



## AMENDMENT TO AUSTRALIAN RULES OF RACING

### Trainer & Owner Reforms

#### Summary:

Racing Australia has resolved to introduce on 1 August 2017 the Trainer and Owner Reforms (TOR). The aim of the TOR is to provide greater certainty and clarity in arrangements between trainers and owners on the one hand and between co-owners on the other.

The TOR will operate pursuant to the TOR Rules, which will become Schedule 1 to the Australian Rules of Racing. The TOR Rules introduce new rules which govern arrangements between the relevant participants, including through:

- a standard form agreement between trainers and owners in relation to training services, i.e. the Standard Training Agreement;
- a standard form agreement between co-owners of a horse in relation to the horse ownership venture, i.e. the Co-owner Agreement;
- procedures for prompt payment of invoices by owners to trainers; and
- procedures for resolving disputes between trainers and owners, including a PRA-established tribunal in each State or Territory.

#### 1. Add the following to the Australian Rules of Racing:

##### “SCHEDULE 1 TO THE AUSTRALIAN RULES OF RACING – THE TOR RULES

##### TOR Rule 1 – Commencement and operation of the TOR

- (1) The TOR, including the TOR Rules, will commence pursuant to *these Rules* on the TOR Commencement Date.
- (2) From the TOR Commencement Date:
  - (a) *persons* bound by *these Rules* must comply with the TOR Rules;
  - (b) all *Trainers* and *Owners* (except *Exempt Trainers* and *Exempt Owners*) must comply with the *Racing Australia Standard Training Agreement (STA)* and the STA is deemed to apply as between those *Trainers* and *Owners* subject to TOR Rule 1(4); and
  - (c) all *Co-owners*, except for *Co-owners* who have obtained their interest in a *horse* through a *Promoter Syndicate* and who do not own their interest in the *horse* with other *Owners* who are not in a *Promoter Syndicate*, must comply with the *Racing Australia Co-owner Agreement (COA)* and the COA is deemed to apply as between those *Co-owners* subject to TOR Rule 1(5).

- (3) Notwithstanding TOR Rule 1(2):
- (a) specific terms of the *STA* can be excluded, varied or limited by agreement in writing between a *Trainer* and an *Owner*, provided that a *Trainer* and *Owner* cannot exclude, vary or limit the operation of any provision of *these Rules* (including any of the *TOR Rules*); and
  - (b) specific terms of the *COA* can be excluded, varied or limited by agreement in writing by the *Co-owners* of a *horse* if that is done in accordance with the terms of the *COA*, provided that *Co-owners* cannot exclude, vary or limit the operation of any provision of *these Rules* (including any of the *TOR Rules*).
- (4) If a *Trainer* and an *Owner*:
- (a) are, as at the *TOR Commencement Date*, party to a separate written agreement in relation to *Training Services*, they can in writing agree that the other agreement continues to operate after the *TOR Commencement Date* in conjunction with, or instead of, the *STA*; or
  - (b) enter, after the *TOR Commencement Date*, into a separate written agreement in relation to *Training Services*, they can in writing agree that the other agreement operates in conjunction with, or instead of, the *STA*,  
provided that they are bound by, and must comply, with *these Rules* (including the *TOR Rules*).
- (5) If one or more of the *Co-owners*:
- (a) is, as at the *TOR Commencement Date*, party to a separate written agreement with other *Co-owners* in respect of the *Horse Ownership Venture*, the *Co-owners* can agree in writing that the other agreement continues to operate after the *TOR Commencement Date* in conjunction with, or instead of, the *COA*; or
  - (b) enter, after the *TOR Commencement Date*, into a separate written agreement with other *Co-owners* in respect of the *Horse Ownership Venture*, the *Co-owners* can in writing agree that the other agreement operates in conjunction with, or instead of, the *COA*,  
provided that they are bound by, and must comply with, *these Rules* (including the *TOR Rules*).
- (6) The *TOR* applies equally to a *training partnership* licensed pursuant to *the Rules* as it does to individually licensed *Trainers*.
- (7) These *TOR Rules*, the *STA* and the *COA* apply equally to a lessee of a *horse* as an *Owner*, unless a particular provision of these *TOR Rules*, the *STA* and/or the *COA* expressly states that it only relates to a *person* with an ownership interest (rather than a lease interest) in a *horse*.
- (8) Any company or other business structure through which a *Trainer* provides *Training Services* (including the billing of *Training Services*) is bound by these *TOR Rules* and must comply with them (to the intent that the requirements of the *TOR* cannot be avoided on account of a *Trainer* providing *Training Services* through a corporate entity or other business structure which is not licensed or registered by *Racing Australia* or a *PRA*).
- (9) The *COA* does not apply to *Promoter Syndicates* which own the whole of the ownership of a *horse*. *Promoter Syndicates* must however comply with the *STA* (subject to *TOR Rules* 1(2)(b), 1(3)(a) and 1(4)).

