



Western Australia

# **Racing and Wagering Western Australia Act 2003**

Compare between:

[02 Nov 2015, 02-g0-01] and [01 Jul 2016, 02-h0-00]



Western Australia

## **Racing and Wagering Western Australia Act 2003**

**An Act to —**

- **establish Racing and Wagering Western Australia;**
- **authorise the provision and operation of totalisators through RWWA;**
- **make provision for totalisator and other gambling with RWWA, and for related matters.**

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Racing and Wagering Western Australia Act 2003*<sup>1</sup>.

### **2. Commencement**

- (1) This Act comes into operation on a day fixed by proclamation<sup>1</sup>.
- (2) Different days may be fixed under subsection (1) for different provisions.

### **3. Terms used in this Act**

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

***allied body*** means a body that provides facilities, including training facilities, that are integral to the thoroughbred racing industry, the harness racing industry or the greyhound racing industry;

***Australian Greyhound Racing Rules*** means the rules relating to the control of greyhound racing approved by the Australian and New Zealand Greyhound Racing Association (or any successor to that body) as amended and in force from time to time;

***Australian Rules of Harness Racing*** means the rules relating to the control of harness racing approved by the Australian Harness Racing Council Inc. (or any successor to that body) as amended and in force from time to time;

***Australian Rules of Racing*** means the rules relating to the control of thoroughbred racing approved by the Australian Racing Board (or any successor to that body) as amended and in force from time to time;

***board*** means the board of directors of RWWA;

***CEO*** means the person holding the office of chief executive officer of RWWA created under section 20;

***club*** includes a society or association;

**combined totalisator pool scheme** means a combined totalisator pool scheme in which RWWA participates under section 59;

**Commission** means the Gaming and Wagering Commission established under section 4 of the *Gaming and Wagering Commission Act 1987*;

**committee**, in relation to a racing club, includes the governing body of the club or a body constituted by the club to make determinations on behalf of the club;

**Corporations Act** means the *Corporations Act 2001* of the Commonwealth;

**director** means a director appointed, nominated or selected under section 8;

**eligible person** means a person who is eligible to be appointed, nominated or selected as a director;

**fixed odds wager** means a wager where a fixed amount that will be won if the wager is successful is determined before the wager is accepted;

**gambling** means wagering or gaming;

**gambling operations** means the business of RWWA referred to in section 50(1)(b);

**gaming** has the same meaning as in the *Gaming and Wagering Commission Act 1987*;

**greyhound racing** means the racing, in competitive pursuit of an artificial lure, of greyhounds registered with the Australian Stud Book maintained by the Australian and New Zealand Greyhound Association or with a registration authority approved by RWWA, and **greyhound race** and **greyhound race meeting** have corresponding meanings;

**harness racing** means the racing of horses registered with the Australian Harness Racing Council, or otherwise eligible to race, under the Australian Rules of Harness Racing, and includes pacing and trotting, and **harness race** and **harness race meeting** have corresponding meanings;

**member of staff** means a person engaged under section 22;

**metropolitan region** has the meaning given to that term in the *Planning and Development Act 2005* section 4;

**prescribed** means prescribed by the regulations;

**race** means a thoroughbred race, a harness race or a greyhound race;

**racecourse** means a racecourse used for races;

**race meeting** means a meeting at which races are held;

**racing club** means a body of persons, corporate or unincorporate, that promotes or holds, or is formed to promote or hold, a race meeting;

**racing industry** means the thoroughbred racing industry, the harness racing industry and the greyhound racing industry, or any of those industries;

**racing year** means a period of 12 months commencing on 1 August;

**record** means any thing or process —

- (a) upon or by which information is recorded or stored; or
- (b) by means of which a meaning can be conveyed by any means in a visible or recoverable form,

whether or not the assistance of some electronic, electrical, mechanical, chemical or other machine or process is required to convey the information or meaning;

**rules of racing** means rules made under section 45;

**rules of wagering** means rules made under section 120;

**RWWA** means the body corporate called Racing and Wagering Western Australia that is established by section 4;

**sporting event** means —

- (a) any cricket match or series of cricket matches selected by RWWA;
- (b) any match or series of matches selected by RWWA from Australian Rules Football fixtures; or

- (c) any other event that is prescribed in the rules of wagering or by the regulations as a sporting event, but does not include a race or trial;

**Sports Wagering Account** means the account referred to in section 110A of the *Gaming and Wagering Commission Act 1987*;

**subsidiary** means —

- (a) a body determined to be a subsidiary of RWWA under subsection (3); and
- (b) any interest or other rights of RWWA in a unit trust, joint venture or partnership where the interest or other rights of RWWA in connection with the unit trust, joint venture or partnership entitle RWWA to —
- (i) control the composition of the governing body of the unit trust, joint venture or partnership;
- (ii) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the unit trust, joint venture or partnership; or
- (iii) control the business affairs of the unit trust, joint venture or partnership;

**thoroughbred racing** means the racing of horses registered with the Registrar of Racehorses, or otherwise eligible to race, under the Australian Rules of Racing, and **thoroughbred race** and **thoroughbred race meeting** have corresponding meanings;

**totalisator** means the instrument known as **the totalisator** and includes —

- (a) any other machine, instrument or contrivance of a like nature and conducted on the like principles lawfully operated under any Act;
- (b) any totalisator pool scheme conducted by RWWA under this Act for enabling any number of persons to make wagers with one another on like principles;

**totalisator agency** means any totalisator agency established and operated under this Act, and includes any premises on which wagers may be made on a race or event through or with RWWA;

**totalisator ticket** includes any ticket, card, token or thing —

- (a) entitling, or purporting to entitle, any person to any interest in any division or distribution of any money by means of or in connection with or as the result of the operations of a totalisator; or
- (b) issued by RWWA acknowledging that a wager has been made through or with RWWA;

**Treasurer** means Treasurer of the State;

**trial** means an event held for the purpose of testing or training horses or greyhounds for which no prize money, trophy or other reward, gratuity or privilege of more than nominal value is offered;

**wagering** has the same meaning as in the *Gaming and Wagering Commission Act 1987*;

**WAGRA** means the Western Australian Greyhound Racing Association established under the *Western Australian Greyhound Racing Association Act 1981*;

**WATA** means the Western Australian Trotting Association constituted under the *Western Australian Trotting Association Act 1946*;

**WATC** means the body known as The Western Australian Turf Club.

- (2) Without limiting section 46 of the *Interpretation Act 1984*, unless the contrary intention appears —
  - (a) a reference in this Act to **this Act** includes a reference to any rules of racing made under, or continued for the purposes of, this Act; and



- (b) a reference in any other written law to the RWWA Act includes a reference to any rules of racing made under, or continued for the purposes of, this Act.
- (3) Part 1.2 Division 6 of the Corporations Act applies for the purpose of determining whether a body is a subsidiary of RWWA.

*[Section 3 amended by No. 35 of 2003 s. 174; No. 38 of 2005 s. 15.]*

## **Part 2 — Racing and Wagering Western Australia**

### **Division 1 — Establishment**

#### **4. Racing and Wagering Western Australia established**

- (1) A body called Racing and Wagering Western Australia is established.
- (2) RWWA is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against RWWA in its corporate name.

#### **5. RWWA not an agent of the Crown**

RWWA is not an agent of the Crown and does not have the status, immunity, and privileges of the Crown.

#### **6. RWWA and officers not part of public sector**

- (1) RWWA is not, and is not to become, a public sector body under the *Public Sector Management Act 1994*.
- (2) Neither the CEO nor any member of staff is to be included in the Senior Executive Service provided for by the *Public Sector Management Act 1994*.

### **Division 2 — Board of directors**

#### **7. Board of directors**

- (1) RWWA is to have a board of directors.
- (2) The board of directors is the governing body of RWWA and, in the name of RWWA, is to perform RWWA's functions under this Act.

#### **8. How the board of directors is constituted**

- (1) The board of directors is to be constituted by the following directors —

- (a) the chairperson of the board;
  - (b) one person nominated by eligible thoroughbred racing bodies;
  - (c) one person nominated by eligible harness racing bodies;
  - (d) one person nominated by eligible greyhound racing bodies;
  - (e) 4 persons selected for their expertise in management, finance, business, commerce or information technology.
- (2) At least one of the persons selected for the purposes of subsection (1)(e) is to have knowledge of, and experience in, regional development.
- (3) Section 10 specifies persons who are not eligible to be appointed, nominated or selected as a director.
- (4) The chairperson of the board is to be appointed by the Minister.
- (5) The persons referred to in subsection (1)(e) are to be selected by a panel established under section 11.
- (6) A body is eligible for the purposes of paragraph (b), (c) or (d) of subsection (1) if it has been declared to be an eligible body for the purposes of that paragraph under section 12.

**9. Nomination and selection procedure**

- (1) The Minister may determine, by order published in the *Gazette* —
- (a) the manner in which, and the criteria on which, persons are to be nominated or selected for the purposes of section 8(1);
  - (b) other procedures to be followed for making nominations under section 8(1),

and persons nominated or selected under section 8(1) are to be nominated or selected in accordance with that order.

- (2) A nomination or selection for the purposes of section 8(1) takes effect on a day approved by the Minister.

**10. Certain persons not eligible to be a director or a member of a selection panel**

- (1) A person is not eligible to be appointed, nominated or selected as a director under section 8, or as a member of a selection panel under section 11, if the person is —
- (a) under the age of 18 years;
  - (b) a member of staff of RWWA (not including the CEO);
  - (c) a RWWA agent or a person employed in a RWWA agency;
  - (d) an employee or officer of a racing club;
  - (e) an employee or officer of a body declared to be an eligible body under section 12;
  - (f) licensed under the *Betting Control Act 1954*;
  - (g) currently warned off or disqualified under this Act;
  - (h) a person whose name is currently on the Forfeits List under the Australian Rules of Racing or the Unpaid Forfeits List under the Rules of Harness Racing or who is currently declared a defaulter under the Rules of Greyhound Racing;
  - (i) a person who has been refused a licence under section 14 of this Act or has had a licence revoked under section 109K(3) of the *Gaming and Wagering Commission Act 1987*; or
  - (j) disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* of the Commonwealth.
- (2) Without limiting subsection (1), a person is also not eligible to be selected as a director under section 8(1)(e) if the person is or has been, at any time during the preceding 2 years, a member of the committee of a racing club or the holder of an office on the

governing body of a body declared to be an eligible body under section 12.

- (3) If a member of the committee of a racing club or the holder of an office on the governing body of a body declared to be an eligible body under section 12 is appointed or nominated as a director or member of a selection panel, that person cannot take office as a director or member of a selection panel until he or she has resigned from, or otherwise ceased to hold, office as a member of the committee or office holder of the governing body.

*[Section 10 amended by No. 35 of 2003 s. 174(2).]*

## **11. Selection panel**

- (1) A selection panel is to be established for the purposes of section 8(1)(e) and (5).
- (2) The selection panel is to comprise the following members —
- (a) one person appointed by the Minister whom the Minister considers has knowledge and experience in human resource management and senior executive recruitment;
  - (b) one person, not being a director selected under section 8(1)(b), (c) or (d), nominated by the board;
  - (c) one person nominated by eligible thoroughbred racing bodies;
  - (d) one person nominated by eligible harness racing bodies;
  - (e) one person nominated by eligible greyhound racing bodies.
- (3) Section 10 specifies persons who are not eligible to be appointed or nominated as a member of a selection panel.
- (4) A body is eligible for the purposes of paragraph (c), (d) or (e) of subsection (2) if it has been declared to be an eligible body for the purposes of that paragraph under section 12.
- (5) A nomination under subsection (2) —

- (a) is to be made in writing to the Minister; and
  - (b) takes effect on a date determined by the Minister.
- (6) The Minister may direct by written notice that part or all of an order published under section 9(1) applies in respect of nominations under this section.
- (7) The members of the selection panel are to appoint a member as chairperson.
- (8) Subject to subsections (9) and (10), a person remains on the selection panel for such period, not exceeding 3 years, as is specified by the Minister, and is eligible for reappointment or renomination as the case requires.
- (9) A person may resign from the selection panel by written notice to the Minister.
- (10) The Minister may by written notice remove a person from the selection panel.
- (11) The selection panel may determine its own procedures.
- [Section 11 amended by No. 8 of 2007 s. 24.]*

**12. Eligible bodies**

RWWA is to declare, by written notice, which bodies are eligible bodies for the purposes of section 8(1)(b), (c) and (d) and section 11(2)(c), (d) and (e).

*[Section 12 amended by No. 8 of 2007 s. 25.]*

**13. Failure to nominate, appoint or resign office**

- (1) If—
- (a) an eligible body or group of eligible bodies fails to nominate an eligible person under section 8(1)(b), (c) or (d) or section 11(2)(c), (d) or (e); or

- (b) the board of RWWA fails to nominate a person under section 11(2)(b) or appoint a person under Schedule 1 clause 3(1),

within 30 days after receiving a written request from the Minister, the Minister may nominate an eligible person as a director or member or appoint a person as deputy chairperson, as the case requires, and the person so nominated or appointed is taken for all purposes to have been nominated by the relevant body or appointed by the Minister, as the case requires.

- (2) If a person appointed or nominated as a director, or member of a selection panel, fails to resign from or cease to hold office as a member or holder of an office as mentioned in section 10(3) within 30 days of the appointment or the day determined by the Minister as the day on which the nomination takes effect, the Minister may appoint or nominate another eligible person as director or member, as the case requires, and the person so appointed or nominated is taken for all purposes to have been appointed or nominated under the relevant provision of this Act.

