Racing Integrity Amendment Bill 2022

Explanatory Notes

Short title

The short title of the Bill is the Racing Integrity Amendment Bill 2022.

Policy objectives and the reasons for them

Reform of review processes

The *Racing Integrity Act 2016* (the RI Act) established the Queensland Racing Integrity Commission (QRIC) as an independent statutory body, with a range of functions regarding the integrity of the racing industry, including the greyhound, thoroughbred horse and harness horse racing codes.

Stewards, who are QRIC employees, can decide, among other things, to suspend, reprimand and/or warn-off persons for breaches of the rules of racing. The RI Act provides a framework to allow racing participants to challenge decisions made by QRIC. The review model, comprises the original decision made by QRIC, including a steward's decision, internal review by QRIC, and (if an applicant is not satisfied) external review by the Queensland Civil and Administrative Tribunal (QCAT).

In 2020–21, QRIC stewards made 1,947 original decisions, and 148 applications were made for internal review. On average over the five years to 2020–21, more than 70 per cent of applications for both internal review and for external review by QCAT concerned thoroughbred racing, compared with up to 20 per cent for harness racing, and approximately 10 per cent for greyhound racing.

The Queensland government committed to the review of the operation of the RI Act in consultation with stakeholders in its response to the 2016 Parliamentary Agriculture and Environment Committee report on the *Racing Integrity Bill 2015*.

A discussion paper—*Racing Integrity Reforms – Review of the Racing Integrity Act 2016*—was released in June 2018 for public comment. Concerns expressed in the responses, and since, from racing industry participants and the community, suggested the current review arrangements for stewards' decisions were undermining confidence in the integrity of the industry in Queensland, including disciplinary decisions that may be stayed for long periods pending review.

There was a perceived a lack of independence of QRIC's internal reviews and dissatisfaction with the level of racing expertise at QCAT, which conducts external reviews under the RI Act. The average time taken for QCAT to consider reviews referred to it (more than two hundred days) compares unfavourably with the time taken to finalise reviews in

other jurisdictions (generally no more than a few weeks, except in limited circumstances where an appeal is allowed).

Stakeholders also asserted that stay orders were being used to enable participants to continue racing despite serious and/or repeated breaches of the rules of racing until it was convenient to accept the penalty, such as when they had completed riding in lucrative races, or when a break from riding would coincide with a family holiday. These assertions received some support from data showing that over 40 per cent of the applications for review by QCAT were withdrawn before their final decisions.

QCAT has review jurisdiction for decisions made by disciplinary boards for many professions, such as teaching and architecture, but not for professional conduct in other sports, including those for which there is wagering. Reviewable stewards' decisions, particularly those relating to riding by jockeys, which constitute most decisions, are comparable to disciplinary proceedings in other in other sports that are reviewed and finalised by a tribunal established by the code. The concerns raised are not with QCAT itself, but rather that the QCAT model—where a member relies on evidence brought by the parties—is not fit-for-purpose for the review of stewards' decisions. Most other Australian jurisdictions provide for more rapid review of stewards' decisions by a specialist body and limit grounds for further review.

The main policy objective of the Bill is to reform the review processes for decisions made by stewards under the rules of racing by including:

1. replacing the current internal and external review processes for decisions made by racing stewards under the rules of racing with review by an independent panel;
2. ensuring reviews are finalised within a reasonable timeframe; and
3. reducing serious welfare, human safety or integrity risks from being stayed pending hearing of an appeal by the Queensland Civil and Administrative Tribunal (QCAT).

Establishing an independent panel is broadly consistent with the approach in New South Wales and Victoria and will allow matters to be finalised in a shorter timeframe.

There will be no change to the arrangements for review of other administrative decisions made by QRIC. This includes administrative decisions, such as licensing decisions, which will still be subject to the current arrangements for internal review and external merits review by QCAT. Further, the exercise of certain powers under the RI Act, such as the seizure of animals or property and the issuing of animal welfare directions, will still be subject to internal review and appeal to the courts as currently provided.

Publication of reports

Another policy objective of the Bill is to provide for the publication of stewards' reports and other reports online. Online publication of the reports will promote confidence in the integrity of the racing industry through transparent decision making.

The rules of racing for each code of racing provide for the publication of stewards' reports and other reports of detection of prohibited substances, such as elevated readings of TCO2 (total carbon dioxide) in the pre-race testing of horses. The publication of these

reports has been a long-standing practice in all jurisdictions; industry participants require and support reports to be published as they provide the transparency required to promote and retain confidence in the integrity of the racing industry.

Amendments are required to clarify and ensure compliance with the *Information Privacy Act 2009* by authorising the publication of prescribed reports.

Technical or minor amendments

The Bill will also provide for the following technical or minor amendments:

- remove the redundant requirement for QRIC to obtain and store fingerprints prior to licensing bookmakers. The collection of fingerprints was an historical requirement for a bookmaker's licence, which was relocated from the *Racing Act 2002* (Racing Act) into the RI Act when QRIC was established. Fingerprints no longer serve a purpose in deciding whether a person is a suitable person to hold a racing bookmaker's licence.
- align the time a racing bookmaker's clerk can act as agent at no more than 12 weeks in any year for all approved purposes, including reasons of illness or accident, by providing that 'temporarily incapacitated' means no more than 12 weeks in any year. Approving a racing bookmaker's clerk to act as agent for the reason of illness or accident has been problematic because, unlike the other grounds in section 142 of the RI Act, there is not a maximum time limit. Further, the RI Act does not define 'temporarily incapacitated', so a person could potentially act as an agent for extended periods of time by providing QRIC with successive medical certificates.
- clarify that an approved telecommunications system must be used regardless of whether the bookmaker is making a bet with a person who is not present at a licensed venue or the bookmaker themselves is not present at a licensed venue. The requirement for the Minister to approve an independent entity used by QRIC to assess a bookmaker's telecommunications system is unnecessary.
- enable a racing bookmaker to apply for an amendment of an offcourse approval. There are currently no provisions to amend an offcourse approval, including in circumstances where a person has moved from the place of residence that was approved under an existing offcourse approval to a new residence. In such situations, an application for a new offcourse approval is currently required.
- clarify that the Minister may delegate the Minister's powers relating to offcourse approvals to the Commissioner to consider and decide offcourse approvals.
- provide that a person must not improperly influence, or attempt to improperly influence, a person, including a witness or expert, who they know will be participating in an audit or investigation. This is necessary to ensure that there is no collusion between racing participants after receiving a notice to attend before the Commissioner and answer questions relevant to the audit or investigation. Instances of collusion or influencing the witnesses appearing before the Commissioner's investigations have occurred previously, in particular in a serious harness racing race-fixing investigation.
- amend sections of the RI Act that have been identified as being incompatible with the *Human Rights Act 2019*. Departmental reviews of the RI Act identified sections 177,

200, 201 and 231 as being incompatible on the basis that the RI Act's provisions did not allow for a reasonable excuse not to comply with a document or certification requirement if it might tend to incriminate the person, or for the reason that the onus of proof was reversed.

Achievement of policy objectives

Reform of review processes

The objective of reforming review processes is achieved by establishing a Racing Appeals Panel (Panel) independent from QRIC to hear and determine review applications of stewards' decisions made under the rules of racing; reducing timeframes for applying for and hearing matters by the independent panel compared to existing internal review timeframes; restricting appeals to the QCAT appeals tribunal (QCATA) to particular disqualification actions for periods of 3 months or longer; and by restricting QCATA from making stay orders for matters that involve a serious risk to animal welfare, human safety or the integrity of racing.

The Panel will operate as a statutory authority within the portfolio of the Minister for Racing, be administered by the department that is authorised to administer the Act, and will be located separately from other racing bodies. It is intended to operate more independently than the Racing Disciplinary Board, which was abolished in 2016.

The Panel will be established under new chapter 6, parts 4 and 5, to hear and determine review applications arising from the decisions of stewards under the rules of racing for each code. The current review processes will be retained for all other decisions of QRIC—including decisions that relate to the seizure and forfeiture of an animal or thing—that are heard in the Magistrates court.

The Panel will be constituted by a Chairperson and 2 other members selected by the Chairperson from a larger pool of appointees. The Chairperson may sit alone or with a maximum of 2 members to review decisions that involve a penalty that is $200 or less, or a disciplinary action that has effect for no longer than 8 days.

The Chairperson, Deputy Chairpersons, and members will be appointed by the Governor in Council and will include individuals with racing or other relevant expertise.

Applications for review must be lodged within 3 business days after a person is given notice of a racing decision and the Panel must finalise its review of an application within 20 business days for decisions to take disqualification action, and within 7 days for all other decisions. This means most reviews will be finalised within 10 days of the stewards' original decision, which compares favourably to the current timeframes for internal review alone, which can take up to 30 business days.

The 7-day timeframe recognises the relevance of the industry practice of booking jockeys 10–14 calendar days in advance of most races. The shorter period for the finalisation of most matters will mean that riding offences, which constitute the majority of stewards' decisions, will generally be decided by the Panel within the 9 day deferment of penalty

given by a steward under the rules of thoroughbred racing and, although the Panel may consider stay applications, there will be little incentive to apply for a stay in these cases.

The 20-day timeframe for disqualification actions aligns with the current maximum period for internal review and will ensure that sufficient time is provided for gathering evidence and calling of witnesses, as is often required for these more serious matters.

Most matters will be finalised by the Panel without further review. Only questions of law relating to the extent of a disqualification action that prevents a person from betting, bookmaking, racing an animal, or attending a race meeting for a period of 3 months or more will be subject to appeal to QCATA.

QCATA will be excluded from granting a stay of the Panel's decision pending an appeal where the Panel finds that the breach involved a serious risk to animal welfare, human safety or the integrity of racing.

In combination, these reforms will significantly reduce the maximum time that matters, other than particular appealable serious breaches, are finalised.

Publication of stewards' reports and other reports

The Bill will authorise the publication of stewards' and other reports by inserting a new chapter 7, part 1A (Miscellaneous provisions relating to stewards' reports), which authorises the publication of these reports. The provisions will prescribe the types of reports, the matters that may be published, and will allow a person to request information not be published on a non-disclosure ground.

Technical or minor amendments

The Bill will achieve the technical or minor amendments by amending the relevant provisions.

