CONSTITUTION OF THE NEWCASTLE JOCKEY CLUB LIMITED

NEWCASTLE
JOCKEY CLUB

NOVEMBER 2022

1 DEFINITIONS AND INTERPRETATION

1.1 In this Constitution:

"Appointed Director" means a director appointed in accordance with clause 12.13;

"Board" means the Board of Directors of the Company;

"Chairman" means the Director elected as Chairman of the Board pursuant to clause 12.15;

"Chief Executive Officer" means the person (if any) appointed pursuant to clause 15;

"Company" means the Newcastle Jockey Club Limited;

"Constitution" means the Constitution of the Company as originally adopted or as altered;

"Director" means any person holding office or appointed by the members as either an Appointed Director or an Elected Director;

"Elected Director" means a director appointed in accordance with clause 12.10 or 12.11;

"Eligible Member" means each Ordinary Member, Honorary Member, Life Member, Perpetual Member and any other member, who would have voting rights at any Annual General Meeting, who is a fully paid up and financial member (unless for any reason that category of member is not required to pay membership or subscription fees) at 5:00pm on the date immediately prior to the date on which the memorandums and ballot papers are to be sent to members in accordance with clause 12.11(b) of this Constitution;

"Financial Year" means the period set out in clause 20;

"Financial Statements" means the profit and loss statement and balance sheet of the Company for each Financial Year;

"General Meeting" means a meeting of the Members of the Company;

"Member" means a Member of the Company;

"Replaceable Rules" means the rules contained in the Corporations Act 2001;

"Rules" means the rules of the Company made from time to time by the Board;

"Rules of Racing" means the Australian Rules of Racing and the Local Rules (including the Rules of Betting) to be interpreted and construed together;

"Secretary" means any person appointed (whether or not on an honorary basis) to perform the duties of Secretary of the Company within the meaning of the Corporations Act 2001;

"Special Majority" means seventy five (75) percent or more of the votes able to be cast at the relevant meeting.

"Super Majority" means six Members of the Board;

1.2 In this Constitution, unless the contrary intention appears:

(a) the singular includes the plural and vice versa;

(b) a reference to the masculine includes the feminine and vice versa;

(c) a reference to any officer of the Company includes any person acting for the time being as such officer;

(d) the headings and index to the Constitution are for convenience only

and do not form part of the Constitution;

(e) references to clauses are to clauses of the Constitution.

2 **NAME**

The name of the Company is The Newcastle Jockey Club Limited.

3 **OBJECTS**

The objects for which the Company is established are:

3.1 the preservation and fostering of the ideals and traditions of thoroughbred racing and thoroughbred breeding;
3.2 to encourage, promote and conduct the sport of thoroughbred racing;
3.3 to maximise wagering and increase the number of people wagering from thoroughbred racing;
3.4 to make thoroughbred racing more attractive;
3.5 to provide industry control and direction for the thoroughbred industry;
3.6 to more effectively market thoroughbred racing; and
3.7 to increase owners' returns from participation in thoroughbred racing

together with any other matter which the Board determines, in its discretion, is an appropriate object for the Company from time to time.

4 **THE COMPANY'S POWERS AND HOW THEY MAY BE EXERCISED**

4.1 In furtherance of the Company's objects, the Company has the power:

(a) to enter into negotiations or arrangements with any government or authority, municipal, local or otherwise that may seem conducive to the company's objects;

(b) to enquire into and deal with any matter relating to thoroughbred racing and to refer any such matter to stewards or others for investigation and report;

(c) to do all such acts, deeds, matters and things and to enter into and make such agreements are as incidental or conducive to the attainment of the objects of the Company; and

(d) to otherwise exercise any powers of an individual and those powers contained in Pt 2B.1 of the Corporations Act 2001, provided that they shall not be exercised in contravention of any provision of this Constitution.

4.2 **Agent Exercising Company's Power to Make Contracts**

The Company's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with the Company's express authority and on behalf of the Company.

4.3 **Execution of Documents by the Company Itself**

The Company may execute a document if the document is signed by:

(a) two Directors; or

(b) a Director and a Secretary.

5 **COMPANY LIMITED BY GUARANTEE**

The Company is a company limited by Guarantee and accordingly the following provisions apply:

5.1 the number of Members shall be unlimited; and

5.2 the liability of Members is limited.

6 **UNDERTAKING BY MEMBERS**

Every Member undertakes to contribute to the assets of the Company in the event of it being wound up by a Member or within one year afterwards for payment of the debts and liabilities of the Company contracted before the time at which the Members cease to be a member and of the costs, charges and expenses of winding up the Company and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding two dollars.

7 **INCOME APPLIED TO OBJECTS**

The income and property of the Company however derived shall be applied solely to the promotion of the objects of the Company as set out in clause 3. No portion of this income and property shall be paid or transferred directly or indirectly by way of dividends, bonus or otherwise by way of profit to Members provided that nothing herein contained shall prevent the payment in good faith of remuneration to any officers or servants of the Company or to any Member in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual course of business, nor prevent the payment of any interest at a rate not exceeding the rate for the time being fixed for the purpose of this clause by the Board for money borrowed from any Member or reasonable and proper rent for premises demised or let by any Member to the Company.

8 **CONSTITUTION**

8.1 **Effect of the Constitution**

This Constitution has effect as a contract:

(a) between the Company and each Member;

(b) between the Company and each Director and Secretary;

(c) between a Member and each other Member.

8.2 **Relationship to Corporations Act**

This Constitution is subject to the Corporations Act 2001 and where there is an inconsistency between a provision in this Constitution and the Act, the Act shall prevail to the extent of the inconsistency.

