

# Australian Jockey and Sydney Turf Clubs Merger Act 2010 No 93

[2010-93]



New South Wales

## Status Information

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### Provisions in force

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

### Responsible Minister

- Minister for Gaming and Racing

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

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# Australian Jockey and Sydney Turf Clubs Merger Act 2010 No 93



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## Contents

<b>Long title</b>	5
<b>Part 1 Preliminary</b>	5
1 Name of Act	5
2 Commencement	5
3 Objects of Act	5
4 Interpretation	6
5 Mandatory corporate governance provisions	8
<b>Part 2 Merger of AJC and STC</b>	9
<b>Division 1 Establishment of merged racing club</b>	9
6 Inclusion of mandatory corporate governance provisions in constitution of proposed merged racing club	9
7 Financial arrangements for racecourse improvements	9
8 Recognition of merger	10
9 Alteration of mandatory corporate governance provisions of merged racing club constitution	11
10 Appointment of directors of merged racing club	12
<b>Division 2 Transfer of business undertakings and employees of AJC and STC to merged racing club</b>	15
11 Operation of Division	15

12 Interpretation .....	15
13 Vesting of assets in merged racing club .....	17
14 Transfer of transferable regulatory authorisations.....	17
15 Transferable rights and liabilities become those of merged racing club .....	19
16 Updating of certain references to AJC or STC and transfer of contractual rights and obligations ....	19
17 Proceedings against AJC or STC may be taken against merged racing club .....	19
18 Acts or omissions of AJC or STC taken to be those of merged racing club .....	20
19 Assets, rights and liabilities outside of the State .....	20
20 Cessation of certain personal rights and liabilities of officers of AJC or STC .....	22
21 Potential entitlements and obligations also transferred .....	22
22 Employees of AJC or STC become employees of merged racing club .....	23
23 Sale or disposal of racing infrastructure of racecourses prohibited during 10-year moratorium period .....	23
24 Status of AJC and STC on and after merger finalisation day .....	24
25 Certification to registration authorities.....	25
26 No compensation payable .....	25
27 Confirmation of operation of this Division .....	25
<b>Part 2A Randwick Racecourse Trust.....</b>	<b>26</b>
27A Constitution of the Trust .....	26
27B Appointment of Trustees .....	26
27C Principal function of Trust .....	26
27D Sale, mortgage or disposal of Randwick Racecourse generally prohibited .....	26
27E Liability of Trust and Trustees .....	27
27F Delegation by the Trust.....	27
<b>Part 3 Operation of Randwick Racecourse and other racecourses .....</b>	<b>27</b>
<b>Division 1 Functions of merged racing club in relation to Randwick Racecourse</b>	
.....	27
28 Merged racing club has functions while lessee.....	27
29 Functions of merged racing club in relation to Randwick Racecourse .....	27
30 Use of Randwick Racecourse for additional activities .....	27
31 Maintenance and erection of buildings and improvements .....	28

<b>Division 2 Leasing of Randwick Racecourse</b>	28
32 (Repealed)	28
33 Further lease of Randwick Racecourse	28
34 Authorisation of matters relating to leases over Randwick Racecourse	29
<b>Division 3 Use of racecourses operated by merged racing club</b>	30
35 Application of Division	30
36 By-laws	30
37 Exclusion of persons from applicable racecourse	30
38 Trespass on applicable racecourse	31
<b>Part 4 Miscellaneous</b>	31
39 Existing clubs legislation ceases to have effect on merger finalisation day	31
40 Relationship of Act with other racing legislation	31
41 Act to bind State and other jurisdictions	31
42 Extraterritorial operation of Act	32
43 Effect of this Act on contracts, instruments and related matters	32
44 Displacement and exclusion of Corporations legislation	32
45 Exemption from State tax	34
46 Giving or service of documents	34
47 Regulations	35
48 Nature of proceedings for offences	35
49 Review of Act	35
<b>Schedule 1 Mandatory corporate governance provisions</b>	35
<b>Schedule 2 Savings, transitional and other provisions</b>	44
<b>Schedule 3 Provisions relating to the procedure of the Trust</b>	48
<b>Schedule 4 Provisions relating to the Trustees</b>	49

# Australian Jockey and Sydney Turf Clubs Merger Act 2010 No 93



New South Wales

An Act to facilitate the merger of Australian Jockey Club Limited and the Sydney Turf Club; to make continuing provision in relation to the operation of Randwick Racecourse and certain other racecourses; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the [Australian Jockey and Sydney Turf Clubs Merger Act 2010](#).

### 2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Schedule 3 commences on a day or days to be appointed by proclamation.
- (3) A day may not be appointed for the commencement of a provision of Schedule 3 that is earlier than the merger finalisation day.

### 3 Objects of Act

The objects of this Act are as follows:

- (a) to facilitate the merger of the AJC and the STC into a new racing club incorporated under the Corporations Act (including by making provision for the transfer of certain assets, rights and liabilities and employees to the merged racing club),
- (b) to make provision in relation to the corporate governance of the merged racing club,
- (c) to provide for the functions of the merged racing club in relation to Randwick Racecourse and certain other racecourses,
- (d) to provide for the granting of further leases over Randwick Racecourse,
- (e) to provide for the repeal of the [Australian Jockey Club Act 2008](#) and the [Sydney Turf Club Act 1943](#),

- (f) to make provision for matters of a savings or transitional nature,
- (g) to make consequential amendments to certain other Acts and statutory instruments.

#### 4 Interpretation

(1) **Definitions** In this Act:

**AJC** means Australian Jockey Club Limited (ACN 130 406 852).

**assets** means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**club rules** means:

- (a) in relation to the former AJC—the document entitled the *Constitutional Rules of the Australian Jockey Club*, as in force from time to time, and
- (b) in relation to the AJC—the constitution of the company and any other document issued by the AJC that contains rules concerning membership of the company, as in force from time to time, and
- (c) in relation to the STC—the regulations for the Sydney Turf Club set out in the First Schedule to the [Sydney Turf Club Act 1943](#), as in force from time to time, and
- (d) in relation to the merged racing club—the constitution of the club and any other document issued by the club containing rules concerning membership of the club, as in force from time to time.

**company** has the same meaning as it has in the Corporations Act.

**constitution**, in relation to the merged racing club or any other company, has the same meaning as **constitution** of a company has in the Corporations Act.

**Corporations Act** means the [Corporations Act 2001](#) of the Commonwealth.

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

**former AJC** means the club that was known as the Australian Jockey Club as referred to in the repealed [Australian Jockey Club Act 1873](#).

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

**general law** means the common law and equity (as modified from time to time by legislation).

**instrument** means an instrument (other than this Act or an instrument made under this Act) or any other document 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, process or other instrument issued by a court or tribunal.

**legislation** includes:

- (a) any statute of a legislature (whether enacted or made in Australia or elsewhere), and
- (b) any proclamation, regulation, rule, by-law, order or any other kind of subordinate legislation (however described) made under the authority of a statute of a legislature (whether enacted or made in Australia or elsewhere).

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

**mandatory corporate governance provisions**—see section 5.

**merged racing club** means a company that is declared to be the merged racing club for the purposes of this Act by an order made by the Minister under section 8, and includes its successors and permitted assigns.

**merger finalisation day** means the day specified as the merger finalisation day for the purposes of this Act by an order made by the Minister under section 8.

**modification** includes addition, exception, omission or substitution.

**previous club** means any of the following:

- (a) the former AJC,
- (b) the AJC,
- (c) the STC.

**power** includes an authority.

**racecourse** has the same meaning as it has in the [Betting and Racing Act 1998](#).

**Randwick Racecourse** means:

- (a) the land comprised in Certificate of Title Folio Identifier 1/130234, and
- (b) the land comprised in Certificate of Title Folio Identifier 1642/752011, and
- (c) the land comprised in Certificate of Title Folio Identifier 1588/752011,

and includes any buildings, structures, fixtures, fittings and other improvements on that land.

**Randwick Racecourse lease** means any of the following:

- (a) any lease of Randwick Racecourse granted to the merged racing club by the Trust under section 33,
- (b) any lease of Randwick Racecourse granted to the AJC under section 10 of the [Australian Jockey Club Act 2008](#) that, by operation of Division 2 of Part 2, is vested in the merged racing club.

**regulatory authorisation** means any licence, permit, consent, entitlement, accreditation or other authority under State legislation.

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

**State legislation** means any legislation of the State.

**STC** means the Sydney Turf Club incorporated under the [Sydney Turf Club Act 1943](#).

**the State** means New South Wales.

**Trust** means the Randwick Racecourse Trust constituted by this Act.

**Trustee** means a trustee referred to in section 27B.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) **When events or other things occur** If this Act provides for an event or other thing to occur on a particular day, that event or thing is taken to occur at the beginning of that day.
- (3) **Notes** Notes included in this Act do not form part of this Act.

## **5 Mandatory corporate governance provisions**

- (1) For the purposes of this Act:
  - (a) the **mandatory corporate governance provisions** are the provisions set out in Schedule 1, and
  - (b) the constitution of a company **includes** the mandatory corporate governance provisions if the constitution of the company includes provisions in the same terms as, or to the effect of, the mandatory corporate governance provisions.
- (2) The constitution of a company does not cease to include the mandatory corporate governance provisions merely because it includes additional provisions, so long as those additional provisions are not inconsistent with the mandatory corporate

governance provisions.

