

TASMANIA

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**RACING REGULATION (TRANSITIONAL  
AND CONSEQUENTIAL PROVISIONS) BILL  
2004**

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# **RACING REGULATION (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) BILL 2004**

*(Brought in by the Minister for Racing, the Honourable  
James Glennister Cox)*

## **A BILL FOR**

**An Act to provide for savings and transitional matters and to effect certain legislative repeals and amendments consequent on the enactment of the *Racing Regulation Act 2004* and the *TOTE Tasmania (Racing Regulation) Act 2004***

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

## **PART 1 – PRELIMINARY**

### **Short title**

**1.** This Act may be cited as the *Racing Regulation (Transitional and Consequential Provisions) Act 2004*.

### **Commencement**

**2.** This Act commences on the day on which the *Racing Regulation Act 2004* commences.

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**THIS BILL IS COGNATE WITH THE *RACING REGULATION BILL 2004***

**PART 2 – SAVINGS AND TRANSITIONAL*****Division 1 – Interpretation*****Interpretation of Part****3. (1)** In this Part –

**“commencement day”** means the day on which the New Act commences;

**“former Council”** means a specialist council reconstituted under section 16I of the former Racing Act;

**“former Racing Act”** means the *Racing Act 1983*;

**“former Racing Regulation Act”** means the *Racing Regulation Act 1952* in force immediately before the commencement day;

**“New Act”** means the *Racing Regulation Act 2004*;

**“transitional period”** means the 12-month period commencing on the commencement day.

**(2)** If an expression used in this Part is defined in section 3 of the New Act, it has, unless the contrary intention appears, the same meaning in this Part as in the definition in the New Act.

***Division 2 – Offices and bodies*****Director of Racing**

**4. (1)** The State Service officer or State Service employee who held the appointment of Director of Racing under the former Racing Act immediately before the commencement

day continues in office as the Director of Racing under the New Act until –

- (a) the appointment expires; or
- (b) the appointment is sooner terminated under the New Act.

**(2)** Any delegation of a function or power of the Director under section 15 of the former Racing Act and in force immediately before the commencement day is, if the equivalent function or power exists under the New Act, taken to be a delegation by the Director of that function or power under section 9 of the New Act.

### **Councils: members**

**5.** A person who, immediately before the commencement day, was a member of a former Council continues in office as a member of that Council, as continued under the New Act, until –

- (a) the term of office for which the member was appointed or elected under the former Racing Act expires; or
- (b) the member's term of office is sooner terminated under the New Act.

### **Councils: staff**

**6. (1)** Except as provided by this section –

- (a) a person who was an employee of a former Council immediately before the commencement day continues as an employee of that Council as continued under the New Act; and

- (b) until varied by that Council or by an applicable award made under another Act, the conditions of that person's continuing employment are the same as the conditions of his or her employment immediately before the commencement day.

(2) The State Service Minister, by notice published in the *Gazette* during the first 2 months of the transitional period, may designate a Council employee to whom subsection (1) applies as a transferable employee.

(3) For the purposes of subsection (2), the State Service Minister may seek and take into account recommendations and advice from the Director or any Council.

(4) On or as soon as practicable after designating a person as a transferable employee, the State Service Minister, by notice, is to offer the transferable employee appointment as a permanent employee under and in accordance with the *State Service Act 2000* –

- (a) for at least the same remuneration as he or she was receiving immediately before the commencement day; and
- (b) to perform, at least for the transitional period, duties for the purposes of the New Act.

(5) The notice under subsection (4) is to –

- (a) explain the conditions of the offered appointment; and
- (b) give an indication of the duties that the transferable employee would initially be expected to perform on taking up the offered appointment.



**(6)** The transferable employee may accept or reject the offer of appointment by giving a notice of acceptance or rejection to the State Service Minister within 14 days after being given the notice under subsection (4).

**(7)** If the offer of appointment is rejected (or is not acknowledged), the transferable employee continues in Council employment as provided by subsection (1), but nothing in this section is to be taken as –

- (a) guaranteeing the further continuation of that employment; or
- (b) requiring that any further offer of appointment under the *State Service Act 2000* be made to the transferable employee.