8.3 **Replaceable Rules**

Where applicable, this Constitution shall replace or modify the Replaceable Rules to the extent permitted by the Corporations Act 2001. If this Constitution does not replace or modify a Replaceable Rule which applies to the Company, the Replaceable Rule shall apply.

9 MEMBERS

9.1 Initial Members

The initial Members of the Company are all persons who have been elected and whose names appear in the Register of Members and all other persons who have been admitted as life members in accordance with this constitution. These Members shall be deemed to have agreed to be bound by this Constitution and the Rules in force from time to time.

9.2 Categories of Membership

The Company will initially be comprised of the following categories of members or any categories as deemed appropriate by the Board: -

(a) Ordinary members;
(b) Honorary members;
(c) Life members;
(d) Deleted;
(e) Corporate members;
(f) Perpetual members; and
(g) Student members.

9.3 Additional Members

The Members may, by resolution:

(a) create other categories of membership and specify any obligations, rights or privileges that are attached to the categories of membership; and
(b) impose, revoke or vary any rules relating to membership including without limitation, disciplinary matters and cessation of membership.

9.4 Ordinary Members

Persons who have attained the age of eighteen (18) years shall upon application and approval be admitted as Ordinary Members. Ordinary Members shall pay an annual subscription as determined from time to time by the Directors and shall be entitled to full voting rights as members on condition their annual subscription has been paid in accordance with the requirements of this Constitution and any requirements determined from time to time by the Directors. Ordinary Members shall be entitled, upon payment of an additional fee determined by the Directors in their discretion, to one Guest Badge, entitling a guest of the Ordinary Member to access to the racecourse and the Member's Stand.

9.5 Honorary Members

Honorary membership is to be automatically granted by the Directors, without payment of any subscription, to any person who has been a paying member for more than 35 years (whether consecutive or in broken periods). The Directors must advise Honorary Members of the attainment of such status in writing within a reasonable period.

9.6 **Life Members**

(a) The Board may admit as a Life Member of the Company any person who the Board may consider has rendered such service to the Company as in the opinion of the Board entitles him thereto provided that such person shall not be admitted unless the Members assembled at any annual general meeting by a three-fourth majority confirm the recommendation of the Board.

(b) Life Members shall have all the rights and privileges of and be subject to all the obligations of a Member but shall be exempt from the payment of the annual subscription.

9.7 **Corporate Members**

(a) Corporate membership may be granted to Companies, businesses or individuals at the discretion of the Directors;

(b) Corporate Members shall pay such admission fee and annual subscription fee as is determined from time to time by the Directors;

(c) A printed membership card and guest cards are to be retained by the corporate member, the number of which is to be determined by the Directors; and

(d) Corporate members will have all the entitlements of an ordinary membership but will not be entitled to full voting rights.

9.8 **Perpetual Members**

a) Perpetual Membership may be granted by the Directors to Members who shall pay a one-off subscription fee, to be determined by the Directors but not less than ten (10) times the annual subscription fee, to provide them with continual membership until their death.

b) Perpetual Members shall have all the rights and privileges of and be subject to all the obligations of a Member but shall be exempt from the payment of the annual subscription.

9.9 **Student Members**

(a) Persons who have attained the age of eighteen (18) years and who hold a student card issued by an educational institution shall upon application be admitted as Student Members. Student Members shall pay an annual subscription as determined from time to time by the Board of Directors, which shall be not more than 50% of the subscription payable by Ordinary Members, and shall be admitted to the Broadmeadow Racecourse and the Members Stand, but shall not be entitled to any voting rights as Student Members.

9.10 **Members' Obligations**

A Member shall be bound to further, to the best of the Member's ability, the objects, interest, influence and standing of the Company.

9.11 **Application for Membership**

Each candidate shall sign and forward to the Secretary an application in such form as may be approved and provided by the Board. A candidate must, at his or her election, pay their membership fee either at the time they submit their application or upon receiving confirmation of their admission as a new member. By signing and forwarding an application for admission as a Member in such form as is determined by the Board, including but not limited to electronic means. together with payment of the relevant fee or subscription, each candidate agrees if admitted as a member that he or she will abide by this Constitution together with any other rules, regulations and by-laws and any amendments or alterations as by all such consequences resulting therefrom or from a breach or non-performance thereof.

9.12 **Admission**

Candidates for admission as Members shall be admitted or rejected by the Board in such manner and by such method as may from time to time be approved by the Board.

9.13 **Rejection**

The Board may without disclosing any reason and in its absolute discretion refuse to accept an application of any candidate for admission as a Member but in all cases where an application is rejected the Board shall refund any fees paid upon application.

9.14 **New Members to be Notified**

Every person on being admitted as a Member of the Company:

(a) shall be notified of their admission by the Secretary in whatever fashion the Secretary deems appropriate, in his or her absolute discretion, including but not limited to by email or other electronic means;

(b) upon request shall receive from the Secretary a copy of the Constitution and any rules regulations or by-laws of the Company or, in the Secretary's discretion, a copy of the relevant rules, regulations or by-laws, together with the Constitution will be made available for inspection in whatever fashion the Secretary determines in his or her absolute discretion (including but not limited by uploading the relevant documents to the Company website), and shall subscribe his/her name in such form as may be approved and provided by the Board and such signature shall make it binding upon such persons to abide by this Constitution together with any other rules regulations and by-laws and any amendments and alterations or from any breach or non-performance and such signature shall absolve every person concerned in carrying out and enforcing such Constitution rules regulations and by-laws against such subscriber from all personal responsibility or legal liability on such account; and

(c) shall upon payment of the annual subscription and entrance fee and any other fees payable under the rules of the Company in lieu of an entrance fee receives from the Secretary a membership card token badge or medal.

