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Racing Australia's Trainer and Owner Reforms

To modernize industry practice, Racing Australia is introducing new reforms to standardise the arrangements between owners and trainers, and also agreements between co-owners. These new measures will be known as the Trainer and Owner Reforms (TOR).

The TOR will provide greater clarity and certainty between owners and trainers as well as between co-owners.

The commencement date for the reforms will be 1 March, 2017.

There are three key features to the TOR:

(1) Standard Training Agreement (STA)

A new set of standard contractual terms will for the first time apply to all owners and trainers. These terms will be known as the "Standard Training Agreement" (the STA).

The STA will be compulsory for owners and trainers. However, to preserve flexibility in relation to the contractual arrangements between trainers and owners, the STA can be varied so long as certain terms are not excluded or limited. The terms that cannot be varied will be defined in the Australian Rules of Racing.

If the trainer and owner are parties to a separate agreement in relation to training services as at 1 March, 2017, they can agree in writing that their other agreement continues to operate as well. However if there is any conflict or inconsistency between the STA and that agreement, the STA prevails to the extent of that conflict or inconsistency.

The STA will expressly impose some basic requirements on trainers. Those requirements are in practice already undertaken by many trainers.

For example, trainers will be required to set out in a document called a "Fees Notice" the training fees and disbursements the trainer plans to charge. A Fees Notice will need to be issued within 14 days of a trainer being appointed by an owner. The STA will also require that trainers meet basic standards for caring for and training a horse, and to report to the owner from time to time about the welfare and progress of a horse. The STA will formalise services many trainers already provide their owners.

The STA is specifically designed to facilitate and encourage trainers getting paid training fees and disbursements promptly by owners. An invoice for training fees and/or disbursements will be presumed due and payable to a trainer at the end of a month as long as the invoice is issued within the first 15 days of that month.

Principal Racing Authorities (PRAs) will have powers under the Rules of Racing to facilitate payment to trainers (including powers to reject the registration of an interest in a horse where fees are due and payable to a trainer, to freeze prizemoney, and to direct payment of prizemoney to trainers in some circumstances).

(2) Training Disputes Tribunal (TDT)

Of course safeguards are built into the STA, including that an owner may dispute an invoice by serving a "Dispute Notice". Once a Dispute Notice is lodged, a trainer and owner will each have the right to elect to have an independent tribunal convened and arranged by each PRA called a Training Disputes Tribunal (TDT).

The TDT will determine disputes in relation to fees and disbursements for training services. Those hearings will take place in a practical and informal forum so that that if there is a dispute, it can be brought to a head promptly. The TDT process will fairly balance the rights and interests of both trainers and owners.

(3) Co-owners Agreement (COA)

Racing Australia believes that many trainers/owners and Co-owners operate informally and don't have access to a document setting out where they stand. This leads to numerous misunderstanding and disputes to the detriment of the industry. There has long been a need for standard documents which state the rights and obligations of trainers and owners and co-owners.

The COA applies in multiple ownerships (except for Co-owners who have acquired shares in a horse offered by a promoter approved by a PRA and licenced under the *Corporations Act* (Cth) and/or offered pursuant to an ASIC instrument or Class Order in relation to shares in horses.

If groups of owners already have in place separate contracts or deeds governing their venture, they can agree for them to operate side by side with the COA, as long as they do not conflict with and/or are not inconsistent with the COA. Again, the COA will prevail to the extent of the conflict or inconsistency.

Co-owners will also be able to add to or vary the COA (except that they cannot exclude or limit a requirement of the rules of racing).

Conclusion

The new TOR will be provided for by the Rules of Racing. There are obviously some detailed points about it and will take some time getting used to. Racing Australia will work with stakeholders to familiarize themselves with the terms and operation of both the STA and COA. A number of communication initiatives are being considered.

A Frequently Asked Questions and a copy of the STA and COA documents is available at www.racingaustralia.horse.

For further information:

Peter McGauran, Chief Executive Officer, Racing Australia

Tel: 0408 483 491

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TRAINER AND OWNER REFORMS (TOR)

Frequently Asked Questions (FAQs)

Summary

1. What are the Trainer Owner Reforms (TOR)?

The TOR introduces a standard agreement between owners and trainers on the one hand, and a standard agreement between Co-owners on the other. Racing Australia believes that there is a need to standardize the arrangements between trainers and owners as well as between co-owners of a horse.