- (10) If an *Owner's* ownership interest in a *horse* is as a member of a registered *Syndicate*, including as a member of a *Promoter Syndicate*, then for the purposes of the *TOR*:
- (a) the *Syndicate Manager* is responsible for representing the *Syndicate*;
  - (b) the *Syndicate* is deemed to be the only *Owner* of the combined ownership interest held by the *Syndicate*, as if it was a separate legal entity, and the *Syndicate Manager* will be its expressly authorised legal representative; and
  - (c) all actions and decisions made by the *Syndicate Manager* will be taken to be made on behalf of the relevant *Syndicate*.
- (11) To the extent that there is any conflict or inconsistency between a provision of *these Rules* (including any of the *TOR Rules*) and a term of the *STA* or the *COA* (including as amended, whether in accordance with *TOR Rule 1(3)* or otherwise), or a term of any other separate agreement made in relation to *Training Services* or a *Horse Ownership Venture* (whether made in accordance with *TOR Rule 1(4)* or *1(5)* or otherwise), *these Rules* (including the *TOR Rules*) prevail to the extent of the conflict or inconsistency.
- (12) *Racing Australia* (including its officers and employees), each *PRA* (including its officers and employees) and each *TDT* (including its members), shall not be liable to any person, and no person shall be entitled to make any claim for damages, for any loss or damage sustained as a result of, or in any way (either directly or indirectly) arising out of, the exercise of any right, privilege, power, duty or discretion conferred or imposed, or bona-fide believed to have been conferred or imposed, under the *TOR Rules*.
- (13) If a dispute between a *Trainer* and an *Owner* arises under the *TOR Rules*:
- (a) neither party may commence *External Proceedings* in respect of the matters the subject of the dispute, save as to proceedings seeking urgent interlocutory relief, until all processes set out in the *TOR Rules* through which *Training Fees* and/or *Training Disbursements* can be recovered, or disputes in relation to them resolved or determined, have been followed; and
  - (b) if a party commences *External Proceedings* in respect of the matters the subject of the dispute, this subrule may be relied upon or pleaded by the other party as a bar to any such proceedings.

## **TOR Rule 2 – Powers of *Principal Racing Authorities (PRAs)* in relation to the *TOR***

- (1) A *PRA* shall, in addition to the powers conferred by these *Rules*, have power, in its discretion, to put in place *Local Rules*, regulations, policies or procedures, and/or take steps incidental or conducive to *Trainers* and *Owners* of *horses* complying with the *TOR*.
- (2) Without limiting *TOR Rule 2(1)*, a *PRA* has power:
- (a) to appoint a person or persons, who must have relevant experience in dealing with commercial disputes, as a *Training Disputes Tribunal (TDT)* member for the purpose of determining disputes in relation to *Training Fees* and/or *Training Disbursements*;
  - (b) to make and enforce policies or procedures in respect of the role, powers and functions of the *TDT*, and any member of it;
  - (c) to freeze the payment of prizemoney to which an *Owner* would otherwise be entitled and pay that prizemoney to a *Trainer* in payment of *Training Fees* and/or *Training Disbursements* due and payable to the *Trainer*;

- (d) to take whatever action it thinks fit (including to refuse to accept the nomination of a *horse* to race, or to take disciplinary action permitted by *the Rules*) against a *person* who contravenes any provision of these *TOR Rules* or any regulations, policies or guidelines made by or pursuant to a direction of *Racing Australia* in relation to them;
  - (e) to require fees (including administrative, or transaction processing fees) to be paid to *Racing Australia* or to a *PRA* in connection with the *TOR*, including in connection with the operation of the *TDT*.
- (3) If there is any inconsistency between a rule contained in these *TOR Rules* and that contained in a *PRA's Local Rules*, to the extent of any conflict or inconsistency, the provision in these *TOR Rules* will prevail (except where a *PRA* makes a local rule in relation to the *TDT's* role and/or processes pursuant to *TOR Rule 8(8)*).

### **TOR Rule 3 – The requirement for *Trainers* to issue a *Fees Notice***

- (1) As from the *TOR Commencement Date*:
- (a) any *Trainer* who currently trains for an *Owner* must issue a *Fees Notice* to the *Managing Owner* within 28 days of the *TOR Commencement Date*;
  - (b) any *Trainer* who is appointed as a *Trainer* on or after the *TOR Commencement Date* must issue a *Fees Notice* to the *Managing Owner*:
    - (i) if the *Trainer* is appointed in the period from the *TOR Commencement Date* up to and including 28 days after the *TOR Commencement Date* – within 35 days of the *TOR Commencement Date*; or
    - (ii) if the *Trainer* is appointed more than 28 days after the *TOR Commencement Date* – within 7 days of the date on which the *Trainer* is appointed;
  - (c) the *Managing Owner* must provide a copy of the *Fees Notice* to each *Owner* within 5 days of being issued the *Fees Notice* by the *Trainer*; and
  - (d) if the *Managing Owner* does not object to the *Trainer* within 14 days of being issued the *Fees Notice*, the basis for providing *Training Services* set out in that notice is deemed to have been accepted by the *Owner/s*.
- (2) The *Fees Notice* must set out:
- (a) the *Training Fees* itemised by category of service or item provided;
  - (b) the anticipated *Training Disbursements* by name of service and anticipated provider (if known);
  - (c) the anticipated *Direct Payment Disbursements* by name of service and anticipated provider (if known);
  - (d) any additional fees the *Trainer* proposes to charge the *Owner*, including bonuses for winning races, or commissions on the sale of a *horse*; and
  - (e) whether a *Trainer* proposes to charge interest on any unpaid *Training Fees* and/or *Training Disbursements*. The *Trainer* is entitled to do so from the day after an amount falls due and payable, at an interest rate not more than the rate prescribed from time to time for pre-judgment interest in the Supreme Court of the State or Territory of the *TDT* at which any dispute in relation to *Training Fees* and/or *Training Disbursements* would be heard pursuant to *TOR Rule 5(4)*.