9.15 **Register of Members**

The name of every person elected as a Member shall be entered in the Register of Members together with the date of his/her admission and his/her place of abode or business address and no name shall be erased from such Register except by resolution of the Board or upon failure of any person to renew their membership by paying the relevant fee or subscription within two (2) months of the due date for payment.

9.16 **Change of Address.**

Any Member who shall at any time change his/her place of abode or business address shall immediately give notice thereof in writing to the Secretary.

9.17 **Resignation**

Any Member may resign as a Member of the Company by giving one month's notice in writing addressed to the Secretary and thereupon he shall cease to be a Member.

9.18 **Minors**

No person under the age of 18 years shall be eligible to be admitted as a Member of the Company.

9.19 **Bookmakers Not Eligible**

No Bookmaker shall be eligible for election as a Member of the Company and any Member who shall at any time carry on or be engaged or interested in the business of a Bookmaker shall immediately cease to be a Member of the Company.

9.20 **Horse Trainers Not Eligible**

Persons holding licences under the Rules of Racing (NSW), and the Australian Rules of Racing (as defined in the Thoroughbred Racing Act of 1996 and as otherwise apply and are in force from time to time) may not be admitted as a Member of the Company and any Member who is granted or commences to hold such a licence shall immediately cease to be a Member of the Company.

9.21 **Return of Badge**

Upon ceasing to be a Member of the Company the card token badge or medal shall revert to and become the absolute property of the Company.

9.22 **Board may Refuse Subscription and May Expel**

The Board may if at any time it shall be of the opinion that the interests of the Company so requires or that his/her presence is likely to endanger the welfare

and good order of the Company or bring the name and/or reputation of the Company into disrepute refuse to accept the subscription of any Member or by letter notify any such Member to withdraw from the Company within a time specified in such letter and in default of such withdrawal may immediately expel the member.

9.23 **Badge**

No membership badge card token or medal shall be transferable from the Member to any other person and every Member shall on demand produce to the attendant or any other person duly authorised by the Board such badge card token or medal and on failure to do so such Member may be removed from the Members area or the racecourse. Members shall at all times when entering or remaining inside the Company's premises prominently display on their person such badge card token or medal.

9.24 **Misuse**

In the event of the Board being satisfied that any Member has allowed his/her membership badge card token or medal to be used by any other person for the purpose of obtaining admission to the racecourse or any of the parts or divisions thereof he shall be liable to a fine not exceeding $1,000 and/or to forfeit such badge card token or medal to the Company and/or to be expelled from the Company and the Board may cancel his/her membership and thereupon he shall cease to be a Member of the Company.

9.25 **Absence from State**

Any Member signifying to the Secretary his/her intention to be absent from the State for a period of not less than twelve (12) months may be placed by the Board on the list of supernumerary Members and be exempt during his/her absence from the payment of the annual subscription provided that on the return of such Member to New South Wales he/she shall on payment of the whole current subscription if previous to 31st December or half the subscription if subsequent be readmitted to the privileges of membership.

9.26 **Bankruptcy**

Any Member becoming bankrupt or insolvent or making any general assignment of all his/her property for the benefit of or general composition with his/her creditors shall immediately cease to be a Member of the Company. Any Member ceasing to be a Member under this rule may on obtaining his/her certificate of release or otherwise ceasing to be bankrupt or insolvent be readmitted under the Constitution for the election of Members.

9.27 **Under Rules of Racing**

Any Member who shall be disqualified under the Rules of Racing by the Board shall upon such disqualification immediately cease to be a Member of the Company.

9.28 **Misconduct**

If any Member wilfully infringes any of the rules regulations or by-laws of the Company or if any Member in the opinion of the Board is guilty of conduct unbecoming a Member or detrimental to the interest of the Company it shall be in the power of the Board to caution fine suspend or expel such Member as the Board may deem fit and the decision of the Board shall be final, conclusive and not subject to any appeal either at law or in equity.

9.29 **Complaint to be Submitted to Board**

(a) No Member shall be fined or expelled for the breach of any rule regulation or by-law or for any other reason until the complaint has been submitted to the Board and such Member has been cited to appear before the Board.

(b) Should a Member be charged with conduct which the Board considers to be contrary to the policy or prejudicial to the interests or welfare or image of the Company or the sport of thoroughbred racing, a special meeting of the Board shall be called to hear such charge or charges and the Member so charged shall be informed of the charges at least [seventy-two (72) hours] prior to the meeting so that he/she may attend such meeting to give an explanation.

(c) At such special meeting the Board shall hear any explanation which the Member provides. No Member shall be cautioned, fined suspended or expelled by the Board unless the resolution to that effect be supported by a special majority of the Board present at such meeting.

9.30 **Board to Determine Annual Subscription**

(a) Every Member other than Honorary, Perpetual and Life Members shall pay such annual subscription as shall from time to time be determined by the Board.

(b) In the event a Member fails to pay his or her annual subscription within two (2) months of the due date for payment, determined by the Board, that person shall immediately cease to be a Member unless otherwise determined by the Board and shall have his or her name removed from the register of Members as contemplated by clause 9.15.

10 GENERAL MEETINGS

10.1 All general meetings, other than an annual general meeting, shall be called general meetings.

10.2 The Board may whenever it thinks fit, convene a general meeting. In addition, 5% of Members may requisition a general meeting. A general meeting shall be convened as soon as practicable on such requisition or in default, or may be convened by such requisition as provided by the Corporations Act 2001.

10.3 A notice of a general meeting shall be sent to all Members specifying the place, date and the hour of the meeting and in the case of special business, the general

nature of that business to be transacted at the meeting.

10.4 For the purpose of clause 10.3, all business shall be special that is transacted at a general meeting and also all that is transacted at an annual general meeting, with the exception of the consideration of the accounts, balance sheets, the election of directors and the appointment of auditors, if necessary.

