

South Australia

**RACING (PROPRIETARY BUSINESS LICENSING) ACT 2000**

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An Act to provide for the licensing of persons carrying on certain businesses involving the conduct of races on which betting is to occur; to amend the Gaming Supervisory Authority Act 1995 and the Racing Act 1976; and for other purposes.

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*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 October 2001.*

**RACING (PROPRIETARY BUSINESS LICENSING) ACT 2000**

being

Racing (Proprietary Business Licensing) Act 2000 No. 90 of 2000  
[Assented to 21 December 2000]<sup>1</sup>

as amended by

Statutes Amendment (Gambling Regulation) Act 2001 No. 18 of 2001 [Assented to 31 May 2001]<sup>2</sup>

<sup>1</sup> S. 2(2) came into operation 21 December 2000: s. 2(3); remainder of Act came into operation 18 January 2001: *Gaz.* 18 January 2001, p. 68.

<sup>2</sup> Part 8 (ss. 45-47) came into operation 1 October 2001: *Gaz.* 13 September 2001, p. 4116.

**NOTE:**

- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the Act see Appendix.*

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The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *Racing (Proprietary Business Licensing) Act 2000*.

**Commencement**

2. (1) Subject to this section, this Act will come into operation on a day to be fixed by proclamation.

(2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act.

(3) Subsection (2) comes into operation on the day on which this Act is assented to by the Governor.

**Interpretation**

3. (1) In this Act, unless the contrary intention appears—

"**approved licensing agreement**"—*see* section 11;

"**authorised officer**" means—

- (a) the Commissioner; or
- (b) a member or the secretary of the Authority; or
- (c) an inspector;

"**Authority**" means the Independent Gambling Authority established under the *Independent Gambling Authority Act 1995*;

"**business**" includes any organised activity, whether or not for profit or commercial purposes;

"**close associates**"—*see* section 5;

"**Commissioner**" means the person for the time being holding or acting in the office of Liquor and Gambling Commissioner under the *Liquor Licensing Act 1997* (or the Commissioner's delegate);

"**compliance notice**"—*see* section 36;

"**executive officer**" of a body corporate means—

- (a) a secretary or public officer of the body corporate; or
- (b) a person responsible for managing the body corporate's business or any aspect of its business;

"**for-profit entity**" means a person or body other than—

- (a) a body corporate that is unable, because of its constitution or its nature, lawfully to return profits to its members; or

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- (b) a body corporate each of the members of which is a body corporate of a kind referred to in paragraph (a); or
- (c) a body corporate each of the members of which is a body corporate of a kind referred to in paragraph (b);

"**licensee**" means a person who holds a proprietary racing business licence;

"**proprietary racing business licence**" means a licence granted under this Act;

"**race**" or "**racing**" means—

- (a) a horse race or horse racing; or
- (b) a harness race or harness racing (*ie* a pacing race or trotting race or pacing or trotting); or
- (c) a greyhound race or greyhound racing (*ie* a race or racing between greyhounds in competitive pursuit of a quarry or lure that is not a live animal); or
- (d) any other race of a kind prescribed by regulation;

"**statutory default**"—*see* section 33;

"**substantial holding**" in a body corporate has the same meaning as in the *Corporations Law*.

(2) In this Act, "**administrator**", "**controller**" and "**liquidator**" have (unless the contrary intention appears) the same respective meanings as in the *Corporations Law*.

**Proprietary racing business**

**4.** A person carries on a proprietary racing business if—

- (a) the person carries on a business involving the conduct of races on which betting is to occur (whether in this State or elsewhere); and
- (b) the person—
  - (i) is a for-profit entity; or
  - (ii) conducts the races under an agreement or arrangement with a for-profit entity.

**Close associates**

**5.** Two persons are close associates if—

- (a) one is a spouse, parent, brother, sister or child of the other; or
- (b) they are members of the same household; or
- (c) they are in partnership; or
- (d) they are joint venturers; or
- (e) one is a body corporate and the other is a director or executive officer of the body corporate; or

- (f) one is a body corporate (other than a public company whose shares are listed on a stock exchange) and the other is a shareholder in the body corporate; or
- (g) one is a body corporate whose shares are listed on a stock exchange and the other has a substantial holding in the body corporate; or
- (h) one has a right to participate (otherwise than as a shareholder in a body corporate) in, or is remunerated by reference to, proceeds or profits derived from a business conducted by the other; or
- (i) one is in a position to exercise control or significant influence over the conduct of the other; or
- (j) a chain of relationships can be traced between them under any one or more of the above paragraphs.

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**PART 2  
PROPRIETARY RACING BUSINESS LICENSING**

**DIVISION 1—GRANT OF LICENCE**

**Requirement for licence**

6. A person must not carry on a proprietary racing business except as authorised by a proprietary racing business licence.

Maximum penalty: \$100 000.

**Eligibility to hold licence**

7. The holder of a proprietary racing business licence must be a body corporate.

**Grant of licence**

8. (1) The Governor may, on the recommendation of the Authority, grant a proprietary racing business licence.

(2) The Governor is not bound to act in accordance with the Authority's recommendation.

**Term and renewal of licence**

9. (1) A proprietary racing business licence is to be granted for a term fixed under the licensee's approved licensing agreement.

