**Agreement in Principle**

**Mr DAVID HARRIS** (Wyong—Parliamentary Secretary) [10.55 a.m.]: I move:

That these bills be now agreed to in principle.

The main purpose of the bills before the House is to facilitate the merger of the Australian Jockey Club [AJC] and the Sydney Turf Club [STC] into a new racing club incorporated under the Corporations Act and to amend the Totalizator Act 1997 so that betting activities in respect of computer-simulated horseracing, harness racing and greyhound racing events may be approved under that Act. Before going to the detail of the bills I wish to acknowledge the tireless commitment to the merger of Mr Ron Finemore and Mr Bill Picken, the chairpersons of the Australian Jockey Club and the Sydney Turf Club. It is similarly appropriate to acknowledge all the directors and the chief executives, Mr Michael Kenny and Mr Darren Pearce, of the two clubs. Mr Alan Brown, Chairperson of Racing NSW, his board members and Chief Executive, Mr Peter V'Landys, are also staunch supporters of the merger and have enthusiastically given many hours to the proposal.

These industry leaders must be lauded for their vision and their personal efforts, which have resulted in a cooperative approach to a complex issue. I also wish to record in *Hansard* that the chairpersons of the Australian Jockey Club and Sydney Turf Club have written separately to the Minister to advise that their boards support the merger proposal and that they have anticipated the Government's legislation by taking the first steps to register the proposed merged club as a new company under the Corporations Act.

These proposals underpin the biggest step in securing the future viability of the New South Wales racing industry, which is the home of racing in Australia. Put simply, the proposed reforms and accompanying investment in racing infrastructure and spectator facilities are essential to the future viability of the New South Wales thoroughbred racing industry. A strong Sydney racing sector is the jewel in the crown of New South Wales racing and its economic strength has a flow-on effect to country and provincial racing and to the estimated 50,000 racing jobs, both full-time and part-time, throughout the State. Our major races and carnivals headline the national and worldwide interest in New South Wales racing. Racing is one of the State's most significant industries and, as a provider of regular major events, it attracts significant benefits to the State's economy.

The lead bill is the Australian Jockey and Sydney Turf Clubs Merger Bill 2010. The merger bill formally provides for seven objects, which I will state and describe in detail. The first object of the merger bill is to facilitate the merger of the Australian Jockey Club and the Sydney Turf Club into a new racing club incorporated under the Corporations Act. The two clubs, of their own volition, have taken the first steps to register a new company for that purpose. The bill assists that process by providing for the orderly transfer of the business undertakings, certain assets, rights and liabilities and employees of the former clubs to the new merged club. The merger of the Australian Jockey Club, which is a company incorporated under the Corporations Act, with the Sydney Turf Club, which is a body created by New South Wales statute, is generally a complex subject that has required obtaining expert advice from the Crown Solicitor's Office.

The bill addresses these matters. The procedure provided in clauses 8 and 9 of the bill is that the Minister is to make an order to be published in the *Government Gazette* to declare the company to be the merged racing club. The Minister's order may declare a company to be the merged racing club and also specify a day as the "merger finalisation day". But that may occur only if the company is registered in this State pursuant to the Corporations Act and a copy of the constitution of the company has been provided to the Minister and the Minister is satisfied that the constitution of the company includes certain mandatory corporate governance provisions. Subclause 8 (6) of the merger bill also provides that the Minister's order, if made in accordance with the requirements of the provision, cannot be challenged. This provision is to ensure that once the process is undertaken there is protection for the racing industry from a costly and self-destructive challenge to the merger by an element which is not acting in the overall best interests of the racing industry. The issue of mandatory corporate governance provisions is addressed in detail later.

In summary, the prudent effect of these provisions is that there is no merger unless the Australian Jockey Club and the Sydney Turf Club have registered a new company for the purpose and that there is a new constitution in accordance with the mandatory governance provisions required by the bill and that a new board is in place for the new merged club. The House may note that subclause 12 of clause 10 enables the appointments process for foundation board directors to commence before the merger. This will enable a full board for the new merged club to be in place as soon as possible.

