negligence while performing duties associated with being a member of the

disciplinary board. Subsection (2) provides that civil liability attaches to the State and not the member.

### **Division 3            Chairperson**

New section 149M(1) outlines the role of the chairperson by listing some of the activities the chairperson will be required to undertake. Subsection (2) makes it clear that the matters provided for in subsection (1) are not exclusive and that the chairperson may do all things necessary or convenient to be done for the performance of the chairperson's role.

New section 149N empowers the chairperson of the disciplinary board to delegate any of the chairperson's powers to the deputy chairperson or another member who is a lawyer. It also empowers the chairperson to delegate the power to choose members to constitute the disciplinary board to another member or the registrar. This provision allows for the efficient and effective operation of the disciplinary board while ensuring that the chairperson's powers, other than the power to choose members to constitute the disciplinary board, can only be exercised by a legally qualified member.

### **Division 4            Constitution of disciplinary board**

New section 149O(1) provides that for the hearing and deciding of an accepted appeal, the chairperson must choose one (1), two (2) or three (3) members to constitute the disciplinary board. Subsection (2) provides that if the chairperson chooses one (1) member to constitute the disciplinary board, the person chosen must be a lawyer and have a thorough knowledge of the rules of racing of the code of racing relevant to the accepted appeal. Subsection (3) provides that the relevant control body for an accepted appeal is the control body whose decision is being appealed against. Subsection (4) provides that if the chairperson chooses two (2) or three (3) members to constitute the disciplinary board, the members chosen must include a lawyer and a member who, in the chairperson's opinion, has a thorough knowledge of the rules of racing related to the code of racing relevant to the accepted appeal. The chairperson must nominate one of the persons to be the appeal chairperson.

Subsection (5) allows more than one board to be constituted at any time to hear different accepted appeals and provides that the member or members chosen to hear and decide an accepted appeal may constitute the disciplinary board even if other members of the disciplinary board are, at the same time, constituting the disciplinary board for the purposes of hearing and deciding a separate accepted appeal. Subsection (6) clarifies that if the disciplinary board is constituted for more than one (1) accepted appeal at the same time, the members chosen for each accepted appeal may separately exercise the jurisdiction and powers of the disciplinary board.

## **Division 5            Staff of disciplinary board**

New section 149P(1) empowers the chief executive of the department to appoint an officer of the public service to be the registrar to the disciplinary board, or to help the disciplinary board perform its functions. Subsection (2) provides that if a public service officer is appointed under subsection (1), or assigned by the chief executive to perform duties to help the disciplinary board, they hold any such appointment or perform the duties concurrently with any other appointment the officer holds in the public service. Subsection (3) provides that the registrar of the disciplinary board has the powers and must perform the functions of the registrar specified under the Act. This provision allows public service officers, with the appropriate skills, to be appointed to assist the disciplinary board which may reduce the costs associated with the operation of the disciplinary board. It also ensures that a public service officer does not suffer any detriment or reduction in public service entitlements as a result of their appointment.

New section 149Q(1) provides that if the chairperson of the disciplinary board reasonably considers it necessary, with the approval of the chief executive of the department, the chairperson may require a control body to assign staff members of the control body to help the disciplinary board perform its functions, Subsection (2) provides that a control body must not, without a reasonable excuse, fail to comply with such a requirement.

## **Part 2                      Appeals against appellable decisions**

### **Division 1                      Preliminary**

New section 149R lists definitions for part 2.

New section 149S(1) defines an appellable decision of a control body. Subsection (2) identifies those decisions of a control body that are not ‘appellable decisions’. The decisions that are currently not appellable under the Racing Act have been replicated in section 149S(2).

### **Division 2                      Starting an appeal**

Section 149T(1) allows an ‘aggrieved person’ to appeal to the disciplinary board against an ‘appellable decision’ made by a control body. Subsection (2) provides that a person is an aggrieved person for an appellable decision if:

- for an appellable decision about the grant of a licence, the person was the applicant for the licence; or
- otherwise, the person is a licence holder adversely affected by an appellable decision.

New section 149U sets out the process for lodging a notice of an appeal against an appellable decision. Subsection (1) provides that an aggrieved person must give a notice in the approved form (a notice of appeal) and the fee prescribed to the registrar of the disciplinary board; and a copy of the notice of appeal to the control body whose appellable decision is being appealed against. Subsection (2) provides that the notice of appeal must be given to the registrar and the relevant control body:

- within five (5) business days after the aggrieved person is notified of the appellable decision being appealed against; or
- if the chairperson is satisfied the aggrieved person has a reasonable excuse for not giving the notice within five (5) business days, within a longer period as the chairperson may allow.

Subsection (3) provides that the notice of appeal must state the grounds for the appeal.

While five (5) business days is a relatively short period of time in which to lodge an appeal, the conduct of hearings by the disciplinary board must be timely. Also, currently under the control body appeal committee process, licensees are required to lodge a notice of appeal with the appeal committee no later than the second business day after the decision being appealed against is made. The proposed five (5) business day timeframe is a significant improvement for licensees.

New section 149V(1) provides that if the aggrieved person gives the registrar of the disciplinary board a notice of appeal, the registrar must give the chairperson a copy of the notice of appeal. Subsection (2) provides that after the chairperson receives a notice of appeal from the registrar, the chairperson must:

- accept the notice without imposing any conditions; or
- accept the notice on conditions; or
- reject the notice on the basis of a ground set out in subsection(3); or
- refer the appeal for which the notice was given to the tribunal if the chairperson believes it is in the public interest to do so.

Subsection (3) allows the chairperson to reject a notice of appeal on any of the following grounds:

- the notice was given by a person who is not authorised to give it; or
- the notice was given to the registrar or the control body whose appellable decision is being appealed against after the expiry of the period mentioned in section 149U(2); or
- the notice, or the giving of the notice, does not otherwise comply with the Racing Act.

New section 149W states that an appeal starts when the chairperson accepts a notice of appeal, whether or not on conditions, and such an appeal becomes an ‘accepted appeal’.

New section 149X defines who is a ‘party’ to an accepted appeal.

New section 149Y(1) requires the registrar of the disciplinary board to give notice of the time and place for the hearing of an accepted appeal to the persons specified. Subsection (2) specifies when the notice must be given.