<u>Collection of fingerprints</u>

The removal of the requirements imposed on QRIC to obtain and store fingerprints prior to licensing the destruction of fingerprints will be achieved by:

- amending section 79 (Requirements about applications) to omit (2)(b)(i) and (2)(c)(i), which require the application to be accompanied by a signed consent for fingerprints to be taken by either the applicant, if the applicant is an individual, or by associates if the applicant is a corporation.
- omitting section 84 (Taking fingerprints), which authorises QRIC to take fingerprints for the purposes of assessing an application for a bookmaker's licence.
- omitting section 112 (Destruction of fingerprints) which requires QRIC to destroy any fingerprints that have been collected and stored when the racing bookmaker's licence is surrendered or cancelled. This provision is not needed as the requirement for fingerprints will be removed.

- amending section 211 (Definitions for division) to omit definition *background document*, paragraph (c) ("*the fingerprints of a person obtained by the commission*")in consequence of the removal of the fingerprint requirements from section 79.

Racing bookmakers' agents

The Bill will amend section 142 (Racing bookmaker's agent during particular periods) of the RI Act to limit the time a racing bookmaker's clerk can act as agent for the reason of illness or accident by providing that 'temporarily incapacitated' means no more than 12 weeks in any year.

Telecommunications systems

The Bill amends sections 116 (Application for offcourse approval) and 135 (When a racing bookmaker may make a bet with a person who is not present at a licenced venue) to insert the term 'approved telecommunications system'. The defined term inserted by these amendments links those provisions to new s 142A (Approving telecommunications system for bookmaking), which provides that a telecommunications system that is used for making bets must be approved by QRIC.

The approval process for a telecommunications system that is currently provided for in section 135(2)–(4) will be relocated to new section 142A. These amendments will clearly provide the requirement for the approval of a telecommunications system used for making bets.

Section 135(2) will be amended to omit the requirement for the Minister to approve the independent entity used by QRIC to assess a bookmaker's telecommunications system. The Minister's approval for an entity to conduct an assessment is unnecessary.

Amendments of offcourse approvals

The Bill will insert new chapter 4, part 3, division 1A (Amendments of offcourse approval) to enable a racing bookmaker to apply to the Minister for an amendment of their current offcourse approval instead of having to apply for a new offcourse approval.

Minister's delegation

The Bill amends section 258 (Delegations) to include the Racing Integrity Commissioner as a person to whom the Minister may delegate the Minister's powers under the RI Act.

Influencing witnesses or experts

The Bill amends section 39 (Offences by witnesses) to provide that a person who has been issued with a notice to attend before the Racing Integrity Commissioner must not improperly influence, or attempt to improperly influence, a person that they know has been given notice to attend the same hearing (including, for example, witnesses and experts).

Compatibility with Human Rights

The Bill will amend the RI Act to provide that it is a reasonable excuse not to comply with a document or certification requirement if compliance might tend to incriminate the person, and to ensure the onus of proof is not reversed.

The following amendments are required to remove the exclusion of the reasonable excuse to comply with a requirement if it might tend to incriminate the person:

- Omitting section177(3), which provides that self-incrimination or exposure to a penalty is not a reasonable excuse for a person not to comply with a requirement to produce a document or to give information if the relevant document or information is required to be held under the RI Act or Racing Act.
- Amending section 200(2) to provide that it is a reasonable excuse for the person not to comply with a requirement to produce a document if complying with the requirement might tend to incriminate the person or expose them to a penalty.
- In consequence of the amendment to section 200(2), subsections (3) to (5) of that provision will be omitted. Those subsections provide for the current consequences of failing to comply with a requirement to produce a document (i.e., in circumstances in which the defence of self-incrimination is not available).
- Amending section 201(2) to provide that it is a reasonable excuse for the person not to comply with a requirement to certify a copy of a document if complying with the requirement might tend to incriminate the person or expose them to a penalty.
- In consequence of the amendment to section 201(2), subsections (3) and (4) of that provision will be omitted. Those subsections provide for the current consequences of failing to comply with a requirement to certify a copy of a document (i.e., in circumstances in which the defence of self-incrimination is not available).

A reverse onus of proof provision is removed by omitting section 231(3), which currently provides that a place being opened, kept or used (wholly or partly) as an illegal betting place is proof that the opening, keeping or use of the place has been done with the permission of f an occupier of the place.

Alternative ways of achieving policy objectives

Reform of review processes

Consideration was given to the issues raised during the review of the RI Act, the subsequent review of stewards' decisions and the Government's *Administrative Review Policy* (Policy). The Policy provides that as first option it is desirable for QCAT to conduct external reviews.

Alternative 1– Retain the status quo

Making no legislative amendments may be considered an alternative option, but it would mean that the serious concerns raised by industry stakeholders in response to the review of the RI Act would not be addressed.

Stakeholders' concerns include a perception of a lack of independence of QRIC's internal reviews; a dissatisfaction with the level of racing expertise within QCAT; the time taken for reviews to be finalised in Queensland; and the perceived potential for the misuse of stay orders.

The stakeholders' concerns raised are not with the current review model itself, which is consistent with the Government's *Administrative Review Policy*, but rather that the model which is not fit-for-purpose for the review of stewards' decisions. Most other Australian jurisdictions provide for a more rapid review of stewards' decisions by a specialist body and limit grounds for further review.

Alternative 2– An internal review panel

The then Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs announced an internal review panel appointed by QRIC to conduct internal reviews of stewards' decisions on 16 September 2020. Under this model, QCAT's role would be maintained but stays of decisions would not be available where there was a serious risk to human or animal welfare, or there were repeated breaches. However, stakeholders contend that this would not fully address their concerns in respect to a fit-for-purpose, independent review body to provide specialist oversight of the conduct of participants in the three codes of racing in a timely manner.

More data has since become available which lends support to stakeholder claims about timeframes for review under the current arrangements and confirms a significant number of applications for review are being withdrawn after a period where the decisions have been stayed.

Other alternatives

There is no one model for racing governance across Australian jurisdictions. Most other Australian jurisdictions provide for more rapid initial review and have more restrictions on further review compared to Queensland. However, there are significant differences between the review models they employ, each of which offer alternative options for review in Queensland. Industry stakeholders have indicated they are broadly supportive of the establishment of a separate review body for the highly specialised decisions under the rules of racing, which is broadly consistent with the approach in New South Wales and Victoria.

Publication of stewards' reports and other reports

There are no alternative ways of achieving the policy objective other than by legislative amendments to ensure that the publication of stewards' and other reports is consistent with the *Information Privacy Act 2009*.

Technical and minor amendments

Amending legislation is the only way to achieve the policy objectives in relation to the technical and minor proposals.

Estimated cost for government implementation

The total cost of the new arrangements is expected to be similar to QRIC's current expenditure relating to reviews.

The total operating cost of the Panel is estimated at $607,000 per annum, which will be transferred from QRIC's existing budget for reviews. There will also be initial Panel establishment costs of approximately $40,000 to be funded by QRIC.

Additionally, it is broadly estimated that the cost of oversight of the Panel incurred by the administering department would be $20,000 per annum. The administering department would also incur some initial Panel establishment costs.
The Panel will be part of the administering department for the purposes of the *Financial Accountability Act 2009*.

Although the Bill provides that a fee may be prescribed an amendment of offcourse approval application, an application for review of a racing decision of a steward, and for inspection and copying of a record kept in the Registry, it is currently not proposed to prescribe such a fee.

Consistency with fundamental legislative principles

The Bill has been drafted to have sufficient regard to fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* (LSA). Potential breaches of FLPs are addressed below.

Legislation should have sufficient regard to rights and liberties of individuals – LSA - s4(2)(a)

Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation – whether the penalties are of an appropriate level

Improper influence of a witness to a Racing Integrity Commissioner's audit or investigation

- Clause 4 Amendment of section 39 (Offences by witnesses)

The Bill amends section 39 to provide that it is an offence for a person, who has been given notice to attend or provide documents to an audit or investigation conducted by the Commissioner, to improperly influence, or attempt to improperly influence, someone else that the person knows, has been given a notice to attend the same audit or investigation. A maximum penalty of 100 penalty units applies.

The potential FLP is that a penalty should be proportionate to the offence and consistent with other penalties within the legislation.

The maximum penalty of 100 penalty units is justified to ensure public confidence in the proceedings and to uphold the integrity of the audits and investigations. It reflects the seriousness of obstructing the Commissioner in conducting audits and investigations and gathering all the available evidence. The persons required to participate in the

Commissioner's audits and investigations must be allowed to do so without any improper influence from anyone else.

Criminal history of a Panel member

- Clause 26 Insertion of new chapter 6, parts 4 and 5 New section 252BO (Changes in criminal history must be disclosed)

New section 252BO provides that, unless a Panel member has a reasonable excuse, it is an offence for the member not to immediately notify the Minister of a charge or conviction which is a change to their criminal history. A maximum penalty of 100 penalty units will apply.

The penalty is considered necessary to encourage disclosure of a change in criminal history information. The operation and standing of a Panel may be jeopardised because of a member's conviction, which may negatively affect public confidence in the integrity of the Queensland racing industry.

The maximum penalty of 100 penalty units is consistent with the maximum penalty for similar offences that are prescribed under section 206Q of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) and section 37 of the *Hospitals Foundation Act 2018*.

Offences related to attendance at Panel hearings

- Clause 24 Insertion of new chapter 6, parts 4 and 5 New section 252AL (Offences for witness)
- Clause 24 Insertion of new chapter 6, parts 4 and 5 New section 252AN (Contempt of panel at hearing)

New section 252AL provides that it is an offence for a person given a notice to attend a Panel review application hearing not to comply with the notice without reasonable excuse. It will also be an offence for a witness to fail to take an oath, and, without a reasonable excuse, to fail to answer a question or to fail to produce a document or thing required by the Panel. A maximum penalty of 100 penalty units applies to each of the offences.

The penalties relating to attendance and participation in Panel hearings are considered necessary to ensure public confidence in the proceedings and to uphold the integrity of the Panel's decision-making. The maximum penalty will act as a deterrent. The maximum penalty is consistent with the maximum penalty for similar offences prescribed under the QCAT Act and for offences under section 39 of the RI Act to uphold the integrity of the audits and investigations conducted by the Commissioner.

New section 252AN provides that it is an offence for a person to insult a Panel member is participating in a hearing of a Panel review application, or entering or leaving the place where the Panel is holding a hearing. It is also an offence to unreasonably or deliberately interrupt a hearing or to create or continue, or join in creating or continuing, a disturbance in or near a place where the Panel is holding a hearing. A maximum penalty of 30 penalty units applies. The penalty is considered necessary to discourage behaviour that could obstruct the Panel.