### **TOR Rule 4 – The circumstances in which the *TOR's Presumption of a Training Debt* arises**

- (1) As a condition precedent to a *Trainer* being able to rely on the *Presumption of a Training Debt*, the *Trainer* must provide the *Trainer's* invoice (or invoices) in relation to *Training Fees* and/or *Training Disbursements* to the *Owner* of the relevant *horse* by the 15<sup>th</sup> day of any calendar month following a period of time in which *Training Services* were provided by the *Trainer* to the *Owner*.

- (2) A *Trainer* who fails to issue an invoice by the end of the 15<sup>th</sup> day of a month following a period of time in which *Training Services* were provided must wait until the subsequent month to seek to rely on the *Presumption of a Training Debt*, and can then only do so if an invoice has been provided to the *Owner* by the end of the 15<sup>th</sup> day of that subsequent month.
- (3) If an invoice is issued in accordance with TOR Rule 4(1), the *Owner* may formally dispute the invoice (or part of it) by serving a *Dispute Notice* which complies with the requirements in TOR Rule 5(1) on the *Trainer*. A copy of the *Dispute Notice* must also be provided to *Racing Australia*.
- (4) If a *Trainer* issues an invoice in accordance with TOR Rule 4(1) and the invoice is not fully paid by the end of the month in which it is issued, then unless a *Dispute Notice* is provided by the *Owner* to the *Trainer* by the last day of the month in which the invoice is issued, the invoice is deemed to be due and payable to the *Trainer* at the end of that month. (That is known as the *Presumption of a Training Debt* against the *Owner*).
- (5) The provision of a *Dispute Notice* by an *Owner* to a *Trainer* by the last day of the month in which the invoice the subject of the dispute is issued has the effect that the *Presumption of a Training Debt* does not arise. In that instance, unless the dispute is settled by consent, the *Trainer* and *Owner* each may apply in accordance with TOR Rule 5 to have the dispute heard and determined by the *TDT*.

#### **TOR Rule 5 – Requirements in relation to, and the effect of, a *Dispute Notice***

- (1) A *Dispute Notice*:
  - (a) must be in a form prescribed by *Racing Australia* from time to time, and must provide the information required by that form;
  - (b) must clearly identify the invoice/s (or part of the invoice/s) disputed by the *Owner*, the amount in dispute, and the grounds for the dispute;
  - (c) must be provided by an *Owner* to a *Trainer* with supporting documentation (to be enclosed with the *Dispute Notice*) that the *Owner* intends to rely on in relation to the dispute;
  - (d) must be served on the *Trainer*, with a copy also required to be provided by the *Owner* to *Racing Australia*:
    - (i) subject to TOR Rule 5(1)(e) and TOR Rule 6(2), within 6 months of the date of the relevant invoice; and
    - (ii) by the last day of the month in which the relevant invoice is issued if the *Owner* wishes to prevent the *Presumption of a Training Debt* arising; and
  - (e) must not be served on the *Trainer* after an *Enforcement Action Application (EAA)* is filed with *Racing Australia* by the *Trainer* under TOR Rule (6)(1), and any purported service of a *Dispute Notice* after that time will not be valid.
- (2) If a *Dispute Notice* challenges part, but not the whole of an invoice issued by a *Trainer* to an *Owner*, the *Owner* must pay to the *Trainer* the part not in dispute by the last day of the relevant month in which the invoice is issued in accordance with TOR Rule 4(1). Failing that, the part not in dispute is deemed due and payable to the *Trainer* at the end of the month in which the invoice is issued.
- (3) Once a *Dispute Notice* is served by an *Owner* on a *Trainer* in accordance with TOR Rule 5(1), each has the right to elect to have the dispute determined by a *TDT* by filing a *Notice of Election of Hearing* with *Racing Australia* within 14 days of the *Dispute Notice* being served, with a copy also required to be served on the other party to the dispute.

- (4) Once a *Notice of Election of Hearing* is filed with *Racing Australia*, it will allocate the matter to the *TDT* of the relevant *PRA* as follows:
- (a) the matter is to be allocated to the *PRA* of the State or Territory in which the *Trainer* who is party to the dispute is licensed to train *horses*;
  - (b) if the *Trainer* is licensed in more than one State or Territory of Australia, the matter is to be allocated to the *PRA* of the State or Territory in which the *horse* the subject of the dispute (or a majority of the *horses* where there is more than one *horse* the subject of the dispute) is predominantly located, based on the most recent *Stable Return/s* lodged by the *Trainer* with *Racing Australia* in respect of the *horse/s*; and
  - (c) if the *Trainer* is licensed in more than one State or Territory and has an equal number of *horses* the subject of the dispute predominantly located in more than one State or Territory, the matter is to be allocated to the *PRA* that *Racing Australia* thinks fit.