- (3) An alteration of the constitution of a company including the mandatory corporate governance provisions that omits or otherwise alters those provisions does not result in the constitution ceasing to include the mandatory corporate governance provisions if the Minister has consented to the alteration under section 9.
- (4) Any matter in Schedule 1 appearing in a note headed “Incorporation instruction” does not form part of the mandatory corporate governance provisions. Any matter inserted or omitted by reference to an Incorporation instruction is a permitted change to the mandatory corporate governance provisions.

## **Part 2 Merger of AJC and STC**

### **Division 1 Establishment of merged racing club**

#### **6 Inclusion of mandatory corporate governance provisions in constitution of proposed merged racing club**

- (1) The inclusion of the mandatory corporate governance provisions in the constitution of a company that is being (or has been) established for the purpose of becoming the merged racing club is specifically authorised.
- (2) The merged racing club is specifically authorised to carry on its affairs in accordance with the mandatory corporate governance provisions included in its constitution.
- (3) Nothing in this section limits the power of the merged racing club to conduct its affairs in accordance with other provisions that it has included in its constitution, so long as those other provisions are not inconsistent with the mandatory corporate governance provisions included in its constitution.

#### **Note—**

See, in particular, section 5G (4) and (11) of the Corporations Act and the declaration made in relation to this section by section 44 (1) of this Act.

#### **7 Financial arrangements for racecourse improvements**

- (1) The Minister is authorised, on behalf of the State, to enter into an arrangement with the relevant parties for the provision of financial assistance for the purpose of making improvements to Randwick Racecourse and Rosehill Gardens Racecourse.
- (2) The following are specifically authorised by this Act for the purposes of the *Competition and Consumer Act 2010* of the Commonwealth and the *Competition Code of New South Wales*:
  - (a) any arrangement entered into under subsection (1),
  - (b) the conduct of the Minister, any relevant party or any agent in negotiating and

entering into any such arrangement,

(c) the conduct of any party to the arrangement (including the Minister) or any agent in giving effect to the arrangement.

(3) Anything authorised to be done by subsection (2) is authorised only to the extent to which it would otherwise contravene Part IV of the *Competition and Consumer Act 2010* of the Commonwealth or the *Competition Code of New South Wales*.

(4) In this section:

**arrangement** includes agreement and understanding.

**giving effect to** an arrangement includes:

- (a) complying with any obligation under the arrangement, and
- (b) exercising or enforcing any right or power under the arrangement.

**relevant parties** means each of the following:

- (a) Racing New South Wales,
- (b) TAB Limited (ACN 081 765 308),
- (c) the merged racing club (or a company that the Minister anticipates will be declared to be the merged racing club under section 8).

**Rosehill Gardens Racecourse** means the racecourse known as Rosehill Gardens Racecourse that was owned by the STC at the time this Act was enacted, and includes:

- (a) the Rosehill Gardens Event Centre, and
- (b) any other buildings, structures, fixtures, fittings and other improvements on the racecourse.

## 8 Recognition of merger

- (1) The Minister may, by order published in the Gazette, declare a company to be the merged racing club for the purposes of this Act.
- (2) The Minister may make an order under subsection (1) in relation to a company only if the following pre-conditions are met:
  - (a) the company is taken under section 119A of the Corporations Act to be registered in the State,
  - (b) a copy of the constitution of the company has been provided to the Minister,
  - (c) the Minister is satisfied that the constitution of the company includes the mandatory corporate governance provisions.

- (3) The Minister may specify a day as the merger finalisation day for the purposes of this Act:
  - (a) in an order made under subsection (1), or
  - (b) by a subsequent order published in the Gazette.
- (4) The day on which a declaration made by an order under subsection (1) takes effect is the day on which the order is published in the Gazette or such later day as may be specified in the order.
- (5) The only limits on the jurisdiction of the Minister to make orders under this section are:
  - (a) in relation to the making of an order under subsection (1)—that the pre-conditions for the making of the order set out in subsection (2) are met, and
  - (b) in relation to the making of an order under subsection (3) (b)—that an order under subsection (1) has previously been made.
- (6) The making of an order under this section cannot be challenged, reviewed or called into question in proceedings before any court or tribunal except on the grounds that the making of the order exceeds the jurisdictional limits specified by subsection (5) for the making of such an order.

**Editorial note—**

Club specified as the merged racing club: Australian Turf Club Limited ACN 148 157 288. See Gazette No 12 of 4.2.2011, p 543.

Day specified as the merger finalisation day: 7.2.2011. See Gazette No 12 of 4.2.2011, p 543.

**9 Alteration of mandatory corporate governance provisions of merged racing club constitution**

- (1) An alteration to the constitution of the merged racing club that would operate to omit or otherwise alter any of the mandatory corporate governance provisions included in the constitution does not have effect unless the Minister gives written consent to the alteration.

**Note—**

See, in particular, section 5G (10) and (11) of the Corporations Act and the declaration made in relation to this section by section 44 (1) of this Act.

- (2) The Minister may not give consent to such an alteration unless the Minister considers that the alteration does not result in the provisions of the constitution of the merged racing club being inconsistent with the mandatory corporate governance provisions.

## 10 Appointment of directors of merged racing club

- (1) **Appointment of independent and club appointed directors of first board** The following bodies and person are specifically authorised to appoint the 9 directors of the first board of the merged racing club as follows:
- (a) the board of directors of the AJC is to appoint 3 of the directors,
  - (b) the board of directors of the STC is to appoint 3 of the directors,
  - (c) the Minister is to appoint 3 of the directors (the ***independent directors***) on the recommendation of a selection panel constituted under this section (an ***appointments selection panel***).

**Note—**

See, in particular, section 5G (4) and (11) of the Corporations Act and the declaration made in relation to this section by section 44 (1) of this Act.

- (2) When appointing their 3 directors to the first board of the merged racing club, the boards of directors of the AJC and STC are each to designate in the instrument of appointment of one of their appointees that the appointee is the club's short-term appointment.

**Note—**

The short-term appointment of the boards of directors of the AJC or STC will hold office for only 12 months while the other directors appointed by the boards will hold office for 4 years. See clause 4 of the mandatory corporate governance provisions for the merged racing club in Schedule 1.

- (3) **Appointment of replacement independent directors** The Minister is specifically authorised, on the recommendation of an appointments selection panel, to appoint a person to replace an independent director whenever the office of an independent director becomes vacant.
- (4) **Persons not eligible to be appointed** A person is not eligible to be appointed as an independent director if the person:
- (a) is an employee of a race club or racing association, or
  - (b) is or was a member of the appointments selection panel constituted to recommend the appointment, or
  - (c) is a member of the governing body of a race club or eligible industry body (including a director of the AJC or STC), or
  - (d) holds a licence issued by Racing New South Wales or by a racing association, or
  - (e) is registered by or with the Greyhound Welfare and Integrity Commission under the [Greyhound Racing Act 2017](#) or Harness Racing New South Wales under the [Harness Racing Act 2009](#), or

- (f) is currently, or during the previous 10 years has been, warned off, disqualified or named on the Forfeit List under the Australian Rules of Racing, or
  - (g) during the previous 10 years has been convicted in the State of an offence that is punishable by imprisonment for 12 months or more, or convicted elsewhere than in the State of an offence that, if committed in the State, would be an offence so punishable, or
  - (h) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankruptcy, or
  - (i) is a mentally incapacitated person.
- (5) **Recommendations by appointments selection panel** The Minister is to constitute an appointments selection panel to recommend persons for appointment as independent directors and to recommend the terms of office of independent directors.
- (6) An appointments selection panel:
- (a) in the case of the appointment of an independent director to the first board of the merged racing club—is to be constituted by the following persons:
    - (i) a person nominated by the Chairperson of Racing New South Wales,
    - (ii) a person nominated by the board of directors of the AJC,
    - (iii) a person nominated by the board of directors of the STC, and
  - (b) in the case of the appointment of an independent director to replace another independent director who has vacated office—is to be constituted by the following persons:
    - (i) a person nominated by the Chairperson of Racing New South Wales,
    - (ii) a director of the merged racing club nominated by the board of directors of the club who is an independent director,
    - (iii) a director of the merged racing club nominated by the board of directors of the club who is not an independent director.
- (7) An appointments selection panel must recommend only the number of persons required to be appointed (no more and no fewer) and, subject to subsection (8), must recommend a term of office for each person recommended.
- (8) The term of office for an independent director that an appointments selection panel may recommend is:
- (a) in the case of an appointment to the first board of the merged racing club—4 years, and

- (b) in the case of an appointment to fill a casual vacancy—the balance of the term of the independent director who is being replaced, and
  - (c) in the case of any other appointment—such period as the panel considers appropriate (being a period not exceeding 4 years).
- (9) **Selection criteria and probity checks** An appointments selection panel must not recommend a person for appointment as an independent director unless the panel is satisfied that the person has experience in a senior administrative role or experience at a senior level in one or more of the fields of business, finance, law, marketing, technology, commerce, regulatory administration or regulatory enforcement.
- (10) Before recommending a person for appointment as an independent director, the appointments selection panel must conduct a probity check of the person (with the level of scrutiny as determined by the Minister). The Minister is to appoint a Probity Adviser to assist the selection panel to conduct probity checks.
- (11) An appointments selection panel is to choose between candidates for recommendation for appointment as an independent director on the basis of merit, with merit to be determined on the basis of a candidate's abilities, qualifications, experience and personal qualities that are relevant to the performance of the duties of a director of the merged racing club.
- (12) **Appointments before company declared to be merged racing club** Any function conferred or imposed by or under this section in relation to the appointment of directors to the first board of the merged racing club may be exercised even if at the time the function is exercised no company has been formed for the purposes of being declared to be, or no company has been declared to be, the merged racing club under section 8. Any function so exercised is to be taken to have been duly exercised for the purposes of this section and the mandatory corporate governance provisions included in the constitution of a company.
- (13) **Independent directors who are members of race clubs to have membership voting entitlements suspended** If a person who is appointed as an independent director is also a member of a race club, the race club is specifically required to suspend the person's voting entitlements as a member of the race club while the person remains an independent director despite anything to the contrary in the constitution or other membership rules of the club.
- (14) **Definitions** In this section:
- Australian Rules of Racing** has the same meaning as it has in the [Thoroughbred Racing Act 1996](#).
- eligible industry body** has the same meaning as it has in the [Thoroughbred Racing Act 1996](#).