**(8)** If the offer of appointment is accepted –

- (a) the State Service Minister must, as soon as practicable after being notified of that acceptance, appoint the transferable employee as a permanent employee of the State Service in accordance with the conditions of the offer; and
- (b) on that appointment, he or she ceases to be a Council employee and becomes subject to the *State Service Act 2000*, employed, at least for the transitional period, for the purposes of the New Act.

**(9)** The State Service Minister has power to do all things necessary or convenient to be done, consistent with this Act and the *State Service Act 2000*, for or in connection with the performance of that Minister's functions under this section and, without limiting the generality of this, has power to –

- (a) give undertakings; and

(b) enter into agreements with Councils.

**(10)** Section 108 of the New Act applies to the giving of notices under this section.

**(11)** An offer of State Service employment made to a transferable employee under this section lapses immediately, and is of no further effect, if the transferable employee ceases for any reason to be an employee of a Council before the State Service Minister is given notice of the acceptance of the offer.

**(12)** In this section –

“**conditions**”, of employment, includes remuneration;

“**State Service Minister**” means the Minister administering the *State Service Act 2000*.

### **Councils: construction of instruments, &c.**

**7. (1)** If after the commencement day it is expedient to do so, a reference in any document to a Council by its corporate name under the former Racing Act may, unless the context or subject matter of the instrument indicates or requires otherwise, be construed by any person as a reference to the Council by its corporate name under the New Act.

**(2)** For the avoidance of doubt, the application of subsection (1) extends to –

- (a) documents used in legal proceedings commenced before the commencement day; and
- (b) contractual documents executed before the commencement day.

**(3)** In this section –

**“Council”** means Harness Racing Tasmania or  
Greyhound Racing Tasmania.

### **Councils: elections**

**8. (1)** Any election being held before the commencement day to elect a member of a former Council may, if the election had not been completed immediately before that day, be continued and completed as if the New Act had not been enacted.

**(2)** The declared result of any such election has effect under and for the purposes of the New Act.

**(3)** For the purposes of this section, an election is taken to have been completed once the returning officer for the election has caused notice of the declared election result to be published in any newspaper.

### **Tasmanian Racing Appeal Board (TRAB)**

**9. (1)** A person who, immediately before the commencement day, held an appointment as an ordinary member of the former Board continues in office as an ordinary member of the new Board under the New Act until –

- (a)** the appointment expires; or
- (b)** the appointment is sooner terminated under the New Act.

**(2)** A person who, immediately before the commencement day, held the appointment of chairperson or deputy chairperson of the former Board continues in

office as chairperson or deputy chairperson, as the case may be, of the TRAB under the New Act until –

- (a) the appointment expires; or
- (b) the appointment is sooner terminated under the New Act.

(3) In this section –

**“former Board”** means the Tasmanian Racing Appeal Board (TRAB) as constituted under Part V of the former Racing Act;

**“new Board”** means the TRAB as constituted under Part 5 of the New Act;

**“ordinary member”** means a member of the TRAB other than the chairperson or deputy chairperson.

### **Stipendiary stewards**

**10. (1)** A person who, immediately before the commencement day, held an appointment as a stipendiary steward for a former Council under section 40A of the former Racing Regulation Act (in this section referred to as an “old appointment”) is taken to hold an appointment as a stipendiary steward under section 51(1) of the New Act (in this section referred to as a “new appointment”).

**(2)** Except as provided by this section, the person’s new appointment is taken to be on the same terms and conditions as his or her old appointment.

**(3)** The person’s new appointment continues until –

- (a) the day on which the person’s old appointment was due to expire; or

- (b) the new appointment is sooner terminated under this Act.

**(4)** In exercising and performing powers and functions as a stipendiary steward under the new appointment, the person is –

- (a) responsible to, and under the supervision of, the Director; and
- (b) not taken to act for or be responsible to, or be under the supervision of, any Council.

### ***Division 3 – Entitlements***

#### **Club registration, &c.**

**11. (1)** A club that was registered as a club under the former Racing Regulation Act is taken to be registered as a club under the New Act.