**TOR Rule 6 – Consequences for a *Trainer* and *Owner* if the *Presumption of a Training Debt* arises**

- (1) Once the *Presumption of a Training Debt* arises, a *Trainer* may file an *EAA* with *Racing Australia* (with a copy also required to be served on the relevant *Owner*) seeking that one or more of the following consequences be applied against the *Owner*:
- (a) if the defaulting *Owner* owns 50% or more of the total of the ownership of the relevant *horse*, that *Racing Australia* will not process any *Stable Return* seeking to transfer the *horse* to another *Trainer*;
  - (b) that *Racing Australia* and/or the relevant *PRA* responsible for any registration function in respect of the relevant *horse* will not register any transfer of the *Owner's* share or ownership interest in the *horse*; and
  - (c) that *Racing Australia* will notify the relevant *PRA/s* and the *PRA/s* will, other than in a *Special Circumstance* determined in its discretion, Freeze the payment of prizemoney to which the *Owner* would otherwise be entitled, and direct payment of that prizemoney to the *Trainer* owed the *Training Fees* and/or *Training Disbursements*. Subject to any *Special Circumstance* determined by a *PRA*, the defaulting *Owner* expressly waives any right to objecting to a *PRA's* payment of that prizemoney to the *Trainer*.
- (2) Once an *EAA* is filed with *Racing Australia* by a *Trainer* under TOR Rule 6(1), an *Owner* is not permitted to serve a *Dispute Notice* on the *Trainer* and any purported service of a *Dispute Notice* after that time will not be valid.
- (3) Once an *EAA* is filed with *Racing Australia* by a *Trainer* under TOR Rule (6)(1), unless *Racing Australia* or the relevant *PRA*, as applicable, considers that a *Special Circumstance* warrants another course, each of the consequences stated in TOR Rule 6(1)(a) to 6(1)(c) which were applied for by the *Trainer* will apply until:
- (a) the relevant *Training Fees* and/or *Training Disbursements* which are due and payable are paid to the *Trainer*;
  - (b) the *Trainer* notifies *Racing Australia* that the *Trainer* has come to a settlement with the *Owner* in relation to the disputed amount; or
  - (c) the *Owner* notifies *Racing Australia* that the *Owner* has come to a settlement with the *Trainer* in relation to the disputed amount and provides sufficient evidence (as determined by *Racing Australia* in its sole discretion) of such settlement.
- (4) A *Trainer* must notify *Racing Australia* in writing within 24 hours of becoming aware of having received payment from an *Owner* of any *Training Fees* and/or *Training Disbursements* referred to in an *EAA*, and/or of becoming aware of the settlement with the *Owner* of a dispute in respect of *Training Fees* and/or *Training Disbursements* the subject of an *EAA*.

**TOR Rule 7 – Further rights of a *Trainer* (when the *Presumption of a Training Debt* has not arisen) to object to the transfer of a *horse* to another *Trainer*, or the transfer of an ownership interest in relation to a *horse***

- (1) If, despite the *Presumption of a Training Debt* not having arisen, a *Trainer* contends that *Training Fees* and/or *Training Disbursements* are due and payable to the *Trainer* in respect of a *horse*, the *Trainer* may object by written notice provided to *Racing Australia* to the transfer of the *horse* from the *Trainer* to another *Trainer*, or to the transfer of an ownership interest in the *horse* from one *Owner* to another. A copy of that written objection must also be served on the relevant *Owner*.
- (2) If a *Trainer* objects pursuant to TOR Rule 7(1):
  - (a) the following consequences apply:
    - (i) *Racing Australia* will notify the relevant *Owner* of the objection;
    - (ii) if the *Owner* owns 50% or more of the total ownership of the relevant *horse*, *Racing Australia* will not process any *Stable Return* seeking to transfer the *horse* to another *Trainer*, and
    - (iii) *Racing Australia* and/or the relevant *PRA* responsible for any registration function in respect of the relevant *horse* will not register any transfer of an *Owner's* ownership interest in the *horse*.
  - (b) the consequences stated in TOR Rule 7(2)(a)(ii) and 7(2)(a)(iii) will cease after 5 *business days* unless the *Trainer* provides *Racing Australia* with copies of the invoice/s outstanding to the *Trainer* (clearly identifying the parts of them alleged to be due and payable to the *Trainer*) within 5 *business days* of the proposed transfer (which period is not to be extended in any circumstance);
  - (c) upon receipt of that information, *Racing Australia* will notify the relevant *Owner* who may then either:
    - (i) pay the amount of the invoice/s to *Racing Australia* (in which case *Racing Australia* will pay those funds to the *Trainer* and *Racing Australia* and/or the relevant *PRA*, as applicable, will process the relevant transfer request); or
    - (ii) serve a *Dispute Notice* on the *Trainer* (with a copy also required to be provided to *Racing Australia*). Once that is done, either party may elect to have the matter determined by the *TDT* by filing a *Notice of Election of Hearing* with *Racing Australia* within 14 days of the date of issue of the *Dispute Notice* (with a copy also required to be served on the other party). However, a *Notice of Election of Hearing* will only be valid and accepted by *Racing Australia* if the *Dispute Notice* related to the dispute was served within 6 months of the date of the invoice the subject of the dispute.
- (3) If an *Owner* serves a *Dispute Notice* in the circumstances referred to in TOR Rule 7(2)(c)(ii), and the *Owner* still wishes for the relevant transfer to proceed without delay, the *Owner* can pay the amount of the disputed invoice/s into the *Training Disputes Trust Account* pending determination of the dispute, at which point *Racing Australia* and/or the relevant *PRA*, as applicable, will process the relevant transfer.