#### **14. Licensing of directors**

- (1) The Commission may, in accordance with the regulations, license, or refuse to license, a director.
- (2) The Commission may carry out such investigations as it considers necessary and desirable for the purposes of satisfying itself that a person is a suitable person to be licensed as a director.
- (3) Without limiting the matters that may be investigated under subsection (2), investigations made under that subsection must include such investigations as the Commission considers necessary or desirable to inform itself of —
- (a) the reputation, financial status, and capacity to be concerned in the management of RWWA of the director; and
  - (b) such other matters as may be prescribed.

- (4) The director must provide the Commission with the information and records —
- (a) the Commission requires for the purposes of the investigation; and
  - (b) the person is able to provide.
- (5) A licence may be revoked under section 109K(3) of the *Gaming and Wagering Commission Act 1987*.  
*[Section 14 amended by No. 35 of 2003 s. 174(2).]*

**15. Certain provisions about the board of directors**

Schedule 1 applies in relation to the board of directors.

**16. Committees**

- (1) The board may —
- (a) appoint committees of directors or other persons; and
  - (b) discharge, alter or reconstitute any committee.
- (2) A committee is to comply with any direction or requirement of the board.
- (3) A committee may, with the approval of the board, invite any person, including a member of staff, to participate in a meeting of the committee but such a person cannot vote on any resolution before the committee.
- (4) Subject to subsection (2), a committee may determine its own procedures.

**17. Remuneration and allowances**

- (1) A director, a member of a selection panel appointed under section 11 or a member of a committee appointed under section 16 or 47 is to be paid out of the funds of RWWA remuneration and allowances determined by the Minister.



- (2) Subject to subsections (3) and (4), the same rates of remuneration and the same allowances are to apply to all the directors.
- (3) Remuneration is not to be paid to a director who holds a full-time office or position that is remunerated out of moneys appropriated by Parliament.
- (4) Despite subsection (2) —
  - (a) the chairperson is to be paid out of the funds of RWWA additional remuneration and allowances determined by the Minister;
  - (b) the deputy chairperson is to be paid additional remuneration and allowances out of the funds of RWWA if, and to the extent that, the Minister determines; and
  - (c) if a director is a member of a selection panel under section 11 or a committee under section 16 or 47, the director is to be paid additional remuneration and allowances out of the funds of RWWA if, and to the extent, that the Minister determines.

*[Section 17 amended by No. 8 of 2007 s. 26.]*

## **18. Conflict of duties**

- (1) When performing a function under this Act a director is to put the interests of RWWA ahead of the interests of any body that nominated the director.
- (2) If a person is both a public service officer and a director —
  - (a) the person's duties as a director are to prevail if a conflict arises between those duties and the person's other duties as a public service officer; and
  - (b) the person does not have any immunity of the Crown in respect of the duties and liabilities imposed on directors by this Act.
- (3) In this section —

***public service officer*** means a person who is employed in the Public Service under Part 3 of the *Public Sector Management Act 1994*.

**19. Disclosure of material personal interests**

- (1) A director who has a notifiable interest in a matter involving RWWA must, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the board.

Penalty: \$5 000.

- (2) A disclosure under subsection (1) is to be recorded in the minutes of the meeting.

- (3) In subsection (1) —

***notifiable interest*** means an interest in the matter that will, under Schedule 1 clause 8(1), disqualify the director from voting on the matter at a meeting of the board unless allowed to do so by resolution under clause 8(3) or a declaration under clause 8(6).

**Division 3 — Staff**

**20. Chief executive officer**

- (1) RWWA is to have a chief executive officer.

- (2) The powers —

- (a) to appoint and remove the CEO; and  
(b) to fix and alter the terms and conditions of service of the CEO,

are vested in the board.

- (3) The CEO may resign from office by giving written notice to the board.

- (4) The right to resign under subsection (3) must be exercised in accordance with the terms and conditions of service of the CEO.

- (5) The board may appoint a person to act in the office of CEO during any period when the CEO is, or is expected to be, absent from the State or on leave or unable for any other reason to carry out the duties of office.

**21. Role of CEO**

Subject to the control of the board, the CEO is responsible for, and has all the powers needed to administer, the day to day operations of RWWA.

**22. Staff**

- (1) The power to engage and manage the staff of RWWA is vested in the board.
- (2) The power conferred by subsection (1) —
- (a) includes powers to determine remuneration and other terms and conditions of service of staff, to remove, suspend and discipline staff and to terminate the employment of staff; and
  - (b) does not preclude the delegation of any matter under section 33.
- (3) The remuneration of and other terms and conditions of employment of staff are not to be less favourable than is provided for in —
- (a) an applicable award, order or agreement under the *Industrial Relations Act 1979*; or
  - (b) the *Minimum Conditions of Employment Act 1993*.

**23. Superannuation**

- (1) RWWA may grant, or make provision for the grant of, retirement benefits to members or former members of staff and their dependants and for that purpose may, subject to section 30 of the *State Superannuation Act 2000* —
- (a) establish, manage and control; or

- (b) enter into an arrangement with any body for the establishment, management and control by that body either alone or jointly with RWWA of, any fund or scheme for the purpose of providing for such retirement benefits.
- (2) RWWA may make contributions to any fund or scheme referred to in subsection (1).
- (3) In subsection (1) — *members of staff* includes the CEO.
- (4) Nothing in this section affects the operation of the *State Superannuation Act 2000* in relation to RWWA or members or former members of staff or their dependants.

#### **Division 4 — Conduct and integrity of staff**

#### **24. Licensing of key employees**

- (1) The regulations may —
- (a) require RWWA key employees to be persons who are licensed, provisionally or otherwise, by the Commission;
  - (b) make provision as to the licensing of RWWA key employees; and
  - (c) make provision as to the conduct of persons as RWWA key employees.
- (2) In this section —
- public interest* means public interest having regard to the creation and maintenance of public confidence and trust in the credibility, integrity and stability of RWWA's gambling operations;
- RWWA key employee* means a person —
- (a) who, whether or not employed or working for RWWA, is empowered to make decisions, involving the exercise

of that person's discretion, that regulate the gambling operations of RWWA; or

- (b) who, because of that person's influence, remuneration or function, the Commission determines in the public interest should be designated as such.

*[Section 24 amended by No. 8 of 2007 s. 27.]*

**25. Duties of CEO and staff**

- (1) Schedule 2 has effect in relation to the CEO, former CEOs, members of staff and former members of staff.
- (2) For the purposes of Schedule 2, the board may designate a member of staff as an executive officer by resolution —
  - (a) passed by the board; and
  - (b) notified in writing to the member of staff,and may in the same manner revoke such a designation.

## **Part 3 — Functions of RWWA**

### **Division 1 — General provisions**

#### **26. General functions**

- (1) RWWA has —
  - (a) the functions conferred or imposed on it by or under this Act or any other written law; and
  - (b) such other functions as may be prescribed.
- (2) RWWA may affiliate with such organisations, whether in or out of the State, as RWWA considers appropriate.
- (3) RWWA may perform any of its functions in the State or elsewhere.

#### **27. RWWA can act at its discretion**

The conferral of a function on RWWA does not impose a duty on RWWA to do any particular thing and, subject to any enactment, it has a discretion as to how and when it performs the function.

#### **28. Duty to observe policy instruments**

RWWA is to perform its functions in accordance with its strategic development plan and its statement of corporate intent as existing from time to time.

#### **29. Duty to act on commercial principles**

- (1) RWWA in performing its functions must —
  - (a) act in accordance with prudent commercial principles; and
  - (b) endeavour to make a profit.
- (2) If there is any conflict or inconsistency between the duty imposed under subsection (1) and the duty imposed by section 28, the duty imposed by section 28 prevails.

## **Division 2 — General powers and related provisions**

### **30. Powers generally**

- (1) RWWA has all the powers it needs to perform its functions.
- (2) RWWA may for the purpose of performing a function —
  - (a) acquire, hold, maintain, manage, improve, develop, and dispose of real or personal property; and
  - (b) enter into any contract or arrangement including a contract or arrangement with any person for the performance of the function by that person on behalf of RWWA; and
  - [(ba) deleted]*
  - (c) produce and deal in any equipment, facilities or system associated with, the performance of the function; and
  - (d) apply for the grant of any licence or other authority; and
  - (e) acquire, establish and operate —
    - (i) any undertaking necessary or convenient for the performance of the function; and
    - (ii) any associated undertaking;and
  - (f) appoint agents or engage persons under contracts for services to provide professional, technical or other assistance to RWWA; and
  - (g) participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement; and
  - (h) carry out any investigation, survey, exploration or feasibility study; and
  - (i) collaborate in, carry out, or procure the carrying out of, research and publish information that results from the research; and

- (j) develop and turn to account any technology, software or other intellectual property that relates to the function and, for that purpose, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights; and
  - (k) promote and market RWWA and its activities.
- (3) Subsection (2) does not limit subsection (1) or any of RWWA's other powers.
- (4) RWWA may —
- (a) make gifts for charitable purposes or for other purposes of benefit to the community or a section of the community;
  - (b) make any ex gratia payments that it considers to be in RWWA's interest; and
  - (c) accept any gift, devise or bequest if it is absolute, or subject to conditions that are within RWWA's functions.
- (5) In this section —

***business arrangement*** means a company, a partnership, a trust, a joint venture or an arrangement for sharing profits;

***participate*** includes form, promote, establish, enter, manage, dissolve, wind up, and do things incidental to participating in a business arrangement.

*[Section 30 amended by No. 70 of 2006 s. 14; No. 29 of 2009 s. 23.]*

### **31. Use of names for RWWA and its operations**

- (1) RWWA may use and operate under one or more trading names, being —
- (a) an abbreviation or adaptation of the name given by section 4(1); or
  - (b) any other name.



- (2) Without limiting subsection (1), RWWA may carry on its gambling operations under the trading name “TAB”.

**32. Subsidiaries**

- (1) RWWA must advise the Minister before it acquires a subsidiary or enters into any transaction that will result in the acquisition of a subsidiary.
- (2) RWWA must ensure that the constitution of every subsidiary of RWWA that under a written law or the Corporations Act is required to have a constitution —
- (a) contains provisions to the effect of those required by Schedule 3;
  - (b) is consistent with this Act; and
  - (c) is not amended in a way that is inconsistent with this Act.
- (3) RWWA must, to the maximum extent practicable, ensure that every subsidiary of RWWA complies with its constitution and with this Act.
- (4) The provisions of this Act prevail to the extent of any inconsistency with the constitution of any subsidiary of RWWA.
- (5) A director, the CEO or a member of staff may with the approval of RWWA become —
- (a) a member of the [management](#) committee of an incorporated association; or
  - (b) a director of a company,
- that is or is to be a subsidiary of RWWA and may represent the interests of RWWA on that committee or the board of directors of that company.
- (6) Neither subsections (2) and (3), nor provisions referred to in subsection (2)(a) included in the constitution of a subsidiary,

make RWWA or the Minister a director of a subsidiary for the purposes of the Corporations Act.

- (7) This section and Schedule 3 are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the Corporations legislation as defined in section 9 of the Corporations Act.

[\[Section 32 amended by No. 30 of 2015 s. 227.\]](#)

### **33. Delegation**

- (1) RWWA may delegate any power or duty of RWWA under another provision of this Act or any other written law.
- (2) A delegation under subsection (1) may be made to —
- (a) a director or directors;
  - (b) the CEO;
  - (c) a member of staff;
  - (d) a committee established under section 16 or 47; or
  - (e) any other person.
- (3) The delegation must be in writing executed by RWWA.
- (4) The delegation may expressly authorise the delegate to further delegate the power or duty.
- (5) A person exercising or performing a power or duty as authorised under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (6) Nothing in this section limits the ability of RWWA to act through an officer or agent.
- (7) This section does not apply to the execution of documents but authority to execute documents on behalf of RWWA can be given under section 118.

## **Part 4 — Specialised functions in relation to racing**

### **Division 1 — General**

#### **34. Terms used in this Part**

In this Part a reference to a *person associated with racing* is a reference to the following —

- (a) a person who handles horses at a thoroughbred race or harness race;
- (b) a person who handles greyhounds at a greyhound race;
- (c) a breeder of horses for thoroughbred or harness racing;
- (d) a greyhound breeder;
- (e) a person who is an officer or employee of a racing club or is otherwise concerned in the management or control of any such club;
- (f) any other person prescribed for the purposes of this section.

#### **35. Functions in relation to racing in general**

- (1) Without limiting the functions of RWWA under Parts 3 and 5, it is a function of RWWA —
  - (a) to control, regulate and supervise racing in the State; and
  - (b) to foster the development, promote the welfare and ensure the integrity of metropolitan and country thoroughbred racing, harness racing and greyhound racing, in the interests of the long term viability of the racing industry in Western Australia; and
  - (ba) to enter into contracts or arrangements for the commercial exploitation of information held by RWWA relating to the racing industry in Western Australia; and
  - (c) to undertake and manage racing industry strategic planning, promotion, marketing, sponsorship and administration; and

- (d) to supervise racing clubs and their affairs; and
  - (e) to make loans or grants to racing clubs and allied bodies for purposes specified in Part 7 Division 2; and
  - (f) to determine the race meetings on which RWWA will conduct off-course wagering; and
  - (g) in consultation with racing clubs, to establish policies for stake money levels and race conditions and programs; and
  - (h) to establish policies for, and manage the provision of, programs for apprentice jockey, trainee driver and other racing industry training requirements; and
  - (i) to endeavour to ensure that racing industry issues such as insurance, broadcasting of race meetings and the establishment and maintenance of training facilities are carried out in an appropriate and adequate manner; and
  - (j) to liaise with government and other authorities, whether in or out of Western Australia, with respect to, and to represent the interests of, the racing industry in Western Australia.
- (2) Nothing in this Act confers on RWWA power to conduct race meetings on its own behalf.

