



New South Wales

Totalizator Agency Board Privatisation Bill 1997

Explanatory note

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

The following Bills are cognate with this Bill:

- *Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Bill 1997,*
- *Totalizator Bill 1997.*

Overview of Bill

The object of this Bill is to provide for the conversion of the Totalizator Agency Board (*the TAB*) into a company under the *Corporations Law* and for the sale of the new company (to be called TAB Limited) by public float with a maximum shareholding of 5% for any one shareholder.

The Bill provides for the following:

- (a) the TAB is to have share capital with shares to be issued to the State,
 - (b) the incorporation of the TAB as a company under the *Corporations Law*,
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Explanatory note

- (c) the management of the TAB before its conversion to a company by a board of directors appointed by the Minister,
- (d) the management of the new TAB Limited before its sale,
- (e) the reorganisation of the TAB's business undertaking in connection with its conversion and sale,
- (f) the sale of the State's shares in TAB Limited by public float,
- (g) a maximum shareholding restriction of 5%, which is to apply both at the time of the float and in the future,
- (h) the payment of the proceeds of sale into the Consolidated Fund,
- (i) the transfer of staff on sale,
- (j) miscellaneous matters including savings and transitional provisions and consequential amendments.

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

Clause 3 lists the objects of the Act.

Clause 4 contains definitions and other interpretative provisions.

Clause 5 provides for the nomination of a Minister or Ministers to be the Minister for the purposes of the Act.

Part 2 Steps before conversion of TAB to company

Clause 6 provides for the TAB to have a share capital and provides for the amount, classes of and rights attaching to shares.

Clause 7 requires the TAB to apply capital in paying up shares and to issue those shares to the State.

Clause 8 requires the TAB to apply to the ASC for registration as a company and take certain other steps in connection with its becoming registered as a company.

Clause 9 provides for "TAB Limited" to be the name of the company that the TAB is converting to.

Part 3 Management of TAB before conversion to company

Clause 10 provides for the TAB to consist of at least 5 directors appointed by the Minister. This will apply from the commencement of the Part up to the conversion of the TAB to a company.

Clause 11 gives effect to a Schedule containing amendments to the *Totalizator (Off-course Betting) Act 1964* made necessary by the new structure of the TAB before its conversion to a company.

Part 4 Conversion of TAB to company

Clause 12 provides that the TAB is taken to be registered as a company under the *Corporations Law*.

Clause 13 provides for the change of name of the TAB to "TAB Limited" on its becoming registered as a company.

Clause 14 provides for the operation of the new memorandum and articles of association of TAB Limited.

Clause 15 provides for the State of New South Wales to be a member of TAB Limited.

Clause 16 authorises the Minister to act for the State as a shareholder in TAB Limited.

Clause 17 provides that TAB Limited is a continuation of and the same legal entity as the existing TAB and provides for the construction of references in Acts and instruments to the existing TAB.

Clause 18 provides for the continuation of contracts and arrangements to which the existing TAB is a party.

Clause 19 provides for the repeal of Part 2 and the making of consequential amendments on the conversion of the TAB to TAB Limited.

Part 5 Management of TAB Limited after conversion and before sale

Clause 20 provides for the Part to apply during any period after the conversion of the TAB to a company when a majority of the issued shares in TAB Limited are held by the State.

Clause 21 provides that the board of directors of TAB Limited is subject to the control and direction of the Minister and provides protection from civil and criminal liability for anything done at the direction of the Minister (such as "signing off" on a prospectus, for example).

Clause 22 provides that TAB Limited is an agency through which the State conducts totalizator betting and other activities authorised by a licence under the *Totalizator Act 1997*, and for that purpose it is a public authority of the State. TAB Limited is not, and does not represent, the State except by express agreement with the Minister. TAB Limited is not exempt from any rate, tax, duty or other impost imposed by or under any law of the State merely because it is a company in which the State holds shares. It cannot render the State liable for its debts, liabilities or obligations, except as expressly provided.

Clause 23 applies certain provisions of the *State Owned Corporations Act 1989* to TAB Limited and provides for the regulations to prescribe modification to those applied provisions.

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

Clause 24 authorises the Minister to direct that any part or parts of TAB's business undertaking be transferred to a specified TAB subsidiary.

Clause 25 authorises the Minister to direct that any part or parts of the business undertaking of a TAB subsidiary (including anything transferred under this Part) be transferred to another specified TAB subsidiary or to the TAB.

Clause 26 authorises the Minister to direct that any assets transferred to a TAB subsidiary or to TAB under this Part are to be allocated to capital and reserves in specified amounts and in accordance with specified requirements.

Clause 27 provides that an order under this Part may be made before, on or after the conversion of TAB into a public company. After the conversion, an order may not be made unless all the shares in TAB Limited are held by the State.

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

Clause 28 authorises the Minister to direct that any assets, rights or liabilities that are part of the business undertaking of TAB or a TAB subsidiary be excluded from that business undertaking and transferred to the Ministerial Holding Corporation or another person on behalf of the State.

Clause 29 enables an order under this Part to be made before, on or after the conversion of TAB into a public company. After the conversion, an order may not be made unless all the shares in TAB Limited are held by the State.

Clause 30 provides that the Ministerial Holding Corporation or any other person to whom any excluded undertaking is transferred may sell or otherwise dispose of the whole or any part of the excluded undertaking, or retain the whole or any part of the excluded undertaking and conduct any business to which it relates.

Clause 31 authorises the Ministerial Holding Corporation or any other person to whom any excluded undertaking is transferred under this Part to enter into an agreement or arrangement with TAB or a TAB subsidiary for the exercise by TAB or the TAB subsidiary (as an agent or otherwise) of functions relating to the excluded undertaking.

Part 8 Sale of TAB Limited by public float

Division 1 Sale process

Clause 32 authorises the Minister to make arrangements for the sale of TAB Limited by a public float involving the disposal of the shares issued to the State, including underwriting agreements and the issue of a prospectus.

Clause 33 authorises the State to dispose of all or any of its shares in TAB Limited.

Clause 34 gives effect to a Schedule of consequential amendments to Acts to take effect on the sale of TAB Limited.

Clause 35 provides that the obligations of TAB Limited are not guaranteed by the State.

Division 2 Maximum shareholding restrictions

Clause 36 contains definitions for the purposes of the Division.

Clause 37 contains general provisions as to how the Division applies.

Clause 38 provides that a shareholding of more than 5% in TAB Limited is a prohibited shareholding interest and provides that TAB Limited or a subsidiary of TAB Limited cannot have a prohibited shareholding interest in TAB Limited and that it is unlawful for a person to have a prohibited shareholding interest in TAB Limited.

Clause 39 authorises the Minister, or a director or the secretary of TAB Limited, to require a person to furnish specified information for the purpose of determining whether the person or any other person has or is acquiring a prohibited shareholding interest in TAB Limited. The Minister is further authorised to declare persons to be associated or to be entitled to specified shares in TAB Limited.

Clause 40 provides for the Minister to be given a copy of a substantial shareholder notice in respect of TAB Limited under the *Corporations Law*.

Clause 41 authorises the Minister to declare that a person whom the Minister believes has a prohibited shareholding interest in TAB Limited must dispose of shares and provides for shares that are not disposed of to be forfeited to the State.

Clause 42 provides that any provision of the articles of association of TAB Limited that provides for the suspension of voting rights or refusal or deferral of payment of dividend, on the basis of a prohibited shareholding interest, cannot be amended or repealed except with the written consent of the Minister. The Minister is also authorised to declare void a resolution of a general meeting of TAB Limited that has been passed as a result of the admission of votes that should not have been admitted.

Clause 43 deals with the making, review and revocation by the Minister of declarations under the Division.

Clause 44 provides for an appeal against declarations of the Minister under the Division.

Clause 45 requires the Minister to sell any shares forfeited to the State under the Act and specifies the persons to whom the proceeds of sale are to be paid.

Clause 46 provides an immunity from liability for the Minister and TAB Limited and its officers and auditors for any act or omission in good faith under the Division.

Clause 47 provides for how a notice required under the Division is to be served.

Division 3 Results of sale

Clause 48 requires the proceeds of the sale of TAB Limited to be paid into the Consolidated Fund. Allowance is made for any surplus above an amount determined by the Treasurer as a fair return to the State on the sale to be paid as the Treasurer directs.

Clause 49 provides that on the sale of TAB Limited each member of staff of TAB Limited continues to be a member of staff of TAB Limited.

Part 9 Vesting of undertaking on transfer

Clause 50 provides that the Part applies to certain orders under the Act transferring a part of the business undertaking of TAB.

Clause 51 provides for the vesting of any part of a business undertaking that is transferred by an order to which the Part applies.

Clause 52 provides for the transfer of the employment of staff under an order to which the Part applies.

Clause 53 authorises an order to which the Part applies to specify the consideration on which the order is made and the value or values at which assets, rights or liabilities are transferred.

Part 10 Miscellaneous

Clause 54 provides that the Act binds the Crown.

Clause 55 makes it clear that the TAB may, whether or not in connection with the conversion, form or participate in the formation of subsidiary companies before the conversion.

Clause 56 provides that none of the matters for which the Act provides is to be regarded as a breach of certain obligations.

Clause 57 authorises the Treasurer to approve of the communication by the Auditor-General to certain authorised persons of matters that have come to the knowledge of the Auditor-General in respect of TAB, TAB Limited, a TAB subsidiary or a TAB Limited subsidiary.

Clause 58 provides for the exemption from State taxes and charges of the issue of shares in TAB Limited, the disposal of those shares by the State and certain other matters relating to the conversion of TAB into TAB Limited.

Clause 59 authorises the Minister to give certain certificates and for those certificates to be evidence.

Clause 60 provides that proceedings for offences are to be in a Local Court.

Clause 61 gives effect to a Schedule of savings and transitional provisions.

Clause 62 contains a regulation making power.

Schedules

Schedule 1 contains provisions concerning the office and functions of directors of the TAB before its conversion to TAB Limited.

Schedule 2 contains amendments to various Acts that are to take effect before the conversion of the TAB to TAB Limited.

Schedule 3 contains amendments to the *Totalizator (Off-course Betting) Act 1964* that are to take effect on the conversion of the TAB to TAB Limited.

Schedule 4 contains consequential amendments to Acts that are to take effect on the sale of TAB Limited.

Schedule 5 contains savings, transitional and other consequential provisions.



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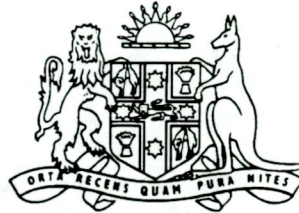
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New South Wales

Totalizator Agency Board Privatisation Bill 1997

No. , 1997

A Bill for

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

See also *Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Bill 1997*, *Totalizator Bill 1997*.

Clause 1 Totalizator Agency Board Privatisation Bill 1997

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

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

2 Commencement

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

3 Objects of Act

The objects of this Act are to provide for the conversion of the Totalizator Agency Board (TAB) into a public company and for its sale by a public float, and in particular: 10

- (a) to convert TAB from a statutory authority into a public company limited by shares and with the name TAB Limited, and
- (b) to repeal provisions of the *Totalizator (Off-course Betting) Act 1964* and to apply the *Corporations Law* to TAB after its conversion, and 15
- (c) to authorise the exclusion from the sale of TAB of any part of the business undertakings of TAB and its subsidiaries, and to reorganise those businesses before the sale, and 20
- (d) to authorise the sale of TAB by a public float (comprising disposal of the shares issued to the State on the conversion) and to limit to 5% the maximum shareholding of any one shareholder.