**TOR Rule 8 – The *TDT* Process**

- (1) If an *Owner* has served a *Dispute Notice* on a *Trainer* in accordance with TOR Rule 5(1), either of them may, within 14 days of the service of the *Dispute Notice*, elect to have the dispute determined by a *TDT* by paying the *Filing Fee* to *Racing Australia* and at the same time filing a *Notice of Election of Hearing* with *Racing Australia* and serving it on the other party to the dispute. Once a valid *Notice of Election of Hearing* is filed with *Racing Australia*, it will transfer the *Filing Fee* to the *PRA* allocated the dispute in accordance with TOR Rule 5(4).

- (2) A *Notice of Election of Hearing* will only be valid and accepted by *Racing Australia* if the *Dispute Notice* related to the dispute was served within 6 months of the date of the invoice the subject of the dispute and before any *EAA* was filed by the *Trainer*.
- (3) When a valid *Notice of Election of Hearing* is received by *Racing Australia* from an *Owner* or a *Trainer*, then the consequences set out in TOR Rule 7(2)(a)(ii) and 7(2)(a)(iii) will apply unless the amount disputed in the *Notice of Election of Hearing* has been paid by the *Owner* into the *Training Disputes Trust Account* pending resolution of the relevant dispute.
- (4) The *TDT* may make directions in relation to the preparation of the dispute for hearing as the *TDT* sees fit, except that a hearing on the papers can only take place if all parties agree to it.
- (5) In relation to an oral hearing before the *TDT*:
  - (a) there is no immediate right to legal representation before the *TDT*; and
  - (b) the *TDT* may grant leave to the *Trainer* and/or *Owner* to be legally represented if in the opinion of the *TDT* that is warranted having regard to one or more of the following matters:
    - (i) the complexity of the issues arising on the dispute;
    - (ii) the amount disputed;
    - (iii) whether or not the case is of general importance to the racing industry;
    - (iv) the interests of justice in the circumstances of the case.
- (6) In respect of a hearing before the *TDT*:
  - (a) the *TDT*:
    - (i) must, other than in exceptional circumstances, make all reasonable efforts to determine a dispute within 10 days of the hearing of that dispute; and
    - (ii) is only required to provide written reasons of the *TDT*'s decision if at least one party to the dispute requests that;
  - (b) the decision of the *TDT* will be binding on all parties as a decision under *these Rules*;
  - (c) the *TDT* may:
    - (i) determine whether *Training Fees* and/or *Training Disbursements* must be paid and in what amount, including in relation to any amounts paid into the *Training Disputes Trust Account*; and/or
    - (ii) recommend to any *PRA* that the *PRA/s* apply *the Rules* against a *Trainer* or an *Owner* in a manner recommended by the *TDT* (in which case it will then be a matter for the relevant *PRA* as to whether it implements that recommendation);
  - (d) if either party intends to challenge the decision of the *TDT* by way of *External Proceedings*, it must provide written notice of that intention to the other party, the relevant *PRA*, and *Racing Australia* within 7 days of the *TDT*'s decision. If that is done, then from that point *Racing Australia* and/or the relevant *PRA*, as applicable, must not take any action in relation to the relevant disputed *Training Fees* and/or *Training Disbursements* until, subject to TOR Rule 8(6)(e), the outcome of the *External Proceedings* is known;
  - (e) if notice of an intention to commence *External Proceedings* is provided in accordance with TOR Rule 8(6)(d), but the notifying party has not provided *Racing Australia* with evidence of the commencement of *External Proceedings* within 28 days of the *TDT*'s decision then:
    - (i) if the *TDT* has ordered that an amount be paid to a *Trainer* in respect of *Training Fees* and/or *Training Disbursements*, the *Owner* must pay the *Trainer* the amount determined by the *TDT* within 2 days of that date (that is, within 30 days of the *TDT*'s decision);