2. What documents are involved in the TOR?

Firstly, there is the Standard Training Agreement which sets out the rights and obligations of a trainer to an owner and vice-a-versa. The second document is the Co-Owner Agreement which provides a set of standard terms which will govern the rights and obligations of Co-owners in a Horse Ownership Venture.

3. Can an owner or trainer "opt out" of the TOR?

No. The TOR will be compulsory for Owners and Trainers. The only owners not subject to the Standard Training Agreement are "Exempt Owners", being owners who either train a horse themselves or employ a trainer exclusively for them pursuant to a written agreement.

4. Can the TOR be varied by agreement?

Yes. Both the Standard Training Agreement and Co-Owner Agreement can be varied by the parties in writing so long as certain terms of the two agreements are not excluded or limited. The terms that cannot be varied will be defined in the Australian Rules of Racing.

5. When does the TOR commence?

The TOR commences on 1 March 2017. The Australian Rules of Racing will enable both the introduction and operation of the TOR.

6. How will any disputes between a Trainer and Owner or Co-owners be resolved?

Each State and Territory Principal Racing Authority will establish a Training Disputes Tribunal (TDT) which will determine a dispute impartially and efficiently in a procedurally fair manner.

The Standard Training Agreement and Co-Owners Agreement set out the steps that a trainer and an owner must take to have a dispute determined by a TDT.

The Standard Training Agreement (STA)

1. What are the key features of the Standard Training Agreement (STA)?

There are three key features:

(i) The STA will impose some basic requirements and standards on trainers. For example, a trainer will be required to disclose the fees and disbursements the trainer will charge in a document called a "**Fees Notice**". The trainer must also abide by basic standards that will apply to caring for and training the horse. The trainer will need to report to owners periodically on a number of issues, including about the welfare and progress of a horse.

Importantly, the STA applies to a trainer and/or training partnership as well as to any company or other business structure through which a trainer or training partnership provides training services (including the billing of training fees and/or training disbursements). That means the STA cannot be avoided on account of a trainer or training partnership providing training services through a corporate entity or other business structure, just because that entity may not be licensed or registered by a Principal Racing Authority.

(ii) The STA is designed to help streamline the process for trainers being paid by owners who fail to make payments on time. If a trainer issues an invoice within the first 15 days of a month following a period of training services, and payment is not made by an owner by the end of that month, the invoice will be deemed to be due and payable to the trainer (to be known as the "presumption of a training debt").

If that point is reached, Racing Australia and/or Principal Racing Authorities will be able to do certain things under the Rules of Racing to encourage payment (including refuse registrations of or transfers of interests in a horse, and freezing prizemoney). A Principal Racing Authority may even in specified circumstances direct the prizemoney that would otherwise go to an owner, go to a trainer. Further, there will be an ability for a trainer to object in writing to the transfer of a horse to another trainer, or between owners, if the trainer contends that money for training fees and/or disbursements is owing.

(iii) The STA builds in safeguards for owners, including the important right to dispute a trainer's invoice (which will halt the "presumption of a training debt" referred to above from arising), and to elect to have an independent tribunal convened by a Principal Racing Authority called a Training Disputes Tribunal (TDT) hear and determine training fees and/or disbursements disputes.

2. Can the Standard Training Agreement be varied?

Yes. It is important to note that the STA does not provide for *all* matters that a trainer and owner may wish to agree on between them. The parties are able to agree in writing on further terms additional to those in the STA, again, provided that no new terms are inconsistent with the STA or conflict with a rule of racing.

3. What are examples of how an STA can be varied?

If a trainer and owner would like matters which are not specifically dealt with in the STA addressed, or matters covered by the STA in more detail, they can agree to do so, as long as the additional matters are in writing and are not inconsistent with the STA or any rule of racing.