10.5 No business shall be transacted at any general meeting unless there are at least 15 Members present.

10.6 Save where otherwise set out in this Constitution, the convening and holding of and procedure with respect to general meetings shall be conducted in accordance with the Corporations Act 2001.

11 ANNUAL GENERAL MEETING

11.1 An Annual General Meeting of the Company shall be held in October of each year or at such other time as the Board may determine and otherwise in accordance with the provisions of the Corporations Act 2001. The Board shall give not less than 21 days' notice to Members of such meeting. Eligible Members, together with any invited observers or participants (to be determined at the discretion of the Board) who have received the prior written approval of the Board may attend the annual general meeting.

12 THE BOARD

12.1 **Annual Election of Directors**

Subject to the terms and conditions of this Constitution and the Corporations Act each Director shall remain in office until the next election of Directors as herein provided.

12.2 **Categories of Directors**

There shall be two (2) categories of directors, namely: -

(a) Elected Directors – elected by the Members; and

(b) Appointed Directors – elected by a convened Selection Panel and approved by Racing NSW.

The processes for electing and appointing Directors will be held separately (12 months apart) so that each process occurs every alternate year on a two (2) yearly cycle.

12.3 **Term of Office**

Each member of the Board of Directors shall be elected for a two year term. Each member of the Board must retire from office at the Second Annual General Meeting after that member was elected. Each retiring member of the board is eligible to stand for re-election subject to the remaining requirements of this clause 12.

12.3A **Period Following 2018 Annual General Meeting**

To facilitate the transition to elections for Elected Directors and Appointed Directors being held separately twelve (12) months apart, to the intent each

process occurs every alternate year on a two (2) yearly cycle, it is agreed by the members, by way of Special Resolution that: -

(a) Those directors elected in 2018, as Elected Directors will be elected for a two (2) year period, to the intent they must each retire from office at the second Annual General Meeting after that member was elected; and

(b) Those directors elected in 2018, as Appointed Directors will be selected for a one (1) year period only, to the intent they must each retire from office at the first Annual General Meeting after that member was selected; and

(c) To the extent of any inconsistency between the operative provisions of this clause 12.3A, and the remaining provisions of the constitution of the Newcastle Jockey Club Limited, the provisions of this clause 12.3A prevail to the extent of any inconsistency; and

(d) This clause 12.3A will be removed from the Constitution of the Company and cease to have any effect on and from the date falling the day after the second Annual General Meeting held in 2018 and referred to in sub-clause (a) above.

12.4 **Number of Directors**

(a) The number of Elected Directors shall be four (4), and at all times not less than three (3).

(b) The number of Appointed Directors shall be three (3), and at all times not less than two (2).

(c) Together the Elected Directors and the Appointed Directors shall comprise the Board.

12.5 **Election of Directors**

For the election of Directors, every second year following the year of their election and at least 120 days before the Annual General Meeting at which the results of the election are to be notified to the members, the Board must: -

(a) Appoint and maintain two (2) members as returning officers for the election who together with the Chief Executive Officer will act as returning officers (who must in advance of their appointment have confirmed they will not be applying for the position of either Elected Director or Appointed Director) for the election of Elected Directors, or in the alternative appoint one (1) of:

i. the Australian Electoral Commission; or

ii. an independent Chartered Accounting Firm; or

iii. an independent Legal Firm;

iv. to act in any capacity determined by the Board in its absolute discretion; or

v. any other suitably qualified company or person.

(b) Set a date and time up to when:

(i) in the case of Elected Directors (in any year in

which Elected Directors are to be elected), nominations of candidates for election may be received; or

(ii) in the case of Appointed Directors (in any alternate year in which Appointed Directors are to be appointed), applications of candidates for selection as Appointed Directors may be received

such date being at least sixty (60) days before the Annual General Meeting at which the results of the election are to be notified to the members,

(c) notify such dates to each member of the Company who is eligible to vote at the time the notices are sent out, which must be not less than sixty (60) days before the Annual General Meeting at which the election is to be held, in whatever fashion the Board determines in its absolute discretion, advising each member of their right to nominate for the position of Elected Director, Appointed Director or both;

(d) at the same time as the notices are sent out in accordance with sub-clause (c) above, in any year in which Appointed Directors may be selected invite candidates to apply for the position of Appointed Director by directly approaching candidates at the request of the Board and by advertising locally for candidates for the position of Appointed Director in not less than two different publications;

(e) ensure at the time each notification referred to in sub-clause (d) above is forwarded to Members, the following information is advertised and also provided to all Members:

(i) how applicants for the position of either Elected Director or Appointed Director can nominate for one or both of those positions;

(ii) the place at which the nomination form is to be delivered by any member wishing to stand for nomination as an Elected Director, the date and time at which the nomination form is to be delivered and the fashion in which it is to be delivered.

(f) No observers will be allowed during the Ballot Process.

12.6 **Candidates to be Nominated**

All nominations, to become an Elected Director, except for any retiring

Elected Director, must be:

(a) in writing;

(b) signed by the candidate and two members who are eligible to vote at the time the notices in clause 12.5 are sent out;

(c) accompanied by a consent form, so signed by the candidate confirming his or her consent to become a director if elected and agreeing to be bound by and adhere to the NJC's code of conduct, this constitution, (including without limitation the provisions related to discipline and/termination) corporate governance policies and any other policy documents in place from time to time; and

(d) received by the Company at its principal place of business, or any other location nominated in the notice, in the fashion set out in the notice (which may include in the absolute discretion of the returning officers by electronic means), or in the absence of that by hand delivery, on or before the time stated in the notice calling for nominations.

