

# TASMANIA

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## **RACING REGULATION AMENDMENT (GOVERNANCE REFORM) (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) BILL 2008**

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**RACING REGULATION AMENDMENT  
(GOVERNANCE REFORM) (TRANSITIONAL AND  
CONSEQUENTIAL PROVISIONS) BILL 2008**

*(Brought in by the Minister for Racing, the Honourable  
Michael Anthony Aird)*

**A BILL FOR**

**An Act to provide for savings and transitional matters and  
to repeal and amend certain legislation consequential on  
the enactment of the *Racing Regulation Amendment  
(Governance Reform) Act 2008***

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**

**1. Short title**

This Act may be cited as the *Racing Regulation  
Amendment (Governance Reform) (Transitional  
and Consequential Provisions) Act 2008*.

**2. Commencement**

This Act commences on the day on which the  
*Racing Regulation Amendment (Governance  
Reform) Act 2008* commences.

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**PART 2 – CONSEQUENTIAL AMENDMENTS**

**3. Consequential amendments**

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

**4. Legislation rescinded**

The legislation specified in Schedule 2 is rescinded.

**5. Effect of certain consequential amendments**

The amendment by this Act of a provision of any regulations, rules or by-laws made under any Act does not prevent that provision or any other provision of those regulations, rules or by-laws from being amended or rescinded by any subsequent regulations, rules or by-laws.

**6. *Legal Profession (Miscellaneous and Consequential Amendments) Act 2007*, Schedule 1 amended**

- (1) If this Act commences before the *Legal Profession (Miscellaneous and Consequential Amendments) Act 2007*, Schedule 1 to that Act is amended by omitting items 1, 2, 3 and 7 of the amendments relating to the *Racing Regulation Act 2004*.

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- (2) If the *Legal Profession (Miscellaneous and Consequential Amendments) Act 2007* commences before this Act, the *Racing Regulation Act 2004* is amended by omitting the definition of “independent legal practitioner” from section 3.

**7. *Racing Regulation Amendment (Race Fields) Act 2008* amended**

The *Racing Regulation Amendment (Race Fields) Act 2008* is amended as follows:

- (a) by omitting paragraphs (b) and (e) from section 4;
- (b) by amending section 54B in section 5 as follows:
  - (i) by omitting from subsection (2) “(but need not)”;
  - (ii) by inserting in subsection (2)(a) “determined by the TRB,” after “amounts,”;
  - (iii) by omitting from subsection (3) “Director must consult with the relevant racing control body” and substituting “TRB must consult with the relevant racing clubs”;
  - (iv) by omitting from subsection (4) “Director” and substituting “Secretary of the Department”;

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- (v) by inserting after subsection (4) the following subsection:
  - (4A) The Secretary of the Department is to pay to the TRB within the prescribed time the sum paid under subsection (4), less an administration fee of not more than 5 per cent of that sum.
- (vi) by inserting in subsection (5) “, other than the fee determined by the TRB under subsection (3),” after “approval”;
- (c) by amending section 54D in section 5 as follows:
  - (i) by omitting from subsection (1) “Secretary of the Department” and substituting “IAB”;
  - (ii) by omitting subsection (2) and substituting the following subsection:
    - (2) An appellant must give notice to the IAB and the Director of the grounds of the appellant’s appeal.
  - (iii) by omitting subsection (3);

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- (iv) by omitting from subsection (4) “Secretary of the Department” and substituting “IAB”;
  - (v) by omitting subsection (5);
  - (vi) by omitting subsection (6) and substituting the following subsection:

(6) The IAB may –

- (a) dismiss the appeal; or
- (b) allow the appeal either unconditionally or subject to such conditions as the IAB thinks proper to impose; or
- (c) if the appeal is against the imposition of conditions, refuse to approve the application for a race field publication approval in respect of which the conditions were imposed.

