

South Australia



ANNO QUADRAGESIMO NONO
ELIZABETHAE II REGINAE
A.D. 2000

TAB (DISPOSAL) ACT 2000

No. 94 of 2000

[Assented to 21 December 2000]

An Act to make provision for the disposal of the business of the South Australian Totalizator Agency Board; to amend and subsequently repeal the Racing Act 1976; to amend the Stamp Duties Act 1923 and the State Lotteries Act 1966; and for other purposes.

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The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *TAB (Disposal) Act 2000*.

Commencement

2. (1) Subject to this Act, this Act will come into operation on a day to be fixed by proclamation.

(2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act.

(3) Subsection (2) comes into operation on the day on which this Act is assented to by the Governor.

Interpretation

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

"asset" means—

(a) a present, contingent or future legal or equitable estate or interest in real or personal property; or

(b) a present, contingent or future right, power, privilege or immunity,

and includes, in relation to a transfer made by a transfer order or sale agreement, a present or future cause of action in favour of the transferor;

"authorised project"—see section 5;

"cause of action" includes any right to bring, defend or participate in legal proceedings;

"Crown entity" means the Crown, a Minister, an instrumentality of the Crown, a statutory corporation or a State-owned company;

"document" includes a disc, tape or other medium in which information is stored;

"employee" includes an officer, but does not include a casual employee unless the person is a regular casual employee;

"employee transfer order"—see section 16;

"executive" means a person occupying a position designated by the Minister, by order in writing, as an executive position;

"instrument" includes a written agreement, undertaking or understanding, a legislative instrument and a judgment, order or process of a court;

"legal proceedings" includes an arbitration and an administrative proceeding;

"liability" means a present, future or contingent liability (arising either at law or in equity) and includes—

- (a) a duty or non-pecuniary obligation; and
- (b) in relation to a transfer made by a transfer order or sale agreement, a present or future cause of action against the transferor;

"purchaser"—*see* section 11;

"regular casual employee" means a casual employee whose casual employment has been on a regular and systematic basis over the immediately preceding 52 weeks;

"sale agreement"—*see* section 11;

"security" means—

- (a) a mortgage or charge; or
- (b) a guarantee or indemnity; or
- (c) any other security for, or instrument relating to, the payment of money or the discharge of a liability;

"State-owned company" means a company incorporated under the *Corporations Law* all of the shares in which are held by Ministers of the Crown;

"statutory corporation" has the same meaning as in the *Public Corporations Act 1993*;

"TAB" means the South Australian Totalizator Agency Board;

"TAB business" means the business of TAB or TABCO conducted under the *Racing Act 1976* or the *Authorised Betting Operations Act 2000*;

"TABCO" means TABCO(A) or TABCO(B);

"TABCO(A)" means TAB as converted to a company under the *Corporations Law*;

"TABCO(B)" means a State-owned company nominated by the Minister by notice in the *Gazette* as TABCO(B) for the purposes of this Act;

"transfer order"—*see* section 10;

"transferred asset" means an asset transferred by a transfer order or sale agreement;

"transferred employee" means—

- (a) a person transferred by an employee transfer order to the employment of the purchaser or, if the shares in TABCO were transferred to the purchaser, to the employment of TABCO; or
- (b) a person who was an employee in the employment of TABCO when the shares in TABCO were transferred to the purchaser,

and includes such a person in the employment of an employer related to the purchaser or TABCO;

"transferred instrument"—*see* section 11;

"transferred liability" means a liability transferred by a transfer order or sale agreement.

(2) Employers are related for the purposes of this Act if—

- (a) one takes over or otherwise acquires the business or part of the business of the other; or
- (b) a chain of relationships can be traced between them under paragraph (a).

Application of Act

4. It is the intention of the Parliament that—

- (a) this Act apply within the State and outside the State to the full extent of the extra-territorial legislative capacity of the Parliament; and
- (b) the provisions of this Act, and orders and agreements made and other things done under this Act, have effect in relation to assets, liabilities, transactions, acts and matters situated, arising, entered into, done or occurring within or outside the State whether the applicable law would, apart from this Act, be South Australian law or the law of another place; and
- (c) a court, tribunal or other body exercising judicial powers in a place outside the State apply South Australian law to the determination of any question about the effect of this Act, or the effect of an order or agreement made or other thing done under this Act, despite any inconsistent law of that other place.