12.7 **Information to be Provided to Nominees**

Within seven (7) days of the date by which nominations for the position of Elected Director must have been received in accordance with clause 12.6 the Chief Executive Officer, or any other party engaged by the Board in accordance with this Constitution to run the election, must write to each nominee for the position of Elected Director and advise them whether the number of candidates standing for the position of Elected Director requires a ballot to be conducted in accordance with clause 12.11 below and whether the Board, in its absolute discretion, has resolved to allow candidates for the position of Elected Director to include an Information Memorandum in the voting material to be forwarded to members as part of the ballot process. If the Board does elect to allow each candidate for election to include an Information Memorandum, the notification sent to each candidate in accordance with this clause 12.7 must include as a minimum the following information: -

(a) If there is a word limit to be imposed on the information to be included in the Information Memorandum, the number of words that may be included;

(b) The maximum font size;

(c) Whether a picture of the candidate or any other picture of image may be included;

(d) If only prescribed information may be included, details of the information each candidate may include;

(e) Whether the Information Memorandum must be in colour or black and white;

(f) Whether candidates may include any other information, in any other form, such as electronic or USB;

(g) The cost to be incurred by each candidate, if any, associated with the distribution by the Company to all members of the Information

Memorandum;

(h) The number of Information Memorandums required to be provided by each candidate to ensure each member receives one Information Memorandum;

(i) The paper size is to be A5;

(j) Any other information the Board requires to be included, or requirements the Board wishes to impose, in respect of the content of the Information Memorandum in its absolute discretion;

(k) The date by which the Information Memorandum must be returned by each candidate for election, the location the Information Memorandum must be returned to and the fashion in which it must be delivered.

(l) All information in the Information Memorandum should be approved by the Returning Officer prior to mailing out.

12.8 **Retiring Elected Directors Standing for Re-Election**

Unless notified to the contrary each retiring Elected Director must notify the Chief Executive Officer in writing at least 7 days before the last day for the receipt of nominations set out in the notice of the member's intention to stand for re-election.

12.9 **Candidates to be Financial Members and Ex-Employees to Have Waited Moratorium Period**

To be eligible for nomination and appointment as an Elected Director candidate must have been constantly admitted as a financially paid up member for the twenty-four (24) months period immediately prior to nomination. All Members nominated for election as an Elected Director must be financial Members of the Company at the time notices are sent out to members in accordance with clause 12.5(c) above, otherwise the nomination shall be rejected by the Secretary.

12.10 **When no Greater Number of Candidates For Elected Director Nominated than to be Elected**

(a) If the number of candidates for the position of Elected Director equals the numbers of vacancies to be filled, the chairman of the general meeting must declare all candidates elected.

(b) A nomination may be withdrawn by any candidate at any time before the beginning of the general meeting.

12.11 **When Greater Number of Candidates For Elected Director are Nominated**

(a) If the number of candidates nominated for the position of Elected Director is more than the number of vacant positions to be filled, the election of members to the Board as Elected Directors must be conducted by a ballot of eligible voting members.

(b) The Returning Officers, or any other party engaged by the Board in

accordance with this Constitution to run the election, must: -

(i) prepare and issue a memorandum explaining the voting procedure and how to complete the ballot paper and the ballot paper listing the candidates in the order they are drawn out of a hat for that purpose by the Returning Officers, with the first candidate randomly drawn to be the first name on the ballot paper and the last name randomly drawn to be the last name on the ballot paper and all other names listed in the order in which they are drawn;

(ii) send the memorandum, ballot paper and any information memorandum provided by a candidate to each Eligible Member at least sixty (60) days before the Annual General Meeting at which the election is to be held.

(c) For the avoidance of doubt, Eligible Members will be the only members entitled to receive the documents referred to in sub-clause (b) above and, on that basis, will be the only members entitled to participate in, and vote on, the ballot.

(d) The voting procedure to be explained in accordance with sub-clause (b) above must contain as a minimum, the following requirements, but otherwise may be determined from time to time by the Returning Officers and/or the entity appointed by the Board to conduct the election in its, his or her absolute discretion: -

(i) members shall vote for no more or less than the number of candidates able to be elected as Elected Directors;

(ii) members shall record their votes by identifying with an appropriate form of marking the names of those four (4) candidates that they wish to be elected;

(iii) Any ballot paper which identifies more or less than four (4) directors to be elected, or is unclear as to which Directors that member wishes to be elected to the Board as a result of the manner of identification/marking, shall be ruled invalid and not counted;

(iv) members must ensure their name and membership number are clearly indicated on any envelope accompanying the ballot paper and sign wherever required by the memorandum forwarded to each

member in accordance with sub-clause (b) above.

(e) For a member's vote to be counted in the ballot, the completed ballot paper, together with return envelope, all completed in accordance with voting instructions must be received by the returning officers at the Company's principal place of business, or as otherwise notified by the Returning Officers or any other party conducting the ballot, in whatever form nominated by the Returning Officers or any other party conducting the ballot or in the absence of that by hand delivery, by no later than 4.00pm on the day falling at least thirty (30) days before the Annual General Meeting at which the election is to be held and as a minimum must comply with the other requirements set out in clause 12.11.

(f) The Returning Officers must count the votes received by each candidate and determine and advise the four (4) successful Directors, being those candidates with the greatest number of valid votes, not less than thirty (30) days before the Annual General Meeting at which the election is to be held. In the event of an equality of votes, the names of those Directors with an equal amount of votes are to be placed in a hat and the successful Director will be that Director's name that is drawn out of the hat by the Returning Officers of the Company. The returning officers must also advise all unsuccessful applicants for the position of Elected Director as soon as possible after the successful directors have been advised.

(g) A decision of the majority of the returning officers, or the entity appointed by the Board to conduct the election, on any matter concerning an election is final and no appeal may be brought from that decision.

(h) The four (4) successfully elected directors shall then immediately convene an informal meeting at which they will elect from their number one director for the sole purpose of sitting on the Selection Panel referred to in clause 12.12 below.

