



New South Wales

# Thoroughbred Racing Amendment Bill 2011

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Thoroughbred Racing Act 1996*:

- (a) to provide for the Minister to appoint 7 members of Racing New South Wales (also known as *Racing NSW*) based on selections made from lists of persons recommended for appointment that have been provided to the Minister by a specially established panel (the *Selection Panel*), and
- (b) to provide that the Minister must select persons to fill casual vacancies in the membership of Racing NSW from lists of persons recommended for appointment provided by Racing NSW, and
- (c) to provide that a person is not eligible to be appointed as a member of Racing NSW if the person is currently, or during the previous 12 months has been, either an employee or member of a governing body of a race club, racing association or eligible industry body, and
- (d) to provide that the Selection Panel cannot include a person in a list of persons recommended for appointment as members of Racing NSW if the Panel is satisfied that a relevant pecuniary conflict of interest will result, and

- (e) to provide for the Chairperson and Deputy Chairperson of Racing NSW to be appointed by the Minister based on selections made from a list of persons recommended for appointment provided by the Selection Panel, and
- (f) to require the members of Racing NSW not to participate in the making of decisions in which they have a pecuniary conflict of interest and to enable the Minister to remove a member who participates in the making of a decision where he or she has such a conflict of interest or has a relevant continuing conflict of interest, and
- (g) to enact provisions of a savings or transitional nature and make an amendment in the nature of statute law revision.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act.

## **Schedule 1      Amendment of Thoroughbred Racing Act 1996 No 37**

**Schedule 1 [1]** enables the Minister to appoint 7 members of Racing NSW selected from lists of persons recommended for appointment provided by the Selection Panel or, in relation to casual vacancies, from lists of persons recommended for appointment by Racing NSW.

**Schedule 1 [2]** provides that a person is not eligible to be appointed as a member of Racing NSW if the person is currently, or during the previous 12 months has been, either an employee or member of a governing body of a race club, racing association or eligible industry body.

**Schedule 1 [3]** provides for the Minister to establish the Selection Panel. The principal functions of the Panel will be to prepare lists of persons recommended for appointment as members of Racing NSW or as the Chairperson or Deputy Chairperson of Racing NSW.

Currently, the Selection Panel is limited to recommending appointments for the precise number of vacancies concerned. Under the new provisions, the Selection Panel will be required to provide a list of recommendations that exceeds the number of vacancies so as to enable the Minister to make a selection.

Also, the new provisions prevent the Selection Panel from including a person in a list of persons recommended for appointment as members if the Panel is satisfied that the person has a direct or indirect pecuniary interest in any matter that gives rise (or is likely to give rise) to a conflict of interest of a nature that is incompatible with membership of Racing NSW.

The Selection Panel will be able to make recommendations concerning the term of office for which a person included in a list of recommended persons should hold

office if appointed. However, the recommendation will not be binding on the Minister. **Schedule 1 [4]** makes a consequential amendment.

**Schedule 1 [5]** omits a spent review provision.

**Schedule 1 [8]** enables the Minister to appoint the Chairperson and Deputy Chairperson of Racing NSW based on selections made from a list of persons recommended for appointment provided by the Selection Panel. Currently, the Chairperson and Deputy Chairperson are selected by the members of Racing NSW.

**Schedule 1 [9] and [10]** require the members of Racing NSW not to participate in the making of decisions in which they have a pecuniary conflict of interest. **Schedule 1 [6] and [7]** enable the Minister to remove an appointed member if satisfied that the member has:

- (a) contravened requirements concerning the disclosure of such pecuniary conflicts of interest, or
- (b) a direct or indirect pecuniary interest in any matter that gives rise (or is likely to give rise) to a conflict of interest of a nature that is incompatible with continued membership of Racing NSW.

The Minister will not be able to remove a member on any of these grounds unless the member has been given an opportunity to show cause as to why he or she should not be removed.

