

## ***Commissions of Inquiry Order (No. 1) 2013***

### **TERMS OF REFERENCE: DRAFT BREAK-DOWN OF ISSUES FOR INQUIRY (AS AT 15 JULY 2013)**

#### **INTRODUCTION**

This document is produced by counsel assisting the inquiry for the purposes of assisting interested persons to understand counsel's view of the matters for investigation raised by each of the terms of reference.

Some matters of clarification are included below. Where any item is not the subject of any clarification, counsel assisting consider that none is possible or appropriate at this stage. However, further versions of this document will be issued, with further points of clarification, in due course.

Nothing in this document constitutes any limitation on the scope of the Terms of Reference.

#### **DEFINITIONS**

***Relevant Entities*** – means:

- Racing Queensland Limited;
- before July 2010: Queensland Racing Limited, Greyhounds Queensland Limited and Queensland Harness Racing Limited;
- between January 2007 and July 2008, the Greyhound Racing Authority and the Queensland Harness Racing Board;
- entities controlled by Racing Queensland Limited or the other entities mentioned above, including Queensland Race Product Co Limited, Sunshine Coast Racing Pty Ltd and Rockhampton Racing Pty Ltd.

***Relevant Period*** means 1 January 2007 to 30 April 2012.

#### **(A) - PROCUREMENT, CONTRACT MANAGEMENT AND FINANCIAL ACCOUNTABILITY**

1. During the ***Relevant Period***, what were the ***Relevant Entities'*** procurement, contract management and financial accountability:

- 1.1 policies;
- 1.2 processes;
- 1.3 guidelines; and
- 1.4 measures to ensure contracts awarded delivered value for money?

2. Were such policies, processes, guidelines and measures:

- 2.1 adequate;
- 2.2 of integrity; and
- 2.3 adhered to?

[Clarification: The concept of the “integrity” of policies, processes, guidelines and measures is taken to overlap partly with that of their adequacy, but to focus attention on issues surrounding moral or ethical soundness and robustness in relation to their development and content]

3. In relation to contractual arrangements in existence during the **Relevant Period** between the **Relevant Entities** and Contour Consulting Engineers Pty Ltd ("**Contour**"), by which **Contour** was engaged to manage contracts on behalf of the **Relevant Entities**:

- 3.1 what were the events surrounding those contractual arrangements;
- 3.2 were the resulting contracts underpinned by sound procurement practices; and
- 3.3 were appropriate payment policies and processes:
  - (a) implemented; and
  - (b) adhered to?

[Clarification:

- 3.1 involves a broad investigation to determine how each and every contractual arrangement existing during the **Relevant Period**, between any of the **Relevant Entities** and **Contour**, arose and was implemented.
- The term “resulting contracts” in 3.2 is taken to refer not only to contracts between any **Relevant Entity** and **Contour** but also to contracts entered into between any **Relevant Entity** or **Contour** and third parties for the purposes of any work done (or to be done) for or on behalf of a **Relevant Entity**. That is, the term includes principal and sub-contracts.
- 3.3 necessitates consideration of whether at relevant times, in relation to work in which **Contour** was involved, appropriate payment policies and processes were in place and complied with. It may involve consideration of policies and processes of both the **Relevant Entities** and of **Contour**]

## **(B) - MANAGEMENT**

4. In relation to the management of the **Relevant Entities** (in particular Racing Queensland Limited) during the **Relevant Period**, what were their:

4.1 management policies, processes and guidelines; and

4.2 workplace culture and practices?

[Clarification: The word “processes” in 4.1 is taken, in context, to mean processes prescribed by some means or otherwise able to be identified as generally followed or expected to be followed. This Term of Reference is not understood to require inquiry into every process in fact followed during the course of every individual act of management within a **Relevant Entity** during the **Relevant Period**]

5. During the **Relevant Period**, were each **Relevant Entity's** management policies, processes and guidelines, and workplace culture and practices:

5.1 adequate;

5.2 of integrity;

5.3 adhered to?