Separately, clause 7 of the bill provides an authorisation for the Minister on behalf of the State of New South Wales 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. The bill proposes that these arrangements be specifically authorised for the purposes of the Trade Practices Act 1974 and the Competition Code of New South Wales. The relevant parties for the purpose of this provision are Racing NSW, Tabcorp

Holdings Ltd and the merged racing club. This provision of the bill will give comfort in relation to many of the concerns of the parties involved in this proposal.

The concerns have been reduced to the form of agreements and are recognised by the proposed legislation. In addition, any further concerns, such as the detail of the management of the merged racing club's race program across the racecourses under its control, are matters that would appropriately be dealt with by the new board. Concerns would be dealt with in accordance with the new board's responsibility to manage the affairs of the new company. It should also be recognised that a merger agreement has been entered into between the Australian Jockey Club and the Sydney Turf Club addressing a number of issues of concern, including the protection of races and prize money. The issue of funding arrangements is addressed later.

The second object of the merger bill is to make provision in relation to the corporate governance arrangements of the merged racing club. Apart from the economic benefits of the merger itself, the other main benefits from the legislative package are the reforms which provide for a modern company structure and the appointment of independent directors selected on merit in accordance with prescribed skills criteria. Clauses 6 and 10 and schedule 1 of the bill do this by providing for mandatory corporate governance provisions to be included in the constitution of the new company. The principal mandatory governance arrangements are in relation to the structure and functions of the new merged racing club and to the appointment process for its directors.

Clauses 6 and 44 of the bill are included as a result of expert legal advice in relation to the displacement and exclusion of Commonwealth corporations legislation and to ensure that the New South Wales law operates alongside the Commonwealth law. Essentially, they facilitate the mandatory inclusion of the prescribed governance arrangements in the constitution of the merged club. The balance of the merged club's constitution will otherwise be in accordance with the normal operation of the Corporations Act.

The foundation board of directors is to consist of nine members—seven appointed for four years and two to retire after 12 months. After the implementation tasks are completed one Australian Jockey Club and one Sydney Turf Club director are to retire. Board members elect their chairperson and deputy chairperson by simple ballot. The Australian Jockey Club and Sydney Turf Club are to appoint three members each to the foundation board. The Australian Jockey Club has indicated its intention to appoint Mr John Cornish, Mr Alan Osburg and Mr Bill Sweeney. The Sydney Turf Club has indicated its intention to appoint Mr Wilf Mula, Mr Michael Crismale and Mr Max Whitby. I thank the Australian Jockey Club and the Sydney Turf Club for putting forward such passionate well-credentialed and capable individuals to form part of the team which is to manage the merger implementation.

The remaining three members of the new merged club's board will be independent directors. The independent directors are appointed by the Minister on the recommendation of an appointments selection panel. For the foundation board of the merged club the selection panel of three will consist of a person nominated by the chairperson of Racing NSW and two persons nominated by the Australian Jockey Club and the Sydney Turf Club board of directors.

The bill provides that the appointments selection panel is subject to the following requirements. The panel must make a recommendation on the basis of merit. The panel must also base its selection in accordance with the requirement that a candidate must have experience in a senior administrative role or experience at a senior level in one or more fields of business finance law, marketing, technology, commerce, regulatory administration or regulatory enforcement. The panel is to be assisted by a probity adviser appointed by the Minister. In addition, by agreement between the members of the selection panel, the first appointment process will be subject to the requirement that a recommendation for the appointment of an independent director will be unanimous.

After the foundation of the board there are similar separate arrangements for independent and elected directors of the merged racing club. Subsequently, the merged racing club's constitution is to provide that the company may at any time, by resolution passed in general meeting, elect a person to be a director of the company to replace a director initially nominated by the Australian Jockey Club or the Sydney Turf Club, or later elected by members, who has vacated office. The appointments selection panel process is retained for the independent directors but the membership of that panel is altered as the Australian Jockey Club and the Sydney Turf Club will no longer exist and cannot nominate panel members. Accordingly, the subsequent appointments selection panel is to consist of a person nominated by the chairperson of Racing NSW and the merged club's board is to nominate the other two persons, with one being one of the independent directors and the other not an independent director.

The third object of the merger bill is to provide for the functions of the merged racing club in relation to Randwick Racecourse and certain other racecourses—being Rosehill Gardens, Warwick Farm and Canterbury Park. The management and control of the business affairs and affairs of the company which underpins the new merged club are vested in the board of directors. The directors of the company will, in accordance with the normal practice, settle the objects of the company, which are to be included in the constitution. Clause 36 and schedule 3 to the bill also provide for the carry forward of relevant by-laws.