PART 2
PREPARATORY ACTION

Preparation for restructuring and disposal

5. (1) The following actions (collectively referred to as the authorised project) are authorised:

- (a) determination of the most appropriate means of disposing of the TAB business;
- (b) examination of relevant assets and liabilities;
- (c) action that the Minister authorises in preparation for disposal of the business.

(2) The authorised project is to be carried out by—

- (a) persons employed by the Crown and assigned to work on the project; and
- (b) employees of TAB or TABCO assigned to work on the project; and
- (c) other persons whose services are engaged by the Crown or TAB or TABCO for the purpose of carrying out the project; and
- (d) other persons approved by the Minister whose participation or assistance is, in the opinion of the Minister, reasonably required for the purposes of the project.

(3) The Minister (or the Minister's delegate) may, despite any other law or instrument, authorise prospective purchasers and their agents to have access to information in the possession or control of TAB or TABCO that should, in the Minister's opinion (or the delegate's opinion), be made available to the prospective purchasers for the purposes of the authorised project.

(4) Members and employees of TAB and directors and employees of TABCO must, despite any other law or instrument—

- (a) allow persons engaged on the authorised project access to information in the possession or control of TAB or TABCO that is reasonably required for, or in connection with, the carrying out of the authorised project; and
- (b) do whatever is necessary to facilitate the provision of the information to persons entitled to access to the information under subsection (3); and
- (c) provide other co-operation, assistance and facilities that may be reasonably required for, or in connection with, the carrying out of the authorised project.

(5) A person who is in a position to grant or refuse access to information to which this section relates may deny access to a person who seeks access to the information unless the person produces a certificate issued by the Minister (or the Minister's delegate) certifying that the person is entitled to access to information under this section and the basis of the entitlement.

(6) Despite the preceding subsections, access to information about particular employees' employment histories or other personal information about employees must not be given except to the purchaser once a sale agreement has been executed.

Authority to disclose and use information

6. The disclosure or use of information in the possession or control of—

- (a) TAB or TABCO; or
- (b) a current or former member or employee of TAB or director or employee of TABCO; or
- (c) persons involved in the authorised project,

as reasonably required for, or in connection with, the carrying out of the authorised project is authorised despite any other law or instrument to the contrary.

Evidentiary provision

7. (1) In legal proceedings, a certificate of the Minister (or the Minister's delegate) certifying that action described in the certificate forms part of the authorised project, or that a person named in the certificate was at a particular time engaged on the authorised project, must be accepted as proof of the matter so certified in the absence of proof to the contrary.

(2) An apparently genuine document purporting to be a certificate under subsection (1) must be accepted as such in the absence of proof to the contrary.

Relationship between Minister and TAB and TABCO in restructuring and disposal period

8. (1) The Minister may, as the Minister considers necessary for the authorised project—

- (a) give TAB or TABCO directions; and
- (b) execute agreements on behalf of TAB or TABCO (including agreements of a kind referred to in the *Authorised Betting Operations Act 2000*).

(2) In executing an agreement under this section, the Minister is to be taken to be acting as the agent of TAB or TABCO (as the case requires).

**PART 3
DISPOSAL**

Conversion of TAB to company

9. Schedule 1 applies for the purposes of the conversion of TAB to a company under the *Corporations Law*.

Transfer order

10. (1) The Minister may, by order in writing (a **transfer order**), transfer to a Crown entity assets or liabilities (or both) of TAB or TABCO.

(2) In exercising powers in relation to assets or liabilities of TAB or TABCO, the Minister is to be taken to be acting as the agent of TAB or TABCO.

(3) A transfer order takes effect on the date of the order or on a later date specified in the order.

(4) A transfer order effects the transfer and vesting of an asset or liability in accordance with its terms by force of this Act and despite the provisions of any other law or instrument.

(5) The transfer of a liability from a body discharges the body from the liability.

(6) If a transfer order so provides, a security to which a transferred asset is subject ceases to apply to the asset on its transfer by the transfer order.

