

# Totalizator Agency Board Privatisation Act 1997 No 43

[1997-43]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Editorial note**

The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-dashes. Text of the legislation is not affected.

This version has been updated.

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# Totalizator Agency Board Privatisation Act 1997 No 43



New South Wales

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# Totalizator Agency Board Privatisation Act 1997 No 43



New South Wales

An Act to provide for the conversion of the Totalizator Agency Board into a public company and for the future sale of that company to the public; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Totalizator Agency Board Privatisation Act 1997*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of Act

The objects of this Act are to provide for the conversion of the Totalizator Agency Board (TAB) into a public company and for its sale by a public float, and in particular—

- (a) to convert TAB from a statutory authority into a public company limited by shares and with the name TAB Limited, and
- (b) to repeal provisions of the *Totalizator (Off-course Betting) Act 1964* and to apply the *Corporations Law* to TAB after its conversion, and
- (c) to authorise the exclusion from the sale of TAB of any part of the business undertakings of TAB and its subsidiaries, and to reorganise those businesses before the sale, and
- (d) to authorise the sale of TAB by a public float (comprising disposal of the shares issued to the State) and to limit to 10% the maximum shareholding of any one shareholder.

### 4 Definitions

(1) In this Act—

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description

(including money), and includes securities, choses in action and documents.

**business undertaking** of TAB or of a TAB subsidiary means all the assets, rights and liabilities of TAB or the subsidiary.

**conversion** means the conversion of TAB into a public company on the commencement of section 12.

**excluded undertaking** means any assets, rights or liabilities of TAB or a TAB subsidiary that the Minister has directed to be excluded under Part 7.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**instrument** means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

**liabilities** means any liabilities, debts and obligations (whether present or future and whether vested or contingent).

**Minister** see section 5.

**Ministerial Holding Corporation** means the Ministerial Holding Corporation constituted by section 37B of the [State Owned Corporations Act 1989](#).

**rights** means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent).

**share** means a share in the share capital of a body corporate.

**State of New South Wales** includes the Crown in right of New South Wales and the Government of New South Wales.

**TAB** means the body corporate called the Totalizator Agency Board and constituted under the *Totalizator (Off-course) Betting Act 1964* (its name being changed after the conversion to TAB Limited).

**TAB Limited** means the company known as TAB Limited established by this Act.

**TAB Limited subsidiary** means a subsidiary of TAB Limited within the meaning of the [Corporations Law](#).

**TAB subsidiary** means a subsidiary of TAB or TAB Limited, within the meaning of the [Corporations Law](#).

- (2) A reference in this Act to the business undertaking of TAB or of a TAB subsidiary at any particular time does not include a reference to any part of that undertaking that

has been excluded or transferred by this Act before that time.

(3) Notes in the text of this Act do not form part of this Act.

## **5 Minister**

(1) A reference in this Act to the Minister is—

(a) if there is for the time being only one nominated Minister under this section—a reference to that Minister, or

(b) if there is for the time being more than one nominated Minister under this section—a reference to all those Ministers.

(2) A nominated Minister is a Minister nominated by the Premier by order published in the Gazette as a nominated Minister.

(3) Such a nomination is to be made by reference to ministerial title. The Premier can be nominated as nominated Minister.

(4) One or more Ministers may be nominated for the time being under this section.

(5) If no Minister is for the time being nominated under this section, a Minister having the duty to administer any provisions or aspect of this Act is a nominated Minister.

## **Part 2**

### **6-9 (Repealed)**

## **Part 3 Management of TAB before conversion to company**

### **10 Directors and meetings of TAB before conversion to company**

(1) As from the commencement of this Part, TAB is to consist of at least 5 directors appointed by the Minister on such terms and conditions as are determined by the Minister.

(2) Schedule 1 has effect with respect to the directors and meetings of TAB.

### **11 (Repealed)**

## **Part 4 Conversion of TAB to company**

### **12 TAB taken to be registered under [Corporations Law](#) as public company**

(1) On the commencement of this section—

(a) the application for registration as a company referred to in section 8 is taken to have been granted, and



- (b) TAB is taken to have been registered under section 137 of the *Corporations Law*—
  - (i) by the name “TAB Limited”, and
  - (ii) as a public company, and as a company limited by shares, within the meaning of the *Corporations Law*, and
- (c) the name “TAB Limited” is taken to have been registered in respect of TAB Limited under section 374 (5) of the *Corporations Law*.
- (2) The date of commencement of TAB Limited’s registration as a company under Division 3 of Part 2.2 of the *Corporations Law* is taken to be the commencement of this section.
- (3) For the purposes of Division 3 of Part 2.2 of the *Corporations Law*, TAB Limited is taken to have been, immediately before the commencement of this section, and to be on that commencement, a corporation within the meaning of the *Corporations Law*.

### **13 New name of TAB**

- (1) On the conversion, TAB’s name is, by force of this subsection, changed to “TAB Limited”.
- (2) Section 382 (4) of the *Corporations Law* applies in relation to the change of name made by subsection (1) as if—
  - (a) TAB were a company, within the meaning of the *Corporations Law*, when the change was made, and
  - (b) the change was made under the *Corporations Law*.
- (3) This section has effect despite anything in the *Corporations Law*, but nothing in this section prevents—
  - (a) TAB Limited from later changing its name under section 382 of the *Corporations Law*, or
  - (b) the cancellation, under Part 4.2 of the *Corporations Law*, of the registration of a name.
- (4) TAB Limited or a TAB Limited subsidiary is not entitled to use in connection with its business a name that suggests that it is associated with the State of New South Wales. This subsection does not apply during any period to which Part 5 applies.

### **14 Memorandum and articles of TAB Limited to have effect**

- (1) As from the conversion, the proposed memorandum and articles of association lodged under section 8—
  - (a) are respectively the memorandum and articles of association of TAB Limited, and

(b) bind TAB Limited and its members accordingly.

- (2) As from the conversion, the *Corporations Law* applies in relation to TAB Limited's memorandum and articles of association as if they had been registered as such under the *Corporations Law*.

### **15 Membership of TAB Limited**

- (1) The State of New South Wales, as the holder of shares in TAB Limited at the conversion, becomes (by force of this subsection) a member of TAB Limited at the conversion.
- (2) The State of New South Wales is, in relation to membership of TAB Limited, entitled to the same rights, privileges and benefits, and is subject to the same duties, liabilities and obligations, as if it had become a member of TAB Limited under its memorandum and articles of association.