[Clarification:

- The concept of integrity is understood consistently with the clarification under paragraph 2 above.
- As to the question of “adherence to... workplace culture and practices”, it is expected that it can only be considered to the extent that the Commission identifies cultures and practices prescribed by some means or otherwise generally followed or expected to be followed]

6. What involvement did the boards (or members of the boards) of each of **Relevant Entity** have in the exercise of functions by:

6.1 the executive management team of the **Relevant Entity**; and

6.2 other key management personnel of the **Relevant Entity**, including the company secretary and those involved in integrity matters?

7. Was the abovementioned board involvement “appropriate”?

### **(C) - CORPORATE GOVERNANCE**

8. In relation to Racing Queensland Limited during the **Relevant Period**:

8.1 what were its corporate governance arrangements; and

8.2 were those arrangements adequate and appropriate.

[Clarification:

- This Term of Reference is understood, without intending to confine it in any way, to require consideration of Racing Queensland Limited’s “framework of rules, relationships, systems and processes within and by which authority is exercised and controlled”, encompassing “the

mechanisms by which companies, and those in control, are held to account” – that is the definition of corporate governance adopted in the 2<sup>nd</sup> edition of the ASX Corporate Governance Council’s *Corporate Governance Principles and Recommendations with 2010 Amendments*.

- Racing Queensland Limited was incorporated on 25 March 2010, so that the period of relevance to this Term of Reference is 25 March 2010 until 30 April 2012.
- The concepts of “adequacy” and “appropriateness” overlap, but the latter term is understood to emphasise that the inquiry is into not just whether the arrangements were generally sufficient for any corporate entity but also whether they were suitable for Racing Queensland Limited in its particular circumstances]

9. Did Racing Queensland Limited, its directors, executive management team and other key management personnel act and operate during the **Relevant Period**:

- (a) with integrity;
- (b) in accordance with the company’s constitution;
- (c) in the best interests of the company;
- (d) in the best interests of the racing industry;
- (e) consistently with relevant applicable State legislation including *Racing Act 2002* and Commonwealth legislation including the *Corporations Act 2001*; and
- (f) consistently with relevant applicable State and Commonwealth policies?

[Clarification:

- There is not understood to be any limit to the acts and operations the subject of this aspect of the inquiry, other than that – because it concerns Racing

Queensland Limited – the applicable date range is 25 March 2010 to 30 April 2012.

- The legislation and policies referred to at (e) and (f) above are understood to be legislation and policies relevant to Racing Queensland Limited’s corporate governance.
- Relevant applicable State policies will be identified in a subsequent iteration of this document.
- As to relevant applicable Commonwealth policies, it is presently understood that there are none. However, in considering whether corporate governance arrangements were adequate and appropriate generally reference will be made *inter alia* to the *ASX Corporate Governance Principles and Recommendations* document referred to above; and to Standards Australia’s corporate governance standards]

**10.** What policies, rules and procedures did Racing Queensland Limited have in place during the **Relevant Period** to:

10.1 identify and manage potential and actual conflicts of interest; and

10.2 minimise the risks of directors and executives improperly using their position, and information obtained by virtue of that position, for personal or financial gain?

**11.** Were the abovementioned policies, rules and procedures adequate and appropriate?

**12.** In relation to employment contracts for directors and executives of Racing Queensland Limited during the **Relevant Period**:

12.1 what (if any) were the terms of the contracts restraining, or intended to restrain, directors and executives leaving Racing Queensland Limited from seeking employment with its preferred contractors and suppliers; and

12.2 were such terms adequate?

[Clarification: The term “preferred contractors and suppliers” is understood, without limitation, to include **Contour**. Any other such entities will be identified in due course]

#### **(D) - GOVERNMENT OVERSIGHT**

**13.** Were the operations of the **Relevant Entities** in the **Relevant Period** subject to sufficient and appropriate oversight, under the *Racing Act 2002* and otherwise, by:

13.1 the responsible Minister;

13.2 executive government; and

13.3 the chief executive.

#### **(E) - EMPLOYMENT CONTRACTS – TUTTLE, ORCHARD, BRENNAN, REID**

**14.** What were the events surrounding:

14.1 the renegotiation of employment contracts in 2011, for the following senior executives of Racing Queensland Limited:

(a) Malcolm Tuttle;

(b) Jamie Orchard;

(c) Paul Brennan; and

(d) Shara Reid (formerly Murray); and

14.2 the payouts made under the abovementioned contracts on the voluntary termination in March 2012 of the employment of the abovementioned persons.

