

TASMANIA

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**RACING (TASRACING PTY LTD) BILL 2009**

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**SCHEDULE 1 – PROVISIONS TO BE INCLUDED IN CONSTITUTION**

# **RACING (TASRACING PTY LTD) BILL 2009**

*(Brought in by the Minister for Police and Emergency Management, the Honourable James Glennister Cox)*

## **A BILL FOR**

**An Act to establish Tasracing Pty Ltd to provide for the governance of the racing industry and for administrative and financial services to that industry**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

## **PART 1 – PRELIMINARY**

### **1. Short title**

This Act may be cited as the *Racing (Tasracing Pty Ltd) Act 2009*.

### **2. Commencement**

This Act commences on 1 July 2009 but, if it does not receive the Royal Assent on or before that day, it is taken to have commenced on that day.

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**3. Interpretation**

(1) In this Act, unless the contrary intention appears –

“**asset**” means property of any kind whether tangible or intangible, real or personal, present or future, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective and includes, without limitation, any –

- (a) legal or equitable estate or interest in real or personal property; and
- (b) chose in action; and
- (c) money, documents or securities; and
- (d) infrastructure; and
- (e) plant and equipment; and
- (f) intellectual property; and
- (g) goodwill; and
- (h) records; and
- (i) other right;

“**Board**” means the board of directors of the Company referred to in section 14;

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“**Company**” means the company referred to in section 5;

“**liability**” means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, and whether owed alone or jointly or jointly and severally with any other person;

“**member of the Company**” means a member referred to in section 10;

“**principal objectives**” means the principal objectives of the Company specified in section 6;

“**right**” means any right, power, privilege or immunity, whether actual, contingent or prospective;

“**TRB**” means the Tasmanian Racing Board established under section 10 of the *Racing Regulation Act 2004*.

- (2) Unless the contrary intention appears, an expression used in this Act has the same meaning as it has in the *Racing Regulation Act 2004*.

#### **4. Application of Act to subsidiary**

If the Company arranges for any of its functions to be performed by a subsidiary, within the meaning of the Corporations Act, the application

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of this Act extends to the subsidiary as if it were  
the Company.

## **PART 2 – TASRACING PTY LTD**

### **5. Formation of Company**

The Minister may form, or participate in the formation of, a company limited by shares and incorporated under the Corporations Act to perform functions relating to the governance of the racing industry and to provide administrative and financial services to that industry.

### **6. Principal objectives of Company**

On its incorporation, the principal objectives of the Company are –

- (a) to perform its functions and exercise its powers so as to be a successful business by operating in accordance with sound commercial practice as efficiently and effectively as possible; and
- (b) to perform any functions conferred by the *Racing Regulation Act 2004* and any other Act.

### **7. Status of Company**

- (1) Unless this or any other Act expressly provides otherwise, the Company –
  - (a) is not, and does not represent, the Crown in right of Tasmania; and

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- (b) except as provided in the *Racing (Tasracing Pty Ltd) (Transitional and Consequential Provisions) Act 2009*, is not exempt from any rate, tax, duty or other impost imposed under any law merely because the Crown in right of Tasmania has beneficial ownership of shares in it; and
  - (c) is not subject to any prerogative right or privilege of the Crown in right of Tasmania.
- (2) The Crown in right of Tasmania is not liable for any liability or obligation of the Company unless the Treasurer gives a guarantee or an indemnity under section 17.

## **8. Application of Corporations Act**

To the extent that any provision of this Act or the regulations is incapable of concurrent operation with the Corporations legislation, that provision is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act.

## **9. Shares**

- (1) Shares in the Company issued to the members of the Company are held by the members of the Company in trust for the Crown.



- (2) A member of the Company who holds shares in the Company in trust for the Crown must not acquire shares in the Company for his or her own benefit.
- (3) Any shares acquired in the Company in contravention of subsection (2) are taken to be held in trust for the Crown but the Crown is not liable to meet the cost of that acquisition.