4 Definitions

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- (1) In this Act:

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents. 30

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

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

excluded undertaking means any assets, rights or liabilities of TAB or a TAB subsidiary that the Minister has directed to be excluded under Part 7. 5

exercise a function includes perform a duty.

function includes a power, authority or duty.

instrument means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court. 10

liabilities means any liabilities, debts and obligations (whether present or future and whether vested or contingent). 15

Minister see section 5.

Ministerial Holding Corporation means the Ministerial Holding Corporation constituted by section 37B of the *State Owned Corporations Act 1989*.

rights means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent). 20

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

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

TAB means the body corporate called the Totalizator Agency Board and constituted under the *Totalizator (Off-course) Betting Act 1964* (its name being changed after the conversion to TAB Limited). 25

TAB Limited means the company known as TAB Limited established by this Act. 30

TAB Limited subsidiary means a subsidiary of TAB Limited within the meaning of the *Corporations Law*.

TAB subsidiary means a subsidiary of TAB or TAB Limited, within the meaning of the *Corporations Law*.

- (2) A reference in this Act to the business undertaking of TAB or of a TAB subsidiary at any particular time does not include a reference to any part of that undertaking that has been excluded or transferred by this Act before that time.
- (3) Notes in the text of this Act do not form part of this Act. 5

5 Minister

- (1) A reference in this Act to the Minister is:
- (a) if there is for the time being only one nominated Minister under this section—a reference to that Minister, or
 - (b) if there is for the time being more than one nominated Minister under this section—a reference to all those Ministers. 10
- (2) A nominated Minister is a Minister nominated by the Premier by order published in the Gazette as a nominated Minister.
- (3) Such a nomination is to be made by reference to ministerial title. The Premier can be nominated as nominated Minister. 15
- (4) One or more Ministers may be nominated for the time being under this section.
- (5) If no Minister is for the time being nominated under this section, a Minister having the duty to administer any provisions or aspect of this Act is a nominated Minister. 20

Part 2 Steps before conversion of TAB to company

6 Share capital of TAB

- (1) As from the commencement of this section, TAB is to have a share capital. 5
- (2) The nominal share capital is to be such amount as the Minister determines being an amount that is not less than the minimum amount that, under the *Corporations Law*, may be the share capital (made up of shares of \$1 each) of a company registered as a public company limited by shares. 10
- (3) The amount of the issued share capital is to be equal to the amount that section 7 requires to be applied in paying up shares in TAB.
- (4) The share capital is to be divided into shares of \$1 each.
- (5) The share capital may be divided into classes of shares. 15
- (6) Rights may be attached to shares included in a class of shares.
- (7) Anything to be done under subsection (5) or (6) is to be done by the Minister by order in writing.

7 Issue of shares in TAB

- (1) As soon as practicable after the commencement of this section, TAB is required to apply the requisite amount of capital in paying up, in full, shares in TAB. 20
- (2) The requisite amount of capital is such amount as the Minister determines by order in writing. The Minister is required to consult with TAB before making such an order. 25
- (3) As soon as practicable after complying with subsection (1), TAB is required to issue the shares paid up under that subsection to the State of New South Wales.
- (4) The issue of those shares discharges in full any obligation of TAB existing before the conversion to repay the capital of TAB to the State of New South Wales. 30
- (5) The shares so issued are taken to have been issued for valuable consideration other than cash, being the discharge effected by this section.

- (6) The State of New South Wales is not a member of TAB at any time before the conversion merely because the State holds shares in TAB.

8 Steps to be taken by TAB before conversion

- (1) TAB must, before the conversion: 5
- (a) apply to the Australian Securities Commission under section 133 of the *Corporations Law* to be registered as a company limited by shares under Division 3 of Part 2.2 of the *Corporations Law* (Registering non-companies as companies), and 10
 - (b) apply to that Commission under section 374 of the *Corporations Law* for the reservation of the name "TAB Limited".
- (2) TAB is required to lodge with the application for registration as a company: 15
- (a) the proposed memorandum and articles of association of TAB Limited, and
 - (b) subject to any order in writing of the Minister, the other documents and information required by section 136 of the *Corporations Law* to accompany the application. 20
- (3) The proposed memorandum of association:
- (a) is to specify that the State of New South Wales is to be the sole subscriber to the memorandum and is to take up the number of shares in the capital of TAB Limited issued under this Part, and 25
 - (b) is to be signed by the Minister on behalf of the State of New South Wales.
- (4) The proposed articles of association:
- (a) are to provide that the first directors of TAB Limited after the conversion are to be appointed by the Minister, and 30
 - (b) are to be signed by the Minister on behalf of the State of New South Wales.
- (5) TAB is entitled to make the applications, and to lodge the documents, referred to in this section.

9 Company name 35

The name "TAB Limited" is taken to have been reserved under section 374 of the *Corporations Law* immediately after the making of the application to reserve that name.

Part 3 Management of TAB before conversion to company

10 Directors and meetings of TAB before conversion to company

- (1) As from the commencement of this Part, TAB is to consist of at least 5 directors appointed by the Minister on such terms and conditions as are determined by the Minister. 5
- (2) Schedule 1 has effect with respect to the directors and meetings of TAB.

11 Consequential amendments

Schedule 2 has effect. 10

Part 4 Conversion of TAB to company

12 TAB taken to be registered under Corporations Law as public company

- (1) On the commencement of this section:
- (a) the application for registration as a company referred to in section 8 is taken to have been granted, and 5
 - (b) TAB is taken to have been registered under section 137 of the *Corporations Law*:
 - (i) by the name "TAB Limited", and
 - (ii) as a public company, and as a company limited by shares, within the meaning of the *Corporations Law*, and 10
 - (c) the name "TAB Limited" is taken to have been registered in respect of TAB Limited under section 374 (5) of the *Corporations Law*. 15
- (2) The date of commencement of TAB Limited's registration as a company under Division 3 of Part 2.2 of the *Corporations Law* is taken to be the commencement of this section.
- (3) For the purposes of Division 3 of Part 2.2 of the *Corporations Law*, TAB Limited is taken to have been, immediately before the commencement of this section, and to be on that commencement, a corporation within the meaning of the *Corporations Law*. 20

13 New name of TAB

- (1) On the conversion, TAB's name is, by force of this subsection, changed to "TAB Limited". 25
- (2) Section 382 (4) of the *Corporations Law* applies in relation to the change of name made by subsection (1) as if:
- (a) TAB were a company, within the meaning of the *Corporations Law*, when the change was made, and
 - (b) the change was made under the *Corporations Law*. 30

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- (3) This section has effect despite anything in the *Corporations Law*, but nothing in this section prevents:
- (a) TAB Limited from later changing its name under section 382 of the *Corporations Law*, or
 - (b) the cancellation, under Part 4.2 of the *Corporations Law*, of the registration of a name. 5
- (4) TAB Limited or a TAB Limited subsidiary is not entitled to use in connection with its business a name that suggests that it is associated with the State of New South Wales. This subsection does not apply during any period to which Part 5 applies. 10
- 14 Memorandum and articles of TAB Limited to have effect**
- (1) As from the conversion, the proposed memorandum and articles of association lodged under section 8:
 - (a) are respectively the memorandum and articles of association of TAB Limited, and 15
 - (b) bind TAB Limited and its members accordingly.
 - (2) As from the conversion, the *Corporations Law* applies in relation to TAB Limited's memorandum and articles of association as if they had been registered as such under the *Corporations Law*.
- 15 Membership of TAB Limited** 20
- (1) The State of New South Wales, as the holder of shares in TAB Limited at the conversion, becomes (by force of this subsection) a member of TAB Limited at the conversion.
 - (2) The State of New South Wales is, in relation to membership of TAB Limited, entitled to the same rights, privileges and benefits, and is subject to the same duties, liabilities and obligations, as if it had become a member of TAB Limited under its memorandum and articles of association. 25
- 16 Minister may act for State as shareholder**
- The Minister may act for or on behalf of the State of New South Wales in connection with: 30
- (a) the rights, privileges and benefits, and
 - (b) the duties, liabilities and obligations,
- of the State as the holder of shares in TAB Limited that were issued to the State under Part 2. 35
-

17 Continuity of TAB and construction of references to TAB

- (1) Without limiting any other provision of this Act or the *Corporations Law*, TAB Limited is a continuation of, and the same legal entity as, TAB (as it existed before the conversion).
- (2) After the conversion, a reference in any other Act or in any other instrument made under any Act or in any other document of any kind to the Totalizator Agency Board or TAB is to be read as (or as including) a reference to TAB Limited, unless it is required by this Act to be read as a reference to some other person because it relates to an excluded undertaking or an undertaking transferred to a TAB subsidiary. 5
10
- (3) This section is to be read subject to clause 1 of Schedule 5 (Savings and transitional regulations).

18 Continuity of contracts and arrangements

- (1) Without limiting any other provision of this Act or the regulations, TAB Limited is, on and after the conversion, entitled to the benefit of, and taken to be a party to, any contract or arrangement entered into by TAB with any person and having force immediately before the conversion. 15
- (2) Section 19 does not affect the operation or continuity of any contract or arrangement referred to in subsection (1). 20
- (3) This section is subject to the operation of Part 9 (Vesting of undertaking on transfer).

19 Consequential amendments

- (1) On the conversion, Schedule 3 has effect. 25
- (2) Part 2 is repealed.

Part 5 Management of TAB Limited after conversion and before sale

20 When Part applies

- (1) This Part applies during any period after the conversion when a majority of the issued shares in TAB Limited are held by the State of New South Wales. 5
- (2) A day may be appointed by proclamation for the purposes of the cessation of the operation of this section. If a day is so appointed, this Part ceases to apply on and from that day, despite subsection (1). 10

21 Ministerial control of TAB Limited

- (1) The board of directors of TAB Limited is, in the exercise of its functions, subject to the control and direction of the Minister.
- (2) Neither the enactment of this section nor the exercise of the Minister's powers under this section constitutes a Minister as a director of TAB Limited or a person who participates in the management of TAB Limited. 15
- (3) A director of TAB Limited is not personally liable in any civil or criminal proceedings (including proceedings for a breach of any duty under the *Corporations Law*) for anything done or omitted for the purpose only of complying with a direction of the Minister under this section. 20

22 Status of TAB Limited

- (1) TAB Limited and any TAB Limited subsidiary to which any part of TAB's business undertaking is transferred under this Act are agencies through which the State of New South Wales carries out the activity of conducting on-course and off-course totalizator betting in New South Wales, and any other activity authorised to be conducted by a licence under the *Totalizator Act 1997*, and for that purpose it is a public authority of the State. 25
- (2) However, TAB Limited or any TAB Limited subsidiary:
 - (a) is not, and does not represent, the State of New South Wales except by express agreement with the Minister, and 30

Clause 22 Totalizator Agency Board Privatisation Bill 1997

Part 5 Management of TAB Limited after conversion and before sale

- (b) is not exempt from any rate, tax, duty or other impost imposed by or under any law of New South Wales merely because it is a company in which the State of New South Wales holds shares, and
- (c) cannot render the State of New South Wales liable for any debts, liabilities or obligations of TAB Limited or any TAB Limited subsidiary, unless this Act or any other Act or law otherwise expressly provides. 5

23 Application of certain provisions of State Owned Corporations Act 1989 to TAB Limited 10

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

- (a) such of the provisions of Part 4 (Accountability) as are prescribed by the regulations, 15
- (b) section 13 (Memorandum and articles of subsidiaries) but only in relation to the provisions contained in clauses 2 and 3 (2) of Part 2 of Schedule 3 to that Act,
- (c) section 36 (Application of other Acts), 20
- (d) any other provision prescribed by the regulations.