- (ii) *Racing Australia* and/or the relevant *PRA*, as applicable, may take any action in relation to the relevant disputed *Training Fees* and/or *Training Disbursements* that it is permitted to take under *the Rules*, provided it does not receive evidence of the commencement of *External Proceedings* before taking such action; and
  - (iii) if *Racing Australia* receives evidence of the commencement of *External Proceedings* more than 28 days after the *TDT's* decision, then from that point *Racing Australia* and/or the relevant *PRA*, as applicable, must not take any action in relation to the relevant disputed *Training Fees* and/or *Training Disbursements* until the outcome of the *External Proceedings* is known.
- (f) if notice of an intention to commence *External Proceedings* is not provided in accordance with TOR Rule 8(6)(d), and the *TDT* has ordered that an amount be paid to a *Trainer* in respect of *Training Fees* and/or *Training Disbursements*, the *Owner* must pay the *Trainer* the amount determined by the *TDT* within 7 days of the *TDT's* decision;
  - (g) an unsuccessful party to an application before the *TDT* must bear the cost of the relevant *Filing Fee* in respect of that application;
  - (h) further to TOR Rule 8(6)(g), if the *Trainer* succeeds before the *TDT* and the proceeding was commenced by the *Trainer*, the unsuccessful *Owner* must pay the successful *Trainer* an amount equivalent to the *Filing Fee* within 7 days of the *TDT's* decision;
  - (i) further to TOR Rule 8(6)(g), if the *Owner* succeeds before the *TDT* and the proceeding was commenced by the *Owner*, the unsuccessful *Trainer* must pay the successful *Owner* an amount equivalent to the *Filing Fee* within 7 days of the *TDT's* decision; and
  - (j) other than as provided in TOR Rule 8(6)(g) to 8(6)(i), the parties to a dispute before the *TDT* must bear their own costs (including any legal costs) in connection with that dispute, except that the *TDT* retains a discretion to order that a party (***first party***) pay some or all of the costs of the other party if the *TDT* is satisfied that:
    - (i) the *first party* commenced or responded to the *TDT* proceedings vexatiously; or
    - (ii) the *first party's* commencement of, or response to, the *TDT* proceedings had no reasonable prospect of success.
- (7) A *TDT* has jurisdiction to determine all issues or questions relevant to determining a dispute between a *Trainer* and an *Owner* (or *Owners*) in relation to the payment of *Training Fees* and/or *Training Disbursements*. A *TDT* does not have jurisdiction to determine disputes between Co-owners.
- (8) Despite anything in TOR Rule 8 and TOR Rule 2(3), a *PRA* is entitled to make its own rules and regulations specific to its State or Territory in relation to the role and/or processes of its *TDT*, provided that they are procedurally fair and are not inconsistent with the overriding purpose of TOR Rule 8, being to have in place a *TDT* to impartially and efficiently determine disputes in respect of *Training Fees* and/or *Training Disbursements*. This subrule means that a *PRA* is able to make local rules inconsistent with TOR Rules 8(4) to 8(6), but only if they are procedurally fair and not inconsistent with the stated overriding purpose of TOR Rule 8.

#### **TOR Rule 9 – Facilitating payment after a decision of a *TDT***

- (1) If a *TDT* makes an award in favour of a *Trainer*.
  - (a) subject to TOR Rule 8(6)(d) and 9(2), the following consequences apply to the defaulting *Owner*.

- (i) if the *Owner* owns 50% or more of the total ownership of the relevant *horse*, *Racing Australia* will not process any *Stable Return* seeking to transfer the *horse* to another *Trainer*;
  - (ii) *Racing Australia* and/or relevant *PRA* responsible for any registration function in respect of the relevant *horse* will not register any transfer of the relevant *Owner's* interest in the *horse*; and
  - (iii) the relevant *PRA/s* must, other than in a *Special Circumstance* to be determined in its discretion, *Freeze* the payment of any *prizemoney* to which the *Owner* would otherwise be entitled.
- (2) The consequences in TOR Rule 9(1)(a) will apply until the *Training Fees* and/or *Training Disbursements* the subject of the *TDT's* award are paid by the *Owner* to the *Trainer*.
- (3) If 14 days have passed after a decision of a *TDT* and the *Trainer* has not been paid by the *Owner* as required by the decision of the *TDT* and informs *Racing Australia* of that, in addition to the consequences stated in TOR Rule 9(2):
- (a) *Racing Australia* will notify the *Owner*, the *Trainer* and the relevant *PRA/s* of that, after which the relevant *PRA/s* must, other than in a *Special Circumstance* to be determined in its discretion, pay any *prizemoney* to which the *Owner* would otherwise be entitled to the *Trainer* in payment of any *Training Fees* and/or *Training Disbursements* outstanding to the *Trainer*. Subject to any *Special Circumstance* determined by a *PRA*, the defaulting *Owner* expressly waives any right to objecting to a *PRA's* payment of that *prizemoney* to the *Trainer*;
  - (b) the relevant *PRA/s* will retain its powers under *the Rules* to take action against the defaulting *Owner* (including to refuse to accept a nomination for a *horse* to race); and
  - (c) the *Trainer* will retain the *Trainer's* rights under the *STA* and at general law.
- (4) For the purposes of TOR Rule 9(1)(a)(iii) and 9(3), if the *PRA* of the *TDT* in which the decision was made notifies *Racing Australia* that it is not in possession of an amount of *prizemoney* to which the *Owner* would otherwise be entitled that is sufficient to satisfy (in whole or in part) the payment of any *Training Fees* and/or *Training Disbursements* outstanding to the *Trainer*:
- (a) *Racing Australia* will notify the *Owner*, the *Trainer* and any other *PRA/s* which may be in possession of such *prizemoney*; and
  - (b) if:
    - (i) one of those *PRA/s* is in possession of an amount of *prizemoney* to which the *Owner* would otherwise be entitled that is sufficient to satisfy (in whole or in part) the payment of any *Training Fees* and/or *Training Disbursements* outstanding to the *Trainer*, that *PRA* is a relevant *PRA* and *Racing Australia* may direct that *PRA* to pay any outstanding *Training Fees* and/or *Training Disbursements* to the *Trainer* from that *prizemoney*; and
    - (ii) if more than one of those *PRA/s* is in possession of an amount of *prizemoney* to which the *Owner* would otherwise be entitled that is sufficient to satisfy (in whole or in part) the payment of any *Training Fees* and/or *Training Disbursements* outstanding to the *Trainer*, those *PRA/s* are each a relevant *PRA* and *Racing Australia* may determine the order in which one or more of those *PRA/s* are, on *Racing Australia's* direction, to pay any outstanding *Training Fees* and/or *Training Disbursements* to the *Trainer* from that *prizemoney*.
- (5) If *Racing Australia* or a *PRA* directs *prizemoney* to which an *Owner* would otherwise be entitled be paid to a *Trainer* pursuant to TOR Rule (3)(a), but the disputed amount has already been paid or settled as between *Trainer* and *Owner* by the time that payment is made to the *Trainer*, the *Trainer* must refund to the *Owner* the amount paid to the *Trainer* by that *PRA* within 7 days.