**race club** has the same meaning as it has in the [Thoroughbred Racing Act 1996](#).

**racing association** has the same meaning as it has in the [Thoroughbred Racing Act 1996](#).

## **Division 2 Transfer of business undertakings and employees of AJC and STC to merged racing club**

### **11 Operation of Division**

This Division operates, on and from the merger finalisation day, specifically (and in accordance with the requirements of this Division):

- (a) to transfer the transferable business undertakings and the employees of the AJC and STC to the merged racing club, and
- (b) to confer or impose other rights and liabilities on the merged racing club and certain other persons in connection with the transfer of the transferable business undertakings.

#### **Note—**

See, in particular, section 5G (4), (5) and (11) of the Corporations Act and the declaration made in relation to this Division by section 44 (1) of this Act.

### **12 Interpretation**

- (1) In this Division:

**conduct** includes any act or omission.

**member** means:

- (a) in relation to the AJC—a member of the AJC under its club rules and includes any person who was previously a member of the former AJC under its club rules, and
- (b) in relation to the STC—a member of the STC within the meaning of the [Sydney Turf Club Act 1943](#).

**officer** means:

- (a) in relation to the AJC—a director or secretary of that company within the meaning of the Corporations Act and includes any person who was previously a Chairman of the Committee of the former AJC or any other member of that Committee, and
- (b) in relation to the STC—a director of the STC within the meaning of the [Sydney Turf Club Act 1943](#).

**transferable assets** means:

- (a) all of the assets vested (whether absolutely or contingently or in full or in part) in,

or otherwise held by, the AJC immediately before the merger finalisation day (including any lease of Randwick Racecourse granted to the AJC under the [Australian Jockey Club Act 2008](#)), and

- (b) all of the assets vested (whether absolutely or contingently or in full or in part) in, or otherwise held by, the STC immediately before the merger finalisation day.

**transferable business undertakings** means all of the following:

- (a) the transferable assets,
- (b) the transferable rights,
- (c) the transferable liabilities,
- (d) the transferable regulatory authorisations.

**transferable liabilities** means all of the liabilities of the AJC and the STC immediately before the merger finalisation day.

**transferable regulatory authorisations** means all regulatory authorisations in force that are held by or on behalf of the AJC or STC immediately before the merger finalisation day, including (without limitation) each of the following:

- (a) any licence held by or on behalf of the AJC or STC that is in force under the [Liquor Act 2007](#),
- (b) any poker machine entitlements or licences held by or on behalf of the AJC or STC under the [Gaming Machines Act 2001](#),
- (c) any licence held by or on behalf of the AJC or STC that is in force under the [Betting and Racing Act 1998](#),
- (d) any licence held by or on behalf of the AJC or STC that is in force under the [Totalizator Act 1997](#).

**transferable rights** means all of the rights of the AJC and the STC immediately before the merger finalisation day.

- (2) A reference in this Division to the [Australian Jockey Club Act 2008](#) or the [Sydney Turf Club Act 1943](#) is a reference to that Act before it ceases to have effect under section 39.
- (3) A reference in this Division (however expressed) to the assets, rights or liabilities of the AJC includes a reference to:
  - (a) any assets, rights or liabilities of the former AJC that became the assets, rights or liabilities of the AJC by virtue of the operation of Part 3 of the [Australian Jockey Club Act 2008](#) (including any assets, rights or liabilities vested in or held by, or

exercisable by or against, an officer of the former AJC and to which section 23 of that Act applied immediately before the merger finalisation day), and

- (b) any potential assets, rights or liabilities of the former AJC that would have become the assets, rights or liabilities of the AJC by virtue of the operation of Part 3 of the [Australian Jockey Club Act 2008](#) had that Part continued in force.

### 13 Vesting of assets in merged racing club

- (1) The transferable assets vest in, and become the assets of, the merged racing club by virtue of this section on the merger finalisation day:
  - (a) without the need for any further conveyance, transfer, assignment or assurance, and
  - (b) free of any estate or interest that any member of the AJC or STC may have had in the assets immediately before the merger finalisation day by reason of being a member.
- (2) Without limiting subsection (1), any lease of Randwick Racecourse granted to the AJC under the [Australian Jockey Club Act 2008](#) that is in force immediately before the merger finalisation day vests in the merged racing club as lessee on that day for the remainder of the period of the lease (and subject to the same conditions and restrictions that applied in relation to the lease immediately before that day) and without the need for the consent of the Randwick Racecourse trustees (within the meaning of this Act as originally enacted).
- (3) No attornment to the merged racing club by a lessee or sublessee from the AJC or STC is required.

### 14 Transfer of transferable regulatory authorisations

- (1) Each of the transferable regulatory authorisations (an **original regulatory authorisation**) becomes a regulatory authorisation of the merged racing club (the **transferred regulatory authorisation**) on the merger finalisation day for the purposes of the State legislation under which the original regulatory authorisation was issued (the **relevant State legislation**).
- (2) A transferred regulatory authorisation:
  - (a) has effect as if it had been issued to the merged racing club for the remainder of the period (if any) for which the original regulatory authorisation was issued, unless it is sooner cancelled, forfeited, surrendered or otherwise ceases to have effect under the relevant State legislation, and
  - (b) is subject to the same terms, conditions and endorsements as the original regulatory authorisation until those terms, conditions or endorsements are altered, varied or revoked in accordance with the relevant State legislation.

- (3) The provisions of the [Registered Clubs Act 1976](#) and the [Liquor Act 2007](#) (and of the regulations made under those Acts) apply in relation to the merged racing club subject to the following modifications:
- (a) the rules referred to in section 30 (1) (a) and (b) of the [Registered Clubs Act 1976](#) do not apply in relation to the merged racing club,
  - (b) section 32 (1) of the [Registered Clubs Act 1976](#) does not prevent the club from having more than one secretary and, in particular, from having one secretary approved under section 33 of that Act for the purposes of that Act and a different secretary or chief executive officer for the club in its capacity as a company,
  - (c) section 34 (3A) of the [Registered Clubs Act 1976](#) does not operate to make a person or the club guilty of an offence against section 34 (2) of that Act if the person is acting as a secretary or chief executive officer for the club in its capacity as a company and another person has been approved as the secretary for the club in its capacity as a registered club,
  - (d) section 66 (2) (a) of the [Liquor Act 2007](#) is to be read as being confined to the secretary of the club approved for the purposes of the [Registered Clubs Act 1976](#),
  - (e) such modifications as may be prescribed by the regulations (being modifications that relate to the operation of this Division).

**Note—**

Section 41J (Disposal by registered club of real property) of the [Registered Clubs Act 1976](#) has no operation in relation to the transfer of the AJC's or STC's core property by operation of this Division because the disposal has been effected by this Division rather than by the AJC or STC.

- (4) The Minister is not to recommend the making of a regulation for the purposes of subsection (3) (e) unless the Minister administering the Act or regulations proposed to be modified has consented to the modification concerned.
- (5) The person or body (a **regulatory body**) that has the function under the relevant State legislation of issuing regulatory authorisations of the same kind as a transferred regulatory authorisation must, at the request of the merged racing club, re-issue the transferred regulatory authorisation in the name of the merged racing club (with substantially the same terms, conditions and endorsements as the transferred regulatory authorisation).
- (6) No fee or charge is payable by the merged racing club to a regulatory body for or in respect of the exercise of any function by the regulatory body in connection with the transfer or re-issue of a regulatory authorisation by operation of, or under, this section.
- (7) In this section:

**issued** includes given.

#### **15 Transferable rights and liabilities become those of merged racing club**

- (1) The transferable rights become, by virtue of this section, the rights of the merged racing club on the merger finalisation day and may be exercised without regard to any fetters on the exercise of those rights that were enforceable by any member of the AJC or STC immediately before the merger finalisation day by reason of being a member.
- (2) The transferable liabilities become, by virtue of this section, the liabilities of the merged racing club on the merger finalisation day.
- (3) Without limiting subsection (2), any indemnity granted (or taken to have been granted) by or on behalf of the AJC or STC to an officer of the AJC or STC before the merger finalisation day with respect to conduct in his or her capacity as such is enforceable against the merged racing club on and from the merger finalisation day as if the merged racing club had granted the indemnity.