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

- 24 Minister may direct transfer of parts of TAB business undertaking to TAB subsidiary** 5
- (1) The Minister may, by order in writing, direct that any part or parts of TAB's business undertaking be transferred to a TAB subsidiary or TAB subsidiaries specified in the order.
- (2) Part 9 applies to an order under this section.
- 25 Minister may direct transfer of parts of business undertaking of TAB subsidiary to other subsidiaries or to TAB** 10
- (1) The Minister may, by order in writing, direct that any part or parts of the business undertaking of a TAB subsidiary (including anything transferred under this Part) be transferred to another TAB subsidiary specified in the order or to TAB. 15
- (2) Part 9 applies to an order under this section.
- 26 Allocation of transferred assets to capital and reserves**
- (1) The Minister may, by order in writing, direct that any assets transferred to a TAB subsidiary or to TAB under this Part are to be allocated to capital and reserves in such amounts and in accordance with such requirements as are specified in the order. 20
- (2) Any shares issued in accordance with a direction under this Part are taken to have been issued in consideration of the vesting in the TAB subsidiary or TAB under this Part of the assets allocated to capital. 25
- 27 Time when transfers may be effected**
- (1) An order under this Part may be made before, on or after the conversion of TAB into a public company.
- (2) After the conversion, any such order may not be made unless all the shares in TAB Limited are held by the State of New South Wales (being the shares issued under Part 2). However, the order may be expressed to take effect after the State has ceased to hold all or any of those shares. 30

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

28 Excluded undertakings

- (1) The Minister may direct, by order in writing, that any assets, rights or liabilities that are part of the business undertaking of TAB or a TAB subsidiary be excluded from that business undertaking and transferred to the Ministerial Holding Corporation or another person on behalf of the State of New South Wales. 5
- (2) If an excluded undertaking includes money, the order may direct the payment of the money into the Consolidated Fund. 10
- (3) An order under this section may define an excluded undertaking by reference to a business undertaking other than any part specified in the order.
- (4) Part 9 applies to an order under this section. 15

29 Time when exclusion may be effected

- (1) An order under this Part may be made before, on or after the conversion of TAB into a public company.
- (2) After the conversion, any such order may not be made unless all the shares in TAB Limited are held by the State of New South Wales (being the shares issued under Part 2). However, the order may be expressed to take effect after the State has ceased to hold all or any of those shares. 20

30 Sale or retention of excluded undertaking

- (1) The Ministerial Holding Corporation or any other person to whom any excluded undertaking is transferred may: 25
 - (a) sell or otherwise dispose of the whole or any part of the excluded undertaking, or
 - (b) retain the whole or any part of the excluded undertaking and conduct any business to which it relates. 30

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- (2) The Minister may, for the purposes of any such sale or other disposal, direct by order in writing that the excluded undertaking concerned be transferred to the body or person to whom it is being sold or otherwise disposed of.
- (3) Part 9 applies to an order under this section. 5

31 TAB or subsidiary may act with respect to excluded undertaking

The Ministerial Holding Corporation or any other person to whom any excluded undertaking is transferred under this Part may enter into an agreement or arrangement with TAB or a TAB subsidiary for the exercise by TAB or the TAB subsidiary (as an agent or otherwise) of such functions relating to the excluded undertaking as are specified in the agreement or arrangement. 10

Part 8 Sale of TAB Limited by public float

Division 1 Sale process

32 Sale of TAB Limited by public float

- (1) The Minister may make arrangements for the sale of TAB Limited by a public float, comprising the disposal of the shares issued to the State of New South Wales under Part 2. 5
- (2) The arrangements may include underwriting agreements and the issue of a prospectus.

33 State may dispose of its shares

- (1) The State of New South Wales may, subject to this Part, dispose of all or any of its shares in TAB Limited. 10
- (2) The Minister is authorised to enter into agreements for the transfer to any person of those shares. Without limitation, any such person may be a body corporate.

34 Amendment of Acts on sale of TAB Limited 15

Schedule 4 has effect.

35 No government guarantees

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

Division 2 Maximum shareholding restrictions 20

36 Definitions

- (1) In this Division:
officer, in relation to TAB Limited, has the same meaning as in section 9 of the *Corporations Law*.
voting share, in relation to TAB Limited, has the same meaning as in section 9 of the *Corporations Law*. 25

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- (2) For the purposes of this Division, a person is an associate of another:
- (a) if the Minister:
 - (i) is of the opinion that the person and the other are likely to act in concert with a view to taking control of, or exercising significant influence over, TAB Limited against the public interest, and 5
 - (ii) by notice in writing served on TAB Limited, declares that the person is an associate of the other, or 10
 - (b) if the person is an associate of the other within the meaning of Division 2 of Part 1.2 of the *Corporations Law*, with that Division modified by omitting sections 13, 14, 16 (2) and 17 of that Law and by substituting for paragraphs (b) and (c) of section 12 (1) of that Law the following: 15
 - or
 - (b) whether the primary person is in a position to exercise certain powers in relation to a body corporate.
- (3) Where notice of a declaration under subsection (2) is served on TAB Limited, the Minister must, at the same time or as soon as practicable thereafter, cause written notice of the declaration to be served on the persons to whom the declaration relates. 20
- (4) For the purposes of this Division, a person has a relevant interest in a share if, and only if, the person would be taken to have a relevant interest in the share because of Division 5 of Part 1.2 of the *Corporations Law* if section 33 of that Law were disregarded. 25
- (5) For the purposes of this Division, the voting shares in TAB Limited to which a person (being TAB Limited or any other person) is entitled include voting shares in TAB Limited to which the person is entitled in accordance with section 609 of the *Corporations Law*, as if a reference in section 609 (1) (a) of that Law to a relevant interest were a reference to a relevant interest to which subsection (4) of this section applies. 30

- (6) A reference in this Division to the *Corporations Law* is a reference to that Law as it would apply if references in that Law to a body corporate, corporation or company included references to:
- (a) a body corporate of any kind wherever formed or incorporated and whether formed or incorporated under that Law or any other law, and 5
 - (b) any unincorporated body, being a society, association, company of proprietors or other body, wherever formed, that, under the law of its place of formation, may sue or be sued, or may hold property in the name of the secretary or some other officer of the society, association or body, or in the name of any trustee or trustees, and 10
 - (c) any unincorporated body, being a society, association, company of proprietors or other body or undertaking to which is applied, under the laws of the place of its formation, with or without exceptions, a law in force in that place relating to companies or corporations as if it were a company or corporation within the meaning of that law. 15
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- (7) The regulations may provide that relevant interests, or particular classes of relevant interests, in shares, or in particular classes of shares, are, in such circumstances and subject to such conditions (if any) as are specified in the regulations, to be disregarded for such purposes as are specified in the regulations. 25
- (8) If a whole or a portion of the share capital of TAB Limited consists of stock, a reference in this Division to a number of shares in TAB Limited as a percentage is, in relation to an amount of stock, a reference to the amount of stock that represents that number of shares. 30

37 Application of Division

- (1) This Division applies in relation to TAB Limited whenever TAB Limited holds a licence under the *Totalizator Act 1997*.
- (2) This Division (including any provision of the *Corporations Law* referred to or applied for the purposes of this Division) applies in relation to any transaction, agreement, arrangement, understanding or undertaking: 35

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- (a) whether the transaction, agreement, arrangement, understanding or undertaking is entered into, or made, in this State or elsewhere, and
- (b) whether the shares (if any) to which the transaction, agreement, arrangement, understanding or undertaking relates are registered in this State or elsewhere, and 5
- (c) whether the proper law of the transaction, agreement, arrangement, understanding or undertaking is the law of this State or not.
- 38 Prohibited shareholding interest 10**
- (1) A person has a prohibited shareholding interest in TAB Limited if the person is entitled to voting shares in TAB Limited that together constitute more than 5% of the total number of voting shares in TAB Limited.
- (2) For the purposes of this Division, TAB Limited or a TAB Limited subsidiary cannot have a prohibited shareholding interest in TAB Limited. 15
- (3) It is unlawful for a person to have a prohibited shareholding interest in TAB Limited.
- 39 Power to require information relating to entitlement to shares in TAB Limited 20**
- (1) The Minister, or a director or the secretary of TAB Limited, may, by notice in writing served on a person who is, or is suspected by the Minister, director or secretary, as the case may be, of being entitled to shares in TAB Limited, require the person to furnish information specified in the notice for the purpose of determining whether that person or any other person has, or is taking action to acquire, a prohibited shareholding interest in TAB Limited. 25
- (2) A notice under subsection (1) may require the person on whom the notice is served, or, if that person is a corporation, 2 directors of the corporation, to verify by statutory declaration any information furnished in compliance with the notice. 30

- (3) If:
- (a) a person on whom a notice under subsection (1) has been served fails to furnish, within the period required by the notice, the information required by the notice, verified as required by the notice, or 5
 - (b) information furnished by the person in response to the notice is, in the opinion of the Minister, by reason of anything included in it or omitted from it, false or misleading in a material particular,
the Minister may, by reason only of that fact, by notice in writing served on TAB Limited, do one or more of the following: 10
 - (c) declare that the person is an associate of another, or that another is an associate of that person,
 - (d) declare that the person, or another to whom a declaration under paragraph (c) relates, is entitled to specified shares in TAB Limited, 15
 - (e) declare that the person, or another to whom a declaration under paragraph (c) relates, has a prohibited shareholding interest in TAB Limited.
- (4) If notice of a declaration under subsection (3) is served on TAB Limited, the Minister must, at the same time or as soon as practicable thereafter, cause written notice of the declaration to be served: 20
- (a) on the person to whom the declaration relates, and
 - (b) in the case of a declaration under paragraph (e) of that subsection—on the holder of the shares to which the declaration relates. 25
- (5) A person who fails to comply with a requirement of a notice under this section is guilty of an offence.
Maximum penalty: 100 penalty units. 30

40 Substantial shareholders to give notice to Minister

- (1) A person who is required to give notice to TAB Limited under a provision of Part 6.7 (Substantial shareholdings) of the *Corporations Law* must give a copy of the notice to the Minister within the time that the notice is required under that Law to be given to TAB Limited. 35
- Maximum penalty: 100 penalty units.

- (2) TAB Limited must notify the Minister in writing within 2 business days after it receives a notice from a person under a provision of Part 6.7 of the *Corporations Law*, informing the Minister of the name and address of the person from whom the notice was received.

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Maximum penalty: 100 penalty units.

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

- (1) If the Minister:

- (a) makes a declaration under section 39 (3), or
(b) forms the opinion and, by notice in writing served on TAB Limited, declares under this subsection,

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that a person (in this section referred to as *the offender*) has a prohibited shareholding interest in TAB Limited, the Minister may, by notice in writing served:

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- (c) if the offender holds voting shares in TAB Limited to which the offender is entitled—on the offender, or
(d) on any other person who holds voting shares in TAB Limited to which the offender is entitled,

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

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- (2) For the purposes of subsection (1), the relevant number of shares that a person may be required by a notice under that subsection to dispose of otherwise than to an associate of the offender is:

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- (a) subject to paragraph (b), the number of shares held by the person that would need to be so disposed of in order to cause the offender to cease to have a prohibited shareholding interest in TAB Limited, or
(b) if, after all the shares in TAB Limited held by the person to which the offender is entitled were so disposed of, the offender would continue to have a prohibited shareholding interest in TAB Limited—the total number of those shares.

