



New South Wales

Australian Jockey and Sydney Turf Clubs Merger Amendment Bill 2011

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

In 1863, the then Governor, on behalf of the Crown, granted the land that comprises Randwick Racecourse on trust to 3 trustees for the principal purpose of enabling the land to be used as a racecourse by a lessee. The lessee of the Racecourse until recently was the Australian Jockey Club. The lessee of the Racecourse is now the new Australian Turf Club Limited by reason of the operation of the *Australian Jockey and Sydney Turf Clubs Merger Act 2010* (the **principal Act**), which facilitated the merger of the Australian Jockey Club and the Sydney Turf Club for this purpose.

Randwick Racecourse continues to be subject to the terms of the trust established in 1863 (the **existing trust**), subject to certain statutory modifications contained in the principal Act. The principal role of the trustees of Randwick Racecourse (the **existing trustees**) is to act as the lessors of the Racecourse on behalf of the existing trust.

The object of this Bill is to amend the principal Act:

- (a) to dissolve the existing trust and create a new corporation to be called the Randwick Racecourse Trust (the **new Trust**), and

- (b) to provide for the new Trust to have 3 trustees and a modern corporate governance structure, and
- (c) to transfer Randwick Racecourse to the new Trust and enable the Trust to exercise the functions of the lessor of the Racecourse, and
- (d) to require the new Trust to obtain the approval of the Minister before it consents to the use of Randwick Racecourse for any activity that the lessee of the Racecourse would otherwise not be permitted to conduct (or allow another person to conduct) and to provide for the withdrawal of such consents, and
- (e) to make provision for matters of a savings or transitional nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Australian Jockey and Sydney Turf Clubs Merger Act 2010 No 93

Schedule 1 [6] provides for the constitution of the new Trust, its functions and the appointment of the trustees of the Trust. **Schedule 1 [1]–[5], [7] and [9]–[11]** make consequential amendments.

Schedule 1 [8] requires the new Trust:

- (a) to obtain the approval of the Minister before consenting to the use of Randwick Racecourse for any activity that the lessee of the Racecourse would otherwise not be permitted to conduct (or allow another person to conduct), and
- (b) to obtain the approval of the Minister before withdrawing such a consent, and
- (c) to withdraw such a consent if directed to do so by the Minister.

Schedule 1 [13] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [14] enacts provisions of a savings or transitional nature, including provisions:

- (a) to dissolve the existing trust, and
- (b) to transfer Randwick Racecourse and the other assets, rights and liabilities of the existing trust to the new Trust.

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Schedule 1 [12] makes an amendment that is consequential on the transfer of the assets, rights and liabilities of the existing trust to the new Trust.

Schedule 1 [15] enacts provisions relating to the procedure of the new Trust and provisions relating to the trustees of the new Trust.

First print



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New South Wales

Australian Jockey and Sydney Turf Clubs Merger Amendment Bill 2011

No. , 2011

A Bill for

An Act to amend the *Australian Jockey and Sydney Turf Clubs Merger Act 2010* with respect to the constitution and functions of the Randwick Racecourse Trust.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Australian Jockey and Sydney Turf Clubs Merger Amendment Act 2011</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6

Schedule 1	Amendment of Australian Jockey and Sydney Turf Clubs Merger Act 2010	1
	No 93	2
		3
[1] Section 4 Interpretation		4
	Omit “the Randwick Racecourse trustees” from paragraph (a) of the definition of <i>Randwick Racecourse lease</i> in section 4 (1).	5
	Insert instead “the Trust”.	6
		7
[2] Section 4 (1), definition of “Randwick Racecourse trustees”		8
	Omit the definition.	9
[3] Section 4 (1)		10
	Insert in alphabetical order:	11
	<i>Trust</i> means the Randwick Racecourse Trust constituted by this Act.	12
	<i>Trustee</i> means a trustee referred to in section 27B.	13
		14
[4] Sections 13 (2) and 34 (1) (a) (i)		15
	Insert “(within the meaning of this Act as originally enacted)” after “trustees” wherever occurring.	16
		17
[5] Section 23 Sale or disposal of racing infrastructure of racecourses prohibited during 10-year moratorium period		18
	Omit “the Randwick Racecourse trustees” from the note to section 23 (1).	19
	Insert instead “the Trust”.	20
		21
[6] Part 2A		22
	Insert after Part 2:	23
	Part 2A Randwick Racecourse Trust	24
27A Constitution of the Trust		25
(1)	There is constituted by this Act a corporation under the corporate name of the Randwick Racecourse Trust.	26
		27
(2)	The Trust:	28
(a)	has and may exercise the functions conferred or imposed on it by or under this or any other Act, and	29
		30