The fourth object of the merger bill is to provide for the granting of further leases over Randwick Racecourse.

The Randwick Racecourse complex will continue to be Crown land managed on behalf of the State by the Randwick Racecourse trustees, who are appointed by the Governor on the advice of the executive council. The trustee arrangements and the 99-year lease of Crown land made in favour of the Australian Jockey Club in 2008 are to be carried forward by clauses 32 to 34 of the bill on exactly the same terms and on the basis that the new merged club is the successor to the Australian Jockey Club for these purposes.

The fifth object of the merger bill is to provide for the repeal of the Australian Jockey Club Act 2008 and the Sydney Turf Club Act 1943. Clause 39 (1) of the bill provides that the Australian Jockey Club Act 2008 and the Sydney Turf Club Act 1943 cease to have effect on the merger finalisation day. The merger finalisation day is declared by ministerial order, subject to the preconditions defined earlier. The procedure has been adopted to facilitate the orderly implementation of the merger. The procedure will also permit some matters to be properly decided by the board of the new merged club. Such matters include the management of the rights of existing members in terms of future membership entitlements and the name of the new merged club. Clause 39 (2) of the bill provides that on or after the merger finalisation day the Governor may, by proclamation, repeal the existing two Acts.

The sixth and seventh objects of the merger bill provide for matters of a savings and transitional nature and for consequential amendments to other Acts and instruments. Clauses 11 to 27 of the bill provide for the transfer of the business undertakings of the Australian Jockey Club and the Sydney Turf Club to the new merged club. As a general principle, the implementation of the merger is on the basis that the Australian Jockey Club and the Sydney Turf Club should not be disadvantaged by that process. The opportunity has also been taken to carry forward the entitlements which are described as regulatory authorisations of each club so that they apply to the new merged club. A major such entitlement is the 99-year lease in relation to Randwick Racecourse which I dealt with earlier.

Other examples include the various racecourse licences and authorisations, however described, pursuant to the Liquor Act 2007 and Registered Clubs Act 1976. Included in these provisions are certain matters that are worthy of a special mention. Clause 14 of the bill provides generally for the transfer of regulatory authorisations, which was mentioned earlier. Clause 14 (3) also enables the future merged club to have a different secretary or chief executive officer for the purposes of the Liquor Act and the Registered Clubs Act for each racecourse under its control. This relaxation of the rules will continue to ensure that there is appropriate accountability under the Liquor Act and Registered Clubs Act. Nothing will change and there is no diminution of club responsibilities.

The proposal is a practical response to the problem of a single chief executive of the new merged club who will already be responsible for multiple racing venues being burdened with registered club and liquor responsibilities. The proposal recognises that it is more efficient and provides for greater accountability if there are separate registered club managers for each venue. Clause 22 of the bill relates to the rights of the employees of the AJC and STC. The provision safeguards their employment and related conditions and entitlements by providing that these are automatically transferred to the new merged club. The board of the new club will then be responsible for determining the needs of the future club.

Clause 23 of the bill provides for a ten-year moratorium on the sale of certain racecourse land that becomes vested in the merged club. The clause has been expressed in terms of other than Randwick Racecourse and Warwick Farm. This is because the former is Crown land and simply cannot be sold by the merged club and the latter is excluded in recognition of a pre-existing arrangement relating to the establishment of the Inglis complex at Warwick Farm. This is a safeguard that has been included at the explicit request of the AJC, the STC and Racing NSW to demonstrate that there is no intention to resort to a fire sale of land.

Clauses 24 (6) to (8) of the bill provide for the preservation of AJC and STC members' entitlements. The merged racing club is specifically required to make provision for the admission of a person as a member of that club if the person was a financial member of the AJC and STC. The provision has been framed in that manner to enable the board of the future club to manage the future membership categories available to members. Clauses 39 to 49 and schedules 2 and 3 to the bill provide for a number of savings and transitional matters that are mostly of a routine nature and that have been included in accordance with legal advice. Some of these, such as the provisions relating to the declaration of the merged company and the merger finalisation day and the matters relating to the provisions of the Corporations Act, were dealt with earlier.

