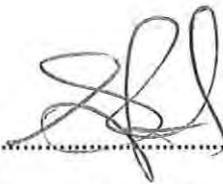


This is attachment marked "AB" ¹⁴⁸

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013



.....

Anthony John Burke



.....

Barry Edward Atkins, Solicitor Witness

AB148

Barry Atkins

From: Barry Atkins [bazlawyer@allaw.net.au]
Sent: Thursday, 4 August 2011 6:14 PM
To: 'Jamie Orchard'
Subject: FW: TTC Investigation - further submission and allegations on behalf of Anthony Burke

Dear Jamie,

The main issues that have arisen in the last week are:-

1. Most importantly, in my email to you on 2/8/11 at 3.49 pm I said:-
" No right thinking committee member of TTC would allow the meeting to proceed until the investigation was completed"

From the letter RQL sent to TTC that was read out last night by Mr. Frappell I know that not only did TTC reject RQL's request to adjourn the meeting ['the decision'] but that that 'decision' was also conveyed to RQL by HopgoodGanim ['HG'].

The facts are:-

- a. The committee was never asked to decide if TTC would agree to RQL's request. We know that as a fact because Mr. Burke was not notified by TTC of RQL's request – there was no 'flying minute' seeking a vote by the Committee Members;
- b. HG advised us at the outset of the various disputes that they received instructions from Mr. Clancy.
 - i. In relation to Mr. Clancy we notified HG that TTC had never delegated authority to him to make decisions about the conduct of the various disputes;
 - ii. We advised HG that Mr. Clancy has been acting unilaterally without authority;
 - iii. In circumstances that he has a clear conflict of interest and is motivated by mala fides against Mr. Burke:-
 1. not just because Mr. Burke complained to RQL about the assault on 26 May, which resulted in Mr. Clancy being charged, found guilty of a breach of the Rules of Racing and reprimanded; but also
 2. because Mr. Clancy is aware [from correspondence from us to HG] that Mr. Burke has made a complaint to the police about the assault [which investigation is ongoing] and
 3. that Mr. Burke intended to take civil action against him.
- c. If Mr. Clancy did not make the decision to reject RQL's request [which rejection we say is further intimidation and bullying] then Mr. Frappell made the decision in circumstances where the facts are:-
 - i. The TTC Committee never delegated authority to him to make decisions about the conduct of the meeting or the various disputes with Mr. Burke.
 - ii. The absence of authority was raised by us directly with HG who responded [from memory] about 'apparent authority';
 - iii. When, as was the case, the issue of actual authority was squarely put in issue TTC [and HG?] had an obligation to make sure that Mr. Frappell had actual authority of the Committee properly delegated to him and they failed to do so;
 - iv. The Minutes that Anthony and I have inspected reveal that no such decision to delegate actual authority to Mr. Clancy or Mr. Frappell has ever been made by the TTC Committee;
 - v. Once Mr. Frappell filed and served the defamation action against Anthony he had a material conflict of interest [as he was interested in a contract or an arrangement (TTC paying his legal fees) that precluded him from even participating in a 'debate' about Anthony, and if the member votes, the vote shall not be counted [Rule 31.5] let alone to unilaterally,

without authority make a decision prejudicial to the Club, motivated by malice, and another bullying exercise in circumstances where a reasonable person would conclude that the removal of Anthony from the Committee would assist Mr. Frappell's defamation action's prospects of success.

- d. If Mr. Frappell did not unilaterally make the decision to instruct HG to inform you that TTC rejected RQL's request to postpone the meeting then the decision could only have been made by the Executive Sub-Committee of the TTC Committee under TTC Rule 30.10.
 - i. Some months ago we wrote to HG [I will dig out the letter and HG's response and send it to you as soon as I can] seeking information on whether the Executive Sub Committee had had any meetings; and if so, whether any decisions had been made, because if so the Sub Committee was obliged to report to the next meeting of the Committee, and our review of the Minutes showed there were no reports tabled by the Sub-Committee;
 - ii. We urge the investigation to visit TTC onsite and require the immediate production of any Sub-Committee minutes of any meetings held because we believe based on the absence of any reports to the Committee that no executive Sub-Committee meetings have been held. To be honest, we ask this step be taken because we are frightened that with notice to produce then minutes will be 'created';
 - iii. Assuming we are correct in our belief that no Executive Sub-Committee meeting was held to consider the request from RQL, the inescapable conclusion is that Mr. Frappell and Mr. Clancy, either or both, unilaterally, without authority , motivated by mala fides, rejected the request from RQL.
- e. This represents the pattern of behaviour of both men in their campaign to attack Anthony Burke. It goes to the systematic misuse of Club Members money and abuse of power, showing no regard for due process, the Rules and devoid of any conception of an equitable approach. Let us not forget that the letter from Mr. Frappell that started the Supreme Court action was written without authority of TTC. They have abused the resources of the Club including paying legal fees to HG to conduct a vendetta against Anthony.

2. TTC refusal to have an independent Chairman for the Special Meeting scheduled for 3/8/11. I raised the issue first. Mr. Frappell was unwilling to chair the meeting as advised by HopgoodGanim but Mr. Healy was going to. We objected on the bases that Mr. Healy could not be impartial as:-
 - a. Mr. Burke had complained to RQL about his breach of duty of confidentiality when receiving personal information which Anthony requested he keep confidential [this demonstrates actual bias not just apprehended bias]; and
 - b. He chaired the committee meeting when TTC agreed to fund Mr. Frappell's defamation action against Anthony.

TTC rejected our request for an independent Chairman.

3. On 22 July 2011 Mr. Frappell filed a magistrates claim against Anthony for defamation seeking damages of \$200,000. The issues here are:-
 - a. That was done after the investigation [which specifically included examining the decision] had been announced, showing complete disregard for the issues at stake;
 - b. On 3/3/11 through HopgoodGanim Mr. Frappell refused to meet with Anthony to discuss the defamation and other issues. Based on the Egelstone QCAT decision Mr. Frappell has a greater or higher responsibility to both know the Rules, ensure compliance with them and to act appropriately;
 - c. The expenditure by the Club is not for the sole purpose of furthering the objects of the Club as required by, amongst other requirements to the same effect, the Associations Incorporation Act 1981;
 - d. The filing and service of the Writ was intended to harass and intimidate Anthony coming straight after the letter to the members calling the Special meeting;
 - e. No specific :-
 - i. authority was either given to Mr. Frappell to take action as he thought fit about the defamation action; nor

- ii. was a resolution passed by the Committee authorising the filing of the writ and the associated expenditure on legal fees and filing fees;
 - f. To be clear – the only resolution properly passed by TTC regarding funding the defamation action requires :-
 - i. TTC to pay the costs – win or lose;
 - ii. No obligation on Mr. Frappell to repay the costs;
 - iii. Entitles Mr. Frappell to keep any award of damages.
4. This conclusion is because of the operation of Standing Order 16 which effectively prevents the passing of the subsequent motion by the Committee to fund the defamation action against Anthony on a proviso that TTC receive all damages awarded against Anthony;
 5. If TTC were lawfully able to pass the second motion then that would constitute champerty and be void as against public policy;
 6. Despite written requests:-
 - a. By Anthony to Mr. Clancy; and
 - b. By me to HopgoodGanim
 to table the estimate of costs of the action no documentation has ever been tabled at any Committee Meeting.
 7. We notified HopgoodGanim that under Section 301 of the Legal Profession Act 2003 the TTC was a ‘third party payer’ and Anthony as a committee member required an estimate of costs to date, on his undertaking to table the advice at the Committee meeting next held but HopgoodGanim refused to provide the information requested. A complaint has been made by Anthony to the Legal services Commission about this failure.
 8. A complaint has also been made by Anthony to the Legal services Commission about HopgoodGanim’s failure to provide TTC with estimates of costs as required by the Legal Profession Act 2003. I advise, that to be fair to HopgoodGanim, we alerted the LSC to the possibility that HopgoodGanim may have complied with their obligations but Mr. Clancy and Mr. Frappell had with-held these documents from the Committee. If that is the case we asked the LSC to obtain and forward to us copies of those letters and documents. We believe they will co-operate with your investigation to supply the evidence you need to identify whether HG did comply with their obligations – in which case their letters to TTC are evidence against Mr. Frappell and Mr. Clancy for with-holding information from the Committee , and the Members.
 9. TTC have denied Mr. Burke natural justice, again, by refusing our request that Mr. Burke be entitled to use an Attorney at the meeting scheduled for 3/8/11. The refusal in direct denial of a right Mr. Burke has under the Associations Incorporation Act 1981 demonstrates mala fides and a continuation of the bullying by excluding him and isolating him.

The relevant sections are set out below along with an analysis previously supplied to you. The attachments were attached to my email to you at 3.49 pm on Tuesday 2/8/11.

The evidence is:-

1. Associations Incorporation Act 1981 [‘AIA’] Section 47 which provides for an ‘additional provision’ to be part of the TTC Rules where the TTC Rules do not provide for a matter; and
2. Model Rules 37 and 40 of Associations Incorporation Act 1981.

The TTC Rules do not allow for proxies. The TTC have issued advice to its members that they are allowed to vote on 3/8/11 by proxy. TTC must be relying on Section 47 AIA which states:-

47 Matters not provided for in rules provided for in model rules

(1) If a matter is not provided for under an incorporated

association's own rules but the matter is provided for under a provision of the model rules (the *additional provision*), the association's own rules are taken to include the additional provision.

(2) This section does not affect the ability of an incorporated association to amend its rules under this Act.

(3) Subsection (1) does not apply to an incorporated association as far as its own rules provide that the subsection does not apply to the association.

to use the Model Rule 37 which states:-

37 Procedure at general meeting

(1) A member may take part and vote in a general meeting in person, by proxy, by attorney or by using any technology that reasonably allows the member to hear and take part in discussions as they happen.

(2) A member who participates in a meeting as mentioned in subrule (1) is taken to be present at the meeting.

(3) At each general meeting—

(a) the president is to preside as chairperson; and

(b) if there is no president or if the president is not present within 15 minutes after the time fixed for the meeting or is unwilling to act, the members present must elect 1 of their number to be chairperson of the meeting; and

(c) the chairperson must conduct the meeting in a proper and orderly way.

You will note the entitlement of a member to be present at a meeting "by attorney". Attached 'Fax OPS v83' is our request to TTC to allow Mr. Burke to have Mr. Atkins attend the meeting as his attorney as Mr. Burke is unable to personally attend based on medical advice.

Attached 'sharp@twmba.com.au 20110802 105834' is TTC's lawyers response refusing to allow Mr. Burke to have an attorney attend the meeting. This is a denial of natural justice of the most basic right of an individual to attend to present his case and answer the allegations against him. The statement that Mr. Burke can appoint a proxy to attend is invalid because as set out below the rights of a proxy are only to vote.

40 Proxies

(1) An instrument appointing a proxy must be in writing and be in the following or similar form—

[Name of association]:

I, of , being

a member of the association, appoint

of

as my proxy to vote for me on my behalf at the (annual) general meeting of the association, to be held on the day of

20

and at any adjournment of the meeting.

Signed this day of 20 .

Signature

(2) The instrument appointing a proxy must—

(a) if the appointor is an individual—be signed by the appointor or the appointor's attorney properly authorised in writing; or

(b) if the appointor is a corporation—

(i) be under seal; or

(ii) be signed by a properly authorised officer or attorney of the corporation.

(3) A proxy may be a member of the association or another person.

(4) The instrument appointing a proxy is taken to confer authority to demand or join in demanding a secret ballot.

(5) Each instrument appointing a proxy must be given to the secretary before the start of the meeting or adjourned meeting at which the person named in the instrument proposes to vote.

(6) Unless otherwise instructed by the appointor, the proxy may vote as the proxy considers appropriate.

(7) If a member wants a proxy to vote for or against a resolution, the instrument appointing the proxy must be in the following or similar form—

[*Name of association*]:

I, of, being

a member of the association, appoint

of

as my proxy to vote for me on my behalf at the (annual) general meeting of the association, to be held on the day of

20

and at any adjournment of the meeting.

Signed this day of 20 .

Signature

This form is to be used *in favour of/*against [*strike out whichever is not wanted*] the following resolutions—

Secondly Mr. Atkins is not willing to attend just as a proxy. A proxy only entitles the holder to vote, not to speak at any meeting. This implicit limitation is on the face of the proforma supplied by TTC to Members with notice of the Special Meeting.

Thirdly Mr. Burke is exercising his rights under the Model Rules by appointing an attorney. To be clear this is a Power of Attorney by which Mr. Burke would appoint Mr. Atkins limited to speaking on Mr. Burke's behalf at the meeting.

Lastly the TTC Rules do not allow for proxies, so the TTC must be relying on Model Rule 37 and AIA S to allow proxies. If the TTC did not rely on those legislative provisions then the entire meeting would be invalid because the Notice advised members they could appoint a proxy, and if proxies were not allowed the misleading of members effectively denies them the right to vote.

10. Mr. Frappell breached the direction given by RQL when he spoke publicly on ABC radio broadcast in the 11am news. I have not heard what he said but the fact he spoke, at all, defying the Direction given by RQL, demonstrates his complete disregard for compliance with the "Rules". That blatant disregard for the law and legal process was shown straight after Anthony won the Supreme Court action when, Mr. Frappell started the ongoing dispute by refusing to accept the 'umpires decision' and misled the TTC members and the public by saying Anthony was 're-instated' after his membership was 'deemed invalid'. Simply put those statements are lies.
11. The motivation for those lies, I believe, is the notice that Anthony gave TTC, that as he was not given notice of the meeting in March [at which TTC rejected RQL's equity offer], TTC should obtain an independent legal opinion on whether the meeting was validly held and whether that decision was valid. By pretending Anthony was not a Committee Member at the time they avoid confronting this issue.
12. Apart from the continuation of the personal attacks on Anthony there is a political reason for the other Committee Members to try and get rid of Anthony before the AGM in September, at which 4 of the current Committee Members must stand down and seek re-election. Because 5 new Committee Members must be elected, then another 4 of the current committee are also at risk of being forced to face a vote [Anthony and one other are the only two not at risk]. The method of selecting the fifth committee member who must

stand down is by drawing a name out of a hat from the other 4 committee members who may have to face election. It is manipulation of a process that constitutes an abuse of power.

Power without justice is tyranny;
Justice without power is nothing

Thank you for the opportunity to ensure that all relevant material is briefed to Counsel for consideration.

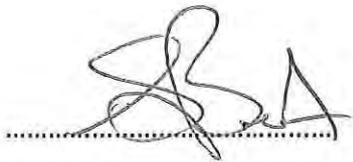
Barry Edward Atkins (B.A., LLB(Hons.))
Solicitor & Attorney
@LAW
Tel: 07 4639 3038
Fax: 07 4632 9529
Email: bazlawyer@atlaw.net.au
Web: www.atlaw.net.au

Park View Chambers
123 Margaret Street
(P.O. Box 605)
Toowoomba Qld 4350

IMPORTANT NOTICE - LEGAL PRIVILEGE

This communication is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the addressee, you are notified that any transmission, distribution or replication of this message or its attachments is strictly prohibited. The legal privilege and confidentiality attached to this e-mail is not waived, lost or destroyed by reason of a mistaken delivery to you. If you have received this email in error, we would appreciate immediate notification by telephone and ask that the message be permanently deleted from your system.

This is attachment marked "AB" ¹⁴⁹
Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013

A handwritten signature in black ink, appearing to be 'AJB', written over a horizontal dotted line.

Anthony John Burke

A handwritten signature in black ink, appearing to be 'B. Atkins', written over a horizontal dotted line.

Barry Edward Atkins, Solicitor Witness

AB149

Barry Atkins

From: Perrett, Carol <Carol.Perrett@racing.qld.gov.au>
Sent: Friday, 5 August 2011 12:34 PM
To: 'Barry Atkins'
Subject: RE: TTC Investigation - further submission and allegations on behalf of Anthony Burke and possible breaches of the Criminal Code

Thanks Barry

Regards Carol

From: Barry Atkins [mailto:bazlawyer@atlaw.net.au]
Sent: Friday, 5 August 2011 12:24 PM
To: Perrett, Carol
Subject: FW: TTC Investigation - further submission and allegations on behalf of Anthony Burke and possible breaches of the Criminal Code

Dear Carol,

We attach a copy of our email to Mr. Orchard today to ensure the Minister's office is kept informed of possible breaches of the Criminal Code.

I forward a copy of my email sent to Mr. Orchard yesterday that relates to aspects of the breaches of TTC's legal obligations since Anthony gave his statement to the initial investigator last Thursday to keep you informed.

Thank you for your involvement.

Barry Edward Atkins (B.A., LLB(Hons.))
Solicitor & Attorney
@LAW
Tel: 07 4639 3038
Fax: 07 4632 9529
Email: bazlawyer@atlaw.net.au
Web: www.atlaw.net.au

Park View Chambers
123 Margaret Street
(P.O. Box 605)
Toowoomba Qld 4350

IMPORTANT NOTICE - LEGAL PRIVILEGE

This communication is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the addressee, you are notified that any transmission, distribution or replication of this message or its attachments is strictly prohibited. The legal privilege and confidentiality attached to this e-mail is not waived, lost or destroyed by reason of a mistaken delivery to you. If you have received this email in error, we would appreciate immediate notification by telephone and ask that the message be permanently deleted from your system.

From: Barry Atkins [mailto:bazlawyer@atlaw.net.au]
Sent: Thursday, 4 August 2011 6:14 PM
To: 'Jamie Orchard'
Subject: FW: TTC Investigation - further submission and allegations on behalf of Anthony Burke

Dear Jamie,

The main issues that have arisen in the last week are:-

1. Most importantly, in my email to you on 2/8/11 at 3.49 pm I said:-
“ No right thinking committee member of TTC would allow the meeting to proceed until the investigation was completed”

From the letter RQL sent to TTC that was read out last night by Mr. Frappell I know that not only did TTC reject RQL's request to adjourn the meeting ['the decision'] but that that 'decision' was also conveyed to RQL by HopgoodGanim ['HG'].

The facts are:-

- a. The committee was never asked to decide if TTC would agree to RQL's request. We know that as a fact because Mr. Burke was not notified by TTC of RQL's request – there was no 'flying minute' seeking a vote by the Committee Members;
- b. HG advised us at the outset of the various disputes that they received instructions from Mr. Clancy.
 - i. In relation to Mr. Clancy we notified HG that TTC had never delegated authority to him to make decisions about the conduct of the various disputes;
 - ii. We advised HG that Mr. Clancy has been acting unilaterally without authority;
 - iii. In circumstances that he has a clear conflict of interest and is motivated by mala fides against Mr. Burke:-
 1. not just because Mr. Burke complained to RQL about the assault on 26 May, which resulted in Mr. Clancy being charged, found guilty of a breach of the Rules of Racing and reprimanded; but also
 2. because Mr. Clancy is aware [from correspondence from us to HG] that Mr. Burke has made a complaint to the police about the assault [which investigation is ongoing] and
 3. that Mr. Burke intended to take civil action against him.
- c. If Mr. Clancy did not make the decision to reject RQL's request [which rejection we say is further intimidation and bullying] then Mr. Frappell made the decision in circumstances where the facts are:-
 - i. The TTC Committee never delegated authority to him to make decisions about the conduct of the meeting or the various disputes with Mr. Burke;
 - ii. The absence of authority was raised by us directly with HG who responded [from memory] about 'apparent authority';
 - iii. When, as was the case, the issue of actual authority was squarely put in issue TTC [and HG?] had an obligation to make sure that Mr. Frappell had actual authority of the Committee properly delegated to him and they failed to do so;
 - iv. The Minutes that Anthony and I have inspected reveal that no such decision to delegate actual authority to Mr. Clancy or Mr. Frappell has ever been made by the TTC Committee;
 - v. Once Mr. Frappell filed and served the defamation action against Anthony he had a material conflict of interest [as he was interested in a contract or an arrangement (TTC paying his legal fees) that precluded him from even participating in a 'debate' about Anthony, and if the member votes, the vote shall not be counted [Rule 31.5] let alone to unilaterally, without authority make a decision prejudicial to the Club, motivated by malice, and another bullying exercise in circumstances where a reasonable person would conclude that the removal of Anthony from the Committee would assist Mr. Frappell's defamation action's prospects of success.
- d. If Mr. Frappell did not unilaterally make the decision to instruct HG to inform you that TTC rejected RQL's request to postpone the meeting then the decision could only have been made by the Executive Sub-Committee of the TTC Committee under TTC Rule 30.10.

i. Some months ago we wrote to HG [I will dig out the letter and HG's response and send it to you as soon as I can] seeking information on whether the Executive Sub Committee had had any meetings; and if so, whether any decisions had been made, because if so the Sub Committee was obliged to report to the **next meeting** of the Committee, and our review of the Minutes showed there were no reports tabled by the Sub-Committee;

ii. We urge the investigation to visit TTC onsite and require the immediate production of any Sub-Committee minutes of any meetings held because we believe based on the absence of any reports to the Committee that no executive Sub-Committee meetings have been held. To be honest, we ask this step be taken because we are frightened that with notice to produce then minutes will be 'created';

iii. Assuming we are correct in our belief that no Executive Sub-Committee meeting was held to consider the request from RQL, the inescapable conclusion is that Mr. Frappell and Mr. Clancy, either or both, unilaterally, without authority , motivated by mala fides, rejected the request from RQL.

e. This represents the pattern of behaviour of both men in their campaign to attack Anthony Burke. It goes to the systematic misuse of Club Members money and abuse of power, showing no regard for due process, the Rules and devoid of any conception of an equitable approach. Let us not forget that the letter from Mr. Frappell that started the Supreme Court action was written without authority of TTC. They have abused the resources of the Club including paying legal fees to HG to conduct a vendetta against Anthony.