For example, additional provisions that trainers and owners may wish to agree on in addition to those in the STA could include:

(a) The circumstances in which an owner can seek to hold a trainer liable for acts or omissions which occur in connection with the provision of training services, and/or for injury to or death of a horse. Those matters are not provided for in the STA. If they wish, it will be for trainers and owners to separately agree on and document whether or not a trainer can be held liable in circumstances of intentional and/or reckless and/or negligent conduct by the trainer or anyone working with the trainer;

(b) Whether any terms that would typically be implied into contracts at general law are to be excluded (to the extent permitted by law);

(c) Whether or not any warranties are considered to be provided to the trainer by the owner as to the health and/or soundness of a horse, including by virtue of the provision of a horse by the owner to the trainer; and

(d) The operation of the *Personal Property Securities Act* (Cth) to an interest in a horse.

4. What if a trainer and owner have an existing agreement in relation to training services?

A Training Agreement that is in place as at 1 March 2017 can continue to operate side by side with the STA to the extent that the existing agreement is not inconsistent with the STA.

The specific provisions of the STA directed at facilitating payment of trainers in relation to training fees and/or disbursements

1. How does the system of streamlined payment for trainers actually work?

The main features which aim to facilitate transparency and timely payment of training fees and disbursements are found in Clauses 4-7 of the STA. The three key features are:

(i) Fees Notice

Upon appointment, the trainer is required up-front to set out for the owner the fees the trainer intends to charge in connection with the training services in a **Fees Notice**. This is so that owners are given a clear picture about the nature and cost of the training fees and/or disbursements that may be charged.

In the Fees Notice the trainer will have to set out the basis on which the trainer will charge training fees (which includes the cost of the basic daily training fee), training disbursements (being fees charged by third parties to be billed direct to the owner by the trainer), and any other costs or fees known or reasonably anticipated by the trainer.

A Fees Notice must be provided by a trainer to existing owner/s within 14 days of 1 March 2017, and to any new owners afterwards within 14 days of the appointment of the trainer.

(ii) The Presumption of a Training Debt

Where a trainer issues an invoice within the first 15 days of a month following a period in which training services are provided, and payment is not made by an owner by the end of that month, then there will be a presumption that the owner is indebted to the trainer in the amount of the invoice issued by the trainer.

Unless an owner disputes the trainer's invoice by lodging a **Dispute Notice**, the Trainer can make written application to Racing Australia for action to be taken against the owner. Racing Australia can refuse to register the transfer of a horse or interest in a horse. At the same time, a Principal Racing Authority could freeze prizemoney, that would otherwise go to an owner, and be paid to the trainer.

*(iii) Dispute Notice and the Training Disputes Tribunal (**TDT**)*

However, an owner has the right to dispute a trainer's invoice. If there is a dispute that cannot be worked out between trainer and owner, either one of them can elect to go to a TDT so as to have training fees and/or disbursements disputes impartially heard and determined. It is important that the TOR balances the rights of trainers and owners.

To dispute an invoice, an owner will need to first complete a form called a "**Dispute Notice**". Importantly, serving a Dispute Notice acts as a "stop" on the ability of a trainer to rely on the presumption of a training debt (as referred to above).

From the day that a Dispute Notice is provided to a trainer, the trainer and owner then each have up to 14 days to apply to Racing Australia to have a TDT (which will typically be headed by a person appointed by each of the Principal Racing Authorities) decide the dispute at a hearing. If so, then a standard form called a "**Notice of Election of Hearing**" must be provided to Racing Australia and the other party to the dispute (and Racing Australia will then allocate the matter to the relevant Principal Racing Authority, which will then convene the TDT hearing).

2. Is there a maximum period of time a trainer has to ask Racing Australia to approach the Training Disputes Tribunal?

Yes. 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 relevant invoice/s the subject of the dispute.

Racing Australia has decided that a 6-month limitation period is long enough for a trainer and owner to seek to resolve their differences but also still have access to the TDT and therefore have an avenue to resolve the dispute outside of formal court processes.

It is hoped that the 6-month limitation period will encourage trainers and owners to act promptly to resolve any training fees and/or disbursements disputes between them.

3. What other rights does a trainer have in relation to an owner's share or interest in a horse if there is default in payment of training fees or disbursements?

Clause 8 of the STA sets out other rights that a trainer has, both under the Rules of Racing and of general law, and many are established practices in the industry.