The maximum penalty for contempt is consistent with the comparable offence imposed under section 217 of the *Coal Mining Safety and Health Act 1999*.

Legislation should not abrogate other rights, in the broadest sense of the word, from any source without sufficient justification

Privacy and confidentiality rights have generally been identified as being relevant to consideration of whether legislation has sufficient regard to an individual's rights and liberties.

Information from Panel hearings not held in public

- Clause 24 Insertion of new chapter 6, parts 4 and 5 New section 252AF (Way application decided)

New section 252AF provides that the Panel may decide a Panel review application in a way it considers appropriate, including a hearing in person, using remote conferencing or on the basis of documents. If the Panel decides not to hold a public hearing, it must ensure the information considered by the Panel is made publicly available to the same extent as if the Panel review application had been heard before the public. However, the requirement to make the information publicly available does not apply to any information the Panel decides is not to be made publicly available based on a non-disclosure ground.

Under the Bill, a 'non-disclosure ground' in relation to publication of information is any of the following: where the physical or mental health or safety of a person would be endangered by publication, where the publication would release sensitive information as defined under the *Information Privacy Act 2009*, where the publication would release information that would be likely to damage the commercial activities of a person to whom the information relates, or where the publication is not otherwise in the interests of justice.

The potential breach of the right to privacy occurs because personal information may be made public at a hearing or through another means chosen by the Panel if there is no public hearing. The impact on privacy is justified to ensure transparency of decision-making, which is essential to the integrity of the Queensland racing industry. It is also justified on the basis of protecting the right to a fair hearing, of which making information on which a decision is based publicly available, is a component.

Inspection and copying of records

- Clause 24 Insertion of new chapter 6, parts 4 and 5 New section 252AS (Record of review)

New section 252AS requires the registrar to keep a record of any document filed in the registry, or otherwise used by the Panel, for deciding a Panel review application.

A person may inspect or copy a record, however any part of a record prohibited from disclosure in a Panel decision is excluded from inspection and copying.

It is generally desirable for evidence given before the Panel and the contents of documents lodged with it to be made available to the parties and to the public.

This potential breach of privacy and reputation is justified to promote natural justice. As a safeguard, the records will be prohibited from inspection and copying only on non-disclosure grounds. That is, where the physical or mental health or safety of a person would be endangered by publication, where the publication would release sensitive information as defined under the *Information Privacy Act 2009*, where the publication would release information that would be likely to damage the commercial activities of a person to whom the information relates, or where the publication is not otherwise in the interests of justice.

Publication of personal information

- Clause 24 Insertion of new chapter 6, parts 4 and 5 New section 252BM (Register of decisions)
- Clause 25 Insertion of new chapter 7, part 1A New sections 256A (Publication of stewards' reports) and 256B (Request for commission not to publish personal information contained in steward's report)
- Clause 25 Insertion of chapter 7, part 1A New section 256C (Publication of elevated readings for licensed horses)

New section 252BM requires the Registrar to publish on the Panel's website a copy of the register, which includes a brief description of each Panel review application that has been made, and the information in the notice given to the parties to the Panel's decision on the application, unless the Panel has decided certain information is not to be made publicly available based on a non-disclosure ground.

New section 256A authorises the publication of stewards' race day reports and stewards' inquiry reports on QRIC's website.

The stewards' race day reports include information such as the race day steward's name, the code of racing at the race meeting, track conditions, outcome of each race, incidents investigated, the relevant rule of racing applying to an incident investigated, and any action taken in response to the incident, including any punishment imposed. They are published for the purpose of providing a transparent record of the conduct of races.

Stewards' inquiry reports provide a summary and outcome of an inquiry that is held in relation to an original decision made by a steward. They are published for the purpose of providing transparency in relation to the outcome of inquiries and the reasons for the decisions.

However, there are adequate safeguards in place, including limiting the period of publication, QRIC's discretion not to publish personal information in a steward's report if it is reasonably satisfied that the information should not be made publicly available based on a non-disclosure ground.

Furthermore, new section 256B applies when a person identified in the report may ask QRIC not to publish personal information contained in the report. The steward must tell the person they can ask QRIC not publish personal information about the person, and also the requirements that apply in relation to the request.

If the person tells the race day steward that the person intends to make a request, the race day steward, when giving the report, must tell QRIC, and QRIC must not publish the report for at least 7 days after it has been given the report. If the report is already on the website before the request was made, QRIC must remove it while it considers the request for non-publication.

If QRIC is reasonably satisfied that the information should not be made publicly available based on a non-disclosure ground when considering a request, it must not publish the personal information on its website.

New section 256C authorises the publication of an 'elevated reading' list which states the name of a licensed horse, the name of the licence holder and the date an elevated reading, such as TCO2 or a prohibited substance, was measured within a 48-hour period before a race for the horse.

The potential FLP issue associated with sections 252BM, 256A and 256C is that publishing personal information potentially breaches the principle that legislation should have sufficient regard to the rights and liberties of individuals, including the right to privacy and confidentiality.

However, the publication of these reports has been a long-standing practice in all Australian jurisdictions with industry participants overwhelmingly supporting publication of the reports because they provide the transparency required to promote and retain confidence in the integrity of the racing industry.

The potential impact on privacy is justified to ensure transparency of decision-making, which is essential to the integrity of the Queensland racing industry. It is also justified on the basis of protecting the right to a fair hearing, of which publishing decisions is a component.

<u>Panel member disclosures</u>

- Clause 24 Insertion of new chapter 6, parts 4 and 5 New section 252BN (Criminal history report)
- Clause 24 Insertion of new chapter 6, parts 4 and 5 New section 252BO (Changes in criminal history must be disclosed)

New section 252BN enables the Minister to obtain a report on the criminal history of a person who is being considered for appointment, provided that the person has given their written consent, or of a person who has been recommended for removal from office as a member of the Panel.

New section 252BO requires that a member immediately give notice to the Minister, unless they have a reasonable excuse, that they have been charged with, or convicted of, an offence prescribed in new section 252BD(2)(f) that is an offence under the RI Act or Racing Act, an indictable offence under any Queensland Act or a law in another State.

These provisions are considered necessary to ensure the integrity of the Panel by ensuring that persons appointed to the Panel are suitable and impartial, and to provide confidence to the community that the reviews are being conducted appropriately.

These provisions are similar to sections 185 and 186 of the *Queensland Civil and Administrative Tribunal Act 2009*.

The RI Act will include safeguards to protect the interests of individuals whose criminal history is obtained or disclosed.

The person's written consent will be required for the Minister to make the request if it is in relation to a person's potential appointment as a Panel member, but not where the Minister is considering recommending the person's removal from office.

To ensure that a person's criminal history information is kept confidential, the RI Act already prescribes that it is an offence under section 212 for a person, who in the course of administering the RI Act has gained access to confidential information. to disclose the confidential information to anyone else without a reasonable excuse. Confidential information can include a person's criminal history. Non-compliance with this requirement carries a maximum penalty of 100 penalty units.

Section 252BN also requires the destruction of the criminal history information as soon as practicable once it is no longer needed for the purpose it was requested.

Legislation should not without sufficient justification unduly restrict ordinary activities

The potential FLP issue is whether the legislation unduly restricts ordinary activity without sufficient justification, including the right to conduct business without interference.

Right to conduct business without interference

Bookmaker's agent

- Clause 11 Amendment of section 142 (Racing bookmaker's agent during particular periods)

The Bill amends section 142 to restrict the time a racing bookmaker's clerk can act as agent for a racing bookmaker who is temporarily incapacitated for reasons of illness or accident to a maximum of 12 weeks in any year. This period aligns with the time limit placed on the other prescribed grounds upon which QRIC may authorise a person to act as an agent.

Approving a racing bookmaker's clerk to act as agent for the reasons of illness or accident has been problematic because, unlike the other grounds in section 142 of the RI Act, there hasn't been a maximum time limit. This means that a person could potentially act as agent for extended periods of time by providing QRIC with successive medical certificates. This jeopardises the integrity of the process of licensing bookmakers and effectively allows persons, who may not be approved for a bookmaker's licence, to operate as a bookmaker.

A maximum time limit of 12 weeks is consistent with the approach taken by the Fair Work Commission in relation to temporary absences for illness or injury.

Approved telecommunications system

- Clause 12 Insertion of new section 142A (Approving telecommunications system for bookmaking)

The approval process for a telecommunications system will be clearly provided for in new section 142A which relocates the approval process by QRIC of a telecommunications system from the current section 135(2)–(4). There will not be an additional obligation. The purpose of the relocation is merely to clarify that, regardless of whether the bookmaker is making a bet with a person who is not present at a licensed venue or the bookmaker themselves is not present at a licensed venue, the telecommunications system must be approved by QRIC. In practice, the bookmaker will be using the same telecommunications system.

This is consistent with the *Victorian Racing Act 1958* which requires the method of communication to be approved by the Minister for remote betting (sections 4A–4C).

Legislation should be consistent with the principles of natural justice – LSA - s4(3)(b)

Right to be heard

- Clause 24 Insertion of new chapter 6, parts 4 and 5 New section 252AF (Way application decided)

New section 252AF enables the Panel to consider review applications on the basis of documents or in another way the Panel considers appropriate.

The potential FLP issue is that it may be inconsistent with the principle of natural justice in that a person whose interests, rights or legitimate expectations may be affected by a decision has a right to be heard before the decision is made.

However, a decision to conduct a review on the basis of documents or in some other way would not excuse the Panel from its obligation under the rules of procedural fairness to ensure that adequate notice of an application and reasonable time for a party to make written submissions is given. It is essential for the Panel to be able to operate flexibly to ensure that matters are reviewed in a quick and cost-effective manner. If the Panel were required to conduct an oral hearing in every matter, including in circumstances where no further information is required other than what would be provided in the filed documents and submissions, it would delay decisions which would undermine a key objective of the reforms.

Non-publication orders and public hearings

- Clause 24 Insertion of new chapter 6, parts 4 and 5 New section 252AF (Way application decided)

New section 252AF allows the Panel to decide whether any information considered by the Panel should not be publicly available. This power, in conjunction with the Panel's decision to conduct a hearing by remote conferencing or on the basis of documents, could be in conflict with the right to a public hearing and the right to be given access to all information before the Panel.

The circumstances in which the Panel may exclude information from publication are restricted to avoid:

- endangering the physical or mental health or safety of a person
- releasing confidential information or sensitive information within the meaning of the *Information Privacy Act 2009*, schedule 5
- the publication of information which is not in the public interest

These circumstances generally reflect the circumstances outlined in Article 14.1 of the International Convention on Civil and Political Rights.