#### **10. Members of Company**

The members of the Company on its incorporation are –

- (a) the Minister; and
- (b) the Treasurer or, if the Treasurer is also the Minister, one other Minister of the Crown determined by the Treasurer.

#### **11. Constitution of Company**

- (1) The constitution of the Company on its incorporation is to include –
  - (a) the principal objectives of the Company; and
  - (b) provisions to the effect of the provisions set out in Schedule 1.
- (2) Other provisions of the constitution of the Company on its incorporation are to be consistent with this Act.

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- (3) The members of the Company are to give to the Minister a copy of a special resolution altering, adding to or omitting a provision of the constitution of the Company within 14 days after the making of the special resolution.
- (4) The Minister is to cause a copy of a special resolution referred to in subsection (3) to be tabled in each House of Parliament within 7 sitting-days after receiving it.

**12. Shareholders' statement of expectations**

- (1) As soon as practicable after the day on which the Company is incorporated, the members of the Company must provide the Board with a shareholders' statement of expectations.
- (2) The shareholders' statement of expectations is to specify –
  - (a) the strategic priorities of the Company;  
and
  - (b) the high-level policy expectations of members of the Company for the performance and business of the Company and its subsidiaries.
- (3) The members of the Company may at any time at their own discretion or on receipt of an application from the Board –
  - (a) amend the shareholders' statement of expectations; or

- (b) revoke the shareholders' statement of expectations and substitute another shareholders' statement of expectations.
- (4) Before or while preparing a shareholders' statement of expectations or an amendment to a shareholders' statement of expectations, the members of the Company must consult with the Board.

### **13. Corporate plan**

- (1) The Board must prepare a corporate plan each financial year and submit it to the members of the Company.
- (2) The Board must consult with each racing club and racing industry association in respect of the Board's corporate plan.
- (3) The corporate plan is to be prepared in the context of the shareholders' statement of expectations.

### **14. Directors of Company**

- (1) The Company is to have a board of directors who must have the experience and expertise necessary to enable the Company to achieve its objectives.
- (2) In forming or participating in the formation of a company referred to in section 5, the Minister is to ensure that the initial directors of the Board

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comprise, until midnight on 31 December 2009, the members of the TRB who were appointed pursuant to section 17 of the *Racing Regulation Act 2004*.

## **PART 3 – FINANCIAL PROVISIONS**

### **15. Accounts and report of Company**

- (1) The Board is to provide the Minister with copies of the following:
  - (a) the constitution of the Company, the constitution of any subsidiaries of the Company and any amendments to those constitutions;
  - (b) any financial statement, directors' report or auditor's report and the annual return for the Company as required by the Corporations Act.
- (2) The Minister must cause the copies referred to in subsection (1) to be laid before each House of Parliament within 7 sitting-days after receiving them.

### **16. Loan from Treasurer**

- (1) The Treasurer may lend to the Company, out of money provided by Parliament for the purpose, any money the Treasurer considers appropriate.
- (2) A loan is subject to any conditions the Treasurer determines.
- (3) An amount lent under subsection (1), together with any interest or other charge payable in

respect of that amount, is a debt repayable by the Company to the Crown.

**17. Guarantee or indemnity**

- (1) On the written request of the Company, the Treasurer, in writing, may give a guarantee or an indemnity to the Company relating to any of the following:
  - (a) the repayment of any money lent or agreed to be lent to the Company;
  - (b) the performance of an obligation undertaken by the Company, or which the Company has agreed to undertake, whether that obligation is monetary or otherwise.
- (2) A guarantee or an indemnity –
  - (a) may include a guarantee of, or an indemnity relating to, any interest and other charges payable in respect of money lent or agreed to be lent or in respect of or arising from an obligation undertaken or agreed to be undertaken; and
  - (b) is subject to any conditions that the Treasurer determines and specifies in the guarantee or indemnity.
- (3) The Treasurer must make any required payment out of money provided by Parliament for the purpose.

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- (4) This section has effect regardless of where the loan or obligation was undertaken or agreed to be undertaken or where it is required to be repaid or performed.