*[Section 35 amended by No. 70 of 2006 s. 15.]*

**36. Thoroughbred racing**

- (1) Subject to this Act, RWWA has all the functions of the principal club for Western Australia and committee of the principal club for Western Australia under the Australian Rules of Racing.
- (2) The functions of RWWA in relation to thoroughbred racing are not limited by the Australian Rules of Racing.
- (3) WATC ceases to have the functions that are solely the functions of the principal club for Western Australia or committee of the principal club for Western Australia under the Australian Rules of Racing.

**37. Harness racing**

- (1) Subject to this Act, RWWA has all the functions of the controlling body for Western Australia under the Australian Rules of Harness Racing.
- (2) The functions of RWWA in relation to harness racing are not limited by the Australian Rules of Harness Racing.
- (3) WATA ceases to have the functions that are solely the functions of the controlling body for Western Australia under the Australian Rules of Harness Racing.

**38. Greyhound racing**

- (1) Subject to this Act, RWWA has all the functions of the racing authority and registration authority for Western Australia under the Australian Greyhound Racing Rules.
- (2) The functions of RWWA in relation to greyhound racing are not limited by the Australian Greyhound Racing Rules.
- (3) WAGRA ceases to have the functions that are solely the functions of the racing authority and registration authority for Western Australia under the Australian Greyhound Racing Rules.

**39. Licensing of racecourses, race meetings, races and tracks**

- (1) RWWA may, in accordance with the rules of racing and the regulations, license or refuse to license —
  - (a) a racecourse;
  - (b) a race meeting;
  - (c) a race; and
  - (d) training and trial tracks.
- (2) An application for a licence is to be made by a racing club or an allied body in a form approved by RWWA.

- (3) A licence may be issued subject to such conditions as RWWA determines.
- (4) RWWA may, in accordance with the rules of racing and the regulations, suspend or cancel a licence issued under subsection (1).

**40. Registration of racing clubs**

- (1) RWWA may, in accordance with the rules of racing and the regulations, register or refuse to register a racing club.
- (2) An application for registration is to be made in a form approved by RWWA.
- (3) Registration may be issued subject to such conditions as RWWA determines.
- (4) RWWA may, in accordance with the rules of racing and the regulations, suspend or cancel the registration of a racing club.

**41. Registration of horses and greyhounds**

- (1) RWWA may, in accordance with the rules of racing and the regulations, register or refuse to register —
  - (a) any thoroughbred racing horse;
  - (b) any harness racing horse; or
  - (c) any greyhound.
- (2) An application for registration is to be made in a form approved by RWWA.
- (3) Registration may be issued subject to such conditions as RWWA determines.
- (4) RWWA may, in accordance with the rules of racing and the regulations, suspend or cancel the registration of any animal under this section.

**42.      Licensing of owners, trainers, jockeys, drivers and associated persons**

- (1) In this section —  
*licence* includes an approval or permit.
- (2) RWWA may, in accordance with the rules of racing and the regulations, license or refuse to license —
  - (a) any owner or trainer of thoroughbred racing horses, harness racing horses or greyhounds;
  - (b) any jockey, apprentice jockey or track work rider;
  - (c) any driver of harness racing horses; or
  - (d) any other person associated with racing.
- (3) An application for a licence is to be made in a form approved by RWWA.
- (4) A licence may be issued subject to such conditions as RWWA determines.
- (5) RWWA may, in accordance with the rules of racing and the regulations, suspend or cancel the licence of any person under this section.

**43.      Directions by RWWA**

- (1) RWWA may give directions to a racing club or an allied body to carry out works to improve safety at a racecourse or training track.
- (2) A racing club or an allied body must comply with a direction under subsection (1).
- (3) A direction may be given to a racing club or an allied body under subsection (1) whether or not an application for assistance under Part 7 Division 2 by that racing club or allied body is being considered, or has been granted, by RWWA.
- (4) For the purposes of subsection (1) RWWA may —

- (a) call for submissions from jockeys and drivers as to safety issues; and
- (b) consider safety issues raised by jockeys and drivers.

**44. Other disciplinary action that may be taken by RWWA**

- (1) RWWA may, in accordance with the rules of racing and the regulations, do all or any of the following —
  - (a) disqualify, either permanently or temporarily —
    - (i) any owner or trainer of thoroughbred racing horses, harness racing horses or greyhounds;
    - (ii) any jockey;
    - (iii) any driver of harness racing horses; or
    - (iv) any other person associated with racing;
  - (b) prohibit any person from participating in or associating with racing in any specified capacity;
  - (c) prohibit any horse from participating in a thoroughbred or harness race or trial;
  - (d) prohibit any greyhound from participating in a greyhound race or trial;
  - (e) prohibit any person from attending or taking part in a race meeting or entering upon and remaining on a racecourse at which racing is conducted or any licensed racecourse;
  - (f) impose fines of up to \$100 000 for breaches of the rules (other than breaches by persons who are only bound by the rules by reason of section 45(6)(g)), and recover those penalties;
  - (g) suspend, for such term as RWWA thinks fit, any right or privilege conferred under this Act on any owner or trainer of thoroughbred racing horses, harness racing horses or greyhounds, jockey, driver of harness racing horses or other person associated with racing;



- (h) impose non-pecuniary penalties for breaches of the rules.
- (2) A fine imposed under subsection (1)(f) is to be paid to and be the property of RWWA.

**45. Rules of racing**

- (1) RWWA may make rules of racing with respect to the control, regulation and supervision of —
  - (a) thoroughbred racing (the Rules of Thoroughbred Racing);
  - (b) harness racing (the Rules of Harness Racing); and
  - (c) greyhound racing (the Rules of Greyhound Racing),that are required or permitted by this Act to be made or that RWWA considers necessary or convenient for the performance of its functions and the exercise of its powers.
- (2) Without limiting subsection (1), RWWA may make rules of racing for or with respect to —
  - (a) any of the matters referred to in section 39, 40, 41, 42 or 44;
  - (b) the effect of a disqualification of, or other penalty imposed on, a person, horse or greyhound under section 44(1)(a);
  - (c) the holding and conduct of race meetings and of races at any such meeting;
  - (d) the holding and conduct of trials and jump-outs at a racecourse or a training or trial track;
  - (e) the keeping of horses and greyhounds which are in the care or custody of persons licensed under this Act;
  - (f) the breeding of thoroughbred racing horses, harness racing horses and greyhounds;
  - (g) the naming and identification of thoroughbred racing horses, harness racing horses and greyhounds;

- (h) prizes for races;
  - (i) fees and charges to be paid to RWWA in respect of licensing, registration, the services of stewards and other matters under this Act, and the recovery of fees and charges;
  - (j) the appointment of stewards;
  - (k) the powers and duties of —
    - (i) stewards and other officers, employees and agents of RWWA in relation to racing; and
    - (ii) racing clubs and their managing bodies, members, officers, employees and agents;and
  - (l) the extent to which and circumstances in which stewards may exercise their functions to the exclusion of managing bodies, members, officers, employees and agents of racing clubs.
- (3) Without limiting the operation of subsections (1) and (2), rules of racing may —
- (a) authorise a steward or other officers or employees of RWWA to —
    - (i) impose pecuniary and non-pecuniary penalties as referred to in section 44; and
    - (ii) prohibit any person from entering upon and remaining on a racecourse or a trial track;
  - (b) subject to the *Racing Penalties (Appeals) Act 1990*, provide for appeals to RWWA from decisions made under paragraph (a).
- (4) A provision of the rules of racing may authorise any matter or thing to be from time to time determined, applied, approved or regulated by any specified person or body.
- (5) Rules of racing may adopt, either wholly or in part and either specifically or by reference, the Australian Rules of Racing, the

Australian Rules of Harness Racing, the Australian Greyhound Racing Rules and any other rules or standards, codes or specifications —

- (a) as at the time the rules of racing are made or at any time before then; or
  - (b) as amended from time to time.
- (6) Rules of racing apply to, and are binding on —
- (a) RWWA, the board, directors, stewards and other officers, employees and agents of RWWA;
  - (b) racing clubs and their managing bodies, members, officers, employees and agents;
  - (c) persons having the management and control of racecourses or trial tracks and their employees and agents;
  - (d) trainers, owners and lessees of horses or greyhounds and their employees and agents;
  - (e) bookmakers, bookmakers' managers and bookmakers' employees who hold licences under the *Betting Control Act 1954* and who accept wagers at racecourses;
  - (f) jockeys, drivers, stablehands, attendants and all other persons participating in, or associated with the keeping, training and racing of horses or greyhounds; and
  - (g) all persons attending race meetings or trials or wagering at race meetings.
- (7) Notice of the making of rules of racing is to be published in the *Gazette*.
- (8) A notice under subsection (7) must either set out the text of the rules of racing or state where a copy of the rules may be obtained.
- (9) Rules of racing come into operation on the day of publication of the notice referred to in subsection (7) or such later day as is provided for in the rules of racing.

- (10) Sections 41, 42 and 43(6) of the *Interpretation Act 1984* do not apply to rules of racing.
- (11) To the extent that a rule of racing is inconsistent with a regulation, the regulation prevails.

**46. Production of racing club records to RWWA**

- (1) RWWA may at any time, by written notice, give a direction to —
  - (a) a racing club; or
  - (b) a person who is or has been an officer or employee of, or an agent, banker, solicitor, auditor or other person acting in any capacity for or on behalf of, a racing club (including such a club that is in the course of being wound up or has been dissolved),

requiring the production, at such time and place as are specified in the direction, of such records relating to the affairs of the racing club as are so specified.

- (2) Where any records relating to the affairs of a racing club are compiled, recorded or stored by means of a mechanical, electronic or other device, a direction under subsection (1) may require the production of a document containing a clear reproduction in writing of the whole or any part of those records.
- (3) A person must not, when required under subsection (1) to produce a record —
  - (a) refuse or neglect to produce the record; or
  - (b) produce a record that contains information that to the person's knowledge is false or misleading in a material particular unless the person discloses that fact when producing the record.

Penalty: \$5 000.

- (4) A reference in this section to the affairs of a racing club is a reference to the affairs of the club that relate, directly or indirectly, to racing.

### **Division 2 — Integrity Assurance Committee**

#### **47. Integrity Assurance Committee**

- (1) The board must establish a committee called the Integrity Assurance Committee (*the IAC*).
- (2) The board may alter or reconstitute the IAC at any time.

#### **48. Constitution of IAC**

- (1) The board is to determine the qualifications and disqualifications for membership of the IAC and in doing so is to have particular regard to the need to minimise conflicts of interest, such as might arise from a person's —
- (a) ownership of horses or greyhounds currently in work;
  - (b) professional involvement in race preparation; or
  - (c) professional or commercial dealings with any person who holds a licence issued by RWWA or with a racing club.
- (2) The IAC may, with the approval of the board, invite any person, including a member of staff, to participate in a meeting of the IAC but such a person cannot vote on any resolution before the IAC.
- (3) Subject to subsection (2), the IAC may determine its own procedures.

#### **49. Functions of IAC**

- (1) The IAC has primary oversight of those aspects of RWWA's functions that relate to —
- (a) stewards;
  - (b) drug testing and control;

- (c) licensing and registration;
  - (d) handicapping; and
  - (e) racing appeals.
- (2) The IAC —
- (a) is to advise RWWA on the matters for which the IAC has primary oversight; and
  - (b) has such other functions as RWWA may confer on it.
- (3) The IAC is to comply with any direction or requirement of the board.

## **Part 5 — Specialised functions in relation to gambling**

### **Division 1 — General**

#### **50. Functions of RWWA in relation to gambling**

- (1) Without limiting the functions and powers of RWWA under Parts 3 and 4, the functions of RWWA in relation to gambling include the following —
- (a) to ensure that on-course wagering by bookmakers and racing club totalisators is conducted in accordance with the *Betting Control Act 1954* and the rules of wagering;
  - (b) to carry on —
    - (i) the business of operating an off-course totalisator wagering service on races and certain sporting and other events;
    - (ii) the business of operating an on-course totalisator wagering service on behalf of racing clubs where it has been engaged to do so;
    - (iii) the business of setting, accepting and making fixed odds wagers in relation to races and certain sporting and other events;
    - (iv) any other business related to gambling authorised under this Act to be carried on by RWWA;
    - (v) any other business considered by the board to be conducive to the success of or incidental to the business of gambling carried on by RWWA, but so that such other business is not conducted to the detriment of the business of gambling carried on by RWWA or in a manner which confers an unfair commercial advantage;
  - (c) to develop and implement a scheme for the distribution of net profits and to negotiate funding arrangements with individual racing clubs.

*[(2) deleted]*

*[Section 50 amended by No. 32 of 2014 s. 9.]*

**51. Establishment of offices and agencies**

- (1) Subject to subsections (2) and (3) and section 52, for the purposes of this Part RWWA may —
  - (a) establish offices and totalisator agencies where wagers may be made —
    - (i) on a totalisator through or with RWWA; or
    - (ii) with RWWA;
  - (b) purchase or take on lease or license any land, building or premises, erect buildings and equip, fit and furnish buildings or premises as offices and totalisator agencies; and
  - (c) enter into any agency contracts or other contracts or arrangements.
- (2) RWWA must not establish a totalisator agency on a racecourse without the prior approval of the committee or other authority controlling the racecourse.
- (3) RWWA must not establish a totalisator agency in licensed premises unless the portion of those premises which is to be used as a totalisator agency is clearly defined.