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- (3) For the purposes of this section, a person is not to be taken to have disposed of shares in TAB Limited to which an offender is entitled unless and until the person ceases to hold the shares and the offender ceases to be entitled to the shares.
- (4) If a person served with a notice of a declaration under subsection (1) requiring the person to dispose of shares in TAB Limited fails to comply with the notice within the period required by the notice, the shares to which the notice relates are, by force of this subsection, forfeited to the State. 5
- (5) If a transaction is entered into with respect to any shares in TAB Limited and: 10
- (a) a person who did not, before the transaction is entered into, have a prohibited shareholding interest in TAB Limited would, but for this subsection, have such an interest after the transaction, or 15
- (b) a person who, before the transaction is entered into, had a prohibited shareholding interest in TAB Limited would, but for this subsection, be entitled after the transaction to a greater number of voting shares in TAB Limited than the person was entitled to immediately before the transaction, 20
- the transaction is illegal and void.
- (6) If voting shares in TAB Limited have been transferred as a result of a transaction that is illegal and void by virtue of subsection (5), the Minister may, by notice in writing served on the transferee, declare that the shares are forfeited to the State. 25
- (7) The Minister must cause written notice of:
- (a) a declaration under subsection (1) requiring a person to dispose of shares in TAB Limited, or
- (b) a declaration under subsection (6) that shares in TAB Limited are forfeited to the State, 30
- to be served on TAB Limited.
- (8) A director or secretary of TAB Limited may, before a transfer of shares in TAB Limited is registered, require the transferee, or, if the transferee is a corporation, 2 directors of the transferee corporation, to make a statutory declaration to the effect that the transaction to which the transfer relates was not a transaction to which subsection (5) applies. 35

- (9) If a requirement under subsection (8) is not complied with, TAB Limited may refuse to register the transfer in relation to which the requirement was made.

42 Effect of prohibited shareholding on voting and dividend rights

- (1) This section applies to any provision of the articles of association of TAB Limited that provides for: 5
- (a) the suspension of any voting rights attaching to voting shares in TAB Limited as a result of any person who is entitled to the shares having a prohibited shareholding interest in TAB Limited, or 10
 - (b) authorises or requires TAB Limited, as a result of any person having a prohibited shareholding interest in TAB Limited, to refuse or defer payment of any amount or amounts that would otherwise be due from TAB Limited in respect of any shares in TAB Limited to which the person is entitled. 15
- (2) It is a condition of any licence that TAB Limited holds under the *Totalizator Act 1997* that any provision of the articles of association of TAB Limited to which this section applies cannot be amended or repealed except with the written consent of the Minister. 20
- (3) If the Minister is of the opinion that a resolution of a general meeting of TAB Limited has been passed as a result of the admission of votes that should not, by virtue of a provision of the articles of association of TAB Limited to which this section applies, have been admitted, the Minister may, by notice in writing served on TAB Limited, declare the resolution to have been (at all times) null and void. 25
- (4) If notice of a declaration under this section is served on TAB Limited, the Minister must, at the same time or as soon as practicable thereafter, cause written notice of the declaration to be served on each person whose votes should not, in the opinion of the Minister, have been admitted. 30
- (5) A notice under this section does not have any effect unless it is served on TAB Limited within one month after the date of the resolution to which it relates. 35

43 Making, review and revocation of declarations by Minister

- (1) A declaration may be made by the Minister under this Division on the basis of such information as the Minister considers sufficient in the circumstances.
- (2) A declaration of the Minister under this Division other than: 5
- (a) a declaration under section 41 (1) requiring a person to dispose of shares in TAB Limited, or
 - (b) a declaration under section 41 (6) that shares in TAB Limited are forfeited to the State,
- is effective when written notice of the declaration is served on TAB Limited irrespective of when or whether service is effected on any other person as provided by this Division. 10
- (3) If the Minister makes a declaration under this Division:
- (a) TAB Limited, or
 - (b) any other person on whom notice of the declaration has been served in pursuance of this Division, 15
- may apply to the Minister for a review of the declaration.
- (4) On an application under this section for review of a declaration, the Minister:
- (a) must allow the applicant and, where the applicant is not TAB Limited, TAB Limited, a reasonable opportunity to make submissions in relation to the application, and 20
 - (b) may, after giving due consideration to any such submissions:
 - (i) confirm the declaration, or 25
 - (ii) revoke or vary the declaration either conditionally or unconditionally and with effect from the date of the declaration or some other date determined by the Minister.
- (5) Notwithstanding that an application is made under this section for review of a declaration of the Minister under this Division, the declaration continues to have effect pending determination of the application except as otherwise determined by the Minister. 30

- (6) The Minister may, of his or her own motion, by notice in writing served on the person on whom notice of the declaration was served, revoke or vary a declaration of the Minister under this Division with effect from the date of the declaration or some other date determined by the Minister. 5

44 Appeal against declarations of Minister

- (1) TAB Limited or any other person on whom notice of a declaration of the Minister is served under this Division may appeal to the Supreme Court against the declaration.
- (2) An appeal does not lie against a declaration under section 42 annulling a resolution of TAB Limited. 10
- (3) An appeal under this section must be instituted within 21 days after notice of the declaration under appeal is served on the appellant, unless the appellant has within that 21 day period applied for a review of the declaration under section 43, in which case the appeal may be instituted within 21 days after determination of the application for review. The period fixed by this subsection as the period within which an appeal must be instituted cannot be extended. 15
- (4) Where an appeal is instituted by a person other than TAB Limited, TAB Limited is to be a respondent in addition to the Minister. 20
- (5) The Supreme Court may, on an appeal under this section, if satisfied that proper grounds for making the declaration did not exist, quash or vary the declaration, either conditionally or unconditionally and with effect from the date of the declaration or some other date, as the Court thinks fit, and make any consequential or ancillary orders that may be just. 25
- (6) Notwithstanding an appeal under this section, a declaration other than: 30
- (a) a declaration under section 41 (1) requiring a person to dispose of shares in TAB Limited, or
- (b) a declaration under section 41 (6) that shares in TAB Limited are forfeited to the State,
- continues to have effect pending determination of the appeal. 35

- (7) Except as provided in this Division, a declaration of the Minister under this Division may not be challenged or called into question.

45 Sale of forfeited shares

- (1) The Minister is to sell any shares forfeited to the State under this Act. 5
- (2) For the purposes of any such sale, the Minister is not bound by any restriction on the sale of shares contained in the memorandum or articles of association of TAB Limited.
- (3) Any money realised from the sale of forfeited shares under this section must, after deduction of the reasonable costs of the forfeiture and sale: 10
- (a) if the shares were transferred as a result of a transaction that was illegal and void by virtue of section 41 (5) and the transferor has not received the full consideration agreed upon with the transferee—be applied in payment to the transferor of the amount or value of the consideration not received by the transferor and in payment of the balance (if any) to the transferee, or 15
- (b) in any other case—be paid to the person from whom the shares were forfeited. 20

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

No liability attaches to the Minister or TAB Limited or any officer or auditor of TAB Limited for any act or omission in good faith and in the exercise or discharge, or purported exercise or discharge, of a power or duty under this Division. 25

47 Service

A notice required or authorised by this Division to be served on a person may: 30

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

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

Division 3 Results of sale

48 Proceeds of sale

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

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49 Staff remaining with TAB Limited

- (1) On the sale of TAB Limited, each member of staff of TAB Limited continues to be a member of staff of TAB Limited (despite the change of ownership) on the same terms and conditions of employment as applied to the member of staff immediately before the sale. Those terms and conditions are to continue to have effect until varied either by agreement or otherwise in accordance with law. 5
- (2) Neither the contract of employment nor the period of employment of each member of the staff concerned is taken to have been broken by the operation of this Act for the purposes of any law, award or agreement relating to the employment of that member of staff. 10
- (3) Without limiting this section, this Division does not affect any accrued rights that the member of staff concerned had immediately before the sale in relation to any kind of leave. 15

Part 9 Vesting of undertaking on transfer

50 Application and interpretation

- (1) This Part applies to the following orders under this Act:
- (a) an order under Part 6 transferring a part of the business undertaking of TAB to a TAB subsidiary, 5
 - (b) an order under Part 6 transferring a part of the business undertaking of a TAB subsidiary to another TAB subsidiary or to TAB,
 - (c) an order under Part 7 excluding a part of the business undertaking of TAB or a TAB subsidiary and transferring it to the Ministerial Holding Corporation or other person on behalf of the State, 10
 - (d) an order under Part 7 transferring any part of the excluded undertaking to a person acquiring it from the Ministerial Holding Corporation or other person on behalf of the State. 15
- (2) In this Part, the body or person from whom a part of a business undertaking is so transferred is called the *transferor* and the body or person to whom it is being so transferred is called the *transferee*.

51 Vesting of undertaking in transferee 20

- (1) When any part of a business undertaking is transferred by an order to which this Part applies, the following provisions have effect (subject to the order directing the transfer):
- (a) the assets of the transferor comprised in that part of the undertaking vest in the transferee by force of this section and without the need for any conveyance, transfer, assignment or assurance, 25
 - (b) the rights and liabilities of the transferor comprised in that part of the undertaking become by force of this section the rights and liabilities of the transferee, 30
 - (c) all proceedings relating to that part of the undertaking commenced before the transfer by or against the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,

(d) anything done or omitted to be done in relation to that part of the undertaking before the transfer by, to or in respect of the transferor is (to extent that it has any force or effect) taken to have been done or omitted to be done by, to or in respect of the transferee, 5

(e) a reference in any other Act, in any instrument made under any Act or in any document of any kind to the transferor is (to the extent that it relates to that part of the undertaking but subject to the regulations under Schedule 5) to be read as, or as including, a reference to the transferee. 10

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

(3) Any instrument executed only for:

(a) a purpose ancillary to or consequential on the operation of this section, or 15

(b) the purpose of giving effect to this section,
is not chargeable with stamp duty.

52 Transfer of staff

(1) This section applies when an order to which this Part applies includes the transfer of the employment of staff from the transferor to the transferee. 20

(2) Each member of the staff concerned becomes after the transfer a member of the staff of the transferee and continues (until other provision is duly made) to be employed in accordance with the awards, agreements and determinations applying, immediately before the transfer, to members of the staff of the transferor. 25

(3) Neither the contract of employment nor the period of employment of each member of the staff concerned is taken to have been broken by the operation of this Act for the purposes of any law, award or agreement relating to the employment of that member of staff. 30

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

- (5) A member of the staff concerned is not entitled to receive any payment or other benefit merely because the member ceases to be an employee of the transferor.

53 Consideration for vesting

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

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Part 10 Miscellaneous

54 Act binds Crown

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

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55 Subsidiary companies

- (1) The purpose of this section is to make it clear that TAB may, whether or not in connection with the conversion, form or participate in the formation of subsidiary companies on or after the date of assent to this Act and before the conversion. 10
- (2) Any function of TAB may be exercised by a company in which TAB has a controlling interest. Such a company is referred to in this section as a *subsidiary company*.
- (3) Before the conversion:
 - (a) TAB may, with the approval of the Minister: 15
 - (i) form, or participate in the formation of, a subsidiary company, or
 - (ii) acquire an interest in a company so that, as a result of the acquisition, the company becomes a subsidiary company, and 20
 - (b) TAB must not, without the approval of the Minister, sell or otherwise dispose of any interest in a subsidiary company so that, as a result of the sale or disposal, it ceases to be a subsidiary company.
- (4) Nothing in this section affects any power of TAB (existing apart from this section) to form or participate in the formation of, or sell or otherwise dispose of interests in, TAB subsidiaries after the conversion. 25
- (5) TAB is taken to have been able to form or participate in the formation of, or sell or otherwise dispose of interests in, subsidiary companies before the date of assent to this Act. 30
- (6) In this section:

company means a company incorporated or taken to be incorporated under the *Corporations Law*.