(6) A *Trainer* must inform *Racing Australia* within 24 hours of becoming aware of having received payment from an *Owner* of any *Training Fees* and/or *Training Disbursements* ordered by a *TDT* to be paid to the *Trainer*.

## APPENDIX 1: INTERPRETATION OF THE TOR RULES

### DEFINITIONS

**Business Day** means a day that is not a Saturday, a Sunday, or a public holiday in the place concerned.

**Co-owner** in relation to a *horse* means a *person* who owns a *horse* together with at least one other *person* and is registered or is intended to be registered with *Racing Australia* as an *Owner*.

**Direct Payment Disbursements** means costs or expenses in relation to the training and/or care of a *horse* which are to be directly invoiced to an *Owner* of a *horse* by service providers other than the *Trainer* (including veterinary fees, breaking in fees, agistment fees and transport costs).

**Dispute Notice** means the *Racing Australia* form of that name referred to in these *TOR Rules*, and in the *STA*, as amended from time to time.

**Enforcement Action Application (EAA)** means the *Racing Australia* form of that name referred to in these *TOR Rules*, as amended from time to time, which a *Trainer* is entitled to submit to *Racing Australia* in accordance with *TOR Rule 6* once the *Presumption of a Training Debt* arises.

**Exempt Owner** means an *Owner* who is not required to comply with the *STA*, being an *Owner*: (a) who themselves trains a *horse* pursuant to an owner/trainer *licence* and does not also train the *horse* for any other *Owner*; or (b) who employs (as an employee pursuant to a written contract of employment), or otherwise engages (pursuant to a written contract for services) a *Trainer* to train a *horse* or *horses* exclusively for that *Owner* so that the *Trainer* does not train a *horse* for anyone else.

**Exempt Trainer** means a *Trainer* who is not required to comply with the *STA*, being a *Trainer*: (a) with an owner/trainer *licence* who does not also train the *horse* for any other *Owner*; and/or (b) who is contracted in writing to provide *Training Services* exclusively to an *Exempt Owner*.

**External Proceedings** means legal proceedings in a court or tribunal (not including a *TDT*) outside the *TOR Rules*.

**Filing Fee** means the fee set and charged by *Racing Australia* (published on the *Racing Australia Website*) to cover administrative costs of the *Training Disputes Tribunal (TDT)* process, and which is to be remitted by *Racing Australia* to the relevant *PRA* which is allocated a *TDT* proceeding by *Racing Australia*.

**Fees Notice** means the written fee disclosure notice a *Trainer* must provide to an *Owner* of a *horse* pursuant to *TOR Rule 3*, and pursuant to the *STA*.

**Freeze** means, in relation to *prizemoney to which the Owner would otherwise be entitled*, a direction by a *PRA* that that *prizemoney* be withheld or not allowed for a period of time that is fixed by the *PRA*.

**Horse** means a thoroughbred horse bred, kept, cared for, trained, managed and/or raced for a purpose or purposes connected with the thoroughbred racing industry in Australia. It includes a mare, filly, entire, colt, rig or gelding.

**Horse Ownership Venture** means a venture conducted by *Co-owners* of a *horse*, and can include racing a *horse* together, selling all or part of a *horse*, and/or *breeding of a horse*.

**Horse Registration Form (HRF)** means a registration form of that name an *Owner* must lodge with *Racing Australia* to register a *horse* (or an interest in a *horse*) for racing.

**Managing Owner** means an *Owner* of a *horse* who is specified as the managing owner in the *HRF* or other relevant registration form lodged or to be lodged with *Racing Australia*.

**Notice of Election of Hearing** means the *Racing Australia* form of that name referred to in these *TOR Rules* and in the *STA*, as amended from time to time, which *Racing Australia* makes available for the purpose of parties electing to take a dispute in relation to *Training Fees* and/or *Training Disbursements* to a *TDT*.