[Clarification: This aspect involves a broad investigation to determine the course of events including in relation to how each employment contract came to be renegotiated, how the renegotiation progressed between the parties, what process

was followed within Racing Queensland Limited in relation to the renegotiation, and how the payouts arose to be made, were approved, and were in fact made]

15. In relation to the abovementioned contract renegotiation and payouts, did the directors and senior executives of Racing Queensland Limited act consistently with:

15.1 their responsibilities;

15.2 their duties; and

15.3 their legal obligations,

including by reference to the key findings of the Auditor-General in his report to Parliament: *Racing Queensland Limited: Audit by arrangement*, tabled in July 2012.

[Clarification: the abovementioned report will be available via the Commission's website, to assist in understanding the matters raised by this item]

#### (F) - TATTS GROUP FEE ARRANGEMENTS

16. What were the arrangements during the **Relevant Period** between Queensland Race Product Co Limited and the Tatts Group, and formerly UNiTAB, concerning fees paid by the Tatts Group for Queensland wagering on interstate races through TattsBet ("the **Fee Arrangements**")?

17. How did Queensland Race Product Co Limited respond to the introduction of race information fees?

18. In relation to the effect on fees payable by the Tatts Group to Queensland Race Product Co Limited as a consequence of race information fees being introduced:

18.1 was legal or other expert advice sought by the Boards of the **Relevant Entities**, or any of them, in relation to the abovementioned effect;

18.2 if the answer to 18.1 is "No", why was no advice sought;

18.3 if the answer to 18.1 is "Yes":



- (a) was advice received;
- (b) was any advice received acted upon; and
- (c) why was the advice acted upon, or not acted upon (as applicable)?

**19.** When the race information fees were introduced, and at all other times during the **Relevant Period**, did the directors and senior executives of the **Relevant Entities** act in relation to the **Fee Arrangements**:

19.1 in good faith;

19.2 consistently with their responsibilities, duties and legal obligations as directors or senior executives; and

19.3 in the best interests of the companies of which they were directors or senior executives?

**20.** Were the actions of any of the directors and senior executives of the **Relevant Entities** relating to the **Fee Arrangements** influenced by any conflict of interest, when the race information fees were introduced or at any other time during the **Relevant Period**, arising from:

20.1 a director of a **Relevant Entity** also being a director of the Tatts Group; or

20.2 a director or senior executive's relationship with any other person.

**21.** Did any of the directors or senior executives of the **Relevant Entities** use their position to gain a personal advantage when race information fees were introduced or at any other time in the **Relevant Period**.

#### **(G) - FEBRUARY 2012 FUNDS TRANSFER**

**22.** What were the events surrounding the approved transfer of funds by the Queensland Government to the Racing Queensland Limited Infrastructure Trust Account in February 2012?

23. What was the basis upon which the abovementioned transfer of funds was made?
24. Was any improper influence exercised by directors of Racing Queensland Limited in relation to the transfer?
25. Was the transfer appropriate and justified?

#### **(H) - OTHER RELEVANT MATTERS**

26. Inquire into any other matter which the Commissioner considers necessary in relation to the operations of the *Relevant Entities* during the *Relevant Period* or otherwise.

[Clarification: No other specific matters have so far been identified as necessary. However, the reference to “the *Relevant Period* or otherwise” makes clear, if there were otherwise any doubt, that the scope of the inquiry extends to events beyond the confines of the *Relevant Period* as necessary; it is plainly necessary where such events aid the investigation of matters occurring within the *Relevant Period*]

#### **RECOMMENDATIONS**

27. What legislative and/or organisational changes are necessary or desirable to promote good corporate governance, integrity and a transparent and accountable culture for the new racing control body for racing in Queensland – the Queensland All Codes Racing Industry Board trading as Racing Queensland?

[Clarification: Although this is not specified as a term of reference of the inquiry, the obligation for the Commissioner to consider any such changes should be kept in mind during the factual investigations into the matters set out above]