



Racing NSW

Board Code of Conduct

(May 2024)

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1. Purpose of the Code

This Code of Conduct (**Code**) is required under section 11A of the *Thoroughbred Racing Act 1996* (NSW). It provides guidance to Board Members to help them carry out their duties and responsibilities effectively. Board Members are bound by this Code and are required to act in accordance with this Code. There are other Codes of Conduct that apply to staff of Racing NSW as required under section 11A of the *Thoroughbred Racing Act 1996* (NSW) as the duties and responsibilities of staff vary depending upon their position.

2. Role of the Board of Racing NSW

The role of the Board is to provide strategic guidance and governance to Racing NSW by setting policies and initiatives and to review and monitor the achievement of objectives by Racing NSW. Management has responsibility to implement the strategies, and adopt the policies approved by the Board.

Other than in circumstances where a Board Member has been delegated authority by the Board, the Board is to act as “one” with no individual Board Member being permitted to act singularly in the day-to-day operation or management of Racing NSW.

Media and public comment on matters relating to Racing NSW are restricted to the Chairman and Chief Executive or as delegated by the Board or the Chief Executive. Policy announcements are to be made by the Chairman or Chief Executive or as delegated by the Board or the Chief Executive.

3. Duties of the Board

The *Thoroughbred Racing Act 1996* (NSW) contains a number of statutory duties of Board Members. These include, but are not limited to, section 11 which provides that *“it is the duty of each appointed member of the Board to act in the public interest and in the interest of the horse racing industry as a whole”*.

In addition to those statutory duties, Board Members are subject to a range of duties owed to Racing NSW arising from common law and other sources. These include fundamental duties such as the fiduciary duty to act honestly, in good faith and to the best of his or her ability in the interests of Racing NSW itself as a whole and the duty to use due care and diligence. In accordance with these duties, Board Members are required to:

- Act with integrity.
- Act bona fide in the best interests of Racing NSW as a whole.
- Exercise the powers conferred by the *Thoroughbred Racing Act 1996* (NSW) for the proper purposes of Racing NSW and not for any extraneous purpose, and
- Avoid being placed in a position where the Board Member’s duty to Racing NSW as a whole conflicts or may conflict with personal interest, and if such a possibility arises disclosing the matter and handling it in the interests of Racing NSW as a whole and in accordance with this Code and the *Thoroughbred Racing Act 1996* (NSW).

In line with their duties and this Code, Board Members are required to publicly support decisions made by the Board of Racing NSW, even in cases where the Board Member did not (and perhaps still does not) personally agree with the decision. Board Members do not have the right to usurp decisions of Racing NSW when they do not agree with the majority decision. Board Members must not make disparaging remarks about Racing NSW, its Board Members or employees.

4. Meetings and Transaction of Business

The business of the Board of Racing NSW is to be transacted at a formal meeting of the Board or by circular resolution as set out below.

Meetings

As set out in sections 19 and 20 of the *Thoroughbred Racing Act 1996* (NSW):

- The quorum for a meeting of the Board is a majority of the appointed Board Members as constituted at that time.
- The Chairman or, in the absence of the Chairman, the Deputy Chairman is to preside at Board Meetings.
- If neither the Chairman nor Deputy Chairman is present at a meeting, the Board Members present may elect one of their number to preside at the meeting. The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.
- The Board may, if it thinks fit, transact any of its business at a meeting at which Board Members (or some Board Members) participate by telephone, closed-circuit television or other means, but only if a Board Member who speaks on a matter at the meeting can be heard by the other Board Members. The Chairman and each other Board Member have the same voting rights as they have at an in-person meeting of the Board.
- A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of Racing NSW.

Circular Resolutions

As set out in section 20 of the *Thoroughbred Racing Act 1996* (NSW):

- The Board may, if it thinks fit, transact any of its business by the circulation of papers among all of the Board Members, and a resolution in writing approved in writing by a majority of the appointed Board Members is taken to be a decision of Racing NSW.
- Email may be used to circulate papers among Board Members and a resolution approved by email is taken to have been approved in writing.
- The Chairman and each other Board Member have the same voting rights as they have at an ordinary meeting of the Board.
- An approved circular resolution is to be recorded in the minutes of the meetings of Racing NSW.

