



ANNO TRICESIMO SEPTIMO

# ELIZABETHAE II REGINAE

A.D. 1988

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No. 91 of 1988

An Act to amend the Racing Act, 1976.

[Assented to 1 December 1988]

The Parliament of South Australia enacts as follows:

## Short title

1. (1) This Act may be cited as the *Racing Act Amendment Act (No. 2), 1988*.
- (2) The *Racing Act, 1976*, is in this Act referred to as "the principal Act".

## Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

## Interpretation

3. Section 5 of the principal Act is amended—

- (a) by striking out the definition of "the Betting Control Board" in subsection (1);
- (b) by inserting after the definition of "bookmaker" in subsection (1) the following definition:
 

"the Bookmakers Licensing Board" means the board continued in existence under Part IV under the name "the Bookmakers Licensing Board";
- (c) by striking out paragraphs (b) and (c) of the definition of "controlling authority" in subsection (1) and substituting the following paragraphs:
  - (b) in relation to harness racing, means the Harness Racing Board;
  - (c) in relation to greyhound racing, means the Greyhound Racing Board;
- (d) by striking out the definitions of "the Greyhound Racing Control Board" and "horse races" or "horse racing" in subsection (1) and substituting the following definitions:
 

"the Greyhound Racing Board" means the board continued in existence under Part II under the name "the South Australian Greyhound Racing Board";

"harness race" or "harness racing" means a pacing race or trotting race or pacing or trotting;

“the Harness Racing Board” means the board continued in existence under Part II under the name “the South Australian Harness Racing Board”:

“horse race” or “horse racing” does not include a harness race or harness racing;

(e) by striking out paragraph (b) of the definition of “race” or “racing” in subsection (1) and substituting the following paragraph:

(b) a harness race or harness racing;

(f) by striking out from the definition of “race meeting” in subsection (1) “trotting races” and substituting “harness races”;

(g) by striking out from the definition of “registered greyhound racing club” in subsection (1) “Greyhound Racing Control Board” and substituting “Greyhound Racing Board”;

(h) by inserting after the definition of “registered greyhound racing club” in subsection (1) the following definition:

“registered harness racing club” means a racing club that is established for the purpose of conducting harness race meetings and is registered by the Harness Racing Board;

(i) by striking out the definitions of “registered racing club” and “registered trotting club” in subsection (1) and substituting the following definition:

“registered racing club” means a registered horse racing club, registered harness racing club or registered greyhound racing club;

(j) by striking out the definitions of “trotting” and “the Trotting Control Board” in subsection (1);

and

(k) by striking out subsection (2).

#### **Insertion of new section 7a**

4. The following section is inserted after section 7 of the principal Act:

##### **Duties and functions of S.A.J.C. as controlling authority**

7a. (1) The Committee of the South Australian Jockey Club Incorporated has, as the controlling authority for horse racing, the functions of the developing and implementing plans and strategies for the management of the financial affairs of the horse racing code and for promotion and marketing in respect of the code.

(2) The Committee must, in performing its functions and exercising its powers as the controlling authority for horse racing, consult with the Minister.

#### **Substitution of heading to Division II of Part II**

5. The heading to Division II of Part II is repealed and the following heading is substituted:

DIVISION II—CONTROLLING AUTHORITY FOR HARNESS RACING.

#### **Interpretation**

6. Section 8 of the principal Act is amended by striking out the definition of “the Board” and substituting the following definition:

“the Board” means the board continued in existence under this Division under the name “the South Australian Harness Racing Board”:

**Continuation of Board**

7. Section 9 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) The board to which this Division relates is to continue in existence under the name "the South Australian Harness Racing Board".

**Constitution of Board**

8. Section 10 of the principal Act is amended—

(a) by striking out from paragraph (d) of subsection (1) "registered trotting clubs" and substituting "registered harness racing clubs";

(b) by striking out from paragraph (a) of subsection (2) "trotting" wherever it occurs and substituting, in each case, "harness racing".