For example, a trainer: will be able to exercise a lien over a horse in the event of non-payment of fees; will be able to seek recovery of fees through normal court or debt collection processes; and, if an owner does not pay fees in relation to training services when due and payable, can sell the horse (or owner's interest in the horse) through a process of auction or private treaty as provided in the STA.

4. Can a Standard Training Agreement be terminated?

Yes. Trainers and owners will have the right to terminate the training agreement between them for any reason on giving appropriate notice - there are provisions in the STA which make it clear how that is to happen.

The Training Disputes Tribunal (TDT)

1. How will the Training Disputes Tribunal (TDT) work?

The starting point is that if an owner disputes a trainer's invoice, the owner can complete a standard form called a "Dispute Notice", and by providing a copy of it to the trainer and Racing Australia, identify the invoice or part of an invoice the owner disputes, and the reason for that.

There is no specific time limit on the ability to serve a Dispute Notice other than it cannot be longer than 6 months after receiving the disputed invoice.

Importantly,, an owner should bear in mind that if an invoice is not disputed, once the end of the month in which the invoice is issued passes, the trainer has the right to rely on the non-payment as giving rise to the presumption that the invoice is due and payable to the trainer.

If a Dispute Notice is served, the owner and trainer are encouraged to try and resolve their dispute. Each has 14 days from when the Dispute Notice was served to apply to Racing Australia for an independent tribunal hearing by lodging with Racing Australia (and serving on the other party) a form called a "Notice of Election of Hearing". That form will alert Racing Australia (who will then inform the relevant Principal Racing Authority) that the owner and trainer have been unable to resolve their dispute and that the lodging party has elected to have an independent tribunal (to be arranged by the relevant Principal Racing Authority) decide the dispute.

Once the TDT proceeding is allocated by Racing Australia to the relevant Principal Racing Authority, it will then be organised by that Principal Racing Authority. The hearing can take place "on the papers" (meaning without an in-person hearing) if all parties agree to that. The TDT will make procedural directions so that the issues can be properly and efficiently heard and determined. The TDT process is intended to be much more informal than a court. The trainer and the owner do not have an immediate right to be legally represented before the TDT, however if they apply to the TDT for that to occur, the TDT will decide whether the circumstances warrant that. Apart from in an exceptional case, the TDT will be required to make a decision about a dispute within 10 days of a hearing. A timely and just process is a central goal of the TDT reforms.

2. What are the possible outcomes of a hearing before the TDT?

A TDT will usually simply determine whether or not an owner owes money to a trainer in relation to training services, and if so, how much. The TDT also has the right to make recommendations to a Principal Racing Authority about whether a Principal Racing Authority should apply the Rules of Racing against a trainer or owner, if the circumstances of the case justify that. The TDT may issue short written reasons for a decision, but that will only be required if specifically requested by a party to the dispute.

3. **Will the loser of a case before the TDT be required to pay the winner's costs, as often happens in court proceedings?**

Usually no. Each party to a hearing before the TDT who chooses to engage legal representatives (and whether or not the TDT grants them leave to appear at a hearing) will normally have to pay their own legal costs and expenses of the proceedings, regardless of the outcome. It is important for owners and trainers to be aware of this – if they decide to engage a lawyer in relation to a TDT hearing, it will be unlikely that they will be able to recover the costs of that person. The TDT will only be able to order that one party pay the other party's legal costs in exceptional circumstances. For example, if one of the parties to the dispute is frivolous or vexatious in their approach, or conducts themselves in a way that is particularly unreasonable and/or unduly extends the length of the proceedings, the TDT may order that party to pay the legal costs of the other party.

4. **Are there any fees that must be paid to lodge a Notice of Election of Hearing, and if so, what happens to those fees at the end of the case?**

Yes, there is a filing fee initially set at $250 (including GST) that must be paid to Racing Australia when a Notice of Election of Hearing form is lodged with it. The person (whether a trainer or owner) who lodges the case and is unsuccessful in the case (based on the decision of the TDT) must bear the cost of the $250 filing fee. If a trainer succeeds before the TDT, and was the party who elected to take the dispute to the TDT, the owner will be required to pay that amount to the trainer. If an owner succeeds having elected to take the matter to the TDT hearing, the trainer will be required to pay an amount of $250 to the owner to reimburse the owner for the filing fee.

