

Explanatory note

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

The *Totalizator Amendment Bill 2010* is cognate with this Bill.

Overview of Bill

The objects of this Bill are:

- (a) to facilitate the merger of Australian Jockey Club Limited (the **AJC**) and the Sydney Turf Club (the **STC**) into a new racing club (the **merged racing club**) incorporated under the *Corporations Act 2001* of the Commonwealth (the **Corporations Act**) for that purpose (including by making provision for the transfer of certain assets, rights and liabilities and employees to the merged racing club), and
- (b) to make provision in relation to the corporate governance of the merged racing club, and
- (c) to provide for the functions of the merged racing club in relation to Randwick Racecourse and certain other racecourses, and
- (d) to provide for the granting of further leases over Randwick Racecourse, and
- (e) to provide for the repeal of the *Australian Jockey Club Act 2008* and the *Sydney Turf Club Act 1943*, and

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

Outline of provisions

Part 1 Preliminary

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

Clause 2 provides for the commencement of the proposed Act.

Clause 3 sets out the objects of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act.

Clause 5 defines what the **mandatory corporate governance provisions** are and what it means for these provisions to be included in the constitution of a company.

The mandatory corporate governance provisions are set out in Schedule 1 to the proposed Act.

Part 2 Merger of AJC and STC

Division 1 Establishment of merged racing club

Clause 6 specifically authorises a company that is being (or has been) established for the purpose of becoming the merged racing club to include the mandatory corporate governance provisions in its constitution. It also specifically authorises the merged racing club to carry on its affairs in accordance with such included provisions.

Clause 7 authorises the Minister, on behalf of the State, to enter into an arrangement with the merged racing club and certain other parties for the provision of financial assistance for the purpose of making improvements to Randwick Racecourse and Rosehill Gardens Racecourse. The proposed section also specifically authorises certain conduct done in connection with the negotiation of, entry into and giving effect to such an arrangement that might otherwise contravene Part IV of the *Trade Practices Act 1974* of the Commonwealth or the *Competition Code of New South Wales*.

Clause 8 enables the Minister, by order published in the Gazette, to declare a company to be the merged racing club if certain pre-conditions are met. These pre-conditions include that the Minister is satisfied that the constitution of the company includes the mandatory corporate governance provisions. The proposed section also enables the Minister, by such an order or by subsequent order, to specify a **merger finalisation day**. The merger finalisation day will be the day on which

business undertakings and employees of both the AJC and STC will be transferred by the proposed Act to the merged racing club.

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Clause 9 prevents the merged racing club from omitting or otherwise altering the mandatory corporate governance provisions from its constitution without the Minister's consent.

Clause 10 specifically authorises the boards of directors of both the AJC and STC and the Minister to appoint directors of the merged racing club. The boards of directors of the AJC and STC will be authorised to appoint 3 directors each to the first board of directors of the merged racing club. The Minister will also be authorised to appoint 3 directors to that board along with directors to replace directors the Minister has previously appointed whenever a vacancy arises. Directors appointed by the Minister will be known as the independent directors. The Minister will only be able to appoint independent directors on the recommendation of a specially constituted appointments selection panel. An appointments selection panel will be required to make recommendations based on certain selection criteria and following probity checks. Recommendations will be required to be on the basis of merit.

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

Clause 11 provides that the proposed Division operates specifically (and in accordance with the requirements of the proposed Division) to transfer the business undertakings and employees of both the AJC and the STC to the merged racing club and to confer or impose certain other rights and liabilities. The provisions of the proposed Division will only have effect on and from the merger finalisation day.

Clause 12 defines certain terms and expressions used in the proposed Division.

Clause 13 transfers assets held by or on behalf of the AJC and STC to the merged racing club. These assets will include the lease of the AJC over Randwick Racecourse.

Clause 14 transfers licences, permits, consents, entitlements, accreditations and other authorities held by or on behalf of the AJC and STC and in force under State legislation to the merged racing club.

Clause 15 transfers the rights and liabilities of the AJC and STC to the merged racing club.

Clause 16 updates certain references in legal instruments (including legislation) to reflect the fact that the business undertakings of the AJC and STC have been transferred to the merged racing club. The proposed section also confirms that the merged racing club becomes the party to certain contracts and other arrangements entered into by the AJC or STC instead of the AJC or STC.

Clause 17 provides for certain pending proceedings by or against the AJC or STC relating to their transferred business undertakings to be treated as being proceedings by or against the merged racing club.

Clause 18 provides for certain acts, matters or things done, or omitted to be done, in relation to the transferred business undertakings of the AJC or STC to be treated as

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having been done, or omitted to be done, by, to or in respect of the merged racing club.

Clause 19 provides for how certain assets, rights and liabilities located outside of New South Wales are to be treated when the business undertakings of the AJC and STC are transferred to the merged racing club.

Clause 20 confirms that officers of the AJC and STC cease to have the rights and liabilities that they had or incurred in their official capacities in relation to the business undertakings of the AJC or STC once those undertakings are transferred to the merged racing club.