Clause 40 of the bill provides an explicit reminder that the merger bill is intended to be subject to the provisions of the Racing Administration Act 1998 and the Thoroughbred Racing Act 1996. Nothing in the proposal alters the status of the merged club nor its responsibilities to comply with the provisions of the two Acts mentioned. Clause 49 of the bill provides for the review of the Act after three years of operation by the Minister and the tabling of that review in Parliament.

The Totalizator Amendment Bill 2010 is cognate with the merger bill. That is because it has a role in relation to the financial arrangements that are referred to in clause 7 of the merger bill. I indicated earlier that the main purpose of the Totalizator Amendment Bill 2010 is to amend the principal Act to cover betting activities in respect of computer-simulated horseracing, harness racing and greyhound racing events that may be approved under that Act. Schedule 1 to the amendment bill proposes to include after section 13 (2) (b) of the Totalizator Act that

computer-simulated horseracing, harness racing or greyhound racing events are matters that may be approved by the Minister as betting activities. The approval for this purpose is intended only for use in TAB retail outlets, which are TAB agencies, PubTAB and ClubTAB outlets. The amendment bill provides for any approval for this purpose to be for an exclusive period until 6 March 2097.

Schedule 1 to the amendment bill also includes a provision which enables the Minister to make a determination in respect of the Racing Distribution Agreement and the thoroughbred Intra-Code Agreement. This is a safety-net provision to ensure that the Minister may direct that changes be made to the agreements where the Minister determines those changes are necessary or desirable for ensuring that the agreement is in the best interests of racing in New South Wales. The Minister's power of determination expires on 31 January 2011. There is also an express statement in clause 117C of the amendment bill which provides for the Provincial Association of New South Wales and Racing NSW Country to receive from Racing NSW the normal funding entitlement that would have been available from Trackside to those bodies. The Minister has agreed with the Opposition racing spokesman that it is appropriate to underpin in this way the entitlement from Trackside for Provincial Association of New South Wales and Racing NSW Country.

Schedule 2 to the amendment bill revokes the earlier authorisation of such computer-simulated games as a gaming machine. It also amends the Betting Tax Act 2001 to provide that no betting tax is payable on net earnings in connection with the first $255 million of bets placed on computer-simulated horseracing, harness racing and greyhound racing events with TAB Limited in any financial year. This arrangement is to expire at the end of the 2033-34 financial year. The proposal will enable a computer-generated simulated racing game, such as the existing Trackside game that operates in Victoria, to be introduced into New South Wales TAB outlets.

The Trackside game is owned and operated by Tabcorp and enables players to place TAB-style bets on the outcome of simulated thoroughbred harness and greyhound races that are displayed as computer-generated graphics on in-venue television screens. The game has been designed to closely resemble the normal TAB racing and wagering experience with the traditional TAB betting options win, place, quinella and trifecta available. Trackside is intended to operate as part of or adjacent to the TAB facilities in any wagering venue. The game is operated by a central host computer at Tabcorp's Melbourne headquarters.

A random number generator is used to determine the result. Each race has 12 runners and the odds for each contestant remain constant across all races; that is, contestant number one is always the favourite contestant number two the second favourite and so on. Each runner's return is in accordance with its probability of winning with the take-out from the game averaging about 19 per cent and the return to player about 81 per cent. Customers place bets by marking their selections on betting tickets and feeding them into a TAB betting terminal in the same manner as with a normal TAB bet. The computer-simulated races and associated race information are transmitted into TAB venues over the Sky Channel satellite infrastructure and displayed on dedicated television monitors.

In New South Wales the Trackside game is currently designated as a multi-terminal gaming machine, unlike in Victoria, where it has operated since 1999 under the classification of a wagering product. The popularity in New South Wales of the Trackside game has been limited and in recent years only two venues have operated the game; namely, Star City Casino, where it ceased operation in November 2008, and the Bankstown Sports Club, which removed the game in June 2007. The bill would revoke the earlier classification of Trackside as a gaming machine and permit the Trackside game to be conducted as a wagering product. Under this designation the game can be offered to customers in dedicated TAB agencies or in TAB outlets in hotels and licensed clubs. The game is currently available in more than 570 Victorian TAB venues and is a popular service with many traditional TAB race wagering customers.