### **16 Minister may act for State as shareholder**

The Minister may act for or on behalf of the State of New South Wales in connection with—

- (a) the rights, privileges and benefits, and  
(b) the duties, liabilities and obligations,

of the State as the holder of shares in TAB Limited issued to the State.

### **17 Continuity of TAB and construction of references to TAB**

- (1) Without limiting any other provision of this Act or the *Corporations Law*, TAB Limited is a continuation of, and the same legal entity as, TAB (as it existed before the conversion).
- (2) After the conversion, a reference in any other Act or in any other instrument made under any Act or in any other document of any kind to the Totalizator Agency Board or TAB is to be read as (or as including) a reference to TAB Limited, unless it is required by this Act to be read as a reference to some other person because it relates to an excluded undertaking or an undertaking transferred to a TAB subsidiary.
- (3) This section is to be read subject to clause 1 of Schedule 5 (Savings and transitional regulations).

### **18 Continuity of contracts and arrangements**

- (1) Without limiting any other provision of this Act or the regulations, TAB Limited is, on and after the conversion, entitled to the benefit of, and taken to be a party to, any contract or arrangement entered into by TAB with any person and having force immediately before the conversion.

(2) Section 19 does not affect the operation or continuity of any contract or arrangement referred to in subsection (1).

(3) This section is subject to the operation of Part 9 (Vesting of undertaking on transfer).

## **19 (Repealed)**

## **Part 5 Management of TAB Limited after conversion and before sale**

### **20 When Part applies**

(1) This Part applies during any period after the conversion when a majority of the issued shares in TAB Limited are held by the State of New South Wales.

(2) A day may be appointed by proclamation published on the NSW legislation website for the purposes of the cessation of the operation of this section. If a day is so appointed, this Part ceases to apply on and from that day, despite subsection (1).

### **21 Ministerial control of TAB Limited**

(1) The board of directors of TAB Limited is, in the exercise of its functions, subject to the control and direction of the Minister.

(2) Neither the enactment of this section nor the exercise of the Minister's powers under this section constitutes a Minister as a director of TAB Limited or a person who participates in the management of TAB Limited.

(3) A director of TAB Limited is not personally liable in any civil or criminal proceedings (including proceedings for a breach of any duty under the *Corporations Law*) for anything done or omitted for the purpose only of complying with a direction of the Minister under this section.

### **22 Status of TAB Limited**

(1) TAB Limited and any TAB Limited subsidiary to which any part of TAB's business undertaking is transferred under this Act are agencies through which the State of New South Wales carries out the activity of conducting on-course and off-course totalizator betting in New South Wales, and any other activity authorised to be conducted by a licence under the *Totalizator Act 1997*, and for that purpose it is a public authority of the State.

(2) However, TAB Limited or any TAB Limited subsidiary—

(a) is not, and does not represent, the State of New South Wales except by express agreement with the Minister, and

(b) is not exempt from any rate, tax, duty or other impost imposed by or under any law of New South Wales merely because it is a company in which the State of New South Wales holds shares, and

- (c) cannot render the State of New South Wales liable for any debts, liabilities or obligations of TAB Limited or any TAB Limited subsidiary, unless this Act or any other Act or law otherwise expressly provides.

### **23 Application of certain provisions of *State Owned Corporations Act 1989* to TAB Limited**

The following provisions of the *State Owned Corporations Act 1989* apply to TAB Limited and a TAB Limited subsidiary as if it were a State owned corporation (with or without any modification prescribed by the regulations)—

- (a) such of the provisions of Part 4 (Accountability) as are prescribed by the regulations,
- (b) section 13 (Memorandum and articles of subsidiaries) but only in relation to the provisions contained in clauses 2 and 3 (2) of Part 2 of Schedule 3 to that Act,
- (c) section 36 (Application of other Acts),
- (d) any other provision prescribed by the regulations.

## **Part 6 Reorganisation of TAB business undertaking in connection with conversion and sale of TAB**

### **24 Minister may direct transfer of parts of TAB business undertaking to TAB subsidiary**

- (1) The Minister may, by order in writing, direct that any part or parts of TAB's business undertaking be transferred to a TAB subsidiary or TAB subsidiaries specified in the order.
- (2) Part 9 applies to an order under this section.

### **25 Minister may direct transfer of parts of business undertaking of TAB subsidiary to other subsidiaries or to TAB**

- (1) The Minister may, by order in writing, direct that any part or parts of the business undertaking of a TAB subsidiary (including anything transferred under this Part) be transferred to another TAB subsidiary specified in the order or to TAB.
- (2) Part 9 applies to an order under this section.

### **26 Allocation of transferred assets to capital and reserves**

- (1) The Minister may, by order in writing, direct that any assets transferred to a TAB subsidiary or to TAB under this Part are to be allocated to capital and reserves in such amounts and in accordance with such requirements as are specified in the order.
- (2) Any shares issued in accordance with a direction under this Part are taken to have been issued in consideration of the vesting in the TAB subsidiary or TAB under this Part of the assets allocated to capital.

## **27 Time when transfers may be effected**

- (1) An order under this Part may be made before, on or after the conversion of TAB into a public company.
- (2) After the conversion, any such order may not be made unless all the shares in TAB Limited are held by the State of New South Wales. However, the order may be expressed to take effect after the State has ceased to hold all or any of those shares.

## **Part 7 Exclusion of parts of business undertaking from TAB or TAB subsidiary**

### **28 Excluded undertakings**

- (1) The Minister may direct, by order in writing, that any assets, rights or liabilities that are part of the business undertaking of TAB or a TAB subsidiary be excluded from that business undertaking and transferred to the Ministerial Holding Corporation or another person on behalf of the State of New South Wales.
- (2) If an excluded undertaking includes money, the order may direct the payment of the money into the Consolidated Fund.
- (3) An order under this section may define an excluded undertaking by reference to a business undertaking other than any part specified in the order.
- (4) Part 9 applies to an order under this section.

### **29 Time when exclusion may be effected**

- (1) An order under this Part may be made before, on or after the conversion of TAB into a public company.
- (2) After the conversion, any such order may not be made unless all the shares in TAB Limited are held by the State of New South Wales. However, the order may be expressed to take effect after the State has ceased to hold all or any of those shares.