Co-owner Agreement (COA)

1. What is the purpose of the Co-owner Agreement?

The Co-owner Agreement (COA) is intended to clearly provide for the rights and obligations of co-owners (defined as persons who own a horse with at least one other person), and give co-owners access to a set of terms to help regulate their venture in relation to the horse, referred to as the "Horse Ownership Venture". The Horse Ownership Venture can include the co-owners racing a horse (or horses) together, selling all or an interest in a horse, or conducting breeding activities in relation to a horse.

2. Who does the Co-Owner Agreement apply to?

The Co-owner Agreement applies to all co-owners except for those co-owners who own an interest in a horse as a result of acquiring shares in a horse offered by a promoter of shares approved by a Principal Racing Authority 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 to it) (those being known as **Promoter Syndicates**). The main reason for this is that those owners are expected to already have a form of structured contractual arrangement in place between them.

3. When does the Co-Owner Agreement commence?

Apart from owners who have a share in a Promoter Syndicate, the COA will apply to all co-owners in a Horse Ownership Venture as from 1 March 2017.

4. Under the COA, is a co-owner potentially liable for another owner's specific share of costs and expenses, or other obligations, in relation to the Horse Ownership Venture?

No. A key principle underpinning the COA is that each owner agrees to be severally liable in respect of the Horse Ownership Venture, but not jointly and severally liable.

That means that each co-owner has to pay his/her share of the costs or expenses of the venture in accordance with his/her ownership share in the horse. But, if a particular co-owner defaults, the other owners do not also have to cover or contribute to the defaulting owner's specific share of costs or expenses as well.

5. Why aren't arrangements between owners simply being left to them to organise? Why is Racing Australia getting involved in arrangements between owners?

Racing Australia recognises that while some groups of owners might have protocols or rules in place for how their arrangements are to be managed, many groups of owners come together informally, and don't have the time or the resources to put together a set of rules and regulations. The COA tries to strike the right balance by giving all owners a framework for their Horse Ownership Venture, and documenting important rights and obligations, while also enabling the possibility of other written arrangements co-existing with them.

6. I am already a co-owner whose ownership group or syndicate has a contract in place to regulate it – what happens to the provisions of that contract?

If the co-owners in a Horse Ownership Venture already have in place a separate agreement, they can agree in writing for those provisions to operate side by side with the COA, but if there is inconsistency between any of those provisions and the COA, the COA will prevail to the extent of the inconsistency.

For example, a scenario could emerge where an individual person owns 50% of a horse, and the other 50% of the horse is owned by a registered syndicate. In that example the syndicate may have a separate written syndicate deed or agreement in place. If agreed by the co-owners in writing, that deed or agreement would continue to operate side by side with the COA (in relation to the owners in that syndicate) to the extent that there is no inconsistency between it and the COA. Co-owners who are members of a syndicate registered with a Principal Racing Authority will be represented by a Syndicate Manager for the purposes of the COA.

7. Can a Horse Ownership Venture vote to change or vary the COA?

Yes. It must be done with the Special Consent of the owners which is at least 75% of the total ownership of the horse in favour of the change.

Also, if the owners want to change the COA to make each of the owners jointly and severally liable in relation to the Horse Ownership Venture (rather than simply severally liable), that can only be done with Unanimous Consent, meaning that votes of 100% of the total ownership of the horse must be in favour of the change.

8. How are decisions made by Co-owners in regard to the Horse Ownership Venture?

When a horse is registered with Racing Australia, a “Managing Owner” is nominated on the relevant Racing Australia registration form. The COA identifies which decisions concerning the Horse Ownership Venture can be made by the Managing Owner without consulting other owners (recognising some decisions should be able to be made in the discretion of the Managing Owner), and which ones require the consultation and input of other owners.

When it comes to decisions that require consultation with other owners, the COA sets out whether Majority Consent is required (meaning that the votes of co-owners making up greater than 50% of the aggregate ownership of the horse must support the decision), Special Consent is required (meaning that the votes of co-owners of at least 75% of the aggregate ownership of the horse must support the decision), or Unanimous Consent is required (meaning that votes of co-owners comprising 100% of the aggregate ownership of the horse must support the decision).

