

Racing (Transitional) Regulation 2016

Explanatory notes for SL 2016 No. 97

made under the

Racing Act 2002

General Outline

Short Title

Racing (Transitional) Regulation 2016

Authorising law

Section 495 of the *Racing Act 2002* as provided for under section 387 of the *Racing Integrity Act 2016*

Policy Objectives and the reasons for them

The rules of racing in Queensland are approved under the *Racing Act 2002* (the *Racing Act*) by the control bodies, specifically the Racing Queensland Board (Racing Queensland), for each code of racing and relate to various matters relevant to the regulation of animals, clubs, participants and venues involved in the racing industry. Matters addressed by the rules of racing include, but are not limited to:

- rules determining the setting of prize money, and which animals are eligible to be entered into races of various prize money levels;
- setting procedures about how animals are to be entered into races;
- the appointment of stewards;
- giving power to stewards to manage the conduct of a race meetings;
- rules about how participants conduct themselves prior to, and during racing to ensure the safety, and integrity of racing;
- rules relating to the welfare of licensed animals, such as rules on whipping;
- matters relating to prohibited substances that may not be present in, or administered to, a licensed animal or participant; including rules about the taking and testing of samples;
- imposing of fines and other penalties for breaches of rules; and
- the placing of persons of the forfeit list in the event that they are unable to pay the required fees or owe a debt to the control body.

The current Rules of Racing provide for one body to manage all of the racing industry in each State, these bodies are referred to as the “Principal Racing Authority” or the “Controlling

Body” in most instances. In Queensland, these roles have been performed by the Queensland All Codes Racing Industry Board.

The reforms established under the *Racing Integrity Act 2016* (the Racing Integrity Act) have separated the functions of the previous Queensland All Codes Racing Industry Board into two separate statutory bodies, the Racing Queensland Board and the Queensland Racing Integrity Commission (the Commission). The powers provided under the Rules of Racing must also be split between these two organisations, in line with the separation of functions established in law.

However, control bodies across Australia have entered into agreements to standardise their Rules of Racing. This has helped to create a standardised national system for racing animals and participants. As a result, it is not practical for Racing Queensland to immediately make modified rules that reflect the separation of roles.

Therefore, as an interim measure, the *Racing (Transitional) Regulation 2016* (the Transitional Regulation) has been developed to provide for the rules of racing to be read and applied in accordance with the functions and powers provided to the Commission under the Racing Integrity Act.

Achievement of policy objectives

The Transitional Regulation provides for the rules of racing approved under the Racing Act (see section 353 of the Racing Integrity Act which amends section 91 of the Racing Act) to be read and applied in accordance with the functions and powers provided to the Commission under the Racing Integrity Act.

Subsection 4(2) of the Transitional Regulation states that if a rule provides for an entity to perform a function that is a function of the Commission, or take action in a matter relevant to the performance of a function of the Commission, the Commission and not the entity may perform the function or take action, including the appointing of stewards and penalising participants.

The provision intends to put it beyond doubt that where the rules of racing state that an entity, such as the Principal Racing Authority or Controlling Body, are the relevant entity which exercises a function under the Rules, if that function exercised by the entity, is a function of the Commission under the Racing Integrity Act, the function is to be performed by the Commission and not the entity mentioned in the rules of racing.

For example, as the Racing Integrity Act states that a steward is appointed by the Commission, the power to appoint stewards under the Rules of Racing is a function to be performed by the Commission and not by the Principal Racing Authority, even though the rules of racing may state that the power to appoint a steward is a power of the Principal Racing Authority.

Similarly, as the Commission is responsible for making disciplinary decisions and licensing animals and participants under the Racing Integrity Act, the Commission is the entity in Queensland responsible for issuing penalties and taking disciplinary action against its licensed animals and participants and not the Principal Racing Authority.

The principles in subsection 4(2) are also consistent with the intent of subsection 4(3) of the Transitional Regulation which states that where there is a reference in the existing rules of racing to the “Principal Racing Authority”, “Controlling Body”, “Control Body” or Racing Queensland” in a rule about a matter relevant to the performance of a function of the Commission, the reference is taken to be to the Commission.

For example, under rule 90(4) of the Harness Rules of Racing, “the Controlling Body may grant a licence for such period and upon such terms and conditions as it thinks fit”. As the Commission is responsible for the licensing of all animals and participants for a code of racing, including harness racing, the reference to “the Controlling Body” should be replaced, to the extent it relates to the licensing of animals and participants, with a reference to “the Commission”.