### **30 Sale or retention of excluded undertaking**

- (1) The Ministerial Holding Corporation or any other person to whom any excluded undertaking is transferred may—
  - (a) sell or otherwise dispose of the whole or any part of the excluded undertaking, or
  - (b) retain the whole or any part of the excluded undertaking and conduct any business to which it relates.
- (2) The Minister may, for the purposes of any such sale or other disposal, direct by order in writing that the excluded undertaking concerned be transferred to the body or person to whom it is being sold or otherwise disposed of.

(3) Part 9 applies to an order under this section.

### **31 TAB or subsidiary may act with respect to excluded undertaking**

The Ministerial Holding Corporation or any other person to whom any excluded undertaking is transferred under this Part may enter into an agreement or arrangement with TAB or a TAB subsidiary for the exercise by TAB or the TAB subsidiary (as an agent or otherwise) of such functions relating to the excluded undertaking as are specified in the agreement or arrangement.

## **Part 8 Sale of TAB Limited by public float**

### **Division 1 Sale process**

#### **32 Sale of TAB Limited by public float**

- (1) The Minister may make arrangements for the sale of TAB Limited by a public float, comprising the disposal of the shares held by the State of New South Wales.
- (2) The arrangements may include underwriting agreements and the issue of a prospectus.
- (3) The Auditor-General is to examine the sale of TAB Limited as he considers appropriate and is to report as soon as practicable after the sale to both Houses of Parliament.
- (4) The Minister is to ensure that the Auditor-General is given access to such information and resources as may be necessary to enable the Auditor-General to exercise the functions conferred by this section.
- (5) The Auditor-General's examination under this section is to accommodate the timetable for the sale of TAB Limited determined by the Minister.

#### **33 State may dispose of its shares**

- (1) The State of New South Wales may, subject to this Part, dispose of all or any of its shares in TAB Limited.
- (2) The Minister is authorised to enter into agreements for the transfer to any person of those shares. Without limitation, any such person may be a body corporate.

#### **34 (Repealed)**

#### **35 No government guarantees**

The obligations of TAB Limited are not guaranteed by the State of New South Wales.

## Division 2 Maximum shareholding restrictions

### 36 Definitions

(1) In this Division—

**officer**, in relation to TAB Limited, has the same meaning as in section 9 of the *Corporations Law*.

**voting share**, in relation to TAB Limited, has the same meaning as in section 9 of the *Corporations Law*.

(2) For the purposes of this Division, a person is an associate of another—

(a) if the Minister—

(i) is of the opinion that the person and the other are likely to act in concert with a view to taking control of, or exercising significant influence over, TAB Limited against the public interest, and

(ii) by notice in writing served on TAB Limited, declares that the person is an associate of the other, or

(b) if the person is an associate of the other within the meaning of Division 2 of Part 1.2 of the *Corporations Law*, with that Division modified by omitting sections 13, 14, 16 (2) and 17 of that Law and by substituting for paragraphs (b) and (c) of section 12 (1) of that Law the following—

or

(b) the primary person's entitlement, as provided by section 609, to shares in a body corporate.

(3) Where notice of a declaration under subsection (2) is served on TAB Limited, the Minister must, at the same time or as soon as practicable thereafter, cause written notice of the declaration to be served on the persons to whom the declaration relates.

(4) For the purposes of this Division, a person has a relevant interest in a share if, and only if, the person would be taken to have a relevant interest in the share because of Division 5 of Part 1.2 of the *Corporations Law* if sections 33 and 35 (c) of that Law were disregarded.

(5) For the purposes of this Division, the voting shares in TAB Limited to which a person (being TAB Limited or any other person) is entitled include voting shares in TAB Limited to which the person is entitled in accordance with section 609 of the *Corporations Law*, as if in that section a reference to an associate were a reference to an associate for the purposes of this Division and a reference to a relevant interest

were a reference to a relevant interest to which subsection (4) of this section applies.

- (6) A reference in this Division to the *Corporations Law* is a reference to that Law as it would apply if references in that Law to a body corporate, corporation or company included references to—
- (a) a body corporate of any kind wherever formed or incorporated and whether formed or incorporated under that Law or any other law, and
  - (b) any unincorporated body, being a society, association, company of proprietors or other body, wherever formed, that, under the law of its place of formation, may sue or be sued, or may hold property in the name of the secretary or some other officer of the society, association or body, or in the name of any trustee or trustees, and
  - (c) any unincorporated body, being a society, association, company of proprietors or other body or undertaking to which is applied, under the laws of the place of its formation, with or without exceptions, a law in force in that place relating to companies or corporations as if it were a company or corporation within the meaning of that law.
- (7) The regulations may provide that relevant interests, or particular classes of relevant interests, in shares, or in particular classes of shares, are, in such circumstances and subject to such conditions (if any) as are specified in the regulations, to be disregarded for such purposes as are specified in the regulations.
- (8) If a whole or a portion of the share capital of TAB Limited consists of stock, a reference in this Division to a number of shares in TAB Limited as a percentage is, in relation to an amount of stock, a reference to the amount of stock that represents that number of shares.

### **36A References to *Corporations Law* in this Division**

A reference in this Division to the *Corporations Law* (or a provision of that Law) is a reference to that Law (or the provision of that Law) as in force on 6 March 1998.

### **37 Application of Division**

- (1) This Division applies in relation to TAB Limited whenever TAB Limited or a TAB Limited subsidiary holds a licence under the *Totalizator Act 1997*.
- (2) This Division (including any provision of the *Corporations Law* referred to or applied for the purposes of this Division) applies in relation to any transaction, agreement, arrangement, understanding or undertaking—
- (a) whether the transaction, agreement, arrangement, understanding or undertaking is entered into, or made, in this State or elsewhere, and



- (b) whether the shares (if any) to which the transaction, agreement, arrangement, understanding or undertaking relates are registered in this State or elsewhere, and
- (c) whether the proper law of the transaction, agreement, arrangement, understanding or undertaking is the law of this State or not.