**18. Guarantee fees**

Division 1 of Part 11 of the *Government Business Enterprises Act 1995* applies in respect of the Company and a subsidiary as if –

- (a) the Company were a Government Business Enterprise specified in Schedule 3 to that Act; and
- (b) the subsidiary were a subsidiary within the meaning of that Act.

**19. Tax equivalents**

Part 10 of the *Government Business Enterprises Act 1995* applies in respect of the Company and a subsidiary of the Company as if –

- (a) the Company were a Government Business Enterprise specified in Schedule 2 to that Act; and
- (b) the subsidiary were a subsidiary within the meaning of that Act.

**20. Audit**

The Auditor-General is to act as the auditor for the Company until the members of the Company appoint another person as auditor for the Company.

**21. Treasurer's Instructions**

Any Treasurer's Instructions issued under the *Government Business Enterprises Act 1995* providing for guidelines relating to the determination, calculation and payment of income tax equivalents and guarantee fees and other related matters, including superannuation, apply to the Company or a subsidiary of the Company as if it were a Government Business Enterprise under that Act.

**22. Effect of *Financial Agreement Act 1994***

If, under section 5(1) of the *Financial Agreement Act 1994*, the Treasurer requires the Company to do or refrain from doing anything for the purpose of implementing the Agreement, within the meaning of that Act, the Company must comply with that requirement.

**23. Superannuation information**

The Company must, when so required by the Minister administering the *Retirement Benefits*



*Act 1993* or the Retirement Benefits Fund Board, provide any information that may be required for an actuarial review of any of its liabilities under that Act.

## **24. Superannuation**

- (1) The Company may make contributions to one or more superannuation schemes that comply with the law of the Commonwealth relating to superannuation and may participate in a superannuation scheme provided by the *Retirement Benefits Act 1993* or the *Public Sector Superannuation Reform Act 1999* and, if it does so participate in either of those schemes, it is taken to be a prescribed authority for the purposes of those Acts in respect of any of its employees who are subject to the scheme.
- (2) A contribution made to a complying superannuation scheme in accordance with subsection (1) in respect of any of its employees, including employees transferred under section 6 of the *Racing (Tasracing Pty Ltd) (Transitional and Consequential Provisions) Act 2009*, is not to be in excess of the rate specified in section 6(7) of the *Public Sector Superannuation Reform Act 1999*.
- (3) The Company must not establish a superannuation scheme.
- (4) If the Company participates in a superannuation scheme provided by the *Retirement Benefits Act 1993* or the *Public Sector Superannuation*

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*Reform Act 1999*, the Company must comply with any instruction relating to superannuation given to it by the Minister administering those Acts.

- (5) The Company may not amend the rules of a scheme maintained by the TRB otherwise than with the written approval of the Treasurer.

**PART 4 – MISCELLANEOUS AND SUPPLEMENTAL**

**25. Directors of Company**

- (1) On and from 1 January 2010, the members of the Company must ensure that the membership of the Board comprises 7 directors, appointed for a period not exceeding 3 years by the members of the Company of whom –
- (a) one is appointed to be the chairperson; and
  - (b) one is appointed from the names of candidates submitted to the panel under subsection (4)(a); and
  - (c) one is appointed from the names of candidates submitted to the panel under subsection (5)(a); and
  - (d) one is appointed from the names of candidates submitted to the panel under subsection (6)(a); and
  - (e) three are appointed from the names of candidates submitted to the panel under subsection (4)(b), subsection (5)(b) and subsection (6)(b) and from the respondents to the advertisement referred to in subsection (9) who have the experience and expertise necessary to enable the Company to achieve its objectives.