	(b) is, for the purposes of any Act, a NSW Government agency.	1 2
	(3) For the purpose of assisting the Trust in exercising its functions, the Trust may, with the approval of the Minister, make use of the services of any officers or employees of the merged racing club.	3 4 5
	(4) Schedule 3 contains provisions with respect to the procedure of the Trust.	6 7
27B	Appointment of Trustees	8
	(1) The Trust consists of 3 trustees appointed by the Minister.	9
	(2) Schedule 4 contains provisions relating to the Trustees.	10
27C	Principal function of Trust	11
	The principal function of the Trust is to exercise the functions that are conferred or imposed on it by or under this Act or the Randwick Racecourse lease as the lessor of the Racecourse.	12 13 14
27D	Sale, mortgage or disposal of Randwick Racecourse generally prohibited	15 16
	(1) The Trust may not, without the consent of the Minister, sell, mortgage or otherwise dispose of any of the land or buildings that form part of Randwick Racecourse.	17 18 19
	(2) The Minister may grant consent under subsection (1) to the sale, mortgage or other disposal of land or a building only if the Minister is satisfied that the sale, mortgage or disposal of the land or building will neither:	20 21 22 23
	(a) affect, to any significant degree, the continued use of Randwick Racecourse for the purpose of a public racecourse and associated activities, nor	24 25 26
	(b) constitute a breach of the Randwick Racecourse lease by the Trust.	27 28
	(3) Nothing in this section prevents or otherwise limits the Trust from granting any lease under section 33.	29 30
27E	Liability of Trust and Trustees	31
	No matter or thing done or omitted to be done by the Trust, any Trustee or any person acting under the direction of the Trust, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this or any other Act, subjects a Trustee or a person so acting personally to any action, liability, claim or demand.	32 33 34 35 36 37

27F	Delegation by the Trust	1
	The Trust may delegate any of its functions (other than this power of delegation) to a Trustee or any staff member of the Trust.	2 3
[7]	Section 30 Use of Randwick Racecourse for additional activities	4
	Omit “the Randwick Racecourse trustees” and “the trustees think” from section 30 (1).	5 6
	Insert instead “the Trust” and “the Trust considers”, respectively.	7
[8]	Section 30 (1A)–(1D)	8
	Insert after section 30 (1):	9
	(1A) The Trust may not give consent under this section unless the Minister approves of the giving of that consent.	10 11
	(1B) The Trust may, with the approval of the Minister, withdraw:	12
	(a) any consent given under this section (whether before or after the commencement of this subsection), or	13 14
	(b) any consent previously given under section 7 of the <i>Australian Jockey Club Act 2008</i> that has not been withdrawn.	15 16 17
	(1C) The Trust must withdraw a consent referred to in subsection (1B) if directed to do so by the Minister.	18 19
	(1D) Section 43 is taken to apply in relation to the withdrawal of a consent as if the reference in that section to the operation of this Act included a reference to the withdrawal of a consent under this section.	20 21 22 23
[9]	Section 32 Appointment of trustees	24
	Omit the section.	25
[10]	Section 33 Further lease of Randwick Racecourse	26
	Omit “the Randwick Racecourse trustees” and “they see” wherever occurring in section 33 (1) and (6).	27 28
	Insert instead “the Trust” and “it considers”, respectively.	29
[11]	Section 34 Authorisation of matters relating to leases over Randwick Racecourse	30 31
	Omit “the Randwick Racecourse trustees” from section 34 (1) (a) (ii).	32
	Insert instead “the Trust”.	33

[12] Section 45 Exemption from State tax	1
Insert after paragraph (a) of the definition of <i>exempt matter</i> in section 45 (1):	2
(a1) the transfer of assets, rights or liabilities by operation of	3
clause 5 of Schedule 2 (including, without limitation, any	4
instrument executed only for a purpose ancillary to or	5
consequential on the operation of that clause),	6
[13] Schedule 2 Savings, transitional and other provisions	7
Insert at the end of clause 1 (1):	8
<i>Australian Jockey and Sydney Turf Clubs Merger Amendment</i>	9
<i>Act 2011</i>	10
[14] Schedule 2, Part 3	11
Insert after Part 2:	12
Part 3 Provisions consequent on enactment of	13
Australian Jockey and Sydney Turf Clubs	14
Merger Amendment Act 2011	15
4 Definitions	16
In this Part:	17
<i>amending Act</i> means the <i>Australian Jockey and Sydney Turf</i>	18
<i>Clubs Merger Amendment Act 2011</i> .	19
<i>dissolution day</i> means the day on which section 32 is repealed by	20
the amending Act.	21
<i>existing trust</i> means the trust referred to in the preamble to the	22
repealed <i>Australian Jockey Club Act 1873</i> .	23
<i>existing trustee</i> means a person holding office as a trustee of the	24
existing trust immediately before the dissolution day.	25
<i>trust assets</i> means:	26
(a) all of the assets vested (whether absolutely or	27
contingently) in, or otherwise held by, the existing trustees	28
on behalf of the existing trust immediately before the	29
dissolution day, and	30
(b) all of the assets purportedly vested (whether absolutely or	31
contingently), or otherwise held, in the name of the	32
existing trust instead of the existing trustees immediately	33
before the dissolution day,	34
and includes (without limitation) Randwick Racecourse.	35

trust liabilities means all of the liabilities of the existing trust (including liabilities enforceable against an existing trustee in his or her capacity as such) immediately before the dissolution day. 1
2
3
trust rights means the rights of the existing trust (including any right enforceable by an existing trustee in his or her capacity as such) immediately before the dissolution day. 4
5
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5 Dissolution of existing trust 7