#### **16 Updating of certain references to AJC or STC and transfer of contractual rights and obligations**

- (1) Subject to subsection (2) and the regulations, on and from the merger finalisation day any reference in any instrument to the AJC, the STC or an officer of the AJC or STC while acting on behalf of the AJC or STC is (to the extent to which it relates to any part of the transferable business undertakings) to be read as a reference to the merged racing club.
- (2) Subsection (1) does not apply in relation to any reference of the kind referred to in that subsection in any Act or other statutory instrument that is amended by Schedule 3.
- (3) On and from the merger finalisation day (and without limiting subsection (1) or sections 13, 15 and 20), the merged racing club is entitled to the benefit and subject to the burden of, and is taken to be a party to, any contract or arrangement in force immediately before the merger finalisation day to which the AJC or STC was a party as if the merged racing club were named in the contract or arrangement as a party instead of the AJC or STC.

#### **17 Proceedings against AJC or STC may be taken against merged racing club**

- (1) All proceedings by or against the AJC or STC that:
  - (a) are pending immediately before the merger finalisation day, and
  - (b) relate to any part of the transferable business undertakings,are taken on and from the merger finalisation day to be proceedings pending by or against the merged racing club.

- (2) Nothing in this Division renders defective any proceedings by or against the AJC or the STC.

### **18 Acts or omissions of AJC or STC taken to be those of merged racing club**

- (1) Any act, matter or thing done or omitted to be done before the merger finalisation day by, to or in respect of the AJC or STC in relation to any part of the transferable business undertakings is (to the extent to which that act, matter or thing has any force or effect) taken on and from the merger finalisation day to have been done or omitted to be done by, to or in respect of the merged racing club.
- (2) Without limiting subsection (1), that subsection extends to any conduct (whether unconscionable, misleading, deceptive or otherwise) of any officer of the AJC or STC in his or her capacity as such.

### **19 Assets, rights and liabilities outside of the State**

- (1) If any asset that forms part of the transferable assets:
- (a) is vested in or held by a relevant person under the law of an external jurisdiction immediately before the merger finalisation day, and
  - (b) does not, despite section 13, become the asset of the merged racing club under the law of that jurisdiction,
- the relevant person:
- (c) subject to paragraph (d), holds the asset, for the purposes of the law of the State, in trust for the sole benefit of the merged racing club until such time as the asset becomes the asset of the merged racing club under the law of the external jurisdiction or the trust is otherwise terminated, and
  - (d) if it is possible for the relevant person to vest the asset in the merged racing club under the law of that external jurisdiction by effecting a conveyance, transfer, assignment or assurance and the merged racing club directs it—must, in accordance with any such direction, effect any such conveyance, transfer, assignment or assurance.

#### **Note—**

For example, paragraph (d) enables the merged racing club to direct that the legal title to an asset be transferred to it as the beneficial owner of the asset.

- (2) The trust created by subsection (1) (c) is to be treated, for all purposes, as if it was a bare trust declared by the relevant person *inter vivos*.

#### **Note—**

The general law relating to the law of trusts applies to the trust created by subsection (1) (c).

- (3) If any right that forms part of the transferable rights (being rights that are not also

part of the transferable assets):

- (a) is exercisable by a relevant person under the law of an external jurisdiction, and
- (b) does not, despite section 15 (1), become a right of the merged racing club on or after the merger finalisation day under the law of that jurisdiction,

the relevant person (or any person entitled to exercise the right instead of the relevant person) must exercise that right in accordance with any directions given by the merged racing club from time to time.

- (4) If any liability that forms part of the transferable liabilities:

- (a) is a liability enforceable against a relevant person under the law of an external jurisdiction, and
- (b) does not, despite section 15 (2), become a liability of the merged racing club on or after the merger finalisation day under the law of that jurisdiction,

the relevant person (or, if the relevant person is deceased, the estate of the person) is entitled to be indemnified by the merged racing club against the liability.

- (5) Any trust created by section 23 of the [Australian Jockey Club Act 2008](#) in favour of the AJC continues in effect on and from the merger finalisation day as if the trust were a bare trust declared by the officer of the AJC concerned inter vivos for the sole benefit of the merged racing club.
- (6) The merged racing club is the person nominated by this Act for the purposes of appointing a new trustee under Division 1 of Part 2 of the [Trustee Act 1925](#):
- (a) in respect of the trust created by subsection (1) (c), and
  - (b) in respect of the trust continued in effect by subsection (5).

**Note—**

The provisions of Division 1 of Part 2 of the [Trustee Act 1925](#) provide for the appointment and removal of trustees.

- (7) In this section:

**external jurisdiction** means any of the following:

- (a) a State (other than the State),
- (b) a Territory,
- (c) the Commonwealth,
- (d) a jurisdiction outside of Australia.

**relevant person** means any of the following:

- (a) the AJC,
- (b) an officer of the AJC,
- (c) an officer of the STC.

**Note—**

Section 24 (5) provides that the merged racing club is taken for all purposes, including the rules of private international law, to be the successor of the dissolved STC. The AJC, on the other hand, will not be dissolved by operation of this Act. See section 24 (1).

## **20 Cessation of certain personal rights and liabilities of officers of AJC or STC**

If any asset, right or liability or any regulatory authorisation becomes that of the merged racing club by operation of this Division:

- (a) any officer of the AJC or STC who held any such asset, or in whom such an asset was vested, ceases on and from the merger finalisation day:
  - (i) to hold, or be vested with, the asset, and
  - (ii) to have any rights or liabilities associated with holding or being vested with the asset, and
- (b) any officer of the AJC or STC who could have exercised or otherwise enforced any such right ceases on and from the merger finalisation day to have the power to exercise or otherwise enforce the right, and
- (c) any officer of the AJC or STC against whom any such liability was or could have been enforceable ceases on and from the merger finalisation day to be the person against whom that liability may be enforced, and
- (d) any officer of the AJC or STC who held any such regulatory authorisation ceases on and from the merger finalisation day:
  - (i) to hold the authorisation, and
  - (ii) to have any rights or liabilities associated with holding the authorisation.

## **21 Potential entitlements and obligations also transferred**

The merged racing club has all the entitlements and obligations of the AJC or STC in relation to the assets, rights and liabilities transferred by this Division that the AJC or STC would have had but for the transfer, whether or not those entitlements and obligations were actual or potential at the time the transfer took effect.

## **22 Employees of AJC or STC become employees of merged racing club**

- (1) Any person who, immediately before the merger finalisation day, was an employee of the AJC or STC ceases, on and from that day, to be an employee of the AJC or STC and becomes instead an employee of the merged racing club (a **transferred employee**).
- (2) The following provisions apply in relation to the employment by the merged racing club of a transferred employee (subject to any applicable provisions of the [Fair Work Act 2009](#) of the Commonwealth and subsection (3)):
  - (a) the transferred employee is to be employed on the same terms and conditions as under the employee's contract of employment with the AJC or STC immediately before the merger finalisation day,
  - (b) the terms and conditions of employment of the transferred employee referred to in paragraph (a) may, after the merger finalisation day, be changed in the same way as they could have been before the merger finalisation day,
  - (c) the service with the AJC or STC of the transferred employee is taken to be service with the merged racing club for all purposes and the employee's accrued entitlements with the AJC or STC are taken to be accrued entitlements with the merged racing club,
  - (d) a transferred employee is not entitled to payment (including, without limitation, any payment in lieu of leave or any damages or other compensation, whether under legislation, contract or otherwise) arising out of, or resulting from, the operation of this Division.

### **Note—**

See also Part 2-8 (Transfer of business) of the [Fair Work Act 2009](#) of the Commonwealth.

- (3) Nothing in this section affects the continued application (if any) of any industrial instrument under the [Industrial Relations Act 1996](#) to the employment of a transferred employee.

## **23 Sale or disposal of racing infrastructure of racecourses prohibited during 10-year moratorium period**

- (1) This section applies to any racecourse (other than Randwick Racecourse or Warwick Farm Racecourse) that becomes vested in the merged racing club by virtue of the operation of this Division.

### **Note—**

Randwick Racecourse is owned by the Trust and, immediately before the merger finalisation day, was leased to the AJC. The merged racing club will become its lessee by virtue of the operation of this Division.

- (2) The merged racing club may not sell or otherwise dispose of any of the necessary racing infrastructure of a racecourse to which this section applies within the 10-year

period commencing on the merger finalisation day.

- (3) The **necessary racing infrastructure** of a racecourse is any lands, buildings or other facilities (such as racetracks, training grounds, spectator or member stands and stabling areas) that are necessary for the conduct of race meetings at the racecourse.
- (4) The regulations may make provision for or with respect to the kinds of lands, buildings or facilities (other than racetracks, training grounds, spectator or member stands or stabling areas) that are, or are not, to be treated for the purposes of this section as being necessary for the conduct of race meetings at a racecourse.
- (5) In this section:

**Warwick Farm Racecourse** means the racecourse known as Warwick Farm Racecourse that was owned by the AJC at the time that this Act was enacted, and includes any buildings, structures, fixtures, fittings and other improvements on the racecourse.

