

Agreement in Principle

Mr GRAHAM WEST (Campbelltown—Minister for Gaming and Racing, and Minister for Sport and Recreation) [4.14 p.m.]: I move:

That this bill be now agreed to in principle.

The main purposes of the bill before the House are to reform and update the statutory arrangements that underpin the governance arrangements for Racing NSW; to clarify the powers and functions of Racing NSW for its controlling body responsibilities in relation to the thoroughbred racing industry in New South Wales; and to provide for necessary savings and transitional arrangements. The opportunity to make these reforms is essential, timely and significant. The objectives of the reforms are to promote the future viability of the thoroughbred racing industry, to give certainty to the many thousands of participants that depend on it for a living, to give appropriate acknowledgement to the custom and tradition of our racing heritage, and to ensure that the many participants and members of the public that enjoy the spectacle of racing continue to do so.

The centrepiece of the reforms is the creation of an independent Racing NSW Board selected against prescribed skills based on criteria and merit. It is essential in the twenty-first century to recognise the need to recruit persons with high-level business and management skills. The bill carries forward the existing duty of members of Racing NSW to act in the public interest and in the interests of the industry as a whole. The fundamental issue in question is that the current nominee structure tends to the expectation by the nominating body that its nominee will promote its narrower factional interest. An independent appointee will not be bound by a nominee structure. Eligibility for appointment on this basis will require the severing of factional ties. The structural failure is not one created by previous board members, and no criticism is implied or levelled at them. They are all highly respected professionals committed to the wellbeing of the racing industry.

The bill prescribes the following skills criteria: experience in a senior administrative role; or experience at a senior level in one or more of the fields of business, finance, law, marketing, technology, commerce, regulatory administration or regulatory enforcement. A maximum eight-year term for future members of Racing NSW is also important to ensure that there is a regular reinvigoration of talent. The bill also provides for an appointments panel to select candidates with the assistance of an external recruitment consultant and a Government-appointed probity adviser. The 10-member appointments panel will include a non-voting Government-appointed probity adviser, and representatives from the Australian Jockey Club, the Sydney Turf Club, Country Racing NSW, Provincial Association of NSW, owners of thoroughbred racehorses, breeders of thoroughbred racehorses, licensed trainers, licensed jockeys and apprentice jockeys, and Unions NSW. The bill also provides for the Racing Industry Consultation Group [RICG] and other requirements aimed at facilitating formal and robust consultation between Racing NSW and stakeholders.

Owners, trainers, jockeys and breeders will each have individual representation on the RICG. Joint meetings between the RICG and Racing NSW are provided for at least 12 times each year unless otherwise agreed. Racing NSW must respond formally to any recommendation made by the RICG, including by providing formal reasons when it does not agree to a recommendation put by the RICG. The bill also requires Racing NSW, in consultation with RICG and industry stakeholders, to prepare an industry strategic plan within 12 months of the commencement of the amending legislation; and regularly undertake formal consultation in relation to the initiation, development and implementation of policies for the promotion, strategic development and welfare of the industry.

The bill also answers important questions about the powers and functions of Racing NSW, which have been the source of uncertainty. There are three major reforms in the areas of the distribution of TAB payments to race clubs under the intra-code agreement, the role of Racing NSW in coordinating race broadcasting arrangements, and the setting by Racing NSW of conditions, standards and operating requirements for the conduct of races and race meetings. Presently, the 99-year thoroughbred intra-code agreement provides for a triennial review of distribution payments to race clubs but no amendment of the distribution arrangements is possible unless there is unanimous agreement of the signatories. The relevant provision in the bill requires that Racing NSW undertake a review of the distribution arrangements with the obligation that any proposals for change are considered necessary or desirable for ensuring that the arrangements are, or remain, in the best interests of the industry as a whole.

The statutory intervention which breaks the deadlock is that, unless the parties agree to the proposal or, after consultation, a variation of the proposal, Racing NSW may give a written direction which specifies the changes to the intra-code that are to be given effect. Without such a statutory intervention the arrangements for distribution of TAB payments that were agreed to in 1998 may well be in place for the life of the 99-year agreement. This inflexible state of affairs would continue irrespective of the wishes of the majority of signatories of the agreement, or the appropriateness of rewarding good performance.

The bill also provides Racing NSW with an express power to prohibit race clubs from entering into any future agreement for the broadcasting of races unless first approved by Racing NSW. A key issue of concern, expressed in submissions and consultation in the course of the independent review undertaken by Mr Ken Brown, is to clarify that Racing NSW should be able to prevent an individual race club, or group of race clubs, exercising broadcast rights in a manner which would be detrimental to the industry as a whole. When making optimal arrangements for the racing industry regarding racing broadcasts Racing NSW must have regard to balancing the interests of all race clubs including those in regional areas. By doing so Racing NSW is fostering economic and social benefits for all industry stakeholders. That is a goal that accommodates both the public interest and racing industry interests.