(7) A transfer order may provide that references to TAB or TABCO in a specified instrument or an instrument of a specified class are replaced by references to a specified Crown entity, and in that case—

(a) the instrument is modified as provided in the order; and

(b) the Crown entity accordingly succeeds to the rights and liabilities of TAB or TABCO under the instrument as from the date on which the transfer order takes effect or the date on which the instrument takes effect (whichever is the later).

(8) A power may not be exercised under this section in relation to TABCO if TABCO has ceased to be a State-owned company.

Sale agreement

11. (1) The Minister may by agreement (a **sale agreement**) with another (the **purchaser**)—

(a) transfer to the purchaser assets and liabilities of TABCO;

(b) transfer to the purchaser the shares in TABCO.

(2) In exercising powers in relation to assets and liabilities of TABCO, the Minister is to be taken to be acting as the agent of TABCO.

(3) A sale agreement effects the transfer and vesting of assets and liabilities or shares in accordance with its terms by force of this Act and despite the provisions of any other law or instrument.

(4) The transfer of a liability by a sale agreement operates to discharge the transferor and the Crown from the liability.

(5) Unless the sale agreement otherwise provides—

- (a) the transfer of an asset by a sale agreement operates to discharge the asset from any trust in favour of the Crown;
- (b) the transfer of the shares in TABCO by a sale agreement operates to discharge the assets of TABCO from any trust in favour of the Crown.

(6) If a sale agreement so provides, a security to which a transferred asset is subject ceases to apply to the asset on its transfer by the sale agreement.

(7) A sale agreement may provide that instruments identified in the agreement, or to be identified as provided in the agreement, are to be transferred instruments.

(8) If an instrument is identified in, or under, a sale agreement as a transferred instrument, the instrument operates, as from a date specified in the agreement, subject to any modifications specified in the agreement.

Supplementary provisions

12. (1) If—

- (a) the transfer of a liability under this Act, and the consequent discharge from the liability, is not recognised under the law of a place outside South Australia; and
- (b) the transferor is required under the law of that place to make a payment in satisfaction of the liability,

the transferor is entitled to be indemnified by the transferee for the payment.

(2) Subject to any contrary provision in a transfer order or sale agreement, the following provisions apply in relation to transferred assets and liabilities:

- (a) if a security held by the transferor is referable to a transferred asset or liability, then, so far as it is referable to the transferred asset or liability—
 - (i) the security is available to the transferee as security for the discharge of the liabilities to which it relates including, where the security relates to future liabilities, liabilities incurred after the transfer; and
 - (ii) the transferee is entitled to the same rights and priorities and is subject to the same liabilities under the security as those to which the transferor would have been entitled or subject if there had been no transfer;
- (b) if a transferred asset consists of a right to the possession or use of property under a lease or other instrument, the transferor incurs no liability (nor does the right to possession become liable to forfeiture) because the transferor has parted with possession of the property, or permitted the possession or use of the property by another person, contrary to the terms of the lease or instrument;

- (c) an instruction, order, authority or notice given to the transferor before the transfer takes effect is, so far as it is referable to a transferred asset or liability, taken to have been given to the transferee;
- (d) the transferee is entitled to possession of all documents to which the transferor was entitled immediately before the transfer took effect that are entirely referable to a transferred asset or liability and is entitled to access to, and copies of, all documents that are referable to both a transferred asset or liability and any other asset or liability;
- (e) a negotiable instrument or order for payment drawn by or on, or accepted or endorsed by the transferor, is (if the transferor's liability under the instrument or order is a transferred liability) payable by the transferee in the same way as if it had been drawn by or on, or accepted or endorsed (as the case may be) by the transferee;
- (f) the transferee has the same right to ratify a contract or agreement relating to an asset or liability transferred to it from the transferor as the transferor would have had if there had been no transfer;
- (g) in legal proceedings about a transferred asset or liability, evidence that would have been admissible by or against the transferor if there had been no transfer may be given in evidence by or against the transferee;
- (h) legal proceedings in respect of a transferred asset or liability that had commenced before the transfer may be continued and completed by or against the transferee.

Evidentiary provision

13. (1) The Minister (or the Minister's delegate) may certify—

- (a) whether specified assets or liabilities are or are not transferred assets or liabilities and the identity of the transferee;
- (b) whether specified instruments are or are not transferred instruments;
- (c) any other matter with respect to a transfer under this Act.