Tabcorp has requested that the Government reclassify the Trackside game as a wagering product for use in New South Wales along the same lines as it is provided in Victoria. This request has the support of the New South Wales racing industry the Australian Hotels Association (New South Wales) and Clubs New South Wales. Separately, the Alan Cameron Wagering Review recommended that the Government treat electronic gaming devices not linked to racing as a wagering activity rather than gaming. This recommendation related to the Trackside game.

Prior to the introduction of the game into TAB outlets Tabcorp will be required to obtain ministerial approval for appropriate rules of betting. Tabcorp will also need to satisfy the Office of Liquor, Gaming and Racing that the regulatory arrangements, such as those currently in place in Victoria, will provide appropriate controls over the conduct of the Trackside game. These controls will ensure that appropriate responsible gambling policies and practices are in place and also that the correct amount of Trackside revenues are returned to persons who might bet on the game and also that government and racing industry revenues are correct. Based on its Victorian operations, Tabcorp projects the Trackside game betting turnover to be over $130 million in its first full year of operation, increasing to over $220 million in the second year and more than $230 million when fully established in the third year.

I mentioned earlier that clause 7 of the merger bill authorises the Minister under the Trade Practices Act 1974 and the Competition Code of New South Wales to enter into financial arrangements for the provision of financial

assistance for the purpose of making improvements to Randwick Racecourse and Rosehill Gardens Racecourse. Clause 7 similarly also authorises the conduct of the relevant other parties for the purpose of negotiating and entering into any such arrangement. The relevant parties are defined by the bill as Racing NSW, Tabcorp Holdings Ltd and the merged racing club. The arrangements in question relate principally to the application of Trackside revenues. The proposed arrangements were announced on 22 July 2010 with the expectation that projected revenues would fund a loan of up to $150 million for improvements to Randwick Racecourse. The announcement spoke of a funding package of $174 million and the additional $24 million is a Government grant dedicated to improvements to Rosehill Gardens.

The arrangements announced in July have been overtaken as a consequence of Tabcorp proposing to provide Racing NSW with $150 million in two instalments to fund the infrastructure improvements at Randwick Racecourse. The new arrangement minimises any commercial risk to the taxpayer as all of the $150 million is to be funded by Tabcorp. As a consequence of Tabcorp shouldering the commercial risk and foregoing the opportunity to invest its funds elsewhere, both Racing NSW and the Government have agreed to concessions to recognise the burden on Tabcorp. Racing NSW will forego its annual Trackside payments from Tabcorp. The other two codes of racing will receive their share as provided for under the Racing Distribution Agreement. The Government will provide Tabcorp with exclusive operation of Trackside until 6 March 2097 and a wagering tax-free threshold of up to $5 million per year until the end of the 2033-34 financial year.

These arrangements will underpin the $150 million facility which will fund improvements to Randwick Racecourse to provide two new state-of-the-art grandstands, which will more than double seating capacity and provide first-class spectator facilities, function space, restaurants and corporate boxes. In addition, there is to be a new 4,500-seat multipurpose "Theatre of the Horse" parade ring, which will enable the public to have a front seat race-day experience. Separately, the Government grant of $24 million is to fund dedicated improvements at Rosehill Gardens, including refurbishment of the Fleming stand, a vehicle access bridge and tunnel link to the infield car park, a new main entry and pedestrian railway bridge from James Ruse Drive, a new pedestrian bridge over James Ruse Drive, a demountable infield concert stage and a new infield display screen.

The proposed refurbishments and redevelopments are to be the subject of a racecourse development agreement between the new merged club and Racing NSW. Racing NSW will monitor progress of the projects and regularly report on progress of works and expenditures to the Government and to racing industry participants. Racing NSW will ensure that there is appropriate accountability and that expenditures are in accordance with approvals and also in accordance with the principle of value for money. I have advised the House that the Australian Jockey Club and Sydney Turf Club support the merger proposal and the detail of the financial arrangements, which include appropriate accountability measures that underpin the redevelopment of Randwick Racecourse and also Rosehill Gardens. I have also advised in detail about the provisions in the merger bill that provide for the merger of the Australian Jockey Club and Sydney Turf Club and related matters. The remaining and most important matter is why it is essential to proceed with the reforms and the associated funding package.