**52. Commission may direct RWWA not to establish agency**

- (1) RWWA must not establish a totalisator agency under section 51 unless it has given the Commission written notice of its intention to establish the totalisator agency.
- (2) A notice under subsection (1) must be given in the manner prescribed and include the matters prescribed.
- (3) If, in the opinion of the Commission, the conduct of gambling at a totalisator agency or a proposed totalisator agency is, or will be, detrimental to the public interest, the Commission may, in accordance with the regulations, direct RWWA to close the totalisator agency or not to establish the totalisator agency.



- (4) RWWA must comply with a direction of the Commission under subsection (3).

**53. Payments to Commission**

RWWA must, in the prescribed manner, pay to the Commission an annual fee, to meet the costs of the Commission in regulating RWWA operations, of such an amount as may be —

- (a) determined by the Commission; and
- (b) approved by the Minister.

**Division 2 — Conduct of wagering**

**54. RWWA may conduct wagering**

- (1) In this section —  
*race* does not include a trial or training race.
- (2) RWWA may conduct —
- (a) totalisator wagering and fixed odds wagering on —
    - (i) any race or series of races, whether conducted in Western Australia or elsewhere;
    - (ii) any sporting event or series of sporting events, whether conducted in Western Australia or elsewhere;
    - (iii) any other event or type of event, whether conducted in Western Australia or elsewhere; and
    - (iv) any contingency of, or relating to, a race, sporting event or other event or type of event;and
  - (b) totalisator and fixed odds wagering on games known as Favourite Numbers and Sweepstakes and any other game.

- (3) Despite subsection (2), RWWA must not conduct wagering on a particular race, sporting event, event, contingency or game if, in the opinion of the Commission —
- (a) it would not be in the public interest to conduct wagering on that race, sporting event, event, contingency or game; or
  - (b) the race, sporting event, event, contingency or game itself would not be in the public interest.
- (4) The Commission may reach an opinion under subsection (3) in respect of totalisator wagering or fixed odds wagering or both of them.
- (5) Wagering authorised under this section must be conducted in accordance with the regulations and the rules of wagering.

**55. Totalisator and fixed odds wagers authorised**

- (1) Despite any other law —
- (a) totalisator wagers under section 54 may be lodged with, and received by or on behalf of, RWWA for —
    - (i) inclusion in a totalisator pool conducted by RWWA; or
    - (ii) at the board's discretion, transmission of all or any of the wagers by RWWA to a combined totalisator pool scheme operated by a person approved under section 59;
- and
- (b) subject to section 17E of the *Betting Control Act 1954*, dividends may be paid by RWWA in respect of those wagers,

at offices and totalisator agencies established by RWWA under section 51.

- (2) Despite any other law —
- (a) fixed odds wagers under section 54 may be lodged with and received by or on behalf of RWWA for —
    - (i) the conduct of fixed odds betting by RWWA; or
    - (ii) at the board's discretion, transmission of all or any of the wagers by RWWA to a body established by a written law that is authorised by that written law to accept such wagers, or to a person approved under section 59;
- and
- (b) subject to section 17EA of the *Betting Control Act 1954*, winnings may be paid by RWWA in respect of those fixed odds wagers,

at offices and totalisator agencies established by RWWA under section 51.

**56. Wagering on RWWA totalisator or with RWWA is not an offence**

- (1) The mere fact of a person wagering on a totalisator through RWWA or conducted by RWWA, wagering at fixed priced odds through RWWA or wagering with RWWA under this Act —
- (a) does not make the wagering an offence, whether at common law or by any Act, either by that person or by RWWA or any of its officers or agents or any of its employees; and
  - (b) is not a ground for any office or totalisator agency of RWWA or any part of the office or agency being deemed or declared, whether at common law or by any Act, to be or to be used as a common betting house or common gaming house, or to be a common nuisance or contrary to law.
- (2) A person must not be prosecuted or convicted, or be liable to prosecution or conviction, or subject to penal consequence

under any written law by reason only of anything done by that person under and in accordance with this Part.

**57. RWWA not precluded from not accepting, or from refunding, wagers**

Nothing in this Part is to be construed as precluding —

- (a) the board from determining that RWWA will not accept wagers at all or any of its totalisator agencies on —
  - (i) any race or series of races;
  - (ii) any sporting event or series of events;
  - (iii) any other event or type of event;
  - (iv) any contingency of, or relating to, a race, sporting event or other event or type of event; or
  - (v) games known as Favourite Numbers and Sweepstakes and any other game,  
on which wagers could be lawfully made by virtue of this Part; or
- (b) the refund of wagers in accordance with the rules of wagering or the regulations.

**Division 3 — Totalisator wagering**

**58. Wagers transmitted from racing club to RWWA**

- (1) If RWWA is conducting totalisator wagering on a race, a racing club may transmit any wager received by the club on that race to RWWA for inclusion in a totalisator pool conducted by RWWA.
- (2) RWWA may —
  - (a) include a wager received from a racing club in a totalisator pool operated by it; or
  - (b) further transmit a wager received from a racing club to a totalisator pool operated under a combined totalisator pool scheme.

- (3) Every wager transmitted to RWWA by a racing club must be received and dealt with by RWWA on behalf of the racing club in accordance with the rules of wagering or the regulations.

**59. Combined totalisator pool schemes**

- (1) In this section —  
*approved* means approved by the Minister on the recommendation of the Commission.
- (2) Subject to subsection (3), RWWA may participate in a combined totalisator pool scheme with any other approved person in the State or elsewhere.
- (3) RWWA may only participate in a combined totalisator pool scheme with a person under an approved contractual arrangement.
- (4) RWWA may, when participating in a combined totalisator pool scheme and despite any provision of the rules of wagering or the regulations —
- (a) adopt and operate under any rules pertaining to the operation or administration of that scheme; or
  - (b) at the discretion of the board, make other arrangements for the administration of that scheme.
- (5) In subsection (4) a reference to rules or arrangements includes a reference to rules or arrangements relating to commission deductions and the payment of dividends.
- (6) RWWA must ensure that a copy of any rules adopted or arrangement made under subsection (4), and any subsequent amendment to those rules or that arrangement, is —
- (a) delivered to the Commission;
  - (b) made available at RWWA's head office for perusal on demand; and
  - (c) included in a notice published in the *Gazette* for public information.

- (7) A racing club must pay to RWWA any charges imposed by the operator of a combined totalisator pool scheme on RWWA in respect of wagers from the racing club transmitted by RWWA to a totalisator pool operated under a combined totalisator pool scheme.

*[Section 59 amended by No. 29 of 2009 s. 24.]*

**60. Payment of refunds and dividends by RWWA**

- (1) All moneys payable by way of dividends or refunds in respect of any wager must be paid by RWWA —
- (a) if the wager is placed by RWWA in a totalisator pool conducted and operated by RWWA, in accordance with the regulations or rules of wagering; and
  - (b) if the wager is placed by RWWA in a totalisator pool operated under a combined totalisator pool scheme, in accordance with the rules adopted under section 59 or other arrangements made under that section.
- (2) The moneys payable as a dividend from a particular pool must be calculated using the assumption that —
- (a) any wager included in the pool is validly made; and
  - (b) the result of any race, sporting event, other event, contingency or game once declared, is beyond dispute for the purposes of dividend calculation and payment.
- (3) Any fractional part of 5c which, in accordance with the rules of wagering or the regulations, is not paid by way of dividend forms part of the funds of RWWA.
- (4) The dividend or refund may be claimed at any racecourse where RWWA conducts wagering or at any office or agency of RWWA.

### **Division 4 — Fixed odds wagering**

#### **61. Fixed odds wagering arrangements with other persons**

- (1) In this section —  
*approved* means approved by the Minister on the recommendation of the Commission.
- (2) RWWA may provide a jointly operated fixed odds wagering system with any other approved person in the State or elsewhere for the purpose of fixed odds wagering as set out in this section.
- (3) RWWA may only provide a jointly operated fixed odds wagering system under subsection (2) with a person under an approved contractual arrangement.
- (4) RWWA may, when providing a jointly operated fixed odds wagering system under subsection (2) and despite any provision of the rules of wagering or the regulations —
  - (a) adopt and operate under any rules pertaining to the operation or administration of that joint system; or
  - (b) at the discretion of the board, make other arrangements for the operation or administration of that joint system.
- (5) In subsection (4) a reference to rules or arrangements includes a reference to rules or arrangements relating to the setting of odds and, subject to section 17EA of the *Betting Control Act 1954*, the payment of dividends.
- (6) RWWA must ensure that a copy of any rules adopted or arrangement made under subsection (4), and any subsequent amendment to those rules or that arrangement, is —
  - (a) delivered to the Commission;
  - (b) made available at RWWA's head office for perusal on demand; and
  - (c) included in a notice published in the *Gazette* for public information.

- (7) If RWWA is providing a jointly operated fixed odds wagering system on a race, a racing club may transmit any fixed odds wager received by the club on that race to RWWA for inclusion in the jointly operated fixed odds wagering system.
- (8) A racing club must pay to RWWA any charges imposed by the operator of a jointly fixed odds wagering system in respect of wagers from the racing club transmitted by RWWA to the jointly operated fixed odds wagering system.

*[Section 61 amended by No. 29 of 2009 s. 25.]*

**62. Payment of fixed odds winning by RWWA**

All winnings payable in respect of any fixed odd wager referred to in this Part must be paid by RWWA to persons entitled to the winnings in accordance with the fixed odds offered at the time the wager was accepted.

**Division 5 — Miscellaneous**

**63. Provisions relating to wagers through RWWA**

- (1) RWWA, or any of its officers, agents or employees or any employee of an agent of RWWA must not accept a wager unless the wager is made —
  - (a) at an office of RWWA or a totalisator agency; or
  - (b) by letter sent through the post or by telephone or electronic communication received at an office of RWWA or a totalisator agency,

in accordance with the provisions of this Act.

- (2) RWWA, or any of its officers, agents or employees or any employee of an agent of RWWA must not accept a wager that is made at an office of RWWA or totalisator agency unless —
  - (a) the person making the wager has established with RWWA in accordance with this Act, a wagering account



- that has a balance sufficient to pay the amount of the wager and the wager is charged against that account; or
- (b) the wager is made —
- (i) by the deposit of the amount of the wager in cash;
  - (ii) by the transfer of the amount of the wager using a prescribed method of payment or funds transfer that does not involve the provision of credit by RWWA; or
  - (iii) by cheque in prescribed circumstances.
- (3) RWWA, or any of its officers, agents or employees or any employee of an agent of RWWA must not accept any wager that is made by letter, telephone message or electronic communication unless —
- (a) the person making the wager has established with RWWA in accordance with this Act, a wagering account that has a balance sufficient to pay the amount of the wager and the wager is charged against that account; or
  - (b) the amount of the wager is forwarded through the post with the letter, or payment of the amount is arranged by telephone or electronic communication in accordance with this Act.

**64. Wagering accounts**

- (1) A wagering account may be established with RWWA for any amount and may be maintained by the payments of further moneys or the credit of winnings to that account.
- (2) RWWA may, as a condition of maintaining a wagering account with RWWA —
  - (a) require the person who has established the wagering account to pay management fees determined by RWWA in respect of that account; and

- (b) deduct from the wagering account the management fees and any expenses not covered by the management fees that are incurred in maintaining the account.

**65. Minimum amount of a wager**

- (1) The minimum amount of any wager that may be made under this Act is the amount prescribed.
- (2) Different amounts may be prescribed in respect of different types of wagers.

## **Part 6 — Accountability**

### **Division 1 — Strategic development plans**

#### **66. Draft strategic development plan to be submitted to Minister**

- (1) The board must in each year prepare, and submit to the Minister for the Minister's agreement, a draft strategic development plan for RWWA and any subsidiary.
- (2) The Minister may from time to time, with the concurrence of the Treasurer, by written notice to the board —
  - (a) fix a day in each year by which a draft strategic development plan is to be submitted under subsection (1); or
  - (b) cancel a notice given under paragraph (a).
- (3) Each draft strategic development plan is to be submitted not later than —
  - (a) the day fixed under subsection (2); or
  - (b) if there is for the time being no day so fixed — 3 months before the start of the next financial year.

*[Section 66 amended by No. 77 of 2006 s. 13.]*

#### **67. Period to which strategic development plan relates**

A strategic development plan is to cover a forecast period of 5 years or a lesser period agreed with the Minister.

#### **68. Matters to be included in strategic development plan**

- (1) A strategic development plan must set out economic and financial objectives and operational targets and how those objectives and targets will be achieved.

- (2) The matters that are to be considered in the preparation of a strategic development plan include —
- (a) competitive strategies, pricing of products, productivity levels, financial requirements, capital expenditure and personnel requirements;
  - (b) the proportions in which funds will be distributed under sections 105(5) and 106(2) to the following classes of racing clubs:
    - (i) thoroughbred racing clubs, harness racing clubs and greyhound racing clubs; and
    - (ii) racing clubs that are in the metropolitan region and racing clubs that are not in the metropolitan region;
- and
- (c) such other matters that the Minister and the board agree should be considered.
- (3) A strategic development plan must set out the proportions in which funds will be distributed under section 107A(2).