2. TTC refusal to have an independent Chairman for the Special Meeting scheduled for 3/8/11. I raised the issue first. Mr. Frappell was unwilling to chair the meeting as advised by HopgoodGanim but Mr. Healy was going to. We objected on the bases that Mr. Healy could not be impartial as:-
- a. Mr. Burke had complained to RQL about his breach of duty of confidentiality when receiving personal information which Anthony requested he keep confidential [this demonstrates actual bias not just apprehended bias]; and
 - b. He chaired the committee meeting when TTC agreed to fund Mr. Frappell's defamation action against Anthony.

TTC rejected our request for an independent Chairman.

3. On 22 July 2011 Mr. Frappell filed a magistrates claim against Anthony for defamation seeking damages of \$200,000. The issues here are:-
- a. That was done after the investigation [which specifically included examining the decision] had been announced, showing complete disregard for the issues at stake;
 - b. On 3/3/11 through HopgoodGanim Mr. Frappell refused to meet with Anthony to discuss the defamation and other issues. Based on the Egelstone QCAT decision Mr. Frappell has a greater or higher responsibility to both know the Rules, ensure compliance with them and to act appropriately;
 - c. The expenditure by the Club is not for the sole purpose of furthering the objects of the Club as required by, amongst other requirements to the same effect, the Associations Incorporation Act 1981;
 - d. The filing and service of the Writ was intended to harass and intimidate Anthony coming straight after the letter to the members calling the Special meeting;
 - e. No specific :-
 - i. authority was either given to Mr. Frappell to take action as he thought fit about the defamation action; nor
 - ii. was a resolution passed by the Committee authorising the filing of the writ and the associated expenditure on legal fees and filing fees;
 - f. To be clear – the only resolution properly passed by TTC regarding funding the defamation action requires :-
 - i. TTC to pay the costs – win or lose;
 - ii. No obligation on Mr. Frappell to repay the costs;
 - iii. Entitles Mr. Frappell to keep any award of damages.

4. This conclusion is because of the operation of Standing Order 16 which effectively prevents the passing of the subsequent motion by the Committee to fund the defamation action against Anthony on a proviso that TTC receive all damages awarded against Anthony;
5. If TTC were lawfully able to pass the second motion then that would constitute champerty and be void as against public policy;
6. Despite written requests:-
 - a. By Anthony to Mr. Clancy; and
 - b. By me to HopgoodGanim
 to table the estimate of costs of the action no documentation has ever been tabled at any Committee Meeting.
7. We notified HopgoodGanim that under Section 301 of the Legal Profession Act 2003 the TTC was a 'third party payer' and Anthony as a committee member required an estimate of costs to date, on his undertaking to table the advice at the Committee meeting next held but HopgoodGanim refused to provide the information requested. A complaint has been made by Anthony to the Legal services Commission about this failure.
8. A complaint has also been made by Anthony to the Legal services Commission about HopgoodGanim's failure to provide TTC with estimates of costs as required by the Legal Profession Act 2003. I advise, that to be fair to HopgoodGanim, we alerted the LSC to the possibility that HopgoodGanim may have complied with their obligations but Mr. Clancy and Mr. Frappell had with-held these documents from the Committee. If that is the case we asked the LSC to obtain and forward to us copies of those letters and documents. We believe they will co-operate with your investigation to supply the evidence you need to identify whether HG did comply with their obligations – in which case their letters to TTC are evidence against Mr. Frappell and Mr. Clancy for with-holding information from the Committee , and the Members.
9. TTC have denied Mr. Burke natural justice, again, by refusing our request that Mr. Burke be entitled to use an Attorney at the meeting scheduled for 3/8/11. The refusal in direct denial of a right Mr. Burke has under the Associations Incorporation Act 1981 demonstrates mala fides and a continuation of the bullying by excluding him and isolating him.

The relevant sections are set out below along with an analysis previously supplied to you. The attachments were attached to my email to you at 3.49 pm on Tuesday 2/8/11.

The evidence is:-

1. Associations Incorporation Act 1981 ['AIA'] Section 47 which provides for an 'additional provision' to be part of the TTC Rules where the TTC Rules do not provide for a matter; and
2. Model Rules 37 and 40 of Associations Incorporation Act 1981.

The TTC Rules do not allow for proxies. The TTC have issued advice to its members that they are allowed to vote on 3/8/11 by proxy. TTC must be relying on Section 47 AIA which states:-

47 Matters not provided for in rules provided for in model rules

(1) If a matter is not provided for under an incorporated association's own rules but the matter is provided for under a provision of the model rules (the *additional provision*), the association's own rules are taken to include the additional provision.

(2) This section does not affect the ability of an incorporated association to amend its rules under this Act.

(3) Subsection (1) does not apply to an incorporated association

as far as its own rules provide that the subsection does not apply to the association.

to use the Model Rule 37 which states:-

37 Procedure at general meeting

(1) A member may take part and vote in a general meeting in person, by proxy, by attorney or by using any technology that reasonably allows the member to hear and take part in discussions as they happen.

(2) A member who participates in a meeting as mentioned in subrule (1) is taken to be present at the meeting.

(3) At each general meeting—

(a) the president is to preside as chairperson; and

(b) if there is no president or if the president is not present within 15 minutes after the time fixed for the meeting or is unwilling to act, the members present must elect 1 of their number to be chairperson of the meeting; and

(c) the chairperson must conduct the meeting in a proper and orderly way.

You will note the entitlement of a member to be present at a meeting “by attorney”. Attached ‘Fax OPS v83’ is our request to TTC to allow Mr. Burke to have Mr. Atkins attend the meeting as his attorney as Mr. Burke is unable to personally attend based on medical advice.

Attached ‘sharp@twmba.com.au 20110802 105834’ is TTC’s lawyers response refusing to allow Mr. Burke to have an attorney attend the meeting. This is a denial of natural justice of the most basic right of an individual to attend to present his case and answer the allegations against him. The statement that Mr. Burke can appoint a proxy to attend is invalid because as set out below the rights of a proxy are only to vote.

40 Proxies

(1) An instrument appointing a proxy must be in writing and be in the following or similar form—

[Name of association]:

I, of, being

a member of the association, appoint
of

as my proxy to vote for me on my behalf at the (annual) general meeting of the association, to be held on the day of
20

and at any adjournment of the meeting.

Signed this day of 20 .

Signature

(2) The instrument appointing a proxy must—

(a) if the appointor is an individual—be signed by the appointor or the appointor’s attorney properly authorised in writing; or

(b) if the appointor is a corporation—

(i) be under seal; or

(ii) be signed by a properly authorised officer or attorney of the corporation.

(3) A proxy may be a member of the association or another person.

(4) The instrument appointing a proxy is taken to confer authority to demand or join in demanding a secret ballot.

(5) Each instrument appointing a proxy must be given to the

secretary before the start of the meeting or adjourned meeting at which the person named in the instrument proposes to vote.

(6) Unless otherwise instructed by the appointor, the proxy may vote as the proxy considers appropriate.

(7) If a member wants a proxy to vote for or against a resolution, the instrument appointing the proxy must be in the following or similar form—

[*Name of association*]:

I, of, being

a member of the association, appoint

of

as my proxy to vote for me on my behalf at the (annual) general meeting of the association, to be held on the day of

20

and at any adjournment of the meeting.

Signed this day of 20 .

Signature

This form is to be used *in favour of/*against [*strike out whichever is not wanted*] the following resolutions—

Secondly Mr. Atkins is not willing to attend just as a proxy. A proxy only entitles the holder to vote, not to speak at any meeting. This implicit limitation is on the face of the proforma supplied by TTC to Members with notice of the Special Meeting.

Thirdly Mr. Burke is exercising his rights under the Model Rules by appointing an attorney. To be clear this is a Power of Attorney by which Mr. Burke would appoint Mr. Atkins limited to speaking on Mr. Burke's behalf at the meeting.

Lastly the TTC Rules do not allow for proxies, so the TTC must be relying on Model Rule 37 and AIA S to allow proxies. If the TTC did not rely on those legislative provisions then the entire meeting would be invalid because the Notice advised members they could appoint a proxy, and if proxies were not allowed the misleading of members effectively denies them the right to vote.

10. Mr. Frappell breached the direction given by RQL when he spoke publicly on ABC radio broadcast in the 11am news. I have not heard what he said but the fact he spoke, at all, defying the Direction given by RQL, demonstrates his complete disregard for compliance with the "Rules". That blatant disregard for the law and legal process was shown straight after Anthony won the Supreme Court action when, Mr. Frappell started the ongoing dispute by refusing to accept the 'umpires decision' and misled the TTC members and the public by saying Anthony was 're-instated' after his membership was 'deemed invalid'. Simply put those statements are lies.
11. The motivation for those lies, I believe, is the notice that Anthony gave TTC, that as he was not given notice of the meeting in March [at which TTC rejected RQL's equity offer], TTC should obtain an independent legal opinion on whether the meeting was validly held and whether that decision was valid. By pretending Anthony was not a Committee Member at the time they avoid confronting this issue.
12. Apart from the continuation of the personal attacks on Anthony there is a political reason for the other Committee Members to try and get rid of Anthony before the AGM in September, at which 4 of the current Committee Members must stand down and seek re-election. Because 5 new Committee Members must be elected, then another 4 of the current committee are also at risk of being forced to face a vote [Anthony and one other are the only two not at risk]. The method of selecting the fifth committee member who must stand down is by drawing a name out of a hat from the other 4 committee members who may have to face election. It is manipulation of a process that constitutes an abuse of power.

Power without justice is tyranny;

Justice without power is nothing

Thank you for the opportunity to ensure that all relevant material is briefed to Counsel for consideration.

Barry Edward Atkins (B.A., LLB(Hons.))
Solicitor & Attorney
@LAW
Tel: 07 4639 3038
Fax: 07 4632 9529
Email: bazlawyer@atlaw.net.au
Web: www.atlaw.net.au

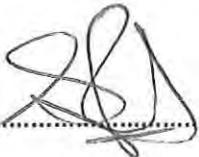
Park View Chambers
123 Margaret Street
(P.O. Box 605)
Toowoomba Qld 4350

IMPORTANT NOTICE - LEGAL PRIVILEGE

This communication is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the addressee, you are notified that any transmission, distribution or replication of this message or its attachments is strictly prohibited. The legal privilege and confidentiality attached to this e-mail is not waived, lost or destroyed by reason of a mistaken delivery to you. If you have received this email in error, we would appreciate immediate notification by telephone and ask that the message be permanently deleted from your system.

This is attachment marked "AB" ¹⁵⁰

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013



.....

Anthony John Burke



.....

Barry Edward Atkins, Solicitor Witness

AB 150

Barry Atkins

From: Barry Atkins <bazlawyer@atlaw.net.au>
Sent: Friday, 5 August 2011 12:29 PM
To: 'Jamie Orchard'
Subject: FW: TTC Investigation

Importance: High

Sorry Mr. Orchard, I left the relevant Section of the Criminal Code for point D below off my email. The Section is

126 Fabricating evidence

(1) Any person who, with intent to mislead any tribunal in any judicial Proceeding--
(a) fabricates evidence by any means other than perjury or Counselling or procuring the commission of perjury; or
(b) knowingly makes use of such fabricated evidence;
Is guilty of a crime, and is liable to imprisonment for 7 years.

Barry Edward Atkins (B.A., LLB(Hons.))
Solicitor & Attorney
@LAW
Tel: 07 4639 3038
Fax: 07 4632 9529
Email: bazlawyer@atlaw.net.au
Web: www.atlaw.net.au

Park View Chambers
123 Margaret Street
(P.O. Box 605)
Toowoomba Qld 4350

IMPORTANT NOTICE - LEGAL PRIVILEGE

This communication is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the addressee, you are notified that any transmission, distribution or replication of this message or its attachments is strictly prohibited. The legal privilege and confidentiality attached to this e-mail is not waived, lost or destroyed by reason of a mistaken delivery to you. If you have received this email in error, we would appreciate immediate notification by telephone and ask that the message be permanently deleted from your system.

From: Barry Atkins [<mailto:bazlawyer@atlaw.net.au>]
Sent: Friday, 5 August 2011 12:17 PM
To: 'Jamie Orchard'
Subject: TTC Investigation
Importance: High

Dear Sir,

I am instructed that because RQL want Mr. Burke's full and final allegations now rather than next week Mr. Burke last night reviewed his statement given to Mr. King and has asked me to bring the following matters to your attention.

1. Possible breaches of the Criminal Code. Mr. Burke asks that the investigation include reference to this area and for RQL to determine, on receipt of the barristers report, whether to refer all or any of the possible breaches to the Department of Public Prosecutions or to the police.

A. – Section 119B Retaliation against or intimidation of judicial officer, juror, witness etc;

The meeting called for 3/8/11 was expressed, on the face of the letter to members to be partly because of the complaint Mr. Burke made about the assault. The TTC were advised by us, in writing, of the complaint made to the police by Mr. Burke.

Mr. Burke is a witness to the assault . Therefore the meeting is a ‘reprisal’. This seems to be a breach of this Section of the Criminal Code.

Based on the definitions of ‘injury or detriment’ as including ‘intimidation’ and ‘intimidation’ ‘includes harassment’, it seems the meeting to be held 3/8/11 is in breach of this Section of the Criminal Code.

Indeed all of the actions of the TTC Committee against Mr. Burke since 26 May 2011 are seemingly ‘harassment’ and appear to be a breach of this Section of the Criminal Code.

B. - Section 442BA Gift or offer of secret commission to an agent

This relates to the offer to pay Mr. Burke \$10,000 in exchange for his resignation. Conveyed by Dr. Morgan on instructions from Mr. Frappell.

C. Section 543 Other conspiracies – subsections (b) and (d)

D. The falsification of the Membership register produced under Subpoena to the Supreme Court

E. The Affidavit of Aaron Clancy filed in the Supreme Court compared and contrasted to the statement recorded in the April Minutes of the TTC meeting by Bob Frappell to Dr. John Morgan

2. We also expand on the issue of the proposed motion of ‘no confidence’ in Mr. Burke as follows , to assist the investigator. The salient context is:-
 1. Mr. Burke sought leave of absence from the Committee for 2 months. This was refused despite the provision of a medical certificate.
 2. On a Friday TTC advised Mr. Burke of the intention to move a vote of no confidence in him.
 3. On instructions we filed in the Supreme Court seeking a declaration that TTC be prohibited from proceeding with the proposed procedure. It was ultra vires the TTC Rules.
 4. TTC withdrew their threat.
 5. On instructions we wrote to HG advising that Mr. Burke required all future communication to be sent through us due to the circumstances. These included the huge stress the notice of the proposed motion of no confidence caused Anthony.
 6. TTC, through HG refused to acquiesce to Mr. Burke’s request.
 7. The following Friday TTC again advised Mr. Burke of the intention to move a motion of no confidence in Mr. Burke.
 8. TTC, through HG acknowledged that the passing of the motion of no confidence would have no effect on Mt. Burke’s ability to perform his role as a Committee Member.
 9. That being so, it is clear that the sole purpose of the notification of, and the intention of, moving the motion of no confidence was to attack him, humiliate him and , we believe to use the passing of such a motion to further vilify him.
 10. Section 26 of the Associations Incorporations Act states:-

26 Ultra vires transactions

(1) No act of an incorporated association (including the entering into of an agreement by the incorporated association) and no

s 27 23 s 27

Associations Incorporation Act 1981

conveyance or transfer of property, whether real or personal, to or by an incorporated association shall be invalid by reason only of the fact that the incorporated association was without capacity or power (whether by provision of this Act or by its rules or otherwise) to do such act or to execute or take such conveyance or transfer.

(2) Any such lack of capacity or power may be asserted or relied upon only in—

(a) proceedings against the incorporated association by any member of the incorporated association to restrain the doing of any act or acts or the conveyance or transfer of any property to or by the incorporated association; or

(b) any proceedings by the incorporated association or by any member of the incorporated association against the present or former officers of the incorporated

a. association.

TTC knew that there was no power to proceed with such a motion. TTC backed down once Court proceedings were instituted but refused to agree to pay the costs of those proceedings offered by Mr. Burke to accept the scale fees.

It was clearly just another attempt to intimidate Mr. Burke and to reduce his resources – time, money and energy.

3. I complain that TTC failed to respect the important legal difference between my Law Firm - @ LAW, and me personally by the consistent reference in the letter to Members of 15 July to “Mr. Atkins”. We do not write about “Mr. Bolton” as it is the Law Firm of HopgoodGanim that have written to us. TTC also fail to recognise that all actions taken by me have always been on instructions. I personally consider the letter to Members to be defamatory because it says the Committee Members consider my phone calls to Mr. Healy as ‘harassment’ when on the face of the transcript attached to the letter I only spoke appropriately.
4. TTC released the letter to members of 15 July to letsgohorseracing web site. The letter said that the Committee Members had signed the letter when there were no signatures on the letter actually sent to Members.
5. We assume all Committee Members will be interviewed, and that copies of all Minutes and financial records will be inspected to confirm the veracity of Mr. Burke’s allegations that financial statements were not tabled and recorded in the minutes as required by legislation.
6. The 28 July Committee meeting was intentionally cut short to prevent Mr. Burke attending when the Committee was informed he would be late due to his business obligations. Brandon the media officer of TTC , if interviewed, would be able to shed some light on the reasons why. We note, however, that the stated reason for the shortness of the meeting [as advised to us by HG] was that financial reports were not tabled as they were with the Auditors. That is proof that they are failing to table the financial records as it is nonsense that a duplicate set of financials could not have been produced while a set was with the auditors.

To assist the barrister we set out the relevant section of the Associations Incorporations Act which goes to the misuse of Club funds on the defamation action.

46 General financial matters

(1) On behalf of the management committee, the treasurer must, as soon as practicable after the end date of each financial year,

ensure a financial statement for its last reportable financial year is prepared.

(2) The income and property of the association must be used solely in promoting the association's objects and exercising the association's powers.

Barry Edward Atkins (B.A., LLB(Hons.))