The race broadcasting amendments have been developed with the assistance of detailed Crown Solicitor's advice. Based on that advice the proposed amendment applies to future arrangements only, including extensions of existing arrangements. There are a number of concerns and fears that the broadcasting power in the bill assigns a race club's broadcasting rights to Racing NSW. Those concerns are unfounded. The power in the bill is limited to prohibiting a race club from entering into future arrangements. The provision does not transfer the ownership of broadcasting rights to Racing NSW. In addition, Racing NSW may only negotiate such arrangements if a race club has authorised it to do so. Racing NSW may not, of its own volition, negotiate broadcasting arrangements.

There is also an appropriate exemption for the provision in favour of Racing NSW in terms of the Trade Practices Act 1974 of the Commonwealth and the Competition Code of NSW. The provision also includes appropriate procedural safeguards such as providing the affected body with the right to make submissions and for Racing NSW to give written reasons for refusing approval to enter into the broadcasting agreement, if that is the case. The final major reform is to provide Racing NSW with the power to set conditions, standards and operating requirements for the conduct of races and race meetings. The power does not extend to the ability to direct a race club to sell its land. It is limited to ensuring that optimal arrangements are in place by way of industry benchmarks for the conduct of race meetings and training facilities.

The minimum standards apply to racing matters, not such things as catering or non-racing event management. This includes the power to compel race clubs to provide information and documents, which will enable Racing NSW to undertake its statutory consultation functions, including developing an industry strategic plan. A complementary provision allows Racing NSW to impose specified sanctions for non-compliance of its statutory directions. The imposition of sanctions is subject to safeguards including the right to make a submission and the right of review on procedural fairness grounds. The bill also contains necessary savings and transitional arrangements to ensure the continuity of operation of Racing NSW.

Two important transitional issues which merit special mention are the provisions that relate to the caretaker period and the facilitation of ancillary appointment processes before the commencement of the amending legislation. The caretaker provision has effect upon the introduction of the bill. It affords the existing members of Racing NSW with the recognition and protection that they are in caretaker mode in expectation of the appointment of a new board. I place on record my thanks for the cooperation and assistance of the existing board members and their leadership of the industry. The new appointment processes require a lead-in time with the need to convene an appointments panel, appoint a probity adviser and engage a recruitment consultant. The earliest possible resolution of this process is essential in the interests of good governance for the racing industry. The bill provides for as many administrative matters to be put in train as possible in anticipation of the commencement of the amending Act.

The bill is a significant milestone for the thoroughbred racing industry. The opportunity for genuine reform to provide a platform for modern best practice governance is one that should not be squandered. There is a longstanding and bipartisan approach to the racing industry that acknowledges its independence, and respects the desire for self-determination in the management of its affairs. Put simply, the industry runs its own race. However, the Government is a major stakeholder, both in terms of the industry economic contribution to the State's economy and of the public interest in terms of gambling integrity. It follows then that the Government's role is to provide a statutory framework that facilitates sustainable economic development and the future viability of the racing industry and ensures the integrity of the conduct of racing and associated wagering on racing.

A powerful example of the practice for providing industry self-determination is the provision in the bill for the appointments panel to seek the Minister's approval for that panel to reconvene for the purpose of a fresh recruitment process. If a 75 per cent majority of the appointments panel is of the view that the Board of Racing NSW should show cause against specified grounds and if Racing NSW does not provide a satisfactory response a fresh recruitment process will be undertaken. This is an extreme step that will be taken to address the serious problem of a dysfunctional or non-performing board. In effect, it is a "break glass in emergency" mechanism that ensures the board is always responsible to its shareholders, the racing industry.

The appointments panel will be required to provide reasons for its decision to the Minister and the Board of Racing NSW. The Government is committed to implementing practical solutions to ensure that racing has a sustainable future, and this bill is one example of its racing industry reform initiatives. Nothing in the bill will impose any undue regulation. The provisions relating to the distribution of TAB payments to race clubs, the role

of Racing NSW in coordinating race broadcasting arrangements and the setting by Racing NSW of conditions, standards and operating requirements for the conduct of races and race meetings have been carefully considered and developed in accordance with legal advice and keeping in mind the public interest and the interests of the thoroughbred racing industry as a whole and a detailed consultation process with the industry and with the Opposition. I commend the bill to the House.