It is important to note that the rules of racing are not amended where the rules relate to matters that are not a function of the Commission. For example, as it is a function of Racing Queensland under the Racing Act to license clubs and venues for harness racing, amendments to the reading and application of the rules are not required as a reference to the “the Controlling Body” under the rules of racing is a reference to Racing Queensland.

The Transitional Regulation will provide Racing Queensland with additional time to enter into further discussions with the national peak bodies about producing Rules of Racing that reflect the new framework established through the provisions of the Racing Integrity Act.

Consistency with policy objectives of authorising law

The Transitional Regulation is consistent with the policy objectives of the authorising law.

The objective of the Transitional Regulation is not to change the substantive policy or intent of the rules of racing. The purpose of the Transitional Regulation is to provide for the separation of functions and power under the rules of racing to reflect the changes to the regulatory framework made by the Racing Integrity Act.

Inconsistency with policy objectives of other legislation

The Transitional Regulation is not inconsistent with the policy objectives of any other legislation.

Alternative ways of achieving policy objectives

There are several alternative ways of achieving the relevant policy objectives, including to amend the rules of racing by the following means:

- Racing Queensland unilaterally amending the rules of racing to reflect changes made in the Racing Integrity Act;
- Racing Queensland working with national peak bodies to reach agreement about the amendment of the rules of racing
- the Commission issuing a Standard in relation to provide for the various matters mentioned in the Standard to prevail over the rules of racing to the extent of any inconsistency (see section 93(3) of the Racing Act).

The reasons for not using an alternative way of achieving the policy objectives are discussed below:

Racing Queensland unilateral amendments

Racing Queensland has long standing agreements with Racing Australia, Greyhounds Australasia and Harness Racing Australia to standardise its rules with other racing bodies across Australia.

Under these agreements, Racing Queensland is unable to adopt new rules or amend an existing rule that would be inconsistent with the nationally agreed rules of racing. As a result, unilateral amendments to the rules of racing are not the preferred option.

National Peak Bodies amendments

An alternative to the enactment of the Transitional Regulation would be for the national peak bodies to amend their rules of racing prior to the commencement of the Racing Integrity Act on 1 July 2016.

However, there has been a limited amount of time from the introduction of the Racing Integrity Bill 2015 into Parliament to commencement of the legislation. Due to this limitation, it was not considered appropriate to conduct multi-party negotiations involving a large number of racing authorities across multiple codes of racing, and multiple states in an attempt to amend the rules to reflect the new regulatory framework in Queensland.

These types of discussions and negotiations have commenced and will continue to take place in order to develop a long-term arrangement.

Commission issuing a Standard

An alternative approach to the enactment of a Transitional Regulation could also be for the Commission to approve and publish a Standard under section 58 of the Racing Integrity Act.

This standard could state that the rules of racing are to be read and applied to transfer the relevant powers provided to the Principal Racing Authority to be powers exercised by the Commission. Under the provisions in the amended Racing Act, the Standard would then prevail over the rules of racing to the extent of any inconsistency.

However, this approach was not considered appropriate given that the Commission would be using its own authority to appoint itself as the relevant body for a large number of matters set out in the rules of racing.

Benefits and costs of implementation

There are no costs associated with the commencement of the Transitional Regulation as it deals with matters relevant to the internal machinery of two government entities, being the Commission and Racing Queensland, and their powers, functions and responsibilities under the rules of racing.

Consistency with fundamental legislative principles

The Transitional Regulation is consistent with fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

Consultation

The Department of National Parks, Sport and Racing has met and/or consulted with the Racing Integrity Commissioner, Racing Queensland, the Department of the Premier and Cabinet and Queensland Treasury regarding the provisions of the Transitional Regulation. No issues were raised.

The national peak bodies for racing in Australia, Racing Australia and Harness Racing Australia were also consulted via teleconferences to discuss the transitional regulation and its operation. No issues were raised.

No other stakeholders were consulted as the Transitional Regulation provides for matters that are machinery in nature and relate to the internal machinery between two statutory bodies.

No changes to the Transitional Regulation have been made following consultation. The commencement of the Transitional Regulation will not change the policy objectives or content of the legislation.

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