Solicitor & Attorney

@LAW

Tel: 07 4639 3038

Fax: 07 4632 9529

Email: bazlawyer@atlaw.net.au

Web: www.atlaw.net.au

Park View Chambers

123 Margaret Street

(P.O. Box 605)

Toowoomba Qld 4350

IMPORTANT NOTICE - LEGAL PRIVILEGE

This communication is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the addressee, you are notified that any transmission, distribution or replication of this message or its attachments is strictly prohibited. The legal privilege and confidentiality attached to this e-mail is not waived, lost or destroyed by reason of a mistaken delivery to you. If you have received this email in error, we would appreciate immediate notification by telephone and ask that the message be permanently deleted from your system.

This is attachment marked "AB" ¹⁵¹

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013



.....

Anthony John Burke



.....

Barry Edward Atkins, Solicitor Witness

AB 131



6th August 2012

Dear Mr Burke

I refer to your email to Mr Clancy of 2 August 2012.

I will respond to your email on Mr Clancy's behalf.

You are entitled to inspect the Management Committee Minutes kept by the Club under rule 30.1 of its Rules. May I remind you though that neither the Rules nor any legislation applying to the Club gives you any right to take copies of any Committee Minutes you inspect?

May I also remind you of your obligations under rule 44 of the Club's Rules? The Committee considers the information recorded in its Minutes to be confidential and requires members to respect and observe their obligations under rule 44 when inspecting Minutes.

The *Associations Incorporation Act 1981* gives you the right to inspect and take copies of the Club's "financial documents" within 28 days of your request. The Act defines "financial document" in very specific terms, as follows:

1. the Club's "Financial Statement" (a term also defined in the Act);
2. the Club's Audit Report;
3. the Auditor's Statement; and
4. the Statement of the Club's President or Treasurer.

The Act says that a "financial statement" is a statement containing the following particulars:

1. the Club's income and expenditure during the relevant financial year;
2. the Club's assets and liabilities as at the end of the relevant financial year;
3. mortgages, charges and securities affecting the Club's property as at the end of the relevant financial year.

I note that, in addition to the Committee Meeting Minutes specified in your email to Mr Clancy, you have also requested inspection of:

1. the "Financial Journal" referred to in the first bullet point of your email to Mr Clancy;
2. "Financial documents" referred to in the second bullet point;
3. the "Asset Register" referred to in the fifth bullet point;
4. the "financials" referred to in the eighth bullet point; and
5. the "Sponsors Registry" referred to in the tenth bullet point.

You are not entitled to inspect the Asset Register or the Sponsors Register. The Club's financial statements for the year ended 30 June 2012 will be ready for publication before next month's AGM and will be available for inspection then. The Club is not obliged to give you access to, or copies of, the accounting documents referred to in the first, second and eighth bullet points of your email to Mr Clancy.

I have not overlooked April Freeman's finding last September that the Club may have breached the Act when it refused you access to the Sponsorship and Financial Registers in May last year. The Club's legal advisers considered that "finding" to be legally wrong, for the reasons set out in correspondence they sent to Racing Queensland Limited following publication of Ms Freeman's report. As you know, the Club did not have to pursue this issue any further because of the position Racing Queensland Limited took in relation to that report.

The Committee Meeting Minutes referred to in your email to Mr Clancy will be available for your inspection at the Club's premises on Thursday 9 August 2012 between 12.00pm and 1.00pm.

Kind regards

Bob Frappell
Chairman
Toowoomba Turf Club Inc

TOOWOOMBA TURF CLUB INC.
Clifford Park Racecourse

Hursley Road, Toowoomba, QLD 4350 PO BOX 6037 Toowoomba West, QLD 4350
Phone (07) 46 34 60 66 Fax (07) 46 33 12 56

"Light years ahead of the rest"

Please find correspondence attached.

Regards,

Aaron

Aaron Clancy

CEO

Toowoomba Turf Club

Hursley Rd, Toowoomba QLD 4350

P.O Box 6037 Toowoomba West QLD 4350

M: 0400 334 854

P: 07 4634 6066

F: 07 4633 1256

E: aaron@toowoombaturfclub.com.au

W: www.toowoombaturfclub.com.au

From: Anthony Burke [<mailto:ajsrburke@optusnet.com.au>]

Sent: Thursday, 2 August 2012 11:28 PM

To: Aaron Clancy

Subject: [SPAM] Committee minutes

Importance: High

Dear Sir

Sorry for delay into your question of what I wished to view.

Next week I have time on Wednesday 8th August 2012 from 11am to 2.30pm and Thursday 9th August 2012 from 9.30am to 1pm.

I would like to look at the following.

- Financial Journal showing that Bob Frappell has repaid the money as per the Barristers report, and AR 112.
- Financial documents showing how much money was paid to Hopgood Gamin by the TTC in the action against me.
- The minutes from when my resignation as a committee member were tabled.
- The minutes from where I advised you Kent Woodford was not elected in accordance with the TTC rules.
- The minutes and the Asset register re the returning of the slasher from Bob Frappell farm to the TTC and what has now happened to the slasher.
- The minutes of the meeting after the Barristers report was presented listing the breaches and the discussions the committee made in correcting them.
- The minutes of the meeting discussing the Barristers report and the breach of 59c of the AIA by the secretary Aaron Clancy and action taken by the committee to prevent any more breaches from the secretary as this is the 2nd in his employment along with the AR175 breach in 2011.
- The financials and the minutes showing what the rumored money from RQL was given for and used for.
- A general read of the minutes from November 2011 to July 2012 as an over view to see where the club is travelling.

- The sponsors registry to see how much CASH sponsors the club has as well as any contra sponsors.

Thanks

Anthony Burke

Member of the Toowoomba Turf Club.

PS look forward to the read.

FREE Animations for your email - by IncrediMail!

Click Here!

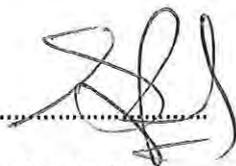
FREE Animations for your email - by IncrediMail!

Click Here!

This is attachment marked "AB

152
"

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013



.....

Anthony John Burke



.....

Barry Edward Atkins, Solicitor Witness

AB152

Barry Atkins

From: Anthony Burke [ajsrburke@optusnet.com.au]
Sent: Tuesday, 7 August 2012 12:55 AM
To: Perrett, Carol; nationalparks@ministerial.qld.gov.au; Wade Birch; complaints@racingqueensland.com.au
Subject: Fw: RE: [SPAM] Committee minutes
Attachments: Correspondence.pdf
Importance: High

It Seems absurd that the Chairman, Bob Frappell, of the Toowoomba turf club can continually deny information that is to do with good corporate governance of such an important issue involving Toowoomba Turf Club members money.

What is to hide about the questions of a concerned financial member enquiry about legal and financial issues?

Do I have to waste more money and RQL time to investigate these issues as they are hidden from all and sundry?

Do I need to report the current TTC and the RQL and Minister for Racing to the CMC for inaction on basic Good Corporate Governance issues?

This is about good corporate governance. Nothing more and nothing less.

Someone has to be accountable for the use of funds and the denial of the use of these funds by the committee and the chairman of the Toowoomba Turf Club.

This is why as an industry participant, I have spent many thousands of dollars in trying to make the government and governing body accountable aware of what is a slap in the face of what is right.

Nothing complicated with the Toowoomba Turf Club and the Chairman Bob Frappell.....they are a law unto their own and have no respect for governing bodies or the members.

Do I need to go to Four Corners with my barristers report of April Freeman and my emails and letters to get action?

Anthony Burke
Toowoomba Turf Club Member.

0423022880

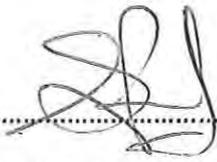
-----Original Message-----

From: Aaron Clancy
Date: 6/08/2012 5:02:48 PM
To: Anthony Burke
Subject: RE: [SPAM] Committee minutes

Hello Mr. Burke,

This is attachment marked "AB" ¹⁵³

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013



.....
Anthony John Burke



.....
Barry Edward Atkins, Solicitor Witness

AB153

Barry Atkins

From: Jamie Orchard <jorchard@racingqueensland.com.au>
Sent: Tuesday, 9 August 2011 12:53 PM
To: 'Barry Atkins'
Subject: RE: Investigation

Mr Atkins,

I'm afraid that timing does not suit Ms Freeman. In fact, since the email was sent last night, the situation has changed somewhat and Ms Freeman would now like to see Mr Burke at 9-30 a.m.

I appreciate that you may not be available. However, Ms Freeman does not believe you will be required as the matters you have raised are well explained in the material you have provided to date – your position is well understood. Ms Freeman just wants to give Mr Burke an opportunity to clarify a few issues.

Please confirm that Mr Burke will be available at that time. You will appreciate that we are anxious to have this investigation completed as efficiently as possible and Mr Burke not being available for interview tomorrow will significantly hamper the timely completion of the investigation.

In terms of material before Ms Freeman, you may note that Ms Freeman will have such material as she considers necessary for her to properly review all allegations.

Regards,

Jamie Orchard

Director of Integrity Operations

PO Box 63, Sandgate QLD 4017

P +61 7 3869 9742

F +61 7 3269 8268

RACING M 0417 791 596

QUEENSLAND E jorchard@racingqueensland.com.au

W www.racingqueensland.com.au

From: Barry Atkins [mailto:bazlawyer@atlaw.net.au]
Sent: Tuesday, 9 August 2011 11:41 AM
To: Jamie Orchard
Subject: RE: Investigation

Thank you Mr. Orchard,

I have asked Anthony if 3.30 pm suits him as I am unavailable until 3.30 pm. I will advise on receipt of his advice.

Please confirm Counsel Freeman has been briefed with copies of all committee minutes as well as confirming she will, while onsite, require the immediate production of any Executive Sub Committee Minutes.

Barry Edward Atkins (B.A., LLB(Hons.))

Solicitor & Attorney

@LAW

Tel: 07 4639 3038

Fax: 07 4632 9529

Email: bazlawyer@atlaw.net.au

Web: www.atlaw.net.au

Park View Chambers
123 Margaret Street
(P.O. Box 605)
Toowoomba Qld 4350

IMPORTANT NOTICE - LEGAL PRIVILEGE

This communication is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the addressee, you are notified that any transmission, distribution or replication of this message or its attachments is strictly prohibited. The legal privilege and confidentiality attached to this e-mail is not waived, lost or destroyed by reason of a mistaken delivery to you. If you have received this email in error, we would appreciate immediate notification by telephone and ask that the message be permanently deleted from your system.

From: Jamie Orchard [mailto:jorchard@racingqueensland.com.au]
Sent: Monday, 8 August 2011 6:56 PM
To: Anthony Burke (ajsrburke@optusnet.com.au)
Cc: bazlawyer@atlaw.net.au
Subject: Investigation

Mr Burke,

Ms Freeman, barrister conducting the investigation, will be in Toowoomba on Wednesday to conduct interviews. She would like to speak to you at 2 p.m. at the RQL offices. Would you please confirm that you are available to attend?

I note that Ms Freeman has been briefed with your statement and all supporting material. The purpose of the interview is not to take further allegations from you (as the scope of the investigation is now set and won't be expanded) but rather to clarify any issues concerning the current allegations that Ms Freeman requires.

Regards,
Jamie

*****E-Mail Disclaimer*****

This email, together with any attachments, is intended for the named recipient only. This email may contain information which is confidential, of a private nature or which is subject to legal professional privilege or copyright. Accordingly, any form of disclosure, modification, distribution and/or publication of this email message is prohibited unless expressly authorised by the sender acting with the Authority of or on behalf of Racing Queensland Limited.

If you have received this email by mistake, please inform the sender as soon as possible and delete the message and any copies of this message from your computer system network. The confidentiality, privacy or legal professional privilege attached to this email is not waived or destroyed by that mistake.

It is your responsibility to ensure that this email does not contain and is not affected by computer viruses, defect or interference by third parties or replication problems (including incompatibility with your computer system).

Unless expressly attributed, the views expressed in this email do not necessarily represent the views of Racing Queensland Limited.

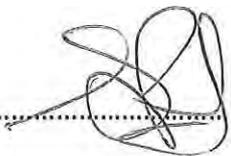
*****E-Mail Disclaimer*****

This email, together with any attachments, is intended for the named recipient only. This email may contain information which is confidential, of a private nature or which is subject to legal professional privilege or copyright. Accordingly, any form of disclosure, modification, distribution and/or publication of this email message is prohibited unless expressly authorised by the sender acting with the Authority of or on behalf of Racing Queensland Limited.

If you have received this email by mistake, please inform the sender as

This is attachment marked "AB" ¹⁵⁴

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013


.....
Anthony John Burke


.....
Barry Edward Atkins, Solicitor Witness

AB154

From: Barry Atkins [mailto:bazlawyer@atlaw.net.au]
Sent: Friday, 26 August 2011 1:40 PM
To: 'Jamie Orchard'
Subject: TTC - Investigation by RQL

Dear Sir,

Mr. Burke has sent me a copy of your email advising that the report should be released early next week as it has been completed [subject to clarification requested by you of Barrister Freeman of several issues].

I am cognizant that you did not want any new allegations. The following information:-

1. Is part of the previous allegations about misuse of Club funds; and
2. Only came to Mr. Burke's attention last night at a Committee Meeting.

Firstly, the TTC approved at the July meeting to spend up to \$75,000.00 on Bob Frappell's defamation action against Anthony.

If the requirements arising from the investigation do not currently include requiring TTC to stop funding that action, I'm sure this information will make sure that is a requirement, particularly in light of Section 112 of the Racing Act, RQL's policies and the financial manual which includes:-

In addition to the requirements of the Act and the Financial Management Procedures Manual, a race club must obtain prior approval in writing from the Chief Executive Officer of Racing Queensland before:

- undertaking expenditure on any capital item or capital program in excess of \$50,000, or
- undertaking any expenditure on activities not directly related to the conduct or encouragement of racing

Clearly the expenditure is not directly related to the conduct or encouragement of racing.

I attach a copy of Anthony's defence filed in the District Court. We advise that we offered to delay incurring the costs for both parties of the defence until after the investigation was completed but TTC rejected that offer.

You will note Anthony intends to join TTC as a party to the action in relation to costs.

Secondly, TTC are actively misleading its members by providing financial reports which refer to 'Constitutional issues' in the disclosure of legal costs when obviously that must refer to Mr. Burke.

The current expenditure [costs paid and debt incurred] is almost \$75,000 in attacking Anthony and trying to get rid of him. This is also a clear breach of the above financial obligations.

We do not know if Barrister Freeman was apprised of this information, but we suspect given the committee minutes from July were only released last night it has been with-held from her [and you].

If that is the case, then notwithstanding the desirability of completing the investigation expeditiously these matters must be fully and properly investigated to prevent the necessity of a subsequent complaint/allegation by Mr. Burke [as he is obliged to do as a Committee member] and the consequential further investigation by RQL.

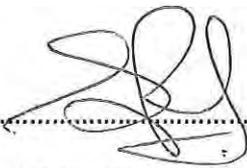
Barry Edward Atkins (B.A., LLB(Hons.))
Solicitor & Attorney
@LAW
Tel: 07 4639 3038

This is attachment marked "AB

155"

Specified in the list of attachments in the Statutory Declaration

of Anthony John Burke sworn 6 August 2013



.....

Anthony John Burke



.....

Barry Edward Atkins, Solicitor Witness

AB 155

R 14/9/11 4hrs

fax to reg copies all
ltrs for HQ. prior 2
filings of our S. Ct Writ



31 August 2011

**RACING
QUEENSLAND**

Clear Freeman's been
mistaken by

Mr Anthony Burke
By email: ajsrburke@optusnet.com.au

BF & AC

Racing Queensland Limited
A.B.N 62 142 786 874
Racecourse Rd Deagon QLD 4017
PO Box 63 Sandgate QLD 4017
T 07 3869 9777
F 07 3269 8404
E info@racingqueensland.com.au
W www.racingqueensland.com.au

① Response for AB b/c
Press Release

Dear Sir,

+ ② No final cond'n til we see evid

I refer to our telephone conversation of 31 August 2011 in which you agreed to be bound by a confidentiality undertaking. In the interests of fairness, the terms of that confidentiality undertaking should be in the same terms as that provided by Mr Frappell which is as follows:

"I undertake not to disclose the contents of Ms Freeman's report to any party other than my legal representatives, the Committee Members and Mr Aaron Clancy (the Club's Chief Executive Officer), provided however that this undertaking will not prevent me from commenting publically on the report (or responding to media enquiries in relation to the report) upon release of the public statement by RQL referred to in its correspondence of 30 August 2011".

are as if
2 as the
men
essence
comp
concl
holding
of info

While RQL is willing to release the report to you on the basis of that undertaking you should note that the reason for seeking such an undertaking was to prevent any further damage being done to the industry by issues being raised by the parties publicly. You should bear this in mind when making any public statement and ensure that any such comment is not likely to lead to further damage of the image of Racing. RQL obviously reserves its right to take action should any inappropriate comments be made.

A copy of Ms Freeman's report is attached hereto. You will note that only 2 small areas have been blacked out and that has been done in the interests of maintaining your privacy in relation to certain matters.

In respect of Ms Freeman's findings, there are 5 particular areas which I wish to draw to your attention:

1. Payment of fees to HopgoodGanim in respect of personal defamation claim

Ms Freeman found, on page 13, that the payment by a Club to a law firm for costs incurred for services provided to an individual does not fall within section 112 (3) (d) of the *Racing Act 2002* and that such a payment is therefore in breach of section 112 of the Act. In this case, it is noted that the services were requested by, or given to, Mr Frappell as the named party in the defamation action and the person with whom the law firm has a client agreement. Invoices were issued to Mr Frappell and not the Club.

BF

br. fin op's - No kg by TCC c
2/b informed of costs

2. **Conduct on 10 February 2011.**

Ms Freeman considered the circumstances of the incident on 10 February 2011 and came to the conclusion that the conduct could potentially fall within the ambit of AR175 (a) or (q). Ms Freeman also commented that even if a breach was made out, any penalty would be at the lower end of the scale and may not warrant any further action now.

3. **Section 59C Associations Incorporation Act**

Ms Freeman found at page 34, that the Club in failing to allow Mr Burke access to financial records without providing an undertaking, breached section 59C of the Associations Incorporations Act 1981.

4. **Leave of Absence**

Ms Freeman found, on page 37 that the Club should not have refused Mr Burke's request for a leave of absence.

5. **Correspondence**

It was alleged that certain correspondence had not been reported to committee meetings. In this regard, Ms Freeman found that while most of the correspondence to which reference had been made was in fact tabled, some emails had not been. Ms Freeman pointed out that this failure was due to the volume of correspondence as opposed to any sinister motive.

In respect of the foregoing 5 areas, RQL has sought the comments of the Club in respect of the findings and advice as to what the Club proposes to do in respect of each of those matters. These comments are to be provided before the close of business 28 September 2011. RQL will take those comments into account at that point in determining what action, if any, to take in respect of the identified matters.

I expect to make a public statement in respect of the findings in this matter tomorrow.

Yours Sincerely

A.J. Orchard

A.J.Orchard
Director of Integrity Operations

*RP website media release
Response of parties*

*→ 270 seeing brief 2 F
seems her comments are outside ambit of invest'g:
ok br -! should be charged even if*

*penalty
is low!
RQ failed 2 act +
penalty 2 chgs wd be act. fail
2 act*

*↳ goes 2 systematic
bullying politician
RQC know/
ought 2
breakdown
as were
fold
of RQC's
able*

*note study
ref 2 AC
clubs obj'n
2 have in minutes +
20 see
AC's part*

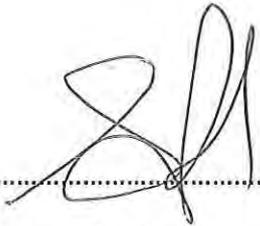
16 - 175 - Rules blk + white / regardless of volume / person unless result

This is attachment marked "AB

156
"

Specified in the list of attachments in the Statutory Declaration

of Anthony John Burke sworn 6 August 2013



.....

Anthony John Burke



.....