New section 149Z provides that the disciplinary board constituted to hear and decide an appeal has the jurisdiction to hear and decide the appeal and may do all things necessary or convenient for exercising its jurisdiction.

New section 149ZA(1) provides that the disciplinary board constituted to hear and decide an appeal must begin the hearing of an accepted appeal as soon as practicable but no later than 28 days after an aggrieved person gives the registrar the notice of the appeal. Subsection (2) provides that the constituted board may extend the 28 day period if it considers the special circumstances of the case require such action. While the constituted board must begin the hearing of the appeal within 28 days, it is envisaged that the majority of hearings will commence in a shorter timeframe.

New section 149ZB(1) provides that an aggrieved person for the accepted appeal may apply for a stay of the appellable decision being appealed against. Subsection (2) provides that any application for a stay must be in writing to the registrar of the disciplinary board. Subsection (3) provides that the chairperson of the disciplinary board may stay the appellable decision if the stay is necessary to secure the effectiveness of the appeal. Subsection (4) provides that in deciding whether to stay the appellable decision, the chairperson may consider submissions from the control body for the accepted appeal. If the chairperson grants a stay, subsection (5) allows the chairperson to impose conditions; specify the period the stay operates and to revoke or amend the stay. Subsection (6) provides that the period of the stay must not extend past the time when the appeal is decided. Subsection (7) provides that if a stay is given on conditions, the stay is not in force for any period during which a condition is not complied with.

Section 149ZC outlines how conflicts of interest that may arise on the disciplinary board constituted to hear and decide an appeal are to be dealt with and resolved. Subsection (1) provides that if the appeal chairperson, or another member, of the disciplinary board constituted to hear and decide an accepted appeal becomes aware that they have a conflict of interest about the accepted appeal, they must disclose the nature of the conflicting interest to the:

- parties to the appeal, if they are the appeal chairperson; or
- appeal chairperson and the parties to the appeal, if they are a member other than the appeal chairperson.

Subsection (2) provides that after making a disclosure under subsection (1), the person disclosing a conflict of interest must not be present when the constituted board hears the accepted appeal, or take part in a decision of the

constituted board about the appeal. Subsection (3) provides a mechanism that allows a person who has declared a conflict to be present and take part in a decision. If the person who has declared a conflict is the appeal chairperson, and the parties to the appeal agree, the appeal chairperson may continue their participation in the appeal. If the person who has declared a conflict is a member of the constituted board, other than the appeal chairperson, they may continue to participate in the appeal with the approval of the appeal chairperson.

This provision has been provided because persons appointed to the constituted board must have a thorough knowledge of the rules of racing for the relevant code of racing and, in many cases, will have been involved in the regulated racing industry. As such, it is likely that there may be perceived conflicts of interest that arise because of their past involvement in the Queensland racing industry. Subsection (4) clarifies that a reference in subsection (3) to a party is taken to be a reference to a representative of the party. Subsection (5) outlines what constitutes a conflict of interest for the purposes of section 149ZC. Subsection (6) provides that if the member is a public service officer, a conflict of interest does not arise merely because of the appointment the officer holds in the public service.

New section 149ZD applies if a member of the disciplinary board constituted to hear and decide an accepted appeal, has a conflict of interest and does not obtain the necessary agreement under section 149ZC to continue to participate as a member of the constituted board. The section outlines how, in such circumstances, the constituted board is to be comprised.

### **Division 3            Appeal hearings**

New section 149ZE(1) provides that, subject to this division, the procedure for the hearing of an accepted appeal is at the discretion of the disciplinary board constituted to hear and decide the appeal. Subsection (2) requires the board to observe natural justice in hearing an accepted appeal. The board is not bound by the rules of evidence, may inform itself in any way it considers appropriate and must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues. It may decide the procedures to be followed in the appeal, including, for example, whether the appeal should be heard with other appeals and whether the parties should be heard together or separately.

Subsection (3) provides that an appeal is by way of rehearing, unaffected by the appellable decision being appealed against, on the material before the relevant control body and any further evidence allowed by the constituted board.

New section 149ZF(1) requires the hearing of an accepted appeal to be held in public. Subsection (2) allows the constituted board to direct that the hearing be held in private for reasons specified in subsection (2). If the constituted board decides that the hearing is to be held in private, it is given the power to make the necessary directions as outlined in subsections (3) to (5).

New section 149ZG provides that the disciplinary board constituted to hear and decide an accepted appeal may, if appropriate, hear all or part of the appeal by 'remote conferencing' or entirely on the basis of documents, without the parties, their representatives or witnesses appearing at a hearing. Under such circumstances, the constituted board must ensure the public has access to, or is precluded from access to, matters disclosed in the appeal to the same extent as if the appeal had been heard before the constituted board with the attendance in person of all persons involved. 'Remote conferencing' is defined in subsection (3).

Section 149ZH(1) provides that the disciplinary board constituted to hear and decide an accepted appeal may give a direction at any time in an accepted appeal and do whatever is necessary for the speedy and fair conduct of the appeal. Subsection (2) provides that the constituted board may hold a directions hearing before any other hearing is held for the appeal. Subsection (3) provides that the constituted board may give a direction under this section that requires a party to the appeal to produce a document or another thing, or provide information to the constituted board or to another party to the appeal. Subsection (4) makes it an offence for a party to not comply with a direction given under this section within the period stated in the direction or an extended period granted by the constituted board, unless the party has a reasonable excuse.

A reasonable excuse would include the situation where complying with the section would tend to incriminate the person, or the document required to be produced is subject to legal professional privilege. A person who is convicted of the offence is liable to a maximum penalty of 50 penalty units. The amount of the penalty reflects that it is critical to the success of the appeals process to ensure a quick resolution of accepted appeals and failure to comply with a direction from the constituted board may frustrate this intention. Subsection (5) provides that the constituted board may act under

this section on the application of a party to the appeal or on its own initiative.

New section 149ZI enables the disciplinary board constituted to hear and decide an accepted appeal to join other persons to an accepted appeal, if their interests may be affected by the appeal. This may be done on the application of a person or on the board's own initiative.

New section 149ZJ(1) states that the main purpose of the section is to have parties to an accepted appeal represent themselves unless the interests of justice require otherwise. Subsection (2) provides that in an accepted appeal, the aggrieved person:

- may appear without representation; and
- may be represented by someone else, if the aggrieved person elects to be represented; and
- must be represented by someone else if the aggrieved person is unable, in the constituted board's opinion, to effectively represent himself, herself or itself.

