

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane  
NUMBER: 9471 of 2009

Plaintiff: **WILLIAM BERNARD ANDREWS**

AND

Defendant: **QUEENSLAND RACING LIMITED ACN 116 735 374**

**NOTICE OF INTENTION TO DEFEND**

**TAKE NOTICE** that the defendant intends to defend this proceeding.

The facts relied on by the defendant are set out in the attached defence.

Filed in the Brisbane registry on: **28 SEP 2009**

Registrar:



**PARTICULARS OF THE DEFENDANT:**

Name:	Queensland Racing Limited
Residential or business address:	Racecourse Road, Deagon Qld 4017
Solicitor's name:	David Grace
and firm name:	Cooper Grace Ward Lawyers
Solicitor's business address:	GPO Box 834, Brisbane Qld 4001
Address for service:	Level 23, 66 Eagle Street, Brisbane Qld 4000
DX (if any):	256
Telephone:	3231 2958
Fax:	3231 8958
E-mail address (if any):	neesha.pierce@cgw.com.au

Signed:

Description: Solicitor for the defendant

Dated: 25 September 2009



**NOTICE OF INTENTION TO DEFEND**

Filed on behalf of the defendant  
Form 6 - R.139

NLP10073612 2656133v1

**COOPER GRACE WARD**  
Level 23 Central Plaza Two  
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SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane  
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Plaintiff: **WILLIAM BERNARD ANDREWS**

AND

Defendant: **QUEENSLAND RACING LIMITED ACN 116 735 374**

**DEFENCE OF THE DEFENDANT**

Filed in the Brisbane Registry on

The Defendant relies on the following facts in defence of the claim:

1. The Defendant admits the allegations contained in paragraph 1 of the Statement of Claim.
2. As to paragraph 2 of the Statement of Claim:
  - (a) the Defendant admits at all material times the QRL Constitution contained and contains the clauses set out therein;
  - (b) the QRL Constitution also provides:
    - (i) in clause 1.1:
      - (A) "Advertising Notice" means the advertising notice to be placed in all metropolitan and Queensland state-wide newspapers by the Company in accordance with clause 17.2;
      - (B) "Chairman" means the chairman of the Board of Directors of the Company from time to time;
      - (C) "Company" means the Defendant;
      - (D) "Directors" or "Board of Directors" or "Board" means the directors of the Company;
      - (E) "Director Candidates" means persons named on the Shortlist and to be considered by the Selection Committee in accordance with the provisions of clause 17;
      - (F) "Selection Committee" means the Committee formed and convened in accordance with clause 17;
      - (G) "Selection Criteria" means the criteria for the selection of directors set out in Appendix A;
      - (H) "Shortlist" means the shortlist of Director Candidates formulated in accordance with clause 17;



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- (ii) in clause 15.8(h), the office of a Director becomes vacant if the Director resigns as a Director by notice in writing to the Company;
  - (iii) in clause 15.9, for the avoidance of doubt in circumstances where a casual vacancy arises due to any of the reasons set out in clause 15.8, the Board may appoint a Director to fill the vacancy. The Director shall hold office until the conclusion of the next Annual General Meeting of the Company but is eligible to apply to become a Director under clause 17.
3. The Defendant does not admit the allegations contained in paragraphs 3, 4 and 5 of the Statement of Claim as the proper construction of the QRL Constitution is a matter of law.
  4. The Defendant admits the allegations contained in paragraphs 6, 7, 8, 9, 10, 11 of the Statement of Claim.
  5. As to paragraph 12 of the Statement of Claim, the Defendant:
    - (a) admits that the Plaintiff submitted an application to Northern Recruitment for appointment to the Board of the Defendant;
    - (b) otherwise does not admit the allegations contained therein as, having made reasonable inquiries, the Defendant remains uncertain of them.
  6. The Defendant admits the allegations contained in paragraph 13 of the Statement of Claim.
  7. As to paragraph 14 of the Statement of Claim, the Defendant:
    - (a) admits that Northern Recruitment received 26 applications in writing for appointment to the Board of the Defendant;
    - (b) otherwise does not admit the allegations contained therein as, having made reasonable inquiries, the Defendant remains uncertain of them.
  8. As to paragraph 15 of the Statement of Claim, the Defendant:
    - (a) admits that the Plaintiff was interviewed by Mr Wilson;
    - (b) otherwise does not admit the allegations contained therein as, having made reasonable inquiries, the Defendant remains uncertain as to the truth of them.
  9. The Defendant admits the allegations contained in paragraph 16 of the Statement of Claim.
  10. The Defendant does not admit the allegations contained in paragraph 17 of the Statement of Claim as, having made reasonable inquiries, the Defendant remains uncertain as to the truth of them.
  11. The Defendant admits the allegations contained in paragraph 18 of the Statement of Claim.
  12. As to paragraph 19 of the Statement of Claim:
    - (a) the Defendant admits:
      - (i) the allegations contained in sub-paragraph 19(a);
      - (ii) that Northern Recruitment sent a letter to the Defendant dated 18 June 2009 which stated, inter alia:
 