Although it is generally desirable for hearings to be held in public and for all the information to be made available to the public, the potential breach of the principles of natural justice is justified because of the serious nature of the circumstances in which the Panel considers it necessary.

Appeals

- Clause 24 Insertion of new chapter 6, parts 4 and 5 New section 252AU (Appealing disqualification action to appeal tribunal)

New section 252AU limits the matters that a party dissatisfied with the Panel's decision on their review application may appeal to QCAT appeal tribunal. The appealable decisions will be limited to a decision of the Panel which includes disqualification action, which is a disciplinary action relating to the person's approval or licence or exclusion action against the person that prevents a person from betting, bookmaking, racing an animal or attending a race meeting for 3 months or longer, and only on a question of law relating to the disqualification action.

This approach is justified because an objective of establishing an independent review panel is to finalise review applications in a shorter timeframe. Limiting appeals to the QCAT appeal tribunal is consistent with the approach taken in New South Wales and Victoria which allows matters to be finalised quickly. Any errors of law or procedural fairness will still be subject to judicial review under the *Judicial Review Act 1991*.

Stays

- Clause 24 Insertion of new chapter 6, parts 4 and 5 New section 252AV (Staying operation of panel's decision)

New section 252AV provides that a stay is not available to a person if the Panel has stated that the decision includes a disqualification action against the person for a serious risk caused to the welfare or health of an animal, or the safety of any person, or the integrity of the Queensland racing industry. For example, a serious risk may arise from the inappropriate use of equipment, or the use of prohibitive substances, or activities involving wagering.

The potential FLP issue is that excluding those types of matters from stay orders is potentially breaching the principle of natural justice that a decision should not be made that will deprive a person of some right, interest or legitimate expectation of a benefit without the person being given an adequate opportunity to be heard by the decision-

maker. In particular, where it involves the immediate suspension of a person's licence or other authority without receiving and considering submissions from the person, even if the suspension is subject to subsequent review and appeal processes.

However, the exclusion from stay orders would only apply in relation to appeals to the appeal tribunal of QCAT after the matter had already been reviewed by the Panel, and then only where there was a serious risk caused to the welfare or health of an animal, or the safety of any person, or the integrity of the Queensland racing industry. It should also be noted that appeals to appeal tribunal of QCAT would only be permitted on the extent of the disqualification action. The decision of the Panel about whether the offence occurred, and whether there was a serious risk caused to the welfare or health of an animal, or the safety of any person, or the integrity of the Queensland racing industry, would not be subject to the appeal proceedings.

Excluding stay orders for breaches involving such serious risks beyond the point of the Panel hearing is justified because of the concerns raised by industry stakeholders that 'stays' of decisions granted by QCAT may enable industry participants to continue operating, pending an appeal, even though it has been established that there was a serious breach of the rules of racing. There would also be the potential for very serious outcomes if the offending behaviour continues while the stay is in place.

Legislation does not reverse the onus of proof in criminal proceedings without adequate justification – LSA - 4(3)(d)

Reasonable excuse

- Clause 24 Insertion of new chapter 6, parts 4 and 5 New section 252AL (Offences for witness)
- Clause 24 Insertion of new chapter 6, parts 4 and 5 New section 252BO (Changes in criminal history must be disclosed)

New section 252AL requires that a person, unless they have a reasonable excuse, comply with a notice, under section 252AK, to attend a hearing to give evidence or produce a stated document or other thing.

Subsection (3) clarifies that it is a reasonable excuse not to answer a question or produce a document or thing if doing so might tend to incriminate the person.

New section 252BO requires that a Panel member immediately give notice to the Minister, unless they have a reasonable excuse, that they have been charged with, or convicted of, an offence prescribed under new section 252BD(2)(f), that is an offence under the RI Act or Racing Act, an indictable offence under any Queensland Act or under a law of another State.

The potential FLP in relation to the above sections is whether the proposed legislation reverses the onus of proof in criminal proceedings without adequate justification. The person would bear the onus of proof to show that they had a reasonable excuse.

For these matters, the reversal of the onus of proof is justified because the offences involve matters which would be within the defendant's knowledge and/or on which evidence would be available to them. These provisions support the Panel to collect all

relevant information to their decision-making whilst protecting persons involved in the review from self-incrimination.

Legislation should not confer immunity from a proceeding or prosecution without adequate justification – LSA - 4(3)(h)

Protection from civil liability

- Clause 26 Amendment of section 259 (Protection from civil liability)

Section 259 is amended to provide Panel members and the Registrar protection from civil liability for an act done or an omission made honestly and without negligence. The potential FLP issue is that legislation should not confer immunity from a proceeding or prosecution without adequate justification. The basis for this fundamental legislative principle is that persons who commit a wrong when acting without authority should not be granted immunity.

It is appropriate that Panel members should be free from personal attack when performing the Panel's functions. The immunity will ensure that these persons can act with appropriate confidence in carrying out their roles in the community interest. Such roles would be difficult to carry out if the office holders, or others involved in the proceeding, were subject to litigation taken against them personally for their actions in the office or proceeding.

Given the nature of the members' roles, the Panel decisions will be subject to review, and other parties will be subject to the offence provisions in relation to witnesses.

Providing protection for persons acting on behalf of the State is consistent with the *Public Service Act 2008*, the *Queensland Civil Administrative Act 2009,* and the *Industrial Relation Act 2016*.

Consultation

The Government committed to review of the operation of the RI Act in consultation with stakeholders in its response to the 2016 Parliamentary Agriculture and Environment Committee report on the *Racing Integrity Bill 2015*.

A discussion paper *Racing Integrity Reforms – Review of the Racing Integrity Act 2016 in June 2018* (Discussion paper) was released for public comment in June 2019 and submissions closed in August 2019. The Discussion Paper focused on following four topic areas: Penalty and review processes, Bookmakers, Minor technical amendments, and Other matters. It posed 21 questions.

Responses to the Discussion Paper were able to be provided directly through the Queensland Government's 'Get Involved' portal and via written submissions.

Public consultation through the Get Involved portal was open for response from 26 June to 26 August 2019. There were 27 respondents, of which 44.4% identified as a racing industry participant. Not all respondents commented on all of the questions. Respondents came from a variety of geographical locations with 51.9% from South East Queensland, 18.5% from the Toowoomba area, 7.4% from other parts of Queensland, 18.5% from New South Wales and 3.7% from Tasmania. Responses varied widely from calls to ban racing due to animal welfare issues to suggestions for alternative review models. A significant majority questioned the effectiveness and appropriateness of current review process, and there were some specific suggestions that an independent appeals body was needed to hear appeals in a timelier manner.

Seven written submissions were received in response to the Discussion Paper from the Australian Trainers Association, the Coalition for the Protection of Greyhounds Inc., the Sunshine Coast Turf Club Inc., the Brisbane Racing Club, Racing Queensland, The Queensland Law Society and an individual. Submissions discussed issues including: animal welfare matters and the finalisation of the MacSporran recommendations; options to enhance both internal and external review processes under the Racing Integrity Act; and processes to enhance the review processes under the current integrity framework.

The then Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs, announced some proposed changes to the review processes for stewards' decision at a Racing Industry Forum on 16 September 2020. Informal feedback from stakeholders following the meeting suggested the proposed changes would address some but not all stakeholder concerns about the current review processes. Policy work by the Department of Agriculture and Fisheries (DAF) continued and further data was gathered to inform consideration of policy options to address the outstanding concerns.

Targeted consultation with stakeholders, principally the Queensland Jockeys Association and Queensland Thoroughbred Alliance on 28 June 2021 and the 14 October 2021, was undertaken by DAF to inform an improved proposal.

Representatives of the Queensland Jockeys Association and Queensland Thoroughbred Alliance were broadly supportive of replacing internal and QCAT reviews with an independent panel and limiting appeals to QCAT's appeals jurisdiction to ensure that matters were finalised more quickly. The Jockeys Association requested consideration of a further proposal – to extend the period that stewards can defer commencement of a riding penalty to 15 days or more. They argued this would de-incentivise most applications for review which they suggested were directed not at overturning the decision but at achieving a stay to allow a jockey to meet a commitment to ride in another race. It should be noted that the period for which stewards can defer a riding suspension is set under local rules of racing for thoroughbred racing rather than the RI Act. The timeframe is 9 days in almost all Australian jurisdictions but in many jurisdictions is subject to the rider having an engagement to ride in that period. Local rules in the Northern Territory allow deferment only for up to 3 days and for Victoria Derby Day or Melbourne Cup Day the rules of racing generally allow deferment only for up to 3 days.

On 8 December 2021, the Minister for Education, Minister for Industrial Relations and Minister for Racing announced a revised reform proposal that is reflected in the Bill.

On 15 December 2021, DAF convened a meeting of targeted industry stakeholders, including the Thoroughbred Alliance, Queensland Jockey Association, Australian Jockey Association, and Harness Racing Australia to provide further detail on the revised proposal, answer questions and seek feedback. Participants were broadly supportive of the proposal. The only concern expressed was whether the combination of reduced timeframes for matters to be finalised and the current provision for a 9 day deferment for stewards' penalties would be sufficient to ensure riding penalties under the rules of racing for thoroughbred racing did not come into force after acceptances for upcoming races. Various suggestions were made including further reducing the time to make an application for review of decisions by the Panel, extending the period that stewards can defer riding penalties under the local rules of racing and ensuring the Panel met regularly so matters could be finalised within 9 days.

A representative of Greyhounds Australasia was provided several opportunities to meet with DAF but was unavailable.

The Bill is silent on the frequency of Panel meetings because it is considered better for these to be set administratively and adjusted as needed. However, it is anticipated that regular meetings of the Panel will ensure reviews of riding penalties can be finalised in a timely manner. Increasing the deferment period for stewards' decisions above the current 9 days would be inconsistent with practice in other jurisdictions. Further, there is a need to carefully consider whether allowing extended deferment of penalties could undermine the intended behaviour modification outcomes of imposing riding penalties.

The Office of Best Practice Regulation (OBPR), within Queensland Treasury, was consulted on a Preliminary Impact Assessment for the amendments contained in the Bill.

The OBPR provided advice that it is reasonably clear the proposed amendments will not result in significant adverse impacts, and hence no further regulatory impact assessment is required.

Consistency with legislation of other jurisdictions

There is no one model for racing governance including the review of stewards' decisions across Australian jurisdictions. Queensland is unique in having a single statutory integrity body, QRIC, which is independent of the racing control bodies and covers all three racing codes. Stewards are employed by QRIC rather than the racing codes.