### **37A Exemption for nominated company**

- (1) The other provisions of this Division do not apply to or in respect of the nominated company or a related body corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth) of the nominated company (other than TAB Limited or a TAB Limited subsidiary), subject to this section.
- (2) If the Racing Minister is satisfied that—
  - (a) the nominated company (or, if the nominated company is a company referred to in paragraph (c) of the definition of **nominated company** in subsection (6), the ultimate holding company (within the meaning of the *Corporations Act 2001* of the Commonwealth) of the nominated company) is no longer listed on the Australian Stock Exchange, or
  - (b) there no longer exists, under the law of another jurisdiction or otherwise, a prohibition on shareholding interests in the nominated company (or, if the nominated company is a company referred to in paragraph (c) of the definition of **nominated company** in subsection (6), in the shareholding interests in the ultimate holding company (within the meaning of the *Corporations Act 2001* of the Commonwealth) of the nominated company) with substantially the same effect as the prohibition on shareholding interests in TAB Limited under the other provisions of this Division, or
  - (c) TAB Limited is not wholly owned by the nominated company or the nominated company has not taken all reasonable steps to acquire a relevant interest in all the issued voting shares (within the meaning of the *Corporations Act 2001* of the Commonwealth) of TAB Limited, or
  - (d) TAB Limited is not a subsidiary (within the meaning of the *Corporations Act 2001* of the Commonwealth) of the nominated company,the Racing Minister is to serve a notice on the nominated company declaring that the exemption granted by subsection (1) is suspended on and from the day specified in the notice (being a day that is not less than 3 months after service of the notice).
- (3) The Racing Minister is, by further notice served on the nominated company, to revoke a notice under subsection (2) and terminate the suspension effected by that notice if satisfied that—
  - (a) the nominated company or the ultimate holding company (within the meaning of

the *Corporations Act 2001* of the Commonwealth) of the nominated company (as the case may require) has relisted on the Australian Stock Exchange, or

(b) a prohibition of the kind referred to in subsection (2) (b) has been restored, or

(c) TAB Limited is wholly owned by the nominated company or the nominated company has taken all reasonable steps to acquire a relevant interest in all the issued voting shares (within the meaning of the *Corporations Act 2001* of the Commonwealth) of TAB Limited (as the case may be), or

(d) TAB Limited is a subsidiary (within the meaning of the *Corporations Act 2001* of the Commonwealth) of the nominated company,

as the case may require.

(4) A notice under subsection (2) that is in force has effect according to its tenor.

(5) More than one notice may be served under each of subsections (2) and (3).

(6) In this section—

***nominated company*** means one of the following—

(a) Unitab Limited, being the company of that name (ACN 085 691 738), formerly named TAB Queensland Limited,

(b) TABCORP Holdings Limited, being the company of that name (ACN 063 780 709), formerly named TABCORP Limited,

(c) a wholly owned subsidiary (within the meaning of the *Corporations Act 2001* of the Commonwealth) of a company referred to in paragraph (a) or (b),

as nominated by the Racing Minister by notice (being an irrevocable notice) published in the Gazette.

***Racing Minister*** means the Minister administering the *Totalizator Act 1997*.

### **38 Prohibited shareholding interest**

(1) A person has a prohibited shareholding interest in TAB Limited if the person is entitled to voting shares in TAB Limited that together constitute more than 10% of the total number of voting shares in TAB Limited.

(2) For the purposes of this Division, TAB Limited or a TAB Limited subsidiary cannot have a prohibited shareholding interest in TAB Limited.

(3) A person must not have a prohibited shareholding interest in TAB Limited. A person who contravenes this subsection is guilty of an offence.

Maximum penalty—100 penalty units.

### **39 Power to require information relating to entitlement to shares in TAB Limited**

- (1) The Minister, or a director or the secretary of TAB Limited, may, by notice in writing served on a person who is, or is suspected by the Minister, director or secretary, as the case may be, of being entitled to shares in TAB Limited, require the person to furnish information specified in the notice for the purpose of determining whether that person or any other person has, or is taking action to acquire, a prohibited shareholding interest in TAB Limited.
- (2) A notice under subsection (1) may require the person on whom the notice is served, or, if that person is a corporation, 2 directors of the corporation, to verify by statutory declaration any information furnished in compliance with the notice.
- (3) If—
  - (a) a person on whom a notice under subsection (1) has been served fails to furnish, within the period required by the notice, the information required by the notice, verified as required by the notice, or
  - (b) information furnished by the person in response to the notice is, in the opinion of the Minister, by reason of anything included in it or omitted from it, false or misleading in a material particular,the Minister may, by reason only of that fact, by notice in writing served on TAB Limited, do one or more of the following—
  - (c) declare that the person is an associate of another, or that another is an associate of that person,
  - (d) declare that the person, or another to whom a declaration under paragraph (c) relates, is entitled to specified shares in TAB Limited,
  - (e) declare that the person, or another to whom a declaration under paragraph (c) relates, has a prohibited shareholding interest in TAB Limited.
- (3A) A declaration under subsection (3) has effect according to its tenor for the purposes of this Division.
- (4) If notice of a declaration under subsection (3) is served on TAB Limited, the Minister must, at the same time or as soon as practicable thereafter, cause written notice of the declaration to be served—
  - (a) on the person to whom the declaration relates, and
  - (b) in the case of a declaration under paragraph (e) of that subsection—on the holder of the shares to which the declaration relates.
- (5) A person who fails to comply with a requirement of a notice under this section, or in

purported compliance with such a requirement furnishes information that is false or misleading in a material particular, is guilty of an offence.

Maximum penalty—100 penalty units.

- (6) It is a defence to a prosecution of a person for an offence under subsection (5) if it is proved that, at the time the information was furnished, the person believed, on reasonable grounds—
  - (a) in the case of false information—that the information was true, or
  - (b) in the case of misleading information—that the information was not misleading.
- (7) A person is not liable to be convicted of both an offence under subsection (5) and an offence under Chapter 4 (Perjury, false statements etc) of Part 7 of the *Crimes Act 1900* in respect of the same incident.

#### **40 Substantial shareholders to give notice to Minister**

- (1) A person who is required to give notice to TAB Limited under a provision of Part 6C.1 of the *Corporations Act 2001* of the Commonwealth must give a copy of the notice to the Minister within the time that the notice is required under that Act to be given to TAB Limited.

Maximum penalty—100 penalty units.

- (2) TAB Limited must notify the Minister in writing within 2 business days after it receives a notice from a person under a provision of Part 6C.1 of the *Corporations Act 2001* of the Commonwealth, informing the Minister of the name and address of the person from whom the notice was received.

Maximum penalty—100 penalty units.

#### **41 Disposal, forfeiture etc of shares where prohibited shareholding interest**

- (1) If the Minister—
  - (a) makes a declaration under section 39 (3), or
  - (b) forms the opinion and, by notice in writing served on TAB Limited, declares under this subsection,  
  
that a person (in this section referred to as **the offender**) has a prohibited shareholding interest in TAB Limited, the Minister may, by notice in writing served—
    - (c) if the offender holds voting shares in TAB Limited to which the offender is entitled—on the offender, or
    - (d) on any other person who holds voting shares in TAB Limited to which the offender is entitled,

declare that the offender or that other person must dispose of the relevant number of those shares, or a specified number of those shares not exceeding the relevant number, otherwise than to the offender or an associate of the offender within a specified period, being not less than 3 months after service of the notice.