Subsection (3) provides a safeguard for aggrieved persons by providing that the appeal chairperson of the constituted board may appoint a person to represent an unrepresented party to the appeal.

Subsection (4) reinforces the policy intent that the decision on whether the parties to an appeal are to be legally represented lies with the aggrieved person, not the control body, by restricting a control body's right to legal representation. In an accepted appeal, a control body can not be represented by a lawyer unless the aggrieved person has elected to be represented by a lawyer, or the appeal chairperson appoints a lawyer to represent the aggrieved person under subsection (3).

The purpose of this section is to address concerns that, as a control body has superior financial and legal resources to enable it to be legally represented at the hearing of an appeal, aggrieved persons have felt compelled to also obtain legal representation which is a significant cost that in many cases they cannot afford. The requirement that parties represent themselves unless the interests of justice require otherwise is to ensure appeals are decided in a fair and as cost effect manner as possible, having regard to the circumstances of the appeal.

New section 149ZK(1) provides that with the leave of the chairperson of the disciplinary board, an aggrieved person may withdraw an accepted appeal before the appeal is heard and decided by the constituted board.

However, if the aggrieved person successfully withdraws an accepted appeal under subsection (1), subsection (2) provides that the aggrieved person can not make a further appeal relating to the same facts or circumstances without leave of the chairperson. Subsection (3) and (4) provide that if the chairperson of the disciplinary board gives leave for the withdrawal of an accepted appeal, the chairperson may make orders the chairperson considers appropriate, which may include an order for the payment of costs. The purpose of this section is to prevent an aggrieved person whose licence has been suspended by a control body, lodging an appeal and seeking a stay to enable them to fulfil commitments already made (for example, a jockey may have been engaged to ride at future race meetings) and then withdrawing the appeal after fulfilling the commitments.

## **Division 4            Witnesses**

New section 149ZL(1) provides that the disciplinary board constituted to hear and decide an accepted appeal may, by written notice, require a person to appear at a stated hearing of an accepted appeal to give evidence, or produce a stated document or other thing to the constituted board. Subsection (2) makes it an offence for a person to fail to comply with a notice given under subsection (1) without a reasonable excuse and provides a maximum penalty of 100 penalty units for a contravention. Subsection (3) provides that the constituted board may give a notice under subsection (1) on the application of a party to an accepted appeal or on its own initiative.

A reasonable excuse for failing to comply with this provision includes the situation where complying with the provision might tend to incriminate the person. A reasonable excuse for failing to produce a document would include the situation where the document is subject to legal professional privilege. This provision is provided to ensure the constituted board can effectively deal with an appeal by having relevant persons, documents and things available for the appeal.

New section 149ZM(1) provides that a member of the disciplinary board constituted to hear and decide an appeal may require a witness appearing before the constituted board to take an oath or make an affirmation. Subsection (2) allows a member who is a lawyer to administer the oath or affirmation to the person appearing as a witness.

New section 149ZN(1) provides that a person who has been given written notice to appear before the disciplinary board constituted to hear and decide an accepted appeal as a witness is entitled to the witness fees and expenses prescribed under a regulation or if no fees or expenses are prescribed, the reasonable fees and expenses decided by the chairperson of the disciplinary board. Subsection (2) provides that the fees and allowances payable to a person under subsection (1) must be paid by:

- if the person was given the notice on the application of a party to the appeal, the party; or
- otherwise, all of the parties in the proportions decided by the constituted board.

New section 149ZO(1) makes it an offence for a person given written notice to appear before the constituted disciplinary board as a witness to fail, without reasonable excuse, to appear as required by the notice or to continue to appear as required by the constituted board until excused from further appearances. A maximum penalty of 100 penalty units may be imposed for a contravention of subsection (1). The success of the appeals process requires that the constituted board is able to have access to all relevant persons to ensure a fair and quick resolution to accepted appeals and the failure of a witness to attend, or continue to attend, would frustrate this intention. Subsection (2) makes it an offence for a person appearing as a witness at a hearing of an accepted appeal to:

- fail to take an oath or affirmation when required by a member of the constituted board; or
- fail, without reasonable excuse, to answer a question the person is asked by the constituted board; or
- fail, without reasonable excuse, to produce a document or other thing the person is asked to produce by the constituted board.

A maximum penalty of 100 penalty units may be imposed for a contravention of subsection (2). Subsection (3) is provided as a safeguard for witnesses by providing that it is a reasonable excuse for a person to refuse to answer a question or produce a document or other thing if the answer or the production of the document or thing might tend to incriminate the person or the if the document is subject to legal professional privilege. The success of the appeals process requires that the constituted board is able to have access to all relevant information a witness may possess and such information must be provided truthfully to ensure a

fair resolution to accepted appeals. The failure of a witness to provide truthful evidence would frustrate this intention.

## **Division 5            Experts**

New section 149ZP(1) provides that the constituted board may appoint a person with relevant knowledge, expertise and experience (an expert) to help the constituted board in relation to an accepted appeal. Subsections (2) and (3) provide that the constituted board may appoint an expert on the application of a party to the appeal or on its own initiative and that any such appointment must be made in writing.

New section 149ZQ(1) imposes a duty on a witness giving evidence in a hearing of an accepted appeal as an expert to assist the constituted board. Subsection (2) provides that this duty overrides any obligation the witness may have to any party to the appeal. This section has been provided to ensure that the expert's evidence is directed towards the fair resolution of an appeal.

New section 149ZR provides that an expert is entitled to the remuneration and expenses decided by the constituted board and stated in the expert's instrument of appointment.

New section 149ZS(1) empowers the disciplinary board constituted to hear and decide an appeal to obtain assistance from an expert by:

- asking an expert to give expert evidence, in person or by written report; or
- engaging an expert to help the constituted board including, for example, by sitting with the constituted board for giving advice about the appeal; or
- referring a question of fact arising in an accepted appeal to an expert for the expert to decide the question and give the constituted board a written report stating the decision and the reasons for it; or
- asking an expert to give advice to the constituted board.