**(2)** Subsection (1) applies to a club even if its registration under the former Racing Regulation Act was suspended, but nothing in this section is to be taken as revoking, or reducing the period of, the suspension.

**(3)** Any winding-up being executed under section 45 of the former Racing Regulation Act (pursuant to the publication of a winding-up notice within the meaning of that section) may be continued and executed by the Director under section 47 of the New Act.

**(4)** Any approval given by the Director under section 45AA of the former Racing Regulation Act but not acted upon before the commencement day has effect as a permission for the purposes of section 48 of the New Act.

**Bookmaker registration and telephone betting endorsements**

**12. (1)** A person who was registered as a bookmaker under the former Racing Regulation Act is taken to be registered as a bookmaker under the New Act (on the same conditions, if any, as applied to the registration immediately before the commencement day) until –

- (a) the period for which the person was registered under the former Racing Regulation Act expires; or
- (b) the registration is sooner cancelled or surrendered under the New Act.

**(2)** If the person's certificate of registration as a bookmaker under the former Racing Regulation Act had a telephone betting endorsement, the endorsement also continues in force (on the same conditions, if any, as applied to the endorsement immediately before the commencement day) under the New Act until –

- (a) the period for which the person was registered under the former Racing Regulation Act expires; or
- (b) the registration is sooner cancelled or surrendered under the New Act.

**(3)** Subsections (1) and (2) apply even if, immediately before the commencement day, the person's registration as a bookmaker under the former Racing Regulation Act was suspended, but nothing in this section is to be taken as revoking, or reducing the period of, the suspension.

***Division 4 – Applications***

**Applications for registration**

**13. (1)** An application for registration of any kind under the former Racing Regulation Act that had not been processed and finally determined immediately before the commencement day is, if equivalent registration is available under the New Act, to be regarded by the Director, the TRAB and other persons as an application for that equivalent registration under the New Act and the application may continue to be processed and determined in all respects as if it were a valid application made under the New Act.

**(2)** If equivalent registration is not available under the New Act –

- (a) the application lapses; and
- (b) the application fee, if any, that accompanied the application is to be refunded in full to the applicant.

**(3)** The fee that is payable for an application referred to in subsection (1) is the same as the fee, if any, that was payable under the former Racing Regulation Act.

**(4)** The bond, indemnity or other form of security that is required to be given in relation to an application referred to in subsection (1) is the same as the bond, indemnity or other form of security, if any, that was required to be given under the former Racing Regulation Act.

**(5)** In this section –

**“registration”** does not include registration under the *Rules of Racing*.

**Applications for telephone betting endorsements**

**14. (1)** An application for a telephone betting endorsement under the former Racing Regulation Act that had not been processed and finally determined immediately before the commencement day is to be regarded by the Director and other persons as an application for a telephone betting endorsement under the New Act and the application may continue to be processed and determined in all respects as if it were a valid application made under the New Act.

**(2)** The application fee that is payable for the application is the same as the application fee that was payable under the former Racing Regulation Act.

**(3)** The bond, indemnity or other form of security that is required to be given in relation to the application is the same as the bond, indemnity or other form of security that was required to be given under the former Racing Regulation Act.

***Division 5 – Proceedings, &c.*****TRAB appeals**

**15. (1)** If an appeal under section 26 of the former Racing Act had not been completed immediately before the commencement day, the TRAB may proceed to hear, or continue to hear, and determine the appeal as if the New Act had not been enacted.

**(2)** On the completion of the appeal, the TRAB may make such orders as it thinks fit to ensure that its findings and determinations on the appeal are translated to the scheme of, and have effect under, the New Act.



(3) An order of the TRAB made under subsection (2) has effect as an order of the TRAB for the purposes of the New Act.

(4) For the purposes of this section, an appeal under section 26 of the former Racing Act is to be taken to have been completed as soon as the TRAB announces its findings, whether or not the reasons for those findings are given at the same time or a later time.

### **Inquiries**

**16. (1)** Any inquiry being held by the Director under section 24, 60AA or 60AAB of the former Racing Regulation Act may, in the Director's discretion –

- (a) be continued as an inquiry under the New Act;  
or
- (b) be discontinued.