(2) For the purposes of subsection (1), the relevant number of shares that a person may be required by a notice under that subsection to dispose of is—

(a) subject to paragraph (b), the number of shares held by the person that would need to be so disposed of in order to cause the offender to cease to have a prohibited shareholding interest in TAB Limited, or

(b) if, after all the shares in TAB Limited held by the person to which the offender is entitled were so disposed of, the offender would continue to have a prohibited shareholding interest in TAB Limited—the total number of those shares.

(3) For the purposes of this section, a person is not to be taken to have disposed of shares in TAB Limited to which an offender is entitled unless and until the person ceases to hold the shares and the offender ceases to be entitled to the shares.

(4) If a person served with a notice of a declaration under subsection (1) requiring the person to dispose of shares in TAB Limited fails to comply with the notice within the period required by the notice, the shares to which the notice relates are, by force of this subsection, forfeited to the State.

(5) If a transaction is entered into with respect to any shares in TAB Limited and—

(a) a person who did not, before the transaction is entered into, have a prohibited shareholding interest in TAB Limited would have such an interest after the transaction, or

(b) a person who, before the transaction is entered into, had a prohibited shareholding interest in TAB Limited would be entitled after the transaction to a greater number of voting shares in TAB Limited than the person was entitled to immediately before the transaction,

the transaction is not illegal or void as a result of this Division but the voting shares in TAB Limited that were the subject of the transaction are subject to forfeiture under subsection (6).

(6) The Minister may by written notice served on the parties to a transaction referred to in subsection (5) declare that the voting shares in TAB Limited that were the subject of the transaction are forfeited to the State.

(6A) A declaration under subsection (6) takes effect when the notices required in respect of the declaration by subsections (6) and (7) are served (or, if they are served at different times, when the one that is served latest is served).

(7) The Minister must cause written notice of—

- (a) a declaration under subsection (1) requiring a person to dispose of shares in TAB Limited, or
- (b) a declaration under subsection (6) that shares in TAB Limited are forfeited to the State,

to be served on TAB Limited.

(8), (9) (Repealed)

#### **42 Effect of prohibited shareholding on voting and dividend rights**

(1) This section applies to any provision of the articles of association of TAB Limited that—

- (a) provides for the suspension of any voting rights attaching to voting shares in TAB Limited as a result of any person who is entitled to the shares having a prohibited shareholding interest in TAB Limited, or
- (b) authorises or requires TAB Limited, as a result of any person having a prohibited shareholding interest in TAB Limited, to refuse payment, defer payment or suspend any entitlement to payment of any amount or amounts that would otherwise be due from TAB Limited in respect of any shares in TAB Limited to which the person is entitled.

(2) It is a condition of any licence that TAB Limited or a TAB Limited subsidiary holds under the *Totalizator Act 1997* that any provision of the articles of association of TAB Limited to which this section applies must not be amended or repealed except with the written consent of the Minister.

(2A) The contravention of a condition of a licence imposed by subsection (2) is grounds for disciplinary action in relation to the licence concerned (including a licence held by a TAB Limited subsidiary) for the purposes of section 47 of the *Totalizator Act 1997*.

(3) If the Minister is of the opinion that a resolution of a general meeting of TAB Limited has been passed as a result of the admission of votes that should not, by virtue of a provision of the articles of association of TAB Limited to which this section applies, have been admitted, the Minister may, by notice in writing served on TAB Limited, declare the resolution to have been (at all times) null and void.

(4) If notice of a declaration under this section is served on TAB Limited, the Minister must, at the same time or as soon as practicable thereafter, cause written notice of the declaration to be served on each person whose votes should not, in the opinion of the Minister, have been admitted.

(5) A notice under this section does not have any effect unless it is served on TAB Limited

within one month after the date of the resolution to which it relates.

#### **43 Making, review and revocation of declarations by Minister**

- (1) A declaration may be made by the Minister under this Division on the basis of such information as the Minister considers sufficient in the circumstances.
- (2) A declaration of the Minister under this Division other than—
  - (a) a declaration under section 41 (1) requiring a person to dispose of shares in TAB Limited, or
  - (b) a declaration under section 41 (6) that shares in TAB Limited are forfeited to the State,is effective when written notice of the declaration is served on TAB Limited irrespective of when or whether service is effected on any other person as provided by this Division.
- (3) If the Minister makes a declaration under this Division—
  - (a) TAB Limited, or
  - (b) any other person on whom notice of the declaration has been served in pursuance of this Division,may apply to the Minister for a review of the declaration.
- (4) On an application under this section for review of a declaration, the Minister—
  - (a) must allow the applicant and, where the applicant is not TAB Limited, TAB Limited, a reasonable opportunity to make submissions in relation to the application, and
  - (b) may, after giving due consideration to any such submissions—
    - (i) confirm the declaration, or
    - (ii) revoke or vary the declaration either conditionally or unconditionally and with effect from the date of the declaration or some other date determined by the Minister.
- (5) Notwithstanding that an application is made under this section for review of a declaration of the Minister under this Division, the declaration continues to have effect pending determination of the application except as otherwise determined by the Minister.
- (6) The Minister may, of his or her own motion, by notice in writing served on the person on whom notice of the declaration was served, revoke or vary a declaration of the Minister under this Division with effect from the date of the declaration or some other

date determined by the Minister.

#### **44 Appeal against declarations of Minister**

- (1) TAB Limited or any other person on whom notice of a declaration of the Minister is served under this Division may appeal to the Supreme Court against the declaration.
- (2) An appeal does not lie against a declaration under section 42 annulling a resolution of TAB Limited.
- (3) An appeal under this section must be instituted within 21 days after notice of the declaration under appeal is served on the appellant, unless the appellant has within that 21 day period applied for a review of the declaration under section 43, in which case the appeal may be instituted within 21 days after determination of the application for review. The period fixed by this subsection as the period within which an appeal must be instituted cannot be extended.
- (4) Where an appeal is instituted by a person other than TAB Limited, TAB Limited is to be a respondent in addition to the Minister.
- (5) The Supreme Court may, on an appeal under this section, if satisfied that proper grounds for making the declaration did not exist, quash or vary the declaration, either conditionally or unconditionally and with effect from the date of the declaration or some other date, as the Court thinks fit, and make any consequential or ancillary orders that may be just.
- (6) Notwithstanding an appeal under this section, a declaration other than—
  - (a) a declaration under section 41 (1) requiring a person to dispose of shares in TAB Limited, or
  - (b) a declaration under section 41 (6) that shares in TAB Limited are forfeited to the State,continues to have effect pending determination of the appeal.
- (7) Except as provided in this Division, a declaration of the Minister under this Division may not be challenged or called into question.