**Schedule 1 [11]** enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

**Schedule 1 [12]** makes transitional arrangements. These arrangements include the following:

- (a) to provide for the establishment of the Selection Panel, pending the commencement of the new provisions to be inserted by the proposed Act, to enable it to prepare lists of persons recommended for appointment as the new members of Racing NSW and as the new Chairperson and new Deputy Chairperson of Racing NSW,
- (b) to provide for existing members of Racing NSW and the existing Chairperson and Deputy Chairperson to cease to hold office when the appointments of the new members take effect,
- (c) to recognise that existing members are eligible to be reappointed (or to be appointed or reappointed as the new Chairperson or Deputy Chairperson) if the Selection Panel includes them in the list of persons recommended for appointment.



First print



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# Thoroughbred Racing Amendment Bill 2011

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New South Wales

# Thoroughbred Racing Amendment Bill 2011

No. , 2011

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## A Bill for

An Act to amend the *Thoroughbred Racing Act 1996* to make further provision with respect to the membership of Racing New South Wales.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Thoroughbred Racing Amendment Act 2011</i> .	3
<b>2 Commencement</b>	4
(1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).	5 6
(2) Schedule 1 [11] and [12] commence on the date of assent to this Act.	7



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**Schedule 1      Amendment of Thoroughbred Racing Act 1996 No 37**

**[1]      Section 6 Membership**

Omit section 6 (1). Insert instead:

(1)      Racing NSW is to consist of the Chief Executive and 7 other members appointed by the Minister from time to time.

(1A)     The Minister is to appoint members as follows:

(a)      except as provided by paragraph (b)—each person appointed must be selected from a recommended members list that is provided to the Minister by the Selection Panel under section 7 in relation to the vacancy or vacancies concerned,

(b)      in the case of any casual vacancy (a vacancy in the office of an appointed member occurring other than by reason of the completion of the member’s term of office)—each person appointed must be selected from a list of persons recommended for appointment to fill the vacancy or vacancies concerned that is provided to the Minister by Racing NSW.

(1B)     The number of persons listed in a list of persons recommended for appointment to fill any casual vacancy or vacancies must be more than the number of persons required to fill the vacancy or vacancies concerned.

**Note.** See section 7 (2) (c) for a comparable requirement in relation to lists provided by the Selection Panel.

**[2]      Section 6 (2) (a) and (b)**

Omit the paragraphs. Insert instead:

(a)      is currently, or during the previous 12 months has been, an employee of a race club, racing association or eligible industry body, or

(b)      is currently, or during the previous 12 months has been, a member of the governing body of a race club, racing association or eligible industry body, or

<b>[3] Section 7</b>	1
Omit the section. Insert instead:	2
<b>7 Selection Panel</b>	3
(1) The Minister is to establish a Selection Panel:	4
(a) to prepare and provide to the Minister a list of persons recommended for appointment as members of Racing NSW when any vacancies arise (a <i>recommended members list</i> ), and	5 6 7 8
(b) to prepare and provide to the Minister a list of persons recommended for appointment as the Chairperson or Deputy Chairperson of Racing NSW when any vacancies arise, and	9 10 11 12
(c) to recommend the terms of office for persons included in any such list.	13 14
(2) A list provided to the Minister under this section:	15
(a) must list the persons recommended for appointment and recommend terms of office for the persons listed, and	16 17
(b) may list persons as being recommended for appointment both as members of Racing NSW and as the Chairperson or Deputy Chairperson of Racing NSW, and	18 19 20
(c) must list more persons than the number of persons required to fill the vacancy or vacancies concerned.	21 22
(3) The Selection Panel must not include a person in a recommended members list unless the Panel is satisfied that the person has 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.	23 24 25 26 27 28
(4) Before including a person in a recommended members list, the Selection Panel must conduct a probity check of the person (with the level of scrutiny as determined by the Minister). The Minister is to appoint a Probity Adviser to assist the Selection Panel to conduct probity checks.	29 30 31 32 33
(5) The Selection Panel is to choose between candidates for inclusion in a list to be provided under this section on the basis of merit, with merit to be determined on the basis of a candidate's abilities, qualifications, experience and personal qualities that are relevant to the performance of the duties of membership of Racing NSW or the duties of the Chairperson or Deputy Chairperson (as the case requires).	34 35 36 37 38 39 40