*[Section 68 amended by No. 38 of 2005 s. 15; No. 29 of 2009 s. 26.]*

**69. Strategic development plan to be agreed if possible**

The board and the Minister must try to reach agreement on a draft strategic development plan as soon as possible, and in any event not later than one month before the start of the next financial year.

**70. Minister's powers in relation to draft strategic development plan**

- (1) The Minister may return a draft strategic development plan to the board and request it to —
- (a) consider or further consider any matter and deal with the matter in the draft plan; and

- (b) revise the draft plan in the light of its consideration or further consideration.
- (2) The board must comply with the request as soon as is practicable.
- (3) If the board and the Minister have not reached agreement on a draft strategic development plan by one month before the start of the next financial year, the Minister may, by written notice, direct the board —
  - (a) to take specified steps in relation to the draft plan; or
  - (b) to make specified modifications to the draft plan.
- (4) The board must comply with a direction under subsection (3) as soon as is practicable.
- (5) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 117.

**71. Strategic development plan pending agreement**

- (1) If the board and the Minister have not agreed to a draft strategic development plan before the start of a financial year, the latest draft plan is to be the strategic development plan for RWWA and any subsidiary until a draft strategic development plan is agreed to under section 72.

- (2) In subsection (1) —

*latest draft plan* means the draft strategic development plan submitted, or last submitted, by the board to the Minister before the start of the financial year with any modifications made by the board, whether before or after that time, at the direction of the Minister.

**72. Minister's agreement to draft strategic development plan**

When the board and the Minister reach agreement on a draft strategic development plan, it becomes the strategic

development plan for the relevant financial year or the remainder of the year, as the case may be.

**73. Modifications of strategic development plan**

- (1) A strategic development plan may be modified by the board with the agreement of the Minister.
- (2) The Minister may, by written notice, direct the board to modify a strategic development plan and the board must comply with any such direction.
- (3) Before giving a direction to the board under subsection (2) the Minister must consult with the board and take its views into account.
- (4) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 117.

**74. Concurrence of Treasurer**

The Minister is not to —

- (a) agree to a strategic development plan under section 72;  
or
- (b) agree to or direct any modification of a strategic development plan under section 73,

except with the Treasurer's concurrence.

**Division 2 — Statement of corporate intent**

**75. Statement of corporate intent to be submitted to Minister**

- (1) The board must in each year prepare and submit to the Minister a statement of corporate intent for RWWA and any subsidiary.
- (2) Each statement of corporate intent is to be submitted not later than 14 days after agreement has been reached under section 72 on a strategic development plan that relates to the financial year to be covered by the statement of corporate intent.

**76. Period to which statement of corporate intent relates**

A statement of corporate intent is to cover a financial year.

**77. Matters to be included in statement of corporate intent**

- (1) A statement of corporate intent must be consistent with the strategic development plan under Division 1 for RWWA and any subsidiary.
- (2) The statement of corporate intent for RWWA and any subsidiary must set out —
  - (a) an outline of objectives; and
  - (b) an outline of main undertakings during the relevant financial year; and
  - (c) the proportions in which funds will be distributed under sections 105(5) and 106(2) to the following classes of racing clubs:
    - (i) thoroughbred racing clubs, harness racing clubs and greyhound racing clubs; and
    - (ii) racing clubs that are in the metropolitan region and racing clubs that are not in the metropolitan region; and
  - (da) the proportions in which funds will be distributed under section 107A(2); and
  - (d) an outline of the nature and scope of the functions proposed to be performed during the relevant financial year; and
  - (e) the performance targets and other measures by which performances may be judged in relation to objectives for the relevant financial year; and
  - (f) the accounting policies that apply to the preparation of accounts; and
  - (g) the type of information to be given to the Minister, including information to be given in the annual report; and

(h) such other matters as the board thinks fit.

- (3) The Minister may exempt RWWA from including any matter, or any aspect of a matter, mentioned in subsection (2) in the statement of corporate intent.

*[Section 77 amended by No. 38 of 2005 s. 15; No. 29 of 2009 s. 27.]*

**78. Minister may request revision of statement of corporate intent**

- (1) The Minister may request the board to —
- (a) consider or further consider any matter in the statement of corporate intent; and
  - (b) revise the statement of corporate intent in the light of its consideration or further consideration.
- (2) The board must comply with subsection (1)(a) as soon as is practicable.

**79. Statement of corporate intent laid before Parliament**

- (1) The Minister must within 14 days after receiving a statement of corporate intent under section 75 cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 117.
- (2) The board may request the Minister to delete from the copy of a statement of corporate intent that is to be laid before Parliament a matter that is of a commercially sensitive nature, and the Minister may, despite subsection (1), comply with the request.
- (3) Any copy of a statement of corporate intent to which subsection (2) applies must contain a statement detailing the reasons for the deletion at the place in the document where the information deleted would otherwise appear and be accompanied by an opinion from the Auditor General stating whether or not the information deleted is commercially sensitive.



**80. Modifications of statement of corporate intent**

A statement of corporate intent may be modified by the board.

**Division 3 — Directions, consultation and provision  
of information**

**81. Directions to RWWA**

Except as provided by this Act or any other written law, RWWA is not required to comply with any direction or administrative request given or made by or on behalf of the Government.

**82. Consultation**

- (1) The board of RWWA, and the Minister, at the request of either, are to consult together, either personally or through appropriate representatives, in relation to any aspect of the operations of RWWA or a subsidiary.
- (2) The board of RWWA is to establish procedures for consulting with prescribed racing bodies, and other prescribed bodies that have an interest in the racing industry, in relation to prescribed operations of RWWA or a subsidiary.

**83. Minister to have access to information**

- (1) The Minister is entitled —
  - (a) to have information in the possession of RWWA and any subsidiary; and
  - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
  - (a) request the CEO or the board to furnish information to the Minister;
  - (b) request the CEO or the board to give the Minister access to information;

- (c) for the purposes of paragraph (b) make use of the staff of RWWA and any subsidiary to obtain the information and furnish it to the Minister.
- (3) The CEO or the board is to —
  - (a) comply with a request made under subsection (2); and
  - (b) make staff and facilities available to the Minister for the purposes of subsection (2)(c).
- (4) Where the CEO or the board furnishes or gives access to information to the Minister, the Minister is to be advised whether or not in the opinion of the CEO or the board the public disclosure of the information would adversely affect the commercial interests of RWWA or any subsidiary or of any other person.
- (5) In this section —
  - document* includes any tape, disk or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;
  - information* means information specified, or of a description specified, by the Minister that relates to the functions of RWWA.

**84. Minister to be kept informed**

RWWA must —

- (a) keep the Minister reasonably informed of the operations, financial performance and financial position of RWWA and its subsidiaries, including the assets and liabilities, profits and losses and prospects of RWWA and its subsidiaries;
- (b) give the Minister reports and information that the Minister requires for the making of informed assessments of matters mentioned in paragraph (a); and

- (c) if matters arise that in the opinion of the board of RWWA may prevent, or significantly affect, achievement of RWWA's —
  - (i) objectives outlined in its statement of corporate intent; or
  - (ii) targets under its strategic development plan,promptly inform the Minister of the matters and its opinion in relation to them.

**85. Notice of financial difficulty**

- (1) The board of RWWA must notify the Minister if the board forms the opinion that RWWA or a subsidiary is unable to, or will be unlikely to be able to, satisfy any financial obligation, of RWWA or the subsidiary from the financial resources available to or likely to be available to RWWA or the subsidiary at the time the financial obligation is due.
- (2) The notice must —
  - (a) be in writing;
  - (b) provide the reasons for the board's opinion; and
  - (c) provide such other information as the board considers relevant.

**86. RWWA records**

- (1) All records relating to the accounts and management of RWWA must, subject to subsection (3), be kept by RWWA in a place approved by the Commission.
- (2) The Commission, on giving written notice, must be given the access and facilities necessary, and may exercise in respect of those records, the powers conferred by sections 26 and 27 of the *Gaming and Wagering Commission Act 1987* in relation to its functions under this Act or any other Act.

- (3) The Commission may by written notice —
- (a) exempt RWWA from compliance with subsection (1) to such extent, or in respect of such records, as may be specified in that notice; or
  - (b) consent, generally or in a particular case, to records otherwise required to be kept in a place approved by the Commission being removed temporarily.
- (4) Subject to any other law relating to the retention or destruction of those records, all records to which subsection (1) applies must be retained in the possession or subject to the control of RWWA for a period of 7 years after the completion of the transactions to which they related unless the Commission, by written notice, otherwise approves —
- (a) the retention of the records in an alternative form or manner; or
  - (b) the destruction of any records, the retention of which the Commission does not consider to be essential.

*[Section 86 amended by No. 35 of 2003 s. 174(2).]*

#### **Division 4 — Protection from liability**

##### **87. Protection for disclosure**

RWWA, a subsidiary of RWWA or a person performing functions under this Act is not liable in respect of any claim arising as a consequence of the disclosure of information or documents in accordance with this Act.

## Part 7 — Financial provisions

### Division 1 — General

#### 88. Bank account

(1) In this section —

*account* means —

- (a) an agency special purpose account established under section 16 of the *Financial Management Act 2006*; or
- (b) an account held, with the approval of the Treasurer, at a bank as defined in section 3 of that Act.

(2) RWWA is to maintain one or more accounts.

(3) Money received by RWWA is to be credited to, and expenditure of RWWA is to be paid from, an account maintained by it.

*[Section 88 amended by No. 77 of 2006 s. 17.]*

#### 89. Investment

Funds of RWWA that are in an account described in paragraph (b) of the definition of *account* in section 88(1)(b) and are not being used for the performance of RWWA's functions may be invested in such investments as the board determines.

*[Section 89 amended by No. 28 of 2006 s. 405.]*

#### 90. Reserve accounts

For the purpose of establishing reserves, RWWA may, subject to the *Financial Management Act 2006*, open and operate separate accounts under such headings as it thinks fit.

*[Section 90 amended by No. 77 of 2006 s. 17.]*

**91. Payment of outgoings and expenses**

- (1) The outgoings and expenses of any of RWWA's operations may be paid from revenue arising from any of its operations.
- (2) Any revenue from RWWA's operations may be used for any of the functions of RWWA.

**Division 2 — Loans and grants**

**92. RWWA may lend or grant money to racing clubs and allied bodies**

- (1) RWWA may lend or grant moneys to any racing club or allied body —
  - (a) to enable or assist the racing club or allied body to —
    - (i) provide new facilities or improve existing facilities on a racecourse or training track;
    - (ii) establish a new racecourse or training track;
    - (iii) discharge or reduce an existing loan previously obtained by the racing club or allied body;
    - (iv) conduct its affairs during a period of financial difficulty;
    - (v) carry out works to improve safety at a racecourse or training track; or
    - (vi) comply with a direction given by RWWA under section 43;
  - or
  - (b) for any other purpose approved by the board.
- (2) A loan or grant under this section may be made in one sum or in progress payments from time to time at the discretion of RWWA.
- (3) A loan or grant may be made for part or all of an amount requested by a racing club or allied body.

**93. Terms and conditions of loan**

- (1) A loan or grant made to a racing club or allied body under section 92 may be made subject to such terms and conditions as the board thinks fit.
- (2) Without limiting subsection (1), terms and conditions may be imposed on the loan or grant requiring it to be repaid if —
  - (a) property of the racing club or allied body specified by the board is disposed of; or
  - (b) the racing club or allied body, in the opinion of the board, ceases to carry on the activity or function for which the loan or grant was made.
- (3) The terms and conditions of a loan, including interest to be paid may be less onerous than those that might reasonably apply to such a loan made commercially.

**94. Failure to comply with terms and conditions**

- (1) If a racing club or an allied body —
  - (a) fails to comply with the terms and conditions subject to which a loan or grant has been made under section 92; or
  - (b) fails to comply with a direction with respect to which a loan or grant has been made under section 92(1)(a)(vi),  
RWWA may, by written notice given to the racing club or allied body —
    - (c) vary the terms and conditions to which the loan or grant is subject; or
    - (d) demand that all or part of the amount granted or all or part of the outstanding balance of the amount of the loan (including interest and other charges) be repaid immediately.
- (2) Any sum demanded under subsection (1)(d) is recoverable in a court of competent jurisdiction as a debt due to RWWA.

**95. Application and security for loan or grant**

- (1) RWWA may require a racing club or an allied body making application for a loan or grant —
  - (a) to complete such form or forms of application as RWWA specifies;
  - (b) to support the application with such certificates, plans, statements or quotations as RWWA specifies; and
  - (c) to make a statutory declaration as to the accuracy of any details shown in the application or documents supporting the application.
- (2) Before making a loan to a racing club or an allied body, RWWA may require the racing club to execute such form of security to secure the due repayment of the loan and interest accruing on the loan as the board considers appropriate in all the circumstances.

**96. Club or allied body may make representations to board**

Before RWWA —

- (a) makes, or refuses to make, a loan or grant to a racing club or an allied body under section 92; or
- (b) gives a notice to a racing club or an allied body under section 94(1),

RWWA must give the racing club or allied body a reasonable opportunity to make representations in writing to RWWA with respect to the matter.

**Division 3 — Borrowing**

**97. Borrowing**

- (1) RWWA may, subject to section 98 —
  - (a) borrow or re-borrow moneys;
  - (b) obtain credit; or



- (c) otherwise arrange for financial accommodation to be extended to RWWA.
- (2) RWWA is to keep such registers for the purposes of this section as may be prescribed.