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- (2) Before any person is appointed as a director of the Company under paragraph (b), (c), (d) or (e) of subsection (1), the members of the Company are to appoint a person or body (the “panel”) to recommend the names of persons it considers suitable for appointment as a director of the Company under each of those paragraphs.
- (3) The panel as appointed in relation to the appointment of a person as a director of the Company –
  - (a) referred to in subsection (1)(b), is to include a person with experience and expertise in thoroughbred racing; and
  - (b) referred to in subsection (1)(c), is to include a person with experience and expertise in harness racing; and
  - (c) referred to in subsection (1)(d), is to include a person with experience and expertise in greyhound racing.
- (4) Persons are eligible to –
  - (a) submit to the panel the names of candidates, not exceeding 3, with experience and expertise relating to the thoroughbred code of racing who the persons consider suitable for appointment as a director of the Company; or
  - (b) submit to the panel the names of candidates, not exceeding 3, with the experience and expertise necessary to

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enable the Company to achieve its objectives and who the persons consider suitable for appointment as a director of the Company –

if the persons are –

- (c) members of a thoroughbred racing club; or
- (d) members of a thoroughbred racing industry association; or
- (e) licensed under the *Rules of Racing* for the thoroughbred code of racing; or
- (f) owners or breeders of thoroughbred horses.

(5) Persons are eligible to –

- (a) submit to the panel the names of candidates, not exceeding 3, with experience and expertise relating to the harness code of racing who the persons consider suitable for appointment as a director of the Company; or
- (b) submit to the panel the names of candidates, not exceeding 3, with the experience and expertise necessary to enable the Company to achieve its objectives and who the persons consider suitable for appointment as a director of the Company –

if the persons are –

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- (c) members of a harness racing club; or
  - (d) members of a harness racing industry association; or
  - (e) licensed under the *Rules of Racing* for the harness code of racing; or
  - (f) owners or breeders of standardbred horses.
- (6) Persons are eligible to –
- (a) submit to the panel the names of candidates, not exceeding 3, with experience and expertise relating to the greyhound code of racing who the persons consider suitable for appointment as a director of the Company; or
  - (b) submit to the panel the names of candidates, not exceeding 3, with the experience and expertise necessary to enable the Company to achieve its objectives and who the persons consider suitable for appointment as a director of the Company –
- if the persons are –
- (c) members of a greyhound racing club; or
  - (d) members of a greyhound racing industry association; or
  - (e) registered under the *Rules of Racing* for the greyhound code of racing; or

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- (f) owners or breeders of greyhounds.
- (7) If a person submits a name to the panel under subsection (4), (5) or (6), the person is to advise the panel whether the name is submitted under paragraph (a) or (b) of those subsections.
  - (8) The panel is to recommend, in writing, to the members of the Company –
    - (a) from the names of candidates submitted to it under subsection (4)(a), a person who it considers suitable for appointment as a director of the Company; and
    - (b) from the names of candidates submitted to it under subsection (5)(a), a person who it considers suitable for appointment as a director of the Company; and
    - (c) from the names of candidates submitted to it under subsection (6)(a), a person who it considers suitable for appointment as a director of the Company.
  - (9) The panel is to place in the 3 daily newspapers published and circulating in the State, and in any other newspaper it considers desirable, an advertisement calling for expressions of interest from potential candidates for appointment as a director of the Company to provide the experience and expertise necessary to enable the Company to achieve its objectives.
  - (10) The panel is to recommend, in writing, to the members of the Company, from the names of candidates submitted to it under

subsection (4)(b), subsection (5)(b) and subsection (6)(b) and from the respondents to the advertisement referred to in subsection (9), 3 persons who it considers suitable for appointment as directors of the Company.

**26. Vacancies in offices of directors of Company**

- (1) If a vacancy arises in the office of a director of the Company less than 6 months before the expiration of the term for which the director was appointed, the members of the Company may appoint a person to the vacant office for the remainder of the director's term of office.
- (2) If a vacancy arises in the office of a director of the Company 6 months or more before the expiration of the term of office of the director and the director is –
  - (a) a director referred to in section 25(1)(a), the members of the Company are to appoint a person who the members of the Company consider suitable to fill the vacancy; or
  - (b) a director referred to in section 25(1)(b), the eligible persons referred to in section 25(4) are to submit to the panel the names of candidates, not exceeding 3, with experience and expertise relating to the thoroughbred code of racing who the eligible persons consider suitable to fill the vacancy; or