#### **24 Status of AJC and STC on and after merger finalisation day**

- (1) **Status of AJC** Subject to this Division, nothing in this Act (including section 39) operates to wind up or dissolve the AJC.
- (2) Accordingly, the AJC is not required to wind up its affairs or pay its liabilities and distribute its assets as a result of the operation of this Act.
- (3) However, the AJC may (but need not) wind up its affairs or deregister the AJC in accordance with the provisions of the Corporations Act.
- (4) **Status of STC** On the merger finalisation day:
  - (a) the STC is dissolved, and
  - (b) the members of the STC cease to be members of the STC, and
  - (c) the directors of the STC, and any person holding office as the Chairperson, Vice-Chairperson or Honorary Treasurer, cease to hold office as such, and
  - (d) any person who ceases to be a member of the STC or to hold an office because of the operation of this subsection is not entitled to any compensation for the loss of that membership or office.
- (5) The merged racing club is taken for all purposes, including the rules of private international law, to be the successor of the dissolved STC.
- (6) **Entitlements of membership to be afforded by merged racing club to existing members** A person who was a member of the AJC or STC immediately before the merger finalisation day (an **existing club member**) is entitled to be afforded the same or equivalent entitlements of membership of the merged racing club as the person had

as a member of the AJC or STC immediately before the merger finalisation day.

- (7) The merged racing club is specifically required to make provision for an existing club member to be afforded the membership entitlements to which the member is entitled under subsection (6) for the period of 12 months commencing on the merger finalisation day.
- (8) Nothing in subsection (6) or (7) prevents or otherwise limits the merged racing club from admitting members to the club or from excluding any person from membership of the club in accordance with the club rules of the merged racing club.
- (9) **Definition** In this section:

***member of the AJC*** does not include a member of the former AJC.

## **25 Certification to registration authorities**

- (1) In this section:

***registration authority*** means a person or body that has functions under any law in connection with the keeping of a register in respect of assets, rights or liabilities.

- (2) The merged racing club may lodge with a registration authority a certificate certifying as to such information as may reasonably be required by the registration authority to enable the registration authority to exercise any function of the authority arising in connection with the transfer of any transferable asset, right or liability by operation of this Division.
- (3) Such a certificate is to be accepted and acted upon by the registration authority and, despite any other law, the registration authority is not entitled to require that the information concerned be provided to it in any particular form or in any particular manner.
- (4) No fee or charge is payable by the merged racing club to a registration authority for or in respect of the exercise of any function by the registration authority in connection with the transfer of a transferable asset, right or liability by operation of this Division.

## **26 No compensation payable**

No compensation is payable to any person or body in connection with the operation of this Division in respect of any asset, right, liability or regulatory authorisation.

## **27 Confirmation of operation of this Division**

- (1) The Minister may, by notice in writing, confirm that particular employees, assets, rights, liabilities or regulatory authorisations have become the employees, assets, rights, liabilities or regulatory authorisations of the merged racing club by operation of this Division.

- (2) Such a notice is evidence of that fact.

## **Part 2A Randwick Racecourse Trust**

### **27A Constitution of the Trust**

- (1) There is constituted by this Act a corporation under the corporate name of the Randwick Racecourse Trust.
- (2) The Trust:
  - (a) has and may exercise the functions conferred or imposed on it by or under this or any other Act, and
  - (b) is, for the purposes of any Act, a NSW Government agency.
- (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.
- (4) Schedule 3 contains provisions with respect to the procedure of the Trust.

### **27B Appointment of Trustees**

- (1) The Trust consists of 3 trustees appointed by the Minister.
- (2) Schedule 4 contains provisions relating to the Trustees.

### **27C Principal function of Trust**

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.

### **27D Sale, mortgage or disposal of Randwick Racecourse generally prohibited**

- (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.
- (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:
  - (a) affect, to any significant degree, the continued use of Randwick Racecourse for the purpose of a public racecourse and associated activities, nor
  - (b) constitute a breach of the Randwick Racecourse lease by the Trust.
- (3) Nothing in this section prevents or otherwise limits the Trust from granting any lease under section 33.

## **27E Liability of Trust and Trustees**

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.

## **27F Delegation by the Trust**

The Trust may delegate any of its functions (other than this power of delegation) to a Trustee or any staff member of the Trust.

# **Part 3 Operation of Randwick Racecourse and other racecourses**

## **Division 1 Functions of merged racing club in relation to Randwick Racecourse**

### **28 Merged racing club has functions while lessee**

The merged racing club has the functions conferred or imposed on it by or under this Part in relation to Randwick Racecourse only while it is the lessee of that Racecourse.

### **29 Functions of merged racing club in relation to Randwick Racecourse**

The merged racing club has the following functions in relation to Randwick Racecourse:

- (a) to manage, use and maintain the land that comprises the Racecourse for the purpose of a public racecourse and associated activities,
- (b) to manage, use and maintain that land for any other purpose authorised by or under this Part or the Randwick Racecourse lease.

### **30 Use of Randwick Racecourse for additional activities**

- (1) The merged racing club may, with the consent of the Trust and subject to such terms and conditions as the Trust considers fit, use (or permit the use of) all or any part of Randwick Racecourse for the purposes of an activity, or class of activities, that the merged racing club would otherwise not be authorised to conduct (or allow another person to conduct).
- (1A) The Trust may not give consent under this section unless the Minister approves of the giving of that consent.
- (1B) The Trust may, with the approval of the Minister, withdraw:
  - (a) any consent given under this section (whether before or after the commencement of this subsection), or
  - (b) any consent previously given under section 7 of the [Australian Jockey Club Act](#)

[2008](#) that has not been withdrawn.

- (1C) The Trust must withdraw a consent referred to in subsection (1B) if directed to do so by the Minister.
- (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.
- (2) The use of Randwick Racecourse in accordance with any of the following consents is not to be regarded as a breach of the Randwick Racecourse lease:
  - (a) any consent given under this section,
  - (b) any consent previously given under section 7 of the [Australian Jockey Club Act 2008](#) that has not been withdrawn.
- (3) Nothing in this section affects the operation of any other State legislation for the time being applicable to or in respect of any activity or class of activities referred to in this section.

### **31 Maintenance and erection of buildings and improvements**

- (1) The merged racing club may maintain any buildings and other improvements within Randwick Racecourse.
- (2) The merged racing club may erect or re-erect buildings and other improvements within Randwick Racecourse if the merged racing club considers it necessary or expedient to do so for or in connection with the use of the Racecourse.
- (3) Nothing in this section affects the operation of any other State legislation for the time being applicable to or in respect of the erection or re-erection of buildings or other improvements on land.

## **Division 2 Leasing of Randwick Racecourse**

### **32 (Repealed)**

### **33 Further lease of Randwick Racecourse**

- (1) On the surrender of any Randwick Racecourse lease that is in force, the Trust may grant a further lease or leases, on such terms and conditions as it considers fit, of all or any part of Randwick Racecourse to the merged racing club for a period not exceeding 99 years.
- (2) A lease granted under this section may contain options for the lessee to renew the lease for a further period or periods.
- (3) If the lease contains options for renewal of the lease by the lessee, the aggregate of

the original period and the further period or periods must not exceed 99 years.

- (4) The merged racing club is, subject to any Randwick Racecourse lease, authorised to grant subleases and licences to use any part of Randwick Racecourse while it is the lessee of the Racecourse.
- (5) The grant of a lease under this section does not affect the continued operation of any sublease or licence to use Randwick Racecourse (or any part of the Racecourse) previously granted by or on behalf of the AJC or the former AJC.
- (6) If a Randwick Racecourse lease provides for the payment of damages by the merged racing club or the AJC in the event of the non-fulfilment by the merged racing club or the AJC of a term or condition of the lease, those damages are taken to be liquidated damages and may be recovered as such by the Trust in any court of competent jurisdiction.

### **34 Authorisation of matters relating to leases over Randwick Racecourse**

- (1) The following are specifically authorised by this Act for the purposes of the [Competition and Consumer Act 2010](#) of the Commonwealth and the *Competition Code of New South Wales*:
  - (a) any lease entered into between:
    - (i) the Randwick Racecourse trustees (within the meaning of this Act as originally enacted) and the AJC as provided by section 10 of the [Australian Jockey Club Act 2008](#), and
    - (ii) the Trust and the merged racing club as provided by section 33,
  - (b) the conduct of those persons or any agent in negotiating and entering into any such lease,
  - (c) the conduct of those persons or any agent in giving effect to any such lease.
- (2) Anything authorised to be done by this section is authorised only to the extent to which it would otherwise contravene Part IV of the [Competition and Consumer Act 2010](#) of the Commonwealth or the *Competition Code of New South Wales*.
- (3) In this section:  
***giving effect to*** a lease includes:
  - (a) complying with any obligation under the lease, and
  - (b) exercising or enforcing any right or power under the lease.

## **Division 3 Use of racecourses operated by merged racing club**

### **35 Application of Division**

This Division applies in relation to each of the following racecourses (an **applicable racecourse**) on and from the merger finalisation day:

- (a) Randwick Racecourse,
- (b) any other racecourse that is owned or controlled by the merged racing club (including any buildings, structures, fixtures, fittings and other improvements on the racecourse).