**98. Borrowing restrictions**

- (1) The Minister, with the Treasurer's concurrence and in accordance with subsections (3), (4) and (5), may, by notice to RWWA, impose monetary limits on the exercise of the power conferred by section 97(1)(a).
- (2) RWWA must comply with any limit for the time being in force in relation to it and, if no limit is for the time being in force, must not exercise the power conferred by section 97(1)(a) except with, and in accordance with, the Treasurer's approval.
- (3) The monetary limit is to be determined for the exercise of that power in a financial year specified by the Minister and may relate to —
  - (a) the total amount that can be outstanding at any one time during that year as a result of the exercise of that power; or
  - (b) the total liabilities that can be incurred during that year as a result of the exercise of that power.
- (4) A limit for the time being in force may be varied for a subsequent financial year.
- (5) A limit for the time being in force continues to apply until it is so varied.
- (6) A liability of RWWA is not unenforceable or in any way affected by a failure of RWWA to comply with this section.
- (7) No person dealing with RWWA is bound or concerned to enquire whether RWWA has complied or is complying with this section.

**99. Hedging transactions**

RWWA may, for the purpose of managing, limiting or reducing perceived risks or anticipated costs in connection with the exercise of any power conferred by section 97 —

- (a) enter into an agreement or arrangement to effect any of the following transactions —
  - (i) a foreign exchange transaction;
  - (ii) a forward foreign exchange transaction;
  - (iii) a currency swap;
  - (iv) a forward currency swap;
  - (v) a foreign currency cap, a foreign currency collar or a foreign currency floor;
  - (vi) a transaction of such other class as is approved in writing by the Minister, with the Treasurer's concurrence, as a class of transaction to which this paragraph applies;

or

- (b) enter into an agreement or arrangement to effect any transaction which is a combination of —
  - (i) 2 or more transactions permitted under paragraph (a); or
  - (ii) one or more transactions permitted under paragraph (a) and one or more transactions permitted under section 97.

**Division 4 — Guarantees**

**100. Guarantees**

- (1) The Treasurer, with the Minister's concurrence may, in the name and on behalf of the State, guarantee the performance by RWWA, in the State or elsewhere, of any financial obligation of RWWA arising under section 97.

- (2) A guarantee is to be in such form and subject to such terms and conditions as the Treasurer determines.
- (3) The due payment of moneys payable by the Treasurer under a guarantee —
  - (a) is by this subsection guaranteed by the State; and
  - (b) is to be made by the Treasurer and charged to the Consolidated Account, and this subsection appropriates that Account accordingly.
- (4) The Treasurer is to cause any amounts received or recovered from RWWA or otherwise in respect of any payment made by the Treasurer under a guarantee to be credited to the Consolidated Account.

*[Section 100 amended by No. 77 of 2006 s. 4 and 5(1).]*

**101. Charges for guarantee**

- (1) The Treasurer may, after consultation with the board, fix charges to be paid by RWWA to the Treasurer for the benefit of the Consolidated Account in respect of a guarantee given under section 100.
- (2) Payments by RWWA to the Treasurer in respect of any such charges are required to be made at such times, and in such instalments, as the Treasurer determines.

*[Section 101 amended by No. 77 of 2006 s. 4.]*

**Division 5 — Financial provisions in relation to wagering**

**102. RWWA wagering tax**

- (1) In this section —

***off-course racing wager*** means a wager —

  - (a) made on a horse or greyhound race; and
  - (b) included in an off-course totalisator,that is made through or with RWWA under this Act.

- (2) RWWA must, in accordance with this Act —
- (a) make at such times and in such manner as may be prescribed true and full returns of —
    - (i) all amounts of money received by it in respect of wagers made; and
    - (ii) without limiting subparagraph (i), all amounts of money received by it in respect of off-course racing wagers and all amounts of money paid by it by way of winnings in respect of off-course racing wagers;
- and
- (b) pay tax, at the rates imposed by and in accordance with the *Racing and Wagering Western Australia Tax Act 2003* sections 4 and 5, on moneys received by it in respect of wagers made.

*[Section 102 inserted by No. 2 of 2007 s. 4.]*

**103. Supplementary pool schemes**

RWWA may supplement the amount in any totalisator pool using moneys set aside for that purpose.

**104. Unclaimed dividends, fixed odds winnings and refunds**

- (1) If moneys payable by way of dividends, fixed odds winnings or refunds by RWWA in respect of wagers made on sporting events are unclaimed by any person entitled to the moneys for 7 months after the moneys become payable, the moneys must be paid by RWWA into the Sports Wagering Account under section 110A of the *Gaming and Wagering Commission Act 1987*.
  - (2) Upon payment of moneys under subsection (1) into the Sports Wagering Account —
    - (a) the moneys become part of the funds of that Account;
- and

- (b) the person who was entitled to claim the moneys has no enforceable claim in respect of the moneys.
- (3) The moneys must be paid under subsection (1) not later than the last operating day of the month following the period of 7 months referred to in that subsection.
- (4) If any other moneys payable by way of dividends, fixed odds winnings or refunds by RWWA in respect of wagers are unclaimed for 7 months by any person entitled to the moneys, on the expiration of that 7 months —
  - (a) the moneys become part of the funds of RWWA; and
  - (b) the person who was entitled to claim the moneys has no enforceable claim in respect of the moneys.
- (5) Subsections (1) and (4) do not apply to moneys which are credited by RWWA to a wagering account established with it under section 64.

*[Section 104 amended by No. 35 of 2003 s. 174(2).]*

**105. Allocation of RWWA's funds before 1 August 2006**

- (1) For each racing year commencing on or after 1 August 2003 until 31 July 2006, RWWA, after paying —
  - (a) to any racing club any amounts payable in respect of wagers received by the racing club and transmitted to RWWA for inclusion in a totalisator pool conducted by RWWA or a combined totalisator pool scheme;
  - (b) all moneys payable by way of dividends, winnings and refunds in respect of wagers made through or with RWWA;
  - (c) any amount required to be paid under section 53 to the Commission;
  - (d) the respective amounts, required for the time being, to a reserve account opened under section 90;
  - (e) any grants or loans payable under section 92;

- (f) the amount of wagering tax payable under section 102;
- (g) any amount required to be paid under section 104 or 107 to the Sports Wagering Account;
- (h) any amount required to be paid under section 24 of the *Racing Penalties (Appeals) Act 1990*; and
- (i) all other outgoings and expenses incurred by RWWA under this Act,

must pay or credit the balance of its funds in accordance with this section.

- (2) The balance of the funds, or \$50 million, whichever is the lesser amount, is to be paid or credited by RWWA as follows —
  - (a) 55.26% to thoroughbred racing clubs registered with RWWA;
  - (b) 29.76% to harness racing clubs registered with RWWA;
  - (c) 14.98% to WAGRA.
- (3) Of the funds referred to in subsection (2)(a) —
  - (a) at least 28.09% is to be paid or credited by RWWA to thoroughbred racing clubs conducting races outside the metropolitan region in such amounts, or in accordance with such criteria, as are determined by the Western Australian Provincial Thoroughbred Racing Association and the Country Racing Association; and
  - (b) the remainder is to be paid to WATC.
- (4) Of the funds referred to in subsection (2)(b) —
  - (a) at least 20% is to be paid or credited to harness racing clubs conducting races outside the metropolitan region so that each of those clubs receives such part of that percentage as bears to the whole of that percentage the ratio which the amount of stakes paid by the club during the preceding racing year bears to the total amount of stakes paid by all of those clubs during that year;

- (b) 17.5% of the funds remaining after payment under paragraph (a) is to be paid to the Fremantle Trotting Club; and
  - (c) the remainder is to be paid to WATA.
- (5) Any funds of RWWA remaining after the payment or credit required by subsection (2) must be paid or credited by RWWA to thoroughbred racing clubs registered with RWWA, harness racing clubs registered with RWWA and WAGRA in such amounts, or in accordance with such criteria, as are determined by RWWA.
- (6) The funds may be paid or credited under subsections (2) and (5) by periodical or other payment or credit in the manner and at the times RWWA determines.

*[Section 105 amended by No. 38 of 2005 s. 15; No. 2 of 2007 s. 5.]*

**106. Allocation of RWWA's funds after 31 July 2006**

- (1) For each racing year commencing on or after 1 August 2006, RWWA, after paying —
- (a) to any racing club any amounts payable in respect of wagers received by the racing club and transmitted to RWWA for inclusion in a totalisator pool conducted by RWWA or a combined totalisator pool scheme;
  - (b) all moneys payable by way of dividends, winnings and refunds in respect of wagers made through or with RWWA;
  - (c) any amount required to be paid under section 53 to the Commission;
  - (d) the respective amounts, required for the time being, to a reserve account opened under section 90;
  - (e) any grants or loans payable to racing clubs under section 92;
  - (f) the amount of wagering tax payable under section 102;

- (g) any amount required to be paid under section 104 or 107 to the Sports Wagering Account;
- (h) any amount required to be paid under section 24 of the *Racing Penalties (Appeals) Act 1990*; and
- (i) all other outgoings and expenses incurred by RWWA under this Act,

must pay or credit the balance of its funds in accordance with this section.

- (2) The balance of the funds is to be paid or credited by RWWA, in such amounts as it determines, to —
  - (a) thoroughbred racing clubs registered with RWWA;
  - (b) harness racing clubs registered with RWWA; and
  - (c) greyhound racing clubs registered with RWWA.
- (3) RWWA is to use its best endeavours to ensure that the amount paid or credited to any racing club under subsection (2) in any racing year is not less than the revenue, after taxes and expenses are deducted, generated from wagering conducted by RWWA on races conducted by that racing club during that year.
- (4) The funds may be paid or credited by periodical or other payment in such manner and at such times as RWWA determines.

*[Section 106 amended by No. 2 of 2007 s. 5.]*

**107A. Distribution of funds from the racing bets levy**

- (1) If RWWA receives moneys from the Commission under the *Gaming and Wagering Commission Act 1987* section 110B(5), RWWA is to credit those moneys to an account (the ***racing bets levy account***) maintained under section 88 for the sole purpose of dealing with those moneys under this section.
- (2) The funds in the racing bets levy account are to be paid or credited by RWWA, in such amounts as it determines, to —
  - (a) thoroughbred racing clubs registered with RWWA; and



- (b) harness racing clubs registered with RWWA; and
- (c) greyhound racing clubs registered with RWWA.

*[Section 107A inserted by No. 29 of 2009 s. 28.]*

**107. Allocation of RWWA's funds in respect of sporting events**

- (1) RWWA must pay from the moneys received by RWWA in respect of totalisator and fixed odds wagering on sporting events —
  - (a) all moneys payable by way of dividends, winnings and refunds in respect of wagers on sporting events made through or with RWWA; and
  - (b) the amount of wagering tax payable under section 102 in respect of wagers made on sporting events,

and pay 25%, or such other percentage as may be prescribed, of the balance to the Sports Wagering Account under section 110A of the *Gaming and Wagering Commission Act 1987*.

- (2) Any funds remaining after the payments referred to in subsection (1) must be dealt with under section 105 or 106, as the case requires.

*[Section 107 amended by No. 35 of 2003 s. 174(2); No. 2 of 2007 s. 5.]*

**Division 6 — General**

**108. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

- (1) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of RWWA and its operations.
- (2) Despite the provisions of the *Financial Management Act 2006*, the financial year of RWWA ends on 31 July.

*[Section 108 amended by No. 77 of 2006 s. 17.]*

## **Part 8 — Miscellaneous**

### **Division 1 — Protection of people dealing with RWWA**

#### **109. People dealing with RWWA may make assumptions**

- (1) A person having dealings with RWWA is entitled to make the assumptions mentioned in section 111.
- (2) In any proceedings in relation to the dealings, any assertion by RWWA that the matters that the person is entitled to assume were not correct must be disregarded.

#### **110. Third parties may make assumptions**

- (1) A person (*the third party*) having dealings with a person (*the new owner*) who has acquired, or purports to have acquired, title to property from RWWA (whether directly or indirectly) is entitled to make the assumptions mentioned in section 111.
- (2) In any proceedings in relation to the dealings, any assertion by RWWA or the new owner that the matters that the third party is entitled to assume were not correct must be disregarded.

#### **111. Things that can be assumed**

The assumptions that a person is entitled to make, because of section 109 or 110, are —

- (a) that, at all relevant times, this Act has been complied with;
- (b) that a person who is held out by RWWA to be a director, the CEO, an executive officer, a member of staff or an agent of a particular kind —
  - (i) has been properly appointed; and
  - (ii) has authority to perform the functions customarily performed by a director, the CEO, an executive officer, a member of staff or an agent of that kind, as the case may require;

- (c) that a member of staff or agent of RWWA who has authority to issue a document on behalf of RWWA has authority to warrant that the document is genuine;
  - (d) that a member of staff or agent of RWWA who has authority to issue a certified copy of a document on behalf of RWWA has authority to warrant that the copy is a true copy;
  - (e) that a document has been properly sealed by RWWA if —
    - (i) it bears what appears to be an imprint of RWWA's seal; and
    - (ii) the sealing of the document appears to comply with section 118;
- and
- (f) that the directors, CEO, members of staff and agents of RWWA have properly performed their duties to RWWA.