- (1) On the dissolution day: 8
- (a) the existing trust is dissolved, and 9
 - (b) each existing trustee ceases to hold office as such (but is eligible, if otherwise qualified, to be appointed as a Trustee). 10
11
12
- (2) On and from the dissolution day, the following provisions have effect in relation to the trust assets, rights and liabilities: 13
14
- (a) the trust assets vest in the Trust by virtue of this clause: 15
 - (i) without the need for any further conveyance, transfer, assignment or assurance, and 16
17
 - (ii) free of any equitable estates, interests, rights or obligations that attached to the assets immediately before the dissolution day by reason of the existing trust, 18
19
20
21
 - (b) the trust rights and trust liabilities become by virtue of this clause the rights and liabilities of the Trust, 22
23
 - (c) all proceedings relating to the trust assets, rights or liabilities commenced before the dissolution day by or against the existing trustees or any predecessors of the existing trustees and pending immediately before the dissolution day are taken to be proceedings pending by or against the Trust, 24
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26
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29
 - (d) any act, matter or thing done or omitted to be done in relation to the trust assets, rights or liabilities before the dissolution day by, to or in respect of the existing trust 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 Trust, 30
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 - (e) the Trust has all the entitlements and obligations of the existing trust and existing trustees in relation to the trust assets, rights and liabilities that the existing trust or existing trustees would have had but for the dissolution of the existing trust, whether or not those entitlements and 36
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	obligations were actual or potential at the time the dissolution took effect.	1 2
(3)	No attornment to the Trust by a lessee from the existing trust or trustees is required.	3 4
(4)	Subject to the regulations, a reference in any other Act or instrument made under any other Act or in any instrument of any kind to the existing trust or the existing trustees is to be read on and from the dissolution day as being a reference to the Trust.	5 6 7 8
(5)	Without limiting section 43, no compensation is payable to any person or body in connection with the transfer of any asset, right or liability, or the loss of any office, by operation of this clause.	9 10 11
	Note. Section 43 provides for the effect of this Act on contracts, instruments and other related matters. In particular, section 43 provides that the operation of this Act is not to be regarded as a breach of trust or otherwise as a civil wrong.	12 13 14 15
[15]	Schedules 3 and 4	16
	Insert after Schedule 2:	17
	Schedule 3 Provisions relating to the procedure of the Trust	18 19
	1 General procedure	20
	The procedure for the calling of meetings of the Trust and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Trust.	21 22 23
	2 Quorum	24
	The quorum for a meeting of the Trust is all of the Trustees for the time being.	25 26
	3 Presiding Trustee	27
(1)	The Chairperson of the Trust (or, in the absence of the Chairperson, another Trustee elected to chair the meeting by the Trustees present) is to preside at a meeting of the Trust.	28 29 30
(2)	The presiding Trustee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.	31 32
	4 Voting	33
	A decision supported by a majority of the votes cast at a meeting of the Trust at which a quorum is present is the decision of the Trust.	34 35 36

5	Transaction of business outside meetings or by telephone	1
(1)	The Trust may, if it considers fit, transact any of its business by the circulation of papers among all the Trustees for the time being, and a resolution in writing approved in writing by a majority of those Trustees is taken to be a decision of the Trust.	2 3 4 5
(2)	The Trust may, if it considers fit, transact any of its business at a meeting at which Trustees (or some Trustees) participate by telephone, closed-circuit television or other means, but only if any Trustee who speaks on a matter before the meeting can be heard by the other Trustees.	6 7 8 9 10
(3)	For the purposes of:	11
(a)	the approval of a resolution under subclause (1), or	12
(b)	a meeting held in accordance with subclause (2),	13
	the Chairperson and each Trustee have the same voting rights as they have at an ordinary meeting of the Trust.	14 15
(4)	A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Trust.	16 17 18
(5)	Papers may be circulated among the Trustees for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.	19 20 21
6	Minutes	22
	The Trust must cause full and accurate minutes to be kept of the proceedings of each meeting of the Trust.	23 24
7	First meeting	25
	The Minister may call the first meeting of the Trust in such manner as the Minister considers fit.	26 27