### **36 By-laws**

- (1) The merged racing club may make by-laws, not inconsistent with this Act or any other law, for or with respect to any of the following matters:
  - (a) the admission and expulsion of members or former members of the club or a previous club and other persons from an applicable racecourse (or from any building, structure or other part of an applicable racecourse),
  - (b) rates, tolls or charges to be paid for admission to an applicable racecourse (or to any building, structure or other part of an applicable racecourse),
  - (c) any other matter concerning or connected with the use or management of an applicable racecourse.
- (2) The by-laws may create offences punishable by an amount not exceeding 5 penalty units.
- (3) A by-law has no effect unless approved by the Governor.

**Note—**

Any by-law made by a person or body that requires the approval of the Governor is a statutory rule for the purposes of the [Interpretation Act 1987](#). Accordingly, it must be published on the NSW legislation website in order to come into force.

- (4) Nothing in this section limits any other power that the merged racing club has apart from this section (including under the Corporations Act) to make, amend or repeal its club rules or to otherwise deal with its members or business.

### **37 Exclusion of persons from applicable racecourse**

- (1) The merged racing club may refuse a person admission to, or expel a person from, any part of an applicable racecourse (or cause a person to be refused admission or expelled) if:
  - (a) the person is a member or former member of the club or a previous club who has been disqualified pursuant to the club rules of the club or previous club, or

(b) there are reasonable grounds for believing that the person's presence on the racecourse would be undesirable in the interests of the public using the racecourse or prejudicial to the proper conduct of racing at the racecourse.

(2) The provisions of subsection (1) are in addition to, and not in derogation of, any power to refuse admission or expel a person that is conferred by or under the by-laws or other legislation or at general law.

### **38 Trespass on applicable racecourse**

A person must not intentionally or recklessly trespass on any part of an applicable racecourse (or any building or structure located within an applicable racecourse).

Maximum penalty: 50 penalty units.

#### **Note—**

Part 4AD (Criminal destruction and damage) of the [Crimes Act 1900](#) also contains a number of offences involving damage to property.

## **Part 4 Miscellaneous**

### **39 Existing clubs legislation ceases to have effect on merger finalisation day**

- (1) The provisions of the [Australian Jockey Club Act 2008](#) and the [Sydney Turf Club Act 1943](#) cease to have effect on the merger finalisation day.
- (2) On or after the merger finalisation day, the Governor may, by proclamation published on the NSW legislation website, repeal the [Australian Jockey Club Act 2008](#) and the [Sydney Turf Club Act 1943](#).

#### **Editorial note—**

Proclamation published NSW legislation website 15.7.2011 (2011 (370)).

### **40 Relationship of Act with other racing legislation**

Nothing in this Act limits the operation of the [Betting and Racing Act 1998](#) or the [Thoroughbred Racing Act 1996](#) in their application to the conduct of racing activities by or on behalf of the merged racing club.

### **41 Act to bind State and other jurisdictions**

- (1) This Act binds the State and, in so far as the legislative power of the Parliament of the State permits, the other States, the Territories and the Commonwealth.
- (2) Without limiting subsection (1), this Act has effect despite any privilege or immunity of the Crown in any of its capacities.
- (3) This Act does not make any State or Territory, the Commonwealth, or the Crown in any of its capacities, liable to be prosecuted for an offence.

- (4) A reference in this section to a State, Territory or the Commonwealth includes a reference to the Government of the State, Territory or Commonwealth.

#### **42 Extraterritorial operation of Act**

- (1) It is the intention of the Parliament of the State that the operation of this Act should, as far as possible, include operation in relation to the following:
- (a) things situated in or outside the territorial limits of the State,
  - (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of the State,
  - (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another State, a Territory, the Commonwealth or a foreign country.
- (2) Without limiting subsection (1), it is the intention of the Parliament of the State that the provisions of this Act have an operation in relation to the things, acts, transactions and matters referred to in that subsection even if the rules of private international law (whether at general law or as provided by legislation) would require the application of a law other than this Act instead of the provisions of this Act.

#### **43 Effect of this Act on contracts, instruments and related matters**

The operation of this Act (and, in particular, Division 2 of Part 2) is not to be regarded as:

- (a) a breach of contract, trust or confidence or otherwise as a civil wrong, or
- (b) a breach of any instrument (including, without limitation, any provision prohibiting, restricting or regulating the assignment or transfer of employees, assets, rights, liabilities or regulatory authorisations), or
- (c) an event of default under any contract or other instrument, or
- (d) giving rise to any remedy by a party to a contract or other instrument, or as causing or permitting the termination of, or exercise of rights under, any contract or other instrument.

##### **Note—**

See section 5G of the Corporations Act and the declaration made in relation to this section by section 44 (1) of this Act.

#### **44 Displacement and exclusion of Corporations legislation**

- (1) **Corporations displacement provisions** The following provisions of this Act are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of the Corporations legislation generally:

- (a) section 6,
- (b) section 9,
- (c) section 10,
- (d) Division 2 of Part 2,
- (e) section 43,
- (f) Schedule 1.

**Note—**

Section 5G of the Corporations Act enables a State to displace the operation of provisions of the Corporations legislation in favour of provisions of State laws that are declared under State law to be Corporations legislation displacement provisions for the purposes of that section. See, in particular, section 5G (4), (5), (9), (10) and (11) of the Corporations Act in relation to the displacements effected by this subsection.

- (2) **Declarations under section 5F of Corporations Act** The regulations may declare any matter referred to in, or arising under or in connection with, this Act or the regulations to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to:
- (a) the whole of the Corporations legislation, or
  - (b) a specified provision of that legislation, or
  - (c) that legislation other than a specified provision, or
  - (d) that legislation otherwise than to a specified extent.

**Note—**

Section 5F of the Corporations Act 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, the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (3) **Further declarations under section 5G of Corporations Act** The regulations may declare any provision of this Act (other than a provision referred to in subsection (1)) to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act (either generally or specifically in relation to a provision of the Corporations legislation).
- (4) **Definitions** In this section:

**Corporations legislation** means the Corporations legislation to which Part 1.1A of the Corporations Act applies.

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

#### **45 Exemption from State tax**

(1) In this section:

**exempt matter** means any of the following:

- (a) the transfer of any employees, assets, rights, liabilities or regulatory authorisations by operation of Division 2 of Part 2 (including, without limitation, any instrument executed only for a purpose ancillary to or consequential on the operation of Division 2 of Part 2),
- (a1) the transfer of assets, rights or liabilities by operation of clause 5 of Schedule 2 (including, without limitation, any instrument executed only for a purpose ancillary to or consequential on the operation of that clause),
- (b) anything certified by the Minister in writing as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land).

**State tax** means application or registration fees, duty or any other tax, fee or charge imposed by any State legislation or other law of the State.

(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.

#### **46 Giving or service of documents**

(1) A document that is authorised or required by this Act or the regulations to be given to or served on any person may be given or served:

- (a) in the case of a natural person:
  - (i) by delivering it to the person personally, or
  - (ii) by sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
  - (iii) by sending it by facsimile transmission to the facsimile number of the person, or
- (b) in the case of a body corporate:
  - (i) by leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the

giving or service of documents, or

- (ii) by sending it by facsimile transmission to the facsimile number of the body corporate.

- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

#### **47 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.

#### **48 Nature of proceedings for offences**

Proceedings for an offence against this Act or the by-laws may be dealt with summarily before the Local Court.

#### **49 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

### **Schedule 1 Mandatory corporate governance provisions**

(Section 5)

#### **1 Interpretation**

- (1) The following definitions apply in this Constitution, unless the context otherwise requires:

**AJC** has the same meaning as it has in the Merger Act.

**appointments selection panel** means an appointments selection panel constituted by the Minister under section 10 of the Merger Act to recommend to the Minister a person for appointment as an Independent Director.

**Australian Rules of Racing** has the same meaning as it has in the *Thoroughbred Racing Act 1996* of New South Wales.

**Board** means the Directors for the time being of the Company.

**Chair** means a person elected to the office of the Chair of the Company in accordance with this Constitution.

**Chief Executive** means a person appointed as the Chief Executive in accordance with this Constitution.

**Club Appointed Director** means a Director appointed by the board of directors of the AJC or the board of directors of the STC under section 10 (1) of the Merger Act.

**Company** means *\*[insert name and ACN of company]*.

**Incorporation instruction—**

Insert the name and ACN of the relevant company where indicated.

**Corporations Act** means the [Corporations Act 2001](#) of the Commonwealth.

**Director** means a person appointed or elected to the office of director of the Company in accordance with the Merger Act and this Constitution.

**Elected Director** means a Director elected to office by the Members in accordance with this Constitution.

**eligible industry body** has the same meaning as it has in the [Thoroughbred Racing Act 1996](#) of New South Wales.

**First Board** means the Board at the time that the initial 12-month period commences.

**Harness Racing Act** means the [Harness Racing Act 2009](#) of New South Wales.

**HRNSW** means Harness Racing New South Wales constituted under the Harness Racing Act.

**Independent Director** means a Director appointed by the Minister on the recommendation of an appointments selection panel.