The New South Wales racing industry is a significant employer and also makes a significant contribution to the State's economy. I will not repeat the figures; they were provided earlier. The racing industry operates across the State, with a significant number of its 200 racecourses outside the Sydney metropolitan area. Racing is community based and all race clubs must have a non-proprietary basis if they are to be registered by the relevant controlling body. Despite increasing competition from other sports and entertainment opportunities, the popularity of New South Wales racing ranks favourably relative to other sports. The Australian Bureau of Statistics estimates on the basis of persons who attended one or more times in a year that attendance at race meetings is second only to attendance at rugby league matches. As a community we love our sport and our racing.

The competition for the wagering dollar and the entertainment dollar generally has imposed a significant burden on the racing industry to promote and conduct its business affairs with a view to ensuring future viability. The recent Cameron report, which examined wagering trends and the future sustainability of the New South Wales racing industry, noted among other matters that New South Wales is a high tax jurisdiction for the purposes of wagering taxation. Based on the tax, for every $100 wagered in New South Wales and Victoria the rate is $4.50, in Western Australia it is $3.50, in Queensland it is $3.20, in New Zealand it is $2.90 and in South Australia it is $2.40. Coupled with revenue streams that are declining in real terms the racing industry is facing the prospect of reduced distribution payments to race clubs, which in turn will result in reduced prize money levels. The uncertainty of revenue levels means that the racing industry cannot guarantee its current prize money distribution, let alone guarantee its infrastructure funding needs.

The policy response across Australia has been to introduce industry governance reforms, reduce wagering taxes, provide one-off infrastructure funding and introduce race fields legislation. In Queensland there have been several reforms, the first of which was the 2009 merger of the two Brisbane metropolitan clubs. The merger was followed in July this year by the restructure of the three-code controlling body structure into a single controlling body, Queensland Racing. This was accompanied by $80 million of funding over four years specifically for racing infrastructure. In South Australia in 2008 the Government introduced a phasing-out of wagering taxation, which reduces annually from 6 per cent that year to zero in 2012. The South Australian Government in the same year

also provided one-off funding of $11 million for racing infrastructure purposes. Since 2000, metropolitan racing in Adelaide has been discontinued at the former Cheltenham and Victoria Park racecourses but racing continues at the redeveloped Morphettville racecourse.

The Australian Capital Territory and Northern Territory governments have established a regime of low wagering taxation and, unlike other Australian jurisdictions, appropriate an annual amount from their budget to their local racing industries. In Victoria there have also been several reforms relating to the rebate of wagering taxes for premium customers and also government guarantees to replace gaming machine revenues that previously accrued to the Victorian racing industry. The Victorian Government has also funded various infrastructure projects, including a multimillion-dollar grant for new running rails. Of particular significance to this State is the 2009 Maxstead report, which recommends the merger of the Melbourne metropolitan racing clubs. The report states that it is not an option in terms of guaranteeing future viability to "do nothing". While the Melbourne racing clubs have not disclosed their intentions, it is understood that the matter is under consideration. In New South Wales the 2009 Ernst and Young report, the L.E.K. report and the Merger Benefits Team all concluded that the merger of the Australian Jockey Club and Sydney Turf Club was of benefit to the racing industry and the economy of New South Wales.

While there were varying views about the quantum of the benefits, there is unanimous agreement that a modern corporate governance structure as proposed by this bill will maximise the benefits to all segments of the New South Wales thoroughbred racing industry and to the State's economy and its annual wagering tax receipts of approximately $160 million exclusive of GST. Not supporting this bill and effectively doing nothing will result in the State's racing industry falling behind the industry in other States. The inevitable conclusion is that it will damage the future viability of our racing industry and effectively abandon racing industry participants.

The Keneally Government recognises the importance of the racing industry in terms of its employment and economic contribution to the State and its importance to the people of New South Wales. The Keneally Government is a strong supporter of the racing industry and has implemented many initiatives to ensure the long-term viability of that industry. Apart from the merger proposal, the other major reforms include the race fields legislation and defending the validity of that legislation before the court, and reform of the corporate governance structures of the racing controlling bodies, which includes the independent board member structure and one controlling body for each of the three codes of racing. I commend the bills to the House.