(2) Any inquiry that was being held under section 30 of the former Racing Regulation Act is to be discontinued.

### **Commencement of proceedings under New Act**

**17.** For the avoidance of doubt, section 104 of the New Act applies only to offences committed on or after the commencement day.

## ***Division 6 – Rules and miscellaneous***

### ***Rules of Racing***

**18. (1)** The *Rules of Racing* that were in force for a code of racing under the former Racing Act immediately before

the commencement day continue in force as the *Rules of Racing* for that code of racing under and for the purposes of the New Act.

(2) On or after the commencement day, the *Rules of Racing* so continued in force may at any time be amended, or rescinded and replaced by new rules, in accordance with the New Act.

(3) Subject to section 19, any registration or licence in force under the *Rules of Racing* for a code of racing immediately before the commencement day continues in force and effect on and after that day, as a registration or licence under and subject to those *Rules of Racing*, as continued under and for the purposes of the New Act.

### **Continuation of determinations, &c., under certain *Rules of Racing***

**19. (1)** A *Rules of Racing* determination having force and effect immediately before the commencement day continues in force and effect on and after that day, according to its terms, as a determination under and for the purposes of those *Rules of Racing*, until whichever of the following first occurs:

- (a) the determination is discharged, or is exhausted or made redundant, by events;
- (b) the determination, if it has an express or implied expiry date, expires;
- (c) the determination is revoked, modified or superseded by a determination made by –
  - (i) in the case of thoroughbred racing, the Tasmanian Thoroughbred Racing Council; or

- (ii) in the case of harness or greyhound racing, the new administering body.

**(2)** In this section –

**“determination”** means any determination, decision, order or direction;

**“new administering body”** means –

- (a) for harness racing, the body referred to in section 18(1)(b) of the New Act; or
- (b) for greyhound racing, the body referred to in section 18(1)(c) of the New Act;

**“old administering body”** means –

- (a) for harness racing, the body referred to in section 16I(1)(b) of the former Racing Act; or
- (b) for greyhound racing, the body referred to in section 16I(1)(c) of the former Racing Act;

**“Rules of Racing determination”** means –

- (a) a handicapping, grading, race programming, field selection or similar determination; or
- (b) a determination (including a determination imposing or confirming any kind of suspension, disqualification or other penalty) in respect of any registration or licence –

made under and for the purposes of the *Rules of Racing* before the commencement day by –

- (c) in the case of thoroughbred racing, the Tasmanian Thoroughbred Racing Council; or
- (d) in the case of harness or greyhound racing, the old administering body.

### **Approved sports events**

**20. (1)** Any event that was the subject of a notice under section 63AA(1) of the former Racing Regulation Act is, if that notice was still in force immediately before the commencement day and not spent, taken to be an approved sports event within the meaning of and for the purposes of the New Act.

**(2)** The Director may, by notice published in the *Gazette*, revoke any notice under section 63AA(1) of the former Racing Regulation Act that was in force immediately before the commencement day.

**(3)** A notice published under subsection (2) is not a statutory rule.

### **Authorisations to enter racecourses**

**21.** An authorisation under section 16 of the former Racing Act in force immediately before the commencement day continues in force as an authorisation under section 96(1) of the New Act.

### **Directions to bookmakers**

**22.** To the extent that they are applicable under the New Act, any directions to bookmakers that were in force under section 59(3) of the former Racing Regulation Act continue

in force and effect during the transitional period, according to their terms, as directions to registered bookmakers under and for the purposes of the New Act.

### **Directions of TOTE Tasmania to Councils**

**23. (1)** To the extent that they are applicable under the New Act, any directions to a Council that were in force under section 16K of the former Racing Act immediately before the commencement day continue in force and effect during the transitional period, according to their terms, as directions to that Council under and for the purposes of the New Act.

**(2)** TOTE Tasmania may at any time during the transitional period rescind a direction referred to in subsection (1) or, by a further direction, amend any such direction.