Most other Australian jurisdictions provide for more rapid initial review and have more restrictions on further review compared to Queensland.

The amendments are specific to the State of Queensland, but many aspects of the decision review model proposed in the Bill draws on features of the models in New South Wales and Victoria. For example, there are aspects of both the New South Wales and Victorian models reflected in the grounds of appeal to QCAT's appeal jurisdiction.

The circumstances in which appeals can be made to the New South Wales Racing Appeals Tribunal vary between the codes of racing. For thoroughbreds, appeals can be made if the decision was to disqualify or warn off a person, revoke their licence or suspend

for a period of 3 months or more or for a fine of $2000 or more. Similarly, the Bill will allow appeal of 'disqualification action', which prevents a person from betting, bookmaking, racing an animal or attending a race meeting for a period of three months or more.

Decisions made by the Victorian Racing Tribunal can be appealed to the Victorian Civil and Administrative Tribunal (VCAT) on a question of penalty only. Similarly, the Bill will limit the grounds on which disqualification action can be appealed to QCAT's Appeals jurisdiction to questions of law relating to the extent of the disqualification action. It should also be noted that the powers and jurisdiction of VCAT are somewhat different from QCAT which has a separate appeals jurisdiction.

Notes on provisions

Part 1 Preliminary

Clause 1 states the short title of the Act which will be *Racing Integrity Amendment Act 2022*.

Clause 2 states that part 3 of the Bill and schedule 1, part 2 will commence on proclamation. All other parts of the Bill will commence on assent.

Clause 3 states that the Bill will amend the *Racing Integrity Act 2016*. A note directs the reader to amendments in schedule 1.

Part 2 Amendments commencing on assent

Clause 4 amends section 39 (Offences by witnesses) by:

- amending the section heading to 'Offences relating to audits and investigations' as section 39 prescribes offences in relation to audits and investigations
- inserting a new subsection (1A) which provides that it is an offence for a person, who has been given a notice to attend an audit or investigation conducted by the Commissioner, to improperly influence, or attempt to improperly influence, another person that the person knows, has been given a notice under section 37 to appear as a witness at the same audit or investigation. A maximum penalty of 100 penalty units will apply
- amending subsections (2) and (3) by replacing 'the audit' with 'an audit' to reflect current drafting practices
- amending subsection (5) to update references from Subsection (3) and (4) to Subsection (4) and (5) as a consequence of clause 4(5) renumbering the subsections from new subsection (1A)
- renumbering sections 39(1A) to (5) as sections 39(2) to (6) respectively.

Clause 5 amends section 65 (Standards for a licensing scheme–mandatory matters) for consistency with current drafting practices by:

- replacing paragraph (i) to separate the grounds for taking disciplinary action into two paragraphs and correcting the subsection reference from subsection (3) to the subsection (2);
- inserting 'disciplinary' before 'action' in paragraph (1)(k)(ii) and (iii). This is to clarify that the type of action referred to in paragraph (k) is disciplinary action.

Clauses 6–8 omit the provisions relating to the collection and destruction of fingerprints, which were a historical requirement for a bookmaker's licence, that were relocated from the Racing Act to the RI Act. Fingerprints no longer serve a purpose in deciding whether a person is a suitable person to hold a racing bookmaker's licence, and QRIC does not have the systems or infrastructure to collect, compare, store or destroy them.

Clause 6 amends section 79 (Requirements about applications) by:

- replacing 'the following' with 'each of the following' in section 79(2)(b) for consistency with current drafting practices;
- omitting sections 79(2)(b)(i) and (c)(i) to remove the consent for fingerprints requirements that was required to accompany the application for a bookmaker's licence. The collection of fingerprints were historical requirements for a bookmaker's licence and no longer serve a purpose in deciding whether a person is suitable to hold a racing bookmaker's licence;
- renumbering paragraphs as a consequence of the omission of 79(2)(b)(i) and (c)(i).

Clause 7 omits section 84 (Taking fingerprints) which provides for the taking of fingerprints.

Clause 8 omits section 112 (Destruction of fingerprints) which prescribes the circumstances in which fingerprints must be destroyed.

Clause 9 inserts a new chapter 4, part 3, division 1A (Amendments of offcourse approvals) to allow a racing bookmaker to apply to the Minister for an amendment of an offcourse approval.

Currently, if a racing bookmaker wishes to amend their offcourse approval, for example if they are changing their address, they would need to apply for a new offcourse approval.

New section 123A (Application for amendment of offcourse approval) provides that a racing bookmaker who holds an offcourse approval may apply to the Minister for an amendment of the approval other than an amendment of a mandatory condition.

Subsection (2) prescribes the application requirements, including the amendment sought and the reasons for the amendment.

New section 123B (Further information or documents to support amendment application) enables the Minister to seek further information or documents by notice from an applicant, or, taking into account the impact on the accepted undertaking of the approval, give to the Minister a revised undertaking for the offcourse approval. The notice must be given before the Minister decides the application and within 30 days after an amendment application has been made. The notice must provide a reasonable period of at least 28 days for the applicant to provide the further information or documents. If the person does not comply with the notice within the period stated in the notice, the application is taken to be withdrawn. The Minister has the discretion to refund all or part of any fee paid if the application is withdrawn.

New section 123C (Decision on amendment application) provides that the Minister must consider the amendment application for the offcourse approval and decide to grant, refuse or if the applicant agrees in writing to another amendment, the Minister can grant that amendment agreed upon. If the Minister decides to grant the amendment application or grant an agreed amendment, the Minister must amend the offcourse approval and vary the accepted undertaking in the way revised if applicable.

New section 123D (Notice of decision to refuse amendment application) requires the Minister to give the applicant an information notice about the Minister's decision to refuse to grant the amendment application.

Clause 10 amends section 135 (When a racing bookmaker may make a bet with a person who is not present at a licensed venue) by amending subsection (1)(a) to provide that a

telecommunications system used by a racing bookmaker at a race meeting to make a bet with a person that is not present at the race meeting is a telecommunications system for bookmaking approved by QRIC under new section 142A.

Clause 10 also omits subsections (2)–(4) as new section 142A relocates the requirements for QRIC to approve a telecommunications system. The purpose is to clarify in one provision that all telecommunications systems used by racing bookmakers must be approved by QRIC.

Clause 11 amends section 142 (Racing bookmaker's agent during particular periods) to replace subsection (2)(a)(i) to provide a maximum period of 12 weeks in any year that a racing bookmaker's clerk may act as an agent for a racing bookmaker. This is consistent with the other grounds upon which a person may apply to act as agent.

Approving a racing bookmaker's clerk to act as agent for the reason of illness or accident has been problematic because, unlike the other grounds in section 142 of the RI Act, there is no maximum time limit. Furthermore, the RI Act does not define 'temporarily incapacitated', so a person could potentially act as agent for extended periods of time by providing QRIC with successive medical certificates.

Clause 12 inserts new section 142A (Approving telecommunications system for bookmaking) which relocates the requirements for the approval of a telecommunications system for bookmaking by QRIC from section 135. The purpose is to provide a clear requirement that an approved telecommunications system must be used regardless of whether the bookmaker is making a bet with a person who is not present at a licensed venue or the bookmaker themselves is not present at a licensed venue.

Subsection (1) provides that QRIC may approve a telecommunications system if a suitably qualified entity other than QRIC has assessed the system and given QRIC a report stating the system is of a standard to ensure the integrity of bets made and to the protect the money and privacy of any person placing a bet.

Subsection (2) states that a telecommunications system approved by QRIC under subsection (1) is an approved telecommunications system for bookmaking.

Subsection (3) provides that the Minister may, if reasonably satisfied it is in the best interests of the Queensland racing industry, give QRIC a written direction to have an approved telecommunications system for bookmaking audited by a suitably qualified entity, other than QRIC, and for the results to be given to the Minister.

Subsection (4) states that QRIC must comply with a direction given under subsection (3).

Clauses 13–16 amend sections of the RI Act which have been identified as being incompatible with the *Human Rights Act 2019* on the basis that the RI Act's provisions do not allow for a reasonable excuse not to comply with a document or certification requirement if it might tend to incriminate the person, or for the reason that the onus of proof was reversed.

Clause 13 amends section 177 (Offence to contravene help requirement) to:

- replace ‘not to’ with ‘fail to’ consistent with current drafting practices;
- omit subsection (3) which provides that it is not a reasonable excuse not to comply with a help requirement if it is in relation to a document or information required to be held or kept under the RI Act or the Racing Act even though complying with the requirement might tend to incriminate the individual or expose the person to a penalty;
- relocate the note in subsection (3) to subsection (2). The note directs the reader to section 210 which also provides immunity to a person who is required to give or produce information or a document under the RI Act which might otherwise tend to incriminate the person or expose the person to a penalty in the proceeding.

Clause 14 amends section 200 (Offence to contravene document production requirement) by amending subsection (2) by omitting the word ‘not’ to provide that it a reasonable excuse not to comply with a document production requirement on the basis that it might tend to incriminate the person or expose the person to a penalty in the proceeding.

Clause 14 also amends the note in subsection (2) which directs the reader to section 210 which also provides immunity to a person who is required to give or produce information or a document under the RI Act which might otherwise tend to incriminate the person or expose the person to a penalty in the proceeding.

Clause 14 also omits the requirement for the authorised officer to inform a person of the consequences of not complying with a document production requirement in subsections (3)–(5), which applies when making a document requirement when it is not a reasonable excuse not to comply on the basis that it might tend to incriminate the person or expose the person to a penalty in the proceeding.

Clause 15 amends section 201 (Offence to contravene document certification requirement) by omitting the word ‘not’ to provide that it is a reasonable excuse not to comply with a document certification requirement on the basis that it might tend to incriminate the person or expose the person to a penalty in the proceeding.

Clause 15 also amends the note in subsection (2) which directs the reader to section 210 which also provides immunity to a person who is required to certify a document under the RI Act which might otherwise tend to incriminate the person or expose the person to a penalty in the proceeding.

Clause 15 also omits the requirement for the authorised officer to inform a person of the consequences of not complying with a certification in subsections (3) and (4) when it is not a reasonable to excuse not to comply on the basis that it might tend to incriminate the person or expose the person to a penalty in the proceeding.

Clause 16 amends section 210 (Evidential immunity for individuals complying with particular requirements) to omit subsection (3) which excluded false or misleading information from the immunity provided in subsection (2) for it might tend to incriminate the individual or expose the person to a penalty for evidence in a proceeding.