**initial 12-month period** means the period of 12 months commencing at the time that *\*the Company is registered/\*the mandatory corporate governance provisions (within the meaning of the Merger Act) are included in this Constitution.*

**Incorporation instruction—**

The first alternative phrase indicated by an asterisk (\*) is to be used if the mandatory corporate governance provisions are included in the company's constitution when it is registered as a company. The second alternative phrase indicated by an asterisk is to be used if the mandatory corporate governance provisions are included in the company's constitution after the registration of the company.

**Member** means any person who is admitted to the membership of the Company and whose name is entered in the Register.

**mentally incapacitated person** means a person who is an involuntary patient or a

forensic patient or a correctional patient within the meaning of the [Mental Health Act 2007](#) of New South Wales, or a protected person within the meaning of the [NSW Trustee and Guardian Act 2009](#) of New South Wales.

**Merger Act** means the [Australian Jockey and Sydney Turf Clubs Merger Act 2010](#) of New South Wales.

**Minister** means the Minister administering the Merger Act from time to time.

**race club** has the same meaning as it has in the [Thoroughbred Racing Act 1996](#) of New South Wales.

**racing association** has the same meaning as it has in the [Thoroughbred Racing Act 1996](#) of New South Wales.

**Racing NSW** means Racing New South Wales established by the [Thoroughbred Racing Act 1996](#) of New South Wales.

**Register** means the register of members maintained by the Company in accordance with the Corporations Act.

**Registered Clubs Act** means the [Registered Clubs Act 1976](#) of New South Wales.

**Secretary**, in relation to the Company, means any person appointed to perform the duties of secretary of the Company, and includes an assistant secretary or any person appointed to act as secretary temporarily.

**Short-term Club Appointed Director** means a Club Appointed Director whose instrument of appointment, in accordance with section 10 (2) of the Merger Act, designates the Director to be the short-term appointment under that subsection of the board of directors of the AJC or STC.

**STC** has the same meaning as it has in the Merger Act.

**Vice-Chair** means a person elected to the office of the Vice-Chair of the Company in accordance with this Constitution.

- (2) Headings in this Constitution are for convenience only and do not affect interpretation.
- (3) The following rules of interpretation apply to this Constitution unless the context requires otherwise:
  - (a) a gender includes all genders,
  - (b) the singular includes the plural and conversely,
  - (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning,

- (d) a reference to a person includes a reference to a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity,
- (e) a reference to a clause, subclause, paragraph or subparagraph is a reference to a clause, subclause, paragraph or subparagraph of this Constitution,
- (f) a reference to any legislation or to any provision of any legislation includes a reference to any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments made or issued under it,
- (g) an expression has, in a provision of this Constitution that relates to a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act,
- (h) the words “includes” and “including” are not words of limitation, and do not and must not be taken as detracting from the generality of any provisions of this Constitution.

## **2 Board of Company**

- (1) The Board is to consist of:
  - (a) during the initial 12-month period—9 Directors, and
  - (b) after the expiry of that period—7 Directors.
- (2) The Directors may act as the Board despite a vacancy in their number. However, if their number is reduced below the minimum fixed for a quorum for a meeting of the Board, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to the number required for a quorum.

## **3 Board to manage Company**

- (1) The management and control of the business and affairs of the Company are vested in the Board.
- (2) The Board may exercise all powers of the Company which are not, by the Corporations Act or this Constitution, required to be exercised by the Company in general meeting.

## **4 Constitution of First Board**

- (1) The 9 Directors of the First Board are those persons who at the time of the commencement of the initial 12-month period have:
  - (a) been appointed in accordance with section 10 (1) of the Merger Act, and

(b) consented in writing to be members of the Company (except in the case of persons appointed as Independent Directors), and

(c) consented in writing to act as Directors of the Company.

(2) Section 10 (1) of the Merger Act provides for:

(a) 3 of the Directors of the First Board to be appointed by the board of directors of the AJC, and

(b) 3 of the Directors of the First Board to be appointed by the board of directors of the STC, and

(c) 3 of the Directors of the First Board to be appointed by the Minister on the recommendation of an appointments selection panel.

(3) Each of the Directors of the First Board (other than a Short-term Club Appointed Director) holds office for a term of 4 years unless the Director vacates office before the expiry of the term.

(4) A Short-term Club Appointed Director holds office for a term of 12 months unless the Director vacates office before the expiry of that term.

(5) A Director of the First Board may not hold office as a Director for a term that exceeds 8 years in total.

## **5 Election and appointment of Directors to subsequent Boards**

(1) The Company may at any time by resolution passed in general meeting elect a person to be a Director to replace:

(a) a Club Appointed Director who has vacated office, or

(b) an Elected Director who has vacated office.

(2) A person is eligible to be elected as a Director only if the person is:

(a) a Member, and

(b) not otherwise ineligible to be elected as a Director under subclause (3).

(3) A person is not eligible to be elected as a Director if the person:

(a) is an employee of a race club or racing association, or

(b) is a member of the governing body of another race club or eligible industry body (including a director of the AJC or STC), or

(c) holds a licence issued by Racing NSW or by a racing association, or

- (d) is registered by or with the Greyhound Welfare and Integrity Commission under the [Greyhound Racing Act 2017](#) or HRNSW under the Harness Racing Act, or
  - (e) is currently, or during the previous 10 years has been, warned off, disqualified or named on the Forfeit List under the Australian Rules of Racing, or
  - (f) during the previous 10 years has been convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more, or convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (g) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankruptcy, or
  - (h) is a mentally incapacitated person, or
  - (i) is prevented from holding office as a Director by clause 4 (5).
- (4) Subject to subclause (7), an Elected Director holds office for a term of 4 years or until the Director sooner vacates office as a Director.
- (5) Subject to clause 4 (3) and subclause (7), an Independent Director holds office for such term (not exceeding 4 years) as may be specified in the instrument of appointment for the Director unless the Director vacates office before the expiry of that term.
- (6) An Independent Director who vacates office is to be replaced by a person appointed by the Minister under section 10 of the Merger Act.
- (7) If a person is elected or appointed to fill a casual vacancy in the office of a Director, the person holds office as a Director for the balance of the term of the person's predecessor as Director unless the person vacates office as a Director before the expiry of the balance of that term.

## **6 Chair and Vice Chair of the Company**

- (1) The Board may elect a Director to hold office as Chair and another Director to hold office as Vice-Chair.
- (2) The Chair or, in the Chair's absence, the Vice-Chair, is to chair any meeting of the Board.
- (3) The Board may determine the period of time that a Director elected to the office of Chair or Vice-Chair may hold such office.
- (4) No Director may hold the office of Chair or Vice-Chair for longer than a total aggregate period of 4 years.

- (5) The Board may elect another Director to chair a meeting of the Board if at the time the meeting is held:
  - (a) neither a Chair nor a Vice-Chair has been elected, or
  - (b) the Chair and Vice-Chair are not present at the time appointed for the holding of the meeting.

## **7 Vacancies in office of Director**

- (1) In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if:
  - (a) the Director dies, or
  - (b) the Director becomes a mentally incapacitated person, or
  - (c) the Director resigns the office by notice in writing to the Company, or
  - (d) the Director's term of office expires and the Director is not re-elected or re-appointed to the office, or
  - (e) in the case of a Director other than an Independent Director—the Director ceases to be a Member, or
  - (f) the Director is not present personally at meetings of the Board for a continuous period of 3 months without leave of absence from the Board, or
  - (g) the Director becomes an employee of another race club or racing association, or
  - (h) the Director becomes a member of the governing body of another race club or eligible industry body (including a director of the AJC or STC), or
  - (i) the Director becomes the holder of a licence issued by Racing NSW or by a racing association, or
  - (j) the Director is registered by or with the Greyhound Welfare and Integrity Commission under the [Greyhound Racing Act 2017](#) or HRNSW under the Harness Racing Act, or
  - (k) the Director is warned off, disqualified or named on the Forfeit List under the Australian Rules of Racing, or
  - (l) the Director is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more, or convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (m) the Director becomes bankrupt or insolvent or takes advantage of the laws in

force for the time being relating to bankruptcy, or

(n) the Director is removed from office under subclause (2).

(2) The Company may at any time by resolution passed in general meeting remove any Director from office.

## **8 Proceedings of Board**

(1) Subject to the requirements of the Registered Clubs Act to the extent applicable to the Company, the Board may meet as often as it deems necessary.

(2) The quorum for a meeting of the Board is:

(a) during the initial 12-month period—5 Directors, and

(b) at any time after the expiry of that period—4 Directors.

(3) The Chief Executive may at any time, and on the request of the Chair or any 3 Directors must, convene a meeting of the Board.

(4) Reasonable notice must be given to every Director of the place, date and time of every meeting of the Board. If any Director is for the time being outside of Australia, notice need only be given to that Director if contact details have been provided to the Secretary by the Director.

(5) Questions arising at a meeting of the Board are decided by a majority of votes of Directors present and voting and any such decision is for all purposes taken to be a decision of the Board.

(6) In the case of an equality of votes, the Chair of the meeting has a casting vote in addition to any deliberative vote.