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(6)	The Selection Panel must not include a person in a recommended members list if the Panel is satisfied that the person has a direct or indirect pecuniary interest in any matter that gives rise (or is likely to give rise) to a conflict of interest of a nature that is incompatible with membership of Racing NSW.	1 2 3 4 5
(7)	The term of office for which the Minister may appoint a person selected from a list provided under this section may (but need not) be the term of office recommended by the Selection Panel.	6 7 8
<b>[4]</b>	<b>Section 8 Term of office of members</b>	9
	Omit “recommended by the Selection Panel under section 7” from section 8 (1).	10 11
<b>[5]</b>	<b>Section 9 Review of appointments process</b>	12
	Omit the section.	13
<b>[6]</b>	<b>Section 15 Vacation of office</b>	14
	Insert “or (3)” after “subsection (2)” in section 15 (1) (f).	15
<b>[7]</b>	<b>Section 15 (3) and (4)</b>	16
	Insert after section 15 (2):	17
(3)	The Minister may also remove an appointed member from office if the Minister is satisfied that the member has:	18 19
(a)	contravened section 21 (Disclosure of pecuniary interests by members), or	20 21
(b)	a direct or indirect pecuniary interest in any matter that gives rise (or is likely to give rise) to a conflict of interest of a nature that is incompatible with continued membership of Racing NSW.	22 23 24 25
(4)	The Minister may not remove a member from office under subsection (3) unless the Minister has first given the member an opportunity to show cause why the member should not be removed from office.	26 27 28 29
<b>[8]</b>	<b>Section 16</b>	30
	Omit the section. Insert instead:	31
	<b>16 Chairperson and Deputy Chairperson of Racing NSW</b>	32
(1)	The Minister is to appoint one of the appointed members of Racing NSW as the Chairperson of Racing NSW and another appointed member as the Deputy Chairperson of Racing NSW.	33 34 35

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Schedule 1 Amendment of Thoroughbred Racing Act 1996 No 37

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(2)	The Minister must select persons for appointment as the Chairperson or Deputy Chairperson to a vacancy in any of those offices from a list of persons recommended for appointment as such that is provided to the Minister by the Selection Panel under section 7 in relation to the vacancy concerned.	1 2 3 4 5
(3)	The appointment of a person as the Chairperson or Deputy Chairperson may be made by the relevant instrument of appointment of the person as an appointed member or by another instrument executed by the Minister.	6 7 8 9
(4)	The Chairperson or Deputy Chairperson is to be appointed to hold office (subject to this Act) for a period of up to 4 years, unless the Chairperson or Deputy Chairperson sooner vacates office as such.	10 11 12 13
(5)	The Minister may remove a person from office as the Chairperson or Deputy Chairperson at any time.	14 15
(6)	A person ceases to hold office as Chairperson or Deputy Chairperson if he or she:	16 17
	(a) resigns the office by instrument in writing addressed to the Minister, or	18 19
	(b) is removed from that office by the Minister, or	20
	(c) ceases to hold office as a member of Racing NSW.	21
(7)	The Chairperson or Deputy Chairperson does not cease to be a member of Racing NSW merely because he or she ceases to be Chairperson or Deputy Chairperson.	22 23 24
<b>[9]</b>	<b>Section 21 Disclosure of pecuniary interests by members</b>	25
	Omit “must not, unless Racing NSW otherwise determines” from section 21 (4).	26 27
	Insert “must not”.	28
<b>[10]</b>	<b>Section 21 (5)</b>	29
	Omit the subsection.	30
<b>[11]</b>	<b>Schedule 1 Savings and transitional provisions</b>	31
	Insert at the end of clause 3 (1):	32
	<i>Thoroughbred Racing Amendment Act 2011</i>	33