### **Warning-off notices, &c.**

**24. (1)** Any notice issued by or on behalf of a racing authority under section 39 or 101 of the former Racing Regulation Act that was still in force immediately before the commencement day continues in force on and after that day, according to its terms, as a warning-off notice issued by that racing authority under section 54 of the New Act.

**(2)** In this section –

**“racing authority”** means the Director, a Council or a registered club.

***Division 7 – Preservation of former transitional  
arrangements***

**Preservation of 1999 restructuring transitionals**

**25. (1)** Notwithstanding the repeal of the former Racing Act, section 40 of that Act continues to have effect on and after the commencement day as if it were re-enacted in this Act.

**(2)** For the purposes of this section, an expression used in section 40 of the former Racing Act has the same meaning as it had in that Act.

**References to Tasmanian Principal Clubs Board**

**26. (1)** In construing, on or after the commencement day, an instrument that was in force before the 1985 changeover day, a reference to the Board is, unless the contrary intention appears in the instrument, to be read as a reference to the Tasmanian Thoroughbred Racing Council.

**(2)** In this section –

**“Board”** means the Tasmanian Principal Clubs Board constituted under the former Racing Act as in force between 13 February 1984 and the 1985 changeover day;

**“instrument”** means a document, other than an Act, that creates, evidences, modifies or extinguishes rights or obligations;

**“1985 changeover day”** means the day fixed by proclamation under section 2(2) of the *Racing Amendment Act (No. 2) 1985*.

***Division 8 – Regulations*****Savings and transitional regulations**

**27. (1)** The Governor may make regulations of a savings or transitional nature consequent on the repeal of the former Racing Act or former Racing Regulation Act and the enactment of the New Act, this Act or any Act with which the New Act is incorporated.

**(2)** Without limiting the generality of subsection (1), regulations made under this section may supplement any of the provisions of this Act.

**(3)** Regulations made under this section may –

- (a)** take effect on the commencement day or a later day as specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made; and
- (b)** be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations; and
- (c)** authorise any matter to be from time to time determined, applied or regulated by the Minister or Director; and
- (d)** rescind any regulations or other subordinate legislation made under the former Racing Act or former Racing Regulation Act (or under any Act that amended either of those Acts).

**PART 3 – ADMINISTRATION, CONSEQUENTIAL AMENDMENTS AND REPEALS****Administration of Act**

**28.** Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Racing; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Infrastructure, Energy and Resources.

**Consequential amendments**

**29.** The legislation specified in Schedule 1 is amended as specified in that Schedule.

**Act repealed**

**30.** The Act specified in Schedule 2 is repealed.

**Statutory Rules rescinded**

**31.** The Statutory Rules specified in Schedule 3 are rescinded.



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**Statutory Rule revoked**

**32.** The Statutory Rule specified in Schedule 4 is revoked.

**SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS**

## Section 29

***Animal Welfare Act 1993***

1. Section 25(2) is amended by omitting “registered club within the meaning of the *Racing and Gaming Act 1952*” and substituting “club registered under the *Racing Regulation Act 2004*”.

***Annulled Convictions Act 2003***

1. Part 5 of Schedule 1 is amended as follows:
  - (a) by omitting from clause 3 “bookmaker’s clerk under the *Racing Regulation Act 1952*” and substituting “bookmaker’s agent under the *Racing Regulation Act 2004*”;
  - (b) by omitting from clause 4 “*Racing Regulation Act 1952*” and substituting “*Racing Regulation Act 2004*”.

***Anzac Day Observance Act 1929***

1. Section 3 is amended as follows:
  - (a) by omitting the definition of “coursing”;
  - (b) by omitting “*Racing and Gaming Act 1952*” from the definition of “race meeting” and substituting “*Racing Regulation Act 2004*”.

2. Section 4(1) is amended by omitting “and coursing”.
3. Section 5(1) is amended by omitting “, coursing,”.
4. Section 6 is amended by omitting “*Racing and Gaming Act 1952*” from the definition of “race meeting” and substituting “*Racing Regulation Act 2004*”.
5. Section 9(2) is amended by omitting paragraph (a).