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- (c) a director referred to in section 25(1)(c), the eligible persons referred to in section 25(5) are to submit to the panel the names of candidates, not exceeding 3, with experience and expertise relating to the harness code of racing who the eligible persons consider suitable to fill the vacancy; or
  - (d) a director referred to in section 25(1)(d), the eligible persons referred to in section 25(6) are to submit to the panel the names of candidates, not exceeding 3, with experience and expertise relating to the greyhound code of racing who the eligible persons consider suitable to fill the vacancy; or
  - (e) a director referred to in section 25(1)(e), the eligible persons referred to in section 25(4), (5) and (6), respectively, are to submit to the panel the names of candidates, not exceeding 3, who have the experience and expertise necessary to enable the Company to achieve its objectives and who the eligible persons consider suitable to fill the vacancy.
- (3) In relation to a vacancy under subsection (2)(e) in the office of a director of the Company, the panel is to place in the 3 daily newspapers published and circulating in the State and in any other newspapers it considers desirable, an advertisement calling for expressions of interest from potential candidates to fill the vacancy.

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- (4) The panel is to recommend, in writing, to the members of the Company –
- (a) from the names of candidates submitted to it under subsection (2)(b), a person who it considers suitable to fill the vacancy; or
  - (b) from the names of candidates submitted to it under subsection (2)(c), a person who it considers suitable to fill the vacancy; or
  - (c) from the names of candidates submitted to it under subsection (2)(d), a person who it considers suitable to fill the vacancy; or
  - (d) from the names of candidates submitted to it under subsection (2)(e) and from the respondents to an advertisement referred to in subsection (3), a person who it considers suitable to fill the vacancy.
- (5) On receipt of a recommendation referred to in subsection (4), the members are to appoint the person to fill the vacancy.

**27. Grants and loans**

- (1) The Company, out of money provided by Parliament for the purpose, may –
- (a) make grants or loans at such interest and on such terms and conditions as it may determine, for or in relation to the

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- administration, maintenance or improvement of horse racing or greyhound racing in Tasmania, and may take mortgages or such other securities as it considers adequate to secure such a loan; and
- (b) undertake and contract for capital improvement to, or maintenance of, a racecourse; and
  - (c) purchase, lease, maintain, develop and otherwise deal with properties and facilities for the conduct of race meetings, or for the training of horses and greyhounds, and charge fees for the use of those properties or facilities.
- (2) A grant or loan under subsection (1)(a) or an undertaking under subsection (1)(b) may be made unconditionally or subject to such conditions as the Company may impose and, without limiting the generality of this subsection, the terms and conditions, in the case of a grant or loan to a racing club, may relate to the administration of the racing club, capital improvements to and maintenance of racecourses, the payment of stake money and the provision of facilities for the training of horses and greyhounds.
- (3) The Company may not, without the prior approval of the Treasurer –
- (a) form, or participate in the formation of, a company; or

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- (b) participate in a trust; or
- (c) borrow, or otherwise obtain financial accommodation, for the purpose of performing its functions; or
- (d) participate in any or all of the following arrangements for the purpose of the sharing of profits:
  - (i) a joint venture;
  - (ii) a partnership;
  - (iii) any other arrangement.

**28. Limitations on members of Company**

- (1) A member of the Company must not sell or otherwise dispose of the shares held by that member.
- (2) A member of the Company must not vote at a meeting of the shareholders of the Company to allow the Company to –
  - (a) offer shares in the Company for subscription; or
  - (b) invite persons to subscribe for shares in the Company; or
  - (c) allot or issue shares in the Company on a basis other than to existing shareholders pro rata to their existing shareholding.