Section 149ZS(2) provides that in asking an expert to decide a question and give advice under subsection (1) (b) or (c), the constituted board may ask the expert to conduct an inquiry or investigation into a matter and give a written report of the expert's findings in the inquiry or investigation.

Section 149ZS(3) provides that if an expert gives the constituted board a written report of the expert's decision under subsection (1) (b) or (c), or the expert's findings in an inquiry or investigation under subsection (2), the constituted board:

- must give a copy of the report to each party to the appeal; and
- must give each party to the appeal an opportunity to make written submissions about the report; and
- after considering any submissions made by parties to the appeal, may either:
  - adopt the expert's decision or findings, in whole or in part; or
  - reject the decision or findings.

New section 149ZT deals with the costs associated with obtaining an expert's help in an accepted appeal. Subsection (1) provides that in an accepted appeal, the constituted board may make an order requiring a party to the appeal to pay or contribute to the constituted board's costs of obtaining an expert's help. However, under subsection (2), before obtaining the expert's help, the constituted board must have advised the party of the constituted board's intention of obtaining the help, the likely costs of obtaining the help, the likely amount of the party's payment or contribution; and have given the party an opportunity to be heard on the matter of obtaining the expert's help. Subsection (3) provides that the constituted board's costs of obtaining an expert's help include the remuneration and expenses for the expert decided by the constituted board and stated in the expert's instrument of appointment.

Section 149ZU relates to the disclosure of interests by experts appointed to assist the constituted board hear and decide an accepted appeal. Subsection (1) provides that section 149ZU applies if an appointed expert has or acquires an interest, financial or otherwise, that may conflict with the proper performance of the expert's functions. Subsection (2) requires the expert to disclose the nature of the interest to both the constituted board and the parties to the appeal. Subsection (3) provides that the constituted board may require the expert not to take part in, or exercise powers for, the appeal. Subsections (4) and (5) require the constituted board in making a decision under subsection (3), to take and consider submissions from the parties to the appeal and must allow the parties a reasonable time to lodge their submissions with the constituted board. Subsection (6) provides that an expert does not have a conflict merely because:

- of their employment at an accredited facility or a secondary facility for an accredited facility; or
- the expert is a member of the Racing Animal Welfare and Integrity Board.

## **Division 6            Decisions and powers of constituted board**

New section 149ZV provides that the constituted board, in hearing and deciding an accepted appeal may:

- act in the absence of a person who has been given reasonable notice;
- receive evidence on oath, affirmation or by statutory declaration;
- adjourn the appeal;
- permit a document to be amended; and
- disregard any defect, error, omission or insufficiency in a document.

New section 149ZW provides for the way in which the disciplinary board constituted to hear and decide an accepted appeal, is to decide a question.

New section 149ZX(1) deals with the powers of the disciplinary board constituted to hear and decide an accepted appeal. It provides that the constituted board may make any decision that the relevant control body could have made under its rules of racing or under a policy made by the control body for its code or under this Act. Subsection (2) provides that without limiting the operation of subsection (1), the constituted board may:

- confirm the appellable decision appealed against; or
- vary the appellable decision; or
- set aside the appellable decision and substitute its own decision.

New section 149ZY provides that a decision of the disciplinary board constituted to hear and decide an accepted appeal:

- is taken to be the decision of the control body that made the appellable decision being appealed against;
- is binding on all parties to the appeal; and
- takes effect when it is made, or on the later day stated in the decision.

New section 149ZZ requires the disciplinary board constituted to hear and decide an accepted appeal to give a QCAT information notice about the decision to the parties to the appeal.

New section 149ZZA provides that the disciplinary board constituted to hear and decide an accepted appeal, may on the application of a party to the appeal or on the constituted board's own initiative, dismiss all or part of the appeal if the constituted board considers the appeal or part of the appeal is frivolous, vexatious or misconceived or is lacking in substance.

Section 149ZZB provides that if a party to an accepted appeal does not attend a hearing for the appeal, and the disciplinary board constituted to hear and decide an accepted appeal is satisfied the absent party has been given notice of the time and place for the hearing of the appeal:

- the hearing may proceed in the party's absence; and
- if the constituted board and all the parties present agree, the constituted board may:
  - make a decision adverse to the absent party and make any appropriate orders, including orders about costs; or
  - order that the absent party be removed from the appeal, and pay another party's costs reasonably incurred by the other party as a result of the absent party's involvement in the appeal.

## **Division 7            Costs and enforcement**

New section 149ZZC(1) provides that each party to an accepted appeal must bear the party's own costs for the appeal. However, subsection (2) allows the disciplinary board constituted to hear and decide an accepted appeal to make an order requiring a party to the appeal to pay all or a stated part of the costs of another party to the appeal, if the constituted board considers the interests of justice require it to make the order. Subsection (3) outlines the matters that the constituted board may have regard to in deciding whether to award costs under subsection (2):

- the relative strengths of the claims made by each of the parties to the appeal;

- whether the aggrieved person was afforded natural justice by the relevant control body when it made the appellable decision being appealed against;
- the financial circumstances of the parties to the appeal;
- anything else the constituted board considers relevant.

New section 149ZZD provides the process for the enforcement of a costs order under section 149ZZC(2).

## **Division 8            Offences and contempt**

New section 149ZZE makes it an offence for a person to contravene a decision of the disciplinary board constituted to hear and decide an accepted appeal, without reasonable excuse. A person who is convicted of the offence is liable to a maximum penalty of 100 penalty units. The penalty reflects that the success of the appeals process requires that persons comply with, and give effect to, decisions of the disciplinary board constituted to hear and decide an accepted appeal.

New section 149ZZF(1) and (2) makes it an offence for a person to state anything the person knows is false or misleading in a material particular, or give a document containing information the person knows is false or misleading in a material particular to the disciplinary board, the disciplinary board constituted to hear and decide an accepted appeal or a member. A person who is convicted of the offence is liable to a maximum penalty of 100 penalty units. The penalty reflects that the success of the appeals process requires that persons provide truthful and accurate information in relation to an appeal. Subsection (3) provides a safeguard by providing subsection (2) does not apply to a person if the person, when giving the document:

- tells the disciplinary board, a constituted board or a member to the best of the person's ability, how it is false or misleading; and
- if the person has, or can reasonably obtain, the correct information, gives the correct information.

