

Bill introduced on motion by Mr George Souris.

Agreement in Principle

Mr GEORGE SOURIS (Upper Hunter—Minister for Tourism, Major Events, Hospitality and Racing, and Minister for the Arts) [4.25 p.m.]: I move:

That this bill be now agreed to in principle.

The primary purpose of the Thoroughbred Racing Amendment Bill 2011 is to amend the Thoroughbred Racing Act 1996 in relation to the appointment procedures and eligibility requirements for the board of Racing NSW and to increase the number of appointed members. I make it clear that these changes do not reflect on the current board of Racing NSW or on any particular board member. The Government recognises the importance of the racing industry in terms of its employment and economic contribution to the State, as well as its importance to the people of New South Wales as a source of entertainment and social interaction. The Government's broad policy for racing is to support the viability and the sustainable economic development of the racing industry, while ensuring that the highest integrity standards apply to racing and associated wagering in accordance with community expectations.

The controlling or governing body for the thoroughbred racing code is Racing NSW. Although it is established by the Thoroughbred Racing Act 1996, Racing NSW is independent of government, does not represent the Crown and is not subject to ministerial direction. This recognises that the racing industry has self-management of its affairs. Nevertheless, the Government is responsible for the legislative framework that underpins the racing industry and the governance and integrity standards set out in the enabling legislation. The thoroughbred racing code is the largest sector of the New South Wales racing industry; made up of some 137 race clubs, which conduct over 750 race meetings per year across the State. Prize money distributed to participants each season is well over \$100 million.

The New South Wales racing industry is a significant employer, providing 50,000 full-time and part-time jobs. The industry also makes a significant contribution to the State's economy—estimated to be in the order of \$1 billion annually. It has provided the State with wagering taxes for many years, with its most recent contribution being approximately \$160 million. Apart from regulatory functions under the Act and under the rules of racing, the primary responsibilities of Racing NSW include the registration of race clubs, the allocation of race dates and the distribution of TAB revenue and prize money. Historically, there has been an issue with factional interests within the racing industry seeking to secure a benefit in accordance with their self interests. Ian Temby, QC, identified a primary example of this tendency in 1995 when he recommended that the Australian Jockey Club should revert to a race club and relinquish its governing body role for the industry. The Temby review found that it was inappropriate for the Australian Jockey Club to manage TAB payments and race

date allocations for the racing industry at the same time as it operated as a race club.

The Temby recommendations resulted in the creation of what is now known as Racing NSW as an independent body. Since then there have been several changes to the arrangements for the structure of Racing NSW and the manner in which members are appointed to improve the governance model and to ensure contemporary, best practice governance in the spirit of continuous improvement. The present arrangements in the Act for the appointment of members of Racing NSW were made in 2008. The intent of the 2008 changes was to move away from a nominee structure and to establish a board made up of independent members appointed by an independent selection panel and based on a merit-selection process in accordance with prescribed business skills criteria. In addition, the legislation was also changed to impose on members of Racing NSW the duty to act in the public interest and in the interests of the horse racing industry as a whole in New South Wales. The bill has come about in part from a concern that the existing eligibility criteria for membership of Racing New South Wales are not suited to ensuring that members comply with their duty to act in the public interest and in the interests of the horse racing industry as a whole in New South Wales. For some time I have had concerns about whether Racing New South Wales can operate effectively and meet its statutory duty to the racing industry and to the public under the current arrangements.

When leading for the then Opposition in debate on the Thoroughbred Racing Amendment Bill 2008, I expressed the need to create a board of governance that comprises people of high calibre, but not necessarily people with fixed views who have the aim of representing only their own section of the industry. There are a number of pressing challenges facing the racing industry, such as the ongoing race fields information usage fee issue, the major redevelopment of Randwick and Rosehill racecourses and the unprecedented competition for the entertainment dollar. It is questionable whether the current Racing New South Wales board membership of five is sufficient in terms of size and range of skills to manage the workload and to undertake the many reforms necessary to ensure the future viability and sustainable economic development of the thoroughbred racing industry.

The bill leaves intact the business and skills criteria for appointment as a member of Racing New South Wales but strengthens the eligibility, disclosure and management of pecuniary interest requirements to minimise the influence of factional and personal interests as a basis for decision making. The bill also retains the independent selection panel process but amends its procedure. Under the current arrangements, a person is not eligible for appointment if he or she is an employee of a race club or racing association, or a member of the governing body of a race club or eligible industry body. However, the Act is silent on the operative date of effect, and the practice has been that the prohibition applies at the time of appointment. This arrangement does not afford sufficient separation from the interests and influences of a former role within the industry and the duty of an independent member of Racing New South Wales.

Under the proposed new arrangements, the eligibility requirements for appointment to Racing

New South Wales will provide that a person is not eligible for appointment if he or she is currently, or during the past 12 months has been, either an employee or member of a governing body of a race club, racing association or eligible industry body as defined in the Act. The 12-month separation period is considered appropriate and is likely to become the benchmark for appointments to other independent boards established by legislation. The new provisions will also expressly prohibit membership of Racing New South Wales if the independent selection panel forms the view that an applicant has a direct or indirect pecuniary interest that is considered to be a conflict of interest that is incompatible with membership of Racing New South Wales. Examples of conflicts of interest that would be incompatible are already set out in section 21 of the Act, that is, being a member, partner, employee of a specified company, body or person or having some other specified interest relating to a specified company, body or person.