(i) With the exception of convening the meeting referred to in sub-clause (h) above, and the one selected director sitting on the Selection Panel, the newly elected Elected Directors will perform no role, and will not take office, until the conclusion of the Annual General Meeting at which their appointments will be affirmed, and the incumbent directors must resign.

12.12 **Appointed Directors Selection Panel**

Not less than thirty (30) days prior to the Annual General Meeting at which Appointed Directors are to be elected the Board will convene a selection panel (the "Selection Panel") comprised of the following members for the purpose of electing Appointed Directors: -

(a) the identified representative from the newly elected Elected Directors, elected in accordance with clause 12.11(h) above;
(b) a non-executive board member from Racing NSW;
(c) the President of the Hunter Business Chamber or such other appropriately skilled or qualified person determined by the Board in conjunction with Racing NSW.

12.13 **Appointed Director Selection Process**

The Selection Panel convened in accordance with Clause 12.12 above will: -

(i) if deemed necessary, interview applicants not less than two weeks prior to the holding of the Annual General Meeting; and
(ii) select the Appointed Directors and obtain Racing NSW approval of the selected Appointed Directors not less than seven (7) days prior to the holding of the Annual General Meeting.

12.14 **Appointed Directors**

To be eligible to be appointed as an Appointed Director candidates must: -

(a) be appropriately skilled or qualified in law, commerce, construction, marketing, event management or hold other qualifications or be experienced in a fashion which Racing NSW deems appropriate; and
(b) reside in one of the Newcastle, Port Stephens, Lake Macquarie, Maitland or Cessnock local government areas; and
(c) be or agree to immediately become a member of the Company if successfully elected as an Appointed Director.

12.15 **Chairman**

The newly elected and appointed Board shall at its first meeting after the Annual General Meeting appoint one of their members to be Chairman and one of their members to be Vice-Chairman. The Chairman must be elected from one of the Elected Directors and shall preside at all meetings of the Board at which he/she is present. In addition to his/her original vote he/she shall in case of equality of votes have a second or casting vote. Subject to clause 14.5, in the absence of the Chairman from any meeting the Vice- Chairman, who may be an Elected Director or an Appointed Director, shall preside and if the Chairman and Vice-Chairman are both absent from any meeting the members present shall elect another Director to preside at such meeting during such absence and for the purpose of so presiding the Vice- Chairman or such member as the case may be shall have the same powers as the Chairman.

12.16 **Casual Vacancy**

The office of both an Elected Director and an Appointed Director shall become vacant if the director:

(a) dies;

(b) becomes bankrupt or makes any arrangement or composition with the Director's creditors;

(c) resigns;

(d) by reason of any provision of the Corporations Act 2001, becomes prohibited from being a Director;

(e) becomes of unsound mind or a person whose person or estate is liable to be dealt with under the law relating to mental health;

(f) fails to attend any two consecutive meetings of the Board without obtaining the leave of the other Directors, such consent or leave not to be unreasonably withheld;

(g) in the case of an Elected Director is removed by the Members in accordance with the requirements of the Corporations Act;

(h) becomes an employee of a race club or association;

(i) is currently, or during the previous 10 years has been, warned off, disqualified or named to the Forfeit List under the Rules of Racing; or

(j) holds a licence issued by Racing NSW or by a racing association; or

(k) ceases for any reason to be a member of the Company; or

(l) in the case of an Appointed Director, is removed by Racing NSW upon recommendation of the Selection Panel.

12.17 **Filling Casual Vacancy**

(a) The continuing Elected Directors may act notwithstanding any vacancy in their number; but for as long as the number of Elected Directors is below the minimum number fixed by this constitution, the directors will not act except in emergencies or for the purpose of filling vacancies or convening an extraordinary general meeting of the company.

(b) In the event the number of Elected Directors is below the minimum number fixed by this constitution, the board must, as soon as practicable, appoint one or more replacement Elected Directors as required to achieve the minimum number, such replacements to be determined in the board's absolute discretion, to hold office until the next Annual General Meeting at which there will be an election of Elected Directors.

(c) In the event the number of Elected Directors is less than 4, the board may, in its absolute discretion and at any time, invite one or more replacement Elected Directors to hold office until the next Annual General Meeting at which there will be an election of directors.

(d) In the event the number of Appointed Directors is below the minimum number fixed by this Constitution, the Board must

immediately reconvene the Selection Panel which must, as soon as practicable, select one or more replacement Appointed Directors, to be approved by Racing NSW, as required to achieve the minimum number. Subject to Racing NSW approval, such replacements can be invited to act as Appointed Directors by the Selection Panel and shall hold office until the next annual general meeting at which there is due to be a further selection of Appointed Directors.

12.18 **Quorum**

The quorum for all Board meetings shall be not less than four (4) members of the Board of Directors, irrespective of whether those members are Appointed Directors or Elected Directors.

12.19 **Remuneration of Directors**

The Directors may:

(a) be paid such out of pocket expenses incurred by them from time to time in carrying out their duties as Directors; and

(b) be paid for services rendered to the Company in a professional or technical capacity, provided:

(i) that the service has the prior approval of the Board; and

(ii) the amount payable is on reasonable commercial terms and approved by the Members and is noted as a related party transaction.

Nothing in this clause shall affect the operation of clause 7.

12.20 **Resignation**

An Elected Director or Appointed Director may resign from his or her office by giving at least one week's notice in writing to the Company at its registered office.

12.21 **Removal of Director**

(a) The Members may, in accordance with the requirements of the Corporations Act from time to time, remove an Elected Director or an Appointed Director before the end of the Appointed Director or Elected Director's period of office, notwithstanding anything in the Constitution or any agreement between the Company and the Elected Director and/or Appointed Director.