New section 149ZZG makes it an offence for a person to improperly influence, or attempt to improperly influence, a person in relation to the person's participation in an accepted appeal, whether as a member, a party, a witness or an expert, to act other than in the course of the person's duty in

relation to the appeal. A person who is convicted of the offence is liable to a maximum penalty of 100 penalty units. The penalty reflects that the success of the appeals process requires that all persons involved in the appeals process are able to undertake their roles and duties free from improper influence.

New section 149ZZH makes it an offence for a person at a hearing of an accepted appeal to:

- insult a member of the disciplinary board constituted to hear and decide an accepted appeal; or
- deliberately interrupt the hearing; or
- take part in a disturbance in or near a place where the constituted board is conducting the hearing; or
- do anything that would be a contempt of court if the constituted board were a court.

A person who is convicted of the offence is liable to a maximum penalty of 100 penalty units. The maximum penalty reflects that the success of the appeals process requires that all persons involved in the appeals process behave in an appropriate manner to enable the appeal to be effectively decided.

New section 149ZZI(1) empowers the constituted disciplinary board to exclude a person from the hearing of an accepted appeal if, in the opinion of the constituted board, the person is disrupting the hearing. Subsection (2) makes it an offence for a person directed to leave the hearing to fail to comply with such a direction. A person who is convicted of the offence under subsection (3) is liable to a maximum penalty of 100 penalty units. The amount of the maximum penalty reflects that the success of the appeals process requires that appeals are not disrupted.

## **Part 3                      Miscellaneous**

Section 149ZZJ confers on members of the disciplinary board constituted to hear and decide an accepted appeal, parties, representatives of parties, witnesses and experts, protections and immunities that are equivalent to those conferred upon comparable participants in District Court proceedings. A document produced at, or used for, a hearing before the

constituted board for an accepted appeal has the same protection as a document produced at, or used, for a hearing before the District Court.

Section 149ZZK sets out the annual reporting requirements of the disciplinary board.

Clause 49 omits sections 150 to 152.

Clause 50 inserts new parts 1 and 2 in Chapter 5 and a new part 3 heading.

## **Part 1                      Referral by chairperson of disciplinary board to tribunal**

New section 150(1) provides that this section applies if the chairperson of the disciplinary board refers an appeal to QCAT under section 149V(2)(d). Subsection (2) requires the chairperson to file a notice with the QCAT registrar. Subsection (3) outlines the matters that must be included in the QCAT notice.

New section 151 provides that for an appeal referred to QCAT under section 149V(2)(d), QCAT must exercise its review jurisdiction under the QCAT Act.

## **Part 2                      Review of decisions by tribunal other than by disciplinary board referral**

New section 152 provides that subject to section 149V(2)(d), every review of an appellable decision of a control body must be, in the first instance, by way of an appeal to the disciplinary board.

New section 152A protects the appeal rights of an aggrieved person who has had an appeal determined by the disciplinary board by providing that an aggrieved person who is given, or is entitled to be given, a QCAT information notice for a decision of a constituted board may apply, as provided under the QCAT Act, to QCAT for a review of the decision.

## **Part 3                      General provisions about reviews**

Clause 51 makes consequential amendments to section 153.

Clause 52 makes a consequential amendment to section 154(4) by amending the definition of ‘relevant person’ by omitting ‘a committee member’ inserting ‘a member of the disciplinary board’.

Clause 53 inserts a new part 4 in Chapter 5.

## **Part 4                      Appeal by control bodies of decisions of constituted board**

New section 155(1) and (2) provides that a control body may appeal to the appeal tribunal under the QCAT Act against the decision of the constituted disciplinary board only on a question of law. The purpose of this section is to prevent a control body using its superior financial and legal resources to continue to litigate a matter which results in the aggrieved person feeling compelled to incur legal expenses in defending such action. This provision gives effect to the clear policy intent that a control body is not to undertake such action, by restricting the right of a control body to appeal against a decision of the disciplinary board to a question of law. Section 155 (3) provides that the notice of appeal must, unless the appeal tribunal orders otherwise be filed in the appeal tribunal’s registry within 20 business days after the date of the decision being appealed against and be served on all parties to the accepted appeal. Subsection (4) provides that the appeal tribunal has jurisdiction to hear and decide the appeal and must be constituted by one (1) judicial member. Section 155(5) provides that any appeal may be only by way of rehearing.

Clause 54 amends the heading of section 194 by inserting ‘or approval’ to reflect that a racing bookmaker may hold an offcourse approval to undertake bookmaking. New subsections 1A, 2A and 4 are inserted which create offences in respect to offcourse approvals held by racing bookmakers. These offences and the penalties replicate the offences and penalties currently in section 194 in respect to bookmaking carried on by a

racing bookmaker at a licensed venue. Clause 54 also makes consequential amendments, including renumbering of the section.

Clause 55(1) amends section 195(2) to include a reference to subsections (1) and (2). Clause 55(2) renumbers section 195(2) as section 195(3). Clause 55(3) inserts a new section 195(2) which makes it an offence for a racing bookmaker who holds an offcourse approval to hire a person to work at an approved place unless they are a racing bookmaker's clerk licensed by the relevant control body. This offence and the maximum penalty replicate the offence and penalty currently contained in subsection (1) in respect to a racing bookmaker's clerk who is employed by a racing bookmaker at a licensed venue.

Clause 56(1) renumbers section 196(2) as section 196(3). Clause 56(2) inserts a new section 196(2) which makes it an offence for a person to be employed by a racing bookmaker in their bookmaking business, at a place approved for offcourse bookmaking, unless the person is a racing bookmaker's clerk or a licensed executive officer of a corporation that is a racing bookmaker. This provision is not intended to prevent a racing bookmaker from employing a person to carry out administrative functions or assist a racing bookmaker in their business. Rather, it is intended to ensure that persons materially involved in the conduct of bookmaking hold the appropriate authorities to do so.

Clause 56(2) also inserts a new section 196(4) which provides that section 196(5) applies to a racing bookmaker, who holds an offcourse approval, carrying on bookmaking at an approved place. New section 196(5) provides that a racing bookmaker's clerk employed at an approved place must have their licence with them at all times. These offences and the maximum penalties replicate the offences and penalties currently contained in section 196 in respect to a racing bookmaker's clerk who is employed by a racing bookmaker at a licensed venue.