Due diligence

A Board Member should attend all Board meetings but where attendance at meetings is not possible, appropriate steps should be taken to obtain leave of absence. Pursuant to section 15(1)(d) of the *Thoroughbred Racing Act 1996* (NSW), the office of an appointed Board Member becomes vacant if the Board Member is absent from 4 consecutive meetings of the Board NSW of which reasonable notice has been given to the Board Member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those

meetings, the Board Member is excused by Racing NSW for having been absent from those meeting

A Board Member must acquire knowledge of the statutory and regulatory requirements affecting Board Members in the discharge of their duties to Racing NSW and be aware of the physical, political and social environment in which it operates.

In order to be fully effective, Board Members should review and consider all relevant information provided to the Board so that Board Members are able to make a reasoned judgment and so discharge their duties of care and diligence.

Respectful consideration of views

Board Members should be respectful of the views of other Board Members when matters are being considered by the Board and any debate on issues should be conducted with due respect and courtesy and in a civilised manner. All decisions of the Board are determined by majority vote and, upon a decision being made, Board Members are required to support the decision publicly and with any third parties even if the Board Member did not (and perhaps still does not) personally support the decision.

5. Confidentiality of Information

Board Members have an obligation to maintain the confidentiality of information provided to them which is the property of Racing NSW. Further, information (both written and verbal) that is not known to other parties should not be released by a Board Member without the express permission of the Board.

Confidential information available to the Board Members must only be used in ways which are consistent with the obligations and duties of the Board Members. Obligations under applicable legislation (such as the *Government Information (Public Access) Act 2009*) and in respect of mandatory court orders (such as discovery and subpoenas) are exclusions to the prohibition on disclosing confidential information.

6. Conflicts of Interest including Pecuniary Interests

The avoidance of conflicts of interest (perceived or actual) is paramount. Conflicts of interest are assessed in terms of the likelihood that Board Members possessing a particular interest could be influenced or might appear to be influenced, in the performance of their duties on any matter. At all times, a Board Member must be able to act in the interests of Racing NSW as a whole. The interests of associates, affiliates, other racing interests and personal interests of the Board Member or the Board Member's family or associates must not be allowed to prevail over those of Racing NSW. The pursuit of self-interest or representation of a factional interest above the interests of Racing NSW is a breach of a Board Member's fiduciary duties.

Where a conflict or perceived conflict does arise, the Board Member must comply with section 21 of the *Thoroughbred Racing Act 1996* (NSW) which requires disclosure and precludes the Board Member from participating in the debate and/or voting on the matter. For the avoidance of doubt, the process specified in section 21 of the *Thoroughbred Racing Act 1996* (NSW) is to apply to all conflicts of interest and is not restricted to pecuniary interests.

The Board Member should discuss with the Chairman whether it would be appropriate to arrange that the relevant parts of the Board Papers are not sent, or in an extreme case whether it would be necessary to resign from the Board of Racing NSW. The Chairman or Chief Executive is available to discuss potential conflicts of Interest with Board Members. In any event, full disclosure of conflicts or potential conflicts must be made as soon as possible after the Board Member becomes aware of the

conflict or potential conflict.

The Board Members are required to declare and keep updated a register of other Board positions and relevant racing and breeding related interests held. Conflicts of interest are assessed in terms of the likelihood of that Board Member possessing a particular interest which could influence or appear to influence that Board Member in the performance of their duties for Racing NSW.

Pursuant to section 21 of the *Thoroughbred Racing Act 1996* (NSW)

(1) if:

- (a) a member of the Board or of a committee of Racing NSW has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board or the committee, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board or the committee.

(2) A disclosure by a member at a meeting of the Board or a committee of Racing NSW that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subsection (1).

(3) Particulars of any disclosure made under this section must be recorded by the Board or the committee in a book kept for the purposes and that book must be open at all reasonable hours to inspection by any person on payment of the reasonable fee determined by the Board.

(4) After a member has disclosed the nature of an interest in any matter, the member must not:

- (a) be present during any deliberations of the Board or the committee with respect to the matter, or
- (b) take part in any decision of the Board or the committee with respect to the matter.

Again, as stated above, the process specified in section 21 of the *Thoroughbred Racing Act 1996* (NSW) is to apply to all conflicts of interest and is not restricted to those relating to pecuniary interests.

7. Gifts and Hospitality

In their dealings with other individuals and entities in the industry, Board Members must always act to foster Racing NSW's reputation for independence, impartiality and scrupulous adherence to ethical standards.