Barry Edward Atkins, Solicitor Witness

AB 156

April Freeman
Barrister-at-Law

ABN: 54 759 675 475

Level 27 East, Santos Place
32 Turbot Street,
Brisbane Q 4000
Email: April.Freeman@qldbar.asn.au

Tel: 07 3221 0882
Fax: 07 3229 6628

Racing Queensland Limited
Racecourse Road
DEAGON QLD 4017

ATTENTION: Mr. Jamie Orchard

INVESTIGATION REPORT

Allegations made by Anthony Burke against the Toowoomba Turf Club

AUTHORISATION

I have been engaged by Mr. Jamie Orchard, Director of Integrity Operations, Racing Queensland Limited to provide advice to Racing Queensland Limited ("RQL") regarding complaints made by Anthony Burke in relation to the conduct of current committee members of the Toowoomba Turf Club ("the Club") towards him and the general operation of the Club.

SCOPE AND PURPOSE

The scope of the investigation is to review a large number of allegations made by Burke regarding the conduct of a number of members of the current committee of the Toowoomba Turf Club and how the Club has been managed. These allegations also include particular allegations of harassment and bullying by committee members towards Mr Burke either as a result of him speaking out about these matters or in pursuance of obtaining Mr Burke's

resignation from the committee.

The purpose of the report is to inquire about and provide advice with a view to determining:

- (a) Whether the allegations made by Burke can be established;
- (b) If such allegations can be established, whether such conduct breaches the Club rules, RQL's policies, the Rules of Racing, the *Associations Incorporation Act 1981*, *Workplace Health and Safety Act 1995*, or the *Racing Act 2002*; and
- (c) What action RQL may consider taking as a result of any such breaches.

OVERVIEW OF COMPLAINT AND ALLEGATIONS

It has been alleged that over a period from September 2010 to present, a number of committee members of the Club have failed to manage the affairs of the Club in an appropriate way and specifically have engaged in conduct directed towards Mr Burke with a view to harassing, intimidating or bullying him into leaving the Club.

Mr Burke has raised numerous allegations which have, for the purpose of this investigation, been summarized as follows:

1. The Club improperly agreed to fund the defamation claim by Mr Frappell (Chairman of the Club) against Mr Burke; and agreed to pay Mr Clancy's cost in defending an assault allegation;
2. Mr Clancy (Chief Executive of the Club) misled the Supreme Court during recent proceedings involving Mr Burke and the Club by producing a members register without reference to Mr Burke and by also swearing an affidavit that was in contradiction to statements made in the April minutes of the committee meeting;
3. Mr Clancy failed to keep the Club Committee informed of all relevant matters, in particular some 16 items sent by Mr Burke to Mr Clancy whilst Mr Burke was on leave were not tabled at the relevant committee meetings;
4. The Club engaged, and incurred costs with, Hopgood Ganim Solicitors without Committee approval;
5. The Club improperly cancelled the sponsorship of Mr Burke and/or his company in or around February 2011;

6. The Club failed to award the perpetual trophy donated by the Burke family to be presented at the Toowoomba Cup in 2011;
7. Mr Frappell improperly obtained a slasher from the Club;
8. Dr Morgan (Committee member) on behalf of Mr Frappell made an improper offer to Mr Burke of money (\$10,000) to settle the dispute which is alleged to amount to bribery;
9. Committee members have not reported the amount of free alcohol and food obtained by them on raceday;
10. Committee members aggressively confronted Mr Burke on 10 February 2011; and
11. The Club and/or Committee members have engaged in harassment, intimidation and bullying of Mr Burke by:
 - a. Not keeping Mr Burke aware of issues while he was on sick leave from December 2010 to March 2011 and not providing him with minutes of the committee meetings during this period;
 - b. Not replying to Mr Burke's emails during this time;
 - c. Not complying with sponsorship arrangements;
 - d. Not allowing Mr Burke access to minutes when requests were specifically made on 3 and 9 February 2011;
 - e. Engaging in a confrontation with Mr Burke on 10 February 2011;
 - f. Terminating Mr Burke's membership on 14 February 2011 and there being no record of this in the minutes of the committee meeting prior to this date;
 - g. Failing to give Mr Burke notice of the committee meeting to be held in March 2011;
 - h. Advertising Mr Burke's position as a casual vacancy in the Toowoomba Chronicle on 13 April 2011;
 - i. Making a false statement about the "re-instatement" of Mr Burke's membership subsequent to the Supreme Court action regarding his membership status;

- j. Graham Healy stated to Mr Burke at a raceday soon after the Supreme Court proceedings were concluded that the committee members wanted to rip his head off and that the next meeting was going to be a fiery one;
- k. Resisting Mr Burke's access to records on 5 May 2011;
- l. Failing to disclose financials in minutes;
- m. Preventing Channel 7 from using Mr Burke's gift as prizes;
- n. Removing Mr Burke's sponsorship signs;
- o. Losing ring stands belonging to Mr Burke;
- p. Failing to include Mr Burke's name in the list of committee members in the raceday program for the Weetwood/Toowoomba Cup held on 30 March 2011;
- q. Refusing access to sponsorship and financial registry on 12 May 2011;
- r. Sending a notice on 30 June 2011 of a special meeting to be held where the first item on the agenda was a motion of no confidence in Anthony Burke which was later retracted after legal action was threatened;
- s. Refusing Mr Burke's application for leave of absence made on 14 July 2011;
- t. Refusing to disclose a copy of an audio recording of the events of 10 February 2011 despite numerous requests for it;
- u. Sending a copy of a "Without Prejudice" letter dated 15 July 2011 sent by Mr Burke's lawyer including an offer of settlement to all club members and two journalists with a covering letter which was defamatory;
- v. Filing a defamation claim;
- w. Ending the committee meeting held on 21 July 2011 early and prior to Mr Burke's pre-arranged time of arrival in addition to Mr Frappell refusing to allow Mr Burke to read the minutes of that meeting when he did arrive; and
- x. Scott, Volz, Healy and Turnbull sent Burke emails on or around 29 May 2011 which were harassing and intimidating.

It is proposed to address each of these points in turn, and considering the evidence gathered during the investigation, comment on whether the allegation has been founded and whether it would constitute a breach of any rules, policies or legislation that might be applicable.

THE COMPLAINT

(a) Source

A series of written complaints have been received by RQL from 23 May 2011 to 5 August

2011 from Anthony Burke, a committee member of the Club, or via his lawyer, Barry Atkins, regarding the conduct of a number of committee members relating firstly to the management of the Club and secondly relating to their treatment of Burke during his time on this committee.

A number of these allegations were also received by members of parliament and the Office of Racing which resulted in the Office of Racing requesting that RQL conduct an investigation into the matters raised.

(b) The Complainant

The complainant is Anthony Burke who is a local business man in Toowoomba. He has been a member of the Club since 2006 and became a member of the committee in 2009.

Mr Burke's role as a committee member is a voluntary one which he was required to nominate for and then be subject to an election to such role.

Mr Burke's company "Jewels of the Range" was also a sponsor of the Club from 2006 until February 2011.

It should be noted that there did not seem to be any difficulties concerning Mr Burke until the current committee was formed in September 2010 at the Club's Annual General Meeting.

(c) Subject Officers

The complaint concerns the conduct of a number of committee members including:

- I. Bob Frappell (Chairman);
- II. Aaron Clancy (Secretary);
- III. Peter Turnbull (Treasurer);
- IV. Graham Healy (Deputy Chairman) and
- V. Dr John Morgan.

These persons were elected to the committee in September 2011 at the Club's last AGM. These are all voluntary roles performed apart from that held by Mr Clancy who is employed by the Club in a paid, full time capacity as the Chief of Management and Secretary for the Club.

All persons on the committee, including Mr Burke (but apart from Mr Clancy), will be subject to re-election at the next AGM to be held in September 2011.

THE INVESTIGATION

(a) Overview

I was briefed by Mr. Jamie Orchard, Director of Integrity Operations for RQL on 5 August 2011. As part of this initial brief I was provided with the following:

- (1) Letter of engagement;
- (2) Rules of the Club;
- (3) Relevant policies of RQL;
- (4) Statement of Anthony Burke;
- (5) Sponsorship Agreement Material;
- (6) Material relating to Proposed Special General Meeting;
- (7) Initial notice to Burke regarding his membership;
- (8) Material from RQL Director of Integrity regarding Burke and the Club;
- (9) Material provided by Barry Atkins to Wayne King
- (10) Material provided by Anthony Burke to Wayne King;
- (11) Emails from Burke to Wayne King (July 2011);
- (12) Emails from Atkins to Wayne King (July 2011);
- (13) Letter from Office of Racing requesting investigation;
- (14) Contact details for committee members of the Club.

On 10 August 2011, I interviewed the following persons regarding the matter:

- (1) Anthony Burke – complainant
- (2) Bob Frappell – Chairman
- (3) Aaron Clancy – Secretary
- (4) Peter Turnbull – Treasurer
- (5) Graham Healy – Deputy Chairman

I also conducted telephone interviews on 11 August 2011 with:

- (1) Dr John Morgan
- (2) Tom Warren

As part of my investigation I also obtained with the following material:

- A series of emails and other documents alleged by Burke to have not been tabled or recorded in the minutes of meetings held by the Club;
- A recording of the Stewards' Inquiry held on 7 June 2011 regarding an incident that occurred on 26 May 2011;
- The Stewards report for same;
- Various policy documents for the Club including the Bar Stock Take Policy and the Bank Reconciliation Policy
- A copy of the sponsorship agreement dated February 2010;
- Affidavit of Aaron Clancy tendered as part of Supreme Court proceedings heard on 20 April 2011;
- Minutes of committee meetings for 25 September 2010, 6 December 2010, 24 January 2011, 17 February 2011, 17 March 2011, 7 April 2011, 30 June 2011 and 7 July 2011;
- Minutes of an executive committee meeting on 5 & 6 November 2010;
- Profit and loss statements for period 1 July 2010 to 31 May 2011;
- A folder of correspondence and other documents in response to the allegations prepared by Aaron Clancy;
- A bundle of correspondence relevant to the allegations prepared by Brett Bolton of Hopgood Ganim, lawyer for the Club.

(b) Overview

In September 2010 the current committee was formed. I am advised that at the relevant AGM, Mr Burke nominated for the position of Treasurer but did not gain enough votes. The other committee members believe that this then led to a sense of dissatisfaction and hostility by Mr Burke towards the rest of the committee. In November 2010, Mr Burke sought and was granted a 3 month leave of absence from the committee starting in December 2010 and concluding on 1 March 2011. This was sought on the basis that Mr Burke was suffering from a serious illness at the time and Mr Frappell was aware that this was a form of cancer.

As a result, the committee concluded that it would be best if Club issues were not specifically raised with Mr Burke over this period. Mr Burke however intended for the Club to keep him fully abreast of all issues and specifically requested that he be sent the minutes of all

meetings during his leave period.

This differing of views resulted in firstly Mr Burke feeling isolated by the Club and took this to be intentional on their part and secondly Mr Clancy feeling harassed by the constant emails that he was receiving from Mr Burke during this period of time seeking information and minutes. It would seem that this discourse would escalate once the leave period came to an end.

Also during this time, two major issues arose surrounding Mr Burke's membership and his sponsorship of the Club which further served to enhance the sense of isolation and harassment that Mr Burke had already felt.

With regards to the sponsorship of the Club by Mr Burke's company "Jewels of the Range", this was due for renewal in February 2011. Leading up to this, Mr Burke had written to the Club expressing his dissatisfaction at the current level of benefits he was gaining from such sponsorship when compared to previous committees. Around the same time, the Club had resolved to conduct a review of the current sponsorship arrangements with all sponsors (not just Mr Burke's company) and was in the process of preparing to re-negotiate many of them as it was thought that the majority of the arrangements benefited the sponsors to a greater extent than it did the Club.

As a result of this audit, Mr Burke was advised that his sponsorship agreement would not be renewed in its current form and he was invited to meet with the Club to discuss a further proposal. Mr Burke formed the view that he should not meet with the Club until he had a proposal in writing to consider first. He also seemed to indicate in his letter to the Club that it would be a matter for his company to decide whether to continue such sponsorship. When no proposal was presented, this led to Mr Burke issuing a press release giving effect to the sentiment that he would no longer continue to sponsor the Club. The Club took this as notice of termination of the agreement.

This then resulted in the relevant signage around the track being removed and a number of other issues regarding such sponsorship arising.

Furthermore on 14 February 2011, the Club wrote to Mr Burke advising him that his membership with the Club (and as a consequence, his position on the committee) was deemed to be invalid by the operation of the Club rules and he was no longer considered a member. This came as a result of Mr Clancy conducting a review of memberships in

January 2011 and discovering that there was an anomaly with Mr Burke's membership. This had arisen as a result of the status of his membership which had originally been via a corporate membership through his company. In August 2010, Mr Burke had changed the nominee from himself to his wife and therefore was no longer a member unless he applied again as an individual (which he had not).

This was an issue upon which the Club took legal advice and upon receiving same, advised Mr Burke of the invalidity of his membership. This would also seem to be the impetus for the confrontation which occurred on 10 February 2011 about which Mr Burke has also complained.

This resulted in Mr Burke taking legal action in the Supreme Court whereby Justice Daubney made a declaration on 20 April 2011 that Mr Burke was in fact a member and that the rules had been interpreted narrowly by the Club.

In the meantime however, the Club had begun to take steps to fill Mr Burke's position by advertising the vacancy, and also treated him as if he was no longer a member by not sending him notices of meetings, refusing him access to minutes and other records and the like.

Once the membership issue resolved and Mr Burke returned to his position on the committee, it would seem that the damage had already been caused to the relationship between Mr Burke and the rest of the committee and from May until August, the committee took steps to remove Mr Burke from the committee. It was at this point that the situation descended even further into an environment of hostility and mistrust which was simply not viable for the proper functioning of the Club.

[REDACTED]

(c) Complainant's Version

Mr Burke has provided a detailed statement (taken by Wayne King of RQL) which is attached¹. This is intended to be a full recitation of the issues and concerns that Mr Burke

¹ See attachment 1

has regarding the conduct of the Club's committee members.

The contents of this statement have primarily formed the basis for the summary of allegations outlined above. It is not intended to traverse these issues in any great detail here.

The essence of the concerns that Mr Burke has raised are that over the course of the last nine months or so, he has been subject to a number of acts by committee members that he considers to be harassing, intimidating or bullying. He also has concerns regarding the management of the Club's affairs in relation to financial record keeping, disposal of Club funds and general disclosure of committee decisions and actions to the membership at large.

(d) Subject Officer's Versions

I interviewed five other committee members on 10 August 2011. During these interviews each allegation as was relevant to their position and/or involvement within the committee was discussed and they had an opportunity to respond. Mr Brett Bolton of Hopgood Ganim was also present during these interviews and assisted when necessary with the provision of documents or background information relating to legal advice that had been provided to the Club regarding these issues.

These interviews were recorded and digital recordings have been made and are attached to this report². It is intended to simply refer to the relevant responses provided as each allegation is considered below.

I also spoke with Life Member Tom Warren who was present during the conversation allegedly had between Healy and Burke on 30 April 2011. Again, his response will be outlined below when dealing with this allegation.

² See attachment 11

ANALYSIS OF ALLEGATIONS

ALLEGATION

1. *The Club improperly agreed to fund the defamation claim by Mr Frappell (Chairman of the Club) against Mr Burke; and agreed to pay Mr Clancy's cost in defending an assault allegation.*

EVIDENCE

Mr Burke has raised concerns that the Club agreed to fund a defamation claim commenced by Mr Frappell against Mr Burke and that this was improper use of Club funds.

The minutes of the committee meeting dated 17 February 2011 reflect that Frappell raised with the meeting initially the possibility of the Club having a case against Burke for defamation and that legal advice was being sought from Hopgood Ganim regarding this. Such defamation claim was to be founded upon the statements released by Burke to a number of politicians, RQL, members of the Club and other public forums regarding the incident that occurred on 10 February 2011. This involved Mr Burke alleging that Frappell and other committee members attacked him "like a pack of dogs" at the Club when he was attempting to leave as he refused to have a meeting with them (this incident is discussed in more detail later on in the report).

I understand that Frappell and the Club were advised that a defamation suit would have to be commenced in an individual's name, as opposed to the Club and as a result, Mr Frappell decided to commence such proceedings.

What the committee resolved to do on 17 February 2011 was to have the Club "pay all expenses incurred by the Club to Hopgood Ganim for the on-going defamation case in the name of B Frappell against Anthony Burke over the incident that happened at the Turf Club."

At the next meeting held on 17 March 2011, the committee again considered this issue, as some members had not been present at the previous meeting. The minutes note that "all committeemen had time to discuss the cost involved in the defamation case."

A further motion was passed that "The TTC will agree to fund the legal costs of the defamation action taken by B Frappell against Anthony Burke. Should the case be

successful, if damages are awarded to B Frappell, all monies will be paid to the club.”

Frappell was absent during discussion and the moving of such motion.

Mr Clancy has advised me that he has since received two invoices from Hopgood Ganim in relation to costs associated with this defamation action, one of which has been paid and was in the amount of approximately \$6000. The other invoice has yet to be paid.

Brett Bolton advised me that Hopgood Ganim is retained by Mr Frappell in relation to this action and the client agreement is with him as an individual. Thus any invoices rendered as a result of work performed in relation to this matter are issued to Mr Frappell for payment. How they are then paid is not a matter for the firm.

Mr Frappell advised me that he has received invoices and sent them onto the Club for payment as per the arrangement he has with the Club.

He and the other committee members rely upon the operation of Rule 42 in the Club Rules to authorize these payments. This Rule provides that:

“The Committee, stewards, and Secretary shall be indemnified from the funds of the Club against all damages and the costs of any legal proceedings that may be instituted by or against them in consequence of the performance of their duties.”

Mr Frappell advised me that he was of the view that because five committee members were named in the statements that were sent out by Mr Burke regarding the 10 February incident, he felt the need to take action to protect the Club’s reputation.

Mr Clancy advised me that the committee took the view that Frappell would not have been in the position he was on 10 February 2011 and subsequently regarding his potentially tarnished reputation had he not been acting in his role as chairman and therefore it fell within the operation of Rule 42.

In relation to the further allegation that the Club agreed to fund Mr Clancy’s costs in defending an assault charge, I am satisfied upon reviewing the Club’s minutes and considering the evidence provided by the committee members and Mr Bolton that this was never something the Club agreed to do.

POSSIBLE BREACHES

Section 112 of the *Racing Act 2002* provides:

"(1) A non-proprietary entity must not divide, directly or indirectly, money comprising the entity's revenues, profits or other assets, however derived, among the individual members of the entity or any of them.

(2) The non-proprietary entity may apply amounts comprising its revenues and profits –

(a) For encouraging the relevant control body's code of racing in Queensland if the application is under 1 of the control body's policies for that purpose; and

(b) For a charitable, benevolent, patriotic or special purpose, if the application is under the relevant control body's written approval obtained before the entity applies the amounts.

(3) This section does not prevent –

(d) a payment by the entity of a reasonable amount to a person, whether or not a member of the entity, for legal, accounting, secretarial or other professional services requested by or given to the entity."

Consideration thus needs to be given to whether the payment of Mr Frappell's legal costs associated with a private claim for defamation would fall within the exception set out at subsection 112(3)(d).

In my view a payment by the Club to a law firm for costs incurred for legal services provided to an individual would not fall within the ambit of such subsection, and therefore would be a breach of section 112 of the *Racing Act* by the Club.

It is difficult to contemplate how a payment for legal services incurred by an individual would ever be considered to be payment for legal services "requested by or given to the entity" as required by subsection 112(3)(d). Clearly the services are requested by or given to Mr Frappell as the named party in the action and also the person with whom the law firm has a client agreement. The invoices are issued to Mr Frappell for payment for services requested or given to him, not the Club.

This then begs the question as to how this would operate in light of Rule 42 of the Club

Rules.

The Club is an incorporated association. Such associations are primarily governed by the *Associations Incorporation Act 1981* which provides for the process of incorporation including the option for such bodies to adopt proposed rules for same. The Act also provides model rules that may be applied should the body choose to not make its own. The Act also places obligations upon members of such associations to ensure compliance with certain rules such as the rules about calling and holding meetings.