*"The purpose of this correspondence is to advise you of the outcome of my deliberations regarding the nomination of candidates for selection as Directors of Queensland Racing.*



At the time of closing for receipt of applications, we had received 26 written submissions regarding each individual's interest and suitability for consideration in the role of a Director with Queensland Racing. A matrix in alphabetical order is enclosed.

Of the 26 applications that were considered, seven clearly stood out in terms of either their commercial capability, or entrepreneurial achievements at club level. Each of the seven candidates was invited to a meeting to discuss their thoughts, ideas and motivation for wanting to be put forward in consideration for the role of Director.

Unfortunately, we are required to reduce the number to four nominations for consideration for the appointment of two Directors. I would like to place on record my observation that the likely workload for the Board over the next year or two would be better supported if there were seven Directors instead of five to allow for a richer and broader range of skillsets on the Board, as well as to give greater flexibility with regard to succession planning into the future.

Of the seven candidates, four were more forthright in outlining their appreciation of developments in racing not only in Queensland, but in Australia and internationally. There was quite a marked distinction between the final four candidates and other who were under consideration, in terms of their willingness to devolve any activities that may cause a conflict of interest, and with this group alone, there was a complete absence of lobbying or third party endorsement.

The four candidates nominated below, in my opinion, represent the optimum combination of skills with regard to understanding the financial operating parameters at club level, demonstrated experience in lifting financial performance at club level and the weighting of experience across metropolitan, and non metropolitan racing activity. This is not the only potential combination of skills and experience. The particular group does however seem to represent a more hands on approach to the fulfilment of Director duties."

- (b) the Defendant denies that Mr Wilson held the belief alleged therein because that is untrue;
- (c) further and alternatively, if (which is denied) Mr Wilson held the belief alleged therein it was immaterial to his preparation of the Shortlist because, independently of any such belief:
  - (i) Mr Wilson determined that the four persons nominated in the Shortlist were the only persons whom he should nominate in the Shortlist;
  - (ii) Mr Wilson determined that the Plaintiff and the others applicants not nominated in the Shortlist were not persons whom he should nominate in the Shortlist.

13. As to paragraph 20 of the Statement of Claim:

- (a) the Defendant admits:
  - (i) that as at the closing date for applications for appointment to the Board of the Defendant:
    - (A) Mr Stewart was a member of the committee of the Toowoomba Turf Club Inc;
    - (B) Mr Milner was a member of the committee of the Brisbane Racing Club Limited;
    - (C) accordingly, Mr Stewart and Mr Milner were not then eligible persons within the meaning of s.9 of the *Racing Act 2002*;



