

Racing and Other Legislation Amendment Bill 2012

Report No. 14

Health and Community Services Committee

22 November 2012

Health and Community Services Committee

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Chair's foreword

This report presents a summary of the committee's examination of the Racing and Other Legislation Amendment Bill 2012.

The committee's task was to consider the policy outcomes to be achieved by the legislation, and whether the Bill has sufficient regard to the fundamental legislative principles, including the rights and liberties of individuals and the institution of Parliament.

Examination of a Bill by a portfolio committee allows the Parliament to hear views from the public and stakeholders on legislation and its impact. The examination of Bills is intended to contribute to better policy and legislation in Queensland.

On behalf of the committee I thank the individuals and organisations that made a written submission on this Bill. I also thank the Minister for National Parks, Recreation, Sport and Racing, officials from the Department of National Parks, Sport, Recreation and Racing, the committee's secretariat, and the Technical Scrutiny of Legislation secretariat.

I commend the report to the House.

A handwritten signature in black ink, reading 'Peter Dowling'. The signature is written in a cursive, flowing style with a large loop at the end of the last name.

Mr Peter Dowling MP
Chair

22 November 2012

Abbreviations

the committee	Health and Community Services Committee
all-codes board	Queensland All Codes Racing Industry Board
control boards	Code-specific control boards i.e. Thoroughbred Control Board, Harness Control Board, Greyhound Control Board
QCAT	Queensland Civil and Administrative Tribunal
the Bill	Racing and Other Legislation Amendment Bill 2012
the Department	The Department of National Parks, Recreation, Sport and Racing

Recommendations

Recommendation 1

2

The committee recommends that the Racing and Other Legislation Amendment Bill 2012 should be passed.

Recommendation 2

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The committee recommends that the Minister consider regional representation issues when he provides advice to the Governor-in-Council about appointment of members to the control boards.

Recommendation 3

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The committee recommends that the Minister inform the Legislative Assembly of the steps he will take to encourage eligible persons from regional and rural areas to seek appointment to the control boards and to respond to industry's desire to ensure adequate regional membership.

Recommendation 4

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The committee recommends that section 113AW be amended to specifically provide that a reasonable excuse for not answering a question or producing a document to the Racing Integrity Commissioner includes that it might tend to incriminate the person.

1 Introduction

1.1 Role of the committee

The Health and Community Services Committee (the committee) was established by resolution of the Legislative Assembly on 17 May 2012, and consists of government and non-government members.

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of fundamental legislative principles to the Bill.

1.2 The committee's process

1.2.1 Referral

The Racing and Other Legislation Amendment Bill 2012 (the Bill) was referred to the committee on 1 November 2012. The committee was required to report to the Legislative Assembly by 22 November 2012.

1.2.2 Submissions

The committee wrote to stakeholder organisations on 6 November 2012 inviting written submissions about the Bill by 12 November 2012. The committee also advertised its call for submissions on its website. Fourteen submissions were received and accepted. Submissions are published on the committee's website.¹

1.2.3 Public briefing

Officers from the Department of National Parks, Recreation, Sport and Racing (the Department) briefed the committee on the Bill on 7 November 2012. A transcript of the departmental briefing is published on the committee's website.

¹ Submissions referred to in this report are published at: <http://www.parliament.qld.gov.au/work-of-committees/committees/HCSC/inquiries/current-inquiries/RacOthLegAmdBill2012>

2 Examination of the Racing and Other Legislation Amendment Bill 2012

2.1 Should the Bill be passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed. After examination of the Bill and consideration of the evidence available, the committee determined that the Bill should be passed.

Recommendation 1

The committee recommends that the Racing and Other Legislation Amendment Bill 2012 should be passed.

2.2 Policy context

The *Racing Act 2002* (the Act) currently establishes Racing Queensland Limited (Racing Queensland) as the single racing control body responsible for managing and administering the thoroughbred, harness and greyhound codes of racing in Queensland. The Act also provides the legislative framework for the regulation of racing bookmakers in Queensland.²

In 2010 the *Racing Act 2002* was amended to amalgamate the then three control bodies into the current control body, Racing Queensland.

The Bill amends the *Racing Act 2002* to replace Racing Queensland with a new principal racing authority and three code specific control boards. It establishes and transfers racing integrity functions to government and is intended to provide a more competitive environment for Queensland bookmakers.³

2.3 The Racing and Other Legislation Amendment Bill 2012

The Bill amends three Acts - the *Racing Act 2002*, the *Wagering Act 1998* and the *Interactive Gambling (Player Protection) Act 1998*.

2.3.1 Amendments to the Racing Act 2002

The Bill replaces the control body, Racing Queensland Limited, with a new principal racing authority, the Queensland All Codes Racing Industry Board (the all-codes board), and code-specific control boards for each of the three racing codes.

The Bill also provides for the appointment of a Racing Integrity Commissioner and the establishment of a Racing Disciplinary Board.

2.3.2 Amendments to the Wagering Act 1998

The Bill amends the *Wagering Act 1998* to extend funding for the Racing Industry Capital Development Scheme for one year, until 30 June 2015.

² Explanatory Notes, Racing and Other Legislation Amendment Bill 2012, p.2

³ Introductory speech, Hon SL Dickson, 1 November 2012,
<http://www.parliament.qld.gov.au/documents/tableOffice/HALnks/121101/Racing.pdf>

2.3.3 *Amendments to the Interactive Gambling (Player Protection) Act 1998*

The Bill amends the *Interactive Gambling (Player Protection) Act 1998*, to enable bookmakers to conduct business at the racecourse, off-course at approved premises and over the internet.