(b) In addition to the above provision, an Appointed Director may be removed before the end of the Appointed Director's period in office, notwithstanding anything in the Constitution or any agreement between the Company and the Appointed Director, by Racing NSW upon the recommendation of the Selection Panel, which the Board

may in its absolute discretion elect to reconvene for this purpose.

13 POWERS AND DUTIES OF THE BOARD

13.1 Management of Company's Business

Subject to the Corporations Act 2001 and to any other provision of this Constitution, the business of the Company shall be managed by the Board, who may:

(a) pay all expenses incurred in promoting the objects of the Company;

(b) appoint sub-committees of the Board in connection with the management of the Company and to delegate to such sub-committees any of its powers except the election of Members and to make such regulations as to the duties functions powers and privileges of such sub-committees and the members thereof as it may deem expedient;

(c) petition Parliament to make any application to the Supreme Court or to the Judges or other officer thereof the Governor Executive Council or any officer of the Government of New South Wales or to convene any public meetings in the City of Newcastle or any town or district in the State in the name of the Company;

(d) from time to time make alter and repeal all such rules as it may deem necessary or expedient for the proper conduct and management of the Company or in any wise in relation thereto and in particular but not exclusively it may by rules regulate:

(i) such matters as they are specifically by this Constitution empowered to do;

(ii) the general management control and trading activities of the Company;

(iii) the upkeep control and management of the Company premises and racecourses;

(iv) the management and control of horse races;

(v) the conduct of general meetings and meetings of Directors;

(vi) the conduct of Members;

(vii) the privileges to be enjoyed by Members;

(viii) the relationship between the Members and club servants; and

(ix) generally all such matters as are commonly the subject matter of Rules or which by the Constitution are not reserved for decision by the Company in general meeting.

(e) refer any claims or demands by or against the Company to arbitration and to observe and perform the awards thereby made;

(f) give receipts releases and other discharges for money payable to the Company and for all claims and demands of the Company not recoverable by the Secretary in the ordinary course of the business thereof;

(g) invest any monies of the Company not immediately required for the purpose thereof on such security and in such manner as it may think fit and from time to time to vary or realize such investments;
(h) from time to time make vary and repeal any rules regulations and by-laws for the regulation of the affairs of the Company its officers and servants for observance by the Members of the Company or for defining or limiting the rights and privileges of Members provided it shall be lawful for any general meeting to vary or disallow any such rules regulations and by-laws;
(i) employ solicitor or counsel or engage the services of any other person or persons for any of the Company;
(j) determine the persons eligible for membership of the Company;
(k) set out the conditions upon which persons shall be admitted to membership of the Company;
(l) determine the entrance fee if any payable in respect of membership of the Company;
(m) determine the annual subscriptions or payments to be made by Members of the Company;
(n) determine the conditions upon which Honorary Members and Perpetual Members may be appointed;
(o) determine the manner in which membership of the Company may be terminated or shall determine;
(p) determine the rights and privileges which shall be accorded to Members of the Company;
(q) determine the qualifications restrictions and conditions which shall be attached to Members of the Company;
(r) make arrangements with other clubs or associations for reciprocal concessions or otherwise;
(s) co-opt any Member or Members of the Company in connection with any matter concerning the Company as it may deem expedient;
(t) provide for suspension and expulsion of Members;
(u) do all such other acts and things as in this Constitution provided or any rules regulations or by-laws made thereunder; and
(v) exercise all such powers of the Company as are not, by the Corporations Act 2001 or by the Constitution, required to be exercised by the Company in general meeting.

13.2 **Borrow Money**

Without limiting the generality of clause 13.1, the Board may exercise all the powers of the Company to:

(a) borrow money;
(b) charge any property or business of the Company; or
(c) issue debentures guarantee or give any other security for a debt, liability or obligation of the Company or of any other person.

13.3 **Power of Attorney**

(a) The Board may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Board) for such period and subject to such conditions as the Board thinks fit.

(b) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Board thinks fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

13.4 **Cheques**

All cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company, shall be signed, drawn, accepted, endorsed and otherwise executed as the case may be, by such persons and in such manner as the Board may from time to time determine.

13.5 **Rules**

In addition to the powers given to the Board elsewhere in this Constitution, the Board may from time to time make, change and repeal any Rules as may be necessary for the proper conduct and management of the Company and the regulation of its affairs and in particular, but not exclusively, it may by such Rules determine:

(a) the terms and conditions of appointment of administrators, officers and paid staff of the Company and the conduct of such persons; and

(b) the procedure or order of business of meetings of the Company and Board not elsewhere prescribed in this Constitution.

13.6 **Rules of Racing**

The Board shall adopt and act in accordance with the Australian Rules of Racing as at the date of this Constitution and may make further rules of racing which are not inconsistent with the Australian Rules of Racing.

14 BOARD MEETINGS

14.1 **Regulation of Meetings**

The Board shall meet monthly or at such other intervals as it shall determine for the dispatch of business and may adjourn and otherwise regulate its meetings as it thinks fit.

14.2 **Calling a Meeting**

A Director may at any time, and the secretary shall on the request of a Director, convene a Board Meeting.

14.3 **Use of Technology**

A Board Meeting may be called or held using any technology consented to by all Directors provided the means chosen allows each Director to reasonably participate in the meeting.

14.4 **Passing of Resolutions**

Save where otherwise provided in this Constitution, a resolution of the Board must be passed by a majority of votes cast by Directors entitled to vote on the resolution.

14.5 **Chairing of Board Meetings**

When the Chairman is absent from a meeting of the Board or is not present within 15 minutes of the time appointed for the meeting, the Vice-Chairman will chair the meeting of the Board and if the Vice-Chairman is absent from the meeting or is not present within 15 minutes of the time appointed for the meeting the Directors may choose one of their number to be Chairman of the meeting.