56 Protection of contractual and other obligations

- (1) This section applies to the following:
- (a) the operation of this Act, and in particular the operation of section 51,
 - (b) the sale of TAB Limited as authorised by this Act, 5
 - (c) an agreement, guarantee or other arrangement or transaction, entered into or carried out under this Act for purposes connected with this Act,
 - (d) a disclosure of information made for the purposes of the sale or proposed sale of TAB Limited. 10
- (2) None of the matters or things referred to in subsection (1) are to be regarded as a breach of confidence or otherwise as a civil wrong or as giving rise to a breach of or an offence against a provision of an Act that prohibits or restricts the disclosure of information. 15
- (3) None of the matters or things referred to in subsection (1) are to be regarded:
- (a) as a breach of contract or other instrument or as requiring any act to be done under an instrument, or
 - (b) as giving rise to any right or remedy by a party to an instrument, or as causing or permitting the termination of an instrument, or 20
 - (c) as an event of default under an instrument, or
 - (d) as a contravention of section 205 (1) (a) of the *Corporations Law*. 25
- (4) Subsections (2) and (3) do not affect, and a reference in subsection (3) to an instrument does not include, an agreement, guarantee or other arrangement or transaction, entered into or carried out under this Act for purposes connected with this Act.
- (5) A reference in subsection (3) to an instrument does not include an Act. 30

57 Auditor-General authorised to communicate information regarding TAB

- (1) The Treasurer may approve of the communication by the Auditor-General to an authorised person on such terms and conditions as the Treasurer thinks fit of any matter or thing that has come to the knowledge of the Auditor-General in respect of TAB or a TAB subsidiary. 5
- (2) Any communication by the Auditor-General in accordance with the Treasurer's approval is authorised by this section, and is not prevented by section 38 (Secrecy) or any other provision of the *Public Finance and Audit Act 1983*. 10
- (3) In this section:
- authorised person* means:
- (a) any person exercising functions under this Act or the *Totalizator Act 1997*, and 15
- (b) any person engaged to perform functions in connection with an application for or the grant of a licence under the *Totalizator Act 1997* or the conversion of TAB into a public company and the sale of shares in that company, and 20
- (c) the holder of any office that is nominated for the purposes of this section by the Minister by notification in writing to the Auditor-General.

58 Exemptions from tax for conversion documents and other documents

- (1) In this section:
- exempt matter* means:
- (a) the issue of shares in TAB Limited under Part 2, the disposal of those shares by the State and the purchase of those shares from the State, or 30
- (b) the application by TAB Limited under this Act for registration as a company or for the reservation of its name, or
- (c) any other matter related to the conversion of TAB into a public company under this Act, or 35

- (d) such other matters in connection with this Act as may be prescribed.

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

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- (2) State tax is not payable in relation to:
- (a) an exempt matter, or
- (b) anything done because of, or for a purpose connected with or arising out of, an exempt matter.

- (3) This section does not limit the operation of section 51 (3). 10

59 Certificate evidence

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

15

60 Proceedings for offences

Proceedings for an offence against this Act are to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

20

61 Savings, transitional and other provisions

Schedule 5 has effect.

62 Regulations

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

25

Schedule 1 TAB up to conversion to company

(Section 10)

Part 1 Preliminary

1 Application of Schedule

This Schedule applies to TAB from the commencement of Part 2 to the conversion of TAB to TAB Limited. 5

2 Definition

In this Schedule:

director means a director of TAB, and includes the Chairperson of TAB. 10

Part 2 Directors

3 Chairperson

One of the directors is, in and by the instrument of appointment or in and by another instrument, to be appointed by the Minister as Chairperson of TAB. 15

4 Acting director

(1) The Minister may, from time to time, appoint a person to act in the office of a director during the illness or absence of the director. The person, while so acting, has all the functions of the director and is taken to be a director in place of the ill or absent director. 20

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

5 Term of office

Subject to this Schedule, a director holds office for such period as is specified in the instrument of appointment, but is eligible for reappointment. 25

6 Remuneration

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

7 Vacancies in office

5

- (1) The office of a director becomes vacant if the director:
- (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing to the Minister, or 10
 - (d) is absent from 4 consecutive meetings of TAB without the leave of TAB, or
 - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her salary for their benefit, or 15
 - (f) becomes a mentally incapacitated person, or
 - (g) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or 20
 - (h) is removed from office by the Governor under Part 8 of the *Public Sector Management Act 1988* or by the Minister under this clause. 25
- (2) The Minister may remove a director from office at any time for any or no reason and without notice.

8 Effect of certain other Acts

- (1) The *Public Sector Management Act 1988* does not apply to the appointment of a director, and a director is not, as a director, subject to that Act (except Part 8). 30
- (2) The office of a director is not, for the purposes of any Act, an office or place of profit under the Crown.

Part 3 Meetings

9 General procedure

The procedure for the calling of meetings of TAB and for the conduct of those meetings is, subject to this Schedule and the *Totalizator (Off-course Betting) Act 1964*, to be as determined by TAB. 5

10 Quorum

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

11 Presiding director 10

- (1) The Chairperson of TAB or, in the absence of the Chairperson, another director elected to chair the meeting by the directors present is to preside at a meeting of TAB.
- (2) The person presiding at any meeting of TAB has a deliberative vote and, in the event of an equality of votes, has a second or casting vote. 15

12 Voting

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

13 Minutes 20

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

Schedule 2 Amendment of Acts to take effect before conversion of TAB to company

(Section 11)

2.1 Totalizator Act 1916 No 75

Section 19A Racecourse Development Fund

5

Omit section 19A (2). Insert instead:

- (2) There is to be a Racecourse Development Committee (*the Committee*) consisting of 3 persons appointed by the Minister. The Racecourse Development Committee constituted under this subsection immediately before its substitution by the *Totalizator Agency Board Privatisation Act 1997* is abolished.

10

2.2 Totalizator (Off-course Betting) Act 1964 No 1

[1] Section 2 Definitions

Insert in alphabetical order:

15

director means a director of the Board.

[2] Section 2, definition of "Member"

Omit the definition.

[3] Section 3 Constitution of Board

Omit section 3 (2)–(9). Insert instead:

20

- (2) The Board consists of directors appointed under the *Totalizator Agency Board Privatisation Act 1997*.

- [4] Section 4 Meetings of the Board**
Omit section 4 (1)–(4).
- [5] Section 4 (5)**
Omit “member” wherever occurring. Insert instead “director”.
- [6] Section 5 Board to be body corporate** 5
Omit section 5 (3).
- [7] Section 7 Delegation to committees etc**
Omit “member” from section 7 (1). Insert instead “director”.
- [8] Section 8 Remuneration and expenses of members** 10
Omit the section.
- [9] Section 13 Certain acts otherwise unlawful to be lawful**
Omit “members” wherever occurring in section 13 (2).
Insert instead “directors”.
- [10] Section 17 Provisions relating to the betting operations of the Board** 15
Omit “, with the approval of the Minister in writing,” wherever occurring in subsections (1A) and (1AA).
- [11] Section 17A Advertising rights**
Omit “, with the approval of the Minister given in writing,”.

Schedule 3 Amendment of Totalizator (Off-course Betting) Act 1964 to take effect on conversion of TAB to company

(Section 19)

- [1] **Long title** 5
- Omit “to establish a Totalizator Agency Board and to define its powers, authorities, duties and functions;”.
- [2] **Section 2 Definitions**
- Omit the definition of *Board*.
- [3] **Section 2, definition of “Company”** 10
- Insert in alphabetical order:
- Company* means TAB Limited, as mentioned in the *Totalizator Agency Board Privatisation Act 1997*.
- [4] **Part 2, heading**
- Omit the heading. Insert instead “**Part 2 The Company**”.
- [5] **Section 3 Constitution of Board**
- Omit the section.
- [6] **Sections 4–7**
- Omit the sections.

Totalizator Agency Board Privatisation Bill 1997

Schedule 3 Amendment of Totalizator (Off-course Betting) Act 1964 to take effect on
conversion of TAB to company

**[7] Section 9 Manager, secretary, officers and employees of
Company**

Omit subsection (1). Insert instead:

- (1) The Company may appoint such agents as the Company
considers necessary for the purposes of this Act. 5

[8] Section 9 (2)

Omit the subsection.

[9] Section 11 Borrowing by Board

Omit the section.

[10] Section 16 Company to hold residue in trust 10

Omit “, Board”.

[11] The whole Act

Omit “Board” or “Board’s” wherever occurring (except in
provisions amended or omitted by this Act).

Insert instead “Company” or “Company’s”, respectively. 15

Schedule 4 Amendment of Acts on sale of TAB Limited

(Section 34)

- 4.1 Government and Related Employees Appeal Tribunal Act 1980 No 39** 5
- Schedule 4 Employing authorities**
Omit "Totalizator Agency Board."
- 4.2 Public Finance and Audit Act 1983 No 152**
- Schedule 2 Statutory bodies**
Omit "Totalizator Agency Board." 10
- 4.3 State Authorities Non-contributory Superannuation Act 1987 No 212**
- Schedule 1 Employers**
Omit the matter relating to the Totalizator Agency Board from Part 1.
- 4.4 Superannuation Act 1916 No 28** 15
- Schedule 3 List of employers**
Omit the matter relating to the Totalizator Agency Board from Part 1.

Schedule 5 Savings, transitional and other provisions

(Section 61)

Part 1 Regulations

- | | |
|--|----|
| 1 Regulations | 5 |
| (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act. | |
| (2) Any such savings or transitional provisions may, if the regulations so provide, take effect on the date of assent to this Act or a later date. | 10 |
| (3) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as: | |
| (a) to affect, in a manner prejudicial to any person (other than the State, TAB, a TAB subsidiary or an authority of the State), the rights of that person existing before the date of its publication, or | 15 |
| (b) to impose liabilities on any person (other than the State, TAB, a TAB subsidiary or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. | 20 |

Part 2 Provisions consequent on enactment of this Act

- | | |
|---|----|
| 2 Members of TAB | |
| (1) A person who, immediately before the commencement of Part 2 of this Act, held office as a member of TAB: | 25 |
| (a) ceases to hold that office, and | |
| (b) is eligible (if otherwise qualified) to be appointed as a director under section 10. | |
| (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office. | 30 |

3 Directors of TAB

- (1) A person who, immediately before the conversion of TAB to TAB Limited, held office as a director of TAB, is, by force of this clause, a director of TAB Limited on and from the conversion, as if appointed to that office in accordance with the memorandum and articles of association of TAB Limited. This subclause has effect despite any provision of the memorandum or articles of association. 5
- (2) Such a person holds office for the balance of the then current term for which the person was appointed, subject to the memorandum and articles of association of TAB Limited, and is (if otherwise qualified) eligible for further appointment as a director of TAB Limited in accordance with the memorandum and articles of association of TAB Limited. 10
- (3) A person is not entitled to any remuneration or compensation because of the operation of this clause. 15

4 Application of certain provisions of Corporations Law

- (1) While the State of New South Wales continues to hold all the shares in TAB Limited (being the shares issued to the State under Part 2), sections 186 and 461 (d) of the *Corporations Law* do not apply in relation to TAB Limited, and section 249 (7) of the *Corporations Law* applies in relation to TAB Limited as if: 20
- (a) the State of New South Wales were a holding company (within the meaning of section 249 (7) of the *Corporations Law*) of TAB Limited, and 25
- (b) the Minister were a representative of the State authorised under section 249 (3) of the *Corporations Law*.
- (2) Sections 139 (2) and 151 (5) of the *Corporations Law* do not apply in relation to TAB Limited.
- (3) For the purposes of Division 2 of Part 5.6 of the *Corporations Law* (Contributories on winding up): 30
- (a) the State of New South Wales is not (in relation to any period before the conversion) a past member of TAB Limited, and

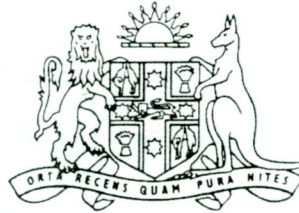
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- (b) a person is not a past member of TAB Limited merely because he or she was a member of the Totalizator Agency Board, or acted as such, before the conversion.
- (4) For the purposes of the *Corporations Law*, accounts and records kept under Part 3 of the *Public Finance and Audit Act 1983* are, after the conversion, taken to be accounting records kept by TAB Limited under a provision of a previous law of the State of New South Wales, being a provision corresponding to section 289 of the *Corporations Law*. 5
- (5) For the purposes of the *Corporations Law*, a report and financial statements that were prepared under Part 3 of the *Public Finance and Audit Act 1983* in relation to a period and furnished to the Minister on a particular day are, after the conversion, taken to be a profit and loss account of TAB Limited that was: 10
- (a) made out in relation to that period, and 15
- (b) laid before the body at an annual general meeting of the body held on that day.
- 5 Audit and accounts**
- (1) As from the conversion, the functions of the Auditor-General under the *Public Finance and Audit Act 1983* are no longer exercisable in respect of TAB Limited, except in respect of whole financial years before the conversion. 20
- (2) TAB Limited is not required to prepare accounts as at the date of conversion if the conversion occurs during a financial year.
- 6 Superannuation under State public sector schemes** 25
- (1) This clause applies to a member of staff of TAB Limited who is, immediately before the conversion, a contributor under a State public sector superannuation scheme.
- (2) Contributors to whom this clause applies cease to be contributors on the day referred to in subclause (1). They are taken to have elected on that day to preserve their superannuation benefits in accordance with the relevant statutory provisions. 30

(3) This clause does not affect the provisions of any other Act or regulation relating to the rights of contributors under superannuation schemes.