2.4 **Objects of the Bill**

The objectives of the Bill are:

- remove 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 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.⁴

2.4.1 *Submissions*

Six of the fourteen submissions expressly support some or all of the objectives of the Bill. Racing Queensland's submission states:

*The Board of Racing Queensland supports the reforms to the regulatory arrangements for racing in Queensland proposed by the Amendment Bill, including the establishment of the Queensland All-codes Racing Industry Board and the code specific Control Boards.*⁵

The Australian Bookmakers Association gave its 'full support' for the 'proposed amendments to racing and betting legislation contained within this Bill'.⁶

The Gold Coast Harness Racing Club submission states:

*Our club is largely in favour of the objectives of the Bill and supports that there needs to be changes made to the way Racing is currently run and administered in Queensland.*⁷

Submissions from Mr Wayne Dosseto,⁸ the Townsville Turf Club⁹ and Marburg Pacing Association¹⁰ also supported all or most of the objectives of the Bill.

⁴ Explanatory Notes, Racing and Other Legislation Amendment Bill 2012, p.1

⁵ Racing Queensland, Submission 10

⁶ Australian Bookmakers Association, Submission 7

⁷ Gold Coast Harness Racing Club, Submission 3

⁸ Wayne Dosseto, Submission 4

⁹ Townsville Turf Club, Submission 6

¹⁰ Marburg Pacing Association, Submission 8

2.5 Queensland All Codes Racing Industry Board

2.5.1 Functions of the all-codes board

Proposed sections 9AA to 9AC of the Bill (inserted by clause 11) establish the Queensland All Codes Racing Industry Board as the control body for the thoroughbred, harness and greyhound racing codes. The all-codes board is to be a statutory body with financial accountabilities under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*. The Bill also provides that the all-codes board is subject to the *Crime and Misconduct Act 2001*.

Proposed section 9AD of the Bill provides that the primary function of the all-codes board is to be the control body for the board codes of racing. Other functions in proposed section 9AD 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
- managing the redevelopment of existing and new racing infrastructure for individual codes or racing as a whole
- developing and implementing plans and strategies for developing, promoting and marketing the codes of racing individually or as a whole
- assisting control boards by providing staff and funding for the performance of the control boards' functions
- making recommendations to the Minister about the administration and conduct of the codes of racing individually or as a whole, and considering matters referred to the all-codes board by the Minister.

2.5.2 Powers of the all-codes board

Proposed new section 9AE of the Bill provides the all-codes board with powers that may be exercised in relation to each code of racing individually or to codes of racing as a whole. The all-codes board would be required by proposed section 9AF to perform a function in a way that is in the best interests of all three codes, while having regard to the interests of each individual code.

The powers of the all-codes board include the powers of an individual, for example to enter into contracts, acquire and dispose of property, engage consultants or contractors, appoint agents and employ staff.

In addition, the all-codes board has the powers provided under section 34 of the Act, which previously applied to a control body, and additional powers inserted by clause 20 of the Bill. The powers under amended section 34 of the Act include existing powers such as the licensing of clubs, venues, participants and animals for the relevant code and distribution of prize money for races. Clause 20 of the Bill inserts new powers, including the power to make decisions about the allocation of race dates, supervise construction, alteration or renovation of a racing venue, conduct research and investigations into breeding and racing of animals, and publish information to inform the public.

2.5.3 Membership

The Bill provides (in proposed section 9AI) that the all-codes board will have five members appointed by the Governor-in-Council for a period of up to three years. The Governor-in-Council may remove a member of the all-codes board, for any reason or none.

Members of the all-codes board are the chairs of the three control boards and two other members. To be eligible for appointment, members must have skills or experience in one or more of the following:

- business or financial management
- law
- leadership
- marketing
- a code of racing.

Members are subject to criminal history checking prior to appointment (proposed clause 9BG and 9BH).

One submission states that there is a need to ensure that the five positions on the all-codes board cannot be vacated at same time.¹¹

2.5.4 Chief executive officer

The Bill provides for the all-codes board to have a Chief Executive Officer (CEO) appointed by the Governor-in-Council for a three year term which may be renewed (proposed sections 9AZ and 9BA).

The CEO is employed under the *Racing Act 2002* and is not a public servant. Remuneration and allowances are decided by the Governor-in-Council and the terms and conditions of employment are decided by the all-codes board (proposed section 9BC).

2.5.5 Submissions - structure and functions of all-codes board

The views expressed in submissions about the structure and functions of the all-codes board varied. The Queensland Jockeys' Association submission supports the proposed arrangements. The Association's submission states:

*The function of the Queensland All Codes Racing Industry Board (QACRIB) is a must. The Thoroughbred Industry needs this body in place as the Principal Racing Authority to function as a body on the Australian Racing Board to give the Queensland Thoroughbred Industry a vice (sic) and representation on National issues that affect racing in Queensland.*¹²

In contrast, the Queensland Racehorse Owners Association is:

*concerned with the legality and corporate structure of the proposed structure, particularly in so far as ASIC requirements and independently (sic) of each control board.*¹³

The Townsville Greyhound Racing Club submission states it is:

*gravely concerned regarding the formation, structure and implementation of the proposed Queensland All Codes Racing Industry Board and the associated independent industry boards.*¹⁴

¹¹ Wayne Dosetto, Submission 4

¹² Queensland Jockeys' Association, Submission 2

¹³ Queensland Racehorse Owners Association, Submission 13

¹⁴ Townsville Greyhound Racing Club, Submission 11

It went on to suggest that the formation of new control boards could be undertaken by reworking the current Queensland Racing Board and implementing sub-committees for each individual code.

2.5.6 Transitional arrangements for all-codes board

Clause 73 inserts new sections 446 and 447, which remove the approval held by Racing Queensland as the control body at the date of commencement of the amendment Act and provide for all employees, assets and liabilities of Racing Queensland to be transferred to the all-codes board.