14.6 **Vacancy**

In the event of a vacancy or vacancies in the office of a Director or Directors, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a Board meeting, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum or to convene a general meeting of the Company.

14.7 **Circulating Resolutions**

(a) The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

(b) Separate copies of a document may be used for signing by Directors if the wording of the resolution and the statement is identical in each copy.

(c) A resolution circulated in this manner is passed when the last Director signs the statement that the Director is in favour of the resolution.

14.8 **Delegation to Committees**

The Board may delegate any of its powers or functions (not being duties imposed on the Board as directors by the Corporations Act 2001 or the General Law) to one or more committees consisting of such persons as the Board thinks fit.

14.9 **Committee's Powers**

A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the Board and a power

so exercised shall be deemed to have been exercised by the Board.

14.10 **Committee Meetings and Numbers**

(a) The Members of a committee may elect one of their number to act as chairman of their meetings.

(b) Where such a meeting is held and:

(i) a chairman has not been elected as provided by clause 14.10 (a); or

(ii) the chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the members present may elect one of their number to be chairman of the meeting.

(c) A committee may meet and adjourn as it thinks fit.

(d) Questions arising at a meeting of the committee shall be determined by a majority of votes of the members present and voting.

(e) The chairman shall have a deliberative vote only and in the case of an equality of votes, the motion shall be deemed to have been lost.

14.11 **Acts Valid**

All acts done by any Board meeting or by a committee appointed by the Board or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was a defect in the appointment of a person to be a Director or that a person so appointed was disqualified, valid as if the person had been duly appointed and was qualified to be a Director or member of the appointed committee.

15 CHIEF EXECUTIVE OFFICER

15.1 **Appointment**

The Board may from time to time appoint a person as Chief Executive Officer of the Company for such period and on such terms as to remuneration and otherwise as the Board thinks fit and subject to the terms of any agreement entered into in any particular case, may revoke such appointment. The Chief Executive Officer may attend, but not vote at Board meetings.

15.2 **Control and Powers**

(a) The Chief Executive Officer shall at all times be subject to the control of the Board.

(b) The Board may:

(i) confer upon the Chief Executive Officer such of the powers exercisable under the Constitution by the Board;

(ii) impose terms and conditions upon which such powers may be exercised;

(iii) confer such powers either collaterally with or to the exclusion of or in substitution for all or any of the

powers of the Board; and

(iv) withdraw or change all or any of such powers.

16 **RULES OF RACING**

16.1 **Race Meeting to be held under Rules of Racing**

All race meetings of the Company shall be conducted under the Rules of Racing.

17 **MINUTES**

17.1 **Entry in Minute Book**

The Company shall keep a minute book in which it shall record:

(a) resolutions of meetings of the Members;

(b) resolutions of Board meetings (including meetings of a committee of Directors); and

(c) resolutions passed by the Board without a meeting.

17.2 **Minutes to be Signed**

The Company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by one of the following:

(a) the Chairman of the meeting; and

(b) the Chairman of the next meeting.

17.3 **Resolution Passed Without Meeting**

The Company must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

17.4 **Prima Facie Evidence**

A minute that is so recorded and signed is evidence of the matter stated in the minutes.

18 **SECRETARY**

A secretary shall hold office on such terms and conditions, as to remuneration and otherwise as the Board determines.

19 **INSPECTION OF RECORDS**

Unless otherwise determined by the Board or by reason of the Corporations Act 2001, any accounting records and other financial documents (including the Financial Statements) may only be inspected by Directors and Members.

20 **FINANCIAL YEAR**

The Financial Year of the Company shall be from 1 July in each year to 30 June in the following year.

21 FINANCIAL STATEMENTS

The Board shall keep such accounting and other financial records that correctly record and explain its business and financial position in order that:

21.1 true and fair Financial Statements can be prepared from time to time; and

21.2 the Financial Statements can be conveniently and properly audited.

22 NOTICES

22.1 Giving Notice

The Company may give notice (for the purposes of a meeting or otherwise) to a member by:

(a) delivering it personally;

(b) by sending it by post to the address of the Member in the register of Members or an alternative address (if any) nominated by the Member; or

(c) by sending it to the facsimile number or electronic address (if any) nominated by the Member.

22.2 When Notice Received

A notice shall be taken to be received:

(a) if delivered personally, on delivery;

(b) if sent by post, two business days after the date of posting; or

(c) if sent by facsimile or electronic address, upon the sender obtaining confirmation that successful transmission has occurred.

23 INDEMNITY

Every Officer, Auditor and Secretary for the time being of the Company shall be indemnified out of the assets of the Company against any liability arising out of the execution of the duties of his/her office which is incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his/her favour or in which he/she is acquitted or in connection with an application, in relation to such proceedings, in which the court grants relief to him under the Corporations Act 2001 or as otherwise permitted under the Act.

24 WINDING UP

If upon the winding up or dissolution of the Company, there remains after satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid or distributed amongst the Members but shall be given or transferred to some institution or institutions having objects similar to the objects of the Company and whose constitution shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of clause 7, such institution or institutions to be determined by the Members at or before the time of dissolution and in default thereof, by such judge of the Supreme Court of New South Wales as may have or acquire jurisdiction in the matter.

25 AUDITOR

25.1 Appointment

The Board shall appoint a duly qualified auditor or auditors and take reasonable steps to ensure that the Financial Statements for the Financial Year are audited.

25.2 Auditor's Duties

The auditor's duties shall be regulated in accordance with the Corporations Act 2001.

25.3 Auditor's Report

The Board shall cause the auditor's report to be attached to, or endorsed on, the Financial Statements for each Financial Year.