(4) In this clause:

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

5



New South Wales

Totalizator Agency Board Privatisation Act 1997 No 43

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New South Wales

Totalizator Agency Board Privatisation Act 1997 No 43

Act No 43, 1997

An Act to provide for the conversion of the Totalizator Agency Board into a public company and for the future sale of that company to the public; and for other purposes. [Assented to 1 July 1997]

See also *Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997*, *Totalizator Act 1997*.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

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

2 Commencement

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

3 Objects of Act

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

- (a) to convert TAB from a statutory authority into a public company limited by shares and with the name TAB Limited, and
- (b) to repeal provisions of the *Totalizator (Off-course Betting) Act 1964* and to apply the *Corporations Law* to TAB after its conversion, and
- (c) to authorise the exclusion from the sale of TAB of any part of the business undertakings of TAB and its subsidiaries, and to reorganise those businesses before the sale, and
- (d) to authorise the sale of TAB by a public float (comprising disposal of the shares issued to the State on the conversion) and to limit to 5% the maximum shareholding of any one shareholder.

4 Definitions

- (1) In this Act:

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

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

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

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

exercise a function includes perform a duty.

function includes a power, authority or duty.

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

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

Minister see section 5.

Ministerial Holding Corporation means the Ministerial Holding Corporation constituted by section 37B of the *State Owned Corporations Act 1989*.

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

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

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

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

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

TAB Limited subsidiary means a subsidiary of TAB Limited within the meaning of the *Corporations Law*.

TAB subsidiary means a subsidiary of TAB or TAB Limited, within the meaning of the *Corporations Law*.

- (2) A reference in this Act to the business undertaking of TAB or of a TAB subsidiary at any particular time does not include a reference to any part of that undertaking that has been excluded or transferred by this Act before that time.
- (3) Notes in the text of this Act do not form part of this Act.

5 Minister

- (1) A reference in this Act to the Minister is:
 - (a) if there is for the time being only one nominated Minister under this section—a reference to that Minister, or
 - (b) if there is for the time being more than one nominated Minister under this section—a reference to all those Ministers.
- (2) A nominated Minister is a Minister nominated by the Premier by order published in the Gazette as a nominated Minister.
- (3) Such a nomination is to be made by reference to ministerial title. The Premier can be nominated as nominated Minister.
- (4) One or more Ministers may be nominated for the time being under this section.
- (5) If no Minister is for the time being nominated under this section, a Minister having the duty to administer any provisions or aspect of this Act is a nominated Minister.

Part 2 Steps before conversion of TAB to company

6 Share capital of TAB

- (1) As from the commencement of this section, TAB is to have a share capital.
- (2) The nominal share capital is to be such amount as the Minister determines being an amount that is not less than the minimum amount that, under the *Corporations Law*, may be the share capital (made up of shares of \$1 each) of a company registered as a public company limited by shares.
- (3) The amount of the issued share capital is to be equal to the amount that section 7 requires to be applied in paying up shares in TAB.
- (4) The share capital is to be divided into shares of \$1 each.
- (5) The share capital may be divided into classes of shares.
- (6) Rights may be attached to shares included in a class of shares.
- (7) Anything to be done under subsection (5) or (6) is to be done by the Minister by order in writing.

7 Issue of shares in TAB

- (1) As soon as practicable after the commencement of this section, TAB is required to apply the requisite amount of capital in paying up, in full, shares in TAB.
- (2) The requisite amount of capital is such amount as the Minister determines by order in writing. The Minister is required to consult with TAB before making such an order.
- (3) As soon as practicable after complying with subsection (1), TAB is required to issue the shares paid up under that subsection to the State of New South Wales.
- (4) The issue of those shares discharges in full any obligation of TAB existing before the conversion to repay the capital of TAB to the State of New South Wales.
- (5) The shares so issued are taken to have been issued for valuable consideration other than cash, being the discharge effected by this section.

- (6) The State of New South Wales is not a member of TAB at any time before the conversion merely because the State holds shares in TAB.

8 Steps to be taken by TAB before conversion

- (1) TAB must, before the conversion:
- (a) apply to the Australian Securities Commission under section 133 of the *Corporations Law* to be registered as a company limited by shares under Division 3 of Part 2.2 of the *Corporations Law* (Registering non-companies as companies), and
 - (b) apply to that Commission under section 374 of the *Corporations Law* for the reservation of the name "TAB Limited".
- (2) TAB is required to lodge with the application for registration as a company:
- (a) the proposed memorandum and articles of association of TAB Limited, and
 - (b) subject to any order in writing of the Minister, the other documents and information required by section 136 of the *Corporations Law* to accompany the application.
- (3) The proposed memorandum of association:
- (a) is to specify that the State of New South Wales is to be the sole subscriber to the memorandum and is to take up the number of shares in the capital of TAB Limited issued under this Part, and
 - (b) is to be signed by the Minister on behalf of the State of New South Wales.
- (4) The proposed articles of association:
- (a) are to provide that the first directors of TAB Limited after the conversion are to be appointed by the Minister, and
 - (b) are to be signed by the Minister on behalf of the State of New South Wales.
- (5) TAB is entitled to make the applications, and to lodge the documents, referred to in this section.

9 Company name

The name "TAB Limited" is taken to have been reserved under section 374 of the *Corporations Law* immediately after the making of the application to reserve that name.

Part 3 Management of TAB before conversion to company

10 Directors and meetings of TAB before conversion to company

- (1) As from the commencement of this Part, TAB is to consist of at least 5 directors appointed by the Minister on such terms and conditions as are determined by the Minister.
- (2) Schedule 1 has effect with respect to the directors and meetings of TAB.

11 Consequential amendments

Schedule 2 has effect.

Part 4 Conversion of TAB to company

12 TAB taken to be registered under Corporations Law as public company

- (1) On the commencement of this section:
 - (a) the application for registration as a company referred to in section 8 is taken to have been granted, and
 - (b) TAB is taken to have been registered under section 137 of the *Corporations Law*:
 - (i) by the name "TAB Limited", and
 - (ii) as a public company, and as a company limited by shares, within the meaning of the *Corporations Law*, and
 - (c) the name "TAB Limited" is taken to have been registered in respect of TAB Limited under section 374 (5) of the *Corporations Law*.
- (2) The date of commencement of TAB Limited's registration as a company under Division 3 of Part 2.2 of the *Corporations Law* is taken to be the commencement of this section.
- (3) For the purposes of Division 3 of Part 2.2 of the *Corporations Law*, TAB Limited is taken to have been, immediately before the commencement of this section, and to be on that commencement, a corporation within the meaning of the *Corporations Law*.

13 New name of TAB

- (1) On the conversion, TAB's name is, by force of this subsection, changed to "TAB Limited".
- (2) Section 382 (4) of the *Corporations Law* applies in relation to the change of name made by subsection (1) as if:
 - (a) TAB were a company, within the meaning of the *Corporations Law*, when the change was made, and
 - (b) the change was made under the *Corporations Law*.

- (3) This section has effect despite anything in the *Corporations Law*, but nothing in this section prevents:
 - (a) TAB Limited from later changing its name under section 382 of the *Corporations Law*, or
 - (b) the cancellation, under Part 4.2 of the *Corporations Law*, of the registration of a name.
- (4) TAB Limited or a TAB Limited subsidiary is not entitled to use in connection with its business a name that suggests that it is associated with the State of New South Wales. This subsection does not apply during any period to which Part 5 applies.

14 Memorandum and articles of TAB Limited to have effect

- (1) As from the conversion, the proposed memorandum and articles of association lodged under section 8:
 - (a) are respectively the memorandum and articles of association of TAB Limited, and
 - (b) bind TAB Limited and its members accordingly.
- (2) As from the conversion, the *Corporations Law* applies in relation to TAB Limited's memorandum and articles of association as if they had been registered as such under the *Corporations Law*.

15 Membership of TAB Limited

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

16 Minister may act for State as shareholder

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

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

of the State as the holder of shares in TAB Limited that were issued to the State under Part 2.

17 Continuity of TAB and construction of references to TAB

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

18 Continuity of contracts and arrangements

- (1) Without limiting any other provision of this Act or the regulations, TAB Limited is, on and after the conversion, entitled to the benefit of, and taken to be a party to, any contract or arrangement entered into by TAB with any person and having force immediately before the conversion.
- (2) Section 19 does not affect the operation or continuity of any contract or arrangement referred to in subsection (1).
- (3) This section is subject to the operation of Part 9 (Vesting of undertaking on transfer).

19 Consequential amendments

- (1) On the conversion, Schedule 3 has effect.
- (2) Part 2 is repealed.

Part 5 Management of TAB Limited after conversion and before sale

20 When Part applies

- (1) This Part applies during any period after the conversion when a majority of the issued shares in TAB Limited are held by the State of New South Wales.
- (2) A day may be appointed by proclamation for the purposes of the cessation of the operation of this section. If a day is so appointed, this Part ceases to apply on and from that day, despite subsection (1).

21 Ministerial control of TAB Limited

- (1) The board of directors of TAB Limited is, in the exercise of its functions, subject to the control and direction of the Minister.
- (2) Neither the enactment of this section nor the exercise of the Minister's powers under this section constitutes a Minister as a director of TAB Limited or a person who participates in the management of TAB Limited.
- (3) A director of TAB Limited is not personally liable in any civil or criminal proceedings (including proceedings for a breach of any duty under the *Corporations Law*) for anything done or omitted for the purpose only of complying with a direction of the Minister under this section.

22 Status of TAB Limited

- (1) TAB Limited and any TAB Limited subsidiary to which any part of TAB's business undertaking is transferred under this Act are agencies through which the State of New South Wales carries out the activity of conducting on-course and off-course totalizator betting in New South Wales, and any other activity authorised to be conducted by a licence under the *Totalizator Act 1997*, and for that purpose it is a public authority of the State.
- (2) However, TAB Limited or any TAB Limited subsidiary:
 - (a) is not, and does not represent, the State of New South Wales except by express agreement with the Minister, and

- (b) is not exempt from any rate, tax, duty or other impost imposed by or under any law of New South Wales merely because it is a company in which the State of New South Wales holds shares, and
- (c) cannot render the State of New South Wales liable for any debts, liabilities or obligations of TAB Limited or any TAB Limited subsidiary, unless this Act or any other Act or law otherwise expressly provides.