(7) For the purposes of the Corporations Act, each Director, on becoming a Director (or on the adoption of this Constitution), consents to the use of the following technology for calling or holding a meeting of the Board:

(a) video,

(b) telephone,

(c) electronic mail,

(d) any other technology that permits each Director to communicate with every other Director,

(e) any combination of the technologies described in the above paragraphs.

(8) A Director may withdraw the consent given under subclause (7) in accordance with the Corporations Act.

- (9) If the Directors are not all in attendance at one place and are holding a meeting using technology that permits each Director to communicate with other Directors:
  - (a) the participating Directors are, for the purpose of every provision of this Constitution concerning meetings of Directors, taken to be assembled together at a meeting and to be present at that meeting, and
  - (b) all proceedings of those Directors conducted in that manner are as valid and effective as if conducted at a meeting at which all of them were present.

## **9 Disclosure of interests by Directors**

- (1) A Director who has a material personal interest in a matter that relates to the affairs of the Company must give the Board notice of the interest in accordance with the Corporations Act.
- (2) A contract or arrangement made by the Company with a Director or in which a Director is in any way directly or indirectly interested is not avoided merely because the Director is a party to or interested in it.
- (3) A Director is not liable to account to the Company for any profit derived in respect of a matter in which the Director has a material interest, merely because of the Director's office or the fiduciary relationship it entails, if the Director has:
  - (a) declared the Director's interest in the matter as soon as practicable after the relevant facts have come to the Director's knowledge, and
  - (b) not contravened this Constitution or the Corporations Act in relation to the matter.
- (4) A general notice giving details of the nature and the extent of the interest and the relation of the interest to the affairs of the Company is a sufficient declaration of the Director's interest, provided the extent of that interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.
- (5) A Director may not be present during deliberations or vote on a contract or matter in which the Director has a personal interest unless the Board, when considering the particular contract or matter, resolves that the interested Director may be present and may vote on that particular contract or matter because the Board is satisfied that the interest ought not disqualify the Director from being present and voting on it.
- (6) A Director must not hold any office of employment in the Company in addition to holding office as a Director.

## **10 Chief Executive**

- (1) The Board may appoint a Chief Executive on such terms and conditions, as to remuneration and otherwise, as the Board decides.

- (2) The Board may at any time terminate the appointment of the Chief Executive.
- (3) The Chief Executive must not be appointed as a Director.
- (4) The Board may, on the terms and conditions and with any restrictions as the Board thinks fit, confer on the Chief Executive any of the powers exercisable by the Board.
- (5) Any powers so conferred may be concurrent with the powers of the Board.
- (6) The Board may at any time withdraw or vary any of the powers conferred on the Chief Executive.
- (7) Unless the Board appoints a Secretary, the Chief Executive is to act as Secretary of the Company for the purposes of the Corporations Act.

## **11 Other officers**

- (1) The Board may from time to time:
  - (a) create any other position or positions in the Company with such powers and responsibilities as the Board may from time to time confer, and
  - (b) appoint any person to any position or positions so created.
- (2) Without limiting subclause (1), the Board may create any one or more of the following positions:
  - (a) a secretary (in addition to the position of Secretary of the Company) to carry out the functions of an approved secretary of a registered club under the Registered Clubs Act to the extent that Act applies to the Company,
  - (b) an Honorary Race Day Committee Director for the purpose of carrying out official or representative functions on behalf of the Board.
- (3) Any person appointed to a position created under this clause must not also be a Director.
- (4) The Board may at any time terminate the appointment of a person holding a position created under this clause and may abolish the position.

## **Schedule 2 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

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

*Australian Jockey and Sydney Turf Clubs Merger Amendment Act 2011*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State 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 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 Selection of directors for merged racing club during pre-commencement period**

- (1) The Minister, and the boards of directors of the AJC and STC, are taken to have been authorised by this Act to exercise during the pre-commencement period any of the functions that, had section 10 been in force during that period, would have been conferred or imposed on them by or under that section.
- (2) Accordingly, the following things (if done in accordance with the provisions of section 10) are taken to have been duly done for the purposes of that section and the mandatory corporate governance provisions even if they were done during the pre-commencement period:
  - (a) the selection or appointment of any director of the merged racing club by the board of directors of the AJC or STC,
  - (b) the constitution by the Minister of an appointments selection panel to make recommendations to the Minister on the appointment of independent directors to the first board of the merged racing club,
  - (c) the appointment of a Probity Adviser by the Minister and the conduct of any probity check of a person,
  - (d) the making of recommendations to the Minister by an appointments selection panel about the appointment of independent directors,
  - (e) the selection or appointment by the Minister of any independent director.
- (3) In this clause:

***pre-commencement period*** means the period:

- (a) commencing on the day on which the Bill for this Act was first introduced into Parliament, and
- (b) ending immediately before the commencement of section 10.

### 3 Existing by-laws taken to be by-laws made under Act

Any by-laws in force under the [Australian Jockey Club Act 2008](#) or the [Sydney Turf Club Act 1943](#) immediately before the merger finalisation day are taken to have been made under section 36 of this Act, and may be amended and repealed accordingly.

## Part 3 Provisions consequent on enactment of [Australian Jockey and Sydney Turf Clubs Merger Amendment Act 2011](#)

### 4 Definitions

In this Part:

**amending Act** means the [Australian Jockey and Sydney Turf Clubs Merger Amendment Act 2011](#).

**dissolution day** means the day on which section 32 is repealed by the amending Act.

**existing trust** means the trust referred to in the preamble to the repealed [Australian Jockey Club Act 1873](#).

**existing trustee** means a person holding office as a trustee of the existing trust immediately before the dissolution day.

**trust assets** means:

- (a) all of the assets vested (whether absolutely or contingently) in, or otherwise held by, the existing trustees on behalf of the existing trust immediately before the dissolution day, and
- (b) all of the assets purportedly vested (whether absolutely or contingently), or otherwise held, in the name of the existing trust instead of the existing trustees immediately before the dissolution day,

and includes (without limitation) Randwick Racecourse.

**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.

**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.

## **5 Dissolution of existing trust**

- (1) On the dissolution day:
  - (a) the existing trust is dissolved, and
  - (b) each existing trustee ceases to hold office as such (but is eligible, if otherwise qualified, to be appointed as a Trustee).
- (2) On and from the dissolution day, the following provisions have effect in relation to the trust assets, rights and liabilities:
  - (a) the trust assets vest in the Trust by virtue of this clause:
    - (i) without the need for any further conveyance, transfer, assignment or assurance, and
    - (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,
  - (b) the trust rights and trust liabilities become by virtue of this clause the rights and liabilities of the Trust,
  - (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,
  - (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,
  - (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 obligations were actual or potential at the time the dissolution took effect.
- (3) No attornment to the Trust by a lessee from the existing trust or trustees is required.
- (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) 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.

**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.

## **Schedule 3 Provisions relating to the procedure of the Trust**

### **1 General procedure**

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.

### **2 Quorum**

The quorum for a meeting of the Trust is all of the Trustees for the time being.

### **3 Presiding Trustee**

- (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.
- (2) The presiding Trustee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **4 Voting**

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.

### **5 Transaction of business outside meetings or by telephone**

- (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) 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.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),

the Chairperson and each Trustee have the same voting rights as they have at an ordinary meeting of the Trust.

- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Trust.
- (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.

## **6 Minutes**

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

## **7 First meeting**

The Minister may call the first meeting of the Trust in such manner as the Minister considers fit.

# **Schedule 4 Provisions relating to the Trustees**

## **1 Chairperson of the Trust**

- (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.
- (2) The Chairperson vacates office as Chairperson if he or she:
  - (a) is removed from that office by the Minister under subclause (3), or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a Trustee.
- (3) The Minister may remove a Trustee from the office of Chairperson at any time for any or no reason and without notice.

## **2 Acting Trustees and acting Chairperson**

- (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.
- (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.
- (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.

- (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.

### **3 Term of office**

- (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.
- (2) The period specified in the instrument of appointment of a Trustee during which the Trustee is to hold office may not exceed:
- (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
  - (b) in any other case—4 years.
- (3) A Trustee may not hold office as such for a term (taking into account any reappointments) that exceeds 8 years in total.

### **4 Casual vacancies**

- (1) The office of a Trustee becomes vacant if the Trustee:
- (a) dies, or
  - (b) completes a term of office and is not reappointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (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
  - (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
  - (g) becomes a mentally incapacitated person, or
  - (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.
- (2) The Minister may remove a Trustee from office at any time for any or no reason and

without notice.

## **5 Filling of vacancy in office of Trustee**

If the office of any Trustee becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **6 Disclosure of pecuniary interests**

(1) If:

- (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
- (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,

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.

(2) A disclosure by a Trustee at a meeting of the Trust that the Trustee:

- (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 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).

- (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.
- (4) After a Trustee has disclosed the nature of an interest in any matter, the Trustee must not, unless the Minister otherwise determines:
  - (a) be present during any deliberation of the Trust with respect to the matter, or
  - (b) take part in any decision of the Trust with respect to the matter.
- (5) A contravention of this clause does not invalidate any decision of the Trust.
- (6) A reference in this clause to a meeting of the Trust includes a reference to a meeting of a committee of the Trust.

## **7 Effect of certain other Acts**

- (1) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to a Trustee.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

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