For all decisions except decisions requiring Unanimous Consent, not all of the owners must in fact lodge a vote in relation to the relevant issue – in simple terms, the COA provides that as long as the Managing Owner gives reasonable notice to the other owners about a vote to take place, and the votes of co-owners who make up the required level of aggregate ownership for the particular decision are lodged in favour of it, the decision will be valid.

9. How does Majority Consent (50%), Special Consent (75%) and Unanimous Consent (100%) work in practice?

For example, under the COA, decisions to engage a new trainer or retire a horse require Majority Consent. In a situation where there are 10 owners of the horse and each is a 10% owner, for a vote on either of those issues to be successfully carried, the Managing Owner would need to at least: communicate to all owners (verbally, or via email, post or some other readable medium) a proposed resolution giving reasonable notice of when a vote was required to be communicated by; and have greater than 50% of the ownership equity in the horse vote in favour of the proposed resolution (so in that example at least 6 owners would need to vote in favour of it for it to be validly passed). There is no minimum amount of votes that need to be cast in order to reach a required majority (so if two people owned a horse, and the shares were respectively 80% and 20%, the relevant decision could be passed if the 80% owner voted in favour of it).

Special Consent is required in relation to some decisions including: a decision to stand the horse as a stallion; a decision for a filly or a mare to be used as a broodmare; and most decisions seeking to change the terms of the COA.

Unanimous Consent is required in relation to a decision for the Horse Ownership Venture to borrow funds for the purpose of the venture, and also a decision to change the COA to make all owners jointly and severally liable (rather than simply severally liable) in relation to the obligations of the Co-owners in connection with the Horse Ownership Venture.

10. In order to vote on an issue where Majority Consent, Special Consent or Unanimous Consent is required, does the Managing Owner have to hold a formal meeting of co-owners?

No. As long as reasonable notice (verbally or in writing) is given of a proposed resolution (or vote on an issue) to all co-owners, and they are given a reasonable opportunity to vote on it, formal owners meetings do not need to be convened. For example, votes could be lodged via email, during a phone conference, or in a meeting in person (or a combination of these). If a formal meeting is to be held, then unless otherwise agreed by all co-owners, at least five days' notice of the meeting must be given.

Further, a quorum for a formal meeting is reached by co-owners present in person or by proxy who together hold at least 50% of the aggregate ownership of the horse.

Some Horse Ownership Ventures may, in addition to the provisions of the COA, choose to agree on specific rules or protocols in relation to voting. They may also wish to put in place additional and/or specific provisions which deal with the power to call and the conduct of meetings of owners. They are able to agree on those provisions and have them compliment the provisions of the COA.

11. What happens if a co-owner wants to sell that owner's share in the horse? What are the processes for this?

This topic is dealt with in detail at clause 4 of the COA.

A summary of the position is as follows. Majority Consent is usually needed for the sale of an interest in a horse, however there are a small amount of situations where a Managing Owner can sell or transfer a horse without Majority Consent. For example, if an owner passes away and the sale or transfer of the owner's interest is to the beneficiary of the estate of the deceased, Majority Consent for the transfer is not needed. It is also not needed where: the sale or transfer is to the personal representative of a deceased owner; the sale or transfer is to the spouse or child of a co-owner (or trust or company controlled by the co-owner, spouse or child); or, if the particular process for a sale or transfer set out in clause 4.3 of the COA is followed.

Majority Consent will be required for a sale or transfer of an interest in a horse on most occasions including if: a co-owner becomes ineligible under the Rules of Racing to own a horse; a co-owner is declared bankrupt or placed into administration or liquidation; and in some circumstances where there is repeated failure of a co-owner to make payments in relation to the Horse Ownership Venture when due and/or where there are repeated breaches of the COA by a co-owner.

In all of those scenarios the COA provides a specific procedure for how the Managing Owner can take steps to sell an interest in a horse, which can either be by public auction or private treaty.

12. Is there still a horse registration form process for an owner to register a horse (or an interest in a horse)?

Yes. The process of completing a form to register an interest in a horse will be similar to the existing system. Racing Australia will make available any new forms on its website: www.racingaustralia.horse.

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