

RACING (TASRACING PTY LTD) BILL 2009

CLAUSE NOTES

Clause 1	Short Title and citation.
Clause 2	The <i>Racing (Tasracing Pty Ltd) Act 2009</i> commences on 1 July 2009, but if Royal Assent has not been received on or before that date, the Act is taken to have commenced on 1 July 2009.
Clause 3	This clause provides definitions for the purpose of this Act. It also provides for expressions used in this Act to have the same meaning as those contained in the <i>Racing Regulation Act 2004</i> .
Clause 4	This clause provides for this Act to extend to any subsidiary of the Company in the performance of any functions of the Company, as if the subsidiary were the Company.
Clause 5	This clause empowers the Minister to form or participate in the formation of a Company to perform functions relating to the governance and administrative and financial aspects of the racing industry.
Clause 6	This clause defines the principal objectives of the Company.
Clause 7	<p>This clause sets out the status of the Company, by:</p> <p>under subclause (1), providing that the Company or a subsidiary thereof, unless legislation provides otherwise, does not represent the Crown, is not exempt from any rates, tax, duty or other impost simply because the Crown has beneficial ownership of shares in the company, and it is not entitled to any Crown prerogative rights or privilege as a consequence of the Crown's ownership; and</p> <p>under subclause (2), making it clear that the Crown is not liable for any liability or obligation of the Company or its subsidiary unless the Treasurer gives a guarantee or indemnity.</p>
Clause 8	This clause provides for displacement provisions for the purposes of section 5G of the Corporations Act.
Subclause 9(1)	This subclause determines that shares held by the members are held in trust for the Crown.
Subclause 9(2)	This subclause prevents members of the Company acquiring shares in the Company for his or her own benefit.
Subclause 9(3)	This subclause provides that if shares in the Company are

	acquired by a member for his or her own benefit, they are taken to be held in trust for the Crown but the Crown is not liable to pay for those shares.
Clause 10	<p>This clause provides that the Minister for Racing and the Treasurer are the two members of Company.</p> <p>Subclause 10(b) further provides if at any time, the Treasurer is responsible for both portfolios, then the Treasurer must determine a second Minister to be a member of the Company.</p>
Subclause 11(1)	This subclause sets out the requirements to be included in the constitution, namely the principal objectives of the Company and the provisions detailed in Schedule 1 of the Act.
Subclause 11(2)	This subclause requires the provisions of the constitution to be consistent with the Act.
Subclause 11(3)	This subclause requires the Company to provide to the Minister a copy of the special resolution altering, adding to or omitting a provision of the constitution within 14 days of the making of the special resolution.
Subclause 11(4)	This subclause requires the Minister to lay that special resolution before Parliament within 7 sitting-days of receiving it.
Subclause 12(1)	This subclause requires the members of the Company to provide the Board with a shareholder's statement of expectations as soon as is practicable after the incorporation day.
Subclause 12(2)	This subclause sets out the requirements to be included in the statement of expectations.
Subclause 12(3)	This subclause enables the members of the Company to amend or revoke and substitute the statement of expectations, either at their own discretion or at the Board's request.
Subclause 12(4)	This subclause requires the members of the Company to consult with the Board in the preparation of, or amendment to, the statement of expectations.
Clause 13	This clause requires the Board, in consultation with the industry and with reference to the shareholder's statement of expectations, to prepare and submit a corporate plan to the members each financial year.
Clause 14	This clause requires the Company to have a Board of Directors with necessary experience and expertise to enable the Company to meet its objectives. The clause also

	provides for the initial members of the TRB to be the initial directors of the Company until 31 December 2009.
Clause 15	This clause requires the Company to provide to the Minister copies of the constitution (including any amendments), financial statements, and director's reports of the Company and any subsidiaries. It further requires the Minister to lay these papers before Parliament within 7 sitting-days of receiving them.
Clause 16	This clause provides that the Treasurer may lend money to the Company from money provided by Parliament. In making the loan the Treasurer may set conditions on the loan. The loan, any charges, and/or interest are to be repaid into the Consolidated Fund.
Clause 17	This clause empowers the Treasurer to provide a guarantee or an indemnity, or both, in respect of repayment of money by a company or subsidiary, or the performance of obligations. Any such guarantee or indemnity may extend to interest and other charges payable and is subject to any conditions determined by the Treasurer. Any payment required to be made by the Treasurer under a guarantee or indemnity is to be from money provided by Parliament for the purpose.
Clause 18	This clause provides that Part II, Division I of the <i>Government Business Enterprises Act 1995</i> applies to the Company or its subsidiary as if the entity were a GBE under that Act for the purpose of establishing fees for guarantees.
Clause 19	This clause provides that the provisions of Part 10 of the <i>Government Business Enterprises Act 1995</i> relating to tax equivalents apply to the Company or a subsidiary in the same way as they apply to GBEs.
Clause 20	This clause requires the Auditor-General to act as auditor until another is appointed by the members.
Clause 21	This clause provides for the application of any Treasurer's Instructions issued under the <i>Government Business Enterprises Act 1995</i> in respect of guidelines for determining, calculating and paying income tax equivalents and guarantee fees and related matters, including superannuation, to the Company or its subsidiary as if the same were a GBE.
Clause 22	This clause requires the Company to comply with any requirement by the Treasurer and to do or refrain from doing anything required for the purposes of implementing the Agreement made under the <i>Financial Agreement Act 1994</i>
Clause 23	This clause requires the Company to provide information that may