- (ii) Mr Stewart ceased to be a member of the committee of the Toowoomba Turf Club Inc on 25 July 2009;
  - (iii) Mr Milner ceased to be a member of the committee of the Brisbane Racing Club Limited on 17 June 2009;
- (b) the Defendant otherwise denies the allegations contained therein because:
- (i) on its proper construction, the QRL Constitution does not require Director Candidates to be eligible individuals within the meaning of s.9 of the *Racing Act 2002* as at the closing date for application for appointment to the Board of the Defendant;
  - (ii) at the time of preparing the Shortlist, Mr Wilson determined that Mr Stewart and Mr Milner would be eligible individuals within the meaning of s.9 of the *Racing Act 2002* at the time of their appointment, if any, to the Board of the Defendant;
- (c) further and alternatively, if, on its proper construction, the QRL Constitution requires Director Candidates to be eligible individuals within the meaning of s.9 of the *Racing Act 2002* on the closing date for application for appointment to the Board of the Defendant, any non-compliance with that requirement was immaterial because:
- (i) on 25 July 2009 Mr Stewart resigned as a member of the committee of the Toowoomba Turf Club Inc effective on 25 July 2009;
  - (ii) on 17 June 2009 Mr Milner resigned as a member of the committee of the Brisbane Racing Club Limited effective on 17 June 2009;
  - (iii) accordingly, Mr Stewart and Mr Milner were eligible individuals within the meaning of s.9 of the *Racing Act 2002*:
    - (A) at all times since their resignations;
    - (B) at the time of the meetings of Class A Member Representatives and Class B Members held pursuant to clause 17.5 of the QRL Constitution, which occurred on 14 August 2009;
    - (C) at the time of meeting of the Selection Committee held pursuant to clause 17.6 of the QRL Constitution, which occurred on 14 September 2009 and which appointed them Directors of the Defendant effective from the date of the Defendant's next annual general meeting.

14. The Defendant admits the allegations contained in paragraph 21 of the Statement of Claim.

15. As to paragraph 22 of the Statement of Claim, the Defendant:

- (a) admits that in a letter to the Plaintiff dated 14 July 2009, the Defendant stated, inter alia:

*"I advise that Northern Recruitment were required to reduce the number of applications received (26), to four nominations for consideration for the appointment of two Directors."*

- (b) otherwise denies the allegations contained therein because they are untrue.

16. The Defendant denies the allegations contained in paragraph 23 of the Statement of Claim because they are untrue.

17. The Defendant denies the allegations contained in paragraph 24 of the Statement of Claim.

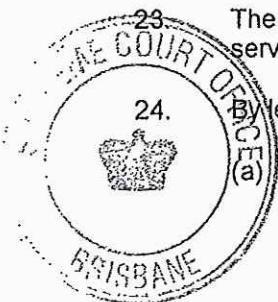


- (a) for the reason stated in paragraphs 12, 13, 15, and 16 herein;
  - (b) the Defendant did not instruct Mr Wilson to limit the Shortlist to no more than four persons;
  - (c) Mr Bentley did not require Mr Wilson to include in the Shortlist candidates with race club experience as well as some financial accounting background;
  - (d) at all times Mr Wilson acted independently of the Defendant and was not partial.
18. Further and alternatively, if (which is denied) the Shortlist was not prepared in accordance with clause 17 of the QRL Constitution, the Defendant relies on the following matters.
19. On 6 March 2009, the Board of the Defendant, including the Plaintiff, resolved to appoint Northern Recruitment as the Independent Recruitment Consultant for the purposes of clause 17 of the QRL Constitution.
20. By letter dated 13 August 2009 to the Chairman of the Defendant, Mr Bentley, the Plaintiff's solicitors:
- (a) alleged that the Shortlist was not prepared in accordance with clause 17 of the QRL Constitution;
  - (b) demanded that all seven applicants referred to in the letter referred to in subparagraph 12(a)(ii) herein be included in the Shortlist;
  - (c) stated that if an appropriate response was not received by 5pm on 14 August 2009, the Plaintiff would institute injunctive proceedings.
21. By letter dated 14 August 2009 to the Plaintiff's solicitors, the Defendant's solicitors:
- (a) denied the allegations contained in the letter referred to in paragraph 20 herein;
  - (b) refused the demand referred to in the letter referred to in paragraph 20 herein.
22. On 14 August 2009:
- (a) a meeting of Class A Member Representatives was held pursuant to clause 17.5 of the QRL Constitution at which:
    - (i) the Class A Member Representatives were informed that there was an issue as to whether or not the Shortlist had been correctly prepared in accordance with the Constitution;
    - (ii) a majority of the Class A Member Representatives resolved to proceed to consider the order of preference of the Director Candidates notwithstanding those matters;
    - (iii) the Class A Member Representatives determined their order of preference of the Director Candidates;
  - (b) at a meeting of Class B Members held pursuant to clause 17.5 of the QRL Constitution, the Class B Members who were aware that there was an issue as to whether or not the Shortlist had been correctly prepared in accordance with the Constitution, including the Plaintiff, determined their order of preference of the Director Candidates.