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- (vii) by omitting from subsection (7) “Secretary of the Department” and substituting “IAB”;
- (viii) by omitting from subsection (7) “(other than a decision under subsection (6)(d))”;
- (ix) by omitting subsection (8);
- (d) by omitting section 54E from section 5;
- (e) by inserting the following sections after section 5:

**5A. Section 11 amended (General functions and powers of TRB)**

Section 11(1) of the Principal Act is amended by inserting after paragraph (q) the following paragraph:

- (qa) determining a fee for a race field publication approval for each code of racing; and

**5B. Section 22D amended (Persons may appeal to IAB against decisions of Director)**

Section 22D of the Principal Act is amended by inserting after paragraph (k) the following paragraphs:



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- (ka) refuse to grant approval to a person to publish a Tasmanian race field; or
  - (kb) impose conditions on a race field publication approval; or
  - (kc) cancel or vary the terms of a race field publication approval; or

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**PART 3 – SAVINGS AND TRANSITIONAL**

**8. Interpretation of Part 3**

(1) In this Part –

“**asset**” means property of any kind whether tangible or intangible, real or personal, present or future, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective and includes, without limitation, any –

- (a) legal or equitable estate or interest in real or personal property; and
- (b) chose in action; and
- (c) money, documents or securities; and
- (d) infrastructure; and
- (e) plant and equipment; and
- (f) intellectual property; and
- (g) goodwill; and
- (h) records; and
- (i) other right;

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**“commencement day”** means the day on which the *Racing Regulation Amendment (Governance Reform) Act 2008* commences;

**“former Council”** means a Council in existence under the *Racing Regulation Act 2004* immediately before the commencement day;

**“liability”** means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, and whether owed alone or jointly or jointly and severally with any other person;

**“prescribed functions and powers”** means the functions and powers of TOTE Tasmania, in existence immediately before the commencement day, that relate to the administration of the racing industry;

**“right”** means any right, power, privilege or immunity whether actual, contingent or prospective;

**“State tax”** means any of the following if imposed by any Act or law of Tasmania:

- (a) a fee, including an application fee and registration fee;
- (b) a tax, including a duty;

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(c) a charge;

**“transfer order”** means an order contained in a notice published in the *Gazette* under section 11;

**“transferor”** means TOTE Tasmania, or a former Council, as the context indicates or requires, from which any assets, rights, liabilities or employees are transferred to the TRB.

- (2) If an expression used in this Part is defined in the *Racing Regulation Act 2004*, it has, unless the contrary intention appears, the same meaning in this Part as in that Act.

**9. Former Council members**

- (1) The office of a member of a former Council ceases to exist on the commencement day.
- (2) A person is not entitled to any compensation or payment in respect of his or her office ceasing to exist as provided in subsection (1).

**10. Acting Chief Executive Officer of TRB**

- (1) The person holding the position of Chief Racing Officer of TOTE Tasmania immediately before the commencement of this Act is taken to be the Acting Chief Executive Officer of the TRB until

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a Chief Executive Officer is appointed by the TRB.

- (2) The Acting Chief Executive Officer is appointed for a period not exceeding 6 months from the commencement day under the same terms and conditions that applied immediately before that day.

**11. Stipendiary stewards**

A person who, immediately before the commencement day, held an appointment under section 51(1) of the *Racing Regulation Act 2004* as a stipendiary steward continues to hold that appointment as a stipendiary steward for the remainder of the period for which he or she was appointed.

**12. Notice of transfer**

- (1) The Minister may, by notice published in the *Gazette*, order the transfer to the TRB of such of a specified transferor's –
- (a) assets, rights and liabilities; and
  - (b) employees –
- as are specified in the order.
- (2) The assets, rights and liabilities and the employees specified in the order referred to in

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subsection (1) need not constitute all of the assets, rights or liabilities or all of the employees of the transferor and, in relation to TOTE Tasmania, only relate to the prescribed functions and powers.