#### **45 Sale of forfeited shares**

- (1) The Minister is to sell any shares forfeited to the State under this Act.
- (2) For the purposes of any such sale, the Minister is not bound by any restriction on the sale of shares contained in the memorandum or articles of association of TAB Limited.
- (3) Any money realised from the sale of forfeited shares under this section must, after deduction of the reasonable costs of the forfeiture and sale—



- (a) if the shares were transferred as a result of a transaction referred to in section 41 (5) and the transferor has not received the full consideration agreed upon with the transferee—be applied in payment to the transferor of the amount or value of the consideration not received by the transferor and in payment of the balance (if any) to the transferee, or
- (b) in any other case—be paid to the person from whom the shares were forfeited.

#### **45A Excluded matters for the purposes of the [Corporations Act 2001](#) of the Commonwealth**

- (1) The regulations may declare any matter that is dealt with by this Act or the regulations to be an excluded matter for the purposes of section 5F of the [Corporations Act 2001](#) of the Commonwealth in relation to—
  - (a) the whole of the Corporations legislation, or
  - (b) a specified provision of the Corporations legislation, or
  - (c) the Corporations legislation other than a specified provision, or
  - (d) the Corporations legislation other than to a specified extent.

#### **Note—**

Section 5F of the [Corporations Act 2001](#) of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (2) In this section—

***matter*** includes act, omission, body, person or thing.

#### **46 Immunity of Minister and TAB Limited and its officers and auditors**

No liability attaches to the Minister, the State or TAB Limited or any officer or auditor of TAB Limited for any act or omission in good faith and in the exercise or discharge, or purported exercise or discharge, of a power or duty under this Division.

#### **47 Service**

A notice required or authorised by this Division to be served on a person may—

- (a) in the case of a natural person—
  - (i) be served personally on the person, or
  - (ii) be sent by post to the person at his or her last known place of residence, business or employment, or

- (b) in the case of a company or other body—be left at, or sent by post to, its registered office or a place of business of the company or body whether within the State or elsewhere.

### **Division 3 Results of sale**

#### **48 Proceeds of the sale**

- (1) The proceeds of the sale of TAB Limited are to be paid into the Consolidated Fund so as to reduce net budget sector debt.
- (2) There is to be applied out of the proceeds of sale for payment into the Racecourse Development Fund (**the RDF**) such amount (not exceeding \$50 million) as the Treasurer is satisfied (after consultation with the Minister administering the RDF) is required to meet the commitments of the RDF. The Racecourse Development Fund is the fund of that name established under the *Totalizator Act 1916* and continued under the *Totalizator Act 1997*.
- (3) If the proceeds of the sale exceed an amount determined by the Treasurer for the purposes of this section as a fair return to the State on the sale, the Treasurer can direct payment out of the Consolidated Fund of that excess (or such part of it as the Treasurer thinks appropriate) to such persons, bodies or funds in the horse and greyhound racing industry in the State as the Treasurer thinks appropriate. The Treasurer's direction is to be given by order published in the Gazette.
- (4) The Consolidated Fund is appropriated to the extent necessary to make any payments required by this section.
- (5) The proceeds of sale consist of any payment for the disposal of the shares of the State of New South Wales and any proceeds of the sale of an excluded undertaking determined by the Minister.
- (6) There may be deducted from any proceeds of sale before payment into the Consolidated Fund such amount as the Minister approves to meet the expenses reasonably incurred in connection with the sale (including expenses incurred in connection with the conversion of TAB into a public company).

#### **49 Staff remaining with TAB Limited**

- (1) On the sale of TAB Limited, each member of staff of TAB Limited continues to be a member of staff of TAB Limited (despite the change of ownership) on the same terms and conditions of employment as applied to the member of staff immediately before the sale. Those terms and conditions are to continue to have effect until varied either by agreement or otherwise in accordance with law.
- (2) Neither the contract of employment nor the period of employment of each member of the staff concerned is taken to have been broken by the operation of this Act for the

purposes of any law, award or agreement relating to the employment of that member of staff.

- (3) Without limiting this section, this Division does not affect any accrued rights that the member of staff concerned had immediately before the sale in relation to any kind of leave.

## **Part 9 Vesting of undertaking on transfer**

### **50 Application and interpretation**

- (1) This Part applies to the following orders under this Act—
- (a) an order under Part 6 transferring a part of the business undertaking of TAB to a TAB subsidiary,
  - (b) an order under Part 6 transferring a part of the business undertaking of a TAB subsidiary to another TAB subsidiary or to TAB,
  - (c) an order under Part 7 excluding a part of the business undertaking of TAB or a TAB subsidiary and transferring it to the Ministerial Holding Corporation or other person on behalf of the State,
  - (d) an order under Part 7 transferring any part of the excluded undertaking to a person acquiring it from the Ministerial Holding Corporation or other person on behalf of the State.
- (2) In this Part, the body or person from whom a part of a business undertaking is so transferred is called the **transferor** and the body or person to whom it is being so transferred is called the **transferee**.

### **51 Vesting of undertaking in transferee**

- (1) When any part of a business undertaking is transferred by an order to which this Part applies, the following provisions have effect (subject to the order directing the transfer)—
- (a) the assets of the transferor comprised in that part of the undertaking vest in the transferee by force of this section and without the need for any conveyance, transfer, assignment or assurance,
  - (b) the rights and liabilities of the transferor comprised in that part of the undertaking become by force of this section the rights and liabilities of the transferee,
  - (c) all proceedings relating to that part of the undertaking commenced before the transfer by or against the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,

- (d) anything done or omitted to be done in relation to that part of the undertaking before the transfer by, to or in respect of the transferor is (to extent that it has any force or effect) taken to have been done or omitted to be done by, to or in respect of the transferee,
- (e) a reference in any other Act, in any instrument made under any Act or in any document of any kind to the transferor is (to the extent that it relates to that part of the undertaking but subject to the regulations under Schedule 5) to be read as, or as including, a reference to the transferee.