Schedule 4 Provisions relating to the Trustees 28

1	Chairperson of the Trust	29
(1)	One of the Trustees is to be appointed as Chairperson of the Trust by the relevant instrument of appointment as a Trustee or by another instrument executed by the Minister.	30 31 32
(2)	The Chairperson vacates office as Chairperson if he or she:	33
(a)	is removed from that office by the Minister under subclause (3), or	34 35

(b)	resigns that office by instrument in writing addressed to the Minister, or	1 2
(c)	ceases to be a Trustee.	3
(3)	The Minister may remove a Trustee from the office of Chairperson at any time for any or no reason and without notice.	4 5
2	Acting Trustees and acting Chairperson	6
(1)	The Minister may, from time to time, appoint a person to act in the office of a Trustee during the illness or absence of the Trustee, and the person, while so acting, has and may exercise all the functions of the Trustee and is taken to be a Trustee.	7 8 9 10
(2)	The Minister may, from time to time, appoint a Trustee to act in the office of Chairperson during the illness or absence of the Chairperson, and the Trustee, while so acting, has and may exercise all the functions of the Chairperson and is taken to be the Chairperson.	11 12 13 14 15
(3)	The Minister may remove any person from any office to which the person was appointed under this clause at any time for any or no reason and without notice.	16 17 18
(4)	For the purposes of this clause, a vacancy in the office of Trustee or Chairperson is taken to be an absence from office of the Trustee or Chairperson, as the case may be.	19 20 21
3	Term of office	22
(1)	Subject to this Schedule, a Trustee holds office for such period as may be specified in the instrument of appointment of the Trustee, but is eligible (if otherwise qualified) for reappointment.	23 24 25
(2)	The period specified in the instrument of appointment of a Trustee during which the Trustee is to hold office may not exceed:	26 27 28
(a)	in the case of a Trustee who is also appointed as the Chairperson on his or her appointment as a Trustee— 5 years, or	29 30 31
(b)	in any other case—4 years.	32
(3)	A Trustee may not hold office as such for a term (taking into account any reappointments) that exceeds 8 years in total.	33 34

4 Casual vacancies	1
(1) The office of a Trustee becomes vacant if the Trustee:	2
(a) dies, or	3
(b) completes a term of office and is not reappointed, or	4
(c) resigns the office by instrument in writing addressed to the Minister, or	5 6
(d) is removed from office by the Minister under this clause, or	7 8
(e) is absent from 3 consecutive meetings of the Trust of which reasonable notice has been given to the Trustee personally or by post, except on leave granted by the Minister or unless the Trustee is excused by the Minister for having been absent from those meetings, or	9 10 11 12 13
(f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or	14 15 16 17
(g) becomes a mentally incapacitated person, or	18
(h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.	19 20 21 22 23
(2) The Minister may remove a Trustee from office at any time for any or no reason and without notice.	24 25
5 Filling of vacancy in office of Trustee	26
If the office of any Trustee becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.	27 28
6 Disclosure of pecuniary interests	29
(1) If:	30
(a) a Trustee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Trust, and	31 32 33

(b)	the interest appears to raise a conflict with the proper performance of the Trustee's duties in relation to the consideration of the matter,	1 2 3
	the Trustee must, as soon as possible after the relevant facts have come to the Trustee's knowledge, disclose the nature of the interest at a meeting of the Trust.	4 5 6
(2)	A disclosure by a Trustee at a meeting of the Trust that the Trustee:	7 8
(a)	is a member, or is in the employment, of a specified company or other body, or	9 10
(b)	is a partner, or is in the employment, of a specified person, or	11 12
(c)	has some other specified interest relating to a specified company or other body or to a specified person,	13 14
	is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subclause (1).	15 16 17 18
(3)	Particulars of any disclosure made under this clause must be recorded by the Trust in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Trust.	19 20 21 22
(4)	After a Trustee has disclosed the nature of an interest in any matter, the Trustee must not, unless the Minister otherwise determines:	23 24 25
(a)	be present during any deliberation of the Trust with respect to the matter, or	26 27
(b)	take part in any decision of the Trust with respect to the matter.	28 29
(5)	A contravention of this clause does not invalidate any decision of the Trust.	30 31
(6)	A reference in this clause to a meeting of the Trust includes a reference to a meeting of a committee of the Trust.	32 33
7	Effect of certain other Acts	34
(1)	Chapter 2 of the <i>Public Sector Employment and Management Act 2002</i> does not apply to or in respect of the appointment of a Trustee.	35 36 37

- (2) If by or under any Act provision is made: 1
 - (a) requiring a person who is the holder of a specified office to 2
devote the whole of his or her time to the duties of that 3
office, or 4
 - (b) prohibiting the person from engaging in employment 5
outside the duties of that office, 6

the provision does not operate to disqualify the person from 7
holding that office and also the office of a Trustee. 8