Importantly, however, section 1B of the Act states:

"To remove any doubt, it is declared that if a rule of an association is inconsistent with this Act, this Act prevails to the extent of the inconsistency."

Thus, the Act takes precedent over any rules that are inconsistent with the Act. A logical conclusion that may follow from this is that the *Racing Act 2002* being a properly enacted act of parliament would also prevail over Rules adopted by an incorporated association should there be an inconsistency.

Curiously, section 5(1) (d) of the *Associations Incorporation Act 1981* provides that an association is not eligible for incorporation under the Act if the association is provided for in a special Act that specifically regulates its affairs. It is arguable that any Club licensed by RQL as the relevant control body under the *Racing Act* would fall within such definition and therefore would not be eligible to be an incorporation association. This is particularly so given RQL is obliged under the *Racing Act* to regulate and monitor its licensees, and take disciplinary action as necessary to ensure compliance with its policies.

Nevertheless, it is my view that the provisions of the *Racing Act* concerning the application of revenue and/or profits by a non-proprietary entity (being the Club) would prevail over the Rules of the Club and in this case, operate to make the payment of Frappell's legal costs associated with his defamation suit, a potential breach of the *Racing Act*.

ALLEGATION

2. *Mr Clancy (Chief Executive of the Club) misled the Supreme Court during recent proceedings involving Mr Burke and the Club by producing a members register*

without reference to Mr Burke and by also swearing an affidavit that was in contradiction to statements made in the April minutes of the committee meeting;

EVIDENCE

I have been provided with a copy of Mr Clancy's affidavit and the minutes of the April committee meeting³. Upon review of these documents I have been unable to locate anything materially different between Mr Clancy's knowledge of the state of Mr Burke's membership as stated in the affidavit and what is noted in the April minutes.

The only reference to this issue in the April minutes is a reference to what Mr Frappell said which was that he recalled Burke voting to remove the joining fee at a meeting in September 2010 and that as a result Burke said he would make his wife the corporate member and Frappell did not know he was just a corporate member at that time.

Mr Clancy states in his affidavit at paragraph 12 that he informed Mr Frappell in January 2011 that Mr Burke may have breached the rules by changing the nominee on the corporate membership to his wife's name while still remaining on the committee.

I can see no evidence of any misleading statements being made here. In any event there is certainly no evidence of any intentional misrepresentations being made on the part of Mr Clancy.

In relation to the membership register issue, I have been provided with a copy of the register which was produced in the Supreme Court proceedings. This shows that at the place where Mr Burke should have been recorded at number 265, he is no longer there, but he is listed on the final page of the register under memberships which have been cancelled, expired or reinstated.

Mr Burke has suggested to me that he should not have been removed (had his membership truly expired) until the end of the financial year when the list is revised and that Mr Clancy has deliberately gone and changed the list.

Upon a review of the list, it can be seen that a number of persons have been removed (as the list is not completely in numerical order) and it was not just Mr Burke's name which was

³ See attachments 15 and 4

targeted.

In any event, this would seem to be a change in the way the lists are managed rather than anything sinister in my view, particularly given Mr Burke still remains on the list, just in a different section.

POSSIBLE BREACHES

I am satisfied that there are no possible breaches that arise from this conduct.

ALLEGATION

3. *Mr Clancy failed to keep the Club Committee informed of all relevant matters, in particular some 16 items sent by Mr Burke to Mr Clancy whilst Mr Burke was on leave were not tabled at the relevant committee meetings;*

EVIDENCE

I have sought from Mr Burke clarification as to which items he refers to in relation to this allegation.

As a result of the material provided by Mr Burke I have compiled the following table which sets out the individual correspondence or items which are alleged to have been withheld from the committee meeting's consideration:

DATE	DESCRIPTION	COPY PROVIDED?
5/12/10	Email from Burke to Clancy – Re: Night Racing	Y
6/12/10	Email from Burke to Clancy – Re: Minutes	Y
9/12/10	Email from Burke to Tash and Kate – Re: Sponsors renewals	Y
10/12/10	Email from Burke to Clancy – re: Letsgohorseracing	Y
16/12/10	Email from Burke to Tash – Re: RSVP	Y
16/12/10	Second email from Burke to Clancy – Re: Copy of financial	N
22/12/10	Email from Burke to Clancy – Re: JJ Atkins	Y
20/01/11	Letter from Jewels of the Range to TTC – Re: Sponsorship	Y
28/1/11	Email from Frappell to Burke – re: Sponsorship	N

29/1/11	Email from Burke to Clancy and Frappell – Re: Sponsorship	N
Undated	Letter from TTC to Burke – re: sponsorship arrangements	Y
29/1/11	Letter from Burke to TTC - re: sponsorship	Y
1/2/11	Email from Burke to Clancy – re: Jewels of the Range	Y
1/2/11	Email from Clancy to Burke – re: Jewels of the Range	Y
3/2/11	Email from Burke to Clancy – re: enquiring when March committee meeting would be held	N
14/2/11	Email from Clancy to Burke attaching a letter from Frappell – re: membership	Y (letter)
18/2/11	Letter from RQL to TTC	Y
11/5/11	Email from Burke to Clancy – re: Minutes and financials	Y
26/6/11	Email from Burke to Committee – re: legal costs	Y
February 2011	Audio recording of incident on 10 February 2011 not tabled	N
April 2011	Press release by TTC after Supreme Court action re: membership issues not tabled	N
April 2011	Casual Vacancy advertisement on 13 April 2011 not recorded as having been discussed or tabled	N

I have received the following response to these allegations:

- 1) Mr Clancy has no record of receiving some of the communications from Mr Burke listed in the table;
- 2) Mr Burke's initial letter of complaint regarding the Sponsorship Agreement dated 20 January 2011 is recorded as having been tabled at the committee meeting in January 2011;
- 3) The letter from RQL dated 18 February 2011 was initially emailed by Mr Orchard to all committee members that day so all members were aware of the issues raised.

POSSIBLE BREACHES

Whilst I accept that there are a number of emails sent by Mr Burke which were not tabled, I

am satisfied that this was due to the sheer volume of correspondence received over this period, particularly from Mr Burke, as opposed to any sinister motive relating to misleading the committee.

I do accept however that the proper receipt and recording of correspondence sent and received by the Club is important to the efficient functioning of the Club and is an integral part of keeping the committee apprised of the issues the Club needs to address.

RQL may consider providing support and assistance to the Club in establishing a method of recording inward and outward correspondence which is accurate and reliable.

ALLEGATION

4. *The Club engaged, and incurred costs with, Hopgood Ganim Solicitors without Committee approval.*

EVIDENCE

I have been provided with the minutes of an executive committee meeting held over two days on 5 and 6 November 2010 which notes that discussion was had regarding whether the Club should spend up to \$5000 to seek legal advice on two matters. Mr Frappell suggested the firm Hopgood Ganim and all three members agreed upon this.

On 6 December 2010 the minutes reflect that a motion was passed, after discussion, that the committee approved extra costs to continue legal proceedings regarding the Club's ongoing dispute with RQL

I have also seen other references to the engagement of Hopgood Ganim in other committee meeting minutes which suggests to me that the committee members were not only aware of such expenditure but approved same.

It should also be noted that in the monthly profit and loss statements provided to the Club by its accountant there are records of the amount of money spent on legal fees each month and a year to date tally. It is my understanding that these statements are tabled at each monthly committee meeting and are available for all members to view.

POSSIBLE BREACHES

I am satisfied that there are no possible breaches that arise as a result of this allegation.

ALLEGATION

5. *The Club improperly cancelled the sponsorship of Mr Burke and/or his company in or around February 2011.*

EVIDENCE

I have been provided with a number of documents relating to this issue, including a bundle of sponsorship agreements, the last dated February 2010⁴, and correspondence sent between Mr Burke and the Club regarding the issue from January to February 2011. I have also been provided with the statements that Mr Burke made to various racing media outlets regarding same⁵.

From a review of this documentation it would seem that the following occurred:

- a) At the committee meeting held on 6 December 2010 it was resolved that the Secretary would conduct an audit of the Club's current sponsors and establish a sponsorship proposal to present to the committee. This was in response to discussion had regarding the Yalumba sponsorship from which the committee felt the Club was not getting any benefits.
- b) As a result of this resolution, Mr Clancy conducted such audit which was presented to the January 2011 meeting. The minutes of the 24 January 2011 meeting show that XXXX and Fittons Insurance were the only sponsors who contributed money to the Club and many of the current arrangements appeared to be more beneficial to the sponsor than the Club. As a result it was concluded that the current sponsorships would not be renewed in their current form.
- c) The sponsorship agreement with "Jewels of the Range" states that it has a renewal date of 12 months and can only cease upon notice in writing from either party.
- d) On 21 January 2011, Mr Burke sent an email to Mr Clancy and a racing website stating he was not receiving the level of support that he had enjoyed as a sponsor in

⁴ See attachment 10

⁵ See attachment 9

previous years and he had not received certain benefits usually afforded to his company.

- e) On 25 January 2011, Mr Clancy wrote to Mr Burke asking if he would be available for a meeting the following Monday. Mr Burke indicated in reply that he could not meet with the Chairman until the company had a written response to its earlier correspondence. He also noted the blatant disregard of the Chairman towards his company's sponsorship and recommended that there should be a sponsor's register to this doesn't happen again. He also mentioned that such oversight may contravene RQL's guidelines for clubs.
- f) A letter was then sent to Mr Burke from Mr Frappell regarding this and again suggested a meeting to discuss the matter going forward. This was subject of further correspondence from Mr Burke on 29 January 2011. This notes that once the company receives a written proposal from the Club it will consider whether it wishes to continue with the sponsorship.
- g) A further meeting was requested by Mr Clancy on 31 January which was refused by Mr Burke on 1 February.
- h) On 2 February 2011, an article was published on Brisbane Racing stating that Burke had been advised that the Club had decided to end the current sponsorship agreement that was to conclude in February 2011. On 14 February 2011, Mr Burke issued a media release stating that there would be no rings presented at the upcoming Weetwood and Toowoomba Cups.

It would seem from all of this that both parties were of the view that either party had terminated the agreement. Whilst the termination was not in accordance with the prescribed method outlined by the agreement, it would seem to reflect the mutual intentions of the parties whereby an impasse had been reached and no real offers had been made by either party to move the matter forward.

On the face of the correspondence exchanged, both parties were dissatisfied with the current arrangements but neither had suggested an alternative to those arrangements. With the February deadline for renewal fast approaching it is likely that the agreement would have expired regardless of who did so first.

What underlies the complaints made by Mr Burke is that this termination of the sponsorship agreement was part of a campaign of intentional conduct directed at him to cause him distress or harm or to harass him.

Given the circumstances whereby all sponsorship agreements were subject to an audit and review process, as properly authorized by the committee and repeated attempts were made by the Club to meet with Mr Burke to discuss a new proposal going forward, it is difficult to conclude that this was intentional conduct directed towards Mr Burke to cause him distress or to harass him, but rather a measure taken by the Club in order to promote the Club's best interests.

POSSIBLE BREACHES

This conduct potentially could constitute a breach of contract as between "Jewels of the Range" and the Club which would be a civil matter to be pursued by the individual parties.

If considered part of a campaign of harassment or intimidation, then it may fall within the ambit of a breach of Rule AR175(x) of the Australian Rules of Racing whereby the Stewards may penalize a person who in their opinion is guilty of workplace harassment of a person while the latter is acting in the course of his duties when employed, engaged or participating in the racing industry.

This particular rule and its application to this case will be considered later on in my report.

ALLEGATION

6. *The Club failed to award the perpetual trophy donated by the Burke family to be presented at the Toowoomba Cup in 2011.*

EVIDENCE

Mr Clancy has stated in his interview with me that this failure was attributable to him but that it was merely an oversight on his part. At that particular time, he was only relatively new to the Club and was working long hours to get all the preparations done for the Weetwood and Toowoomba Cup racedays.

He did note that it was not just Mr Burke's family trophy that was overlooked in the presentation, but also the Weetwood Handicap trophy as well, belonging to another family. Additionally, the owners of the winner of the Toowoomba Cup were not present on the day in any event to receive the trophy.

Since this time, the trophy has been engraved with the relevant winner.

POSSIBLE BREACHES

Whilst this may fall within the overall allegation of harassment and bullying, on its own it does not fall within the ambit of any possible breaches.

In any event I am satisfied that it was a genuine oversight and not intentional conduct directed at Mr Burke, given it was not just his family's trophy that was overlooked on the day.

ALLEGATION

- 7. Mr Frappell improperly obtained a slasher from the Club.*

EVIDENCE

I am informed that around the time of the floods in January, the slasher was in high demand in order to keep the track looking tidy for race days. In late January 2011 it broke down. As a result Mr Frappell offered to try and fix it, charging the Club only for parts as necessary. This is recorded in the minutes of the 17 February 2011 meeting where there were no objections by the committee for Mr Frappell to take the slasher to his residence for repairs.

At the 7 April 2011 meeting Mr Frappell reported that the slasher had been assessed and it was uneconomical to repair as the gearbox was severely damaged. Mr Frappell offered to buy it for \$100 and use it for parts. The minutes reflect that this was agreed by the committee.

Since that time I am informed that the slasher has been returned to the Club by Mr Frappell and no such \$100 was ever paid for it. It is still inoperable.

POSSIBLE BREACHES

Potentially this could have amounted to misappropriation of Club property for a member's use. It is arguable what benefit the slasher was to Mr Frappell given it was inoperable and it is unknown how much the parts would have been worth compared to the consideration offered by him.

Ultimately however, Mr Frappell came to the conclusion that it was not worthwhile or perhaps understood the implications that could flow from such an arrangement and has returned the property to the Club for Club use.

ALLEGATION

8. *Dr Morgan (Committee member) on behalf of Mr Frappell made an improper offer to Mr Burke of money (\$10,000) to settle the dispute which is alleged to amount to bribery.*

EVIDENCE

This allegation arose as a result of discussions between Dr Morgan and Mr Burke on 15 July 2011. On this day, the Chairman was proposing to call a Special General Meeting for the purpose of moving a motion that Mr Burke be removed from the committee by mail to be sent at the end of the day.

Dr Morgan advised me that he in fact was in disagreement with this course of action and took it upon himself that day to try to prevent this from occurring. As a result he spoke to Mr Frappell and asked whether there was another way of dealing with the situation. Mr Frappell indicated to him that he could make enquiries and see what he could do.

Thus, Dr Morgan spoke with Mr Burke by telephone and discussed with him the possibility of him resigning and all parties walking away from the litigation that had been commenced and whether some money to cover legal costs already incurred would help. Mr Burke was at first not that keen but Dr Morgan advises that towards the end of the discussion he was amiable to negotiating a settlement.

Dr Morgan spoke with Mr Frappell about what sort of figure the Club would look at paying and Mr Frappell indicated that it would cost the Club between \$5000 to \$10,000 to hold a Special General Meeting so something in that range could be considered. He did stress however that he would have to take any proposal to the committee first for approval but if it resolved matters once and for all, he would support it. This however was not communicated to Mr Burke.

Dr Morgan conveyed to Mr Burke the offer of up to \$10,000. Mr Burke indicated that this was not enough and that he had spent a lot more than that on legal costs. He counter-offered with \$30,000 (according to Dr Morgan). Mr Frappell was unable to consider this amount and again indicated that they couldn't go beyond \$10,000.

Dr Morgan states that Mr Burke was not keen on accepting this amount and ended discussions with Dr Morgan. In a final attempt to resolve the matter, Dr Morgan states he sent a text message to Mr Burke indicating words to the effect that Burke would get a guaranteed \$10,000 if he resigned and asked him to call Dr Morgan to discuss further. Dr Morgan stressed to me that these were his words not Mr Frappell's and Mr Frappell was always clear that he would have to take any proposal to the committee first.

Ultimately this resulted in a "without prejudice" letter being sent by Mr Burke's lawyer Barry Atkins offering to settle for \$20,000 on certain terms. This was rejected by the Club and the notice of Special General Meeting was sent out.

It was soon after this that Mr Burke sent a letter out to all members stating the following:

"FACT: TTC are in the wrong and Frappell knows this because he offered me \$10,000 of Club Members money to resign via an SMS on 18 July 2011."

In response to this letter, Mr Frappell also wrote to all members seeking to respond to such allegation. In the process of defending his position he revealed the "without prejudice" letter sent by Burke's lawyer making the \$20,000 offer.

I am advised that this was released upon taking legal advice from Mr Bolton first. Mr Bolton advised me that he was of the view that because Mr Burke had misrepresented the circumstances surrounding such negotiations and had made some serious allegations, Mr Frappell and the Club were within their rights to respond in the way they did and disclose the true nature of the discussions.

POSSIBLE BREACHES

It has been alleged that such conduct may constitute bribery or an offence of offering secret commissions under the Criminal Code. These are matters that should be reported to the police should Mr Burke wish to do so.

Certainly such conduct if it amounted to a bribe of some sort would fall within the ambit of conduct that was corrupt, improper or constituted dishonourable actions in connection with racing (see AR 175(a)) or would constitute misconduct, improper conduct or unseemly behavior (see AR 175 (q)) and therefore would be a breach of the Australian Rules of Racing.

In my view however it is important to view the offer in the context of the surrounding circumstances which would appear to resemble some form of settlement negotiations of which Mr Burke was ultimately a willing participant as evidenced by the making of counter-offers and engaging in such discussions.

It is also important to note that the negotiations were instigated by Dr Morgan, not Mr Frappell and Mr Frappell at all times was insistent that the committee would have to agree to any such settlement proposals first before they were accepted.

It is clear that this was not communicated to Mr Burke by Dr Morgan and hence may explain why Mr Burke had some concerns about the offer but in the context of him also making offers via his lawyer in an attempt to resolve the matter, it is difficult to conclude that such conduct would form the basis of a breach of the abovementioned rules.

ALLEGATION

9. *Committee members have not reported the amount of free alcohol and food obtained by them on raceday.*

EVIDENCE

During the course of my investigation I have gathered information from the Club regarding this policy. As I understand it, such policy is set out in a formal document entitled "Toowoomba Turf Club Committee Expenditure Policy" which is attached⁶.

This policy provides for committee members to receive a bar tab for drinks on race days which is kept by the bar staff upon the members showing their allocated lanyards which display their names. Drinks are recorded against each member according to consumption

⁶ See attachment 12

and these records are forwarded to Mr Clancy at the end of each week. This expenditure is including in the profit and loss statements prepared each month by the Club's accountant and is recorded as "Raceday Entertainment Committee".

Generally speaking this seems to be in the amount of \$200 to \$300 per month in total.

As I understand it, this policy used to include meals as well and was often abused by previous committees. I understand that some \$30,000 was spent in the previous financial year on such expenses.

Thus, the current committee's expenditure in relation to this is much less than previous committees and seemingly better controlled and reported than it was in the past.

POSSIBLE BREACHES

I am satisfied that there are no breaches of any rules or policies disclosed by this conduct.

ALLEGATION

10. Committee members aggressively confronted Mr Burke on 10 February 2011.

EVIDENCE

Mr Burke has alleged that on the relevant day he attended at the Club premises in order to view some minutes of meetings as arranged with Mr Clancy. At this time he saw Mr Norman Pankhurst and some other members in Mr Clancy's office. He acknowledged them. The next thing he recalls is Allan Gee, Jim Cosgrove and Bob Frappell appearing seemingly out of nowhere and move towards him in a hurried fashion.

This caused Mr Burke concern. Mr Frappell indicated that he wanted to speak with Mr Burke upstairs about something. Mr Burke was unaware that this would be requested of him that day and was unsure what it was about. He felt that they were physically crowding him at this time also.

Mr Burke stated he was there to collect his ring boxes and read some minutes and that was it. Clancy and Gee went to look for the boxes in the safe and Mr Burke followed. A quick search could not reveal the whereabouts of the boxes. Mr Burke then attempted to leave.

Mr Frappell again insisted that he should come upstairs to discuss something. Mr Burke felt this was said in an aggressive tone. Mr Burke refused and went to walk outside to his car to leave.