This concept will be extended to cover any direct or indirect pecuniary interests that a member may acquire or that may become apparent following his or her appointment as a member. As currently occurs, a member will be required to disclose any direct or indirect pecuniary interest in a matter to be considered at a meeting of Racing New South Wales. In the past such conflicts of interest were left to the board to manage and to determine whether the member should participate in the consideration of an issue. However, under the proposed amendments, a member will be prohibited from participating in the consideration of that matter. Should a serious conflict of interest exist the Minister may ask that the member show cause why his or her appointment should not be terminated.

These amendments will ensure, firstly, that self-interest is, and is seen to be, eliminated and, secondly, that board decisions are made in the best interests of the whole of the thoroughbred racing industry and the public interest. Currently, the independent selection panel is limited to recommending appointees for the precise number of vacancies on the board. Under the new provisions, the independent selection panel will be required to provide a list of recommended appointees that exceeds the number of vacancies so as to enable the Minister to make a selection. This arrangement gives the Minister greater purview over the appointment process and, coupled with the expansion of the board from five to seven members, reflects the need to broaden the skill base of the board and allows for the appointment of the best available talent.

Similarly, the independent selection panel will be required to provide a list of eligible appointees for the Minister's consideration for appointment to the positions of chairperson and deputy chairperson. While it is appreciated that Racing New South Wales is independent of government, the appointment of the chair and deputy chair by the Minister will provide for stability and allow Racing New South Wales to focus on its statutory responsibilities to the racing industry and to the public. The bill also provides that the independent selection panel will continue to be able to make recommendations concerning the term of office for which a person is to be appointed. However, this would not be binding on the Minister, as is presently the case. Given the concerns about the existing arrangements, the bill provides that the terms of existing appointees be terminated and that a fresh appointment process be undertaken, with existing appointees eligible to reapply under the new arrangements.

The current appointees are Chairperson Alan Bell, Deputy Chairperson Alan Brown, Mr Ken Brown, AM, Ms Kim Harding and Mr Arthur Inglis. I acknowledge their service and commitment to the State's thoroughbred racing industry. It is appropriate that their contribution be considered, along with new candidates, but in terms of the new benchmarks for eligibility and conflict of interest. To provide for business and governance continuity, appropriate transitional arrangements have been included so that all existing Racing New South Wales members continue in office, under caretaker provisions, until such time as the fresh selection process is undertaken and new appointments are made.

The proposed amendments are intended to provide for the future viability and growth of the New South Wales thoroughbred racing industry and to ensure that a strong, viable industry continues to provide an economic benefit to the State generally and to regional and rural communities in particular. The Government has the prerogative to ensure that the legislation is appropriate in terms of its policy objectives, that it reflects current best practice and that it meets community expectations. I commend the bill to the House.

Mr PAUL LYNCH (Liverpool) [4.36 p.m.]: I lead for the Opposition in this place in debate on this bill. I note that the Hon. Steve Whan in the other place is the shadow Minister for this portfolio area. Notice of this bill was given to the Opposition two hours ago. I acknowledge, however, that we have received a one-page briefing note from the Minister, and that is an improvement over what has happened with other legislation. However, it is obvious that we will be reserving our position and either supporting, seeking to amend or opposing the legislation in the other place. The shadow Minister tells me that at first glance there are some significant industry concerns about this legislation but we will explore the matter further and deal with it in more detail if necessary in the other place.

The legislation is expressed as an attempt to amend the Thoroughbred Racing Act to make provisions relating to the membership of Racing New South Wales, which is the body responsible for the control and regulation of thoroughbred racing in this State. This legislation makes amendments to the appointment procedures, eligibility requirements and the number of appointed members of Racing New South Wales. The bill, in the short time we have had to look at it, would seem to do those things. It will increase the number of appointed members of Racing New South Wales from five to seven, and it will alter the eligibility requirements so that a person is not eligible for appointment if he or she has been an employee or member of the committee of a race club or the like in the 12 months preceding the appointment.

The bill will alter the eligibility requirements to expressly prohibit membership of Racing New South Wales if the independent Selection Panel forms the view that an applicant has a direct or indirect pecuniary interest that is considered to be a conflict of interest that is incompatible with membership of Racing New South Wales. It will amend the Thoroughbred Racing Board Act so that the independent Selection Panel may submit to the Minister a list of eligible candidates for membership of Racing New South Wales and that the Minister may

make a final selection from that list. It will alter the conflict of interest provisions in the Act requiring the disclosure of a direct or indirect interest in a matter under consideration by Racing New South Wales. It will amend the Act in relation to the appointment of the chair and deputy chair of Racing New South Wales so that the Minister makes those appointments.

The bill will terminate the appointments of existing members of Racing New South Wales and provide for a fresh appointment process. Existing appointees will be eligible to reapply under the new arrangements. That seems to represent a significant change in power and vest a much greater degree of power in the hands of the Minister than is currently the case. As I indicated, the Opposition reserves its position and will give further consideration to this legislation in the other place.