One submission raised questions about the transitional arrangements for cancellation of Racing Queensland as the control body, including:

- the meaning of ‘commencement’ in the context of the proposed new section 446, which cancels the approval held by Racing Queensland at midnight before the day of commencement
- when the company will be deregistered
- whether directors will be remunerated once this occurs, and
- whether the four current directors, who were appointed in 2012 until the next Annual General Meeting, will be re-appointed at the AGM scheduled for 16 November 2012.¹⁵

The committee asked the Department to comment on the transitional issues raised in the submission. The Department provided the following comments about the first three issues above.

- commencement is the date the section is proclaimed to commence. This date has not yet been determined but is expected to be in March 2013
- decisions about the deregistration of Racing Queensland are matters for the directors under the *Commonwealth Corporations Act 2001*; while Racing Queensland may remain as a registered company, it will have no powers under the *Racing Act 2002*
- the directors of Racing Queensland will not be paid directors' fees' 'from the date that Racing Queensland Limited ceases to be a control body and all assets transferred to the all-codes board'.¹⁶

The Department also confirmed that the current directors of Racing Queensland will hold office until the company is deregistered and outlined the process undertaken to enable this, including Racing Queensland's application for approval to amend its constitution. The Department stated:

In view of the proposed legislative changes that will establish a new racing governance framework, Racing Queensland applied to the chief executive of the Department in accordance with its control body approval, for approval to amend its constitution to enable the current directors to hold office until the company is deregistered. In the circumstances, it was not considered appropriate for the industry to bear the cost of undertaking a selection process to appoint directors to a company that it is proposed will cease to be the control body and will have no role within the racing industry. Accordingly, the application by Racing Queensland to amend the constitution was approved and the constitution was amended accordingly.¹⁷

A copy of the Department's comments is at Appendix 3.

¹⁵ Stephanie Houghton, Submission 9

¹⁶ Dr John Glaister, letter to committee, 16/11/2012, p. 5

¹⁷ Dr John Glaister, letter to committee, 16/11/2012, p. 5

2.5.7 *Committee comment*

The committee notes the range of views in submissions about the structure and functions of the all-codes board which are set out in the Bill. On balance the committee considers that the Bill provides an appropriate structure for a statutory board.

2.6 **Code-specific control boards**

2.6.1 *Functions of control boards*

The Bill provides for establishment of the Queensland Thoroughbred Racing Board, the Queensland Harness Racing Board and the Queensland Greyhound Racing Board as the control boards for their respective codes of racing (proposed sections 9BO and 9BP).

The primary function of each of the control boards 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. Other functions in proposed section 9BQ (inserted by clause 11) include:

- reviewing and making recommendations about the allocation by the all-codes board of race meeting dates and prize money
- making recommendations to the all-codes board to amend the code's rules of racing
- consulting with industry stakeholders
- with approval of the all-codes board, distributing prize money, developing strategic plans for the operation of the code and for developing, promoting and marketing the commercial operations of the code, and encouraging and facilitating the development of ancillary racing activities.

2.6.2 *Membership of control boards*

The Bill states that each control board will have three members appointed by the Governor in Council, for a period of up to three years. Provision is made for staggered terms of initial appointment, with one member of the board to remain for an additional fourth year after the initial term (proposed section 9BV).

Eligibility for membership is similar to the requirements for the all-codes board, that is, a person must have skills or experience in one or more of: business or financial management; law; leadership; marketing; or a code of racing (proposed section 9BU). Members are also subject to criminal history checks prior to appointment (proposed sections 9CI and 9CJ).

The committee notes that candidates seeking appointment to both the all-codes board and control boards may have lived and worked outside Australia. The Department's advice to the committee at a public briefing indicated that criminal history checks are limited to Australia.

.....checks will be undertaken with other racing jurisdictions to ensure that they do not have convictions under any of the rules of racing or those types of provisions either within Queensland or in other Australian jurisdictions as well as the normal background and financial probity checks that are currently under the Act.¹⁸

The committee invites the Minister, in the second reading debate, to inform the Legislative Assembly of the criminal history screening process and probity checks proposed for candidates who have lived and worked outside Australia.

¹⁸ Mr Mike Kelly, Public Briefing-Inquiry into the Racing and Other Legislation Amendment Bill 2012, p. 5-6

2.6.3 Submissions – regional members of control boards

Representation of regional interests on control boards and increasing the number of members was raised in four submissions. One submission, while not arguing for an increase in the number of members, also raised the issue of regional representation.

The Rockhampton Trainers Association states that there should be five members on the Thoroughbred Control Board and argues that members should be selected by industry. The Association suggests that a non-representative appointment is undemocratic and may affect industry support. The Association also argues that at least one of the additional two members should be living north of the Tropic of Capricorn, to ensure adequate representation of this region.¹⁹

The Breeders, Owners, Trainers and Reinspersons Association (Qld) also supports industry involvement in the selection of members for control boards, requesting that industry ‘have input into the final selection of the three harness racing board members to manage our industry going forward’.²⁰

A five member Thoroughbred Control Board was also suggested by the Eastern Downs Racing Association. It stated that the members should represent the interests of metropolitan, provincial and country clubs and associations, as well as owners, trainers, breeders and bookmakers.²¹

Another argument for regional representation on the Thoroughbred Control Board was submitted by the Townsville Turf Club. It argues that at least one member should be from a country location. The Club provides a regional breakdown of thoroughbred racing clubs to support its view that the regional member should be from the Leichardt / North Queensland region, and states that the Governor-in-Council should consider this information when appointing the control board.