(2) An apparently genuine document purporting to be a certificate under subsection (1) must be accepted in legal proceedings or by an administrative official as proof of the matter certified in the absence of proof to the contrary.

Application of proceeds of sale agreement

14. The Treasurer may only apply proceeds of a sale agreement—

- (a) in payment of the costs of restructuring and disposal of the TAB business; and
- (b) in payment of amounts for the development of the racing industry; and
- (c) in payment to an account at the Treasury to be used for the purposes of retiring State debt.

Tabling of report on probity of sale processes

15. The Minister must have a report on the probity of the processes leading up to the making of a sale agreement prepared by an independent person engaged for the purpose and cause the report to be laid before both Houses of Parliament within 12 sitting days after the making of the sale agreement.

**PART 4
STAFF****Transfer of staff**

16. (1) If assets and liabilities of TABCO(A) are transferred by a transfer order to TABCO(B), the Minister must, by order in writing (an **employee transfer order**), transfer to positions in the employment of TABCO(B) all employees (including all casual employees) of TABCO(A) at the time of the transfer of the assets and liabilities.

(2) Before assets and liabilities of, or shares in, TABCO may be transferred by a sale agreement to the purchaser, the Minister must, by written notice to each employee of TABCO (other than an employee employed under a fixed term contract or an executive)—

(a) state—

- (i) whether the employee's position is a required position for the business when acquired by the purchaser; and
- (ii) if so, whether the employee's position is a key position (that is, a position occupied by a person with knowledge of the business that should, in the Minister's opinion, be available to or passed on to the purchaser); and

(b) invite the employee to indicate to the Minister in writing within not less than 14 days—

- (i) if the employee's position is stated to be a required position—whether the employee elects to be a transferred employee; or
- (ii) if the employee's position is stated not to be a required position—whether the employee elects to participate in a career transition program.

(3) If assets and liabilities of TABCO are transferred by a sale agreement to the purchaser, the Minister must, by order in writing (an **employee transfer order**), transfer to positions in the employment of the purchaser all employees of TABCO at the time of the transfer of the assets and liabilities—

(a) who have been notified under subsection (2) that their positions are key positions; or

(b) who have been notified under subsection (2) that their positions are required positions other than key positions and have, in the manner and within the period specified in the notice, elected to be transferred employees.

(4) If an employee who has been notified under subsection (2) that the employee's position is not a required position elects, in the manner and within the period specified in the notice, to participate in a career transition program, the employee will have rights with respect to—

(a) continued employment for a period not exceeding 12 months; and

(b) access during that period to career transition training and assistance,

as approved by the Minister, by order in writing, for employees electing to participate in such a program.

(5) Before shares in TABCO may be transferred by a sale agreement to the purchaser, the Minister must, by order in writing (an **employee transfer order**), transfer to positions in the employment of a Crown entity all employees of TABCO who have been notified under subsection (2) that their positions are not required positions and have elected, in the manner and within the period specified in the notice, to participate in a career transition program.

(6) The Minister may, by order in writing (an **employee transfer order**), at the joint request of an employee who has been transferred under subsection (5) and the purchaser or, if the shares in TABCO have been transferred by a sale agreement to the purchaser, TABCO, transfer the employee to a position in the employment of the purchaser or TABCO (as the case may require).

(7) An employee transfer order takes effect on the date of the order or on a later date specified in the order.

(8) An employee transfer order has effect by force of this Act and despite the provisions of any other law or instrument.

(9) A transfer of an employee under this section does not—

- (a) affect the employee's remuneration or other terms and conditions of employment; or
- (b) interrupt continuity of service; or
- (c) constitute a retrenchment or redundancy.

(10) A person whose employment is transferred under this section is taken to have accrued as an employee of the transferee an entitlement to annual leave, sick leave and long service leave that is equivalent to the entitlements that the person had accrued, immediately before the transfer took effect, as an employee of the transferor.

(11) A transfer under this section does not give rise to any remedy or entitlement arising from the cessation or change of employment.

(12) For the purposes of construing a contract applicable to a person whose employment is transferred under this section, a reference to the transferor is to be construed as a reference to the transferee.

