

Oaths Act 1867

STATUTORY DECLARATION

QUEENSLAND

TO WIT

I, Michael Anthony Kelly, of 111 George Street Brisbane in the State of Queensland, do solemnly and sincerely declare that:

Amalgamation of the control bodies and the constitution Racing Queensland Limited (RQL).

1. On 18 December 2009, I attended a meeting chaired by Ken Smith, Director-General of the Department of Premier and Cabinet. Ian Fletcher, Director-General DEEDI, David Ford, Deputy Director General, DEEDI, Lachlan Smith, Treasurer's Policy Advisor, Bob Bentley, Bob Lette, and Kerry Watson also attended. At this meeting it was clear that the three control body Chairs had already discussed the amalgamation and the key features they wanted to see in the amalgamated control body. The government's preferred position that the amalgamation proceed was put to the control body Chairs and they supported this.
2. It was decided that a further operational meeting would need to be conducted between the control bodies and Ken Smith advised that I would attend to assist them with discussing relevant issues.

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3. This next meeting was conducted on 23 December 2009, at Deagon and I attended it. The other attendees at the meeting were Bob Bentley, Bob Lette, Kerry Watson, Mike Godber, Darren Beavis, Malcolm Tuttle, Darren Beavis and Carol Perrett.
4. The purpose of the 23 December 2009 meeting was to discuss the proposed amalgamation of the control bodies in more detail. I believe that a considerable amount of planning and work had been done by the three control bodies in preparation for this meeting as they were very well prepared to discuss the detail of amalgamation and had identified issues for addressing in the constitution of Racing Queensland Limited (RQL).
5. I outlined to the meeting, the key elements that had been identified at the 18 December 2009 meeting as the three control body Chief Executives had not been at the 18 December 2009 meeting and I believed it was important that they understood the scope of the proposed changes as they would be key people in implementing the change to an amalgamated control body structure. This approach was supported by the three control body Chairs. An additional issue that I raised related to the security of employment for staff which was seen as a key safeguard for staff impacted by the amalgamation and had been discussed within government post the 18 December 2009 meeting. This matter had already been discussed with the control body Chairs.
6. At this meeting, Mr Lette outlined concerns in regard to the number of directors representing the harness and greyhound codes, and indicated that he supported the appointment of an independent Chair. This was the same matter that he had raised at the 18 December 2009 meeting with Ken Smith and it is my recollection that this proposal was not supported by Bob Bentley or Kerry Watson at the 23 December 2009 meeting. I did not express any view on this matter as it had been made clear to the three control body Chairs by Ken Smith that government

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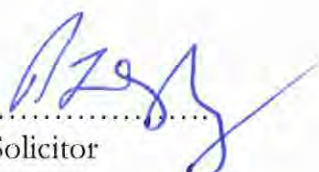
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expected the control bodies to reach an agreement on the detail of an amalgamated control body structure and advise government accordingly.

7. Following this meeting, Mr Bentley sent the attached letter dated 29 December 2009 to the Premier and copied it to the Treasurer and Minister Lawlor. Attached to the letter were the minutes of the meeting held at Deagon on 23 December 2009. (see **Attachment MK1**).
8. I went on leave for a period in January 2010. Carol Perrett prepared a briefing note for Minister Lawlor related to responding to the correspondence dated 29 December 2009 received from Bob Bentley that was approved by Ian Fletcher on 20 January 2010. Minister Lawlor signed the response to Mr Bentley on 25 January 2010 (see **Attachment MK2**).
9. On 28 January 2010, I attended a meeting with David Ford and Minister Lawlor. The briefing note prepared for the meeting and noted by the Minister on 28 January 2010 refers to matters that had been agreed by the three control bodies concerning proposed arrangements under the new control body constitution. Also identified in the briefing note were likely legislative amendments that would need to be considered (see **Attachment MK3**).
10. A draft constitution of RQL was developed by Cooper Grace Ward, the lawyers acting for RQL. Attached is a bundle of emails that show the progress in drafting and finalising the constitution (see **Attachment MK4**).
11. A combined Policy/Authority to Prepare Cabinet Submission was prepared, reviewed and assessed by staff within the Department and central agencies. It is my recollection that there were a number of draft submissions prepared as is the normal process related to developing a cabinet submission. I believe that the final submission included an outline of matters to be included in the constitution of

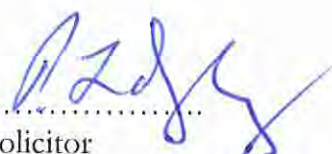
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RQL. See paragraphs 10 to 15 of the latest version of the Policy/Authority to Prepare Cabinet Submission I have been able to locate. (see **Attachment MK5**).