### ***Gaming Control Act 1993***

1. Section 76B(4) is amended as follows:
  - (a) by omitting from paragraph (a)(i) “section 59 of the *Racing and Gaming Act 1952*” and substituting “the *Racing Regulation Act 2004*”;
  - (b) by omitting paragraph (c) and substituting the following paragraph:
    - (c) a gaming activity carried on by the company formed under section 6 of the *TOTE Tasmania Act 2000*; and

### ***Judicial Review Act 2000***

1. Clause 3 of Schedule 1 is amended by omitting paragraph (j) and substituting the following paragraph:
  - (j) *Racing Regulation Act 2004*;

***Racing Regulation Act 1952***

1. Section 1(1) is amended by omitting “*Regulation*” and substituting “(*Totalizator Betting*)”.

2. Section 3 is amended as follows:

- (a) by omitting the definitions of “approved event”, “area” and “authorised police officer”;
- (b) by omitting the definition of “betting premises”;
- (c) by omitting the definitions of “cease to race” and “chairperson”;
- (d) by omitting the definition of “city area”;
- (e) by omitting the definition of “Commissioner for State Revenue”;
- (f) by omitting the definitions of “Director”, “existing club” and “fee unit”;
- (g) by omitting the definition of “goods and services tax”;
- (h) by omitting the definitions of “harness racing” and “harness racing club”;
- (i) by omitting the definition of “horse-racing club”;
- (j) by omitting the definition of “occupier”;
- (k) by omitting the definitions of “proprietary club” and “public place”;
- (l) by omitting the definition of “RAB”;
- (m) by omitting the definition of “registered club”;

- (n) by omitting the definition of “telephone betting endorsement”;
- (o) by omitting the definition of “trotting-horse”.

**3.** Part III is repealed.

**4.** Section 57E is amended by omitting subsection (2) and substituting the following subsection:

**(2)** Despite any law or rule of law to the contrary, it is lawful for persons to bet in a totalizator conducted by TOTE Tasmania in the performance of its function under subsection (1).

**5.** Sections 57QB, 57QC and 57QD are repealed.

**6.** Section 57U is amended by inserting after subsection (4) the following subsection:

**(5)** Despite any law or rule of law to the contrary, it is lawful for a club to conduct totalizator betting under a totalizator licence granted by TOTE Tasmania to the club’s committee pursuant to this section.

**7.** Section 57V(1) is amended by omitting “registered club.” and substituting “club registered under the *Racing Regulation Act 2004*.”.

**8.** Section 57ZP(b)(ii) is amended by inserting “within the meaning of section 37 of the *Racing Regulation Act 2004*” after “racecourse”.

**9.** Parts V and VI are repealed.

**10.** Sections 106, 107, 108, 109, 110, 111 and 111A are repealed.

**11.** Section 112 is amended as follows:

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- (a) by omitting subsections (4), (7), (8), (9) and (10);
- (b) by omitting subsections (12B) and (13).

**12.** Sections 113 and 114 are repealed.

**13.** Section 117 is repealed.

**14.** Section 119 is amended as follows:

- (a) by omitting paragraphs (a), (b) and (bb) from subsection (2);
- (b) by omitting paragraph (d) from subsection (2);
- (c) by omitting subsections (3), (3A), (3B) and (4);
- (d) by omitting from subsection (6) “, other than a regulation containing such a provision as is mentioned in subsection (3B),”.

**15.** Sections 121, 122 and 124 are repealed.

**16.** Schedules II and III are repealed.

***TT-Line Gaming Act 1993***

**1.** Section 9 is amended by omitting subsection (2).

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**SCHEDULE 2 – ACT REPEALED**

Section 30

*Racing Act 1983* (No. 87 of 1983)

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**SCHEDULE 3 – STATUTORY RULES RESCINDED**

Section 31

*Racing (Electoral) Regulations 1997* (No. 197 of 1997)

*Racing (Electoral) Amendment Regulations 1998* (No. 7 of 1998)



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**SCHEDULE 4 – STATUTORY RULE REVOKED**

Section 32

*Racing Order 1997* (No. 114 of 1997)