(13) If—

- (a) an employee who has been notified under subsection (2) that the employee's position is a required position other than a key position does not, in the manner and within the period specified in the notice, elect to be a transferred employee; or
- (b) an employee who has been notified under subsection (2) that the employee's position is not a required position does not, in the manner and within the period specified in the notice, elect to participate in a career transition program,

the employee is to be retrenched (subject to Schedule 2) before assets and liabilities of, or shares in, TABCO are transferred to the purchaser.

Superannuation Trust Deed

17. (1) The Trustee must, as soon as practicable, obtain appropriate advice and, on the basis of that advice, determine the amount by which the Fund exceeds that necessary to maintain the level of benefits payable from the Fund to the Members (the **Fund surplus**).

(2) The Board and the Trustee must, as soon as practicable after the Fund surplus has been determined and in accordance with the Deed, amend the Deed so that 50 per cent of the Fund surplus (or as near to 50 per cent of the Fund surplus as is reasonably achievable) will be applied in the provision of benefits to the Members in a manner that the Board and the Trustee determine to be equitable as between the Members and the balance of the Fund surplus will be paid to TAB or TABCO.

(3) If the making of a transfer order or sale agreement will necessitate the making of an employee transfer order, the transfer order or sale agreement must contain provisions necessary to continue the application of the Deed to the employees who will be transferred by the employee transfer order.

(4) In this section—

- (a) 'Deed' means the deed of trust dated 28 July 1969 establishing the superannuation fund known as the *South Australian Totalizator Agency Board Staff Superannuation Fund*, as amended from time to time;
- (b) the expressions 'Board', 'Fund', 'Member' and 'Trustee' have the same respective meanings as in the Deed.

(5) This section comes into operation on the day on which this Act is assented to by the Governor.

Memorandum of understanding

18. (1) If a memorandum of understanding about the rights of employees of TAB or TABCO or employees the subject of an employee transfer order is entered into between the Government and any one or more of—

- (a) the Public Service Association of South Australia Incorporated; or
- (b) the Australian Municipal, Administrative, Clerical and Services Union, South Australian Clerical and Administrative Branch; or
- (c) the Employee Ombudsman,

the Minister must make an order containing provisions to give effect to the memorandum of understanding.

(2) An order under subsection (1)—

- (a) may contain terms and conditions that take effect as terms and conditions of an employee's contract of employment; and
- (b) must be published in the *Gazette*; and
- (c) has effect according to its terms.

Application of Schedule 2 staff provisions

19. Schedule 2 applies subject to any provision of an order of the Minister under section 18 excluding the application of Schedule 2 or specified provisions of Schedule 2.

PART 5
MISCELLANEOUS

Amount payable by TABCO in lieu of tax

20. The Treasurer may require TABCO to make payments in respect of a period for which TABCO is a State-owned company in lieu of taxes under the law of the State or the Commonwealth from which TABCO is exempt during the period.

Relationship of TABCO and Crown

21. TABCO will be an instrumentality of the Crown but cease to be such an instrumentality when it ceases to be a State-owned company.

Dissolution of TABCO

22. The Governor may, by proclamation, dissolve TABCO if it is a State-owned company and all its assets and liabilities have been transferred under this Act.

Registering authorities to note transfer

23. The Registrar-General or any other authority required or authorised under a law of the State to register or record transactions affecting assets or liabilities, or documents relating to such transactions, must, on application by the Minister or a person nominated by the Minister for the purpose, register or record a transfer under this Act.

Stamp duty

24. (1) No stamp duty is payable under a law of the State in respect of a transfer effected by a transfer order.

(2) No person has an obligation under the *Stamp Duties Act 1923*—

- (a) to lodge a statement or return relating to a transfer effected by a transfer order; or
- (b) to include information about such a transfer in a statement or return.

Interaction between this Act and other Acts

25. (1) This Act has effect despite the provisions of the *Real Property Act 1886* or any other law.

(2) A transaction under this Act is not subject to—

- (a) the *Land and Business (Sale and Conveyancing) Act 1994*; or
- (b) the *Retail and Commercial Leases Act 1995*; or
- (c) Part 4 of the *Development Act 1993*.

