TRAINER AND OWNER REFORMS (TOR)

Frequently Asked Questions (FAQs)

Summary

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

The TOR introduces:

(i) the TOR Rules, which are part of the Australian Rules of Racing;
(ii) a standard agreement between owners and trainers;
(iii) a standard agreement between co-owners; and
(iv) a Training Disputes Tribunal (TDT) in each State/Territory to resolve disputes in relation to payment of training fees and/or disbursements.

Racing Australia believes that there is a need to standardise the arrangements between trainers and owners as well as between co-owners of a horse.

2. What are the key documents involved in the TOR?

Firstly, there is the Standard Training Agreement (STA) 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 (COA) 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. However:

(i) owners who either train a horse themselves or employ a trainer exclusively for them pursuant to a written agreement are not subject to the STA;
(ii) trainers with an owner/trainer licence or who are contracted exclusively by an exempt owner are not subject to the STA; and
(iii) owners in promoter syndicates that own the whole of the horse are not subject to the COA.

4. Can the STA or COA be varied by agreement?

Yes. Both agreements can be varied by the parties in writing so long as certain terms of the agreements are not excluded or limited (i.e. those that mirror or embody an Australian Rule of Racing).

The TOR Rules provide that:

- specific terms of the STA can be excluded, varied or limited by agreement in writing between a trainer and owner, provided that that they cannot exclude, vary or limit the operation of any provision of the Rules of Racing (including the TOR Rules); and

- a trainer and owner can agree in writing that a separate training services agreement (whether entered into before or after 1 August 2017) will operate in conjunction with, or instead of the STA, provided that they comply with the Rules of Racing (including the TOR Rules).

In practice, this means that:

1. A trainer and owner <u>can agree</u> to:

(a) exclude, vary or limit the following terms of the STA; or
(b) exclude, or include a varied or limited version of, the following terms of the STA in any separate training services agreement.

- clause 1 (how this agreement applies to you) – **1.4, 1.5, 1.7, 1.8**
- clause 2 (rights and obligations of the trainer) – **2.1 to 2.9**
- clause 3 (training fees and the fees notice) – **3.3 to 3.4**
- clause 8 (payment default – other rights and remedies of the trainer) – **8.1 to 8.3**
- clause 9 (trainer's right to share in prizemoney and other bonuses) – **9.1 to 9.2**
- clause 10 (insurance) – **10**
- clause 11 (termination) – **11**
- clause 12 (effect of other agreements, and clauses to be severable) – **12.2 to 12.3**
- clause 13 (notices) – **13.1 to 13.3**

2. A trainer and owner must retain the following terms of the STA in any agreed:
(a) amended version of the STA; or
(b) separate training services agreement.

- clause 1 (how this agreement applies to you) – **1.1 to 1.3** *(see note below)*, **1.6**
- clause 3 (training fees and the fees notice) – **3.1 to 3.2**
- clause 4 (payment for training services) – **4.1 to 4.7**
- clause 5 (training disputes tribunal) – **5.1 to 5.4**
- clause 6 (facilitating payment following a decision of a TDT – other rights and obligations) – **6.1 to 6.5**
- clause 7 (transfer of the horse between trainers, or an interest in the horse between owners – further rights of the trainer) – **7.2 to 7.4**
- clause 12 (effect of other agreements, and clauses to be severable) – **12.1** *(see note below)*

Note: Although the precise words of STA clauses **1.1 to 1.3** and **12.1** don't have to be retained in any separate training services agreement, the parties must comply with the requirements contained in those clauses in forming and operating under any such agreement as per the TOR Rules.

5. What if parties already have a training or ownership agreement in place?

Parties can agree in writing that existing agreements continue to operate in conjunction with, or instead of, the STA or COA, so long as the parties comply with the TOR Rules and any other agreement is not in conflict or inconsistent with the relevant standard agreement.

6. When does the TOR commence?

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

7. How will any disputes between a trainer and owner or co-owners be resolved?

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

The STA and COA set out the steps that a trainer and an owner must take to have a dispute determined by a TDT.

Trainers and owners are not permitted to commence external legal proceedings (other than for urgent interlocutory relief) to resolve disputes concerning payment of training fees and/or disbursements until the dispute resolution processes set out in the TOR have been followed.

The Standard Training Agreement (STA)

1. What are the key features of the 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 if the dispute is raised within the relevant timeframe), 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 STA 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 to vary the terms in the STA, provided that no new terms are inconsistent with

the TOR Rules.

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 TOR Rules.

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

(i) 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.. 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;

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

(iii) 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

(iv) 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 August 2017 can continue to operate side by side with, or instead of, the STA, provided that:
(i) the parties comply with the TOR Rules; and
(ii) 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 3-7 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 the trainer to the managing owner:

(i) by 29 August 2017 for existing arrangements;
(ii) by 5 September 2017 for new arrangements made up to 29 August 2017; or
(iii) within 7 days of a trainer being appointed for new arrangements made after 29 August 2017.

A template Fees Notice created by Racing Australia, which trainers may choose to useif they wish, is available at www.racingaustralia.horse.

(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 apply to Racing Australia for action to be taken against the owner by lodging an **Enforcement Action Application** (EAA) (available at www.racingaustralia.horse). 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 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** (available at www.racingaustralia.horse) and serve it on the trainer (and a copy to Racing Australia). Importantly, serving a Dispute Notice by the last day of the month in which the disputed invoice is issued 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 decide the dispute at a hearing. If so, then a standard form called a **Notice of Election of Hearing** (available at www.racingaustralia.horse) 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

(i) 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; and
(ii) the Notice of Election of Hearing was lodged within 14 days of the trainer being

served with the Dispute Notice by the owner.

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.

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 at general law, and many are established practices in the industry.

For example, a trainer: will be able to exercise a lien over a defaulting owner's interest in a horse; and can sell a defaulting owner's interest in a 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 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 serving it on the trainer (copy to 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:

(i) longer than 6 months after receiving the disputed invoice;
(ii) after a trainer has lodged an EAA with Racing Australia.

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 hearing before a TDT 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 a TDT (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.

However, each Principal Racing Authority is entitled to make its own rules in relation to its TDT, which may affect the procedural operation of each State/Territory's TDT.

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. 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 vexatious in their approach, or proceeds without reasonable prospects of success, 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 at the time of lodgment by the party lodging a Notice of Election of Hearing. However, the unsuccessful party will ultimately be responsible for paying the filing fee..

Co-owner Agreement (COA)

1. What is the purpose of the COA?

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), to help regulate their "Horse Ownership Venture". The Horse Ownership Venture can include the co-owners racing a horse together, selling all or an interest in a horse, or conducting breeding activities in relation to a horse.

2. Who does the COA apply to?

The COA 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) (i.e. Promoter Syndicates). The main reason for this is that those owners (who together own the whole of a horse through a Promoter Syndicate) are expected to already have a form of structured contractual arrangement in place between them.

3. When does the COA commence?

Apart from owners who have a share in a Promoter Syndicate which owns the whole of a horse through that syndicate, the COA will apply to all co-owners in a Horse Ownership Venture as from 1 August 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, or instead of, 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. The co-owners must also ensure that they comply with the TOR Rules.

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 aggregate 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 100% of the aggregate 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 (i.e. greater than 50% of the aggregate ownership of the horse must support the decision), Special Consent is required (i.e. at least 75% of the aggregate ownership of the horse must support the decision), or Unanimous Consent is required (i.e. 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 (over 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 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 complement 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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