23. The Plaintiff commenced this proceeding by Claim and Statement of Claim filed and served on 28 August 2009.

24. By letter dated 28 August 2009 to the Defendant's solicitors, the Plaintiff's solicitors:

(a) sought an undertaking from the Defendant that it would not convene the Selection Committee meeting scheduled for 14 September 2009 or otherwise take any step to act upon the Shortlist pending the resolution of this proceeding;



- (b) stated that if the Defendant was not prepared to provide such an undertaking, they were instructed to bring an application for interlocutory injunctive relief;
  - (c) requested that the Defendant's solicitors provide the Defendant's instructions in relation to this issue by close of business on 31 August 2009.
25. By letter dated 31 August 2009 to the Plaintiff's solicitors, the Defendant's solicitors did not give the undertaking requested in the letter referred to in paragraph 24 herein.
26. By letter dated 3 September 2009 to the Defendant's solicitors, the Plaintiff's solicitors:
- (a) stated that the decision of the Selection Committee would effect the election of new Directors from the close of the next annual general meeting;
  - (b) stated that the Selection Committee had been convened to meet on 14 September 2009;
  - (c) stated that should that meeting proceed and a decision be made as to whom the new Directors will be then that decision will effect the election of those Directors from the close of the next annual general meeting;
  - (d) repeated the request that the Defendant provide its undertaking not to proceed with the meeting of the Selection Committee or to take any further steps towards the election of new Directors until the proceeding has been resolved.
27. By letter dated 3 September 2009 to the Plaintiff's solicitors, the Defendant's solicitors did not give the undertaking requested in the letter referred to in paragraph 26 herein.
28. By a Commercial List Statement filed on or about 7 September 2009, the Plaintiff's solicitors stated that:
- (a) a Selection Committee meeting is presently scheduled by the Defendant to take place on 14 September 2009 for the purpose of electing replacement Directors to take office from the next annual general meeting;
  - (b) the Plaintiff seeks an interlocutory injunction to restrain the Defendant from convening the Selection Committee meeting or otherwise take any step to act upon the Shortlist pending the resolution of this proceeding;
  - (c) there was urgency attending this proceeding, including that the Defendant has scheduled the Selection Committee meeting for 14 September 2009.
29. By letter dated 3 September 2009 to the Defendant's solicitors, the Plaintiff's solicitors stated that the Plaintiff does not intend to apply for interlocutory relief in the event that early trial dates are able to be set.
30. The Plaintiff did not apply for an interlocutory injunction restraining the holding the Selection Committee meeting scheduled by the Defendant on 14 September 2009.
31. On 14 September 2009:
- (a) the Selection Committee, including the Plaintiff, met and conducted a secret ballot to appoint two Directors of the Defendant effective from date of the Defendant's next annual general meeting;
  - (b) Mr Stewart and Mr Milner were appointed Directors of the Defendant effective from the date of the Defendant's next annual general meeting.

In the premises referred to in paragraphs 19 to 31 herein:

in the knowledge that the Selection Committee would meet on 14 September 2009 and would appoint two Directors of the Defendant effective from the date of the Defendant's next annual general meeting, the Plaintiff deliberately refrained from applying for interlocutory injunctive relief to restrain the making of those appointments;



- (b) any non-compliance with clause 17 of the QRL Constitution in the preparation of the Shortlist:
- (i) has been ratified by the members of the Defendant;
  - (ii) is immaterial given that Mr Stewart and Mr Milner have been appointed Directors of the Defendant effective from that date of the Defendant's next annual general meeting;
- (c) alternatively:
- (i) the Shortlist has been fully acted upon by the Defendant and nothing remains to be done by the Defendant in reference to it;
  - (ii) the relief which the Plaintiff claims in this proceeding lacks any utility;
  - (iii) the Court should refuse the relief claimed by the Plaintiff in the exercise of its discretion to do so.

33. Save as aforesaid, the Defendant does not admit the allegations contained in the Statement of Claim as, having made reasonable inquiries, it remains uncertain as to the truth of them.

Signed: *Cooper Brian Ward*

Description: Solicitor for the Defendant

Dated *25 September 2009*

This pleading was settled by Mr Derrington SC and Mr Clothier of Counsel.

#### NOTICE AS TO REPLY

You have fourteen days within which to file and serve a reply to this defence. If you do not do so, you may be prevented from adducing evidence in relation to allegations of fact made in this defence.