Clause 17 amends section 211 (Definitions for division) by omitting paragraph (c) in the definition of ‘background document’ in chapter 6, part 1, division 1 (Offences relating to

administration of Act) to remove the reference to fingerprints as they are no longer required for licensing purposes. Clause 17 also renumbers the paragraphs as a result of the omission of paragraph (c).

Clause 18 amends section 231 (Other evidentiary provisions) to omit subsection (3) which provides that it is proof that a place that is opened, kept or used wholly or partly for an illegal betting place is evidence that the place is opened, kept or used with the permission of an occupier of the place. This section provides a reversal of the onus of proof. Clause 18 also renumbers subsection (4) as a result of the omission of subsection (3).

Clause 19 amends section 258 (Delegations) to clarify that the Minister may delegate the Minister's powers to the Commissioner.

Clause 20 inserts new chapter 9, part 3 (Transitional provisions for *Racing Integrity Amendment Act 2022*).

New section 298 (Definitions for part) defines the terms 'amending Act' and 'former' used in the transitional provisions under new part 3.

New section 299 (Existing application to act as racing bookmaker's agent) provides that if, before the commencement, a racing bookmaker has applied to authorise a person to act as their agent for a reason prescribed in former section 142(2)(a)(i), and immediately before commencement the application is undecided, QRIC may authorise the person under former section 142(2)(a)(i) as if clause 11 of the of the Bill had not been enacted.

New section 300 (Existing matters relating to telecommunications systems) provides that a telecommunications system that was approved for bookmaking before the commencement is taken to be approved under new section 142A(1).

Under subsections (3) and (4) if, immediately before the commencement, QRIC was considering whether to approve a telecommunications system under former section 135(2), QRIC may decide whether to approve the system under new section 142A(1).

Subsections (5) and (6) provide that a written direction given by the Minister before the commencement under former section 135(3), and the direction had not been complied with, in relation to a telecommunications system is taken to be a direction under new section 142A(3).

Part 3 Amendments commencing by proclamation

Clause 21 amends section 3 (Main purposes of Act and their achievement) by amending subsection (2) to include as main purposes of the RI Act to establish the Panel to review the decisions of stewards under the rules of racing; and to authorise particular information relating to the decisions of stewards to be made available to the public.

Clause 22 amends section 11 (General restriction on functions) to replace 'or the tribunal' with 'a tribunal or the Racing Appeals Panel'. This is to provide that it is not a function of QRIC to investigate a matter that has already been decided by a tribunal or the Panel.

Clause 23 amends section 240 (What is an *original decision*) by:

- amending subsection (2) to include a new paragraph (f) to provide that an original decision is not another decision of a steward under chapter 6, part 4, division 2 or the Panel.
- inserting a new subsection (3) which directs the reader to the definition of 'exclusion action' provided for in schedule 1 of the Racing Act.

Clause 24 inserts new chapter 6, parts 4 (Reviews and appeals of stewards' racing decisions) and 5 (Racing Appeals Panel).

Part 4 Reviews and appeals of stewards' racing decisions

Division 1 Preliminary

New section 252AA (Definition for part) defines the terms used in part 4.

Division 2 Application for review by panel

New section 252AB (Applying for review) states that a person may apply to the Panel for a review of a racing decision of a steward to:

- take disciplinary action in relation to the person's approval or licence; or
- take exclusion action against the person; or
- otherwise impose a monetary or non-monetary penalty on the person.

Subsection (2) sets out the procedure for a review of a steward's decision (a Panel review application). The Panel review application must be made within 3 business days after the day the person is given notice of the racing decision, must be in the approved form, and must be accompanied by the prescribed fee.

Subsection (3) provides that the Chairperson of the Panel may accept a late application if, in their opinion, it would be unjust to refuse to do so.

Subsections (4) and (5) state that the making of a Panel review application does not affect the operation of the racing decision, or prevent the decision being implemented, unless the Panel has stayed the operation of the racing decision under section 252AT (Staying operation of racing decision).

Subsection (6) states that an application made under this section is a Panel review application.

New section 252AC (Parties to application) states that the parties to the Panel review application are the applicant for the Panel review application and QRIC.

Division 3 Constitution of panel

New section 252AD (Constituting panel for application) provides that the Panel is to be constituted to decide a Panel review application by the Chairperson and 2 other members. However, if the panel review applications relate to a monetary penalty imposed for an amount higher than $200, or to take disciplinary action

applying to a person's approval or licence that is no longer than 8 days, or to take exclusion action against a person in effect for no longer than 8 days, then the Chairperson may decide how the Panel is to be constituted, either by the Chairperson alone or the Chairperson and up to 2 other members.

Subsection (3) provides guidance to the Chairperson for choosing which members should constitute the Panel to hear and decide a particular Panel review application. In selecting the members, the Chairperson may consider the nature, importance and complexity of the Panel review application, the need for any special knowledge, expertise or experience relating to the review application, or any other matter that the Chairperson considers relevant.

New section 252AE (Disclosure of conflicting interest) requires that a member of a Panel for a Panel review application must disclose any conflicting interest to the Chairperson as soon as practicable after becoming aware of the conflicting interest, and not take part in any hearing of that review application.

The Chairperson must as soon as practicable, after becoming aware of the member's conflicting interest, choose a different member for the Panel to hear the Panel review application, unless the member has agreed to disclose the conflicting interest to the parties to the Panel review application, and the parties have agreed to the member continuing on the Panel.

Under subsection (5), the Chairperson must make a record of the selection of another member to the Panel or the parties to the hearing of the Panel review application agreeing to the member continuing on the Panel after the member's disclosure.

Subsection (6) provides that if it is the Chairperson that has or acquires the conflicting interest, then the Deputy Chairperson must perform the functions of the Chairperson, for the purposes of fulfilling the requirements under subsections (2), (3) and (5) of either choosing a different member for the review application and making a record of the conflict of interest, or making a record of the Chairperson's disclosure and the agreement of the parties to the Panel review application for the Chairperson to continue on the Panel. The Deputy Chairperson will also replace the Chairperson for the purposes of constituting the Panel under s252AD(1)(a).

'Conflicting interest' in relation to a Panel review application is defined in subsection (7) to mean an interest, whether financial or otherwise, held or acquired by the member that may conflict with the proper performance of the member's function in relation to deciding the application.

Division 4 Deciding applications

Subdivision 1 Making decisions

New section 252AF (Way application decided) allows the Panel to decide the review application as it considers appropriate including by holding a public hearing as provided for under section 252AJ (Public hearing), using remote conferencing,

or on the basis of documents without a hearing. If the Panel conducts a public hearing, the hearing must be conducted in accordance with subdivision 2 (Hearings).

If the Panel decides not to hold a hearing, the Panel must ensure that the public has access to the information considered by the Panel as if the Panel review application were heard in public. This requirement does not apply to information the Panel decides should not be made publicly available on a non-disclosure ground.

New section 252AG (When application must be decided) requires the Panel to decide an application within 7 business days after the application is made, unless it relates to a disqualification action. In that case, the Panel must decide the application within 20 days after the application is made.

New section 252AH (Decision of panel) provides that the Panel must review the racing decision the subject of the Panel review application to confirm, vary, or set aside the decision and substitute another decision.

Subsection (2) provides that if the Panel confirms the racing decision of a steward, it is taken to be the decision of the Panel.

Subsection (3) provides that if the Panel's decision includes the taking of disqualification action against the applicant, then the Panel must decide whether the action is taken because of a serious risk to the welfare or health of an animal, or the safety of any person; or the integrity of the Queensland racing industry. A 'disqualification action' against a person is defined in new section 252AA (Definitions for part) to mean either a disciplinary action relating to a person's approval or licence or an exclusion action against the person which prevents the person from betting, bookmaking, racing an animal or attending a race meeting for a period of 3 months or longer. The definition provides examples such as a suspension of a licence for 3 months, a disciplinary action to cancel a licence and exclusion action to warn off a person from entering, or remaining at, a racecourse for 6 months.

Subsection (3) also provides a note directing the reader to section 252AV(2) which excludes an application to the appeal tribunal for a stay for a decision of the Panel which includes a disqualification action against the person because of a serious risk to the welfare or health of an animal, the safety of any person, or the integrity of the Queensland racing industry.

Subsection (4) requires the Panel to give the parties to the application a notice stating the Panel's decision, including, if applicable, any disqualification action which involves a serious risk to the welfare or health of an animal, the safety of any person, or the integrity of the Queensland racing industry, and the reasons for the decision.

Subsection (5) states that the decision takes effect on the day the notice of the decision is given to the parties, or on a later day if one is stated in the notice.

Subdivision 2 Hearings

New section 252AI (Notice of hearing) requires that the Registrar give notice of the time and place of the hearing of a Panel review application to the applicant and to QRIC. The notice must be given as soon as practicable, and at least a reasonable period before the day of the hearing.

New section 252AJ (Public hearing) provides that the hearing of a Panel review application must be held in public. However, subsection (2) allows the Panel, on its own initiative or on application by a party, to decide that all or part of the hearing is to be held in private. The decision is made only if the Panel considers that information proposed to be disclosed at the hearing should not be made publicly available based on a non-disclosure ground.

Subsection (4) enables the Panel to limit who may be present at the private hearing to the extent the hearing is heard in private under subsection (2).

Subsection (5) provides that the hearing may be held at any place in Queensland or by remote conferencing.

Subsection (6) allows the Panel to adjourn a hearing.

New section 252AK (Requiring witness to attend or produce document or thing) enables the Panel, on application of a party or on the Panel's own initiative, to give a person, who is not a party to the hearing, a notice to attend a hearing of a Panel review application to give evidence, or to produce a document or other thing to the Panel. Subsection (1) also provides a note directing the reader to new section 252AL for the consequences of failing to comply with the notice.

Subsection (2) provides that the notice may only be given if the Panel reasonably believes the person has information, or the document or thing contains information, required for consideration of the Panel review application.

Subsection (3) provides that a notice must be given as soon as practicable, and at least a reasonable period, before the day of the hearing.

Subsections (4) and (5) provide that a person given a notice to attend or to produce a document or thing is entitled to be paid the fees and allowances decided by the Panel. The fees and allowances are to be paid by the party that required the person's attendance, or otherwise by all parties in the proportions decided by the Panel.

New section 252AL (Offences for witness) sets out the offences by witnesses.