Clause 57(1) amends section 197 heading to reflect that a racing bookmaker may also hold an offcourse approval in addition to a licence. Clause 57(2) inserts new subsections (1A), (1B), (2A) and (2B) as detailed below:

- (1A) – provides that section 197(3) applies to a racing bookmaker who is an individual, holds an offcourse approval and is, or appears to be, carrying on bookmaking under the offcourse approval.
- (1B) – makes it an offence for a racing bookmaker to fail to produce their offcourse approval to an official of the control body that licensed

them if requested to do so, unless they have a reasonable excuse. Maximum penalty – 40 penalty units.

- (2A) – provides that section 197(6) applies to an executive officer of a corporation licensed as a racing bookmaker that holds an offcourse approval and is, or appears to be carrying on bookmaking under the offcourse approval.
- (2B) – makes it an offence for an executive officer of a corporation approved to be a racing bookmaker to fail to produce the corporation's offcourse approval to an official of the control body that licensed the corporation, if requested to do so, unless they have a reasonable excuse. Maximum penalty – 40 penalty units.

Clause 57(3) rennumbers section 197(1A) to (3) as sections 197(2) to (7). Clause 57(4) inserts new subsections (8) and (9) as detailed below:

- 197(8) – provides that section 197(8) applies in relation to a racing bookmaker who holds an offcourse approval for carrying on bookmaking at an approved place.
- 197(9) – requires a racing bookmaker's clerk who is, or appears to be, employed in the conduct of a racing bookmaker's business at the approved place to produce their licence to an official of the control body that licensed the racing bookmaker if requested to do so, unless they have a reasonable excuse. Maximum penalty – 40 penalty units.

Clause 58 amends section 199 by inserting subsection (2) which provides that a racing bookmaker does not commit an unlawful bookmaking offence if they hold an offcourse approval and the place where they are conducting bookmaking is an approved place and the time that the bookmaking is being conducted is a time permitted under the approval.

Clause 59 inserts a new section 200A which makes it an offence for a racing bookmaker who holds an offcourse approval to make a bet on a contest, contingency or event other than:

- a race at a race meeting at a licensed venue controlled by a control body;
- a sporting contingency declared under section 255; or
- a contest, contingency or event at a meeting of racing animals held outside Queensland that is subject to an arrangement between the entity conducting the contest, contingency or event and the control body that licensed the racing bookmaker.

Maximum penalty – 400 penalty units.

Section 200A replicates section 200 which applies to a racing bookmaker conducting bookmaking at a licensed venue. The intent of this section is to allow racing bookmakers who hold an offcourse to undertake bookmaking on bona fide events other than racing events conducted by a Queensland control body. These events are either declared sporting contingencies under section 255 or other events conducted by reputable organisations that the control body has entered into an arrangement with. For example, some of these events would include events such as the Melbourne Cup, Cox Plate, Golden Slipper, Australian and international rugby league and rugby union matches and Australian Football League matches to name a few.

Clause 60(1) amends section 213(1) by replacing ‘commissioner of the police service’ with ‘police commissioner’. Subsection (2) amends section 213(2) to provide that the criminal history report that the police commissioner provides to the gaming executive is to contain the person’s criminal history and a brief description of the circumstances of a conviction mentioned in the person’s criminal history. It also clarifies that the duty imposed on the police commissioner applies only to information in the commissioner’s possession or to which the commissioner has access.

Clause 61(1) amends section 227(1) by replacing ‘commissioner of the police service’ with ‘police commissioner’. Subsection (2) amends section 227(2) to provide that the criminal history report that the police commissioner provides to the gaming executive is to contain the person’s criminal history and a brief description of the circumstances of a conviction mentioned in the person’s criminal history. It also clarifies that the duty imposed on the police commissioner applies only to information in the commissioner’s possession or to which the commissioner has access.

Clause 62 inserts a new Part 3A into chapter 6.

## **Part 3A                      Offcourse approvals for racing bookmakers**

### **Division 1                      Applications for, and granting of, offcourse approvals**

New section 243(1) provides that a racing bookmaker may apply to the Minister for an offcourse approval to carry on bookmaking at a place (for example, their home office), other than a licensed venue (i.e. at a race track), using a telecommunications system.

‘Telecommunications system’ is defined in schedule 3 and includes a telephone system and the internet. Subsection (2) provides that an application must be in the approved form and outlines in subsections (2)(a) to (g) details and information that must accompany an application:

- 243(2)(a) - the details of the place or places where the racing bookmaker will carry on bookmaking such as at their home or office.
- 243(b) – details of the times during which the racing bookmaker will carry on bookmaking at each place
- 243(2)(c) - details of the number of race meetings and the licensed venues at which they undertook bookmaking in person in the previous 12 months. This provision is required to establish a base-line of the bookmaking in person that the racing bookmaker carried on in the previous 12 months.
- 243(2)(d) - the number of race meetings and the licensed venues at which the racing bookmaker intends to carry on bookmaking in person in the 12 months immediately after they are granted an offcourse approval. The purpose of this provision is to ensure that the granting of an offcourse approval will not adversely impact on the Queensland racing industry and betting public by reducing the occasions on which the bookmaker will carry on bookmaking in person.
- 243(2)(e) – requires an explanation of any difference between the details in paragraphs (c) and (d) to be provided.
- 243(2)(f) – requires the racing bookmaker to give an undertaking as to minimum number of race meetings and venues at which the racing

bookmaker will carry on bookmaking in person should they be granted an offcourse approval.

- 243(2)(g) requires the application to be accompanied by the prescribed fee.

New section 244(1) provides that the Minister may issue a notice requiring an applicant for an offcourse approval give to the Minister further documents or information within a period of at least 28 days. Subsection (2) provides that if an applicant does not comply with a requirement under subsection (1) the application is taken to be withdrawn.

New section 245(1) provides that the Minister may issue a notice requiring a control body that licenses a racing bookmaker, who is an applicant for an offcourse approval, to give to the Minister documents or information the Minister reasonably believes is relevant to deciding the application. The documents or information must be given within a period of at least 28 days. Subsection (2) provides that a control body must comply with the notice.