*The Townsville Turf Club believes that it is vitally important that the Thoroughbred Racing Club consist at least 1 member representative from a country/regional perspective, with a representative from outside the South East & Downs area paramount to providing a country and regional voice and opinion on such a board.*²²

The Marburg Pacing Association raises similar issues in relation to the Harness Racing Control Board. The Association supports increasing membership on the Harness Racing Control Board from three to five. It argues that nominations for appointment to the Board should be taken from all segments of industry, including ‘licensees and persons not necessarily in or representing the interest of South East Queensland’.²³

The Townsville Greyhound Racing Club refers to ‘the omission of any mention to country or regional racing on any level’ and states that ‘Under the current format it could be seen that no input would be allowed from outside the south east corner’. The Club also questions how the Racing Industry Capital Development Scheme is applied in relation to country clubs.²⁴

Another submission proposes an alternative model with a larger representative thoroughbred control body consisting of:

¹⁹ Rockhampton Trainers Association, Submission 1

²⁰ Breeders, Owners, Trainers and Reinspersons Association (Qld) Inc, Submission 14

²¹ Eastern Downs Racing Association, Submission 5

²² Townsville Turf Club, Submission 6

²³ Marburg Pacing Association, Submission 8

²⁴ Townsville Greyhound Racing Club, Submission 11

*a single representative from: the BRC, Provincial Clubs, Country Racing, Jockeys, Trainers, Breeders, the Chief Integrity Commissioner, two development officers and the CEO of Racing Queensland.*²⁵

The importance of country racing and representation of this section of the industry is also evident in a number of more general comments made in submissions about the Bill.

The Eastern Downs Racing Association refers to re-instating the Country Racing Committee and Country Racing Associations, under the Thoroughbred Control Board. These structures were enshrined in legislation prior to the 2010 amendments to the *Racing Act 2002*, with responsibility for policy development and the power to make changes to country racing.²⁶

2.6.4 Committee comment

The committee acknowledges the racing industry's concern about regional representation, particularly in regard to membership of the control boards. The important role of racing in country communities is recognised.

Comments were sought from the Department on the submissions which proposed increased members of control boards, representation from regional areas and recognition of country racing.

The Department provided the following comments about increasing the number of members on control boards:

*The make-up of the code-specific control boards was fully considered during the preparation of the Racing and Other Legislation Amendment Bill 2012 (the Bill). It is considered that the current provisions, having each control board comprising three members strikes an appropriate balance between the views and representations from participants within a code of racing and ensuring effective and timely decision-making by a control board and the associated costs associated with the establishment and operations of a control board.*²⁷

The Department also responded to the regional representation issue, as follows:

While the legislation does not specify that there must be regional representation on the control boards or the all-codes board, a fair and equitable process for the selection of members to the control boards and the all-codes board is proposed. In order for there to be country/regional representation on the boards, it will be necessary for people from regional areas, who have the necessary skills and experience, to apply for a position on the control boards and the all-codes board. It is not considered appropriate that certain sections of the racing industry, or the State, be provided a mandatory position on either a control board or the all-codes board. The intent is to identify the best possible candidates, regardless of where they come from.

*A key objective is to have persons with the requisite skills and experience on the Boards who are capable of making decisions that are in the best interests of the Queensland racing industry.*²⁸

The Department described the proposed selection process for the all-codes board and control boards. An independent recruitment company will be engaged by the Department to conduct the selection process. The company will assess and shortlist candidates suitable for appointment on the basis of the requirements outlined in the relevant sections of the Bill (9AI and 9BU). In addition, each nominee 'will also require a supporting recommendation from a current industry licensee, race club,

²⁵ Mr Gerard Betros, Submission 12

²⁶ Eastern Downs Racing Association, Submission 5

²⁷ Dr John Glaister, letter to committee, 16/11/2012, p. 1

²⁸ *ibid*, p.1

industry association or stakeholder group to be considered'.²⁹ The Minister will appoint a selection panel which will consider the candidates shortlisted by the recruitment company and make recommendations to the Minister.

In response to concerns in submissions about the recognition of country racing, through avenues like Country Racing Associations and the Country Racing Committee, the Department advised that Country Racing Associations and the Country Racing Committee are currently established under the constitution of Racing Queensland. The Department referred to clause 20(7) of the Bill, which inserts a new subsection which 'includes the power for a control body to establish a committee or other entity to perform its functions'.

The Department stated that:

The all-codes board has the power to, and is expected to establish country racing associations and a Country Racing Committee for the thoroughbred code, similar to those currently established under Racing Queensland's constitution. It may be necessary for the all-codes board to establish a range of other advisory committees and the all-codes board is provided this power under the Bill.

*Should the all-codes board not establish country racing associations and a Country Racing Committee, the all-codes board would initially be requested to do so and should this not occur, the Minister has the power to issue a direction to the all-codes board to establish these entities if it is considered appropriate.*³⁰

The Department noted that Country Racing Associations and the Country Racing Committee have always had advisory roles, and have never had the power to overrule decisions made by the control body.³¹

The Department's comments on specific issues raised in submissions are at Appendix 3.

After considering the submissions and the Department's comments, the committee's view is that amendments to the Bill would not be an effective way to ensure that the views of all participants in a racing code can be heard. The committee notes that one of the functions of the control board for each of the racing codes is to consult with industry stakeholders. The committee also notes the capacity of the all-codes board, under proposed section 9BN of the Bill, to establish committees and to decide on the membership and functions of those committees.

The committee considers that it is appropriate that the Bill provide for membership of control boards based on relevant knowledge and skills. Recognising that members of control boards require the skills and knowledge specified in the Bill, the committee makes two recommendations to encourage consideration of regional interests in the appointment of members.

Recommendation 2

The committee recommends that the Minister consider regional representation issues when he provides advice to the Governor-in-Council about appointment of members to the control boards.

Recommendation 3

The committee recommends that the Minister inform the Legislative Assembly of the steps he will take to encourage eligible persons from regional and rural areas to seek appointment to the control boards and to respond to industry's desire to ensure adequate regional membership.