Clause 21 ensures that the provisions of the proposed Division also operate to transfer potential entitlements and obligations if and when they arise.

Clause 22 provides for the employees of the AJC and STC to become the employees of the merged racing club and preserves (subject to any applicable Commonwealth or State legislation) the terms and conditions of employment of the transferred employees.

Clause 23 prohibits the merged racing club from selling or otherwise disposing of any of the necessary racing infrastructure of certain of its racecourses for a 10-year period.

Clause 24 provides for the following:

- (a) the dissolution of the STC,
- (b) the conferral of an entitlement on existing members of the AJC and STC to be afforded the same or equivalent club membership entitlements as they currently have for a 12 month period,
- (c) that the merged racing club is for all purposes, including the rules of private international law, the successor of the dissolved STC.

The proposed section also makes it clear that the proposed Act does not operate to dissolve or wind up, or require the winding up of, the AJC. The eventual deregistration of the AJC as a company will be a matter for the AJC to pursue under the Corporations Act.

Clause 25 enables the merged racing club to provide abbreviated information to registration authorities (such as the Registrar-General) to enable such authorities to update registers that they maintain in respect of assets, rights or liabilities.

Clause 26 provides that no compensation is payable in connection with the operation of the proposed Division.

Clause 27 enables the Minister, by notice in writing, to confirm that particular employees, assets, rights, liabilities or regulatory authorisations have been transferred to the merged racing club under the proposed Division.

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Part 3 Operation of Randwick Racecourse and other racecourses

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

Clause 28 provides that the functions that are conferred or imposed on the merged racing club in relation to Randwick Racecourse by proposed Part 3 are conferred or imposed only while the merged racing club is the lessee of that Racecourse. Proposed section 13 will transfer the lease of the AJC over the Racecourse to the merged racing club on the merger finalisation day.

Clause 29 provides for the functions that the merged racing club has in relation to Randwick Racecourse.

Clause 30 enables the Randwick Racecourse trustees to consent to the use of Randwick Racecourse for certain additional activities.

Clause 31 enables the merged racing club to maintain buildings and other improvements within Randwick Racecourse and to erect or re-erect buildings and other improvements.

Division 2 Leasing of Randwick Racecourse

Clause 32 continues the power of the Governor to appoint the Randwick Racecourse trustees despite the *Australian Jockey Club Act 2008* ceasing to have effect and then

being repealed under the proposed Act.

Clause 33 enables the Racecourse trustees to grant further leases of Randwick Racecourse to the merged racing club for periods not exceeding 99 years on the surrender of the current lease.

Clause 34 specifically authorises certain conduct done in connection with the granting of leases over Randwick Racecourse under proposed section 33 that might otherwise contravene Part IV of the *Trade Practices Act 1974* of the Commonwealth or the *Competition Code of New South Wales*.

Division 3 Use of racecourses operated by merged racing club

Clause 35 provides that the proposed Division applies 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).

Clause 36 enables the merged racing club to make by-laws, with the approval of the Governor, in connection with the use or management of any applicable racecourse.

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Clause 37 enables the merged racing club to exclude or expel certain persons from any applicable racecourse.

Clause 38 makes it an offence for a person intentionally or recklessly to trespass on any part of any applicable racecourse (or any building or structure located within any applicable racecourse). The maximum penalty for such an offence will be 50 penalty units (currently, \$5,500).

Part 4 Miscellaneous

Clause 39 provides for the *Australian Jockey Club Act 2008* and the *Sydney Turf Club Act 1943* to cease to have effect on the merger finalisation day. The proposed section also enables the Governor, by proclamation, to repeal those Acts on or after that day.

Clause 40 provides that nothing in the proposed Act limits the operation of the *Racing Administration 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.

Clause 41 provides that the proposed Act binds the State and, in so far as the legislative power of the Parliament of New South Wales permits, the other States, the Territories and the Commonwealth.

Clause 42 provides that the proposed Act is intended to have effect outside of the territorial limits of New South Wales as well as within the State.

Clause 43 ensures that the operation of the proposed Act will not result in a breach of contract or any other civil liability.

Clause 44 provides for the displacement of the Commonwealth Corporations legislation under section 5G of the Corporations Act in favour of certain provisions of the proposed Act. The proposed section also enables further displacements to be effected under section 5F or 5G of the Corporations Act by regulations made under the proposed Act.

Clause 45 provides that State tax is not payable in respect of matters relating to the transfer of the business undertakings of the AJC and STC to the merged racing club.

Clause 46 makes provision for the giving or service of documents under the proposed Act.

Clause 47 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 48 provides that offences against the proposed Act or by-laws made under the proposed Act may be dealt with summarily before the Local Court.

Clause 49 provides for the review of the proposed Act in 3 years.

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Schedule 1 Mandatory corporate governance provisions

Schedule 1 sets out the mandatory corporate governance provisions that the merged racing club will be required to include in its constitution.

Schedule 2 Savings, transitional and other provisions

Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 3 Amendment of Acts and statutory instruments

Schedule 3 amends the Acts and statutory instruments specified in that Schedule.