(2) If, before the end of a term for which a proprietary racing business licence has been granted or renewed, a new approved licensing agreement is entered into, the Governor may, on the recommendation of the Authority, renew the licence for a term fixed under the renegotiated agreement.

(3) The Governor is not bound to act in accordance with the Authority's recommendation and a licensee is to have no entitlement to, or legitimate expectation of, renewal.

**Conditions of licence**

10. (1) The conditions of a proprietary racing business licence consist of—

(a) the conditions fixed by this Act; and

(b) the conditions (**supplementary licence conditions**) fixed by or in accordance with the licensee's approved licensing agreement.

(2) Subject to a licensee's approved licensing agreement, the Governor may, on the recommendation of the Authority, vary supplementary licence conditions.

(3) The Governor is not bound to act in accordance with the Authority's recommendation.

**DIVISION 2—AGREEMENT WITH LICENSEE**

**Approved licensing agreement**

11. (1) There is to be an agreement (the **approved licensing agreement**) between a licensee and the Minister about—

(a) the operation of the licensed business; and

- (b) the fees, or periodic fees, payable for the licence and arrangements for security for payment, payment by instalments and interest and penalties for late payment or non-payment by the licensee; and
- (c) the term of the licence; and
- (d) the conditions of the licence; and
- (e) the performance of the licensee's responsibilities under the licence or this Act.

(2) It is a condition of a proprietary racing business licence that the licensee must pay the fees (and any interest and penalties for late payment or non-payment) payable under the agreement.

(3) The fees (and any interest and penalties for late payment or non-payment) payable under the agreement may be recovered as a debt due to the State.

(4) The agreement may deal with other subjects relevant to the licence or the licensed business.

(5) The agreement—

- (a) is to be entered into with a prospective licensee before a licence is granted or with a licensee before renewal of a licence; and
- (b) must be consistent with the provisions of this Act; and
- (c) has no effect unless approved by the Authority.

(6) If the agreement so provides, specified provisions of the agreement become conditions of the proprietary racing business licence.

(7) The agreement may contain provisions governing the exercise of powers of the Authority or the Commissioner under this Act or the *Independent Gambling Authority Act 1995*.

(8) The agreement binds—

- (a) the licensee; and
- (b) the Minister; and
- (c) the Authority; and
- (d) the Commissioner; and
- (e) if the agreement so provides, any other person who consents to be bound by the agreement,

to the extent provided in the agreement.

(9) The agreement may contain provisions governing its variation but such a variation must be consistent with the provisions of this Act and has no effect unless approved by the Authority.

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**Agreement to be tabled in Parliament**

**12.** The Minister must, within 12 sitting days after—

- (a) the Authority approves an agreement entered into by the Minister with a view to the agreement becoming an approved licensing agreement under this Division; or
- (b) the Authority approves an agreement for the variation of an approved licensing agreement,

have copies of the agreement laid before both Houses of Parliament.

**DIVISION 3—DEALINGS WITH LICENCE OR LICENSED BUSINESS**

**Transfer of licence**

**13.** (1) The Governor may, on the recommendation of the Authority, approve the transfer of a proprietary racing business licence.

(2) On a transfer of a proprietary racing business licence—

- (a) the transferee succeeds to all the rights and obligations of the transferor under the approved licensing agreement; and
- (b) the approved licensing agreement governs the conditions of the licence in the same way and to the same extent as before the transfer.

(3) The Governor is not bound to act in accordance with the Authority's recommendation.

**Dealings affecting licensed business**

**14.** (1) A licensee must not enter into, or be a party to, any of the following transactions without the approval of the Authority:

- (a) an agreement or arrangement with a for-profit entity under which the licensee conducts races on which betting is to occur (whether in this State or elsewhere);
- (b) a partnership agreement that relates to operations conducted or to be conducted under the licence;
- (c) an agreement or arrangement under which the licensee conducts operations under the licence jointly with another or as the agent of another;
- (d) an agreement or arrangement under which a person participates in, or is remunerated by reference to, proceeds or profits of the business conducted or to be conducted under the licence;
- (e) a transaction to mortgage, charge or encumber the licence or assets associated with operations under the licence;
- (f) an agreement or arrangement under which the licensee disposes of, or grants an interest in, the business conducted under the licence.

(2) However, this section does not invalidate an agreement or arrangement made subject to a condition precedent under which it is not to take effect until approved by the Authority.

**Other transactions under which outsiders may acquire control or influence**

**15.** (1) This section applies to a transaction if it is a transaction (other than one for which the Authority's approval is required under this Division) under which a person or a group of persons who are close associates of each other attain a position of control or significant influence over the conduct of a licensee.

(2) Within 14 days after a licensee becomes aware of a transaction to which this section applies, the licensee must—

- (a) inform the Commissioner and the Authority of the transaction; and
- (b) provide any information about the transaction that is available to the licensee.

Maximum penalty: \$50 000.

(3) If a licensee is a party to a transaction to which this section applies, and the transaction takes effect before the Authority approves it, the licensee is liable to disciplinary action.

(4) If a transaction to which this section applies has not been approved or ratified by the Authority, the Authority may, after allowing the parties to the transaction a reasonable opportunity to be heard, make orders of one or more of the following kinds:

- (a) an order avoiding the transaction;
- (b) an order requiring a person who has acquired an interest under the transaction to dispose of that interest within a specified time;
- (c) an order terminating a contractual or other relationship under which control or influence might be exercised over the licensee;
- (d) an order preventing or regulating the exercise of power or influence acquired as a result of the transaction;
- (e) an order (which may include an order for restitution) dealing with any consequential or ancillary issues.

(5) The Supreme Court may, if satisfied on application by the Authority that there is good reason to do so, register an order of the Authority in the Court and, on registration, the order may be enforced as a judgment of the Court.

**Surrender of licence**

**16.** (1) A licensee may, with the approval of the Authority, surrender a proprietary racing business licence.

(2) The surrender of a proprietary racing business licence does not affect liabilities incurred by the licensee before the surrender takes effect.

**DIVISION 4—APPROVAL OF DIRECTORS AND EXECUTIVE OFFICERS**

**Approval of directors and executive officers**

**17.** (1) A licensee must ensure that each person who becomes a director or executive officer of the licensee has been approved by the Authority.

Maximum penalty: \$20 000.

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(2) A licensee must, within 14 days after a person ceases to be a director or executive officer of the licensee, give the Authority written notice identifying the person and stating the date when, and the reason why, the person ceased to be a director or executive officer of the licensee.

Maximum penalty: \$5 000.

(3) This section applies in relation to executive officers of a licensee subject to any limitation for the time being specified by the Authority by written notice to the licensee.

(4) This section does not apply in respect of an administrator, controller or liquidator of a licensee who has assumed control over the licensed business or a person acting on the authority of such a person.

**DIVISION 5—APPLICATIONS AND CRITERIA FOR DETERMINATION  
OF APPLICATIONS**

**Applications**

**18.** (1) The following applications may be made to the Authority:

- (a) an application for the grant, renewal or transfer of a proprietary racing business licence;
- (b) an application for the Authority's approval or ratification of a transaction to which Division 3 applies (other than the transfer of a licence);
- (c) an application for the Authority's approval of a transaction to which Division 3 would apply if the transaction were entered into;
- (d) an application for the Authority's approval of a person who is to become a director or executive officer of a licensee.

(2) An application—

- (a) must be in the form required by the Authority; and
- (b) must be supported by the information required by the Authority verified, if the Authority so requires, by statutory declaration; and
- (c) must be made as follows:
  - (i) in the case of an application for the Authority's approval of a transfer of a licence—the application must be made jointly by the proposed transferor and transferee;
  - (ii) in the case of an application for the Authority's approval or ratification of a transaction to which Division 3 applies or would apply if the transaction were entered into (other than the transfer of a licence)—the application must be made by the licensee or one or more of the parties to the transaction;
  - (iii) in the case of an application for the Authority's approval of a person to become a director or executive officer of a licensee—the application must be made by the licensee.

(3) If a change of circumstances occurs after an application is made but before it is determined, the applicant must immediately give the Authority full details of the change.

Maximum penalty: \$10 000.

(4) An application may be withdrawn by the applicant, or any of the applicants, before the application is determined.

**Determination of applications**

**19.** (1) In considering an application for the grant or renewal of a proprietary racing business licence, the Authority—

- (a) may have regard to the nature and standard of the operations to be conducted under the licence; and
- (b) must not recommend the grant or renewal of the licence unless satisfied that the applicant is a suitable person to carry on the licensed business.

(2) The Authority must not recommend the transfer of a proprietary racing business licence unless satisfied that the proposed transferee is a suitable person to carry on the licensed business.

(3) The Authority must not approve or ratify a transaction to which Division 3 applies, or would apply if the transaction were entered into, unless satisfied that each person who is or will be a party to the transaction (other than the licensee) is a suitable person to be or to become a party to the transaction.

(4) The Authority must not approve a person to become a director or executive officer of a licensee unless satisfied that the person is a suitable person to become a director or executive officer of the licensee.

(5) In assessing the suitability of a person, the Authority may have regard to—

- (a) the corporate structure of the person; and
- (b) the person's financial background and resources; and
- (c) the person's reputation; and
- (d) the character, reputation, and financial background of the person's close associates; and
- (e) any representations made by the Minister; and
- (f) any other matters the Authority thinks fit.

(6) If the Authority approves a transaction to which Division 3 would apply if the transaction were entered into, the approval has effect for the purposes of Division 3 in relation to the transaction when it is entered into.

**DIVISION 6—INVESTIGATIONS BY AUTHORITY**

**Investigations**

**20.** (1) The Authority must carry out the investigations it considers necessary to enable it to make an appropriate recommendation or decision on an application under this Part.

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(2) The Authority must keep under review the continued suitability of a licensee and a licensee's close associates, and carry out the investigations it considers necessary for that purpose.

(3) The Authority may obtain from the Commissioner of Police such reports on persons as it considers necessary for the purposes of investigations.

**Investigative powers**

**21.** (1) The Authority may, by written notice—

- (a) require any person to provide to the best of the person's knowledge and belief, information, verified by statutory declaration, on matters relevant to the investigation that are specified in the notice; or
- (b) require any person to appear before the Authority for examination on matters relevant to the investigation; or
- (c) require any person to produce to the Authority, within a period stated in the notice, documents or other material relevant to the investigation.

(2) The Authority may also require any person whose suitability to be concerned in or associated with a licensed business is under investigation to submit to the taking of photographs, finger prints and palm prints.

(3) A person is guilty of an offence if the person—

- (a) fails to comply with a requirement made by the Authority under this section; or
- (b) having appeared for examination before the Authority, refuses or fails to take an oath, or to answer a question to the best of the person's knowledge and belief, when required to do so by the Authority.

Maximum penalty:       \$10 000.

(4) The powers conferred by this section are in addition to those conferred in the *Independent Gambling Authority Act 1995*.

**Costs of investigation relating to applications**

**22.** (1) Where the Authority carries out an investigation in connection with an application under this Part, the Authority must require the applicant to meet the cost of the investigation.

(2) The Authority may require the applicant to make specified payments towards the costs of the investigation before the investigation begins and during the course of the investigation.

(3) If a payment is not made as required by the Authority, the Authority may discontinue the investigation.

(4) At the end of the investigation, the Authority must certify the cost of the investigation and any unpaid balance of that cost may be recovered from the applicant as a debt due to the State.

(5) In proceedings for recovery of the cost (or the balance of the cost) of an investigation, the Authority's certificate is to be regarded as conclusive evidence of that cost.

(6) This section does not apply in relation to an application for approval of a person to become a director or executive officer of a licensee.

**Results of investigation**

**23.** Where the Authority carries out an investigation in connection with an application under this Part, the Authority must notify the applicant and the Minister of the results of its investigation.

**DIVISION 7—GENERAL POWER OF DIRECTION**

**Directions to licensee**

**24.** (1) The Authority may, by written notice, give directions to a licensee about the management, supervision and control of any aspect of the operation of the licensed business.

(2) The licensee must ensure that all directions given under this section are diligently observed and carried out.

Maximum penalty: \$100 000.

(3) Before the Authority gives directions under this section, the Authority must, unless the Authority considers it contrary to the public interest to do so—

- (a) give written notice to the licensee of the proposed directions; and
- (b) consider any representations made by the licensee about the proposed directions within 14 days after the notice is given or a longer period allowed in the notice.

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**PART 3  
REGULATION OF LICENSED BUSINESS**

**Approval of racing rules, systems, procedures and equipment**

**25.** (1) It is a condition of a proprietary racing business licence that the following must be approved by the Commissioner:

- (a) the rules governing racing conducted by the licensee; and
- (b) systems and procedures for monitoring and enforcing compliance with those rules and for reporting and dealing with any non-compliance; and
- (c) other systems and procedures, or equipment of a kind, that the Authority determines from time to time to be subject to this section.

(2) It is a condition of a proprietary racing business licence that the licensee must ensure—

- (a) that the rules are published in a manner approved by the Commissioner; and
- (b) that the operations under the licence conform with the rules and the systems and procedures approved under this section; and
- (c) that equipment of a kind that must be approved by the Commissioner is not installed or used unless so approved or contrary to any instructions of the Commissioner.

(3) Before the Authority makes a determination for the purposes of subsection (1)(c), the Authority must—

- (a) give written notice to the licensee of the proposed determination; and
- (b) consider any representations made by the licensee about the proposed determination within 14 days after the notice is given or a longer period allowed in the notice.

**Advertising code of practice**

**26.** It is a condition of a proprietary racing business licence—

- (a) that the licensee must adopt a code of practice on advertising approved by the Authority; and
- (b) that the licensee must ensure that advertising by the licensee conforms with the code of practice approved under this section.

**Limitations on associated betting operations**

**27.** (1) It is a condition of a proprietary racing business licence that the licensee must ensure that all reasonable steps are taken to prevent interactive betting operations on races conducted under the licence involving the acceptance of bets from persons within South Australia.

(2) In this section—

**"betting facility"** means an office, branch or agency established by a person lawfully conducting betting operations at which the public may attend to make bets with that person;

**"interactive betting operations"** means operations involving betting by persons not present at a betting facility where the betting is by means of internet communications.

**Alteration of approved rules, systems, procedures, equipment or code provisions**

**28.** (1) The relevant authority may, by written notice to a licensee, require approved rules, systems, procedures, equipment or code of practice provisions to be altered as set out in the notice.

(2) Before the relevant authority makes a requirement under subsection (1), the relevant authority must, unless the relevant authority considers it contrary to the public interest to do so—

- (a) give written notice to the licensee of the proposed requirement; and
- (b) consider any representations made by the licensee about the proposed requirement within 14 days after the notice is given or a longer period allowed in the notice.

(3) It is a condition of a proprietary racing business licence that the licensee must ensure that all alterations required to be made under subsection (1) are made in accordance with the notice given under that subsection.

(4) In this section—

**"relevant authority"** means—

- (a) in relation to rules, systems, procedures or equipment—the Commissioner;
- (b) in relation to code of practice provisions—the Authority.

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**PART 4  
ENFORCEMENT**

**DIVISION 1—COMMISSIONER'S SUPERVISORY RESPONSIBILITY**

**Responsibility of the Commissioner**

**29.** The Commissioner is responsible to the Authority to ensure that the operations of a licensed business are subject to constant scrutiny.

**DIVISION 2—POWER TO OBTAIN INFORMATION**

**Power to obtain information**

**30.** It is a condition of a proprietary racing business licence that the licensee must, on the written request of the Authority or the Commissioner, provide information that the Authority or the Commissioner requires for the administration or enforcement of this Act.

**DIVISION 3—INSPECTORS AND POWERS OF AUTHORISED OFFICERS**

**Appointment of inspectors**

**31.** (1) There will be such number of inspectors as are necessary for the proper administration of this Act.

(2) An inspector is a Public Service employee.

(3) The Commissioner must provide each inspector with a certificate of identity and an inspector must, at the request of a person in relation to whom the inspector has exercised, or intends to exercise, powers under this Act, produce that certificate.

**Power to enter and inspect**

**32.** (1) Subject to this section, an authorised officer may—

- (a) enter or, where necessary, break into any place, using only such force as is reasonably necessary for the purpose;
- (b) inspect or search the place or anything in the place;
- (c) require any person in the place to—
  - (i) produce any equipment or other items, or any books, papers or documents, that are in the person's custody or control;
  - (ii) answer any questions put by the authorised officer;
- (d) inspect any books, papers or documents produced to him or her and retain them for so long as is reasonably necessary for the purpose of copying or taking extracts from any of them;
- (e) if the authorised officer suspects on reasonable grounds that an offence against this Act has been committed, seize and retain anything that he or she believes affords evidence of the offence;
- (f) give such directions as are reasonably necessary for, or as are incidental to, the effective exercise of the officer's powers under this section.

(2) An authorised officer may only exercise powers under subsection (1) in relation to a place—

- (a) at any time when races are being conducted by a licensee, or any operations are being conducted under a proprietary racing business licence, in the place; or
- (b) at any time when there are reasonable grounds to suspect that an offence against this Act has been, is being or is about to be committed in the place or that evidence of such an offence is likely to be found in the place; or
- (c) at any reasonable time when the exercise of the powers is required for the purposes of the administration or enforcement of this Act.

(3) An authorised officer may only exercise powers under subsection (1)(a) in relation to a place in which there are not any races being conducted by a licensee, or any operations being conducted under a proprietary racing business licence, on the authority of a warrant issued by a magistrate.

(4) A magistrate cannot issue a warrant under subsection (3) unless satisfied, on information given on oath—

- (a) that there are reasonable grounds for suspecting that an offence against this Act has been, is being or is about to be committed; and
- (b) that the warrant is reasonably required in the circumstances.

(5) An authorised officer may, in exercising powers under this section, be accompanied by such assistants as are reasonably necessary for the purpose.

(6) Subject to subsection (7), a person who—

- (a) without reasonable excuse, hinders or obstructs an authorised officer in the exercise of powers under this section; or
- (b) fails to answer a question put by an authorised officer to the best of his or her knowledge, information or belief; or
- (c) fails to comply with any other lawful requirement or direction of an authorised officer; or
- (d) uses abusive, threatening or insulting language to an authorised officer or a person assisting an authorised officer; or
- (e) falsely represents, by word or conduct, that he or she is an authorised officer,

is guilty of an offence.

Maximum penalty: \$20 000.

(7) A person is not required to answer a question, or to produce books, papers or documents, under this section if—

- (a) the answer to the question or the contents of the books, papers or documents would tend to incriminate the person of an offence; or
- (b) answering the question or producing the books, papers or documents would result in a breach of legal professional privilege.

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**PART 5  
POWER TO DEAL WITH DEFAULT OR BUSINESS FAILURE**

**DIVISION 1—STATUTORY DEFAULT**

**Statutory default**

**33.** A **statutory default** occurs if—

- (a) a licensee contravenes or fails to comply with a provision of this Act or a condition of the licence; or
- (b) an event occurs, or circumstances come to light, that show a licensee or a close associate of a licensee to be an unsuitable person; or
- (c) a licensee becomes liable to disciplinary action under this Act on some other basis.

**Records relating to alleged default incidents**

**34.** (1) The Authority must cause a record to be kept of every default incident that comes to the notice of the Authority or an authorised officer.

(2) The record must include—

- (a) details of the default incident; and
- (b) details of any action taken under this Part in relation to the default incident; and
- (c) if action was not taken under this Part in relation to the default incident, a statement of the reasons why action was not taken.

(3) A **default incident** consists of an incident that the Authority considers could, on the available evidence, reasonably be found to constitute a statutory default (whether or not, in the opinion of the Authority, warranting action under this Part).

**Effect of criminal proceedings**

**35.** (1) The Authority may exercise its powers under this Part in relation to a statutory default whether or not criminal proceedings have been, or are to be, taken for the default and even though a penalty may have been already imposed for the default.

(2) However—

- (a) if a licensee expiates a statutory default under this Part, no further action may be taken for that default; and
- (b) the Authority must, in imposing a fine, take into account any fine that has already been imposed in criminal proceedings.

**Compliance notice**

**36.** (1) If a statutory default occurs, the Authority may give written notice to the licensee (a **compliance notice**) specifying the default and requiring the licensee to take specified action, within a period specified in the notice, to remedy the default or to ensure against repetition of the default.

(2) If the licensee fails to take the specified action within the time allowed in the notice, the licensee is guilty of an offence.

Maximum penalty: \$100 000.

### **Expiation notice**

**37.** (1) If a statutory default occurs, the Authority may give written notice to the licensee (an **expiation notice**) specifying the default and informing the licensee that disciplinary action may be avoided by payment of a specified sum not exceeding \$10 000 within a period specified in the notice.

(2) If the specified amount is paid in accordance with the notice, no disciplinary action may be taken under this Act for the default nor may criminal proceedings be taken for the default.

### **Injunctive remedies**

**38.** (1) If a statutory default occurs or there are reasonable grounds to suspect that a statutory default may occur or be attempted, the Supreme Court may, on application by the Minister or the Authority, grant an injunction to prevent the statutory default or to prevent recurrence of the statutory default.

(2) The injunction may be granted on terms the Court considers appropriate.

(3) An injunction may be granted under this section whether or not—

(a) there has been some previous statutory default of the same or a similar nature; or

(b) there is imminent danger of substantial damage to any person.

(4) No undertaking as to damages can be required of the Minister or the Authority in proceedings under this section.

### **Disciplinary action**

**39.** (1) If a statutory default occurs, the Authority may give written notice to the licensee—

(a) specifying the default; and

(b) requiring the licensee to show cause, within a period specified in the notice (which must be at least 14 days), why disciplinary action should not be taken against the licensee.

(2) The Authority must allow the licensee a reasonable opportunity to make submissions orally or in writing to the Authority.

(3) After considering the submissions (if any) made by the licensee, the Authority may, by order, take disciplinary action as follows—

(a) the Authority may censure the licensee;

(b) the Authority may impose a fine not exceeding \$100 000 on the licensee;

(c) the Authority may vary the conditions of the licence (irrespective of any provision of the approved licensing agreement excluding or limiting the power of variation of the conditions of the licence);

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- (d) the Authority may suspend the licence for a specified or unlimited period;
- (e) the Authority may cancel the licence.

(4) Disciplinary action takes effect on the date of service of the order on the licensee or on a later date specified in the order.

(5) If the Authority suspends a licence, the Authority may, at any time, terminate the suspension.

(6) A fine imposed under this section may be recovered as a debt due to the State.

**Alternative remedy**

**40.** The Authority may, instead of taking disciplinary action, issue a compliance notice.

**DIVISION 2—ADMINISTRATORS, CONTROLLERS AND LIQUIDATORS**

**Administrators, controllers and liquidators**

**41.** (1) If an administrator, controller or liquidator of a licensee assumes control over the business conducted under a proprietary racing business licence for a period (the **period of administration**) that person—

- (a) stands in the position of the licensee for the period of administration; and
- (b) is subject to this Act, and liable to direction and control under this Act, in the same way as if the person were the licensee; and
- (c) if charged with an offence against this Act, is entitled to a defence on proof that the offence was not committed intentionally and did not arise from the defendant's failure to take reasonable care to avoid the commission of the offence.

(2) For the purposes of subsection (1), an administrator, controller or liquidator will only be regarded as assuming control of the business if the administrator, controller or liquidator assumes control of all or substantially all of the business assets associated with the operation of the business conducted under the licence.

**PART 6  
REVIEW AND APPEAL**

**Review of Commissioner's decision**

**42.** (1) A person aggrieved by a decision of the Commissioner under this Act (including a decision made by the Commissioner as a delegate of the Authority) may, within 30 days after receiving notice of the decision, apply to the Authority for a review of the decision.

(2) On an application under this section, the Authority may confirm, vary, revoke or reverse the decision under review.

**Finality of Authority's decisions**

**43.** (1) A decision of the Authority under this Act is final and without appeal subject however to the following qualifications:

- (a) an appeal lies to the Supreme Court against a decision to take disciplinary action against a licensee; and
- (b) an appeal lies to the Supreme Court against an order made under section 15(4); and
- (c) an appeal lies, by leave of the Supreme Court, against a decision of the Authority on a question of law.

(2) The Supreme Court may, on an appeal—

- (a) affirm the decision appealed against;
- (b) rescind the decision and substitute a decision that the Court considers appropriate;
- (c) remit matters to the Authority for consideration or further consideration in accordance with any directions or recommendations of the Court;
- (d) make incidental and ancillary orders.

(3) An appeal must be commenced, or the application for leave to appeal made, within one month after the decision to which the appeal relates or a longer period allowed by the Supreme Court.

**Finality of Governor's decisions**

**44.** A decision by the Governor under this Act is not subject to review or appeal in any court.

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**PART 7  
MISCELLANEOUS**

**False or misleading information**

**45.** A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished, or record kept, under this Act.

Maximum penalty: \$20 000.

**Offences by body corporate**

**46.** If a body corporate is guilty of an offence against this Act, each member of the governing body and the manager of the body corporate are guilty of an offence and liable to the same penalty as may be imposed for the principal offence, unless it is proved that the person could not by the exercise of reasonable diligence have prevented the commission of the offence.

**Reasons for decision**

**47.** (1) The Governor is not bound to give reasons for a decision under this Act.

(2) The Authority must, at the request of a person affected by a decision, give reasons for a decision if an appeal lies against the decision as of right, or by leave, to the Supreme Court.

(3) Except as provided in subsection (2), the Authority is not bound to give reasons for a recommendation or decision under this Act.

(4) The Commissioner must, at the request of the Authority, give reasons to the Authority for a decision of the Commissioner under this Act.

(5) Except as provided in subsection (4), the Commissioner is not bound to give reasons for a decision under this Act.

**Power of Authority or Commissioner in relation to approvals**

**48.** For the purposes of this Act, an approval of the Authority or the Commissioner required under this Act—

- (a) may, if the Authority or Commissioner thinks fit, be of a general nature extending to matters specified by the Authority or Commissioner; and
- (b) may be unconditional or subject to conditions specified by the Authority or Commissioner.

**Confidentiality of information provided by Commissioner of Police**

**49.** No information provided by the Commissioner of Police to the Authority or the Commissioner may be disclosed to any person (except the Minister or a person to whom the Commissioner of Police authorises its disclosure) if the Commissioner of Police asks for the information to be kept confidential on the ground that its disclosure might—

- (a) prejudice present or future police investigations or legal proceedings; or
- (b) create a risk of loss, harm or undue distress.

**Service**

**50.** (1) A notice or document required or authorised by this Act to be given to or served on a person may—

- (a) be served on the person personally; or
- (b) be posted in an envelope addressed to the person's address for service; or
- (c) be transmitted by facsimile transmission or electronic mail to the person's facsimile number or electronic mail address (in which case the notice or document will be taken to have been given or served at the time of transmission).

(2) A person's address for service is the postal address of which the Authority has been last notified in writing as the person's address for service.

**Evidence**

**51.** (1) In proceedings for an offence against this Act, an allegation in the complaint—

- (a) that a person was or was not at a specified time the holder of a specified licence or approval; or
- (b) that a licence or approval was at a specified time subject to specified conditions; or
- (c) that a person was or was not at a specified time an authorised officer,

will be accepted as proved in the absence of proof to the contrary.

(2) In any legal proceedings, a document apparently certified by the Authority or the Commissioner to be a licence, agreement, approval, notice or other document issued or made under this Act, or to be a copy of such a document, will be accepted as such in the absence of proof to the contrary.

**Annual report**

**52.** (1) The Commissioner must, on or before 30 September in each year, prepare and present to the Authority a report on the administration of this Act during the preceding financial year.

(2) The Authority must, on or before 31 October in each year, prepare and present to the Minister a report on its activities in relation to licensed businesses during the preceding financial year.

(3) The Authority's report must include—

- (a) a copy of the records of default incidents under this Act for the preceding financial year; and
- (b) the Commissioner's report on the administration of this Act together with any observations on that report that the Authority considers appropriate.

(4) The Minister must, within 12 sitting days after receiving the Authority's report, have copies of the report laid before both Houses of Parliament.

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**Regulations**

**53.** (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

- (a) fix fees in respect of any matter under this Act and provide for their payment, recovery or waiver;
- (b) impose fines, not exceeding \$5 000, for offences against the regulations.

(3) The regulations may—

- (a) be of general application or vary in their application according to prescribed factors;
- (b) confer discretionary powers on the Authority or the Commissioner.

**SCHEDULE 1**

*Transitional Provisions*

**Interim proprietary racing business licences**

1. (1) The Minister may grant an interim proprietary racing business licence to an applicant for a proprietary racing business licence if the applicant satisfies the Minister that before 26 October 2000 the applicant had commenced to carry on, or entered into substantial arrangements for the purpose of the applicant carrying on, the proprietary racing business to which the application relates.

(2) An interim proprietary racing business licence remains in force, subject to this Act, until determination of the application for a proprietary racing business licence.

(3) For the purposes of subclause (2), an application for a proprietary racing business licence will be taken to be determined when—

- (a) a proprietary racing business licence is granted to the applicant; or
- (b) the applicant is notified in writing by the Authority or the Minister that it will not be granted a licence.

(4) The Minister may impose conditions of an interim proprietary racing business licence (including conditions fixing fees or periodic fees payable for the licence) and may, by written notice to the licensee, vary or revoke the conditions or impose further conditions.

(5) An interim proprietary racing business licence is not transferable.

(6) Sections 9 to 14 (inclusive) of this Act do not apply to an interim proprietary racing business licence but the other provisions of this Act apply as if the licence were a proprietary racing business licence.

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**SCHEDULE 2**

*Related Amendments*

**Amendment of Gaming Supervisory Authority Act**

1. The *Gaming Supervisory Authority Act 1995* is amended—

(a) by striking out section 3 and substituting the following section:

**Interpretation**

3. In this Act—

"**Authority**" means the Gaming Supervisory Authority established under this Act;

"**Commissioner**" means the person for the time being holding or acting in the office of the Liquor and Gaming Commissioner under the *Liquor Licensing Act 1997* (or the Commissioner's delegate);

"**prescribed Act**" means—

- (a) the *Casino Act 1997*; or
- (b) the *Gaming Machines Act 1992*; or
- (c) any other Act that assigns functions to the Authority;

"**proceedings**" means proceedings on an inquiry, review or appeal.;

(b) by inserting after the present contents of section 4 (now to be designated as subsection (1)) the following subsection:

(2) The Authority is an instrumentality of the Crown but is not subject to Ministerial control or direction except as provided by this or any other Act.;

(c) by striking out subsection (3) of section 5 and substituting the following subsection:

(3) A person who, without the approval of the Minister, has a direct or indirect pecuniary or personal interest in a licensee, or a business conducted by a licensee, under a prescribed Act is not eligible for appointment to the Authority.;

(d) by striking out section 11 and substituting the following section:

**Functions and powers of Authority**

11. (1) The functions of the Authority are—

- (a) to ensure that an effective and efficient system of supervision is established and maintained over the operations of licensees under prescribed Acts; and
- (b) to advise, and make recommendations to, the Minister on matters relating to the operations of licensees under prescribed Acts or on any aspect of the operation, administration or enforcement of prescribed Acts; and
- (c) to perform other functions assigned to the Authority under this Act or a prescribed Act or by the Minister.

(2) The Authority has power to do anything that is necessary for, or incidental to, the performance of its functions.

(3) The Authority may require the Commissioner to furnish the Authority with a report on any matter relating to—

- (a) the operations of a licensee under a prescribed Act; or
- (b) the operation, administration or enforcement of a prescribed Act.

(4) The Authority may give the Commissioner directions in relation to the discharge by the Commissioner of his or her responsibility to the Authority under a prescribed Act, but is not empowered to direct or in any way influence the Commissioner in the exercise by the Commissioner of a discretion under a prescribed Act.;

(e) by striking out subsection (2) of section 12 and substituting the following subsections:

(2) The presiding member, or in his or her absence the deputy of the presiding member, must preside at meetings of the Authority or proceedings before the Authority.

(3) A unanimous or majority decision of the members present at a meeting of the Authority or hearing proceedings before the Authority is a decision of the Authority.

(4) The Authority may—

- (a) hold meetings and conduct proceedings by telephone or other electronic means;
- (b) allow a person to participate in meetings or proceedings by telephone or other electronic means.;

(f) by striking out subsection (1) of section 13 and substituting the following subsection:

(1) The Authority—

- (a) may hold an inquiry whenever it considers it necessary or desirable to do so for the purpose of carrying out its functions; and
- (b) must, if requested to do so by the Minister, hold an inquiry into any matter relating to—
  - (i) the operations of a licensee under a prescribed Act; or
  - (ii) the operation, administration or enforcement of a prescribed Act.;

(g) by striking out from section 14(1) "an inquiry or other";

(h) by striking out from section 15(1) "in any proceedings";

(i) by striking out from section 15(2) "in proceedings";

(j) by inserting after section 15 the following section:

**Delegation**

**15A.** (1) The Authority may, by instrument in writing, delegate to a member, deputy member or the Secretary of the Authority or the Commissioner any of the powers or functions of the Authority under this Act or a prescribed Act (other than the conduct of an inquiry or review or appeal).

(2) A delegation under this section—

- (a) may be unconditional or subject to conditions specified by the delegator; and

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- (b) does not derogate from the power of the delegator to act personally in any matter; and
- (c) is revocable at will by the delegator.;
- (k) by striking out from section 16 "or employee of the Authority" and substituting "of the Authority or the Commissioner";
- (l) by striking out subsection (1) of section 17 and substituting the following subsection:
  - (1) A member or former member of the Authority, the Commissioner or a former Commissioner or any officer or employee engaged or formerly engaged in administration or enforcement of this Act or a prescribed Act must not disclose confidential information obtained in the course of carrying out official functions except—
    - (a) to another person who has official functions under this Act or a prescribed Act, to the Commissioner of Police or as may otherwise be required for carrying out such official functions; or
    - (b) as required by law; or
    - (c) as permitted by the person in whose favour the duty of confidentiality exists; or
    - (d) to a reciprocating authority, or an officer or employee of a reciprocating authority.

Maximum penalty: \$10 000.

**Amendment of Racing Act**

2. The *Racing Act 1976* is amended—

- (a) by striking out from section 5(1) the definition of "**race**" or "**racing**" and substituting the following definition:
  - "**race**" or "**racing**" means—
    - (a) a horse race or horse racing; or
    - (b) a harness race or harness racing; or
    - (c) a greyhound race or greyhound racing,
  - but does not include a race or racing of a kind prescribed by regulation;;
- (b) by striking out from section 84J(1)(a) "twenty per cent" and substituting "the percentage prescribed by regulation";
- (c) by inserting after subsection (1) of section 84J the following subsection:
  - (1a) The regulations may prescribe percentages for the purposes of subsection (1)(a) that vary according to the event or combination of events to which they are expressed to apply or any other factor.

**APPENDIX**

**LEGISLATIVE HISTORY**

Section 3(1):	definition of "Authority" substituted by 18, 2001, s. 45(a) definition of "Commissioner" amended by 18, 2001, s. 45(b)
Section 11(7):	amended by 18, 2001, s. 46
Section 21(4):	amended by 18, 2001, s. 47