²⁹ *ibid*, p. 2

³⁰ *ibid*, pp. 3-4

³¹ Dr John Glaister, letter to committee, 16/11/2012, p. 4

2.7 Racing Integrity Commissioner

The Bill provides for the appointment of a part-time Racing Integrity Commissioner for no more than three years, with re-appointment possible at the end of this term. The appointment would be made by the Governor in Council on the recommendation of the Minister (clause 46, proposed section 113AL). All costs associated with the office are to be met by the all-codes and control boards.³²

2.7.1 Functions of Integrity Commissioner

The Integrity Commissioner's functions include:

- conducting audits and investigations of the integrity processes of the all-codes and control boards
- investigating complaints about an integrity process of the all-codes and control boards
- reporting audit and investigation findings, and any recommendations arising from these, to the Minister and the all-codes and control boards (proposed section 113AN).

Clause 113AO of the Bill states that the Commissioner cannot investigate 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.

2.7.2 Submissions

The Queensland Jockeys' Association supports the appointment of a Racing Integrity Commissioner. The Association believes the appointment will ensure 'the independence of decisions surrounding integrity issues in racing' and maintain 'a high level of accountability and transparent process'.³³

2.8 Racing Disciplinary Board

Proposed section 149A provides for the establishment of a Racing Disciplinary Board. The Bill states that the board will comprise at least five members, appointed by the Minister, for no more than three years. Re-appointment is possible at the end of this term (proposed section 149C). The proposed new section states that remuneration and allowances are decided by the Minister, who also has the power, (under proposed section 149G) to terminate an appointment on the grounds of unsatisfactory performance or misconduct.

All costs associated with the board are to be met by the all-codes and control boards.³⁴

The Bill provides that the members of the Racing Disciplinary Board must include:

- one lawyer with at least five years standing, who is appointed chair
- another lawyer, who is appointed deputy chair, and
- three other members each of whom is a lawyer, or a person who has a thorough knowledge of the rules of racing.

2.8.1 Functions of the Racing Disciplinary Board

Proposed section 149B of the Bill (inserted by clause 48) states the board's functions are to hear and decide appeals by aggrieved persons against appealable decisions and, if it considers it is in the public interest to do so, to refer appeals to QCAT. Proposed section 149S defines 'appealable decisions' as decisions made by the all-codes and control boards to refuse to grant or renew a licence, take disciplinary action in relation to a licence, take an exclusion action against a person and impose a monetary penalty or non-monetary action on a person.

³² Mr Mike Kelly, Public Briefing-Inquiry into the Racing and Other Legislation Amendment Bill 2012, p. 3

³³ Queensland Jockeys' Association, Submission 2

³⁴ Explanatory Notes, Racing and Other legislation Amendment Bill 2012, p. 3

2.8.2 Submissions

The Queensland Jockeys' Association states the Racing Disciplinary Board is 'a step to a better and fairer appeal system'. The Association argues that under than the current model, 'the Control Body hold all the "aces" in obtaining legal representation or expert representatives as a result of their financial advantage'.

The Association states the appellant will feel less obligated to obtain legal advice under this system and identifies the Victorian Racing Appeals and Disciplinary Board as the best system on which to model the process.³⁵

2.9 Internet and off course betting

Currently, Queensland bookmakers can only take bets while they are present at a race meeting and are restricted to using approved telephones to takes bets from clients who cannot attend.

The Bill amends the *Racing Act 2002* and the *Interactive Gambling (Player Protection) Act 1998* to enable bookmakers to use a telecommunications system to conduct their business both at the racecourse and at other, off-course premises, which have been approved by the Minister. A telecommunications system is defined in schedule 3 of the Bill as 'an electronic device or other equipment for communicating at a distance' and includes both telephones and the internet. These amendments provide that bookmaking conducted via internet-based technology is not classified as an interactive game and therefore not subject to the 50% tax that applies to such games.

2.9.1 Submissions

Two submissions gave strong support for amendments to allow off-course bookmaking.

The Australian Bookmakers Association stated the changes 'will allow Queenslander bookmakers to compete on a more level basis with their interstate competitors' and notes that 'internet betting is already available to on-course bookmakers in other Australian jurisdictions and is a vital option for bookmakers to be able to utilise to do business and retain their clients'.

The Association believes the amendments will help 'on-course bookmakers in Queensland to regain a level of commercial viability' and that these options will 'help Queensland bookmakers to continue to support the Queensland racing industry via their continuing presence on Queensland racecourses'.³⁶

The Marburg Pacing Association submission said: 'On-course bookmakers should be allowed at least a "level playing field" to ensure that they can offer an attractive betting medium. Clubs must offer the punter an alternative to the tote if they are to provide an atmosphere which will justify the charging of essential gate fees'.³⁷

2.10 Racing Industry Capital Development Scheme

The Bill amends the *Wagering Act 1998* to extend funding for the Racing Industry Capital Development Scheme (the Scheme) for one year, from 30 June 2014 to 30 June 2015.

The Scheme was established in 2010 to assist the racing industry to maintain its existing infrastructure and to fund necessary capital improvements. It is by funded by the reallocation of 50% of the net wagering tax collected by Queensland Government under the *Wagering Act 1998*. The one year extension will make a further \$20 million available under the Scheme.³⁸

³⁵ Queensland Jockeys' Association, Submission 2

³⁶ Australian Bookmakers Association, Submission 7

³⁷ Marburg Pacing Association, Submission 8

³⁸ Mr Mike Kelly, Public Briefing-Inquiry into the Racing and Other Legislation Amendment Bill 2012, p.3

2.10.1 Submissions

Two submissions raise issues about the Racing Industry Capital Development Scheme.