(2) No attornment to the transferee by a lessee from the transferor is required.

(3) Any instrument executed only for—

- (a) a purpose ancillary to or consequential on the operation of this section, or
- (b) the purpose of giving effect to this section,

is not chargeable with stamp duty.

## **52 Transfer of staff**

- (1) This section applies when an order to which this Part applies includes the transfer of the employment of staff from the transferor to the transferee.
- (2) Each member of the staff concerned becomes after the transfer a member of the staff of the transferee and continues (until other provision is duly made) to be employed in accordance with the awards, agreements and determinations applying, immediately before the transfer, to members of the staff of the transferor.
- (3) Neither the contract of employment nor the period of employment of each member of the staff concerned is taken to have been broken by the operation of this Act for the purposes of any law, award or agreement relating to the employment of that member of staff.
- (4) Without limiting this section, this Act does not affect any accrued rights that the member of the staff concerned had immediately before the transfer in relation to any kind of leave.
- (5) A member of the staff concerned is not entitled to receive any payment or other benefit merely because the member ceases to be an employee of the transferor.

## **53 Consideration for vesting**

An order to which this Part applies may specify the consideration on which the order is made and the value or values at which the assets, rights or liabilities are transferred.

## Part 10 Miscellaneous

### 54 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### 55 Subsidiary companies

- (1) The purpose of this section is to make it clear that TAB may, whether or not in connection with the conversion, form or participate in the formation of subsidiary companies on or after the date of assent to this Act and before the conversion.
- (2) Any function of TAB may be exercised by a company in which TAB has a controlling interest. Such a company is referred to in this section as a **subsidiary company**.
- (3) Before the conversion—
  - (a) TAB may, with the approval of the Minister—
    - (i) form, or participate in the formation of, a subsidiary company, or
    - (ii) acquire an interest in a company so that, as a result of the acquisition, the company becomes a subsidiary company, and
  - (b) TAB must not, without the approval of the Minister, sell or otherwise dispose of any interest in a subsidiary company so that, as a result of the sale or disposal, it ceases to be a subsidiary company.
- (4) Nothing in this section affects any power of TAB Limited (existing apart from this section) to form or participate in the formation of, or sell or otherwise dispose of interests in, TAB Limited subsidiaries after the conversion.
- (5) TAB is taken to have been able to form or participate in the formation of, or sell or otherwise dispose of interests in, subsidiary companies before the date of assent to this Act.

- (6) In this section—

**company** means a company incorporated or taken to be incorporated under the [Corporations Law](#).

### 56 Protection of contractual and other obligations

- (1) This section applies to the following—
  - (a) the operation of this Act, and in particular the operation of section 51,
  - (b) the sale of TAB Limited as authorised by this Act,

- (b1) the payment (whether or not by the issue of shares) of any consideration or fee for a licence issued to TAB or a TAB subsidiary under the *Totalizator Act 1997*, the *Liquor Act 1982* or the *Registered Clubs Act 1976*, before the sale of TAB Limited as authorised by this Act,
  - (c) an agreement, guarantee or other arrangement or transaction, entered into or carried out under this Act for purposes connected with this Act,
  - (d) a disclosure of information made for the purposes of the sale or proposed sale of TAB Limited.
- (2) None of the matters or things referred to in subsection (1) are to be regarded as a breach of confidence or otherwise as a civil wrong or as giving rise to a breach of or an offence against a provision of an Act that prohibits or restricts the disclosure of information.
- (3) None of the matters or things referred to in subsection (1) are to be regarded—
- (a) as a breach of contract or other instrument or as requiring any act to be done under an instrument, or
  - (b) as giving rise to any right or remedy by a party to an instrument, or as causing or permitting the termination of an instrument, or
  - (c) as an event of default under an instrument, or
  - (d) as a contravention of section 205 (1) (a) of the *Corporations Law*.
- (4) (Repealed)
- (5) A reference in subsection (3) to an instrument does not include an Act.

#### **57 Auditor-General authorised to communicate information regarding TAB**

- (1) The Treasurer may approve of the communication by the Auditor-General to an authorised person on such terms and conditions as the Treasurer thinks fit of any matter or thing that has come to the knowledge of the Auditor-General in respect of TAB or a TAB subsidiary.
- (2) Any communication by the Auditor-General in accordance with the Treasurer's approval is authorised by this section, and is not prevented by section 38 (Secrecy) or any other provision of the *Government Sector Audit Act 1983*.
- (3) In this section—
- authorised person** means—
- (a) any person exercising functions under this Act or the *Totalizator Act 1997*, and

- (b) any person engaged to perform functions in connection with an application for or the grant of a licence under the [Totalizator Act 1997](#) or the conversion of TAB into a public company and the sale of shares in that company, and
- (c) the holder of any office that is nominated for the purposes of this section by the Minister by notification in writing to the Auditor-General.

## **58 Exemptions from tax for conversion documents and other documents**

(1) In this section—

**exempt matter** means—

- (a) the issue of shares in TAB Limited to the State, the disposal of those shares by the State and the purchase of those shares from the State, or
- (b) the application by TAB Limited under this Act for registration as a company or for the reservation of its name, or
- (c) any other matter related to the conversion of TAB into a public company under this Act, or
- (d) such other matters in connection with this Act as may be prescribed.

**State tax** means application or registration fees, stamp duty or any other tax, duty, fee or charge imposed by any Act or law of the State, other than the [Corporations Law](#).

(2) State tax is not payable in relation to—

- (a) an exempt matter, or
- (b) anything done because of, or for a purpose connected with or arising out of, an exempt matter.

(3) This section does not limit the operation of section 51 (3).

## **59 Certificate evidence**

A certificate purporting to be signed by the Minister or a prescribed officer that an order specified or referred to in the certificate is an order made by the Minister under a specified provision of this Act is admissible in evidence in any legal proceedings and is evidence of the matters certified.

## **60 Proceedings for offences**

Proceedings for an offence against this Act are to be dealt with summarily by the Local Court.

## **61 Savings, transitional and other provisions**

Schedule 5 has effect.

## **62 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## **Schedule 1 TAB up to conversion to company**

(Section 10)

### **Part 1 Preliminary**

#### **1 Application of Schedule**

This Schedule applies to TAB from the commencement of Part 2 to the conversion of TAB to TAB Limited.