Board Members must not solicit or accept gifts, rewards or benefits in connection with the performance of their duties, or which might compromise or be seen to compromise their independence and objectivity, or which might give rise to a real or apparent conflict of interest. Board Members need to ensure that they are not put in a position where gifts or hospitality are, or can be seen to be, solicited, accepted or provided in order to influence them in the performance of their duties.

Board Members may accept minor hospitality offered in the course of their duties if:

- the total value is modest or nominal; or
- the offer is in accordance with normal social practice; or
- the level of hospitality is not more than Racing NSW would provide in similar circumstances.

Board Members must never accept, under any circumstances, an offer of:

- money or gifts that could be readily converted into money; or
- service or favoured treatment, even if of no measurable value, relating to thoroughbred racing or breeding.

If an offer of an unacceptable gift, reward, benefit or hospitality is made to a Board Member, that Board Member must report it to the Racing NSW Chair and/or Chief Executive. If a Board Member is unsure whether an offer of a gift, reward, benefit or hospitality is unacceptable, the Board Member should report it to the Racing NSW Chair and/or Chief Executive and, in conjunction with the Board Member, they should determine whether the offer is unacceptable.

As a private individual, a Board Member may accept a benefit if it is offered to, and accepted by, the public or the industry.

8. Wagering

Board Members of Racing NSW are to only place bets with licensed wagering operators and should not accept inducements or preferential treatment which are not otherwise provided to the public generally.

9. Staff

Board Members must take care not to use their position as a Board Member to influence any other Board Members or Racing NSW staff in the performance of their duties or functions for the purpose of obtaining advantage, whether direct or indirect, for themselves, their family or their associates.

Board Members must ensure contact with Racing NSW staff is:

- through the Racing NSW Chief Executive; or
- is otherwise in accordance with a specific resolution of the Board.

10. Maintenance and Promotion of Public Confidence

Board Members must not engage in conduct likely to bring discredit upon Racing NSW or otherwise diminish or prejudice the confidence in Racing NSW of the general public or of participants in the racing and breeding industry.

Board Members must report to the Chairman any actions by others which may adversely affect, either directly or indirectly, the public confidence in the integrity of Racing NSW.

11. Enforcement of the Code of Conduct

In addition to legal obligations applying to Board Members generally, breaches of this code may result in Racing NSW recommending to the Minister that the Board Member be removed from office in accordance with Section 15 (2) of the Thoroughbred Racing Act 1996.

12. Summary

In summary, to meet the requirements of Racing NSW and this Code, Board Members must:

- At all times act honestly and with integrity;
- Act at all times in the interest of Racing NSW as a whole rather than any sectional interest;
- Avoid conflicts of interest;
- Be independent in their judgments and actions;
- At all times exercise due care in the performance of their duties;
- Be diligent, attend Board Meetings and make themselves knowledgeable about the Rules and legal requirements, the operations of Racing NSW and the industry and general social environment in which it operates;
- Not release information outside the Board Room; and
- Report to the Chairman or Chief Executive any actions by others which could adversely affect either directly or indirectly the honest and impartial exercise of their duties as a Board Member.

APPENDIX A - PROFORMA BOARD MEMBER'S CONFIRMATION AND DISCLOSURE OF INTERESTS

BOARD MEMBER'S CONFIRMATION AND DISCLOSURE OF INTERESTS

To: Chairman
Racing NSW
Level 7
51 Druitt Street
Sydney NSW 2000

From: _____

I confirm that I have read and agree to abide by the Racing NSW Board Code of Conduct.

The information provided below is for disclosure at relevant meetings and for inclusion in the register of pecuniary and other interests.

I declare that I and/or my associates have the following pecuniary interests which may or may appear to raise a conflict with the proper performance of my duties as a member of the Board of Racing NSW.

1. Memberships of racing clubs, committees, sub committees and associations:

2. Involvement as owner or breeder of Thoroughbred horses

3. Directorship and similar positions

4. Interests by my spouse, de facto or relatives, partners or employees;

5. Interests by companies or other bodies of which I, my nominee, partner or employee are members:

(attach an additional sheet if further space is required)

I agree to advise any changes to these circumstances as soon as possible after the relevant facts have come to my knowledge.

Signed: _____ Date: _____