(3) An application under section 223LD of the *Real Property Act 1886* for the division of land, or an application under section 14 of the *Community Titles Act 1996* for the division of land by a plan of community division, that is certified in writing by the Minister as being for the purposes of a transaction under this Act need not be accompanied by a certificate under Part 4 of the *Development Act 1993*.

Effect of things done or allowed under Act

26. Nothing done, authorised or allowed by or under this Act or a transfer order, sale agreement or employee transfer order—

- (a)* constitutes a breach of, or default under, an Act or other law; or
- (b)* constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
- (c)* constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom) or in any other way; or
- (d)* constitutes a civil or criminal wrong; or
- (e)* terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
- (f)* releases a surety or any other obligee wholly or in part from an obligation.

Regulations

27. The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

SCHEDULE 1
Conversion of TAB to Company

Steps before conversion of TAB to company

1. (1) If the Governor so declares by proclamation, TAB is to have a share capital as from a date specified in the proclamation.

(2) The proclamation may contain requirements for the issuing of shares by TAB to specified Ministers of the Crown, including (without limitation) requirements as to the number of shares to be issued, the rights to be attached to the shares, the issue price of the shares and the consideration to be given for the shares.

(3) The Ministers to whom shares in TAB are issued are not members of TAB at any time before its conversion to a company limited by shares merely because the Ministers hold those shares.

(4) TAB must take such action as the Minister requires for the purpose of its being registered as a proprietary or public company limited by shares under Part 5B.1 of the *Corporations Law* (Registering a body corporate as a company), including (without limitation) action to adopt a constitution approved by the Minister.

Membership of TAB following conversion

2. (1) The Ministers, as holders of shares in TAB at the time of its conversion to a company limited by shares, become (by force of this subclause) members of TAB at the time of that conversion.

(2) The Ministers are, in relation to membership of TAB following its conversion, entitled to the same rights, privileges and benefits, and are subject to the same duties, liabilities and obligations, as if they had become members of TAB immediately prior to its conversion.

Continuity of TAB and construction of references to TAB

3. (1) Without limiting any provision of the *Corporations Law*, TAB as converted into a company limited by shares is a continuation of, and the same legal entity as, TAB as it existed before the conversion.

(2) After the conversion, a reference in any instrument to TAB is to be read as a reference to TAB as converted into a company limited by shares.

SCHEDULE 2
Staff Provisions

Interpretation**1. In this Schedule—**

"actual earnings"—*see* clause 6;

"average weekly earnings"—*see* clause 6;

"average weekly hours"—*see* clause 6;

"career transition employee" means an employee who, having been notified under section 16(2) that the employee's position is not a required position, elected, in the manner and within the period specified in the notice, to participate in a career transition program;

"date of transfer of the TAB business" means the date on which the assets and liabilities of, or shares in, TABCO are transferred by a sale agreement;

"Metropolitan Adelaide" has the same meaning as in the *Development Act 1993*;

"month" means a period of four weeks;

"prescribed termination payment" means—

- (a) 20 times the employee's average weekly earnings during the relevant period plus 3 times the employee's average weekly earnings during the relevant period for each of the employee's years of service; or
- (b) 116 times the employee's average weekly earnings during the relevant period,

whichever is the lesser amount;

"prescribed transfer payment" means—

- (a) in relation to a transferred employee with less than 6 years of service up to the date of transfer of the TAB business—20 per cent of the employee's actual earnings during the financial year last ending before that date or \$5 000, whichever is the lesser;
- (b) in relation to a transferred employee with 6 or more but less than 16 years of service up to the date of transfer of the TAB business—50 per cent of the employee's actual earnings during the financial year last ending before that date or \$13 000, whichever is the lesser;
- (c) in relation to a transferred employee with 16 or more years of service up to the date of transfer of the TAB business—80 per cent of the employee's actual earnings during the financial year last ending before that date or \$20 000, whichever is the lesser;

"relevant period" means—

- (a) in relation to the average weekly earnings of a regular casual employee who becomes entitled to a prescribed termination payment after the first 52 weeks after the date of transfer of the TAB business (other than an employee whose hours of employment after the end of that period were permanently or temporarily reduced as a result of a request made by the employee after the date of transfer)—the immediately preceding 52 weeks or the first 52 weeks after the date of transfer of the TAB business, whichever period results in the greater average weekly earnings;

(b) in any other case—the immediately preceding 52 weeks;