12. It was proposed that the RQL constitution would provide that the directors hold office for an initial term of five years until 2015. This proposal was rejected by Cabinet and the initial term was specified to be 2014. The need for an 'initial term' for RQL was considered important to provide stability of the board and, particularly, to ensure that experienced directors were available to plan and negotiate any new type of Product and Program agreement with wagering operators once the existing one with TattsBet expired in 2014.
13. There had been some discussion on the number of Director positions that would be filled on RQL by former Directors of QRL and the proposal of five was supported by both Bob Bentley and Kerry Watson. The issue had been discussed at the 18 December 2009 meeting with Ken Smith. The thoroughbred code had the critical mass and generated the majority of wagering revenue for the industry approximately as identified below:
- the thoroughbred code generated 78.7% of wagering turnover, the harness code generated 10.6% and the greyhound code 10.8 (see QRL 2009 Annual Report).
 - the thoroughbred code had 108 race tracks, the greyhound code had seven and the harness code had four race tracks.
14. There had been discussion at the 18 December 2009 meeting on the difficulties that both thoroughbred and greyhound control bodies believed they were experiencing in having participants that are licensees and or members of the executive of race clubs involved in electing Directors of the control body and otherwise pursuing interests that may not be in the wider interest of the code of racing. The three control body model included licensees as control body

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members. The company was required to regulate those licensees and those licensees were entitled to vote on the appointment of directors. This was considered an integrity risk and had proven not to work very well. For example, Greyhounds Queensland had attempted to amend its constitution to ensure that all clubs had equitable voting rights. The de-licensing of a club and the change in status of another club from a non-TAB club to a TAB club resulted in the Cairns Greyhound Racing Club, a non-TAB club, having the same voting rights as a TAB club. The resolution was not passed as it was not supported by the Cairns Club which did not wish to lose its increased voting rights. While it was the preferred course of action for the three control bodies that the Directors would be the only members of any amalgamated control body, safeguards were to be established to protect individual codes from 'detrimental decision making' by the new company. See paragraphs 14 of the combined Policy/Authority to Prepare Cabinet Submission at Attachment MK5.

15. A key inclusion in the proposed drafting instructions included with the Cabinet Submission provided the Minister with the power to require the amalgamated control body to provide reasons and justifications for decisions that had a detrimental impact on a particular code of racing and the power to direct the control body to reconsider and make a new decision on such a matter. This submission was considered by Cabinet on 22 February 2010. The cabinet decision of 22 February 2010 required revised drafting instructions to be prepared in relation to the proposed constitutional framework and Ministerial oversight. In particular, the ministerial power to address 'detrimental decision making' by the amalgamated control body was not approved by Cabinet. A copy of the Cabinet Decision was not provided to the Department until 2 March 2010 (see **Attachment MK6**).

16. On 23 February 2010 at 5.49pm, David Ford sent me an email that was copied to the Director-General and other Departmental officers providing guidance as to

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what had been decided by Cabinet and changes required to the drafting instructions for the proposed legislative amendments (see **Attachment MK7**).

17. On 24 February 2010 at 10.07 am, I responded to the email received from David Ford on 23 February 2010. The attached email trail shows a number of emails between David Ford and me, copied to the Director-General and other Departmental officers in relation to trying to identify what was required to progress the cabinet decision of 22 February 2010. There was some confusion surrounding this matter as the exact wording of the cabinet decision had not been communicated to Departmental officers. (see **Attachment MK8**).

18. On 24 February 2010 at 10.22 am, David Ford emailed me, copied to the Director-General and other Departmental officers identifying that specific issues could not be addressed until he obtained the cabinet decision. However, he provided some guidance concerning the next steps required to progress the matter (see **Attachment MK9**). I believe that David Ford discussed the decision made by Cabinet with Minister Lawlor's office to identify what changes were required to the drafting instructions to comply with Cabinet's decision. There was a real sense of urgency surrounding finalising the drafting instructions as it was recognised that there was a large amount of work to be done in developing a draft Bill and Authority to Introduce Cabinet submission.

19. On 10 March 2010, Minister Lawlor sent a letter to the Premier enclosing amended drafting instructions as required by the Cabinet Decision of 22 February 2010 (see **Attachment MK10**). Attached to the letter were amended drafting instructions and an outline of the proposed clauses to be included in the draft RQL constitution regarding the retirement of the Directors as required by the Cabinet Decision. The Premier responded on 7 April 2010 (see **Attachment MK11**).

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20. It is my understanding that the Queensland Racing Limited (QRL) constitution was used as a basis for drafting the RQL constitution. There were a number of provisions in the QRL constitution that were considered as needing to be replicated in the RQL constitution. Clause 26 of the QRL constitution which dealt with the assets of the company in the event the company was wound up was required to be replicated in the RQL constitution. While I have been unable to locate relevant records, I am aware that this was an issue considered in some detail by the Legal Services area in the Department of Public Works when they initially reviewed the proposed QRL constitution. Also, the Directors Selection Criteria, including the mandatory requirements in Appendix A of the QRL constitution were required to be replicated in the RQL constitution.