As he was doing this, Frappell followed him. Burke told him that Frappell was not going to bully him. Pankhurst then stepped forward and placed a hand on Burke's shoulder and said "Trust me, I will make sure he does not bully you."

Cosgrove at this time walked outside as well followed by Gee and Clancy. Burke indicated he was leaving. Pankhurst yelled out something which Burke does not recall. He recalls Frappell telling him to shut up and the Frappell yelled at him to look at some rule. Burke quickly got into his car and drove away. He reported the matter immediately to Jamie Orchard.

The other committee members involved in the incident have provided me with written statements regarding their account of the incident. These apparently were compiled at the behest of Mr Frappell at the time. These generally accord with what Mr Burke says about the order of events and generally what was said although the other members do not recall the level of hostility and aggression that Burke recalls.

Mr Frappell also told me that he thought Pankhurst may have frightened Burke by saying that they needed to speak to him about the serious things that Burke had done. This is what prompted Frappell to tell Pankhurst to shut up.

I have also listened to an audio recording that was made at the time on an iPhone. Whilst the quality of same is not great, it is possible to hear the general gist of what occurred. What was apparent to me upon listening to the recording was the escalation of force in Mr Frappell's voice when he was attempting to speak to Mr Burke. It certainly in my view wasn't a calm conversation towards the end. It is also clear that others were involved in attempting to get Mr Burke to stay and talk with them and again, they seemed fairly insistent that this occur.

I can appreciate how Mr Burke may have felt intimidated and harassed by this incident.

Mr Frappell has told me that the reason he wanted to speak to Mr Burke so urgently that day was to advise him of the issues surrounding his membership and the legal advice that Hopgood Ganim had given the Club. He wanted to let Mr Burke know that he should get his

own legal advice about the situation and felt this was an obligation he had as chairman to convey this information to Burke.

Whilst this may well be the case, I am skeptical about the manner in which it was approached and it is my view that a more appropriate approach may have been to desist in attempting to have a meeting with Mr Burke then and there and either call him or put the concerns in writing.

This is of course easy to ponder with the benefit of hindsight.

POSSIBLE BREACHES

This conduct could potentially fall within the ambit of improper or constituted dishonourable actions in connection with racing (see AR 175(a)) or would constitute misconduct, improper conduct or unseemly behavior (see AR 175 (q)) and therefore would be a breach of the Australian Rules of Racing.

It would be a matter for RQL and its Stewards to determine whether there were sufficient grounds to charge any persons involved. I would have thought that even if a charge was made out, any penalty imposed would be towards the lower end of the scale of seriousness and may not warrant any further action now, considering the passing of time since the incident occurred.

I do note however that this incident appears to have been the impetus for the defamation action commenced against Mr Burke and any determination by RQL regarding this may be of some importance to the ultimate outcome of these proceedings.

ALLEGATION

11. The Club and/or Committee members have engaged in harassment, intimidation and bullying of Mr Burke by engaging in a number of specific acts.

EVIDENCE

I have set out each separate act which forms the basis of the overall allegation that the Club and/or committee members have engaged in the said harassment, intimidation and bullying of Mr Burke in the table below along with some discussion of same.

ALLEGATION	DISCUSSION
<p>Not keeping Mr Burke aware of issues while he was on sick leave from December 2010 to March 2011 and not providing him with minutes of the committee meetings during this period.</p>	<p>At the relevant time, Mr Burke was on a leave of absence due to a serious medical condition. As a result the Club committee formed the view that it was unnecessary and undesirable to concern Mr Burke with the day to day affairs of the Club.</p> <p>This seems to be a reasonable response to the circumstances.</p>
<p>Not replying to Mr Burke's emails during this time.</p>	<p>I have been provided copies of a number of emails sent during this period by Mr Burke and I also have been provided with the responses that Mr Clancy sent where necessary. By and large Mr Clancy responded appropriately where necessary.</p>
<p>Not complying with sponsorship arrangements.</p>	<p>This allegation has been dealt with in some detail earlier on in my report. It is suffice to say here that the Club formed the view, rightly or wrongly, that the sponsorship agreement had been terminated by Mr Burke in early February 2011 and as a result, it did not continue with the arrangements under the previous agreement.</p>
<p>Not allowing Mr Burke access to minutes when requests were specifically made on 3 and 9 February 2011.</p>	<p>The <i>Associations Incorporation Act 1981</i> provides by way of section 57B that if asked by a member of the association, the Secretary must, within 28 days after the request is made, make the minute book for a particular general meeting available for inspection by the member at a mutually agreed time and place and give copies of the minutes of the meeting. The association may require the member to pay the reasonable costs of providing copies of same.</p> <p>As I understand it, Mr Burke requested to look at the minutes of meetings he had missed during his leave of absence on 3 and 9 February 2011 and Mr Clancy</p>

	<p>arranged with him to come and inspect same on 10 February 2011. Mr Burke attended on 10 February 2011 at the Club and this was when the incident occurred with Mr Frappell and other committee members which resulted in Mr Burke leaving without looking at the minutes.</p> <p>In my view Mr Clancy complied with his obligations under section 57B by making the minute book available for inspection on 10 February 2011.</p>
<p>Engaging in a confrontation with Mr Burke on 10 February 2011.</p>	<p>This allegation has already been dealt with in my report.</p> <p>As already observed it is clear that this was not a pleasant interaction between Mr Burke and the other members present and it is understandable that Mr Burke felt harassed at the time. This however would not constitute harassment and intimidation on its own.</p> <p>It should be noted that under the <i>Prevention of Workplace Harassment Code of Practice 2004</i> issued by the Department of Justice and Attorney General to be read in conjunction with the <i>Workplace Health and Safety Act 1995</i>, workplace harassment is defined as repeated behaviour by a person. Thus, simply one incident would not be enough to constitute workplace harassment under the relevant legislation.</p>
<p>Terminating Mr Burke's membership on 14 February 2011 and there being no record of this in the minutes of the committee meeting prior to this date.</p>	<p>As I understand it, the Club formed the view, after receiving legal advice, that Mr Burke's membership was invalid due to his actions in appointing his wife as the nominee under the corporate membership and not applying for membership in his own right. It was not the case that the Club terminated his membership but rather formed the view that Mr Burke was not a member under the Rules.</p> <p>This therefore did not require committee approval in</p>

	<p>order to make that determination.</p> <p>Under section 71 of the <i>Associations Incorporation Act 1981</i>, upon incorporation, the rules of the association shall constitute the terms of a contract between the members and the association. Where a member is deprived by a decision of that association of a right conferred on the member by the rules, the Supreme Court shall have jurisdiction to adjudicate upon the validity of that decision under the rules.</p> <p>In the circumstance this was a matter whereby only the Supreme Court could provide a resolution, given the advice that the Club had received regarding the interpretation of the rules.</p>
Failing to give Mr Burke notice of the committee meeting to be held in March 2011.	I am informed that Mr Burke did not receive a notice of the committee meeting to be held in March 2011 as at the relevant time the committee had determined that Mr Burke was no longer a valid member of the Club or the committee.
Advertising Mr Burke's position as a casual vacancy in the Toowoomba Chronicle on 13 April 2011.	<p>The Supreme Court application made by Mr Burke was filed on or about 13 April 2011. A determination of that application was made on 20 April 2011.</p> <p>Prior to this and indeed prior to 13 April 2011, the committee resolved to take steps to fill the vacancy that was created by Mr Burke's membership being deemed invalid. This was resolved by the committee at the meeting held on 7 April 2011, as is recorded in the minutes.</p> <p>I can see nothing inappropriate about this course of action being taken at that time.</p>
Making a false statement	I have been provided with a copy of the media release

<p>about the "re-instatement" of Mr Burke's membership subsequent to the Supreme Court action regarding his membership status.</p>	<p>issued by the Club after the Supreme Court decision was made. Whilst the use of the word "reinstated" is perhaps clumsy given the declaration was that Mr Burke was a member of the Club (as opposed to being removed and then added again), I am satisfied that it was not intentionally used to incite Mr Burke or cause distress to him.</p> <p>Mr Clancy drafted the media release and indicated to me that it was supposed to be a positive story about the Club and Mr Burke moving forward. I accept this.</p>
<p>Graham Healy stated to Mr Burke at a raceday soon after the Supreme Court proceedings were concluded that the committee members wanted to rip his head off and that the next meeting was going to be a fiery one;</p>	<p>After interviewing Mr Healy and Mr Warren who was also present for this conversation had on 30 April 2011, I am satisfied that whilst Mr Healy did indicate to Mr Burke that some committee members may want to rip his head off at the next meeting, this was in the context of Mr Healy providing some friendly advice to Mr Burke with respect to the potential hostility that may be projected by other members at the next meeting given the events that had unfolded up until this time.</p> <p>Mr Warren stated to me that he recalled Mr Burke being happy with the outcome of the conversation afterwards as Mr Healy had indicated he would look into some of the concerns Mr Burke had raised.</p>
<p>Resisting Mr Burke's access to records on 5 May 2011.</p>	<p>Mr Clancy is unaware of any refusal to access records as he states he has always tried to accommodate Mr Burke's requests.</p>
<p>Failing to disclose financials in minutes.</p>	<p>I believe this allegation is in relation to a failure to disclose the true financial position of the Club at committee meetings and in the minutes of same.</p> <p>I have been provided with profit and loss statements for</p>

	<p>the period from July 2010 to May 2011. I understand that June and July are currently being prepared by the accountant.</p> <p>I have also discussed the matter with Mr Turnbull, treasurer of the Club and Mr Clancy.</p> <p>As I understand it, every month the Club's appointed accountant prepares profit and loss statements for the Club and these are presented to the committee by Mr Turnbull. He usually provides an overview of the Club's financial position and raises any particular issues of relevance.</p> <p>After conducting a review of the minutes of the meetings held in the period from September to present, I cannot see any occasion when this did not occur. The profit and loss statements provided also seem comprehensive.</p>
Preventing Channel 7 from using Mr Burke's gift as prizes.	I understand that this was a result of the sponsorship agreement coming to an end.
Removing Mr Burke's sponsorship signs.	As above.
Losing ring stands belonging to Mr Burke.	I have been advised by Mr Clancy and Mr Frappell that these ring boxes have been located and are available for Mr Burke to collect.
Failing to include Mr Burke's name in the list of committee members in the raceday program for the	This was prior to the Supreme Court action in April 2011. I understand that Mr Burke's name was omitted at the time as he was considered by the club to no longer be a valid member.

Weetwood/Toowoomba Cup held on 30 March 2011.	
Refusing access to sponsorship and financial registry on 12 May 2011.	<p>I am advised that at this time, Mr Burke via his lawyers had indicated that legal action concerning the termination of his sponsorship agreement was being contemplated. As a result, upon such a request being made to inspect the sponsorship and financial registry on 12 May 2011, the Club through its lawyers indicated that Mr Burke could have access to such documents provided he gave an undertaking that such information would not be used against the Club in any legal proceedings and was for the purposes of Mr Burke fulfilling his obligations as a committee member.</p> <p>No such undertaking was provided and as a result access was never arranged.</p> <p>Section 59C of the <i>Associations Incorporation Act 1981</i> states that if asked by a member, the Secretary must within 28 days of such request, make the association's financial documents available for inspection by the member at a mutually convenient time and place and give the member copies of the documents. This carries a maximum penalty of 4 penalty units which is \$400.</p> <p>Whilst it is understandable why the Club would be apprehensive to allow Mr Burke such access in these circumstances, it would appear that such refusal was in breach of the Act.</p>
Sending a notice on 30 June 2011 of a special meeting to be held where the first item on the agenda was a motion of no confidence in Anthony	The committee accepts that this notice was sent. I am advised that at the time, a number of committee members were angry and upset with Mr Burke's conduct leading up to this meeting and approached Mr Frappell to move this motion in order to convey their

<p>Burke which was later retracted after legal action was threatened.</p>	<p>feelings to Mr Burke.</p> <p>It was considered that the committee was having difficulty getting on with running the affairs of the Club when it was being constantly bombarded with correspondence from Mr Burke's lawyer making requests and demands that needed responding to.</p> <p>Upon receiving such notice, Mr Burke's lawyer Mr Atkins advised the Club that they would be taking further Supreme Court action to prevent such a motion being put.</p> <p>As a result, in order to avoid further legal costs, the committee removed it from the agenda.</p> <p>Instead the committee resolved on 7 July 2011 to call a Special General Meeting to consider a resolution seeking Burke's removal from the committee. This was carried unanimously.</p> <p>Whilst I accept that the inclusion of such a motion on the committee's agenda was effected to bring about the resignation of Mr Burke from the committee and no doubt caused Mr Burke to feel harassed and victimised by the committee, this must also be viewed in the context of ongoing hostility and antagonism which had transpired between the parties over the months leading up to this meeting.</p> <p>It is also clear that a significant volume of contentious correspondence was sent by Mr Atkins to the Club and its lawyers which did nothing but inflame the situation in my view.</p> <p>Ultimately a motion of no confidence had no practical</p>
---------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	<p>effect and was purely to voice the feelings of the committee at the time.</p>
<p>Refusing Mr Burke's application for leave of absence made on 14 July 2011.</p>	<p>I have been provided with the correspondence sent by Mr Burke's lawyer requesting such leave and the response from the Club.</p> <p>Mr Burke's request was accompanied by a medical certificate which stated he was unfit for work but provided no other details as to why.</p> <p>This caused the Club some concern as Mr Burke had been seen to be working in his jeweller's business. As a result the Club, via its lawyers, requested further details from Mr Burke as to this medical condition and why it made him unfit to continue working on the committee. The letter stated that the request for leave would not be granted until further material was provided as to his medical condition.</p> <p>No such further material was provided.</p> <p>I spoke to Mr Burke about this and he advised me that the reason for the request was that [REDACTED] [REDACTED] but he was extremely reluctant to reveal this information to the Club as he feared it would not remain confidential and be somehow used against him.</p> <p>He was of the view that the Club should respect the opinion of the doctor who provided the certificate and his privacy and not request any further information from him.</p> <p>I can understand why revealing the details of this condition to the Club in the circumstances caused Mr</p>

	<p>Burke concerns at this time, particularly given the sensitivity of the information and the level of hostility within the relationship between him and the Club at this point in time.</p> <p>I can also somewhat understand the Club's reluctance to simply grant the leave of absence for the same reasons.</p> <p>However, I am of the view that given a doctor has certified to the fact that Mr Burke was unfit for work, and there is no reason to question such opinion, the Club should have accepted this and granted the leave to Mr Burke.</p> <p>This is particularly so when the leave relates to a voluntary position held within an association whereby Mr Burke's absence would not inconvenience the Club in any real way.</p>
<p>Refusing to disclose a copy of an audio recording of the events of 10 February 2011 despite numerous requests for it.</p>	<p>I understand that a recording of the incident on 10 February 2011 was made on an iPhone.</p> <p>This is in the possession of the person who made the recording.</p> <p>There is no obligation upon that person to disclose this recording to Mr Burke at this time.</p> <p>I do note that this incident forms part of the defamation proceedings currently on foot between Frappell and Burke and this recording, should it be sought to be relied upon by Frappell in those proceedings, will ultimately be discoverable during the course of such proceedings. Mr Frappell's lawyers have indicated that</p>

	the recording will be duly disclosed at that time.
Sending a copy of a "Without Prejudice" letter dated 15 July 2011 sent by Mr Burke's lawyer including an offer of settlement to all club members and two journalists with a covering letter which was defamatory.	<p>It is accepted by Mr Frappell that he did send out the "without prejudice" letter to members. He states that this was because Mr Burke had made allegations that an offer made during negotiations by Mr Frappell amounted effectively to a bribe to secure Mr Burke's resignation.</p> <p>It is clear that this offer of \$10,000 to resign was made in the context of some negotiations between the parties in an attempt to resolve the disputes between the parties including legal proceedings.</p> <p>The statements made by Mr Burke in relation to this offer in my view misrepresented the true context within which this offer was made and Mr Frappell was entitled to clarify his position particularly given the serious nature of the allegations made.</p> <p>Whether the release of the letter in its entirety was necessary to defend Mr Frappell's position is arguable. Nevertheless Mr Frappell took legal advice upon the issue and acted in response to claims made by Mr Burke.</p>
Filing a defamation claim.	This was a private matter for Mr Frappell to commence upon seeking legal advice.
Ending the committee meeting held on 21 July 2011 early and prior to Mr Burke's pre-arranged time of arrival in addition to Mr Frappell refusing to allow Mr Burke to read the minutes of	<p>I am advised that this meeting commenced at 7pm. Prior to the meeting Mr Burke had advised that he would not be able to make the meeting until 8 or 8:30pm. The meeting ended at about 8:20pm, about 10 minutes before Mr Burke arrived.</p> <p>Mr Frappell and the other committee members</p>

<p>that meeting when he did arrive.</p>	<p>indicated to me that this meeting was shorter than normal as the committee had already held a meeting that month on 7 July 2011 (which was the meeting the proposed motion of no confidence was intended to be put).</p> <p>The minutes of 7 July 2011 reveal that some Club business was dealt with at that meeting which would explain why the meeting on 21 July was shorter than normal.</p> <p>I am satisfied that there was nothing sinister about this meeting ending when it did.</p> <p>When Mr Burke arrived he requested to see the minutes of the meeting. He was advised that Mr Clancy had already taken them back to the office and I understand that Mr Burke then went to look for Mr Clancy. I do not consider that this constituted a refusal by Frappell of Mr Burke to view the minutes as alleged.</p>
<p>Scott, Volz, Healy and Turnbull sent Burke emails on or around 29 May 2011 which were harassing and intimidating.</p>	<p>I have been provided with copies of these emails and the original email sent by Mr Burke.</p> <p>I am satisfied that the contents of these emails are appropriate responses to the email sent by Mr Burke on 29 May 2011.</p>

POSSIBLE BREACHES

As part of its obligations under the *Racing Act 2002*, RQL has enacted a policy entitled *“Awareness of Duties Policy, including Sexual Harassment, Bullying and Unlawful Discrimination in the Racing Industry”*.

This policy states relevantly:

"It is in the interest of the Queensland racing industry and the public generally that the industry is a safe place to work, free from unsafe work practices, unlawful discrimination, sexual harassment, bullying, victimization and misconduct. Racing Queensland will not tolerate these forms of behavior and will take action when necessary to prevent sexual harassment, bullying, victimization and unlawful discrimination from occurring in the industry."

Such policy applies to all licensees and provides a standard of conduct for them to observe. A manual has been produced which is to serve as a guide to licensees and participants in the industry. Ultimately any conduct that could amount to sexual harassment, bullying, victimization and unlawful discrimination may be penalized by way of an application of the relevant Rules of Racing by RQL as against licensees.

The Australian Rules of Racing including the following rules that may apply to such conduct:

"AR. 175. *The Principal Racing Authority or the Stewards may penalize:*

(a) Any person, who, in their opinion, has been guilty of any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing.

.....

(q) Any person who in their opinion is guilty of any misconduct, improper conduct or unseemly behavior.

.....

(x) Any person who in their opinion is guilty of workplace harassment of a person while the latter is acting in the course of his duties when employed, engaged or participating in the racing industry."

I have also been referred to the *Workplace Health and Safety Act 1995* and the *Prevention of Workplace Harassment Code of Practice 2004*. In order for these to apply to Mr Burke it would be necessary for him to fall within the definition of "worker" under section 11 of the Act. Conversely the Club would also have to fall within the definition of "employer" pursuant to section 10 of the Act.

It is my view that it is unlikely that Mr Burke and the Club would come within the ambit of

these provisions whereby Mr Burke is a voluntary committee member, elected to that role by other members to manage the affairs of the Club as opposed to having been engaged by the Club to do work for or at the direction of the Club.

Upon a review of the allegations made by Mr Burke that are said to constitute a campaign of harassment, intimidation and/or bullying of Mr Burke by the Club and/or committee members, I am of the view that this has not occurred.