**112. When those things cannot be assumed**

- (1) Despite sections 109 and 110, a person is not entitled to assume a matter mentioned in section 111 if —
  - (a) the person has actual knowledge that the assumption would be incorrect; or
  - (b) because of the person's connection or relationship with RWWA, the person ought to know that the assumption would be incorrect.
- (2) If, because of subsection (1), a person is not entitled to make a particular assumption in relation to dealings with RWWA, section 109(2) does not apply to any assertion by RWWA in relation to the assumption.
- (3) If, because of subsection (1), a person is not entitled to make a particular assumption in relation to an acquisition or purported acquisition from RWWA of title to property, section 110(2)

does not apply to any assertion by RWWA or another person in relation to the assumption.

### **Division 2 — Other provisions**

#### **113. Entry and inspection of premises**

- (1) In this section —  
*authorised person* means —
  - (a) a police officer;
  - (b) a director;
  - (c) a member of staff authorised in writing by the board;
  - (d) a steward.
- (2) An inspection may be carried out under this section for any or all of the following purposes —
  - (a) to gather any information relevant to making a decision under this Act;
  - (b) to audit records required to be kept under this Act;
  - (c) to gather evidence of a suspected contravention of this Act;
  - (d) any other purpose relevant to the administration of this Act.
- (3) An authorised person may at any time enter without charge and inspect —
  - (a) premises at which racing horses or greyhounds are kept, trained or raced;
  - (b) a racecourse;
  - (c) a venue at which a sporting event on which wagering takes place is being held; or
  - (d) a totalisator, totalisator agency and other premises of RWWA.

- (4) When an authorised person exercises his or her powers of entry and inspection under subsection (3), the authorised person may do any or all of the following —
- (a) search the premises and examine anything on the premises;
  - (b) take extracts from or make copies of, or download or print out, any documents found in the course of the inspection;
  - (c) photograph or film anything on the premises;
  - (d) if anything on the premises that is relevant to the inspection cannot be conveniently removed — secure it against interference;
  - (e) require any person who is on the premises —
    - (i) to state his or her full name and address;
    - (ii) to answer (orally or in writing) questions put by the authorised person that are relevant to the investigation;
    - (iii) to give the authorised person any information in the person's possession or control that is relevant to the inspection;
    - (iv) to operate or allow the authorised person to operate equipment or facilities on the premises for inspection purposes;
    - (v) to give the authorised person any translation, code, password or other information necessary to gain access to or to interpret and understand any document or information located or obtained by the authorised person in the course of the inspection; and
    - (vi) to give other assistance that the authorised person reasonably requires to carry out the inspection.

- (5) A person who —
- (a) does not comply with a requirement under subsection (4)(e);
  - (b) gives an authorised person information that the person knows to be false or misleading in a material particular; or
  - (c) hinders, delays or obstructs an authorised person in carrying out functions under this section,
- commits an offence.  
Penalty: \$5 000.
- (6) Nothing in this section derogates from the powers of an authorised person who is a police officer.

**114. Commissioner of State Revenue may enter and inspect RWWA premises**

- (1) The Commissioner of State Revenue and persons authorised by the Commissioner of State Revenue have at all times access, without charge, to and authority to inspect totalisators, totalisator agencies and other premises of RWWA.
- (2) The Commissioner of State Revenue, for the purposes of this Act, has such further powers and may perform such further duties as may be prescribed.

**115. Miscellaneous offences**

A person who —

- (a) obstructs, impedes or interferes with the doing of, a thing required or authorised to be done under this Act; or
- (b) uses any threatening language to a person acting in the performance of a function under this Act,

commits an offence.

Penalty: \$5 000.

**116. Immunity from certain claims**

- (1) No claim lies against RWWA, a director, or an officer, employee or agent of RWWA in relation to a wager that has been accepted by or on behalf of RWWA otherwise than in accordance with a written law.
- (2) Subsection (1) does not apply to a claim made by RWWA against an agent of RWWA.

**117. Laying documents before House of Parliament that is not sitting**

- (1) If section 70(5), 73(4), 79(1) or Schedule 1 clause 8(7) requires the Minister to cause the text of a document to be laid before each House of Parliament, or dealt with under this section, within a period and —
  - (a) at the commencement of the period, a House of Parliament is not sitting; and
  - (b) the Minister is of the opinion that the House will not sit during that period,

the Minister is to transmit a copy of the text of the document to the Clerk of that House.

- (2) A copy of the text of a document transmitted to the Clerk of a House is taken to have been laid before that House.
- (3) The laying of a copy of the text of a document that is taken to have occurred under subsection (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

*[Section 117 amended by No. 8 of 2009 s. 106.]*

**118. Execution of documents by RWWA**

- (1) RWWA is to have a common seal.
- (2) A document is duly executed by RWWA if —

- (a) the common seal of RWWA is affixed to it in the presence of 2 directors or of a director and the CEO; or
  - (b) it is signed on behalf of RWWA by a person or persons referred to in subsection (4).
- (3) The common seal is not to be affixed to a document except in accordance with this section.
- (4) RWWA may, by writing under its common seal, authorise a director, the CEO, a member of staff or other agent of RWWA to execute documents on its behalf.
- (5) An authorisation under subsection (4) —
  - (a) may be given —
    - (i) either generally or in respect of a specified matter or specified matters; and
    - (ii) so as to authorise 2 or more persons to execute documents jointly;
  - and
  - (b) may be presumed by a person dealing with RWWA to continue —
    - (i) during any period for which it is conferred; or
    - (ii) if subparagraph (i) does not apply, until notice of termination of the authorisation is given to the person so dealing.
- (6) A document executed by a person under an authorisation under subsection (4) is not to be regarded as a deed unless the person executes it as a deed and is permitted to do so by the authorisation.
- (7) A document purporting to be executed in accordance with this section is to be taken to be duly executed until the contrary is shown.



**119. Contract formalities**

- (1) In so far as the formalities of making, varying or discharging a contract are concerned, a person acting under the authority of RWWA may make, vary or discharge a contract in the name of or on behalf of RWWA in the same manner as if that contract were made, varied or discharged by a natural person.
- (2) The making, variation or discharge of a contract in accordance with subsection (1) is effectual in law and binds RWWA and other parties.
- (3) Subsection (1) does not prevent RWWA from making, varying or discharging a contract under its common seal.

**120. Rules of wagering**

- (1) RWWA, with the approval of the Commission, may make rules —
  - (a) in relation to on-course wagering through totalisators on racecourses and persons licensed under the *Betting Control Act 1954*;
  - (b) prescribing the powers and duties of stewards in relation to totalisators on racecourses and persons licensed under the *Betting Control Act 1954*;
  - (c) in relation to off-course wagering;
  - (d) in relation to fixed odds wagering;
  - (e) providing for the custody of its property;
  - (f) prescribing the duties of its officers, agents and employees in relation to wagering; and
  - (g) required or permitted by this Act to be made or for such purposes as are necessary or convenient for the operation of this Act, or for carrying out the functions of RWWA, in relation to wagering.
- (2) Any rules made under this section, in relation to a totalisator on a racecourse, so far as they are applicable, apply in relation to

wagers made through RWWA on that totalisator as if the wagers were made directly into the totalisator.

- (3) To the extent that there is an inconsistency between a rule made under this section and a regulation made under this Act or the *Betting Control Act 1954*, the regulation prevails.
- (4) The rules are subsidiary legislation as defined in the *Interpretation Act 1984*.

**121. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), regulations may be made under this section in respect of —
  - (a) the licensing of RWWA key employees as defined in section 24, and the conditions and fees applicable to the licensing;
  - (b) the disciplinary actions that the Commission may take in relation to a person licensed as a RWWA key employee, which may include —
    - (i) the service of a letter of censure on the employee;
    - (ii) the imposition of a fine not exceeding \$1 000; or
    - (iii) the cancellation or suspension of the licence held by the employee,or any combination of those actions; and
  - (c) the application for, and the issue, refusal, suspension or cancellation of, licences for racecourses, race meetings, races and training and trial tracks under section 39;
  - (d) the application for, and the issue, refusal, suspension or cancellation of, the registration of a racing club under section 40;

- (e) the application for, and the issue, refusal, suspension or cancellation of, the registration of a horse or greyhound under section 41;
  - (f) the application for, and the issue, refusal, suspension or cancellation of a licence under section 42;
  - (g) the establishment of totalisator agencies and the role of the Commission under section 52;
  - (h) requirements for racing clubs which have received a loan or grant under section 92 to permit RWWA, or any director or other person authorised for the purpose by RWWA, to inspect —
    - (i) any facilities or works in respect of which such a loan or grant was made; and
    - (ii) any books of account of such a racing club.
- (3) Any regulations made under this section or the *Betting Control Act 1954*, in relation to a totalisator on a racecourse, so far as they are applicable, apply in relation to wagers made through RWWA on that totalisator as if the wagers were made directly into the totalisator.
- (4) Regulations made under this section may modify a regulation referred to in subsection (3) or a rule referred to in section 120 to such extent as is necessary to make it applicable in relation to wagers made through RWWA and transmitted to a totalisator.

## **122. Review of Act**

- (1) A review of the operation and effectiveness of this Act is to be carried out by a Joint Standing Committee of both Houses of Parliament appointed for the purposes of this section as soon as is practicable after the expiration of 5 years from its commencement and in the course of that review the Joint Standing Committee is to consider and have regard to —
- (a) the effectiveness of the operations of RWWA;
  - (b) the need for the continuation of the operations of RWWA; and

- (c) any other matters that appear to the Joint Standing Committee to be relevant to the operation and effectiveness of this Act.
- (2) The Joint Standing Committee is to prepare a report based on the review and, as soon as is practicable after the report is prepared (and in any event not more than 12 months after the expiration of the 5 year period referred to in subsection (1)), cause it to be laid before each House of Parliament.

## **Schedule 1 — Provisions about the constitution and proceedings of RWWA's board of directors**

[s. 15]

### **1. Term of office**

- (1) Subject to clause 2, a director holds office for such period, not exceeding 3 years, as is specified in the instrument appointing, nominating or selecting the director, and is eligible for reappointment, renomination or reselection.
- (2) A director's duties are not required to be performed on a full-time basis.
- (3) Despite subclause (1), if the period of office of a director expires by effluxion of time without a person having been appointed or nominated to fill the vacancy, the director continues in office until —
  - (a) a person is appointed or nominated to fill the vacancy; or
  - (b) a period of 3 months elapses after the expiry of the period of office,whichever occurs first.

### **2. Casual vacancies**

- (1) The office of a director becomes vacant if the director —
  - (a) dies;
  - (b) resigns the office by instrument in writing addressed to the Minister;
  - (c) is absent from 4 consecutive meetings of RWWA of which reasonable notice had been given to the director, except on leave granted by RWWA;
  - (d) is convicted in Western Australia of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in Western Australia of an offence that, if committed in Western Australia, would be an offence so punishable;
  - (e) is refused a licence under section 14 of this Act or has the licence revoked under section 109K(3) of the *Gaming and Wagering Commission Act 1987*;

**cl. 3**

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- (f) becomes a member of the committee of a racing club, the holder of an office on the governing body of a body declared to be an eligible body under section 12 or a person who would not be eligible to be appointed, nominated or selected as a director; or
  - (g) is removed from office under subclause (2).
- (2) The Minister may remove a director from office for incapacity, incompetence or misbehaviour.

*[Clause 2 amended by No. 35 of 2003 s. 174(2).]*

**3. Deputy chairperson**

- (1) The board is to appoint a director to be the deputy chairperson.
- (2) When the chairperson is unable to act because of sickness, absence or other cause, the deputy chairperson is to act in the chairperson's place.
- (3) Where the deputy chairperson is acting in place of the chairperson at the meeting clause 4(4) applies as if the deputy chairperson were unable to act.

**4. Alternate directors**

- (1) A person may be nominated or selected under section 8 as an alternate director for a director.
- (2) A person cannot be nominated or selected as an alternate director for more than one director.
- (3) Sections 8(1)(b), (c), (d) and (e), 10, 13 and 14 apply (with any necessary changes) in relation to alternate directors as they apply to directors.
- (4) Where a director is unable to act because of sickness, absence or other cause, the alternate director for that director may act in the director's place, and while so acting that alternate director is to be taken to be a director and entitled to remuneration under section 17.
- (5) No act or omission of an alternate director acting in place of a director under this clause may be questioned on the ground that the occasion for acting had not arisen or had ceased.

**5. Meetings**

- (1) The first meeting of the board is to be convened by the chairperson and, subject to subclause (2), subsequent meetings are to be held at such times and places as the board determines.
- (2) A special meeting of the board may at any time be convened by the chairperson or any 2 directors.
- (3) The chairperson, or the deputy chairperson acting under clause 3(2), is to preside at all meetings of the board at or in which he or she is present, or participating under clause 6.
- (4) If both the chairperson and the deputy chairperson are not present or participating, the directors present or participating are to appoint a director to preside.
- (5) At any meeting of the board —
  - (a) 5 directors constitute a quorum; and
  - (b) in the case of an equality of votes the person presiding has a casting vote in addition to a deliberative vote.

**6. Telephone and video meetings**

Despite anything in this Schedule, a communication between directors constituting a quorum under clause 5(5)(a) by telephone or audio-visual means is a valid meeting of directors, but only if each participating director is able to communicate with every other participating director instantaneously at all times while participating in the proceedings.

**7. Resolution may be passed without meeting**

- (1) If a document containing a statement to the effect that an act, matter or thing has been done, or a resolution has been passed, is sent or given to all directors and is assented to by not less than 5 directors capable of constituting a quorum under clause 5(5)(a) that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the board.