"remuneration (at ordinary rates)"—see clause 6;

"required payment in lieu of notice", in relation to an employee, means the amount calculated in accordance with the following formula:

$$P = (RN - AN) \times \frac{AWE}{7}$$

where—

- P is the amount to be calculated;
 RN is the number of days in the period of notice of retrenchment required to be given to the employee under clause 4(3);
 AN is the number of days notice of retrenchment actually given to the employee;
 AWE is the employee's average weekly earnings during the relevant period;

"TAB" includes TABCO;

"temporarily transferred key employee" means an employee who, having been notified under section 16(2) that the employee's position is a key position, did not, in the manner and within the period specified in the notice, elect to be a transferred employee;

"transferred employee" does not include a temporarily transferred key employee;

"years of service"—see clause 6.

Prescribed transfer payments to transferred employees

2. (1) The Minister must pay each employee who becomes a transferred employee the prescribed transfer payment within 14 days after the employee becomes a transferred employee.

(2) This clause does not apply to—

- (a) an employee employed under a fixed term contract; or
 (b) an executive.

Remuneration of temporarily transferred key employees

3. (1) A temporarily transferred key employee must be paid at fortnightly intervals (in addition to the remuneration otherwise payable to the employee) an amount equal to—

- (a) 20 per cent of the employee's remuneration (at ordinary rates) during the preceding fortnight; or
 (b) \$30 for each day during that fortnight that the employee is required to attend for work in that employment,

whichever is the lesser amount.

(2) This clause does not apply—

- (a) to an employee in respect of any fortnight during which the employee is absent from work on one or more days (whether or not the absence is with leave); or
 (b) to an employee employed under a fixed term contract; or
 (c) to an executive.

Termination payments

4. (1) An employee of TAB must be paid the prescribed termination payment if the employee is retrenched while TAB is an instrumentality of the Crown.

(2) A career transition employee must be paid the prescribed termination payment if the employee—

- (a) resigns otherwise than in order to commence employment in the Public Service or employment with a Crown entity, the purchaser, TABCO or an employer related to the purchaser or TABCO; or
- (b) fails to secure alternative employment during the period of the career transition program and is retrenched.

(3) A transferred employee may not be retrenched within 2 years after the date of transfer of the TAB business unless the employee—

- (a) is given a period of written notice of the retrenchment equal to any period remaining before the end of the first year after the date of transfer of the TAB business or is paid the required payment in lieu of notice; and
- (b) is paid the prescribed termination payment.

(4) A temporarily transferred key employee will be taken to be retrenched 3 months after the date of transfer of the TAB business unless—

- (a) the employee and the employer have agreed otherwise; or
- (b) at an earlier point of time the employee has been retrenched or the employee's employment has otherwise terminated.

(5) A temporarily transferred key employee must, on retrenchment, be paid the prescribed termination payment.

(6) For the purposes of this clause, without limiting the circumstances in which a person will be taken to be retrenched—

- (a) a regular casual employee will be taken to be retrenched if, in the first or any succeeding month after the date of transfer of the TAB business, the employer does not offer the employee any hours of employment without—
 - (i) the employee's consent; or
 - (ii) (assuming the employment were not on a casual basis) proper cause for termination associated with the employee's conduct or physical or mental capacity; and
- (b) a person will be taken to be retrenched if the person's employment is terminated in circumstances where the person has rejected or failed to respond to a proposal of the employer that the person—
 - (i) transfer to a position with a principal workplace outside the State; or
 - (ii) transfer between positions with principal workplaces one within Metropolitan Adelaide and the other outside Metropolitan Adelaide; or
 - (iii) transfer between positions with principal workplaces outside Metropolitan Adelaide more than 45 kilometres apart by the shortest practicable route by road.

(7) This clause does not affect an employee's right to superannuation payments or other payments of a kind to which the employee would be entitled on resignation assuming that the employee were not surplus to the employer's requirements.

(8) This clause does not apply to—

- (a) an employee employed under a fixed term contract; or
- (b) an executive.

(9) The Governor may, by proclamation, suspend the application of subclause (1) for a specified period or until a date fixed by subsequent proclamation.