21. There had been considerable criticism in the media and in correspondence received by the Minister concerning the tenure of Bob Bentley as the chair of the thoroughbred control body. The constitution of RQL was required to specify that the Chair of RQL (Bob Bentley) must be one of the Directors to retire at the first Annual General Meeting of RQL following the Initial term.

22. As the only members of RQL were to be its directors, there was no election process for Directors. The draft constitution of RQL provided that, after the initial term, a selection panel would appoint the Directors and that the constitution would specify this process, including a person appointed by the Director-General of the Department responsible for racing in Queensland.

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23. To ensure compliance with the cabinet decision of 22 February 2010, the following clauses were included in the proposed RQL constitution:

- that the remuneration of the Directors was to be recommended by an independent consultant who had expertise in remuneration of public company Directors and it had to be approved by the Chief Executive Officer of the Department responsible for racing (Clause 12.14). On 24 June 2010, Ian Fletcher, Director-General of DEEDI approved the RQL Directors remuneration (see **Attachment MK12**);
- that in making decisions, the control body was to have regard to the best interests of the thoroughbred, harness and greyhound codes as a whole, and the continued existence and welfare of each individual code (Clause 3.3);
- the establishment of Country Racing Associations and a Country Racing Committee as the establishment of these bodies was to be omitted from the Racing Act (Clause 26); and
- the founding Directors were to hold office for an initial term which expired at the conclusion of the Annual General Meeting which was to take place after 30 June 2014. After the initial term, two Directors were to retire on a rotational basis every two years (clause 12.2).

Conditions imposed by the Minister on the approval of RQL

24. The control body approvals granted since 2006 have contained various conditions depending on the particular issues relating to the control body. However, there were two specific conditions imposed on the approval of RQL that have been imposed on all control bodies. These were:

- the company must adopt the (approved) constitution by a specified date;
- and

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- the company must obtain the ratification in writing of the Minister or Chief Executive before implementing any amendment to the company's constitution. (**Attachment MK13**)

25. In 2006, the Racing Division, as it was then called, was a part of the Department of Public Works. These two conditions were developed by the Legal Services area in the Department of Public Works, which had significant input into racing issues, reviewed and approved the QRL constitution in 2006 and the drafting of all significant Racing Division documentation. The briefing note to the then Minister was prepared and approved with little input from me (see **Attachment MK14**).

26. These two conditions were imposed on all subsequent Control Body Approvals. The first condition ensured that the constitution had been adopted by the company prior to the control body approval taking effect. The requirement to obtain the ratification in writing of the Minister or Chief Executive before implementing any amendment to the company's constitution was considered necessary to ensure the constitution could not be amended without government approval. This provided a safeguard to ensure that the control body could not change its constitution without providing justification to government for the change. The government had the discretion as to whether or not to approve the change.

27. As part of the normal process of both inter and intra-agency consultation, prior to the proposed RQL constitution being submitted to Cabinet for approval with the Authority to Introduce cabinet submission, it was provided to the Deputy Director-General, Director-General and Department of Premier and Cabinet officers for review (see bundle of emails at **Attachment MK15**). A briefing note prepared by the Office of Racing and endorsed by the Acting Deputy Director-

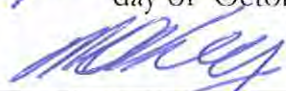
General, and the Director-General recommended that Minister Lawlor approve the constitution of RQL by signing the Control Body Approval Notice. The Control Body Approval Notice imposed three conditions on RQL (see **Attachment MK16**).

28. In addition to the two conditions referred to in paragraph 24, the RQL Control Body Approval Notice included the condition that RQL must hold, in conjunction with its Annual General Meeting, an annual public meeting to provide an industry update. A similar requirement had been contained in section 12E of the Racing Act 2002 (Reprint Version 1G) in relation to the thoroughbred control body, the Queensland Thoroughbred Racing Board, which was a statutory body. However, this requirement was omitted from the Racing Act when QRL became the control body on 1 July 2006 as the company was required to hold an AGM attended by the Class A members of the company. As the only members of RQL were its directors it was considered appropriate that once again, the control body be required to hold an annual public meeting to provide an industry update on relevant issues. Minister Lawlor signed the Control Body Approval Notice and the briefing note on 22 June 2010

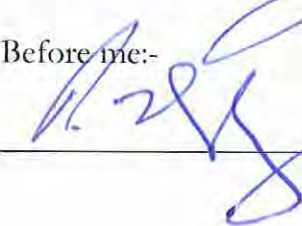
AND I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act* 1867.

DECLARED AND SIGNED at Brisbane

this ^{1st} day of October, 2013

Witness  _____

Before me:-

 _____ Solicitor