**Functions and powers of Board**

9. Section 16 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsections:

(1) The functions of the Board are as follows:

(a) to regulate and control the harness racing code and the conduct of harness race meetings and harness races within the State;

and

(b) to develop and implement plans and strategies for the management of the financial affairs of the code and for promotion and marketing in respect of the code.

(1a) The Board must, in performing its functions and exercising its powers under this Act, consult with the Minister.;

(b) by striking out from paragraphs (c), (d) and (e) of subsection (2) "trotting" wherever it occurs and substituting, in each case, "harness racing";

(c) by striking out from paragraph (f) of subsection (2) "trotting" and substituting "harness";

and

(d) by striking out from paragraph (h) of subsection (2) "trotting" and substituting "harness racing".

**Prohibition of certain race meetings**

10. Section 22 of the principal Act is amended by striking out from subsection (1) "trotting" and substituting "harness".

**Repeal of section 23**

11. Section 23 of the principal Act is repealed.

**Rules of Board**

12. Section 24 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

(1) The Board may make rules for the regulation, control and promotion of the sport of harness racing and the conduct of harness race meetings and harness races within the State.;

- (b) by striking out from paragraph (b) of subsection (2) "trotting" wherever it occurs and substituting, in each case, "harness";
  - (c) by striking out from paragraph (c) of subsection (2) "trotting and the conduct of trotting race meetings and trotting races" and substituting "harness racing and the conduct of harness race meetings and harness races";
  - (d) by striking out from paragraph (d) of subsection (2) "trotting" and substituting "harness racing";
  - (e) by striking out from paragraph (i) of subsection (2) "trotting" and substituting "harness racing";
- and
- (f) by striking out paragraph (j) of subsection (2) and substituting the following paragraph:
    - (j) provide for an appeal to the Board against decisions made under the rules.

#### **Interpretation**

13. Section 25 of the principal Act is amended by striking out the definition of "the Board" and substituting the following definition:

"the Board" means the board continued in existence under this Division under the name "the South Australian Greyhound Racing Board";.

#### **Continuation of Board**

14. Section 26 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) The board to which this Division relates is to continue in existence under the name "the South Australian Greyhound Racing Board".

#### **Functions and powers of Board**

15. Section 33 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsections:

(1) The functions of the Board are as follows:

(a) to regulate and control the greyhound racing code and the conduct of greyhound race meetings and greyhound races within the State;

and

(b) to develop and implement plans and strategies for the management of the financial affairs of the code and for promotion and marketing in respect of the code.

(2) The Board must, in performing its functions and exercising its powers under this Act, consult with the Minister.;

and

(b) by striking out from paragraph (h) of subsection (2) "trotting" and substituting "harness racing".

#### **Repeal of section 40**

16. Section 40 of the principal Act is repealed.

**Rules of Board**

17. Section 41 of the principal Act is amended by striking out paragraph (k) of subsection (2) and substituting the following paragraph:

(k) provide for an appeal to the Board against decisions made under the rules.

**Insertion of new Part IIA**

18. The following Part is inserted after section 41 of the principal Act:

**PART IIA****RACING APPEALS TRIBUNAL****Interpretation**

41a. In this Part—

“the Registrar” means the person appointed to be Registrar of the Tribunal under this Part;

“the Tribunal” means the Racing Appeals Tribunal established under this Part.

**Establishment of Tribunal**

41b. (1) A tribunal is established entitled the “Racing Appeals Tribunal”.

(2) The Tribunal is to consist of—

(a) a President and one or more Deputy Presidents appointed by the Governor under this Part;

and

(b) the members of the panels of assessors appointed by the Governor under this Part for the three codes of racing.

**Constitution of Tribunal for appeals**

41c. (1) For the purpose of hearing any appeal the Tribunal is to be constituted of—

(a) the President or a Deputy President of the Tribunal;

and

(b) two assessors selected by the President from the panel appointed for the code of racing to which the appeal relates.

(2) If the President of the Tribunal is absent or unavailable, or the office of President is vacant, a Deputy President nominated by the Minister may determine the membership of the Tribunal for the purpose of hearing an appeal.