	be required for an actuarial review of any of its liabilities under the <i>Retirement Benefits Act 1993</i> .
Clause 24	This clause specifies the Company's obligations regarding superannuation contributions in respect of its employees.
Clause 25	<p>This clause provides for the membership of the Board of the Company, by:-</p> <p>under subclause (1), specifying the constitution of the Company and appointment of directors by the members of the Company;</p> <p>under subclause (2), providing for the appointment of a panel by the members of the Company, to recommend, the names of candidates it considers suitable for appointment to the Board;</p> <p>under subclause (3), specifying the constitution of the panel when considering code specific appointments to the Board;</p> <p>under subclause (4), specifying the thoroughbred persons eligible to submit to that panel the names of potential candidates for appointment to the Board;</p> <p>under subclause (5), specifying the harness persons eligible to submit to that panel the names of potential candidates for appointment to the Board;</p> <p>under subclause (6), specifying the greyhound persons eligible to submit to that panel the names of potential candidates for appointment to the Board;</p> <p>under subclause (7), requiring persons submitting names to the panel to identify if the candidate which the person is nominating is being nominated under the industry knowledge stream or other skills stream;</p> <p>under subclause (8), requiring the panel to recommend to the Minister the names of three code specific persons it considers suitable for appointment to the Board;</p> <p>under subclause (9), requiring the panel to advertise in the three daily Tasmanian newspapers and any other newspaper considered desirable for expressions of interest from potential candidates; and</p> <p>under subclause (10), requiring the panel to recommend to the members the names of three suitable candidates received from the advertisement process and industry nominations that it considers suitable for appointment to the Board.</p>
Clause 26	This clause provides for the filling of vacancies in the office of director of the Company by the members of the Company.
Clause 27(1)	This subclause empowers the Company to make grants and loans to racing clubs, contract for capital works, purchase, lease and

	maintain racing facilities, and charge fees for their use.
Clause 27(2)	This subclause enables the Company to impose conditions on any loan or grant made under subclause (1).
Clause 27(3)	This subclause prohibits the Company, without the Treasurer's approval, from undertaking the actions outlined therein.
Clause 28	<p>This clause prevents members of the Company selling or disposing of shares in the Company without first obtaining approval from Parliament. It defines what Parliamentary approval is for the purposes of subsection (3).</p> <p>It also prevents members of the Company from voting to allow the Company to offer or invite persons to subscribe for, or allot or issue shares in the Company other than to existing shareholders.</p>
Clause 29	This clause provides that the Company is not a public authority for the purposes of the <i>Land Acquisition Act 1993</i> and accordingly is unable to compulsorily acquire land.
Clause 30	This clause enables the Minister to enter into an agreement with the Company in relation to the performance of non-performance of its functions under any Act, the terms of which may provide for reimbursement to the Company from money provided by Parliament for the purpose.
Clause 31	This clause provides for the administration of the Act.
Clause 32	This clause provides that, for the purposes of Part 5 of this Act, the <i>Racing Regulation Act 2004</i> is the Principal Act.
Clause 33	This clause provides for amendments to be made to section 29 of the <i>Racing Regulation Act 2004</i> to correct an anomaly in respect of appeals that are dealt with by the Integrity Assurance Board in lieu of the Tasmanian Racing Appeal Board.
Schedule 1	<p>Details the provisions to be included in the constitution of the Company, by:</p> <p>under clause 1, providing for phrases and expressions used in the constitution to have the same meaning as those contained in the Corporations Act and the Principal Act;</p> <p>under clause 2, requiring the board of directors to manage the business of the Company and allowing them to exercise all powers of the Company, subject to the Corporations Act, the <i>Racing Regulation Act 2004</i>, the Principal Act and the constitution;</p> <p>under clause 3, preventing the Company from borrowing from</p>

	<p>any person other than the Tasmanian Public Finance Corporation, except where approved by special resolution;</p> <p>under clause 4, preventing the Company from undertaking the specified actions in relation to ownership of subsidiaries, except where approved by special resolution;</p> <p>under clause 5, preventing the Company selling or disposing of the whole or a substantial part of its undertaking or assets without first obtaining approval from Parliament;</p> <p>under clause 6, preventing the Company from approving the constitution of a subsidiary unless such constitution includes a provision substantially the same as that referred to in clause 3 of this Schedule and preventing the Company from amending that provision, except where approved by special resolution; and</p> <p>under clause 7, upon the written request of a member, requiring the Company to provide to that member and the Minister a copy of the Company's business or strategic plans, financial information, report or any other information relevant to any such plan, financial information or report, as specified in the request.</p>
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