Payment to transferred regular casual employees for reduced hours

5. If a regular casual employee becomes a transferred employee and, in the first or any succeeding week within the first 52 weeks after the date of transfer of the TAB business, the employer offers the employee employment but for less than the employee's average weekly hours during the 52 weeks immediately before the date of transfer of the TAB business without—

- (a) the employee's consent; or
- (b) (assuming the employment were not on a casual basis) proper cause associated with the employee's conduct or physical or mental capacity,

the employee is to be regarded as having been employed by the employer during that week for a number of hours equal to the employee's average weekly hours during the 52 weeks immediately before the date of transfer of the TAB business and the employer must remunerate the employee accordingly.

Minister's order fixing manner in which earnings, hours, remuneration and years of service to be determined

6. (1) The Minister may, by order, fix the manner in which the actual earnings, average weekly earnings, remuneration (at ordinary rates), average weekly hours or years of service of an employee are to be determined for the purposes of this Schedule.

(2) An order of the Minister—

- (a) may make different provision in relation to the determination of an employee's actual earnings, average weekly earnings, remuneration (at ordinary rates), average weekly hours or years of service according to whether the relevant employment was full-time or part-time or casual, included unremunerated absences or was affected by other factors; and
- (b) may be varied by the Minister by further order in writing made before any employee becomes a transferred employee; and
- (c) must be published in the *Gazette*.

SCHEDULE 3
Amendment of Racing Act

Commencement

1. If the Governor so declares by proclamation, this Schedule will come into operation at the time at which TAB is converted to a company under the *Corporations Law*.

Amendment of Racing Act

2. The *Racing Act 1976* is amended—

(a) by striking out from section 5(1) the definition of "TAB" and substituting the following definition:

"TAB" means TABCO within the meaning of the *TAB (Disposal) Act 2000*;

(b) by striking out sections 43 to 59 (inclusive) and substituting the following section:

Authorisation to conduct totalizator betting

4. TAB will continue to be authorised—

- (a) to conduct off-course totalizator betting on races held within or outside Australia; and
- (b) to act as the agent of an authorised racing club in the conduct by that club of on-course totalizator betting on races held within or outside Australia; and
- (c) to conduct totalizator betting on football-results held within or outside Australia; and
- (d) to conduct totalizator betting on the result of any other sporting event or an event of any other kind or on a combination of sporting or other events whether held or occurring within or outside Australia.

SCHEDULE 4***Repeal of Racing Act, Amendment of Stamp Duties Act and State Lotteries Act and Transitional Provisions*****Commencement**

1. This Schedule will come into operation on a day to be fixed by proclamation.

Repeal of Racing Act

2. The *Racing Act 1976* is repealed.

Amendment of Stamp Duties Act

3. The *Stamp Duties Act 1923* is amended by striking out subsection (3a) of section 42B.

Amendment of State Lotteries Act

4. The *State Lotteries Act 1966* is amended—

- (a) by striking out from section 3(1) the definition of "the Hospitals Fund" and substituting the following definition:

"the Hospitals Fund" means the fund of that name kept at the Treasury and continued in existence under this Act;;

- (b) by inserting after section 16A the following section:

Hospitals Fund

16AB. (1) The Fund entitled the "Hospitals Fund" established at the Treasury will continue in existence under that name.

(2) The Hospitals Fund may only be used for the provision, maintenance, development and improvement of public hospitals and equipment for public hospitals by making payments as approved by the Treasurer to the Consolidated Account to match amounts appropriated by Parliament and paid from the Consolidated Account for those purposes.

Unclaimed dividends

5. A liability to pay a dividend on a totalizator bet subsisting at the repeal of the *Racing Act 1976* will be discharged at the time at which the body concerned would have ceased to have the liability in accordance with the *Racing Act 1976* had that Act not been repealed.

Appropriation of money for dividends

6. (1) If the Minister is required by the sale agreement or a related agreement to pay an amount for a dividend on a totalizator bet, the amount required is appropriated from the Consolidated Account by force of this clause.

(2) If the Minister decides to pay an amount *ex gratia* as a dividend on a totalizator bet, the amount required is appropriated from the Consolidated Account by force of this clause.

(3) The Minister is not to pay an amount as a dividend on a totalizator bet if more than 12 months have elapsed since the race or other event in respect of which the bet was made.