**cl. 8**

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- (2) For the purposes of subclause (1) —
- (a) the meeting is to be taken as having been held —
    - (i) if the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a director; or
    - (ii) if the directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a director;
  - (b) 2 or more separate documents in identical terms each of which is assented to by one or more directors are to be taken to constitute one document; and
  - (c) a director may signify assent to a document by signing the document or by notifying RWWA of the director's assent in person or by post, facsimile, telephone or other method of written, audio or audio-visual communication.
- (3) Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the board attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (4) Where a document is assented to in accordance with subclause (1), the document is to be taken as a minute of a meeting of the board.

**8. Voting by interested directors**

- (1) A director who has a material personal interest in a matter that is being considered by the board of RWWA —
- (a) must not vote whether at a meeting or otherwise —
    - (i) on the matter; or
    - (ii) in relation to a proposed resolution under subclause (3) in relation to the matter, whether in relation to that or a different director;
- and
- (b) must not be present while —
    - (i) the matter; or



- (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),  
is being considered at a meeting.
- (2) For the purpose of subclause (1), a director does not have an interest in a matter relating to an existing or proposed contract of insurance merely because the contract insures, or would insure, the director against a liability incurred by the director in his or her capacity as a director. This subclause does not apply if RWWA is the insurer.
- (3) Subclause (1) does not apply if the board has at any time passed a resolution that —
  - (a) specifies the director, the interest and the matter; and
  - (b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter.
- (4) Despite clause 5(5), if a director is disqualified under subclause (1) in relation to a matter, a quorum is present during the consideration of that matter if at least 4 directors are present who are entitled to vote on any motion that may be moved at the meeting in relation to that matter.
- (5) The Minister may deal with a matter in so far as a board cannot deal with it because of subclause (4).
- (6) The Minister may by writing declare that subclauses (1) and (4) do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (7) The Minister must within 14 days after a declaration under subclause (6) is made cause a copy of the declaration to be laid before each House of Parliament or to be dealt with under section 117.

**9. Minutes of meetings and resolutions**

The board is to ensure that an accurate record is kept and preserved of the proceedings at each meeting of the board and of each resolution passed under clause 7.

**cl. 10**

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**10. Leave of absence**

The board may, on such terms and conditions as it thinks fit, grant to a director leave of absence from a meeting, including the meeting at which it is intended to grant the leave.

**11. Board to determine own procedures**

Subject to this Act, the board may determine its own procedures.

## **Schedule 2 — Provisions about CEO and staff**

[s. 25]

### **Division 1 — General duties of CEO**

#### **1. Duties of CEO**

- (1) It is declared that the CEO has —
- (a) the same fiduciary relationship with RWWA; and
  - (b) the same duties to RWWA to act with loyalty and in good faith,
- as a director of a company incorporated under the Corporations Act has with and to the company.
- (2) The duties referred to in subclause (1) are enforceable by the board and not otherwise.

### **Division 2 — Particular duties stated**

#### **2. Terms used in this Division**

- (1) In this Division —
- officer* means —
- (a) the CEO; or
  - (b) an executive officer or other member of staff;
- summary conviction penalty*, in relation to a crime, has the same meaning as in section 5 of *The Criminal Code*.
- (2) A person who attempts (as defined in section 4 of *The Criminal Code*) to commit an offence against a provision of this Division is guilty of that offence.
- (3) For the CEO, the duties provided for by this Division are in addition to those in clause 1.

#### **3. Duty to act honestly**

- (1) The CEO or an executive officer of RWWA must at all times act honestly in the performance of the functions of his or her office, whether within or outside the State.

- (2) A person who contravenes subclause (1) —
- (a) with intent to deceive or defraud —
    - (i) RWWA; or
    - (ii) creditors of RWWA or of any other person;
  - or
  - (b) for any other fraudulent purpose,

is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

- (3) If subclause (2) does not apply, a person who contravenes subclause (1) is liable to a fine of \$5 000.

**4. Duty to exercise reasonable care and diligence**

The CEO or an executive officer of RWWA must at all times exercise the degree of care and diligence in the performance of the functions of his or her office, whether within or outside the State, that a reasonable person in that position would reasonably be expected to exercise in RWWA's circumstances.

Penalty: \$5 000.

**5. Duty not to make improper use of information**

- (1) An officer or a former officer of RWWA must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as such to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to RWWA.

- (2) A person who contravenes subclause (1) is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

**6. Duty not to make improper use of position**

- (1) An officer of RWWA must not, whether within or outside the State, make improper use of his or her position as such to gain, directly or

indirectly, an advantage for himself or herself or for any other person or to cause detriment to RWWA.

- (2) A person who contravenes subclause (1) is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

### **Division 3 — Compensation**

#### **7. Payment of compensation may be ordered**

- (1) Where —

- (a) a person is convicted of an offence for a contravention of clause 3, 4, 5 or 6; and
- (b) the court is satisfied that RWWA has suffered loss or damage as a result of the act or omission that constituted the offence,

the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay compensation to RWWA of such amount as the court specifies.

- (2) Any such order may be enforced as if it were a judgment of the court.

#### **8. Civil proceedings for recovery**

Where a person contravenes clause 3, 4, 5 or 6, RWWA may, whether or not the person has been convicted of an offence in respect of that contravention, recover from the person as a debt due to RWWA by action in any court of competent jurisdiction —

- (a) if that person or any other person made a profit as a result of the contravention, an amount equal to that profit; and
- (b) if RWWA has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.

### **Division 4 — Relief from liability**

#### **9. Relief from liability**

For the purposes of clause 1, 7 or 8, if it appears to the court that a person —

- (a) is, or may be, liable under that clause;

- (b) has acted honestly; and
- (c) ought fairly to be excused having regard to all the circumstances of the case, including those connected with the person's appointment,

the court may relieve the person either wholly or partly from liability on such terms as the court thinks fit.

**10. Application for relief**

- (1) Where a person has reason to believe that any claim will or might be made against him or her under clause 1, 7 or 8, the person may apply to the Supreme Court for relief.
- (2) On an application under subclause (1) the Supreme Court has the same power to relieve the person as it would have had under clause 9 if it had been a court exercising jurisdiction under clause 1, 7 or 8.

**11. Case may be withdrawn from jury**

Where a case to which clause 9 applies is being tried by a judge with a jury, the judge after hearing the evidence may, if he or she is satisfied that the person ought under that clause to be relieved either wholly or partly from liability sought to be enforced against the person —

- (a) withdraw the case in whole or in part from the jury; and
- (b) direct judgment to be entered for the person on such terms as to costs or otherwise as the judge thinks proper.

**12. Compliance with directions**

- (1) A person does not contravene clause 1, 3 or 4 by doing or omitting to do anything in compliance with a direction received in the course of the person's employment.
- (2) Subclause (1) does not extend to the manner in which a thing is done or omitted if it is done or omitted in a manner that is contrary to clause 3 or 4 and the direction did not require that it be done in that manner.

**Division 5 — Restrictions on indemnities and exemptions**

**13. Indemnification and exemption of CEO and executive officers**

- (1) RWWA or a subsidiary must not exempt a person (whether directly or through an interposed entity) from a liability to RWWA incurred as the CEO or an executive officer of RWWA.
- (2) RWWA or a subsidiary must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as the CEO or an executive officer of RWWA —
  - (a) a liability owed to RWWA or a subsidiary; or
  - (b) a liability that is owed to someone other than RWWA or a subsidiary and did not arise out of conduct in good faith.
- (3) Subclause (2) does not apply to a liability for legal costs.
- (4) RWWA or a subsidiary must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against legal costs incurred in defending an action for a liability incurred as the CEO or an executive officer of RWWA if the costs are incurred —
  - (a) in defending or resisting a proceeding in which the person is found to have a liability for which the person could not be indemnified under subclause (2);
  - (b) in defending or resisting criminal proceedings in which the person is found guilty; or
  - (c) in connection with proceedings for relief under clause 9 or 10 in which the Supreme Court denies the relief.
- (5) In determining the outcome of proceedings for the purposes of subclause (4), the result of any appeal in relation to the proceedings is to be taken into account.

**14. Insurance premiums for certain liabilities of CEO and executive officers**

- (1) RWWA or a subsidiary must not pay, or agree to pay, a premium for a contract insuring the CEO or an executive officer of RWWA against a liability (other than one for legal costs) arising out of—
  - (a) conduct involving a wilful breach of duty in relation to RWWA; or
  - (b) a contravention of clause 5 or 6.
- (2) Subclause (1) applies to a premium whether it is paid directly or through an interposed entity.

**15. Certain indemnities, exemptions, payments and agreements not authorised and certain documents void**

- (1) Clauses 13 and 14 do not authorise anything that would otherwise be unlawful.
- (2) Anything that purports to indemnify or insure a person against a liability or exempt a person from a liability is void to the extent that it contravenes clause 13 or 14.



### **Schedule 3 — Provisions to be included in constitution of subsidiaries**

[s. 32]

**1. Disposal of shares**

- (1) RWWA is not to sell or otherwise dispose of shares in the subsidiary other than as approved by the Minister.
- (2) The Minister is empowered to execute a transfer of any shares in the subsidiary held by RWWA.

**2. Directors**

- (1) The directors of the subsidiary are to be appointed by RWWA, but no such director may be appointed except with the prior written approval of the Minister.
- (2) All decisions relating to the operation of the subsidiary are to be made by or under the authority of the board of the subsidiary in accordance with the statement of corporate intent of RWWA and the subsidiary.
- (3) The board of the subsidiary is accountable to the Minister in the manner set out in Part 6 and in the constitution of the subsidiary.

**3. Further shares**

Shares may not be issued or transferred except with the prior written approval of the Minister.

**4. Subsidiaries of subsidiary**

- (1) The subsidiary may not form, participate in the formation of, or acquire any subsidiary without the prior written approval of the Minister given with the Treasurer's concurrence.
- (2) The subsidiary must ensure that the constitution of each of its subsidiaries at all times complies with this Act.
- (3) The subsidiary must, to the maximum extent practicable, ensure that each of its subsidiaries complies with its constitution and with the requirements of this Act.

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**cl. 4**

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### Notes

- <sup>1</sup> This is a compilation of the *Racing and Wagering Western Australia Act 2003* and includes the amendments made by the other written laws referred to in the following table<sup>2-4</sup>. The table also contains information about any reprint.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Racing and Wagering Western Australia Act 2003</i>	36 of 2003	26 Jun 2003	s. 1 and 2: 26 Jun 2003; Act other than s. 1 and 2: 1 Aug 2003 (see s. 2 and <i>Gazette</i> 29 Jul 2003 p. 3259)
<i>Racing and Gambling Legislation Amendment and Repeal Act 2003 s. 174</i> <sup>3</sup>	35 of 2003	26 Jun 2003	30 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Jan 2004 p. 397)
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15</i>	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 16 Div. 2</i>	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<b>Reprint 1: The Racing and Wagering Western Australia Act 2003 as at 22 Sep 2006</b> (includes amendments listed above)			
<i>Betting and Racing Legislation Amendment Act 2006 Pt. 3</i>	70 of 2006	13 Dec 2006	9 Jul 2007 (see s. 2 and <i>Gazette</i> 22 Jun 2007 p. 2837)
<i>Financial Legislation Amendment and Repeal Act 2006 s. 4, 5(1), 13 and 17</i>	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Racing and Wagering Legislation Amendment Act 2007 Pt. 2</i>	2 of 2007	28 Mar 2007	1 Jul 2007 (see s. 2)
<i>Racing, Wagering and Betting Legislation Amendment and Repeal Act 2007 Pt. 5</i>	8 of 2007	13 Jun 2007	14 Jun 2007 (see s. 2)
<b>Reprint 2: The Racing and Wagering Western Australia Act 2003 as at 4 Apr 2008</b> (includes amendments listed above)			
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 106</i>	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))

Short title	Number and year	Assent	Commencement
<i>Racing and Wagering Legislation Amendment Act 2009</i> Pt. 4	29 of 2009	23 Nov 2009	11 Jan 2010 (see s. 2(b) and <i>Gazette</i> 8 Jan 2010 p. 9-10)
<i>Statutes (Repeals) Act 2014</i> s. 9	32 of 2014	3 Dec 2014	4 Dec 2014 (see s. 2(b))

<sup>1a</sup> ~~On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.~~

**Provisions that have not come into operation**

Short title	Number and year	Assent	Commencement
<i>Associations Incorporation Act 2015</i> s. 227- <sup>5</sup>	30 of 2015	2 Nov 2015	<del>To be proclaimed</del> <a href="#">1 Jul 2016</a> (see s. 2(b)) and <i>Gazette</i> <a href="#">24 Jun 2016 p. 2291-2</a>

<sup>2</sup> Under the *Racing and Gambling Legislation Amendment and Repeal Act 2003* s. 7(2) the appointed day is 30 Jan 2004 (see *Gazette* 30 Jan 2004 p. 401).

<sup>3</sup> The *Racing and Gambling Legislation Amendment and Repeal Act 2003* s. 19 is a transitional provision that is of no further effect.

<sup>4</sup> The amendment in the *State Superannuation Amendment Act 2007* s. 86 is not included because it was repealed by the *State Superannuation Amendment Act 2011* s. 4 before the amendment purported to come into operation.

<sup>5</sup> ~~On the date as at which this compilation was prepared, the *Associations Incorporation Act 2015* s. 227 had not come into operation. It reads as follows:~~

~~**227. Racing and Wagering Western Australia Act 2003 amended**~~

~~(1) This section amends the *Racing and Wagering Western Australia Act 2003*.~~

~~(2) In section 32(5)(a) after “member of the” insert:~~

~~management~~