Subsection (1) makes it an offence for a person, who has been given a notice under new section 252AK(1), to fail, without a reasonable excuse, to comply with the notice.

Subsection (2) makes it an offence for a witness at a hearing of a Panel review application to fail to take an oath or affirmation when required; or to fail, without a reasonable excuse, to answer a question the person is required to answer by the Panel.

A maximum penalty of 100 penalty units applies to the offences.

Subsection (3) clarifies that it is a reasonable excuse not to answer a question or produce a document or thing if doing so might tend to incriminate the individual or expose the individual to a penalty.

New section 252AM (Hearing in absence of parties or others) provides that the Panel may hear a Panel review application in the absence of a party to that application if the Panel is satisfied that the party has been given notice of the hearing under section 252AI (Notice of hearing) and the party did not have a reasonable excuse for failing to attend.

Subsection (2) provides that Panel may also hear a Panel review application in the absence of any other person who has been given reasonable notice of the hearing.

New section 252AN (Contempt of panel at hearing) makes it an offence for a person to insult a member while the member is participating in a hearing of a Panel review application, or entering or leaving the place where the Panel is hearing a Panel review application. It is also an offence for a person to unreasonably or deliberately interrupt a hearing, or to create or continue, or join in creating or continuing, a disturbance in or near a place where the Panel is hearing a Panel review application.

A maximum penalty of 30 penalty units will apply to each of the offences.

Subdivision 3 Other procedural matters

New section 252AO (Conducting review generally) sets out the general requirements for the Panel's procedures when conducting a hearing. The Panel must act with impartiality, observe the rules of natural justice and is not bound by the rules of evidence. The Panel may inform itself in any way it considers appropriate.

Subsection (2) states that subject to new part 4 (Reviews and appeals of stewards' racing decisions) the procedure for deciding a Panel review application is at the discretion of the Panel.

New section 252AP (Evidence before Panel) provides that, in deciding a Panel review application, the Panel may require a person to give evidence on oath or affirmation, take evidence from a person on oath or affirmation, or administer an oath or affirmation to a person.

Subsection (2) provides that the Panel may allow a person appearing as a witness to tender a written statement verified by oath or affirmation.

New section 252AQ (Applicant bears own costs) provides that the applicant for a Panel review application bears their own costs.

New section 252AR (Withdrawal of application) provides that an applicant may withdraw their Panel review application at any time.

New section 252AS (Record of review) requires the Registrar to keep a record of any documents produced to the Panel for deciding a Panel review application.

Subsection (2) provides, subject to subsection (3), a person, on payment of a prescribed fee, may inspect or to obtain a copy of a record, or part of a record kept under subsection (1).

Subsection (3) provides that a party to a Panel review application may inspect the record kept under subsection (1) without charge.

However, subsection (4) provides that subsections (2) and (3) do not apply to any part of a record containing information that the Panel has decided is not to be made publicly available based on a non-disclosure ground.

Subsection (5) states that section 252AS does not affect the operation of another Act that provides for the recording or keeping of evidence.

Division 5 Stays of stewards' racing decisions

New section 252AT (Staying operation of racing decision) provides that the applicant for a Panel review application may immediately apply to the Panel for a stay of the operation of the racing decision to which the application relates.

Subsections (2)–(3) provide that the Panel may stay the operation of the racing decision to secure the effectiveness of the review of the decision of the Panel, and on the conditions, and for the period, decided by the Panel. Subsection (4) provides that the period of the stay does not extend past the time the Panel decides the Panel review application.

Division 6 Appeal of panel decisions

New section 252AU (Appealing disqualification action to appeal tribunal) applies to a person if the Panel's decision on the person's Panel review application includes the taking of a disqualification action against the person, and the person is dissatisfied with the Panel's decision.

Subsection (2) states that a person may appeal the Panel's decision to the appeal tribunal only on a question of law relating to the extent of the disqualification action.

Subsection (3) provides that a notice of appeal must, unless the QCAT's appeal tribunal orders otherwise, be filed in the tribunal's registry within 28 days after the

date of the Panel's decision. The appeal must be served on QRIC within 7 days after being filed.

Subsection (4) provides that QCAT's appeal tribunal has jurisdiction to hear and decide the appeal.

Subsections (5) and (6) provide that the starting of an appeal does not affect the operation of the Panel's decision or prevent the decision being implemented unless the decision is stayed under new section 252AV (Staying operation of panel's decision).

New section 252AV (Staying operation of panel's decision) sets out matters relating to a stay of a Panel's decision. Subsection (1) enables a party, who has appealed to the appeal tribunal of QCAT under new section 252AU (Appealing disqualification action to appeal tribunal), to make an application for a stay of the operation of the decision. However, under subsection (2) a person cannot make an application for a stay if the notice of the Panel's decision states that the decision includes disqualification action taken against the person because of a serious risk caused to the welfare or health of an animal, or the safety of any person, or the integrity of the Queensland racing industry as mentioned in new section 252AH (3) (Decision of panel).

Subsections (3) and (4) provide that a stay may be given on the conditions and the period decided by the appeal tribunal, provided that the period of the stay does not extend past the time when the appeal tribunal decides the appeal.

Part 5 Racing Appeals Panel

Division 1 Establishment, functions and powers

New section 252AW (Establishment of panel) establishes the Racing Appeals Panel.

New section 252AX (Finances of panel) states that the Panel is part of the administering department for the *Financial Accountability Act 2009*.

New section 252AY (Functions of panel) sets out the Panel's functions which are to hear and decide each application for review of stewards' decisions under the rules of racing and any other Panel function given to the Panel under the RI Act or another Act.

New section 252AZ (Powers) provides that the Panel has the power to do anything necessary or convenient to be done to perform the Panel's functions.

New section 252BA (Independence of panel and members) states that the Panel and its members must act independently, impartially and fairly. Section 252BA(b) also provides that the Panel and its members are not subject to direction or control by any entity, including any Minister, about the way the Panel performs the Panel's functions and exercises its powers under the RI Act or any other Act.

Division 2 Members

Subdivision 1 Appointments

New section 252BB (Composition of panel) provides that the Panel consists of the Chairperson, at least 2 Deputy Chairpersons so that one is always available to act as the Chairperson in the Chairperson's absence, and at least 3 other members.

New section 252BC (Appointment) provides that a member of the Panel, including the Chairperson and Deputy Chairpersons, are appointed by the Governor in Council on the recommendation of the Minister.

The Minister can only recommend a person for appointment to the Panel only if satisfied that the person is eligible for appointment under new section 252BD. The Minister must ensure that the persons recommended for appointment have experience in a sufficient range from the areas of chemistry relating to animals, law, racing and veterinary science as prescribed in section 252BD(1) which will allow the Panel to perform its functions.

New section 252BD (Eligibility for appointment) sets out the eligibility requirements, including matters that would make a person ineligible for appointment to the Panel.

These requirements will ensure that the Panel has the necessary level of expertise to review stewards' decisions while demonstrating to the community that the integrity of racing is being promoted and secured.

A person is eligible for appointment as the Chairperson or Deputy Chairperson if the person is a lawyer of at least 5 years standing. For appointment as another member, they must have at least 1 year's professional experience in chemistry relating to animals, law, racing or veterinary science.

However, a person is not eligible for appointment to the Panel if they are an member or employee of a control body or have been in the 2 years before the proposed appointment; if they are registered or licensed by a control body; if they have a financial or proprietary interest in a licensed animal such as a racing greyhound or a racehorse; if they are a member of a committee of, or employee of, a club licensed by a control body to conduct racing, or if they are a committee member of an association formed in Australia to promote the interests of racing industry participants. A member is also ineligible if they are affected by bankruptcy action defined in Schedule 1 (Dictionary) of the RI Act, in relation to an individual, as being insolvent under administration within the meaning of section 9 of the *Corporations Act 2001* (Cwlth), or they have a conviction, other than a spent conviction, for an offence under the RI Act or the *Racing Act 2002,* or an indictable offence under any Act including an act of another State.

Subsection (3) defines 'interstate rehabilitation law' and 'spent conviction' for the section.

New section 252BE (Term of appointment) provides that a member will hold office for a term stated in the member's instrument of appointment. Section 252BF also states that the appointment must not be for more than 3 years, and a member may be reappointed.

New section 252BF (Conditions of appointment) provides that a member is appointed under the RI Act and not under the *Public Service Act 2008.* Section 252BF also sets out the remuneration and conditions of the office of a member. A member's remuneration and allowances will be decided by the Governor in Council and the conditions will be stated in the member's instrument of appointment.

Subdivision 2 Functions

New section 252BG (Functions of members) sets out the functions conferred on the Chairperson in subsection (1), which are to choose the members to constitute the Panel to hear and decide a Panel review application; to manage the business and overall performance of the Panel; to give practice and procedural directions to promote the making of high quality and consistent decisions by the Panel; and to ensure that the members of the Panel are adequately trained to perform the functions and exercise the powers of the Panel.

The Chairperson must also ensure that a written performance report is prepared in accordance with requirements set out in new section 252BP (Annual performance report).

Subsection (2) also provides that a Deputy Chairperson has the function to act as, and perform the functions of, the Chairperson when there is a vacancy in the office of the Chairperson; if the Chairperson has a conflicting interest under new section 252AE (Disclosure of conflicting interest) in relation to a Panel review application; or if the Chairperson is absent or otherwise cannot perform the functions of the office.

Subsection (3) provides that the function of all members is to participate in the Panel to hear and decide, under new Part 4 (Reviews and appeals of stewards' racing decisions), matters for which the Panel is constituted.

Subdivision 3 Ending appointments

New section 252BH (Resignation) provides that a member may resign by giving a signed notice to the Minister, and the resignation takes effect on the date the notice is given, or a later day if stated in the notice.

New section 252BI (Removal from office) provides that the Governor in Council may, at any time, remove a person from office as a member on the recommendation of the responsible Minister. The Minister may recommend a person's removal if the Minister is satisfied that the person is no longer eligible for appointment for a reason mentioned in section 252BD(2); is incapable of performing the functions or exercising the powers of the office; has neglected the functions or powers of the office; has performed the functions or exercised the

powers incompetently; or has engaged in conduct that would warrant dismissal from the public service if the person were a public service officer.

New section 252BJ (Vacancy in office) provides that the office of a member becomes vacant if the member is not reappointed on the completion of a term of office; the member has resigned under section 252BH (Resignation); or the member is removed from office under section 252BI (Removal from office).