**Owner** means a *person* with an ownership interest or share in a *horse* and, for the purposes of these *TOR Rules*, includes a *Managing Owner*.

**Presumption of a Training Debt** means the presumption that *Training Fees* and/or *Training Disbursements* are due and payable from an *Owner* to a *Trainer* which arises in the circumstances identified in *TOR Rule 4(4)*.

**Prizemoney to which an Owner would otherwise be entitled** means, for the purpose of these *TOR Rules*, any prizemoney which, but for these *TOR Rules*, an *Owner* would be entitled to receive from *Racing Australia* or a *PRA* in relation to the results in a *race* of a *horse* or *horses* owned or part owned by the *Owner* which is trained by the *Trainer*. Such prizemoney may therefore include prizemoney earned through the results of a *horse/s* other than the *horse/s* that received the relevant *Training Services* the subject of action under these *TOR Rules*.

**Promoter Syndicate** means a *Syndicate* where the *Co-owners* own their interest in a *horse* as a result of acquiring shares in the *horse* offered by a *Promoter* approved by a *PRA* and licensed under the *Corporations Act 2001 (Cth)* and/or offered pursuant to *ASIC Corporations (Horse Schemes) Instrument 2016/790* or a successor or predecessor instrument to it.

**Racing Australia** means *Racing Australia Ltd* and any successor entity substantially carrying out *Racing Australia's* functions.

**Racing Australia Co-owner Agreement (COA)** means the agreement of that name, as amended by *Racing Australia* from time to time, which is part of the *TOR* and published on the *Racing Australia Website*.

**Racing Australia Standard Training Agreement (STA)** means the agreement of that name, as amended by *Racing Australia* from time to time, which is part of the *TOR* and is published on the *Racing Australia Website*.

**Racing Australia Website** means [www.racingaustralia.horse](http://www.racingaustralia.horse) or another domain name as notified by *Racing Australia*.

**Special Circumstance** means, for the purpose of these *TOR Rules*, a circumstance which is out of the ordinary, including as stipulated to be a "special circumstance" by a *PRA* under its *Local Rules*.

**TOR Commencement Date** means 1 August 2017 or another date as notified by *Racing Australia*.

**TOR Rules** means these rules set out in this Schedule 1 to the *Australian Rules of Racing*, as amended from time to time.

**Trainer** means a *person* licensed or granted a permit by a *PRA* to train *horses*, and includes any *persons* licensed to train as a training partnership. A *Trainer* includes a licensed pre-trainer.

**Trainer and Owner Reforms (TOR)** means the *Racing Australia* reforms in relation to arrangements between *Trainers* and *Owners*, and between *Co-owners*, commencing on the *TOR Commencement Date*.

**Training Disbursements** means the amounts paid or payable by a *Trainer* to third parties in relation to the provision of *Training Services* which are not included in the *Training Fees* and for which a *Trainer* invoices an *Owner* (including veterinary fees, farrier fees, dentist fees, race acceptance and nomination fees, interstate racing costs, and race-day expenses such as strapper attendance fees).

**Training Disputes Tribunal (TDT)** is a decision-making body set up by each *PRA* in the States and/or Territories of Australia to determine disputes in relation to *Training Fees* and/or *Training Disbursements*, as provided for in these *TOR Rules* and in the *STA*.

**Training Disputes Trust Account** is the trust account held and operated by *Racing Australia* for the purposes of the *TOR*.

**Training Fees** means the amounts charged by a *Trainer* to an *Owner* in relation to the provision of *Training Services*, which includes the main daily training fee plus any additional daily charges for other items such as track usage fees and administration fees, together with all other costs charged by a *Trainer* to train and/or care for a *horse* which are not charged as *Training Disbursements*.

**Training Services** means all the services provided by a *Trainer* (or qualified and authorised employees or persons engaged or approved by a *Trainer*) in relation to the care, training and/or racing of a *horse* including training, pre-training, rehabilitation, maintenance, stabling, feeding, exercising, freighting, agisting, rental of gear, and the provision of veterinary, chiropractic, acupuncture, dental, and farrier services and treatments.

## INTERPRETATION

In the interpretation of these *TOR Rules*:

- (1) Unless the context otherwise requires, italicised words and terms shall have the meaning set out in AR. 1 of *these Rules* and this Appendix 1 of these *TOR Rules*.
- (2) A document (including any notice, form or application) can be served on a *Trainer* or an *Owner*:
  - (a) at the address (electronic (including email) or otherwise) last provided to the person serving the document by the *Trainer* or the *Owner* (as applicable); or
  - (b) at the address of the *Trainer* or the *Owner* most recently recorded in the records of *Racing Australia*; or
  - (c) at the address of the *Trainer* or the *Owner* recorded on the relevant current *Racing Australia* registration form in respect of the relevant *Horse*.
- (3) Unless established to the contrary, a document (including any notice, form or application) is taken to have been received:
  - (a) on the fourth *Business Day* after the date on which it was sent by registered post;
  - (b) on the day and at the time that it appears from the record of email communication that the sending of an email concluded; and
  - (c) when the facsimile transmission is received by an addressee of a facsimile correspondence.”

**Date of Effect: 1 August 2017**