- (3) A transfer order takes effect on the day specified in the order.
- (4) A transferor that is the subject of a transfer order is to ensure that transfer of the specified assets, rights, liabilities and employees occurs on or as soon as practicable after the transfer day.
- (5) The Minister may publish more than one notice in respect of the transfer of assets, rights, liabilities and employees of a transferor and may specify different transfer days in respect of the transfer of those assets, rights, liabilities and employees.
- (6) The Minister may amend or revoke any notice published under this section.
- (7) A notice under this section is not a statutory rule for the purposes of the *Rules Publication Act 1953*.
- (8) State tax is not payable in respect of any document prepared to give effect to a transfer order.

**13. Confirmation of transfer**

- (1) If any dispute arises –

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- (a) as to whether an asset, right, liability or employee is transferred to the TRB under a transfer order; or
  - (b) as to whether any, or any part of any, contract or document relates to an asset, right, liability or employee transferred to the TRB under a transfer order –

the Minister may determine the matter and is to provide the concerned parties with notice of that determination.

- (2) The determination of the Minister under subsection (1) is final and binding on the TRB and transferor concerned.

**14. Vesting of assets, rights and liabilities in TRB**

- (1) When any assets, rights or liabilities are transferred, the following provisions have effect:
  - (a) the assets of the transferor that are the subject of the transfer order vest in the TRB by virtue of this section and without the need for any further conveyance, transfer, assignment or assurance;
  - (b) the rights or liabilities of the transferor that are the subject of the transfer order become by virtue of this section the rights or liabilities of the TRB;
  - (c) all legal or other proceedings relating to the assets, rights or liabilities that are the

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subject of the transfer order commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the TRB;

- (d) any legal or other proceedings relating to the assets, rights or liabilities that are the subject of the transfer order which could have been commenced immediately before the transfer by or against the transferor or a predecessor of the transferor may be commenced by or against the TRB;
- (e) a judgment or order of a court or other tribunal obtained before the transfer by or against the transferor or a predecessor of the transferor relating to the assets, rights or liabilities that are the subject of the transfer order may be enforced by or against the TRB;
- (f) any document relating to legal or other proceedings relating to the assets, rights or liabilities that are the subject of the transfer order that has been served before the transfer on or by a transferor or a predecessor of the transferor is taken, where appropriate, to have been served on or by the TRB;



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- (g) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities that are the subject of the transfer order before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the TRB;
  - (h) a reference in any Act, in any instrument made under any Act, in any contract, agreement, arrangement or undertaking, or in any document of any kind to –
    - (i) the transferor; or
    - (ii) any predecessor of the transferor –

to the extent to which the reference relates to the assets, rights or liabilities that are the subject of the transfer order, is taken to be, or include, a reference to the TRB.

- (2) The operation of this section is not to be regarded –
  - (a) as a breach of contract or confidence or otherwise as a civil wrong; or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or

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- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability that is the subject of the transfer order; or
  - (d) as an event of default under any contract or other instrument.
- (3) A transfer is subject to the terms and conditions of the transfer order by which it is effected.

**15. Transfer of interests in land**

- (1) A transfer order may transfer an interest in respect of land vested in the transferor without transferring the whole of the interests of the transferor in that land.
- (2) If the interest transferred is not a separate interest, the order operates to create the interest transferred in such terms as are specified in the order.
- (3) This clause does not limit any other provision of this Act.

**16. No compensation payable**

No compensation is payable to any person or body in connection with a transfer.

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**17. Transfer of employees**

- (1) As soon as practicable after receiving notice of the transfer day specified in a transfer order, the relevant transferor is to give to each of the employees specified in the transfer order written notice that his or her employment is to be transferred on that day, by the operation of this Part, to the TRB.
- (2) The TRB becomes the employer of each employee referred to in subsection (1), in accordance with the terms of the transfer order, on the transfer day specified in the order.
- (3) An employee referred to in subsection (1) –
  - (a) is to be regarded for all purposes as having become an employee of the TRB, on the same terms and conditions, including remuneration, as the employee was receiving immediately before the day specified in the order; and
  - (b) retains all existing and accrued rights relating to leave as if service as an employee of the TRB were a continuation of his or her service as an employee of the transferor.
- (4) The period of service of a transferred employee referred to in subsection (1) is taken to be service as an employee of the TRB.
- (5) Nothing in this section prevents any of the terms of employment of an employee specified in a

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transfer order being altered by an award, industrial agreement or law after he or she becomes an employee of the TRB.