The Townsville Greyhound Racing Club requests further details to 'substantiate the funding scheme and how it is applied to fund capital development, especially as concerns country clubs'.³⁹

The Gold Coast Harness Racing Club states that funding under this Scheme should be increased above 50% and beyond 2015 to provide funding options and certainty for both government and the racing industry.⁴⁰

2.11 Implementation costs

The Explanatory Notes state that 'The Bill will not impose any significant administrative cost to government in implementing the proposed amendments' and that all costs associated with implementing new racing governance and integrity arrangements would be funded by the racing industry itself'.⁴¹

Some stakeholders are concerned that implementation costs may have an impact on the racing industry. In his submission Mr Wayne Dossetto asks that the Minister make the proposed cost of the establishing of the all codes board, the control boards, the Racing Integrity Commissioner and the Racing Disciplinary Board publicly available.⁴²

The Breeders, Owners, Trainers and Reinspersons Association (Qld) ask who will meet the costs associated with the staff of the all-codes board – the government or industry.⁴³

For the Townsville Greyhound Racing Club, the cost of establishing the Racing Queensland Board two years ago was 'a huge impost on industry - one we are still struggling to pick up' and asks what costs are associated with transferring integrity functions to an independent body.⁴⁴

The committee invites the Minister, during the second reading debate, to inform the Legislative Assembly of the estimated costs of implementation of the Bill.

³⁹ Townsville Greyhound Racing Club, Submission 11

⁴⁰ Gold Coast Harness Racing Club, Submission 3

⁴¹ Explanatory Notes, Racing and Other Legislation Amendment Bill 2012, pp.6-7

⁴² Wayne Dossetto, Submission 4

⁴³ Breeders, Owners, Trainers and Reinspersons Association (Qld), Submission 14

⁴⁴ Townsville Greyhound Racing Club, Submission 11

3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The committee considered the application of fundamental legislative principles to the Bill. It noted that the Explanatory Notes to the Bill state that it is generally consistent with fundamental legislative principles, and outlines (pp. 7 – 11 of the Explanatory Notes) justifications for potential breaches of the principles. The committee makes no comment on those potential breaches. The committee sought the Minister’s response on two issues which are discussed below.

3.1 Protection against self-incrimination

The committee notes that proposed sections 113AU and 113AV of the Bill (inserted by clause 46) would empower the Racing Integrity Commissioner to give a person a written notice requiring that they attend before the commissioner to answer questions, give information or produce a document or thing.

Proposed section 113AW(1) makes it an offence for a person given a notice under sections 113AU or 113AV to, without reasonable excuse, fail to attend before the commissioner, fail to continue to attend, or fail to produce a document or thing the person is required to produce under the notice. Proposed section 113AW(2) provides that a person appearing as a witness at an audit or investigation must not, without reasonable excuse, fail to take an oath or make an affirmation or fail to answer a question the person is required to answer by the commissioner. The maximum penalty for a breach of proposed sections 113AW(1) or (2) is \$11,000.

The committee notes that the Explanatory Notes state that a reasonable excuse for failing to comply with section 113AW “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”.⁴⁵ The committee notes however that proposed section 113AW does not specifically provide that a reasonable excuse for failing to answer a question is that doing so might tend to incriminate the person.

The committee sought the Minister’s comments on whether, in the absence of a provision specifying that a reasonable excuse includes where compliance might tend to incriminate the person, the Bill provides appropriate protection against self-incrimination.

The Minister’s response (see Appendix 4) states that the provision does provide sufficient protection against self-incrimination, given that it does not abrogate the privilege against self-incrimination, and that the Explanatory Notes provide specific confirmation of this.

After considering the Minister’s response, the fundamental legislative principles in section 4 of the *Legislative Standards Act 1992*, and the Explanatory Notes, the committee considers that it would be preferable that proposed section 113AW specifically provide that self-incrimination is a reasonable

⁴⁵ Explanatory Notes, Racing and Other Legislation Amendment Bill 2012, p.40

excuse for failing to comply with a notice given under clause 113U or 113AV. The committee therefore unanimously recommends an amendment to the Bill.

Recommendation 4

The committee recommends that section 113AW be amended to specifically provide that a reasonable excuse for not answering a question or producing a document to the Racing Integrity Commissioner includes that it might tend to incriminate the person.

3.2 Clear and precise drafting

The committee notes that proposed section 149G provides that the Minister may end the appointment of a member of the Racing Disciplinary Board for reasons that include misconduct of a kind that could warrant dismissal from the public service if the member were an officer of the public service. “Misconduct” is defined in proposed subsection 149G(3) as meaning *inappropriate or improper conduct in an official capacity; or inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the disciplinary board*.

The committee notes that the Bill provides one example of *inappropriate or improper conduct in a private capacity*. The example of misconduct in a private capacity is: “publishing defamatory comments about another member”.

The committee notes that the scope of private conduct that could result in a decision to end the appointment of a member of the disciplinary board appears to be broad. The committee sought the Minister’s comments on whether this provision is drafted in a sufficiently clear and precise way, and whether consideration has been given to the inclusion of additional examples to improve the clarity and precision of proposed section 149G.

The Minister’s response (Appendix 4) refers to other Acts with provisions with similar wording and which provide only one example of misconduct, and that the provision is considered to be sufficiently clearly drafted.

The committee makes no further comment on this issue.

3.3 Explanatory notes

The Explanatory Notes generally conform to the requirements of section 23 of the *Legislative Standards Act 1992*.