New section 246(1) requires the Minister in considering an application for an offcourse approval, to have regard to how often the applicant has undertaken to conduct bookmaking in person at a licensed venue. Subsection (2) allows the Minister to ask an applicant to review the undertaking given. Subsection (3) provides that if an applicant does not comply with the notice, the application is taken to be withdrawn. The purpose of this provision is to ensure that the granting of an offcourse approval will not adversely impact on the Queensland racing industry and betting public by reducing the occasions on which the bookmaker will carry on bookmaking in person.

New section 247(1) requires the Minister to consider an application for an offcourse approval and decide to either grant or refuse the approval. Subsection (2) provides that an offcourse approval is subject to 'mandatory conditions' and may also be subject to other conditions that the Minister imposes.

New section 248(1)(a) to (c) specifies the conditions that will be imposed on all offcourse approvals, including the condition that the approved place for the offcourse approval must not be open to the public and that bookmaking in person must be conducted at a licensed venue in accordance with the accepted undertaking. Subsection (1)(d) allows the Minister to impose other conditions on an offcourse approval. Subsection (2) states that conditions in subsections (1)(a) to (c) are 'mandatory conditions'. These mandatory conditions ensure that the granting of an offcourse

approval does not detract from the conduct of bookmaking in person by a racing bookmaker and prevents the establishment of betting shops.

Section 248A(1) defines the ‘accepted undertaking’. Section 248A(2) allows the Minister to vary the accepted undertaking if the racing bookmaker applies to have the undertaking varied.

New section 248B requires the Minister, as soon as practicable after deciding an application for offcourse approval, to give both the applicant and the control body a notice about such a decision.

## **Division 2            Cancellation of offcourse approval**

New section 248C specifies the grounds for cancelling a racing bookmaker’s offcourse approval.

New section 248D(1) provides that, except in extraordinary circumstances, the Minister must give a racing bookmaker a ‘show cause notice’ if the Minister believes that:

- a ground exists to cancel an offcourse approval; and
- the reason the ground exists is of a serious or fundamental nature; and
- the public interest may be affected in an adverse and material way.

Section 248D(2) outlines the information that must be stated in a show cause notice. Subsection (3) provides that the racing bookmaker must be given at least 28 days to respond to the show cause notice. Subsection (4) allows the racing bookmaker to make written representations to the Minister during the show cause period.

Section 248E(1) requires the Minister to give a copy of a show cause notice to each control body. Subsection (2) allows a control body to make written representations about the matters identified in the show cause notice to the Minister during the show cause period.

Section 248F requires the Minister to consider all representations made by the racing bookmaker and a control body during the show cause period.

Section 248G provides that if, after considering representations accepted under section 248F, the Minister forms the view that a ground to cancel an offcourse approval no longer exists, the Minister must take no further action about the show cause notice and give a notice to the racing

bookmaker and each control body that no further action is to be taken regarding the show cause notice.

Section 248H allows the Minister to cancel the offcourse approval if, there are no accepted representations for a show cause notice, or if, after considering accepted representations for a show cause notice, the Minister still believes:

- a ground exists to cancel an offcourse approval; and
- the reason the ground exists is of a serious or fundamental nature; and
- the public interest may be affected in an adverse and material way; and
- cancellation of the offcourse approval is warranted.

If the Minister cancels an offcourse approval, the Minister must immediately give the racing bookmaker a notice about such a decision. The notice must include:

- a direction that the racing bookmaker return the offcourse approval to the Minister within 14 days after the cancellation; and
- a warning to the racing bookmaker that it is an offence not to comply with the direction unless the racing bookmaker has a reasonable excuse.

Section 248I (1) creates an offence for a person to fail to comply with a direction to return an offcourse approval to the Minister within 14 days after it has been cancelled under section 248(H)(5)(a) unless the person has a reasonable excuse. Maximum penalty – 40 penalty units. Subsection (2) provides that if a person is unable to return an offcourse approval to the Minister because it has been lost or destroyed, the bookmaker must within 14 days after the cancellation of the offcourse approval give the Minister a statutory declaration outlining the details of the loss or destruction of the offcourse approval. Maximum penalty – 40 penalty units. Subsection (3) provides that a person does not commit an offence against subsection (1) if the direction issued under section 248H(5)(a) did not contain a warning that it is an offence to fail to comply with the direction unless the person has a reasonable excuse.

Section 248J provides for the automatic cancellation or suspension of an offcourse approval if the racing bookmaker's eligibility certificate or racing bookmaker's licence is cancelled or suspended. This provision reflects that a person must hold an eligibility certificate before they can apply for a

racing bookmaker's licence and a person must hold a racing bookmaker's licence before they can apply for an offcourse approval.

Section 248K provides that in circumstances where the Minister believes that the giving of a show cause notice is not warranted, despite a ground existing to cancel the offcourse approval held by the bookmaker, the Minister may censure the bookmaker for a matter relating to the existing ground for cancellation of the offcourse approval by providing the bookmaker with a notice about the decision to issue the censure.

Section 248L provides that if the Minister decides to cancel an offcourse approval under section 248H or censure the racing bookmaker under section 248K, the Minister must give a notice to each control body of such a decision.

### **Division 3                    Immediate suspension of offcourse approval**

Section 248M empowers the Minister to immediately suspend an offcourse approval if the Minister believes that:

- a ground exists to cancel the offcourse approval; and
- the circumstances are so extraordinary that it is imperative to suspend the offcourse approval immediately to ensure the public interest in a code of racing is not adversely affected.

The suspension can only be effected by the Minister giving the racing bookmaker an information notice about the decision to suspend the offcourse approval, together with a show cause notice. The suspension is operational immediately the information notice is given to the racing bookmaker. The suspension continues to operate until the show cause notice is finally dealt with.

Clause 63 amends section 249. Clause 63(1) amends section 249(1)(a) by omitting the phrase 'system for bookmaking by telephone' and inserting 'telecommunications system for bookmaking'. This term reflects the new activities that may be undertaken by a racing bookmaker using modern telecommunication technology. Clause 63(2) insets new subsections (2) to (4). Section 249(2) has been inserted to ensure that the public interest is protected by providing that a control body may approve a telecommunications system for bookmaking only if:

- the control body has the system assessed by an entity that is independent of the control body and approved by the Minister; and
- the entity assessing the system gives the control body a report stating that the system is of a standard that will ensure the integrity of bets made and protect the money and privacy of persons placing bets.