(3) The Tribunal, separately constituted under this section, may sit simultaneously to hear separate appeals.

**Appointment of members of Tribunal**

41d. (1) The Governor may appoint—

(a) a legal practitioner of not less than seven years standing to be the President or a Deputy President of the Tribunal;

and

(b) a panel of assessors for each code of racing comprising persons with knowledge and experience of that code.

(2) A person is not eligible for appointment as a member of the Tribunal if the person is—

(a) a member of a controlling authority;

or

(b) licensed under this Act or the rules of a controlling authority.

(3) A member of the Tribunal may be appointed for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of appointment and, on the expiration of that term of office, is eligible for reappointment.

(4) The Governor may remove a member of the Tribunal from office for—

(a) mental or physical incapacity to carry out satisfactorily the duties of the office;

(b) neglect of duty;

or

(c) dishonourable conduct.

(5) A person ceases to be a member of the Tribunal if—

(a) the person dies;

(b) the person's term of office expires;

(c) the person resigns by written notice addressed to the Minister;

(d) the person becomes a member of a controlling authority or the holder of a licence under this Act or the rules of a controlling authority;

or

(e) the person is removed from office under subsection (4).

(6) A member of the Tribunal is entitled to such allowances and expenses as may be determined by the Governor.

#### **Immunity from liability**

41e. No liability attaches to a member of the Tribunal for an act or omission by the member or the Tribunal in good faith in the exercise or performance, or purported exercise or performance, of powers or functions under this Act.

#### **Registrar**

41f. A person employed in the Public Service of the State may be appointed by the Governor to be Registrar of the Tribunal.

#### **Appeals to Tribunal**

41g. The Tribunal has jurisdiction to hear and determine an appeal against—

(a) a decision made under the rules of the controlling authority for a code of racing—

(i) disqualifying or suspending a person from participating in that code in any particular capacity;

or

(ii) imposing a fine greater than the amount prescribed by the Minister by rules under this Part;

(b) a decision made under the rules of the controlling authority for a code of racing disqualifying or suspending a horse or greyhound from participating in that code (but only when made in conjunction with a decision referred to in paragraph (a));

or

(c) a decision of a controlling authority or registered racing club requiring a person not to enter a racecourse or training track.

### Rules

41h. (1) The Minister may make rules—

(a) prescribing amounts required to be prescribed for the purposes of this Part;

(b) fixing time limits within which appeals to the Tribunal must be instituted;

(c) prescribing any other matter relating to appeals or the procedures on appeals to the Tribunal.

(2) The provisions of the *Subordinate Legislation Act, 1978*, do not apply in relation to rules made pursuant to this section.

(3) The Tribunal may, if satisfied that it is just and reasonable in the circumstances to do so, dispense with a requirement of the rules.

### Proceedings on appeal

41i. (1) The Tribunal must give a party to an appeal reasonable notice of the time and place at which it intends to hear the appeal and afford any such person a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions to the Tribunal.

(2) The appellant and any body or person determined by the Tribunal to be directly affected by or interested in the subject matter of an appeal are parties to the appeal.

(3) If a person to whom notice has been given pursuant to subsection (1) does not attend at the time and place fixed by the notice, the Tribunal may hear the appeal in that person's absence.

(4) A party to an appeal is entitled to appear—

(a) personally or by counsel;

or

(b) by leave of the Tribunal—by some other representative.

(5) The President or a Deputy President of the Tribunal may, if satisfied that an appeal has been instituted against any decision or order and that it is appropriate to do so, suspend the operation of the decision or order pending determination of the appeal.

(6) An appeal may not be heard by the Tribunal unless the appellant has first lodged with the Registrar as a bond the amount prescribed by the Minister by rules under this Part.

(7) The amount lodged as a bond by an appellant is not to be refunded unless—

(a) the Tribunal allows the appeal in whole or in part;

or

(b) the appellant satisfies the Tribunal that the appeal was genuinely instituted on reasonable grounds and not for the purpose of delaying the operation of the decision or order under appeal.

(8) An appeal to the Tribunal must be heard in public unless the Tribunal, for good reason, determines otherwise.