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

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

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

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

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

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

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

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

26 Allocation of transferred assets to capital and reserves

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

27 Time when transfers may be effected

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

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

28 Excluded undertakings

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

29 Time when exclusion may be effected

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

30 Sale or retention of excluded undertaking

- (1) The Ministerial Holding Corporation or any other person to whom any excluded undertaking is transferred may:
 - (a) sell or otherwise dispose of the whole or any part of the excluded undertaking, or
 - (b) retain the whole or any part of the excluded undertaking and conduct any business to which it relates.

- (2) The Minister may, for the purposes of any such sale or other disposal, direct by order in writing that the excluded undertaking concerned be transferred to the body or person to whom it is being sold or otherwise disposed of.
- (3) Part 9 applies to an order under this section.

31 TAB or subsidiary may act with respect to excluded undertaking

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

Part 8 Sale of TAB Limited by public float

Division 1 Sale process

32 Sale of TAB Limited by public float

- (1) The Minister may make arrangements for the sale of TAB Limited by a public float, comprising the disposal of the shares issued to the State of New South Wales under Part 2.
- (2) The arrangements may include underwriting agreements and the issue of a prospectus.

33 State may dispose of its shares

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

34 Amendment of Acts on sale of TAB Limited

Schedule 4 has effect.

35 No government guarantees

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

Division 2 Maximum shareholding restrictions

36 Definitions

- (1) In this Division:

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

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

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- (2) For the purposes of this Division, a person is an associate of another:
- (a) if the Minister:
 - (i) is of the opinion that the person and the other are likely to act in concert with a view to taking control of, or exercising significant influence over, TAB Limited against the public interest, and
 - (ii) by notice in writing served on TAB Limited, declares that the person is an associate of the other, or
 - (b) if the person is an associate of the other within the meaning of Division 2 of Part 1.2 of the *Corporations Law*, with that Division modified by omitting sections 13, 14, 16 (2) and 17 of that Law and by substituting for paragraphs (b) and (c) of section 12 (1) of that Law the following:
 - or
 - (b) whether the primary person is in a position to exercise certain powers in relation to a body corporate.
- (3) Where notice of a declaration under subsection (2) is served on TAB Limited, the Minister must, at the same time or as soon as practicable thereafter, cause written notice of the declaration to be served on the persons to whom the declaration relates.
- (4) For the purposes of this Division, a person has a relevant interest in a share if, and only if, the person would be taken to have a relevant interest in the share because of Division 5 of Part 1.2 of the *Corporations Law* if section 33 of that Law were disregarded.
- (5) For the purposes of this Division, the voting shares in TAB Limited to which a person (being TAB Limited or any other person) is entitled include voting shares in TAB Limited to which the person is entitled in accordance with section 609 of the *Corporations Law*, as if a reference in section 609 (1) (a) of that Law to a relevant interest were a reference to a relevant interest to which subsection (4) of this section applies.

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

37 Application of Division

- (1) This Division applies in relation to TAB Limited whenever TAB Limited holds a licence under the *Totalizator Act 1997*.
- (2) This Division (including any provision of the *Corporations Law* referred to or applied for the purposes of this Division) applies in relation to any transaction, agreement, arrangement, understanding or undertaking:

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

38 Prohibited shareholding interest

- (1) A person has a prohibited shareholding interest in TAB Limited if the person is entitled to voting shares in TAB Limited that together constitute more than 5% of the total number of voting shares in TAB Limited.
- (2) For the purposes of this Division, TAB Limited or a TAB Limited subsidiary cannot have a prohibited shareholding interest in TAB Limited.
- (3) It is unlawful for a person to have a prohibited shareholding interest in TAB Limited.

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

- (1) The Minister, or a director or the secretary of TAB Limited, may, by notice in writing served on a person who is, or is suspected by the Minister, director or secretary, as the case may be, of being entitled to shares in TAB Limited, require the person to furnish information specified in the notice for the purpose of determining whether that person or any other person has, or is taking action to acquire, a prohibited shareholding interest in TAB Limited.
- (2) A notice under subsection (1) may require the person on whom the notice is served, or, if that person is a corporation, 2 directors of the corporation, to verify by statutory declaration any information furnished in compliance with the notice.

- (3) If:
- (a) a person on whom a notice under subsection (1) has been served fails to furnish, within the period required by the notice, the information required by the notice, verified as required by the notice, or
 - (b) information furnished by the person in response to the notice is, in the opinion of the Minister, by reason of anything included in it or omitted from it, false or misleading in a material particular,
- the Minister may, by reason only of that fact, by notice in writing served on TAB Limited, do one or more of the following:
- (c) declare that the person is an associate of another, or that another is an associate of that person,
 - (d) declare that the person, or another to whom a declaration under paragraph (c) relates, is entitled to specified shares in TAB Limited,
 - (e) declare that the person, or another to whom a declaration under paragraph (c) relates, has a prohibited shareholding interest in TAB Limited.
- (4) If notice of a declaration under subsection (3) is served on TAB Limited, the Minister must, at the same time or as soon as practicable thereafter, cause written notice of the declaration to be served:
- (a) on the person to whom the declaration relates, and
 - (b) in the case of a declaration under paragraph (e) of that subsection—on the holder of the shares to which the declaration relates.
- (5) A person who fails to comply with a requirement of a notice under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

40 Substantial shareholders to give notice to Minister

- (1) A person who is required to give notice to TAB Limited under a provision of Part 6.7 (Substantial shareholdings) of the *Corporations Law* must give a copy of the notice to the Minister within the time that the notice is required under that Law to be given to TAB Limited.

Maximum penalty: 100 penalty units.

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- (2) TAB Limited must notify the Minister in writing within 2 business days after it receives a notice from a person under a provision of Part 6.7 of the *Corporations Law*, informing the Minister of the name and address of the person from whom the notice was received.

Maximum penalty: 100 penalty units.

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

- (1) If the Minister:
- (a) makes a declaration under section 39 (3), or
 - (b) forms the opinion and, by notice in writing served on TAB Limited, declares under this subsection,

that a person (in this section referred to as *the offender*) has a prohibited shareholding interest in TAB Limited, the Minister may, by notice in writing served:

- (c) if the offender holds voting shares in TAB Limited to which the offender is entitled—on the offender, or
- (d) on any other person who holds voting shares in TAB Limited to which the offender is entitled,

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

- (2) For the purposes of subsection (1), the relevant number of shares that a person may be required by a notice under that subsection to dispose of otherwise than to an associate of the offender is:
- (a) subject to paragraph (b), the number of shares held by the person that would need to be so disposed of in order to cause the offender to cease to have a prohibited shareholding interest in TAB Limited, or
 - (b) if, after all the shares in TAB Limited held by the person to which the offender is entitled were so disposed of, the offender would continue to have a prohibited shareholding interest in TAB Limited—the total number of those shares.

- (3) For the purposes of this section, a person is not to be taken to have disposed of shares in TAB Limited to which an offender is entitled unless and until the person ceases to hold the shares and the offender ceases to be entitled to the shares.
- (4) If a person served with a notice of a declaration under subsection (1) requiring the person to dispose of shares in TAB Limited fails to comply with the notice within the period required by the notice, the shares to which the notice relates are, by force of this subsection, forfeited to the State.
- (5) If a transaction is entered into with respect to any shares in TAB Limited and:
- (a) a person who did not, before the transaction is entered into, have a prohibited shareholding interest in TAB Limited would, but for this subsection, have such an interest after the transaction, or
 - (b) a person who, before the transaction is entered into, had a prohibited shareholding interest in TAB Limited would, but for this subsection, be entitled after the transaction to a greater number of voting shares in TAB Limited than the person was entitled to immediately before the transaction,
- the transaction is illegal and void.
- (6) If voting shares in TAB Limited have been transferred as a result of a transaction that is illegal and void by virtue of subsection (5), the Minister may, by notice in writing served on the transferee, declare that the shares are forfeited to the State.
- (7) The Minister must cause written notice of:
- (a) a declaration under subsection (1) requiring a person to dispose of shares in TAB Limited, or
 - (b) a declaration under subsection (6) that shares in TAB Limited are forfeited to the State,
- to be served on TAB Limited.
- (8) A director or secretary of TAB Limited may, before a transfer of shares in TAB Limited is registered, require the transferee, or, if the transferee is a corporation, 2 directors of the transferee corporation, to make a statutory declaration to the effect that the transaction to which the transfer relates was not a transaction to which subsection (5) applies.

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- (9) If a requirement under subsection (8) is not complied with, TAB Limited may refuse to register the transfer in relation to which the requirement was made.

42 Effect of prohibited shareholding on voting and dividend rights

- (1) This section applies to any provision of the articles of association of TAB Limited that provides for:
- (a) the suspension of any voting rights attaching to voting shares in TAB Limited as a result of any person who is entitled to the shares having a prohibited shareholding interest in TAB Limited, or
 - (b) authorises or requires TAB Limited, as a result of any person having a prohibited shareholding interest in TAB Limited, to refuse or defer payment of any amount or amounts that would otherwise be due from TAB Limited in respect of any shares in TAB Limited to which the person is entitled.
- (2) It is a condition of any licence that TAB Limited holds under the *Totalizator Act 1997* that any provision of the articles of association of TAB Limited to which this section applies cannot be amended or repealed except with the written consent of the Minister.
- (3) If the Minister is of the opinion that a resolution of a general meeting of TAB Limited has been passed as a result of the admission of votes that should not, by virtue of a provision of the articles of association of TAB Limited to which this section applies, have been admitted, the Minister may, by notice in writing served on TAB Limited, declare the resolution to have been (at all times) null and void.
- (4) If notice of a declaration under this section is served on TAB Limited, the Minister must, at the same time or as soon as practicable thereafter, cause written notice of the declaration to be served on each person whose votes should not, in the opinion of the Minister, have been admitted.
- (5) A notice under this section does not have any effect unless it is served on TAB Limited within one month after the date of the resolution to which it relates.

43 Making, review and revocation of declarations by Minister

- (1) A declaration may be made by the Minister under this Division on the basis of such information as the Minister considers sufficient in the circumstances.
- (2) A declaration of the Minister under this Division other than:
 - (a) a declaration under section 41 (1) requiring a person to dispose of shares in TAB Limited, or
 - (b) a declaration under section 41 (6) that shares in TAB Limited are forfeited to the State,

is effective when written notice of the declaration is served on TAB Limited irrespective of when or whether service is effected on any other person as provided by this Division.

- (3) If the Minister makes a declaration under this Division:
 - (a) TAB Limited, or
 - (b) any other person on whom notice of the declaration has been served in pursuance of this Division,

may apply to the Minister for a review of the declaration.

- (4) On an application under this section for review of a declaration, the Minister:
 - (a) must allow the applicant and, where the applicant is not TAB Limited, TAB Limited, a reasonable opportunity to make submissions in relation to the application, and
 - (b) may, after giving due consideration to any such submissions:
 - (i) confirm the declaration, or
 - (ii) revoke or vary the declaration either conditionally or unconditionally and with effect from the date of the declaration or some other date determined by the Minister.

- (5) Notwithstanding that an application is made under this section for review of a declaration of the Minister under this Division, the declaration continues to have effect pending determination of the application except as otherwise determined by the Minister.

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- (6) The Minister may, of his or her own motion, by notice in writing served on the person on whom notice of the declaration was served, revoke or vary a declaration of the Minister under this Division with effect from the date of the declaration or some other date determined by the Minister.