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- (3) A member of the Company may not sell or otherwise dispose of the whole or a substantial part of the Company's undertaking or assets unless the sale or disposal is approved by each House of Parliament.
- (4) For the purposes of subsection (3), a sale or disposal is approved by a House of Parliament –
  - (a) when the House passes a motion approving the sale or disposal; or
  - (b) at the end of 5 sitting-days after notice of the sale or disposal was laid before the House, if no notice of a motion to disapprove the sale or disposal is before the House; or
  - (c) if notice of any such motion to disapprove is before the House at the end of that period, when the first of the following occurs:
    - (i) the notice is withdrawn;
    - (ii) the motion is negatived;
    - (iii) a further period of 5 sitting-days ends.

**29. *Land Acquisition Act 1993 does not apply***

The Company is not a public authority for the purposes of the *Land Acquisition Act 1993*.

**30. Arrangements with Minister**

- (1) The Minister may enter into an agreement with the Company consistent with its principal objectives under which it agrees to perform, or to cease to perform, functions under any Act.
- (2) The terms of the agreement may provide for reimbursement to the Company out of money provided by Parliament for the purpose.

**31. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Racing; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Infrastructure, Energy and Resources.

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**PART 5 – AMENDMENTS TO *RACING REGULATION*  
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**32. Principal Act**

In this Part, the *Racing Regulation Act 2004*\* is referred to as the Principal Act.

**33. Section 29 amended (How and when should persons appeal?)**

Section 29 of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) from subsection (2) and substituting the following paragraph:
  - (b) must specify the parties to the appeal, the relevant decision and the grounds of appeal.
- (b) by omitting from subsection (3)(b) “section 28(1)(c)” and substituting “section 28(1)(a)”.

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\*No. 62 of 2004

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**SCHEDULE 1 – PROVISIONS TO BE INCLUDED IN  
CONSTITUTION**

Section 11

**1. Interpretation**

Words, phrases and expressions used in this constitution have the same meaning as in –

- (a) the Corporations Act; and
- (b) except where inconsistent with that Act, the *Racing (Tasracing Pty Ltd) Act 2009*.

**2. Powers and duties of board of directors**

Subject to the Corporations Act, the *Racing Regulation Act 2004*, the *Racing (Tasracing Pty Ltd) Act 2009* and this constitution –

- (a) the business of the Company must be managed by the board of directors; and
- (b) the board of directors may exercise all powers of the Company as are not, by the Corporations Act or by this constitution, required to be exercised by the members.

**3. Approval for borrowings**

Except where approved by special resolution, the Company must not borrow from any person



other than the Tasmanian Public Finance Corporation.

**4. Approval for matters relating to ownership of subsidiaries**

Except where approved by special resolution, the Company must not –

- (a) form or acquire, or participate in the formation or acquisition of, a subsidiary; or
- (b) dispose of shares in a subsidiary; or
- (c) enter into any transaction which may result in a subsidiary ceasing to be a subsidiary.

**5. Approval for sale or other disposition of undertaking or assets**

- (1) The Company must not sell or otherwise dispose of the whole or a substantial part of its undertaking or assets unless the sale or disposal is approved by each House of Parliament.
- (2) A sale or disposal is approved by a House of Parliament –
  - (a) when the House passes a motion approving the sale or disposal; or
  - (b) at the end of 5 sitting-days after notice of the sale or disposal was laid before the

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House, if no notice of a motion to disapprove the sale or disposal is before the House; or

- (c) if notice of any such motion to disapprove is before the House at the end of that period, when the first of the following occurs:
  - (i) the notice is withdrawn;
  - (ii) the motion is negated;
  - (iii) a further period of 5 sitting-days ends.

**6. Approval for constitution of subsidiary in relation to borrowings**

Except where approved by special resolution, the Company must not –

- (a) approve the constitution of a subsidiary unless the constitution contains a provision that is substantially the same as clause 3 of Schedule 1 to the *Racing (Tasracing Pty Ltd) Act 2009*; or
- (b) approve or effect an amendment to that provision.

**7. Member request for information**

On the written request of a member, the Company must provide to both the member and the Minister –

- (a) the business and strategic plans of the Company and any subsidiary as specified in the request; and
- (b) any financial information specified in the request; and
- (c) a report on any matters specified in the request; and
- (d) any other information relevant to any such plan, financial information or report.