- (6) The transfer of an employee's employment to the TRB is not to be regarded as a cessation of employment for superannuation purposes.

**18. Superannuation**

- (1) The TRB is to make adequate provision to meet any liability it may have under the *Retirement Benefits Act 1993* to pay pension and other benefits in respect of employees specified in the transfer order who are transferred to the TRB.
- (2) Nothing in this Act affects the superannuation entitlements of a person referred to in subsection (1) that were in existence immediately before the commencement of this Act.

**19. Registrations and licences**

- (1) An application for a registration or licence of any kind under the *Racing Regulation Act 2004* or the *Rules of Racing* that had not been processed and finally determined immediately before the commencement day is, if equivalent registration is available after the commencement day, to be regarded by the Director, the IAB and other persons as an application for that equivalent registration after the commencement

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day, and the application may continue to be processed and determined in all respects as if it were a valid application made after that day.

- (2) If equivalent registration or licence is not available after the commencement day –
  - (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 immediately before the commencement day.
- (4) A registration or licence granted or approved under the *Racing Regulation Act 2004* or the *Rules of Racing* and in force immediately before the commencement day continues in force on or after the commencement day as if it had been granted or approved under this Act or those Rules.
- (5) Subsection (4) applies to a registration or licence even if the holder of the registration or licence was suspended or disqualified under the *Racing Regulation Act 2004* or the *Rules of Racing*, but nothing in this section is to be taken as revoking, or reducing the period of, that suspension or disqualification.

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**20. *Rules of Racing***

- (1) The *Rules of Racing* that were in force for a code of racing under the *Racing Regulation Act 2004* immediately before the commencement day continue in force as the *Rules of Racing* for that code of racing after the commencement day.
- (2) On or after the commencement day, the *Rules of Racing* so continued in force may at any time be amended, rescinded or replaced by new *Rules of Racing*, in accordance with the *Racing Regulation Act 2004*.
- (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 *Racing Regulation Act 2004*.

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

- (1) A *Rules of Racing* determination in 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:

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- (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.

(2) In this section –

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

**“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 as in existence immediately before that day; or
- (d) in the case of harness racing, the Harness Racing Regulatory Panel

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as in existence immediately  
before that day; or

- (e) in the case of greyhound racing,  
the Greyhound Racing  
Regulatory Panel as in existence  
immediately before that day.

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

Any notice issued by or on behalf of a Council under section 54 of the *Racing Regulation Act 2004* 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 the TRB.

**23. Acts, &c., done by or to former Councils and TOTE Tasmania**

All acts, matters and things done or omitted to be done by, or done or suffered in relation to, a former Council or TOTE Tasmania in relation to the prescribed powers and functions before the commencement day have, on and after that day, the same force and effect as if they had been done or omitted to be done by, or done or suffered in relation to, the TRB.



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**24. Savings and transitional regulations**

- (1) The Governor may make regulations of a savings or transitional nature consequent on the enactment of the *Racing Regulation Amendment (Governance Reform) Act 2008*.
- (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.

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**PART 4 – MISCELLANEOUS**

**25. Administration of Act**

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.

**SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS**

**Section 3**

***Racing (Bookmaker Betting) Regulations 2004***

1. Regulation 4(1) is amended by omitting the definition of “bookmaker”.

***Racing (Miscellaneous) Regulations 2004***

1. Regulation 7(1) is amended by omitting “section 40(1)(c), (d) and (e)” and substituting “section 40(1A)(c), (d) and (e)”.
2. After regulation 8, the following regulations are inserted in Part 3:

**9. Prescribed deposits**

The deposits specified in Schedule 2 are prescribed as the deposits that are payable under the Act for the matters to which they respectively relate.