(9) Except as otherwise determined by the Tribunal, an appeal is to be conducted by way of rehearing upon the evidence at the original hearing, but the Tribunal may receive fresh evidence given orally or, if the Tribunal so determines, by statutory declaration.

(10) Subject to this Act, the Tribunal may conduct an appeal in such manner as it thinks fit.

#### **Powers of Tribunal**

41j. (1) The Tribunal may—

- (a) by summons signed by the President, a Deputy President or the Registrar require the attendance before the Tribunal of any person;
- (b) by summons signed by the President, a Deputy President or the Registrar require the production of any books, papers, documents, films, specimens or other things;
- (c) inspect any books, papers, documents, films, specimens or other things produced before it, and retain them for such reasonable period as it thinks fit, and make copies of any such books, papers or documents or of any of their contents;
- (d) require any person appearing before the Tribunal to answer any relevant questions put by any member of the Tribunal, or by any other person appearing before the Tribunal;
- (e) require any person to make oath or affirmation that the person will truly answer all questions required to be answered in proceedings before the Tribunal.

(2) Any person who—

- (a) has been served with a summons to attend before the Tribunal and fails without reasonable excuse (proof of which shall lie upon that person) to attend in obedience to the summons;
  - (b) has been served with a summons to produce any books, papers, documents, films, specimens or other things and fails without reasonable excuse (proof of which shall lie upon that person) to comply with the summons;
  - (c) misbehaves before the Tribunal, wilfully insults the Tribunal or any member of the Tribunal or interrupts the proceedings of the Tribunal;
- or
- (d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Tribunal,

is guilty of an offence and liable to a division 7 fine.

(3) In the course of any proceedings, the Tribunal may—

- (a) receive in evidence any transcript of evidence in proceedings before a court or tribunal and draw any conclusions of facts therefrom that it considers proper;

or

- (b) adopt, as in its discretion it considers proper, any findings, decision, or judgment of a court or tribunal that may be relevant to the proceedings.



**Procedure for deciding matters before Tribunal**

41k. The President or Deputy President sitting on an appeal to the Tribunal must decide all questions arising for decision on the appeal but may seek such advice and assistance from the assessors also sitting on the appeal as the President or Deputy President thinks fit.

**Principles upon which decisions made**

41l. (1) The Tribunal must act according to equity and good conscience and the substantial merits of the case without regard to technicalities and legal forms.

(2) The Tribunal is not bound by the rules of evidence and may inform itself on any matter in such manner as it thinks fit.

**Orders, etc., that may be made by Tribunal**

41m. The Tribunal may, on the hearing of an appeal, do one or more of the following, according to the nature of the case:

- (a) affirm, vary or quash the decision or order appealed against, or substitute, and make in addition, any decision or order that should have been made in the first instance;
- (b) remit the subject matter of the appeal to the person or body that heard the original proceedings for further hearing or consideration or for rehearing;
- (c) make any further or other order as to costs or any other matter that the case requires.

**Decisions of Tribunal final and binding**

41n. Any decision of the Tribunal on an appeal is final and binding on the persons and bodies affected.

**Constitution of Board**

19. Section 44 of the principal Act is amended by striking out from paragraph (c) "trotting" and substituting "harness racing".

**Application of amount deducted under section 68**

20. Section 69 of the principal Act is amended by striking out from paragraph (b) of subsection (2) "trotting" and substituting "harness racing".

**Substitution of heading to Part IV**

21. The heading to Part IV of the principal Act is repealed and the following heading is substituted:

PART IV

BOOKMAKERS LICENSING BOARD AND BOOKMAKERS.

**Interpretation**

22. Section 85 of the principal Act is amended by striking out the definition of "the Board" and substituting the following definition:

"the Board" means the board continued in existence under this Part under the name "the Bookmakers Licensing Board":.

**Continuation of Board**

23. Section 86 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) The board to which this Part relates is to continue in existence under the name "the Bookmakers Licensing Board".