Whilst I accept that on face value the accumulation of issues which have been said to constitute such harassment and bullying presents a picture of an intentional course of conduct directed at Mr Burke to cause him to leave the Club, it is imperative that this must be considered in its proper context.

It is clear that in this case, both parties have reacted to each other in a manner which has created hostility and mistrust. Any actions taken by the Club initially regarding Mr Burke's sponsorship agreement and his membership in my view were done in good faith and in accordance with what the Club believed at the time to be the correct course of action to take and in the best interests of the Club. Mr Burke's reactions to these issues involved making a number of public statements which presented the Club and its members in an unfavourable light. This then prompted further reactions by the Club in response which ultimately led to the disintegration of the relationship between the parties whereby a "tit for tat" approach was adopted. As each party reacted, the actions in response escalated in intensity and hostility.

I have no doubt that both Mr Burke and the committee members feel genuinely aggrieved by the circumstances that have transpired over the last nine months. I also am satisfied that on at least the 10th of February 2011, the actions of the committee members present was of a nature that would have caused Mr Burke to feel a level of harassment and intimidation.

However, not all unpleasant and indeed distressing interactions between persons within the racing industry will amount to conduct that should be penalized by the control body.

This is not an example of a deliberate course of conduct undertaken by one party against another that would necessarily amount to bullying or workplace harassment as defined under the relevant Workplace Health and Safety legislation and codes.

It is a series of unfortunate and no doubt unpleasant and distressing incidences that has led to an untenable position for both Mr Burke and the Club.

CONCLUSIONS AND RECOMMENDATIONS

RQL's POWERS

Under the *Racing Act 2002*, RQL may take certain actions against licensed clubs. Chapter 3, Part 4 sets out the various powers which include:

- Suspending or cancelling a licensee's licence;
- Issuing a Show Cause Notice as to why such suspension or cancellation should not occur;
- Censuring a licensed club; and
- Directing a licensed club to rectify a matter.

Part 5 of Chapter 3 sets out provisions that apply to licensed clubs and section 108 provides that contravention of this part by a licensed club constitutes grounds for suspending or cancelling a licensed club's licence. This part includes a breach of section 112.

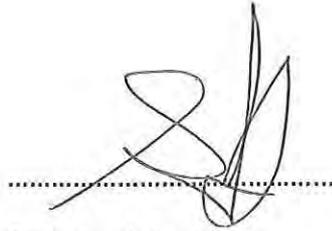
SUMMARY OF FINDINGS

As a result of my investigation, I make the following findings:

1. The motions passed by the committee on 17 February 2011 and 17 March 2011 to fund the legal costs associated with the defamation claim commenced by Frappell against Burke and the subsequent payment of invoices issued to Frappell by Hopgood Ganim by the Club could constitute a breach of section 112 of the *Racing Act 2002*.
2. The actions of Frappell, Pankhurst, Gee and Cosgrove on 10 February 2011 directed towards Burke at the Club could constitute a breach of AR. 175 (a) and/or AR. 175 (q) of the Australian Rules of Racing.
3. The Secretary of the Club breached section 59C of the *Associations Incorporation Act 1981* by failing to allow Burke to inspect the financials of the Club as requested on 12 May 2011.
4. The Club unreasonably refused Burke's request for a leave of absence upon production of a medical certificate certifying he was unfit for work.

This is attachment marked "AB" ¹⁵⁷

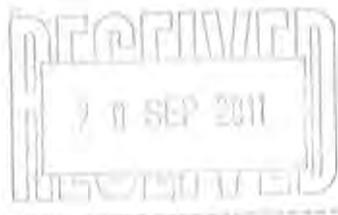
Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the left, positioned above a dotted line.

Anthony John Burke

A handwritten signature in black ink, appearing as a stylized 'BA' with a flourish, positioned above a dotted line.

Barry Edward Atkins, Solicitor Witness



AB 157

15 September 2011



**RACING
QUEENSLAND**

Mr Barry Atkins
@ Law
Parkview Chambers
123 Margaret Street
TOOWOOMBA QLD 4350

By facsimile: (07) 4632 9529

Racing Queensland Limited
A.B.N 52 142 786 874
Racecourse Rd Deagon QLD 4017
PO Box 63 Sandgate QLD 4017
T 07 3869 9777
F 07 3269 6404
E info@racingqueensland.com.au
W www.racingqueensland.com.au

Dear Mr Atkins,

RE: INVESTIGATION REPORT

I understand you want to raise issues with evidence given in the investigation report. We have invited parties to comment in respect of that report by 28 September 2011.

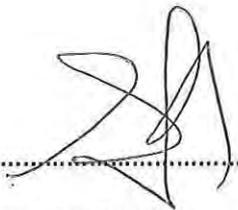
If you have any comments about the report we would be grateful if you would submit your comments in writing by 28 September 2011.

Yours sincerely,

A.J.Orchard
Director of Integrity Operations

This is attachment marked "AB" ¹⁵⁸

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013



.....

Anthony John Burke



.....

Barry Edward Atkins, Solicitor Witness

From: Jamie Orchard <jorchard@racingqueensland.com.au>
Sent: Friday, 16 September 2011 3:33 PM
To: 'Barry Atkins'
Subject: RE: Investigation of TTC

Dear Mr Atkins,

I wish to clarify one issue at the outset. You seem to be proceeding on the misunderstanding that the report provided to you is an "interim" report. That is not the case. The report provided to you is the Investigation Report prepared by the independent investigator Ms Freeman. RQL ensured that Ms Freeman had the full list of Mr Burke's allegations and access to all relevant witnesses and material to make a finding on those allegations and she has now done so.

The report was provided to you so that you understood the results of her investigation. This affords you an opportunity to make any comments you think appropriate prior to RQL determining what action, if any, to take in response to her findings. However by affording you an opportunity to comment on the report, it was not intended that the findings be re-opened for further investigation. I do not intend to have any of the matters re-investigated. Accordingly, while Mr Burke retains his rights to access certain information in the possession of the club, I do not intend providing further information directly from RQL.

I am satisfied (as is Ms Freeman) that she had access to everything she needed to form a view on the various matters. In particular, I note that Ms Freeman had what she considered to be the relevant Committee Minutes and the sub committee minutes of 5 and 6 November 2011 (to which you refer). Moreover Ms Freeman had available to her all correspondence that was in the possession of RQL and other material obtained directly by her in the course of her investigation.

Finally, I note that while the club was given 28 days to advise what it proposed to do in respect of the matters identified in the report, it has indicated that it may be providing that advice sooner than that, potentially next week. Accordingly, if you have any comments that you believe RQL should take into account in determining what action, if any, to take please provide those comments as soon as possible.

Yours sincerely,

Jamie Orchard

Director of Integrity Operations



PO Box 63, Sandgate QLD 4017

P +61 7 3869 9742

F +61 7 3269 8268

RACING
QUEENSLAND

M 0417 791 596

E jorchard@racingqueensland.com.au

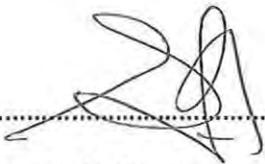
W www.racingqueensland.com.au

From: Barry Atkins [mailto:bazlawyer@atlaw.net.au]
Sent: Friday, 16 September 2011 12:10 PM
To: Jamie Orchard
Subject: Investigation of TTC

Dear Mr. Orchard,

This is attachment marked "AB/59"

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013

A handwritten signature in black ink, appearing to be 'AJB', written over a horizontal dotted line.

Anthony John Burke

A handwritten signature in black ink, appearing to be 'BA', written over a horizontal dotted line.

Barry Edward Atkins, Solicitor Witness

AB ~~158~~ 159

Barry Atkins

From: Jamie Orchard <jorchard@racingqueensland.com.au>
Sent: Friday, 16 September 2011 3:33 PM
To: 'Barry Atkins'
Subject: RE: Investigation of TTC

Dear Mr Atkins,

I wish to clarify one issue at the outset. You seem to be preceding on the misunderstanding that the report provided to you is an "interim" report. That is not the case. The report provided to you is the Investigation Report prepared by the independent investigator Ms Freeman. RQL ensured that Ms Freeman had the full list of Mr Burke's allegations and access to all relevant witnesses and material to make a finding on those allegations and she has now done so.

The report was provided to you so that you understood the results of her investigation. This affords you an opportunity to make any comments you think appropriate prior to RQL determining what action, if any, to take in response to her findings. However by affording you an opportunity to comment on the report, it was not intended that the findings be re-opened for further investigation. I do not intend to have any of the matters re-investigated. Accordingly, while Mr Burke retains his rights to access certain information in the possession of the club, I do not intend providing further information directly from RQL.

I am satisfied (as is Ms Freeman) that she had access to everything she needed to form a view on the various matters. In particular, I note that Ms Freeman had what she considered to be the relevant Committee Minutes and the sub committee minutes of 5 and 6 November 2011 (to which you refer). Moreover Ms Freeman had available to her all correspondence that was in the possession of RQL and other material obtained directly by her in the course of her investigation.

Finally, I note that while the club was given 28 days to advise what it proposed to do in respect of the matters identified in the report, it has indicated that it may be providing that advice sooner than that, potentially next week. Accordingly, if you have any comments that you believe RQL should take into account in determining what action, if any, to take please provide those comments as soon as possible.

Yours sincerely,

Jamie Orchard

Director of Integrity Operations

PO Box 63, Sandgate QLD 4017

P +61 7 3869 9742

F +61 7 3269 8268

M 0417 791 596

E jorchard@racingqueensland.com.au

W www.racingqueensland.com.au



RACING
QUEENSLAND

AB ~~158~~ 159

From: Barry Atkins [mailto:bazlawyer@atlaw.net.au]
Sent: Friday, 16 September 2011 12:10 PM
To: Jamie Orchard
Subject: Investigation of TTC

Dear Mr. Orchard,

I confirm my telephone recorded message yesterday that the Committee members who gave evidence to the investigator have lied to barrister Freeman.

I have not had the opportunity to read the interim report until Wednesday 14/9/11.

Specifically the evidence given that the TTC has not agreed to pay the legal costs of Aaron Clancy for the assault on Anthony Burke is not true.

I can prove they have lied once Mr. Burke and I inspect the minutes of the Committee meetings. Previously Mr. Clancy has denied Mr. Burke the right to have me as his legal representative present at the inspection of Minutes. Given Mr. Bolton was present when the evidence was taken by the investigator, there can be no objection to me being present when Mr. Burke inspects the Minutes.

To prevent argument and delay could you please direct TTC to make the entire Minute book available for Mr. Burke and I to inspect at the offices of RQL in Toowoomba next week. We are happy for a steward to be present during the inspection.

We note that the investigator was not provided with a copy of the November Minutes. Based on the interim report there is most certainly material in those minutes directly relevant to the investigation. Once we read the minutes we are happy to direct her attention to the relevant parts.

On our initial reading of the interim report there are **NUMEROUS** other instances of the individuals interviewed misleading the investigator.

For us to be able to provide evidence of probative value we need to see the Minutes of the executive sub-committee meeting held 5 and 6 November 2010. We firmly believe that Mr. Burke is entitled to see those Minutes in his capacity as a Committee Member, but again, to prevent delay, argument and cost we ask you to provide us with copies of those Minutes.

Similarly, to enable Mr. Burke to prepare a Response to the interim report, with a view to ensuring Barrister Freeman is fully appraised of all relevant facts pertaining to the investigation, we ask you provide us with copies of all letters in your possession from Hopgood Ganim to the TTC prior to 1/3/11 which was the earliest date there was an indication of possible litigation creating a suggestion of privilege.

These letters are crucial to the truth being uncovered by the investigator. All of these letters should have been tabled at previous Committee meetings and therefore should be available to Anthony to read. Also under the Privacy Act Anthony is entitled to see any letter that has any reference to him in.

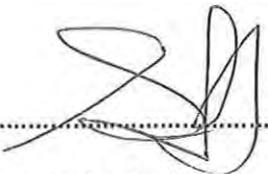
We will write to TTC today requiring they make copies of all these letters available to us to read next week, but alert you to our concern that if TTC do not act appropriately to make them available we will turn to you to assist to prevent the final investigation report being provided to you in circumstances where Mr. Burke is effectively continued to be bullied by being denied access to material that he is entitled to see, particularly when the material he has a right to see in his capacity as a Committee member and crucially when that material is crucial to the Barrister [and RQL] being fully informed, accurately, of all relevant facts before the final report, consideration by RQL of the report, and consequential decisions by RQL are made.

Please send us, by email, copies of all letters in the Investigators control from Hopgood Ganim to TTC as soon as possible.

Barry Edward Atkins (B.A., LLB(Hons.))
Solicitor & Attorney
@LAW
Tel: 07 4639 3038
Fax: 07 4632 9529
Email: bazlawyer@atlaw.net.au
Web: www.atlaw.net.au

This is attachment marked "AB/100"

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013



.....

Anthony John Burke



.....

Barry Edward Atkins, Solicitor Witness

AB 160

From: Barry Atkins
Date: 19/09/2011 12:59:34 PM
To: 'Anthony Burke'
Subject: RE: Investigation of TTC



Thank you Mr. Orchard,

While both Mr. Burke and I respect your opinion, as we can prove that the Committee Members have lied to Ms. Freeman, therefore logically her report is not completed.

Mr/ Burke's response will not be limited to submissions to what action is to be taken by RQL but will deal with the substantive issues as well and we expect that RQL is obliged to take appropriate action against those Committee Members who have lied to Ms. Freeman, as to intentionally mislead the investigator is a most serious offence under your Rules, Policies and the Racing Act.

A simple example of this is on page 11 at paragraph 6 wherein it is asserted that 'some members had not been present at the previous meeting'. This is not true and a lie in the Minutes repeated it seems by the Committee Members to Ms. Freeman. The truth is in the Minutes. The TTC have failed to follow Standing order 16 of the TTC Rules which have a direct impact and bearing on the issue of the funding of the defamation action by TTC.

Another straight forward example where Committee Members [and it seems Mr. Bolton] have lied to Ms. Freeman is at the last paragraph on page 12 which records the 'evidence provided by the committee members and Mr. Bolton that this [funding Mr. Clancy's legal costs arising out of his assault on Mr. Burke] was never something the Club agreed to do.' I will provide you with the evidence of this lie as soon as possible.

Ms. Freeman's report also reveals new breaches of the Rules by TTC which, arising out of the investigation, must be subject to an entitlement of Mr. Burke to complain about to RQL and, respectfully, RQL are then obliged to complete the investigation ordered by the Minister into any new allegations made by Mr. Burke which are based on evidence provided to Ms. Freeman by TTC Committee Members.

I specifically refer to the evidence that there was an executive Subcommittee Meeting on 5 and 6 November 2010. Mr. Burke became aware of this meeting, for the first time, on reading the report from Ms. Freeman.

The Executive Subcommittee have misled the Committee and breached Rule 30.10 of TTC in instructing Hopgood Ganim to provide advice [on two matters] because :-

1. there was no 'urgency connected with the management of the Club'; and
2. The executive subcommittee 'shall report there one [sic] to the next Meeting of the Committee' [but did not do so]

which is a mandatory obligation ['shall'] which has been breached by not reporting to the next Committee Meeting and by doing so the executive subcommittee has misled the Committee [and the members of TTC].

As this complaint, hereby made on behalf of Mr. Burke, arises directly out of the evidence given to Ms. Freeman, contained in her Report, in circumstances where @ LAW wrote to TTC's lawyers earlier this year seeking advice on whether any executive subcommittee meetings had been held, but TTC failed to inform Mr. Burke of the meeting held 5 and 6 November 2010 we expect that this matter will be referred to Ms. Freeman as a part of the existing brief to advise RQL.

Please advise as a matter of urgency if you refuse to adopt this course.

We are disappointed that RQL refuses to provide information that is within your control, which information has been withheld from Mr. Burke as part of the campaign of bullying [in breach of RQL's policies on bullying], and which information is crucial to Ms. Freeman being fully apprised of all relevant facts to enable her to provide an informed opinion to RQL.

We note that Ms. Freeman has not considered or addressed Mr. Burke's complaint about the misuse of confidential information in breach of RQL's Rules and Policies, provided by Mr. Burke to Mr. Healy.

It is imperative that RQL give us copies of the correspondence RQL had in its possession from Hopgood Ganim to TTC about Mr. Burke prior to 1/3/11 as with that documentation we can prove that Ms. Freeman has been misled by the Committee Members who she interviewed.

You should note that:-

1. We have requested copies of these communications; but
2. They have not been provided to us; and
3. That we do not expect they will be provided to s; despite
4. Mr. Burke having an entitlement to view those communications because:-
 - a. He is a member of the TTC; and
 - b. He is a Committee Member of the TTC; and
 - c. Under the Privacy Act.

If you initially give us nothing other than the first letter of advice from Hopgood Ganim about Mr. Burke's membership 'problems' I firmly believe we can show you and Ms. Freeman evidence of a conspiracy which is the root of Mr. Burke's allegations.

You must have a copy of this letter as it is specified in paragraph 2 on page 9 of the report.

If you fail to assist Mr. Burke to ensure Ms. Freeman is informed of all facts so she can uncover the truth then the investigation itself is a failure notwithstanding the already complete vindication of Mr. Burke and the evidence of serial breaches of relevant legislation Rules and Policies.

We will have a response to you by 28/9/11 but reserve our rights to make further submissions after we obtain copies of documents that are directly relevant to the investigation, which documents will prove that the Committee Members have lied to the investigator.

Barry Edward Atkins (B.A., LLB(Hons.))
 Solicitor & Attorney
 @LAW
 Tel: 07 4639 3038
 Fax: 07 4632 9529
 Email: bazlawyer@atlaw.net.au
 Web: www.atlaw.net.au

Park View Chambers
 123 Margaret Street
 (P.O. Box 605)
 Toowoomba Qld 4350

IMPORTANT NOTICE - LEGAL PRIVILEGE

This communication is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the addressee, you are notified that any transmission, distribution or replication of this message or its attachments is strictly prohibited. The legal privilege and confidentiality attached to this e-mail is not waived, lost or destroyed by reason of a mistaken delivery to you. If you have received this email in error, we would appreciate immediate notification by telephone and ask that the message be permanently deleted from your system.

From: Jamie Orchard [mailto:jorchard@racingqueensland.com.au]

Sent: Friday, 16 September 2011 3:33 PM

To: 'Barry Atkins'

Subject: RE: Investigation of TTC

Dear Mr Atkins,

I wish to clarify one issue at the outset. You seem to be preceding on the misunderstanding that the report provided to you is an "interim" report. That is not the case. The report provided to you is the Investigation Report prepared by the independent investigator Ms Freeman. RQL ensured that Ms Freeman had the full list of Mr Burke's allegations and access to all relevant witnesses and material to make a finding on those allegations and she has now done so.

The report was provided to you so that you understood the results of her investigation. This affords you an opportunity to make any comments you think appropriate prior to RQL determining what action, if any, to take in response to her findings. However by affording you an opportunity to comment on the report, it was not intended that the findings be re-opened for further investigation. I do not intend to have any of the matters re-investigated. Accordingly, while Mr Burke retains his rights to access certain information in the possession of the club, I do not intend providing further information directly from RQL.

I am satisfied (as is Ms Freeman) that she had access to everything she needed to form a view on the various matters. In particular, I note that Ms Freeman had what she considered to be the relevant Committee Minutes and the sub committee minutes of 5 and 6 November 2011 (to which you refer). Moreover Ms Freeman had available to her all correspondence that was in the possession of RQL and other material obtained directly by her in the course of her investigation.

Finally, I note that while the club was given 28 days to advise what it proposed to do in respect of the matters identified in the report, it has indicated that it may be providing that advice sooner than that, potentially next week. Accordingly, if you have any comments that you believe RQL should take into account in determining what action, if any, to take please provide those comments as soon as possible.