**10. Prescribed bodies**

For the purpose of the definition of “racing industry association” in section 3 of the Act, the following bodies are prescribed:

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- (a) Australian Trainers Association  
(Tasmanian Branch);
- (b) Tasmanian Racehorse Owners  
Association;
- (c) Thoroughbred Breeders  
Tasmania;
- (d) Tasmanian Jockeys Association;
- (e) Light Harness Tasmania;
- (f) North Western Tasmania Light  
Harness Association;
- (g) Northern Tasmanian Light  
Harness Association;
- (h) Breeders, Owners, Trainers and  
Reinspersons Association  
Tasmania;
- (i) Greyhound Owners, Trainers and  
Breeders Association of  
Tasmania.

**3.** Schedule 1 is amended by omitting item 1.

**4.** After Schedule 1, the following Schedule is  
inserted:

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**SCHEDULE 2 – PRESCRIBED DEPOSITS**

Item	Section of Act	Matter	Deposit*
1.	22G(2)	Deposit on an appeal to the IAB	\$200
2.	30(2)	Deposit on a minor appeal to the TRAB	\$200
3.	30(2)	Deposit on other appeals to the TRAB	\$500

\*All deposits are GST exempt

***Racing (Totalizator Betting) Act 1952***

1. Section 57E is amended by omitting subsections (5), (6) and (7).

***TOTE Tasmania (Racing Regulation) Act 2004***

1. The long title is omitted and the following long title is substituted:

**An Act to impose certain requirements  
on TOTE Tasmania Pty Ltd in  
relation to financial support of the  
racing industry and for related  
purposes**

2. Section 3 is amended as follows:

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- (a) by omitting the definition of “racing year”;
- (b) by omitting “Treasurer.” from paragraph (b) of the definition of “shareholders” and substituting “Treasurer;”;
- (c) by inserting the following definition after the definition of “shareholders”:

**“TRB”** means the Tasmanian Racing Board established under the *Racing Regulation Act 2004*.

- 3. Divisions 1 and 2 of Part 2 are repealed.
- 4. Section 10 is amended by omitting subsection (1) and substituting the following subsection:
  - (1) TOTE Tasmania must, in each financial year, pay a product fee to the TRB to enable the TRB to perform its functions and exercise its powers under the *Racing Regulation Act 2004*.
- 5. Section 11(3) is amended as follows:
  - (a) by inserting “paid to the TRB and are to be” after “be”;
  - (b) by omitting from paragraph (b) “TOTE Tasmania” and substituting “the TRB”.

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**6.** Section 11A(1) is amended as follows:

- (a) by omitting “apply” and substituting “pay to the TRB”;
- (b) by omitting “to the Tasmanian racing industry for the conduct of race meetings (including prize money) and the administration, maintenance and improvement of horse racing and greyhound racing”.

***TOTE Tasmania Act 2000***

**1.** Section 7 is amended by omitting paragraphs (b) and (c) and substituting the following paragraph:

- (b) to encourage wagering on Tasmanian racing; and

***Workers Rehabilitation and Compensation Act 1988***

**1.** Section 4DC is amended as follows:

- (a) by omitting from subsection (1) “Council” and substituting “TRB”;
- (b) by omitting from subsection (2)(a) “Council” and substituting “TRB”;
- (c) by omitting from subsection (2)(b) “Council” and substituting “TRB”;

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- (d) by inserting the following definition before the definition of “licensed” in subsection (4):

**“Director”** means the Director of Racing appointed under the *Racing Regulation Act 2004*;

- (e) by omitting the definition of “Council” from subsection (4);
- (f) by omitting “Council” from the definition of “licensed” in subsection (4) and substituting “the Director”;
- (g) by omitting “*Racing Regulation Act 2004.*” from the definition of “Rules of Racing” in subsection (4) and substituting “*Racing Regulation Act 2004;*”;
- (h) by inserting the following definition after the definition of “Rules of Racing” in subsection (4):

**“TRB”** means the Tasmanian Racing Board established under the *Racing Regulation Act 2004*.



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**SCHEDULE 2 – LEGISLATION RESCINDED**

Section 4

*Racing (Electoral) Regulations 2004* (No. 167 of 2004)