**Licences**

24. Section 100 of the principal Act is amended by inserting after subsection (1) the following subsection:

(1a) Subject to subsections (2) and (3), in determining whether to grant a licence under this Part, the primary consideration is to be the interests of the racing industry.

**Terms of licences**

25. Section 103 of the principal Act is amended by inserting after subsection (4) the following subsection:

(5) In determining whether to renew a licence under this Part, the primary consideration is to be the interests of the racing industry.

**Insertion of new section 104a**

26. The following section is inserted after section 104 of the principal Act:

**Power to impose fines**

104a. (1) The Board may, if of the opinion—

(a) that the holder of a licence under this Part should be disciplined;

but

(b) that cancellation or suspension of the person's licence is not warranted or appropriate in the circumstances,

impose a fine not exceeding \$5 000 on the person.

(2) A fine imposed under this section may be recovered summarily by the Board.

**Interpretation**

27. Section 125 of the principal Act is amended by striking out paragraph (b) of the definition of "Fund" and substituting the following paragraph:

(b) in relation to harness racing, means the "Harness Racing Grounds Development Fund";

**Constitution of Board**

28. Section 127 of the principal Act is amended by striking out from paragraph (c) of subsection (1) "trotting" and substituting "harness racing".

**Establishment of separate funds for forms of racing**

29. Section 133 of the principal Act is amended by striking out paragraph (b) of subsection (1) and substituting the following paragraph:

(b) in the case of the fund for harness racing, under the name the "Harness Racing Grounds Development Fund";

**Functions and powers of Board**

30. Section 135 of the principal Act is amended by striking out from subsection (1) "trotting" wherever it occurs and substituting, in each case, "harness racing".

**Special conditions of appointment to Boards**

31. Section 146a of the principal Act is amended—

(a) by striking out paragraphs (a) and (b) of subsection (4) and substituting the following paragraphs:

(a) the Harness Racing Board;

*(b)* the Greyhound Racing Board;

and

*(b)* by striking out paragraph *(d)* of subsection (4) and substituting the following paragraph:

*(d)* the Bookmakers Licensing Board;

## SCHEDULE

The principal Act is further amended as follows:

Provision Amended	How Amended
Section 7 (1)	Strike out "One thousand dollars" and substitute "Division 7 fine".
Section 22 (1)	Strike out "One thousand dollars" and substitute "Division 7 fine".
Section 39 (1)	Strike out "One thousand dollars" and substitute "Division 7 fine".
Section 50 (1)	Strike out "Five hundred dollars" and substitute "Division 8 fine".
Section 79 (1)	Strike out "One thousand dollars" and substitute "Division 7 fine".
Section 79 (2)	Strike out "One thousand dollars" and substitute "Division 7 fine".
Section 83 (2)	Strike out "penalty not exceeding one thousand dollars" and substitute "division 7 fine".
Section 84k	Strike out "\$1 000" and substitute "Division 7 fine".
Section 108	Strike out "Five hundred dollars" and substitute "Division 8 fine".
Section 117 (3) (a)	Strike out "penalty not exceeding \$15 000 or imprisonment for two years" and substitute "division 4 fine or division 5 imprisonment".
Section 117 (3) (b)	Strike out "penalty not exceeding \$40 000 or imprisonment for four years" and substitute "division 2 fine or division 4 imprisonment".
Section 117 (4) (c)	Strike out "penalty not exceeding \$2 000 or imprisonment for six months" and substitute "division 7 fine or division 7 imprisonment".
Section 117 (4) (d)	Strike out "penalty not exceeding \$4 000 or imprisonment for one year" and substitute "division 6 fine or division 6 imprisonment".
Section 119 (1)	Strike out "Five hundred dollars" and substitute "Division 8 fine".
Section 119 (3)	Strike out "Two thousand dollars or imprisonment for three months" and substitute "Division 7 fine or division 7 imprisonment".
Section 147 (3)	Strike out "Two hundred dollars" and substitute "Division 9 fine".
Section 149 (1)	Strike out "One hundred dollars" and substitute "Division 10 fine".
Section 149 (3)	Strike out "Fifty dollars" and substitute "Division 11 fine".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor