

1998

**LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

RACING BILL 1998

EXPLANATORY MEMORANDUM

**Circulated by the authority of Kate Carnell MLA
Chief Minister and Treasurer**

RACING BILL 1998

General Outline

The Racing Bill 1998 (the Bill) establishes a legal framework for the effective and efficient regulation and administration of the racing industry in the Australian Capital Territory.

The Bill establishes the framework for the control and administration of the three forms of racing in the ACT, namely thoroughbred, harness and greyhound racing. It will also provide for other forms of animal racing, for the purpose of betting, to be permitted within the ACT, upon the approval of the Minister.

The development of legislation to control and conduct racing in the Territory will provide a legal basis for the established race clubs in the ACT to be the controlling body for their particular code of racing. It will also provide the ACT Racing Club Inc., the Canberra Harness Racing Club Inc. and the Canberra Greyhound Racing Club Inc. with the powers necessary to qualify for membership of the peak racing bodies in Australia.

The achievement of membership of the peak national bodies will establish a framework to safeguard the long term future of the racing industry in the ACT. In addition, it will allow ACT race clubs to have an independent voice in the future direction and administration of racing in Australia.

The Bill also establishes an independent Racing Appeals Tribunal to perform the functions of an appeals body to hear appeals against decisions of the controlling authorities.

Financial Implications

The establishment of each racing club as the controlling authority for the particular code of racing is expected to result in a higher standard of racing in the Territory, resulting in increased betting turnover. Enhanced betting turnover will flow directly to increased funding for the racing industry.

Racing is a significant, labour intensive industry. Increases in industry funding would be expected to result in an increase in employment and enhanced economic activity in direct and ancillary racing services.

The long standing funding arrangements for the ACT racing industry will remain in place under the existing provisions of the *Betting (ACTTAB Limited) Act 1964*. Accordingly, the direct financial implications to the Government from the legislation are minimal.

CLAUSE NOTES

PART I - PRELIMINARY

Clause 1

Clauses 1 and 2 are the machinery provisions of the Act. Clause 1 specifies the title of the Act and specifies that the short title will be Racing Act 1998

Clause 2

Clause 2 will provide for commencement of the Act upon notification in the Gazette. This provision is necessary because of the need to provide flexibility in the implementation of the controlling body structure.

This provision establishes a framework that will allow the Minister to be satisfied that the individual constitution of each incorporated racing club is satisfactory and suitable. As each racing club satisfies the Minister that its constitution is suitable to assume the powers and functions of a controlling body and all necessary arrangements are in place (in terms of systems, officials and the like) the Minister is able to notify the commencement of the appropriate part or Division of the Act in the *Gazette*.

Given this essential requirement, there is no standard "automatic default" provision that brings all provisions into force six months from the date of enactment.

Clause 3

This clause is the interpretation clause. It provides for the definition of terms used in this Act.

PART II - CONTROL OF RACES FOR THE PURPOSE OF BETTING

This Part sets the broad control regime for the lawful conduct of racing and betting in the ACT.

Division 1 - Race Meetings

Clause 4

Restriction on races for the purpose of betting

This clause establishes specific offence provisions in respect of racing of horses or dogs. The clause will establish an offence for any person to conduct a race, for the purpose of betting, except at an authorised race meeting

This clause will also establish a specific offence provision for any person to participate as a rider, driver, owner or trainer (or any other capacity prescribed by Regulation) of any horse or dog in any race, conducted for the purpose of betting, except at an authorised race meeting.

This clause further provides that it is a defence to prove that the defendant did not know that a race was conducted for the purpose of betting

Clause 5

Licensed racecourses

This clause establishes provisions for the approval process to establish a place as a licensed racecourse. The concept of a licensed racecourse is retained as it provides national consistency in terms of the regulation and control of wagering on racing

The clause provides that the Minister may approve a racecourse as a licensed racecourse, on application from a controlling body or Approved Racing Organisation (ARO)

The clause provides that an existing licensed racecourse is deemed to be a licensed racecourse, for the purposes of this Bill, if it was a licensed racecourse under the provisions of the *Racecourses Act 1935*, prior to the repeal of that Act and the licence was held by a controlling body

The clause further provides that the Minister may revoke a racecourse licence at the request of the controlling body or ARO or if satisfied that the approval should be revoked

Clause 6

Approval of betting at certain race meetings

This clause provides that the Minister may approve race meetings for the purpose of betting. The clause establishes a provision that enables a controlling body to apply to the Minister to conduct a race meeting for another person, at the licensed racecourse, for the purpose of betting.

The clause enables a controlling body to attach appropriate conditions to the other person

Broadly, this provision establishes a framework that will allow a controlling body to conduct a race or number of races, for the purpose of betting, on behalf of another entity or person and allows the controlling body to impose appropriate conditions

Clause 7

Schedules of race meetings

This clause requires a controlling body or ARO to publish a schedule of race meetings to be conducted by the controlling body or ARO

The clause enables the Minister to determine the frequency and form of the published schedule of race meetings

The clause provides that the schedule will specify the date of the meeting, the location of the meeting and the body that will conduct the race meeting. The clause also provides that if the race meeting or betting at the meeting is to be conducted under any other rules, then the schedule shall notify such rules and identify where copies of the relevant rules may be obtained

Clause 8

Race meetings to be conducted in compliance with conditions

This clause provides that race meetings shall be conducted in compliance with the Act. The clause also provides that a person shall comply with any conditions set by the controlling body (under section 6(3)) or the Minister (under section 34 (3))

Clause 9

Phantom meetings

This clause permits the holding of race meetings without races being conducted - otherwise known as a phantom race meeting. A phantom race meeting involves betting on interstate race meetings taking place at the licensed racecourse without any actual local races being conducted

The clause provides that a person shall not conduct a phantom race meeting unless the meeting is an authorised meeting, nominations have been received, the meeting was cancelled due to unforeseen circumstances and those unforeseen circumstances did not allow the meeting to be cancelled more than two days prior to the date of the meeting

These restrictions have been developed to ensure that controlling bodies or ARO's do not take undue advantage of the capacity to hold phantom meetings

The clause does however provide the Minister with the capacity to approve phantom meetings. This provision is established to enable the Minister to approve phantom meetings if, for example, a racing surface was severely damaged and it is not reasonable for a controlling body to call for nominations for the particular meeting. This clause empowers the Minister to approve a phantom meeting in such circumstances.

Division 2 - Approved Rules

Clause 10

Application of Approved Rules of a controlling body

This clause provides that the Approved Rules, as defined in clause 3, apply to:-

- any person registered or licensed by the controlling body or corresponding body,
- any animal registered or licensed by the controlling body or corresponding body;
- any person or animal that the rules formerly applied to but whose registration or licence has been suspended or cancelled;
- any other approved race meeting; and
- any premises of the controlling body.

Clause 11

Application of Approved Rules of an ARO

This clause provides that the Approved Rules of an ARO, as approved by the Minister, apply to:-

- any person registered or licensed by the ARO;
- any animal registered or licensed by the ARO;
- any person or animal that the rules formerly applied to but whose registration or licence has been suspended or cancelled;
- any other approved race meeting; and
- any premises of the ARO.

Clause 12

Approval of special Rules for race meetings

This clause provides that the Minister, on application of a controlling body or ARO, may approve Rules other than the Approved rules in respect of a race or number of races at a race meeting.

This clause provides the framework for rules to be approved, in respect of proposals made by controlling bodies under clause 6 as well as additional requests made by ARO's.

Clause 13

Special Rules to be made available before a meeting

This clause provides that where a race meeting is to be conducted in accordance with Rules other than the Approved rules, the person or entity conducting the meeting shall ensure that copies of the particular rules are available. The Rules are to be made available, from the time the meeting is published in the schedule of race meetings, in accordance with clause 7, at the address specified in the schedule and at the racecourse on the day of the race meeting.

Clause 14

Application of special Rules

This clause provides that special Rules approved by the Minister apply to the particular race or races for which they were approved and to any person or animal competing or participating in such a race or races.

The clause further provides that where special Rules are approved in respect of a race meeting, they apply in relation to each race at the particular meeting.

PART III - CONTROLLING BODIES

This Part sets the structures for the three declared race clubs in the ACT to operate as the controlling body for their particular code of racing.

Division 1 - Controlling Body for Thoroughbred Racing

Clause 15

Racing Club is the controlling body for thoroughbred racing

This clause provides for the ACT Racing Club Inc. to be the controlling body for thoroughbred racing in the ACT. The ACT Racing Club Inc. is a body incorporated under the *Associations Incorporations Act 1991*.

Given the significant powers provided to the ACT Racing Club by this Act, the clause also provides that the Club shall not amend its constitution without giving the Minister 14 days notice in writing and that the constitution of the ACT Racing Club shall be consistent with the Racing Act and gives the Club the necessary capacity to carry out its functions under this Act.

Clause 16

Functions of the Racing Club

This clause sets out the functions of the Racing Club - the controlling body for thoroughbred racing in the ACT.

The identified functions of the ACT Racing Club are to conduct race meetings in the ACT, make and adopt the rules of betting and the rules of racing, participate as a member of the Australian Racing Board (formerly the Conference of Principal Racing Clubs) and be responsible for the development, marketing and promotion of the thoroughbred racing code.

The clause allows the ACT Racing Club to approve race meetings in accordance with the arrangements set out in clause 6 and allows the ACT Racing Club to impose conditions on such approvals

The clause also allows the ACT Racing Club to enter into reciprocal arrangements with other racing clubs and associations in regard to the registration of animals and persons and the general administration and control of racing.

This clause empowers the ACT Racing Club to exercise the powers conferred upon it by this Act, the rules of racing and the rules of betting and any other statute.

Clause 17

Delegation

This clause empowers the ACT Racing Club to delegate any of its powers or functions, as provided by this Act, to any member, officer or employee.

Clause 18

Reports and accounts

This clause requires that the ACT Racing Club must provide to the Minister, a copy of each annual report and audited financial statement that it provides to its members under the provisions of the *Associations Incorporation Act 1991*.

Clause 19

Rules of Thoroughbred Racing

This clause empowers the ACT Racing Club to adopt the Australian Rules of Racing (as made by the Australian Racing Board) for the control and administration of thoroughbred racing in the ACT.

The ACT Racing Club is also empowered to make additional 'local' rules relating to thoroughbred racing and betting that are not inconsistent with the Australian Rules of Racing

This clause also provides that the rules made or adopted by the controlling body are not subordinate laws.

Clause 20

Minister may appoint administrator where necessary

This clause empowers the Minister to appoint an administrator to administer thoroughbred racing in the ACT, if the Minister is satisfied that such action is necessary. The appointment of the administrator would be effective until such times as a new Committee is appointed in accordance with the approved constitution.

This clause provides that the Minister shall inform the Legislative Assembly and table a statement of the circumstances that made the action necessary, within 7 sittings days of making such an appointment. This clause will ensure that the Legislative Assembly is made aware of any action to replace the board of Directors of the ACT Racing Club.

Division 2 - Controlling Body for Harness Racing

Clause 21

Harness Club is the controlling body for harness racing

This clause provides for the Canberra Harness Racing Club Inc to be the controlling body for harness racing in the ACT. The Canberra Harness Racing Club Inc. is a body incorporated under the *Associations Incorporations Act 1991*.

Given the significant powers provided to the Canberra Harness Racing Club by this Act, the clause also provides that the Club shall not amend its constitution without giving the Minister 14 days notice in writing and that the constitution of the Canberra Harness Racing Club shall be consistent with the Racing Act and gives the Club the necessary capacity to carry out its functions under this Act.

Clause 22

Functions of the Harness Club

This clause sets out the functions of the Canberra Harness Racing Club - the controlling body for harness racing in the ACT.

The identified functions of the Canberra Harness Racing Club are to conduct race meetings in the ACT, make and adopt the rules of betting and the rules of racing, participate as a member of the Australian Harness Racing Council and be responsible for the development, marketing and promotion of the harness racing code.

The clause allows the Canberra Harness Racing Club to approve race meetings in accordance with the arrangements set out in clause 6 and allows the Canberra Harness Racing Club to impose conditions on such approvals.

The clause also allows the Canberra Harness Racing Club to enter into reciprocal arrangements with other racing clubs and associations in regard to the registration of animals and persons and the general administration and control of racing

This clause empowers the Canberra Harness Racing Club to exercise the powers conferred upon it by this Act, the rules of racing and the rules of betting and any other statute.

Clause 23

Delegation

This clause empowers the Canberra Harness Racing Club to delegate any of its powers or functions, as provided by this Act, to any member, officer or employee.

Clause 24

Reports and accounts

This clause requires that the Canberra Harness Racing Club must provide to the Minister, a copy of each annual report and audited financial statement that it provides to its members under the provisions of the *Associations Incorporation Act 1991*.

Clause 25

Rules of Harness Racing

This clause empowers the Canberra Harness Racing Club to make rules for the control and administration of harness racing in the ACT, which may be consistent with the rules made by other harness racing authorities.

This clause also provides that the rules made or adopted by the controlling body are not subordinate laws.

Clause 26

Minister may appoint administrator where necessary

This clause empowers the Minister to appoint an administrator to administer harness racing in the ACT, if the Minister is satisfied that such action is necessary. The appointment of the administrator would be effective until such times as a new Committee is appointed in accordance with the approved constitution

This clause provides that the Minister shall inform the Legislative Assembly and table a statement of the circumstances that made the action necessary, within 7 sittings days of making such an appointment. This clause will ensure that the Legislative Assembly is made aware of any action to replace of the board of Directors of the Canberra Harness Racing Club

Division 3 - Controlling Body for Greyhound Racing

Clause 27

Greyhound Club is the controlling body for greyhound racing

This clause provides for the Canberra Greyhound Racing Club Inc. to be the controlling body for greyhound racing in the ACT. The Canberra Greyhound Racing Club Inc is a body incorporated under the *Associations Incorporations Act 1991*.

Given the significant powers provided to the Canberra Greyhound Racing Club by this Act, the clause also provides that the Club shall not amend its constitution without giving the Minister 14 days notice in writing and that the constitution of the Canberra Harness Racing Club shall be consistent with the Racing Act and gives the Club the necessary capacity to carry out its functions under this Act.

Clause 28

Functions

This clause sets out the functions of the Canberra Greyhound Racing Club - the controlling body for greyhound racing in the ACT.

The identified functions of the Canberra Greyhound Racing Club are to conduct race meetings in the ACT, make and adopt the rules of betting and the rules of racing, participate as a member of the peak national greyhound racing body and be responsible for the development, marketing and promotion of the greyhound racing code.

The clause allows the Canberra Greyhound Racing Club to approve race meetings in accordance with the arrangements set out in clause 6 and allows the Canberra Greyhound Racing Club to impose conditions on such approvals.

The clause also allows the Canberra Greyhound Racing Club to enter into reciprocal arrangements with other racing clubs and associations in regard to the registration of animals and persons and the general administration and control of racing.

This clause empowers the Canberra Greyhound Racing Club to exercise the powers conferred upon it by this Act, the rules of racing and the rules of betting and any other statute

Clause 29

Delegation

This clause empowers the Canberra Greyhound Racing Club to delegate any of its powers or functions, as provided by this Act, to any member, officer or employee

Clause 30

Reports and accounts

This clause requires that the Canberra Greyhound Racing Club must provide to the Minister, a copy of each annual report and audited financial statement that it provides to its members under the provisions of the *Associations Incorporation Act 1991*.

Clause 31

Rules of Greyhound Racing

This clause empowers the Canberra Greyhound Racing Club to make rules for the control and administration of greyhound racing in the ACT, which may be consistent with the rules made by other greyhound racing authorities

This clause also provides that the rules made or adopted by the controlling body are not subordinate laws.

Clause 32

Minister may appoint administrator where necessary

This clause empowers the Minister to appoint an administrator to administer greyhound racing in the ACT, if the Minister is satisfied that such action is necessary. The appointment of the administrator would be effective until such times as a new Committee is appointed in accordance with the approved constitution.

This clause provides that the Minister shall inform the Legislative Assembly and table a statement of the circumstances that made the action necessary, within 7 sittings days of making such an appointment. This clause will ensure that the Legislative Assembly is made aware of any action to replace of the board of Directors of the Canberra Greyhound Racing Club

PART IV - APPROVED RACING ORGANISATIONS

The provisions of this Part achieve two aims. They provide a mechanism for existing declared race clubs in the ACT to be able to continue to race until such times as the clubs are ready to commence as a controlling body. This is particularly so in respect of the Canberra Harness Racing Club

This Part also provides a mechanism for other individuals or organisations to apply to the Minister to conduct a race or race meeting in the ACT. This satisfies the Government's commitment to the National Competition Policy Agreements

Clause 33

Approved Racing Organisations

This clause sets the framework for a person or body to become an Approved Racing Organisation, called an ARO. The Minister is empowered to approve an ARO.

This clause provides that an ARO may only conduct race meetings for the purpose of betting, of the kind specified in the instrument of approval

This clause provides that the Minister shall not approve an ARO to conduct thoroughbred races. This provision is included to ensure that the Australian Racing Board will accept the ACT Racing Club as a member

Similar restrictions are not included for harness and greyhound racing, as it is feasible that the ARO provisions will be used to enable Canberra Harness Racing Club and the Canberra Greyhound Racing Club to race, until the commencement of the appropriate Divisions in Part III.

Clause 34

Applications

The clause establishes the framework for the approval of an ARO. It provides that an applicant to become an ARO must be a corporate entity and be able to demonstrate to the Minister that it has the capacity to conduct and control race meetings and the body can ensure that such meetings can be conducted honestly to protect the integrity of the racing product.

The clause sets out the requirements that appropriate rules must be established and information in respect of the proposed racecourse, and any other necessary information, must be provided to the Minister.

The clause provides that an application shall be approved by the Minister unless the Minister is satisfied that it would be against the public interest to do so and that the Minister may attach appropriate conditions to such an approval

The clause further provides that an approval by the Minister includes an approval of the rules that the ARO shall use when conducting races and race meetings.

In line with National Competition Policy, the public interest test will place an obligation on those parties who claim that new entry is not warranted to demonstrate why such new entry is not in the best interest of the Territory

If the Minister refuses an application under this clause, the Minister is required to give reasons for refusing the application

Clause 35

Variation of conditions or approved rules

This clause allows the Minister to add to or vary any conditions of approval of an ARO. The clause also provides for an ARO to seek approval for a change in rules approved by the Minister under clause 34

The clause provides that the Minister may reconsider the original decision and seek additional information from the ARO in regard to a change in the rules or conditions of approval.

Clause 36

Revocation of approval of ARO

This clause provides that the Minister may revoke the approval of an ARO. The grounds for revoking an approval relate to the ARO being unable to continue to demonstrate an ability to conduct and control race meetings or that race meetings will continue to be conducted honestly and free from criminal influence.

An approval may be revoked if an ARO has contravened a provision of the Act, which includes failing to comply with conditions imposed upon the ARO when the application was approved.

Clause 37

ARO's must provide reports

This clause establishes that Approved Racing Organisations shall provide to the Gaming and Racing Minister a copy of each report or statement of accounts that is provided to members or shareholders of the organisation.

PART IV - RACING APPEALS TRIBUNAL

This Part sets out the arrangements for the Racing Appeals Tribunal.

Division 1 - The Tribunal

Clause 38

Establishment

This clause establishes the Racing Appeals Tribunal

Clause 39

Functions

This clause sets out the functions of the Racing Appeals Tribunal. The functions of the Tribunal are to hear and determine appeals against decisions of the controlling bodies and ARO's and perform other functions as conferred upon the Tribunal

Clause 40

Membership

This clause provides that the Racing Appeals Tribunal shall consist of six individuals. These will be a President of the Tribunal, a Deputy President and four other members.

Members are appointed to the Tribunal under the arrangements established via Schedule 1 of the Act

Clause 41

Constitution for appeals

This clause provides that when hearing an appeal against a decision of a controlling body, the Tribunal shall comprise of three members, one of which shall be the President or the Deputy President.

This clause also provides that where the President is satisfied that the appeal is of a minor nature, the President can determine the constitution of the Tribunal. That is, the President may determine that the Tribunal may be constituted by one or two members to hear a minor appeal.

Finally, this clause provides that the Racing Appeals Tribunal may sit at the same time to consider appeals. For example, a minor appeal may be considered by the Tribunal - with one member sitting - at the same time as the Tribunal (constituted by three members, including the President or Deputy President) is considering a more serious appeal matter

Clause 42

Assessors

This clause provides that the Tribunal may be assisted by persons known as assessors. The President is empowered to direct that in an appeal hearing, the Tribunal may be assisted by one or more assessors.

This clause establishes that the role of an assessor is to advise and assist the Tribunal in an appeal hearing, however the assessor is not empowered to participate in the decision making processes of the Tribunal.

Assessors are appointed to the Tribunal under the arrangements established via Schedule 2 of the Act.

Clause 43

Powers

This clause provides that the Tribunal may issue a summons requiring any person to attend the Tribunal. The Tribunal may issue a summons requiring any document or thing to be made available to it. The Tribunal may inspect or make copies of any document produced and retain such documents for a reasonable time.

This clause empowers the Tribunal to take evidence under oath or affirmation. Accordingly, the Tribunal is empowered to require a person giving evidence before the Tribunal to take an oath or make an affirmation and is empowered to administer an oath or affirmation

Finally, the Tribunal has the power to do all other things necessary to carry out its functions

Clause 44

Offences

This clause provides that a person shall not, without a reasonable excuse, fail to do certain things as summonsed, directed or requested by the Tribunal.

These things include:-

- failing to attend when summoned,
- failing to produce a document or thing when required to do so,
- failing to take an oath or make an affirmation when required to do so, or
- failing to answer a relevant question when directed to do so

The clause also establishes an offence provision for a person misbehaving or interrupting the proceedings of the Tribunal

Clause 45

Rules of the Tribunal

This clause empowers the Tribunal to make rules for the procedure of the Racing Appeals Tribunal. In the Act, the rules are referred to as the Rules of the Tribunal

Rules of the Tribunal are Disallowable Instruments

Clause 46

Registrar

This clause establishes the position of Registrar of the Racing Appeals Tribunal. The Registrar is responsible for servicing the Tribunal

The Registrar of the Tribunal shall be an officer of the ACT Government Service.

Division 2 - Hearing of Appeals

Clause 47

Jurisdiction

This clause empowers the Tribunal to hear and determine an appeal against a decision (made under the rules of racing or rules of betting) by the ACT Racing Club, the Canberra Harness Racing Club, the Canberra Greyhound Racing Club, an Approved Racing Organisation or another person who conducts an approved race meeting

The Tribunal is empowered to hear an appeal if the controlling body decides to disqualify or suspend a person or animal or impose a fine on a person.

The Tribunal also has jurisdiction to hear an appeal by an individual who is warned-off or not permitted to enter a racecourse or training track.

The Regulations will prescribe the thresholds of fine or suspension, below which appeals may not be made to the Tribunal.

Clause 48

Lodging of appeals

This clause provides that an appeal against a decision referred to in the previous clause, must be lodged with the Registrar of the Tribunal within seven (7) days of the appellant being informed of the original decision.

This clause further provides that the Tribunal may extend the time to lodge an appeal

Clause 49

Suspension of decision

This clause provides that the President or Deputy President of the Tribunal may, if he or she is satisfied that it is an appropriate course of action, order that the original penalty imposed by the controlling body or ARO, be suspended until the appeal is considered and determined by the Tribunal.

Clause 50

Parties

This clause provides that parties to an appeal are the appellant, the controlling body or ARO that imposed the original penalty and any other person who is able to satisfy the Tribunal that the person is directly interested in, or affected by, the appeal.

Clause 51

Notice of hearing

This clause provides that the Tribunal shall give a party to an appeal (as determined in the previous clause) reasonable notice of the time and place that the Tribunal proposes to hear the appeal. This clause will ensure that parties to an appeal have sufficient and reasonable notice to attend an appeal hearing.

This clause also provides that if a party (or a representative of a party) fails to attend an appeal hearing, the Tribunal is empowered to proceed with the hearing of the appeal and make a decision in respect of the appeal, in that party's absence.

Clause 52

Representation

This clause provides that a party to an appeal is entitled to be represented by a legal practitioner, or, if the Tribunal agrees, the party can be represented by another person.

Clause 53

Bond

This clause provides that the Tribunal may not hear an appeal unless the appellant has lodged the appropriate bond as set out in the Rules of the Tribunal (made under clause 45).

Further, this clause provides that the Tribunal shall not refund the bond lodged by the appellant unless the appeal, or part of the appeal, is successful or the appellant is able to convince the Tribunal that the appeal was not frivolous or lodged merely to stay the application or effect of the original decision.

Clause 54

Hearings to be in public

This clause provides that all appeal hearings of the Tribunal shall be heard in public unless the Tribunal determines, for good reason, to hear an appeal in private.

Clause 55

Adjournments

This clause provides that the Tribunal may adjourn the hearing of an appeal at any time.

Clause 56

Record of proceedings

This clause provides that, when hearing an appeal, the Tribunal shall keep a record of its proceedings. The record of proceedings can take any appropriate form, including written, electronic or any other suitable medium.

Clause 57

Evidence

This clause provides that the Tribunal can determine the manner in which evidence is considered by the Tribunal. In most situations the appeal is conducted by hearing the evidence submitted at the original hearing. The Tribunal may also consider fresh evidence given orally by a party or, if the Tribunal considers appropriate, by Statutory Declaration.

This clause further provides that the Tribunal may inform itself in any way appropriate to fully consider and determine an appeal.

Finally, this clause provides that the Tribunal shall give each party the opportunity to make submissions and call or give evidence and to call or cross examine witnesses.

Clause 58

Procedure for decision by the Tribunal

This clause provides that a decision of the Tribunal in respect of an appeal will be made by a majority of the Tribunal members hearing the appeal. If there is no majority, the senior member of the Tribunal will have the casting vote in the event of there not being a majority.

To ensure that a decision can be reached on every appeal, this clause further provides that the President of the Tribunal will determine the order of seniority of members. In any situation, the President would be the most senior member and the Deputy President would be the second most senior member.

Clause 59

Principles upon which decisions made

This clause outlines the principles upon which the decisions of the Tribunal must be based. The Tribunal must act according to equity and fairness and in good conscience. Each appeal is to be determined on the individual merits of the case.

This clause further provides that the Tribunal is not bound by the laws of evidence and it may inform itself on any matter in a reasonable and appropriate way

Clause 60

Orders etc that may be made by the Tribunal

This clause provides that upon considering and determining an appeal, the Racing Appeals Tribunal may take one or more of the following actions:-

- uphold the appeal,
- dismiss the appeal;
- vary (either increase or decrease) the original order or penalty,
- substitute or make an additional decision that may have been made by the original decision maker;
- refer the matter back to the controlling body or ARO for a further hearing or consideration; or
- make any further orders as necessary in respect of the individual factors of the appeal

This clause further provides that the Tribunal may make an order relating to costs, if, in the opinion of the Tribunal, it would be unjust for each party to meet its own costs.

Clause 61

Decisions of the Tribunal final and binding

This clause provides that decisions, finding or orders of the Tribunal, in respect of each appeal considered by the Tribunal, are final and binding on each person and body effected by the decision, finding or order.

PART V - MISCELLANEOUS

This part sets the administrative arrangements for the Act

Clause 62

Immunity from liability

This clause provides that members of the Racing Appeals Tribunal are immune from prosecution, whilst performing the functions or exercising the powers of a member of the Racing Appeals Tribunal

Clause 63

Appeal to Administrative Appeals Tribunal

This clause provides that application may be made to the Administrative Appeals Tribunal for a review of a decision of the Minister in respect of certain decisions made under this Act

Clause 64

Annual Report

This clause provides that the Racing Appeals Tribunal is a public authority for the purposes of the *Annual Reports (Government Agencies) Act 1995*. The Tribunal is required to provide an annual report on its activities to the Minister

Clause 65

Fees

This clause empowers the Minister to set fees in respect of receiving applications and giving licenses or approvals.

Clause 66

Regulations

This clause establishes the regulation making power for the Executive to make regulations in respect of the Act.

Among other matters prescribed, the Regulations may specify how a controlling body shall fulfil its functions under the Act, how the Racing Appeals Tribunal may operate and establish the thresholds for appeals to the Racing Appeals Tribunal.

In respect of the power to make regulations specifying the manner in which a controlling body shall fulfil its functions, it is the intention of the regulation making power that such regulations will not be made in regard to day-to-day administrative matters, such as the enforcement of the rules of racing or the conduct, control and administration of races and race meetings in the Territory. These are matters for the controlling bodies alone.

The regulation making power in respect of the Racing Appeals Tribunal, will enable thresholds to be established in respect of appeals to the Tribunal. It is intended that every decision of a controlling body or ARO will not automatically be appealable to the Tribunal. Rather, thresholds of fine or suspension will be established by regulation. Penalties exceeding these thresholds will be appealable to the Racing Appeals Tribunal

Clause 67

Delegation

This clause provides that the Minister may delegate powers provided under this Act to any person. However, the power to delegate does not extend to -

- the revocation of a racecourse licence,
- the appointment of an administrator of a controlling body; or
- the revocation of the approval of an ARO

Clause 68

Repeal

This clause provides that it repeals the *Racecourse Act 1935*. The provisions of the *Racecourses Act 1935* have been addressed in Part II relating to the control of racing for the purpose of betting.

Clause 69

Consequential amendments

This clause provides for the consequential amendment to the Acts set out in Schedule 3.

The Acts amended are the:-

Betting (ACTTAB Limited) Act 1964,
Gaming and Betting Act 1906 of New South Wales, in its application in the Territory; and
National Exhibition Centre Trust Act 1976

SCHEDULE 1

Members of the Tribunal

Clause 1

Qualifications of members

This clause provides that members of the Racing Appeals Tribunal shall be appointed by the Minister responsible for the administration of this Act.

This clause provides that the President and Deputy President of the Racing Appeals Tribunal shall be legal practitioners of at least five years standing.

The clause sets out that an officer or employee of a controlling body or a person licensed under the relevant rules of racing, either by a controlling body in the ACT or other jurisdiction, is not eligible to be appointed as a member of the Racing Appeals Tribunal.

The restriction does not apply to a person who is the owner of an animal registered or licensed by a controlling body or corresponding body.

Further this clause provides that a member whose term is expired is eligible for re-appointment to the Tribunal.

Clause 2

Acting appointments

This clause provides that the Deputy President shall act as President in situations when the President is unavailable or unable to perform the duties of President of the Racing Appeals Tribunal.

This clause provides that the Minister may appoint a person to act as a member of the Racing Appeals Tribunal when the member is unavailable or unable to perform the duties of member of the Racing Appeals Tribunal. The appointment of a person to act as a member of the Tribunal cannot be in effect for longer than six months

Finally, this clause provides that where persons acts on behalf of a member of the Tribunal, the actions of that person are not invalid, if for some reason the acting arrangements were not required.

Clause 3

Term of office

This clause provides that members of the Racing Appeals Tribunal shall not be appointed for a period exceeding three years. Note that clause 1 of this schedule allows for members to be re-appointed.

Clause 4

Removal of members

This clause provides that the Minister shall terminate the appointment of any member of the Tribunal, if the member -

- advises the Minister, in writing, of his/her intention to resign from the Tribunal,
- is no longer eligible for appointment (for example - ceasing to be a legal practitioner, becoming an employee of a controlling body etc);
- becomes bankrupt or applies for relief from bankruptcy; or
- fails to disclose a conflict of interest

This clause also provides that the Minister may terminate the appointment of a member on the grounds of misbehaviour or physical or mental incapacity

Clause 5

Remuneration and allowances

This clause provides for the payment of remuneration and allowances to members of the Racing Appeals Tribunal. The level of payment may be set in regulations prescribed under this Act.

This clause also provides that the ACT Remuneration Tribunal may make determinations in respect of members of the Racing Appeals Tribunal. Where the ACT Remuneration Tribunal has made a determination in respect to the level of payment to members of the Racing Appeals Tribunal, this determination has precedence over the Regulation.

Clause 6

Leave of absence

This clause provides that the Minister may grant a leave of absence to a member of the Tribunal. Where the Minister grants a leave of absence, the Minister may specify appropriate terms and conditions relating to the leave of absence, in respect of remuneration or other relevant issue.

Clause 7

Disclosure of interest

This clause relates to disclosure of conflicts of interest or potential conflicts of interest. In particular, this clause requires a member of the Tribunal to disclose to the President, as soon as they become aware of any possible conflict of interest that could effect the member's capacity to properly perform his/her functions as a member of the Racing Appeals Tribunal.

This clause provides that when a member discloses a conflict of interest, the Tribunal shall be constituted or re-constituted, as far as practicable, so that the member is not involved.

This clause further provides that where it is not possible to constitute or re-constitute the Tribunal to exclude the member (with the potential conflict of interest), the member shall inform all parties of the potential conflict. Where such a situation occurs, the member shall not take part in the hearing or inquiry unless all parties signify their agreement to that member's participation.

SCHEDULE 2

Assessors of the Tribunal

Clause 1

Appointment of assessors

This clause provides that assessors of the Racing Appeals Tribunal shall be appointed by the Minister responsible for the administration of this Act.

This clause provides assessors will be drawn from people who have a strong background and experience in the racing industry.

Clause 2

Term of office

This clause provides that assessors of the Racing Appeals Tribunal shall not be appointed for a period exceeding three years. Further this clause provides that an assessor whose term has expired is eligible for re-appointment.

Clause 3

Removal of assessors

This clause provides that the Minister shall terminate the appointment of an assessor, if the assessor -

- advises the Minister, in writing, of his/her intention to resign, or
- fails to disclose a conflict of interest

This clause also provides that the Minister may terminate the appointment of an assessor on the grounds of misbehaviour or physical or mental incapacity

Clause 4

Remuneration and allowances

This clause provides for the payment of the payment of remuneration and allowances to assessors of the Racing Appeals Tribunal. The level of payment may be set in regulations prescribed under this Act

This clause also provides that the ACT Remuneration Tribunal may make determinations in respect of assessors of the Racing Appeals Tribunal. Where the ACT Remuneration Tribunal has made a determination in respect to the level of payment to assessors of the Racing Appeals Tribunal, this determination has precedence over the Regulation.

Clause 5

Disclosure of interest

This clause relates to disclosure of conflicts of interest or potential conflicts of interest. In particular, this clause requires an assessor to disclose to the President, as soon as they become aware, of any possible conflict of interest that could effect the persons functions as an assessor in an appeal hearing

This clause further provides that where a conflict of interest is identified, the assessor shall not take part in the hearing.