Division 3 Administration

Subdivision 1 Registry

New section 252BK (Registrar and other staff) provides for the staffing arrangements to support the Panel. The Chief Executive must appoint an appropriately qualified person as Registrar of the Panel and appoint other staff to assist the Panel to perform its functions effectively. The appointments will be under the *Public Service Act 2008*.

New section 252BL (Functions of registrar) states that the functions of the Registrar are:

- the functions given to the Registrar under new chapter 6, parts 4 (Reviews and appeals of stewards' racing decisions) and 5 (Racing Appeals Panel); and
- to do any other thing necessary or convenient for the effective and efficient performance of the Panel's functions.

New section 252BM (Register of decisions) requires the Registrar to keep a register that includes a brief description of each Panel review application that has been made, and the information in the notice of the Panel's decision on the application, given to the parties under section 252AH(4). The Registrar must make a copy of the register available to the public on the Panel's website. However, this section does not allow access to information which the Panel has decided is not to be made publicly available based on a non-disclosure ground.

Subdivision 2 Criminal history

New section 252BN (Criminal history report) enables the Minister to obtain a report on the criminal history of a person, who is eligible under s252BD and being considered for appointment to the Panel, provided that the person has given a written consent, or of a person who has been recommended for removal from office as a member of the Panel under section 252BI(2)(a).

The criminal history will include a brief description of the circumstances of a conviction included in the criminal history.

Before using the information to decide a nomination for appointment or whether a person should continue to be a Panel member, the Minister must disclose the information to the person and allow the person a reasonable opportunity to make representations to the Minister about the information.

The Minister must ensure that a report on a person's criminal history is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

New section 252BO (Changes in criminal history must be disclosed) requires that a member immediately give notice to the Minister if they have been charged with or convicted of an offence prescribed in section 252BD(2)(f) that is an offence under the RI Act or Racing Act, an indictable offence under any Queensland Act or a law in another State, and the sentence imposed for a conviction unless they have a reasonable excuse. A maximum penalty of 100 penalty units applies.

Subsection (3) sets out the information that is required to be disclosed by the member.

Subdivision 3 Miscellaneous

New section 252BP (Annual performance report) provides that the Chairperson must ensure that a written report is given to the Minister about the Panel's performance no later than 3 months after the end of each financial year to which the report relates. The performance report will relate to the operation of the Panel for the year and any proposals to improve the operation; the number of Panel review applications received in the year, the number of applications decided by the Panel in the year and a brief description of the nature of the decisions made; and any matters affecting the Panel's ability to decide applications in the year.

Subsection (3) provides that the Minister must table a copy of the report in Parliament within 14 sitting days after receiving the report.

Clause 25 inserts new chapter 7, Part 1A (Miscellaneous provisions relating to stewards' reports) to provide for the online publication of stewards' reports and other prescribed information. The publication of the reports promotes confidence in the integrity of the racing industry through transparent decision making. The new provisions will ensure that the publication of stewards' reports and other prescribed information will not conflict with the *Information Privacy Act 2009.*

Under the rules of racing, it has been a long-standing practice in all jurisdictions for stewards' reports to be published on websites, and these reports generally include personal information, such as the identity of individuals by name. The stewards' race day reports and inquiry reports provide a record of a race meeting and transparency of the decision making in relation to investigations and outcomes of an inquiry that is essential to provide confidence in the integrity of the industry.

In addition, results of pre-race testing of horses which have detected carbon dioxide readings of or above 35.1mmol/L or a prohibited substance of any level may also be published. The publication of 'elevated reading' results acts as a deterrent and provides transparency around results and testing.

New section 256A (Publication of stewards' reports) applies to race day reports and inquiry reports that a race day steward gives to QRIC.

Subsections (2)(a)–(i) list the information the race day report that QRIC may publish on its website: the name of the race day steward, the code of racing conducted at the race meeting, the day of the meeting, the licensed venue at which the meeting was conducted, the details of track conditions at the race meeting, the outcome of each race at the meeting, any incident investigated by the steward at the meeting, the applicable rule of racing applying to any investigation of an incident by the steward, and any action taken by the steward in response to the incident investigated.

Subsection (3)(a)–(d) list the information in an inquiry report that QRIC may publish on its website: the name of person investigated, the rules of racing applying to the incident, the decision of the race day steward about the incident, and the reason for the decision.

Subsection (4) requires QRIC to remove from its website any information published under subsections (2) and (3) no later than the day the effect of the action ends if the information related to disqualification action taken against a person by a race day steward, or otherwise 6 months after the day the information is published.

Subsection (5) states that section 256A is subject to section 256B (Request for commission not to publish personal information contained in stewards' report).

Subsection (6) directs the reader to section 252AA (Definitions for part) for the definition of 'disqualification action' against a person.

New section 256B (Request for commission not to publish personal information contained in steward's report) applies in relation to a race day report or inquiry report under new section 256A prepared by a race day steward for publication on QRIC's website.

Subsection (2) allows the person identified in the report to ask QRIC in writing not to publish on its website, or to remove from publication, any personal information about the person that is contained in the report.

Subsection (3) requires that before giving the report to QRIC, the race day steward must tell the person that the person may ask QRIC not to publish on its website personal information about the person, and the requirements under section 256B to the steward and QRIC in relation to the request.

Subsection (4) provide that the if the person tells the race day steward that the person intends to make a request to QRIC not to publish, the race day steward must tell QRIC of that fact when giving the report to QRIC. QRIC must not publish any personal information about the person from the report for at least 7 days after the day the report is given to QRIC.

Subsections (5) and (6) provides that if QRIC receives a request not to publish after it has already published information to which the request relates, QRIC must remove the information from its website while it considers the request. QRIC must not publish personal information on its website if it is reasonably satisfied the information should not be made publicly available based on a non-disclosure ground.

New section 256C (Publication of elevated readings for licensed horses) applies if a race day steward gives QRIC the information listed in subsection (1)(a)–(c): the name of a licensed horse that has an elevated reading within a 48-hour period before a race, the name of the licence holder for the horse, and the date the elevated reading was measured.

Subsection (2) states that QRIC may on its website publish a list that states the information.

Subsection (3) defines 'elevated reading' for a licensed horse to mean a level of carbon dioxide measured in a blood test carried out on the horse which is 35.1 millimoles per litre or higher; or any level of a prohibited substance measured in a blood test carried out on the horse. A prohibited substance is a substance that is not allowed to be given to a licensed horse under the rules of racing.

Clause 26 amends section 259 (Protection from civil liability) by inserting new paragraphs (ba) and (bb) to confer immunity from civil liability on members of the Panel, including the Chairperson or a Deputy Chairperson. Immunity from civil liability is also conferred on the Registrar. The immunity is limited under section 259 to acts or omissions done or made honestly and without negligence. Further, any potential liability attaches to the State except in circumstances in which the relevant conduct was engaged in other than in good faith or with gross negligence. In such circumstances, the State may recover contribution from the relevant person.

Clause 26 also renumbers section 259(1)(c) to (e) as a consequence of prescribing the Panel members and Registrar as people who are afforded protection against civil liability.

Clause 27 inserts new section 301 (Review of existing racing decisions), which provides that if—

- a steward makes a decision under the rules of racing before the commencement; and
- immediately before the commencement, the decision was an original decision under former section 240; and
- immediately before the commencement, under former chapter 6, part 2, division 4 (Reviews and appeals for original decisions), the period in which an appeal, application for internal review or external review for the decision had not ended; or an application for internal review or external review of the decision had not been decided; or an appeal or stay for the decision had not been decided;

then the relevant appeal, application or stay may be decided as if part 3 of the Bill had not been enacted.

Clause 28 amends schedule 1 (Dictionary) to define new terms used in new provisions inserted by the Bill, such as 'non-disclosure ground' (relating to the publication of personal information), and to insert sign post definitions, including 'appeal tribunal' and 'racing decision', which are defined in in chapter 6, part 4 new section 252AA (Definitions for part).

Part 4 Other Amendments

Clause 29 provides that Schedule 1 amends the provisions it mentions. It is the authorising provision for the schedule of minor and consequential amendments.

Schedule 1 Other amendments

Part 1 Amendments commencing on assent

Clause 1 amends section 103(2)(a) to omit the term 'the proposed action', which is not a required definition in accordance with current drafting practices.

Clause 2 amends section 116(1) and (2)(a) to replace 'a telecommunications system' with 'an approved telecommunications system for bookmaking'. This is to clarify that a telecommunications system used by a racing bookmaker must be approved by QRIC under section 142A.

Clause 3 amends section 122(2)(b) to include that the Minister may require the variation of an offcourse approval. This is a consequence of clause 9 inserting chapter 4, part 3, division 1A (Amendment of offcourse approval), which allows a racing bookmaker to apply for an amendment of their offcourse approval.

Clause 4 amends section 140(3) to replace 'a telecommunications system' with 'an approved telecommunications system for bookmaking'. This is to clarify that a telecommunications system used by a racing bookmaker must be approved by QRIC under section 142A.

Clause 5 replaces chapter 6, part 1, division 5 heading (Other offence) with 'Division 5 Attempts'. Replacement of the heading is consistent with current drafting practices as the division only prescribes an offence to attempt to commit an offence under section 227.

Clause 6 amends schedule 1 (Dictionary) by omitting the definition of 'proposed action' in consequence of schedule 1, section 1 omitting the reference to 'the proposed action' section 103(2)(a). Clause 6 also omits the definitions of 'show cause notice' and 'show cause period'.

Clause 7 replaces the definitions of 'show cause notice' and 'show cause period', which omit the references to section 72 (Requirement to hold licence as racing bookmaker's clerk) because the show cause action does not apply.

Clause 7 also inserts a new definition for ''approved telecommunications system'**,** *which* directs readers to section 142A(2).

Part 2 Amendments commencing by proclamation

Clauses 1 and 2 make amendments to chapter 6, part 2 (Evidentiary and legal proceedings) in consequence of clause 24 inserting new part 4 (Reviews and appeals of stewards' racing decisions) and part 5 (Racing Appeals Panel) to reform the review processes to enable the Panel to hear and determine decisions of racing stewards made under the rules of racing.

The chapter 6, part 2, division 4 heading (Reviews and appeals for original decisions) is amended to replace 'for' with 'of particular' as particular decisions of racing stewards and the Racing Appeals Panel have been excluded from the meaning of 'original decision' through the amendment to section 240 in clause 23 of the Bill.

Clause 3 renumbers chapter 6, part 3, subdivisions 1 to 4 as chapter 6, part 3, divisions 1 to 4 for consistency with current drafting practices.