Appendices

Appendix 1 – List of Submissions

Sub #	Submitter Name
1	Rockhampton Trainers Association
2	Australian Jockeys' Association Qld Branch
3	Gold Coast Harness Racing Club
4	Wayne Dossetto
5	Eastern Downs Racing Association
6	Townsville Turf Club Incorporated
7	Australian Bookmakers' Association
8	Marburg Pacing Association
9	Stephanie Houghton
10	Racing Queensland Limited
11	Townsville Greyhound Racing Club Inc
12	Gerard Betros
13	Queensland Racehorse Owners Association
14	Breeders, Owners, Trainers & Reinspersons Association (Qld) Inc

Appendix 2 – Officers at public briefing 7 November 2012

Department of National Parks, Recreation, Sport and Racing

Mr Mike Kelly, Executive Director, Office of Racing

Ms Carol Perrett, Director, Investigations and Compliance, Office of Racing Regulation, Office of Racing.

Appendix 3 – Department's comments on issues in submissions

Letter from Dr John Glaister, Director-General, Department of National Parks, Recreation, Sport and Racing, 16 November 2012



Office of the
Director-General

Department of
National Parks, Recreation,
Sport and Racing

Our Ref: CTS 17447/12

Mr Peter Dowling MP
Chair
Health and Community Services Committee
Parliament House
George Street
BRISBANE QLD 4000
Email: hcsc@parliament.qld.gov.au

Dear Mr Dowling

I refer to the email from Ms Cawcutt, Research Director dated 13 November 2012 requesting the Department of National Parks, Recreation, Sport and Racing's response to issues raised in a number of public submissions on the Racing and Other Legislation Amendment Bill 2012.

The attached document addresses each of the issues identified in Ms Cawcutt's email.

I hope this information has been of assistance to you. Should you have further enquiries, please contact Mr Mike Kelly, Executive Director, Office of Racing of the department on telephone 3234 1400.

Yours sincerely


Dr John Glaister
Director-General

Enc 16/11/12

Page 1 of 1

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ATTACHMENT

Health and Community Services Committee

Inquiry into the Racing and Other Legislation Amendment Bill 2012

Department of National Parks, Recreation, Sport and Racing
Response to Public Submissions

1. Increasing the number of members on the control boards from three to five

Submission No. 1 from the Rockhampton Trainers Association, Submission No. 5 from the Eastern Downs Racing Association and Submission No. 8 from the Marburg Pacing Association all submit that the number of members of a control board be increased from three to five.

Response

The make-up of the code-specific control boards was fully considered during the preparation of the Racing and Other Legislation Amendment Bill 2012 (the Bill). It is considered that the current provisions, having each control board comprising three members strikes an appropriate balance between the views and representations from participants within a code of racing and ensuring effective and timely decision-making by a control board and the associated costs associated with the establishment and operations of a control board.

2. Representation from country or regional areas on the control boards/all-codes board

Submission No. 1 from the Rockhampton Trainers Association, Submission No. 6 from the Townsville Turf Club, Submission No. 8 from the Marburg Pacing Association and Submission No. 11 from the Townsville Greyhound Racing Club raise issues in relation to country/regional representation on the control boards/all-codes board.

Response

While the legislation does not specify that there must be regional representation on the control boards or the all-codes board, a fair and equitable process for the selection of members to the control boards and the all-codes board is proposed. In order for there to be country/regional representation on the boards, it will be necessary for people from regional areas, who have the necessary skills and experience, to apply for a position on the control boards and the all-codes board. It is not considered appropriate that certain sections of the racing industry, or the State, be provided a mandatory position on either a control board or the all-codes board. The intent is to identify the best possible candidates, regardless of where they come from.

A key objective is to have persons with the requisite skills and experience on the Boards who are capable of making decisions that are in the best interests of the Queensland racing industry.

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The following is the process proposed for the selection of members for the control boards and the all-codes board:

- An independent Recruitment Company engaged by the Department of National Parks, Recreation, Sport and Racing will advertise for members of the control boards and all-codes board.
- A total of 11 persons will be identified for appointment to the control boards and the all-codes board.
- The Recruitment Company will assess and shortlist candidates suitable for appointment, having regard to the need to have a diversity of the following skills and experience on the Boards:
 - business or financial management;
 - law;
 - leadership;
 - marketing; or
 - thoroughbred, harness or greyhound racing industry (as relevant).
- In addition to having to meet at least one of the above criteria for appointment, nominees will also require a supporting recommendation from a current industry licensee, race club, industry association or stakeholder group to be considered by the Recruitment Company for shortlisting.

Appointee Selection Process

- The Minister, in consultation with appropriate persons involved in the Queensland racing industry, will appoint an independent Selection Panel.
- The Recruitment Company will provide details of the shortlisted candidates to the Selection Panel.
- The Selection Panel will assess and select from the shortlisted applicants those best qualified for appointment.
- The Selection Panel will then advise the Minister of the names of the persons selected for the relevant positions. The decision of the Selection Panel to recommend a candidate for appointment must be unanimous.
- All persons selected will be required to undergo probity and criminal history checking.
- The Minister will consider the panel's recommendations and background checks, and will recommend the appointment of those persons to the Governor in Council.
- Any subsequent vacancies on both the control boards, and the all-codes board that may arise, will be filled through the conduct of a new selection process.

Control Boards

- A total of nine persons will be identified for appointment to the three code-specific control boards. Each control board will comprise a Chair, Deputy Chair and a member.
- The three persons who are ultimately appointed as the Chair of each control board will be automatic appointees to the All-Codes Board.

All-Codes Board

- The all-codes board will comprise five persons - the three Chairs of the code-specific control boards (who are automatic appointees) and two additional appointees who will be identified concurrently through the abovementioned recruitment process. The two additional appointees cannot be a member of a control board.

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3. Continuation of Country Racing Committee and Country Racing Associations

Submission No. 5 from the Eastern Downs Racing Association raises a number of issues about country racing associations and the Country Racing Committee:

- there is no reference in the legislation to the country racing associations and the Country Racing Committee; and
- prior to the amendments to the *Racing Act 2002* in 2010, the country racing associations and the Country Racing Committee were enshrined in legislation and had the power to make changes to country racing.