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<b>[12] Schedule 1, Part 11</b>	1
Insert after Part 10:	2
<b>Part 11 Provisions consequent on enactment of Thoroughbred Racing Amendment Act 2011</b>	3 4 5
<b>43 Definitions</b>	6
In this Part:	7
<i>amending Act</i> means the <i>Thoroughbred Racing Amendment Act 2011</i> .	8 9
<i>introduction day</i> means the day on which the Bill for the amending Act was first introduced into Parliament.	10 11
<i>new Chairperson</i> of Racing NSW—see clause 44 (1).	12
<i>new Deputy Chairperson</i> of Racing NSW—see clause 44 (1).	13
<i>new members</i> of Racing NSW—see clause 44 (1).	14
<i>reconstitution day</i> means the day on which Schedule 1 [1] to the amending Act commences.	15 16
<b>44 Transitional arrangements for appointment of new membership of Racing NSW</b>	17 18
(1) For the purpose of facilitating the appointment of the members of Racing NSW in accordance with section 6 as amended by the amending Act (the <i>new members</i> of Racing NSW) and the appointment of a Chairperson and Deputy Chairperson in accordance with section 16 as substituted by the amending Act (the <i>new Chairperson</i> and <i>new Deputy Chairperson</i> of Racing NSW) with effect from the reconstitution day:	19 20 21 22 23 24 25
(a) the Selection Panel provided for by section 7 (as substituted by the amending Act) may be established, and any function of the Selection Panel may be exercised, before the reconstitution day as if the whole of the amending Act had commenced on the date of assent to that Act, and	26 27 28 29 30 31
(b) the Minister may appoint a Probity Adviser under section 7 (as substituted by the amending Act), and any function of the Probity Adviser may be exercised, before the reconstitution day as if the whole of the amending Act had commenced on the date of assent to that Act, and	32 33 34 35 36

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(c)	the Minister may, pursuant to a list provided to the Minister before the reconstitution day, appoint the new members of Racing NSW and the new Chairperson and new Deputy Chairperson of Racing NSW before the reconstitution day, with the appointments to take effect on that day.	1 2 3 4 5 6
(2)	As soon as practicable after the commencement of this clause, the Minister is to establish the Selection Panel for the purpose of providing to the Minister a list of persons recommended for appointment as the new members of Racing NSW and the new Chairperson and new Deputy Chairperson of Racing NSW, as provided by this clause, and recommending their terms of office.	7 8 9 10 11 12
<b>45</b>	<b>Former members, Chairperson and Deputy Chairperson of Racing NSW</b>	13 14
(1)	On the reconstitution day:	15
(a)	each person holding office as an appointed member of Racing NSW immediately before that day ceases to hold that office, and	16 17 18
(b)	each person holding office as the Chairperson or Deputy Chairperson of Racing NSW immediately before that day ceases to hold that office.	19 20 21
(2)	Any person who ceases to hold an office by operation of this clause:	22 23
(a)	is not entitled to any remuneration or compensation because of loss of that office, and	24 25
(b)	is eligible (if otherwise qualified and subject to sections 6 and 16 as amended or substituted by the amending Act) to be appointed as a new member of Racing NSW and, if so appointed, also to be appointed as the new Chairperson or new Deputy Chairperson of Racing NSW.	26 27 28 29 30
(3)	Neither this clause nor any amendment made by the amending Act to section 6 or 16 affects:	31 32
(a)	the continuity of existence of Racing NSW as a body corporate established by this Act, or	33 34
(b)	the continuity of operation of any decision made or other action taken by the members (or the Chairperson or Deputy Chairperson) of Racing NSW before ceasing to hold office under this clause, or	35 36 37 38
(c)	the continuity of employment of the Chief Executive and other members of staff of Racing NSW.	39 40

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**46 Functions of members during caretaker period**

- (1) On and from the introduction day, the members of Racing NSW who hold office before the reconstitution day are entitled to exercise their functions in a manner that is consistent with any convention or practice as to the exercise of functions by members of a body pending the appointment of a new membership of the body.
- (2) This clause is taken to have had effect on and from the introduction day.

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