Section 249(3) has been inserted to ensure that the public interest is protected by allowing the Minister to give a control body a written direction, to have a telecommunications system approved by the control body independently audited and to give the Minister the results of the audit. Section 249(4) requires the control body to comply with a direction given under section 249(3).

Clause 64 amends section 254 which provides for the payment and settlement of bets at a place other than at a licensed venue. Clause 64(1) amends section 254(1) by specifying section 254(2) applies to the payment and settlement of lawful bets made at a licensed venue. Clause 64(2) renumbers section 254(3) as section 254(5). Clause 64(3) inserts sections 254(3) and (4) which provide that the offcourse approval may state a place for the payment and settlement of the bet.

Clause 65 amends section 255 which allows a control body to declare a sporting contingency to be a declared sporting contingency on which racing bookmakers may conduct bookmaking. The amendments reflect that a racing bookmaker may conduct bookmaking on such contingencies both in person at a licensed venue and under an offcourse approval.

Clause 66 amends section 256 by inserting sections 256(7) and (8) which provide that a racing bookmaker's agent authorised by the control body to act as the racing bookmaker's agent, may carry on bookmaking as the racing bookmaker at an approved place for the offcourse approval, or another place approved by the Minister.

Clause 67 amends the definition 'place of business' in section 270(3) by specifying that a place of business includes a place that is approved for the conduct of offcourse bookmaking. This provision has been included to ensure that an authorised officer is able to access the approved place at which offcourse bookmaking is conducted by a racing bookmaker.

Clause 68(1) amends the definition of 'background document' in section 310 to reflect that only the gaming executive may obtain fingerprints of a person. Clause 68(2) renumbers paragraph (d) as (e). Clause 68(3) extends the definition of 'background document' to include a document:

- given by a person for consideration for appointment as an executive officer of the all-codes board or a member of a control board; and
- relating to the person's business reputation, character, criminal history, current financial position or financial background.

Clause 69 replaces section 311 which makes it an offence to disclose confidential information with a new section 311 which has been drafted to reflect current drafting practice.

Clause 70 amends section 351(1) by including references to new entities that have been established, or have been provided functions, under the Act.

Clause 71 amends section 352A by inserting new sections 352A(1)(b) to (d) to reflect the new appeal procedures that have been established.

Clause 72 amends section 355(2)(d) to include all sections that contain a regulation making power.

Clause 73 inserts a new Chapter 10, part 7.

## **Part 7                      Transitional provisions for Racing and Other Legislation Amendment Act 2012**

### **Division 1                Preliminary**

New section 445 is inserted which provides definitions for part 7.

### **Division 2                Provisions relating to former control body**

New section 446 provides that the control body approval held by the former control body, Racing Queensland Limited, is cancelled at midnight on the day before the commencement.

New section 447(1) provides that on the commencement:

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

New section 447(2) provides that the registrar of titles or other person responsible for keeping a register of dealings in property must, on request by the all-codes board, record the vesting of property in the all-codes board.

New section 448 declares section 447 to be a Corporations legislation displacement provision for section 5G of the *Corporations Act 2001* (Cth) to avoid any inconsistency between sections 447 and the Corporations Act.

New section 449 provides an employee of the former control body immediately before the commencement, becomes an employee of the all-codes board on the same terms and conditions as applied to the person immediately before the commencement. The person remains entitled to all rights of employment, accrued or existing, immediately before the commencement, including the person's length of service with the former control body and outstanding leave entitlements accrued up to the commencement.

New section 450 provides that the transfer of an employee to the all-codes board under section 449 does not interrupt continuity of service, does not constitute a termination of employment or a retrenchment or redundancy or entitle the employee to a payment or benefit because he or she is no longer employed by the former control body or require the former control body to make any payment for the employee's accrued rights to leave irrespective of any arrangement between the former control body and the employee.

New section 451 provides that any proceeding that could have been started by or against the former control body before the commencement may be started by or against the all-codes board. From the commencement an existing proceeding by or against the former control body (or a member of

a former control body in their capacity as a member of the former control body) may be continued and finished by or against the all-codes board.

New section 452 provides that anything done by the former control body under the Act, including current policies, rules of racing, licences or a racing calendar made or issued by the former control body:

- continues to have effect; and
- from the commencement, is taken to have been done by the all-codes board.

New section 453 provides that a right or obligation of the former control body immediately before the commencement becomes a right or obligation of the all-codes board.

New section 454 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 2012, applies to the new control body to the extent it is stated to apply to a former control body.

New section 455 provides that, for section 60B of the Act, amounts of the former control body's net UNiTAB product fee paid before the commencement by the former control body are, on the commencement, taken to have been paid by the all-codes board under section 9AG.

New section 456 provides that, for an appeal committee established by the 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 former control body's rules of racing in existence before the commencement.

An appeal against a reviewable decision, within the meaning of former section 95, made before the commencement and started after the commencement may be dealt with by the disciplinary board. This section does not limit section 452(1).

New section 457 provides that if, before the commencement, the 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 the commencement chapter 3, part 4 applies in relation to the show

cause notice as if the notice had been given by the all-codes board. This section does not limit section 452(1).

New section 458 provides that nothing done under this part in relation to the former control body:

- places the all-codes board in breach of a contract, trust or confidence or makes it guilty of a civil wrong;
- makes the all-codes board 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 459 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, rights or obligations or for anything else done under this part.

New section 460 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 all-codes board.

### **Division 3            Other provisions**

New section 461 provides for the destruction of fingerprints taken before the commencement.

New section 462 provides that section 311 applies from the commencement as if section 310 definition of background document included a reference to fingerprints of a person obtained by the chief executive of a control body.

Clause 74 amends schedule 3 by omitting and inserting relevant definitions in the dictionary.

Clause 75 provides that schedule 3 amends the sections it mentions.

**Part 4**                      **Amendment of Wagering Act  
1998**

Clause 76 provides that this part amends the *Wagering Act 1998*.

Clause 77 amends section 169(1)(b) of the Wagering Act by omitting 2014 and inserting 2015. The amendment extends the funding (payment of 50% of the net tax collected under the Wagering Act) for the Racing Industry Capital Development Scheme from 2014 to 2015.

**Schedule**                      **Minor amendments of Racing Act  
2002**

The Schedule makes minor consequential amendments.

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