Response

The explanatory notes to the Bill state:

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.

Provisions establishing country racing associations and the Country Racing Committee were removed from the *Racing Act 2002* in 2010 when Racing Queensland became the control body for the three codes of racing. The explanatory notes to the Racing and the Other Legislation Amendment Bill 2010 stated:

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

The all-codes board has the power to, and is expected to establish country racing associations and a Country Racing Committee for the thoroughbred code, similar to those currently established under Racing Queensland's constitution. It may be necessary for the all-codes board to establish a range of other advisory committees and the all-codes board is provided this power under the Bill.

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Should the all-codes board not establish country racing associations and a Country Racing Committee, the all-codes board would initially be requested to do so and should this not occur, the Minister has the power to issue a direction to the all-codes board to establish these entities if it is considered appropriate.

The country racing associations and the Country Racing Committee have always had advisory roles. They have never had the power to overrule decisions made by the control body. The allocation of race dates is the responsibility of the control body which has contractual obligations with Tattsbet to optimise wagering revenue in regard to the programming of races. The programming of non-TAB races must be made in conjunction with the programming of TAB races to ensure that conflicts do not occur that have an adverse impact on wagering revenue.

4. Cancellation of Racing Queensland Limited's approval as the control body for the thoroughbred, harness and greyhound codes of racing

Submission No. 9 from Stephanie Houghton raises a number of issues associated with the cancellation of Racing Queensland's control body approval.

New section 446 cancels the approval held by Racing Queensland at midnight on the day before commencement. What does commencement mean?

Response

Commencement will be the date the section is proclaimed to commence. This date has not yet been determined but is expected to be in March 2013.

When is Racing Queensland Limited to be deregistered?

Response

Decisions about the deregistration of Racing Queensland Limited are matters for the directors of the company under the *Corporations Act 2001* (Cth).

While Racing Queensland Limited may remain as a registered company, it will have no powers under the *Racing Act 2002* (Qld) and its assets will be transferred to the Queensland All Codes Racing Industry Board on proclamation of the Racing and Other Legislation Bill 2012.

What remuneration will directors of Racing Queensland be paid after its assets are transferred to the new control body?

Response

As stated at page 13 of the Explanatory Notes, from the date that Racing Queensland Limited ceases to be a control body and all assets transferred to the all-codes board, the directors of Racing Queensland will not be paid directors' fees.

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As the four current directors of Racing Queensland Limited were appointed to fill casual vacancies, does their tenure cease following the 2011-12 Annual General Meeting?

Under clause 12 of the Racing Queensland's constitution, Racing Queensland has the power to appoint a director to fill a vacancy that may arise without undertaking a recruitment and selection process. The current directors of Racing Queensland were appointed to replace directors who resigned in accordance with this provision.

However, clause 12.12 of the constitution provided that any directors appointed to fill a 'casual vacancy', only hold office until the conclusion of the next Annual General Meeting (AGM). Racing Queensland's next AGM is scheduled for 16 November 2012.

The effect of clause 12.12 was, that unless Racing Queensland undertakes a director selection process as specified in its constitution, the current directors of Racing Queensland who have all been appointed to fill casual vacancies, would have ceased to hold office at the conclusion of the next AGM on 16 November 2012.

In view of the proposed legislative changes that will establish a new racing governance framework, Racing Queensland applied to the chief executive of the Department in accordance with its control body approval, for approval to amend its constitution to enable the current directors to hold office until the company is deregistered. In the circumstances, it was not considered appropriate for the industry to bear the cost of undertaking a selection process to appoint directors to a company that it is proposed will cease to be the control body and will have no role within the racing industry. Accordingly, the application by Racing Queensland to amend the constitution was approved and the constitution was amended accordingly.

Appendix 4 – Minister’s comments on fundamental legislative principles issues

Letter from Hon Steve Dickson MP, Minister for National Parks, Recreation, Sport and Racing, 16 November 2012



Hon Steve Dickson MP
Minister for National Parks, Recreation,
Sport and Racing

Ref CTS 17480/12

16 NOV 2012

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Dear Mr Dowling

Thank you for your letter of 14 November 2012 concerning the Racing and Other Legislation Amendment Bill 2012.

You have asked me to provide comments on a number of provisions in the Bill in relation to the application of fundamental legislative principles.

In regard to proposed section 113AW, while this provision does not specifically provide that it is a reasonable excuse for failing to answer a question if doing so might tend to incriminate the person, the proposed section does not abrogate the privilege against self incrimination. Accordingly, it is considered that this excuse, as well as others, are available for a person to use, if appropriate in the circumstances. The explanatory notes at page 40 specifically confirm this. In the circumstances, it is considered that the provision does provide sufficient protection against self incrimination.

In regard to proposed section 149G, while consideration has been given to the inclusion of additional examples, it is considered that as the definition of 'misconduct' is very broad, and needs to be broad to ensure it will address the vast number of different situations that may arise, the inclusion of additional examples may not in fact assist in specific cases. It is noted that proposed section 149G contains similar wording to section 187(4) of the *Public Service Act 2008*, section 18A(5) of the *Ambulance Service Act 1991* and section 30(5) of the *Fire and Rescue Service Act 1990*, and these provisions provide only the one example of misconduct, whereas the Bill contains two such examples. Having regard to the wide range of possible issues that could arise, it is considered that the provision is drafted in a sufficiently clear and precise way and that the examples provided give sufficient guidance in interpreting the section.

I trust this information is of assistance and thank the Committee for its consideration of this Bill. Should you have further enquiries, please contact Mr Rhys Turner, Chief of Staff in my office on telephone 07 3224 7477.

Yours sincerely

Steve Dickson MP
Minister for National Parks, Recreation, Sport and Racing