#### **2 Definition**

In this Schedule—

**director** means a director of TAB, and includes the Chairperson of TAB.

### **Part 2 Directors**

#### **3 Chairperson**

One of the directors is, in and by the instrument of appointment or in and by another instrument, to be appointed by the Minister as Chairperson of TAB.

#### **4 Acting director**

(1) The Minister may, from time to time, appoint a person to act in the office of a director during the illness or absence of the director. The person, while so acting, has all the functions of the director and is taken to be a director in place of the ill or absent director.

(2) The Minister may remove a person appointed under this clause at any time for any or no reason and without notice.

#### **5 Term of office**

Subject to this Schedule, a director holds office for such period as is specified in the instrument of appointment, but is eligible for reappointment.



## **6 Remuneration**

A director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the director.

## **7 Vacancies in office**

(1) The office of a director becomes vacant if the director—

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing to the Minister, or
- (d) is absent from 4 consecutive meetings of TAB without the leave of TAB, or
- (e) 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 salary for their benefit, or
- (f) becomes a mentally incapacitated person, or
- (g) 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, or
- (h) is removed from office by the Governor under Part 8 of the *Public Sector Management Act 1988* or by the Minister under this clause.

(2) The Minister may remove a director from office at any time for any or no reason and without notice.

## **8 Effect of certain other Acts**

- (1) The *Public Sector Management Act 1988* does not apply to the appointment of a director, and a director is not, as a director, subject to that Act (except Part 8).
- (2) The office of a director is not, for the purposes of any Act, an office or place of profit under the Crown.

## **Part 3 Meetings**

### **9 General procedure**

The procedure for the calling of meetings of TAB and for the conduct of those meetings is, subject to this Schedule and the *Totalizator (Off-course Betting) Act 1964*, to be as determined by TAB.

## **10 Quorum**

The quorum for a meeting of TAB is a majority for the time being of directors.

## **11 Presiding director**

- (1) The Chairperson of TAB or, in the absence of the Chairperson, another director elected to chair the meeting by the directors present is to preside at a meeting of TAB.
- (2) The person presiding at any meeting of TAB has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **12 Voting**

A decision supported by a majority of the votes cast at a meeting of TAB at which a quorum is present is the decision of TAB.

## **13 Minutes**

TAB must cause full and accurate minutes to be kept of the proceedings of each meeting of TAB.

## **Schedules 2-4 (Repealed)**

## **Schedule 5 Savings, transitional and other provisions**

(Section 61)

## **Part 1 Regulations**

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts—

    this Act

*Totalizator Agency Board Privatisation Amendment Act 2002*

*Totalizator Legislation Amendment Act 2003*

- (2) Any such savings or transitional provisions may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State, TAB, a TAB subsidiary or an authority of the State), the rights of that person existing before

the date of its publication, or

- (b) to impose liabilities on any person (other than the State, TAB, a TAB subsidiary or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of this Act**

### **2 Members of TAB**

- (1) A person who, immediately before the commencement of Part 3 of this Act, held office as a member of TAB—
  - (a) ceases to hold that office, and
  - (b) is eligible (if otherwise qualified) to be appointed as a director under section 10.
- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.

### **3 Directors of TAB**

- (1) A person who, immediately before the conversion of TAB to TAB Limited, held office as a director of TAB, is, by force of this clause, a director of TAB Limited on and from the conversion, as if appointed to that office in accordance with the memorandum and articles of association of TAB Limited. This subclause has effect despite any provision of the memorandum or articles of association.
- (2) Such a person holds office for the balance of the then current term for which the person was appointed, subject to the memorandum and articles of association of TAB Limited, and is (if otherwise qualified) eligible for further appointment as a director of TAB Limited in accordance with the memorandum and articles of association of TAB Limited.
- (3) A person is not entitled to any remuneration or compensation because of the operation of this clause.

### **4 Application of certain provisions of [Corporations Law](#)**

- (1) While the State of New South Wales continues to hold all the shares in TAB Limited, sections 186 and 461 (d) of the [Corporations Law](#) do not apply in relation to TAB Limited, and section 249 (7) of the [Corporations Law](#) applies in relation to TAB Limited as if—
  - (a) the State of New South Wales were a holding company (within the meaning of section 249 (7) of the [Corporations Law](#)) of TAB Limited, and
  - (b) the Minister were a representative of the State authorised under section 249 (3) of the [Corporations Law](#).

- (2) Sections 139 (2) and 151 (5) of the *Corporations Law* do not apply in relation to TAB Limited.
- (3) For the purposes of Division 2 of Part 5.6 of the *Corporations Law* (Contributories on winding up)—
  - (a) the State of New South Wales is not (in relation to any period before the conversion) a past member of TAB Limited, and
  - (b) a person is not a past member of TAB Limited merely because he or she was a member of the Totalizator Agency Board, or acted as such, before the conversion.
- (4) For the purposes of the *Corporations Law*, accounts and records kept under Part 3 of the *Public Finance and Audit Act 1983* are, after the conversion, taken to be accounting records kept by TAB Limited under a provision of a previous law of the State of New South Wales, being a provision corresponding to section 289 of the *Corporations Law*.
- (5) For the purposes of the *Corporations Law*, a report and financial statements that were prepared under Part 3 of the *Public Finance and Audit Act 1983* in relation to a period and furnished to the Minister on a particular day are, after the conversion, taken to be a profit and loss account of TAB Limited that was—
  - (a) made out in relation to that period, and
  - (b) laid before the body at an annual general meeting of the body held on that day.

## **5 Audit and accounts**

- (1) As from the conversion, the functions of the Auditor-General under the *Public Finance and Audit Act 1983* are no longer exercisable in respect of TAB Limited, except in respect of whole financial years before the conversion.
- (2) TAB Limited is not required to prepare accounts as at the date of conversion if the conversion occurs during a financial year.

## **6 Superannuation under State public sector schemes**

- (1) This clause applies to a member of staff of TAB Limited who is, immediately before the conversion, a contributor under a State public sector superannuation scheme.
- (2) Contributors to whom this clause applies cease to be contributors on the day referred to in subclause (1). They are taken to have elected on that day to preserve their superannuation benefits in accordance with the relevant statutory provisions.
- (3) This clause does not affect the provisions of any other Act or regulation relating to the rights of contributors under superannuation schemes.
- (4) In this clause—

***State public sector superannuation scheme*** means an FTC scheme or STC scheme within the meaning of the [Superannuation Administration Act 1996](#) or any other scheme or fund prescribed by the regulations for the purposes of this clause.