44 Appeal against declarations of Minister

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

continues to have effect pending determination of the appeal.

- (7) Except as provided in this Division, a declaration of the Minister under this Division may not be challenged or called into question.

45 Sale of forfeited shares

- (1) The Minister is to sell any shares forfeited to the State under this Act.
- (2) For the purposes of any such sale, the Minister is not bound by any restriction on the sale of shares contained in the memorandum or articles of association of TAB Limited.
- (3) Any money realised from the sale of forfeited shares under this section must, after deduction of the reasonable costs of the forfeiture and sale:
- (a) if the shares were transferred as a result of a transaction that was illegal and void by virtue of section 41 (5) and the transferor has not received the full consideration agreed upon with the transferee—be applied in payment to the transferor of the amount or value of the consideration not received by the transferor and in payment of the balance (if any) to the transferee, or
 - (b) in any other case—be paid to the person from whom the shares were forfeited.

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

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

47 Service

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

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

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

Division 3 Results of sale

48 Proceeds of sale

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

49 Staff remaining with TAB Limited

- (1) On the sale of TAB Limited, each member of staff of TAB Limited continues to be a member of staff of TAB Limited (despite the change of ownership) on the same terms and conditions of employment as applied to the member of staff immediately before the sale. Those terms and conditions are to continue to have effect until varied either by agreement or otherwise in accordance with law.
- (2) Neither the contract of employment nor the period of employment of each member of the staff concerned is taken to have been broken by the operation of this Act for the purposes of any law, award or agreement relating to the employment of that member of staff.
- (3) Without limiting this section, this Division does not affect any accrued rights that the member of staff concerned had immediately before the sale in relation to any kind of leave.

Part 9 Vesting of undertaking on transfer

50 Application and interpretation

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

51 Vesting of undertaking in transferee

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

- (d) anything done or omitted to be done in relation to that part of the undertaking before the transfer by, to or in respect of the transferor is (to extent that it has any force or effect) taken to have been done or omitted to be done by, to or in respect of the transferee,
 - (e) a reference in any other Act, in any instrument made under any Act or in any document of any kind to the transferor is (to the extent that it relates to that part of the undertaking but subject to the regulations under Schedule 5) to be read as, or as including, a reference to the transferee.
- (2) No attornment to the transferee by a lessee from the transferor is required.
- (3) Any instrument executed only for:
- (a) a purpose ancillary to or consequential on the operation of this section, or
 - (b) the purpose of giving effect to this section,
- is not chargeable with stamp duty.

52 Transfer of staff

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

- (5) A member of the staff concerned is not entitled to receive any payment or other benefit merely because the member ceases to be an employee of the transferor.

53 Consideration for vesting

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

Part 10 Miscellaneous

54 Act binds Crown

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

55 Subsidiary companies

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

company means a company incorporated or taken to be incorporated under the *Corporations Law*.

56 Protection of contractual and other obligations

- (1) This section applies to the following:
 - (a) the operation of this Act, and in particular the operation of section 51,
 - (b) the sale of TAB Limited as authorised by this Act,
 - (c) an agreement, guarantee or other arrangement or transaction, entered into or carried out under this Act for purposes connected with this Act,
 - (d) a disclosure of information made for the purposes of the sale or proposed sale of TAB Limited.
- (2) None of the matters or things referred to in subsection (1) are to be regarded as a breach of confidence or otherwise as a civil wrong or as giving rise to a breach of or an offence against a provision of an Act that prohibits or restricts the disclosure of information.
- (3) None of the matters or things referred to in subsection (1) are to be regarded:
 - (a) as a breach of contract or other instrument or as requiring any act to be done under an instrument, or
 - (b) as giving rise to any right or remedy by a party to an instrument, or as causing or permitting the termination of an instrument, or
 - (c) as an event of default under an instrument, or
 - (d) as a contravention of section 205 (1) (a) of the *Corporations Law*.
- (4) Subsections (2) and (3) do not affect, and a reference in subsection (3) to an instrument does not include, an agreement, guarantee or other arrangement or transaction, entered into or carried out under this Act for purposes connected with this Act.
- (5) A reference in subsection (3) to an instrument does not include an Act.

57 Auditor-General authorised to communicate information regarding TAB

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

- (3) In this section:

authorised person means:

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

58 Exemptions from tax for conversion documents and other documents

- (1) In this section:

exempt matter means:

- (a) the issue of shares in TAB Limited under Part 2, the disposal of those shares by the State and the purchase of those shares from the State, or
- (b) the application by TAB Limited under this Act for registration as a company or for the reservation of its name, or
- (c) any other matter related to the conversion of TAB into a public company under this Act, or

- (d) such other matters in connection with this Act as may be prescribed.

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

- (2) State tax is not payable in relation to:
- (a) an exempt matter, or
 - (b) anything done because of, or for a purpose connected with or arising out of, an exempt matter.
- (3) This section does not limit the operation of section 51 (3).

59 Certificate evidence

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

60 Proceedings for offences

Proceedings for an offence against this Act are to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

61 Savings, transitional and other provisions

Schedule 5 has effect.

62 Regulations

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

Schedule 1 TAB up to conversion to company

(Section 10)

Part 1 Preliminary

1 Application of Schedule

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

2 Definition

In this Schedule:

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

Part 2 Directors

3 Chairperson

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

4 Acting director

- (1) The Minister may, from time to time, appoint a person to act in the office of a director during the illness or absence of the director. The person, while so acting, has all the functions of the director and is taken to be a director in place of the ill or absent director.
- (2) The Minister may remove a person appointed under this clause at any time for any or no reason and without notice.

5 Term of office

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

6 Remuneration

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

7 Vacancies in office

- (1) The office of a director becomes vacant if the director:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing to the Minister, or
 - (d) is absent from 4 consecutive meetings of TAB without the leave of TAB, or
 - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her salary for their benefit, or
 - (f) becomes a mentally incapacitated person, or
 - (g) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (h) is removed from office by the Governor under Part 8 of the *Public Sector Management Act 1988* or by the Minister under this clause.
- (2) The Minister may remove a director from office at any time for any or no reason and without notice.

8 Effect of certain other Acts

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

Part 3 Meetings

9 General procedure

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

10 Quorum

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

11 Presiding director

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

12 Voting

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

13 Minutes

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

Schedule 2 Amendment of Acts to take effect before conversion of TAB to company

(Section 11)

2.1 Totalizator Act 1916 No 75

Section 19A Racecourse Development Fund

Omit section 19A (2). Insert instead:

- (2) There is to be a Racecourse Development Committee (*the Committee*) consisting of 3 persons appointed by the Minister. The Racecourse Development Committee constituted under this subsection immediately before its substitution by the *Totalizator Agency Board Privatisation Act 1997* is abolished.

2.2 Totalizator (Off-course Betting) Act 1964 No 1

[1] Section 2 Definitions

Insert in alphabetical order:

director means a director of the Board.

[2] Section 2, definition of "Member"

Omit the definition.

[3] Section 3 Constitution of Board

Omit section 3 (2)–(9). Insert instead:

- (2) The Board consists of directors appointed under the *Totalizator Agency Board Privatisation Act 1997*.

[4] Section 4 Meetings of the Board

Omit section 4 (1)–(4).

[5] Section 4 (5)

Omit “member” wherever occurring. Insert instead “director”.

[6] Section 5 Board to be body corporate

Omit section 5 (3).

[7] Section 7 Delegation to committees etc

Omit “member” from section 7 (1). Insert instead “director”.

[8] Section 8 Remuneration and expenses of members

Omit the section.

[9] Section 13 Certain acts otherwise unlawful to be lawful

Omit “members” wherever occurring in section 13 (2).
Insert instead “directors”.

[10] Section 17 Provisions relating to the betting operations of the Board

Omit “, with the approval of the Minister in writing,” wherever occurring in subsections (1A) and (1AA).

[11] Section 17A Advertising rights

Omit “, with the approval of the Minister given in writing,”.

Schedule 3 Amendment of Totalizator (Off-course Betting) Act 1964 to take effect on conversion of TAB to company

(Section 19)

[1] Long title

Omit “to establish a Totalizator Agency Board and to define its powers, authorities, duties and functions;”.

[2] Section 2 Definitions

Omit the definition of *Board*.

[3] Section 2, definition of “Company”

Insert in alphabetical order:

Company means TAB Limited, as mentioned in the *Totalizator Agency Board Privatisation Act 1997*.

[4] Part 2, heading

Omit the heading. Insert instead “**Part 2 The Company**”.

[5] Section 3 Constitution of Board

Omit the section.

[6] Sections 4–7

Omit the sections.

**[7] Section 9 Manager, secretary, officers and employees of
Company**

Omit subsection (1). Insert instead:

- (1) The Company may appoint such agents as the Company
 considers necessary for the purposes of this Act.

[8] Section 9 (2)

Omit the subsection.

[9] Section 11 Borrowing by Board

Omit the section.

[10] Section 16 Company to hold residue in trust

Omit “, Board”.

[11] The whole Act

Omit “Board” or “Board’s” wherever occurring (except in
provisions amended or omitted by this Act).

Insert instead “Company” or “Company’s”, respectively.

Schedule 4 Amendment of Acts on sale of TAB Limited

(Section 34)

4.1 Government and Related Employees Appeal Tribunal Act 1980 No 39

Schedule 4 Employing authorities

Omit "Totalizator Agency Board."

4.2 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Omit "Totalizator Agency Board."

4.3 State Authorities Non-contributory Superannuation Act 1987 No 212

Schedule 1 Employers

Omit the matter relating to the Totalizator Agency Board from Part 1.

4.4 Superannuation Act 1916 No 28

Schedule 3 List of employers

Omit the matter relating to the Totalizator Agency Board from Part 1.

Schedule 5 Savings, transitional and other provisions

(Section 61)

Part 1 Regulations

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such savings or transitional provisions may, if the regulations so provide, take effect on the date of assent to this Act or a later date.
- (3) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State, TAB, a TAB subsidiary or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State, TAB, a TAB subsidiary or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Members of TAB

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

3 Directors of TAB

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

4 Application of certain provisions of Corporations Law

- (1) While the State of New South Wales continues to hold all the shares in TAB Limited (being the shares issued to the State under Part 2), sections 186 and 461 (d) of the *Corporations Law* do not apply in relation to TAB Limited, and section 249 (7) of the *Corporations Law* applies in relation to TAB Limited as if:
 - (a) the State of New South Wales were a holding company (within the meaning of section 249 (7) of the *Corporations Law*) of TAB Limited, and
 - (b) the Minister were a representative of the State authorised under section 249 (3) of the *Corporations Law*.
- (2) Sections 139 (2) and 151 (5) of the *Corporations Law* do not apply in relation to TAB Limited.
- (3) For the purposes of Division 2 of Part 5.6 of the *Corporations Law* (Contributories on winding up):
 - (a) the State of New South Wales is not (in relation to any period before the conversion) a past member of TAB Limited, and

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

5 Audit and accounts

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

6 Superannuation under State public sector schemes

- (1) This clause applies to a member of staff of TAB Limited who is, immediately before the conversion, a contributor under a State public sector superannuation scheme.
- (2) Contributors to whom this clause applies cease to be contributors on the day referred to in subclause (1). They are taken to have elected on that day to preserve their superannuation benefits in accordance with the relevant statutory provisions.

(3) This clause does not affect the provisions of any other Act or regulation relating to the rights of contributors under superannuation schemes.

(4) In this clause:

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

[Minister's second reading speech made in—
Legislative Assembly on 21 May 1997
Legislative Council on 19 June 1997]

BY AUTHORITY