Yours sincerely,

Jamie Orchard

Director of Integrity Operations

PO Box 63, Sandgate QLD 4017

P +61 7 3869 9742

F +61 7 3269 8268

M 0417 791 596

E jorchard@racingqueensland.com.au

W www.racingqueensland.com.au



RACING
QUEENSLAND

From: Barry Atkins [mailto:bazlawyer@atlaw.net.au]

Sent: Friday, 16 September 2011 12:10 PM

To: Jamie Orchard

Subject: Investigation of TTC

Dear Mr. Orchard,

I confirm my telephone recorded message yesterday that the Committee members who gave evidence to the investigator have lied to barrister Freeman.

I have not had the opportunity to read the interim report until Wednesday 14/9/11.

Specifically the evidence given that the TTC has not agreed to pay the legal costs of Aaron Clancy for the assault on Anthony Burke is not true.

I can prove they have lied once Mr. Burke and I inspect the minutes of the Committee meetings. Previously Mr. Clancy has denied Mr. Burke the right to have me as his legal representative present at the inspection of Minutes. Given Mr. Bolton was present when the evidence was taken by the investigator, there can be no objection to me being present when Mr. Burke inspects the Minutes.

To prevent argument and delay could you please direct TTC to make the entire Minute book available for Mr. Burke and I to inspect at the offices of RQL in Toowoomba next week. We are happy for a steward to be present during the inspection.

We note that the investigator was not provided with a copy of the November Minutes. Based on the interim report there is most certainly material in those minutes directly relevant to the investigation. Once we read the minutes we are happy to direct her attention to the relevant parts.

On our initial reading of the interim report there are NUMEROUS other instances of the individuals interviewed misleading the investigator.

For us to be able to provide evidence of probative value we need to see the Minutes of the executive sub-committee meeting held 5 and 6 November 2010. We firmly believe that Mr. Burke is entitled to see those Minutes in his capacity as a Committee Member, but again, to prevent delay, argument and cost we ask you to provide us with copies of those Minutes.

Similarly, to enable Mr. Burke to prepare a Response to the interim report, with a view to ensuring Barrister Freeman is fully appraised of all relevant facts pertaining to the investigation, we ask you provide us with copies of all letters in your possession from Hopgood Ganim to the TTC prior to 1/3/11 which was the earliest date there was an indication of possible litigation creating a suggestion of privilege.

These letters are crucial to the truth being uncovered by the investigator. All of these letters should have been tabled at previous Committee meetings and therefore should be available to Anthony to read. Also under the Privacy Act Anthony is entitled to see any letter that has any reference to him in.

We will write to TTC today requiring they make copies of all these letters available to us to read next week, but alert you to our concern that if TTC do not act appropriately to make them available we will turn to you to assist to prevent the final investigation report being provided to you in circumstances where Mr. Burke is effectively continued to be bullied by being denied access to material that he is entitled to see, particularly when the material he has a right to see in his capacity as a Committee member and crucially when that material is crucial to the Barrister [and RQL] being fully informed, accurately, of all relevant facts before the final report, consideration by RQL of the report, and consequential decisions by RQL are made.

Please send us, by email, copies of all letters in the Investigators control from Hopgood Ganim to TTC as soon as possible.

Barry Edward Atkins (B.A., LLB(Hons.))
Solicitor & Attorney
@LAW
Tel: 07 4639 3038
Fax: 07 4632 9529
Email: bazlawyer@atlaw.net.au
Web: www.atlaw.net.au

Park View Chambers
123 Margaret Street
(P.O. Box 605)
Toowoomba Qld 4350

IMPORTANT NOTICE - LEGAL PRIVILEGE

This communication is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the addressee, you are notified that any transmission, distribution or replication of this message or its attachments is strictly prohibited. The legal privilege and confidentiality attached to this e-mail is not waived, lost or destroyed by reason of a mistaken delivery to you. If you have received this email in error, we would appreciate immediate notification by telephone and ask that the message be permanently deleted from your system.

*****E-Mail Disclaimer*****

This email, together with any attachments, is intended for the named recipient only. This email may contain information which is confidential, of a private nature or which is subject to legal professional privilege or copyright. Accordingly, any form of disclosure, modification, distribution and/or publication of this email message is prohibited unless expressly authorised by the sender acting with the Authority of or on behalf of Racing Queensland Limited.

If you have received this email by mistake, please inform the sender as soon as possible and delete the message and any copies of this message from your computer system network. The confidentiality, privacy or legal professional privilege attached to this email is not waived or destroyed by that mistake.

It is your responsibility to ensure that this email does not contain and is not affected by computer viruses, defect or interference by third parties or replication problems (including incompatibility with your computer system).

Unless expressly attributed, the views expressed in this email do not necessarily represent the views of Racing Queensland Limited.

Attachments Preview:

[Upload all photos to Facebook](#)

image0011.png

[Email this photo](#) | [Upload photo to Facebook](#)



**RACING
QUEENSLAND**



HopgoodGanim
LAWYERS

14 June 2011

Mr Barry Atkins
Solicitor & Attorney
@Law
By facsimile: 4632 9529

Our Ref: 1102847 - Brett Bolton

This electronic transmission is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, return the original electronic transmission to us at the address below by post and delete or destroy any electronic or other copies. Thank you.

Dear Mr Atkins

**Toowoomba Turf Club Inc & Anthony Burke
Aaron Clancy & Anthony Burke**

We refer to your facsimiles transmitted at 11.05am and 11.18am today.

Our client has no objection in principle to participating in a formal mediation with your client. Indeed, our client has been urging your client for several weeks now to "move on" and participate constructively as a member of the Committee.

However, your facsimile is devoid of any detail. If your client is serious and genuine about mediation, he should provide further details of his proposal, specifically:

1. A statement of the issues he considers should be mediated;
2. How the mediator is to be appointed and remunerated (ie. is the mediator to be appointed by a third party or selected by the parties from a panel by mutual agreement; will the parties share the mediator's costs equally?);
3. The procedures to be followed both before and during the mediation (ie. will the parties have an opportunity to provide Position Papers to the mediator; is there to be a bundle of agreed documents to be given to the mediator; are any other pre-mediation directions necessary or required; is the venue to be a neutral venue?).

Your client is invited to submit a detailed proposal addressing these matters, and any other matters of which he may be advised. Any proposal from your client along these lines will receive appropriate consideration from our client.

We cannot however help but note that your later facsimile today (in which you record your client's apparent intention to take civil court action against Mr Clancy) seems at odds with your first facsimile. Be that as it may, we have instructions to act for Mr Clancy in relation to the matter

Level 8 Waterfront Place, 1 Eagle Street
Brisbane Qld 4000 Australia

T +61 7 3024 0000
F +61 7 3024 0300

PO Box 7822, Waterfront Place Qld 4001 Australia

E contactus@hopgoodganim.com.au

www.hopgoodganim.com.au

4825615_1.DOC

Mr Barry Atkins
Solicitor & Attorney
@Law

14 June 2011



referred to in your later facsimile and to accept service on his behalf of any initiating court documents.

Yours faithfully

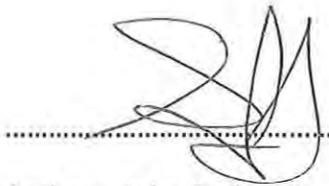
A handwritten signature in black ink, appearing to read 'Brett Bolton', written over the typed name.

HopgoodGanim Lawyers

Contact: **Brett Bolton**
Special Counsel
T 07 3024 0302
F 07 3024 0002
E b.bolton@hopgoodganim.com.au

This is attachment marked "AB 161"

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom, positioned above a dotted line.

Anthony John Burke

A handwritten signature in black ink, appearing as a stylized 'BA' followed by a horizontal stroke, positioned above a dotted line.

Barry Edward Atkins, Solicitor Witness

AB 161

I've sent this

Barry Edward Atkins (B.A., LLB(Hons.))
 Solicitor & Attorney
 @LAW
 Tel: 07 4639 3038
 Fax: 07 4632 9529
 Email: bazlawyer@atlaw.net.au
 Web: www.atlaw.net.au

Park View Chambers
 123 Margaret Street
 (P.O. Box 605)
 Toowoomba Qld 4350

IMPORTANT NOTICE - LEGAL PRIVILEGE

This communication is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the addressee, you are notified that any transmission, distribution or replication of this message or its attachments is strictly prohibited. The legal privilege and confidentiality attached to this e-mail is not waived, lost or destroyed by reason of a mistaken delivery to you. If you have received this email in error, we would appreciate immediate notification by telephone and ask that the message be permanently deleted from your system.

From: Barry Atkins [mailto:bazlawyer@atlaw.net.au]
Sent: Tuesday, 20 September 2011 3:39 PM
To: 'Jamie Orchard'
Subject: Investigation TTC

Mr Orchard,

Mr Burke has requested that @LAW respond to your email re the issues brought to your attention in our previous email.

1. Mr Burke accepts that the investigation is not an interim but concluded report, and he was provided it so his complaints, addressed are answered and with the possible breaches that the TTC have incurred under the relevant rules that govern the issuing of the current operation licence from RQL that expires in December 2011.
2. Mr Burke would like to advise RQL that he has always been transparent with our attempt to have the TTC follows the rules as above, and disagrees that only 5 issues are under charge from RQL to the TTC when more than 20 were presented in the report and have been watered down to being on the lower end of the scale when the fact in the matter is that if an offence under the rules above have been identified then it is black and white re adjudicating the issue and only the punishment determined can be varied accordingly.
3. Mr Burke would like to refer to RQL policy 81(p) with Vicarious Liability which says that parties involved must be held accountable if action that could have been prevented, would have been by decisions based on rights and wrongs and not lower end of scales etc in decisions.
4. Mr Burke sees lies from the TTC and Hopgoodganin in many areas of the report based on his personal interaction in many of the issues that have been disregarded by Ms Freeman in her independent report, where heresay has been reported as gospel. Especially in relation to the non presentation of the Toowoomba Cup, the removal of the slasher, the approval to fund Aaron Clancy assault, the correspondence not presented, Graham Healy issues, and the Channel 7 fashion prize refusal and the Harassment which has been brushed over as a series of unfortunate events that look like bullying and harassment.
5. Mr Burke will expect the RQL department to be concise and black and white in the findings of the report in handing down any directions such as they have done with the GCTC.
6. Mr Burke is relying on this letter to advise his understandings of RQL decision to ignore any lies reported to the Barrister under the criminal law code relevant to not supplying the correct information to a investigator.

7. Mr Burke is also disappointed that RQL has not noted in the media release that his name is vindicated in the findings as Mr Frappell has told the media and the members in the latest members report that they have been not found guilty of anything serious.

Barry Edward Atkins (B.A., LLB(Hons.))
Solicitor & Attorney
@LAW
Tel: 07 4639 3038
Fax: 07 4632 9529
Email: bazlawyer@atlaw.net.au
Web: www.atlaw.net.au

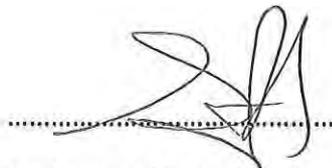
Park View Chambers
123 Margaret Street
(P.O. Box 605)
Toowoomba Qld 4350

IMPORTANT NOTICE - LEGAL PRIVILEGE

This communication is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the addressee, you are notified that any transmission, distribution or replication of this message or its attachments is strictly prohibited. The legal privilege and confidentiality attached to this e-mail is not waived, lost or destroyed by reason of a mistaken delivery to you. If you have received this email in error, we would appreciate immediate notification by telephone and ask that the message be permanently deleted from your system.

This is attachment marked "AB 162"

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013

A handwritten signature in black ink, appearing to be 'AJB', written over a horizontal dotted line.

Anthony John Burke

A handwritten signature in black ink, appearing to be 'BEA', written over a horizontal dotted line.

Barry Edward Atkins, Solicitor Witness

AB 162

@LAW

Park View Chambers
123 Margaret Street

Principal:
Barry Atkins B.A., LLB.(Hons)

P.O. Box 605
TOOWOOMBA QLD 4350

Tel: 07 4639 3038

Fax: 07 4632 9529

Liability limited by a scheme approved under professional standards legislation

FACSIMILE TRANSMISSION

Date: 23 September 2011
To: Hopgood Ganim Lawyers Fax No: 07 3024 0002
Our Ref: BA:11030 Your Ref: Mr B. Bolton
Re: Anthony Burke and Toowoomba Turf Club Inc.[TTC]

Dear Sirs,

TTC is wilfully preventing Mr. Burke having access to that part of the minutes of the Committee that comprises the letter of advice from your Firm to TTC about Mr. Burke's Membership and the minutes of the executive sub-committee meeting held 5 & 6 November 2010.

That letter of advice was specified in the February or March Committee Minutes.

Mr. Burke is a Committee Member of TTC and is entitled to look at those documents.

There is no legitimate legal reason for TTC to stop him looking at those documents.

There are no valid reasons in your letter of 19/9/11 that apply in the circumstances.

Your client has effectively instructed you to invite Mr. Burke to take action in the Supreme Court to force TTC to comply with the obligations incumbent on it under the Rules of TTC and the Associations Incorporations Act.

The prospect of further litigation is absurd and an obscene waste of Club Members money.

In relation to the Minutes of the Executive Sub-Committee we note you have personally misled a fellow practitioner by stating previously, in writing, that your client had complied with the Rules regarding any executive sub-committee meetings.

We now know your statement to be untrue because Rule 30.10 requires the Executive Sub-Committee to report to the next Committee meeting.

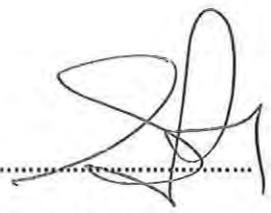
The Executive Sub-Committee meeting was held on 5 & 6 November 2010 [revealed to Mr. Burke for the first time in Ms. Freeman's Report] but no report has ever been made to the Committee.

Given you act for the TTC and not on behalf of the Chairman or Mr. Clancy you are obliged to forthwith properly assist the Club by advising it that they are obliged to make available to Mr. Burke for his inspection both the minutes of the meeting on 5 & 6 November 2010 and the initial letter of advice from your Firm to TTC about his membership.

Barry Atkins
Solicitor & Attorney

This is attachment marked "AB/63"

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013



A handwritten signature in black ink, consisting of a large, stylized 'A' followed by 'JB' and a horizontal line extending to the right.

Anthony John Burke



A handwritten signature in black ink, consisting of a large, stylized 'B' followed by 'EA' and a horizontal line extending to the right.

Barry Edward Atkins, Solicitor Witness

AB 163

FYI

Barry Edward Atkins (B.A., LLB(Hons.))
 Solicitor & Attorney
 @LAW
 Tel: 07 4639 3038
 Fax: 07 4632 9529
 Email: bazlawyer@atlaw.net.au
 Web: www.atlaw.net.au

Park View Chambers
 123 Margaret Street
 (P.O. Box 605)
 Toowoomba Qld 4350

IMPORTANT NOTICE - LEGAL PRIVILEGE

This communication is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the addressee, you are notified that any transmission, distribution or replication of this message or its attachments is strictly prohibited. The legal privilege and confidentiality attached to this e-mail is not waived, lost or destroyed by reason of a mistaken delivery to you. If you have received this email in error, we would appreciate immediate notification by telephone and ask that the message be permanently deleted from your system.

From: Jamie Orchard [mailto:jorchard@racingqueensland.com.au]

Sent: Friday, 23 September 2011 4:19 PM

To: 'Barry Atkins'

Subject: RE: Investigation of TTC - URGENT request to ensure RQL are fully informed of all relevant facts relevant to the Investigation Report.

Mr Atkins,

In respect of the minutes of 5 and 6 November 2011, I have considered the content. There is no apparent relevance to your client given that he is not mentioned, there is no reference whatsoever to his position at the club and nor is the constitutional position relevant to members or committee members mentioned. I am not aware of the basis upon which the club has refused your client access to the material you seek but given that there is no apparent relevance to the present matter, I am not inclined to pursue this matter further at this stage.

Similarly, in respect of the letter of advice to the club concerning your client, I am not aware of the reasons for it not being disclosed but I expect that there would be legal professional privilege issues involved and a significant conflict of interest point given that you suggest the advice was to the club in respect of Mr Burke's position. The letter of advice was not provided to Ms Freeman during the investigation and is therefore not available. Nor do I have the date of the letter. Given the issues associated with this letter which I have identified, I do not propose to issue a direction to the club.

Again Mr Atkins, we are not planning to re-open this investigation but do seek your views on what action, if any, RQL should take in light of Ms Freeman's findings. I look forward to receiving those comments by 28 September 2011.

Regards,

Jamie Orchard

Director of Integrity Operations

PO Box 63, Sandgate QLD 4017

P +61 7 3869 9742

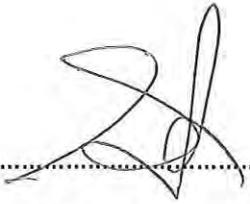
F +61 7 3269 8268

 **RACING**
 QUEENSLAND **M 0417 791 596**

This is attachment marked "AB *164*"

Specified in the list of attachments in the Statutory Declaration

of Anthony John Burke sworn 6 August 2013



.....

Anthony John Burke



.....

Barry Edward Atkins, Solicitor Witness

AB 164

E jorchard@racingqueensland.com.auW www.racingqueensland.com.au

From: Barry Atkins [mailto:bazlawyer@atlaw.net.au]
Sent: Friday, 23 September 2011 3:25 PM
To: Jamie Orchard
Subject: Investigation of TTC - URGENT request to ensure RQL are fully informed of all relevant facts relevant to the Investigation Report.
Importance: High

Dear Mr. Orchard,

Mr. Burke expects he can prove the depth of deceit by the TTC Committee members in their evidence to the investigator once he sees copies of:-

1. The minutes of executive sub-committee held 5 & 6 November 2010; and
2. The initial advice letter from Hopgood Ganim to TTC about Mr. Burke's membership [referred to in Committee Minutes as correspondence].

We have requested access to these items from TTC [through its lawyers] but been denied access.

Without access to these documents, which Mr. Burke is entitled to see as a Committee Member, the truth of the campaign of bullying against Mr. Burke by TTC Committee members will not be uncovered.

With access, the truth of the intentional lies told to the investigator will be uncovered and the object of the investigation will be fulfilled.

Could you please [to enable us to provide our response by 28/9/11]:-

1. Give us copies of these documents which Ms. Freeman obtained [see page 7 of her report]; or
2. Issue a control body directive to TTC to provide access to these documents through Mr. Burke's lawyer; but
3. At the very least advise us by return email the date of the initial letter of advice from Hopgood Ganim to TTC about Mr. Burke's membership.

We believe, on valid grounds, that these documents will prove that the currently employed racing secretary lied in his declaration to the Supreme Court, and that the Committee Members have lied to Ms. Freeman when they were interviewed.

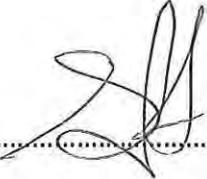
If we are wrong we will simply give you our response to the investigation report without further ado, but you have to ask yourself why TTC won't make them available to Mr. Burke when items 3 and 5 of your letter to Mr. Burke dated 31/8/11 deal with the same pattern of behaviour – denying Mr. Burke access to documents he is entitled to see under legislation and correspondence not tabled.

Even if Ms. Freeman's view that the failure to table other correspondence was not with any 'sinister motive' was correct, the current refusal by TTC to allow Mr. Burke to view the correspondence sought can only be with sinister motives because there is no valid reason for not allowing him to know the contents of those documents.

Barry Edward Atkins (B.A., LLB(Hons.))
 Solicitor & Attorney
 @LAW
 Tel: 07 4639 3038
 Fax: 07 4632 9529
 Email: bazlawyer@atlaw.net.au
 Web: www.atlaw.net.au

This is attachment marked "AB¹⁶⁵"

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013



.....

Anthony John Burke



.....

Barry Edward Atkins, Solicitor Witness

AB 165

Barry Atkins

From: Barry Atkins <bazlawyer@atlaw.net.au>
Sent: Friday, 23 September 2011 3:05 PM
To: 'roger.wilesmith@racing.qld.gov.au'
Subject: FW: Investigation of TTC - RQL not complying with Minister's direction

Barry Edward Atkins (B.A., LLB(Hons.))
Solicitor & Attorney
@LAW
Tel: 07 4639 3038
Fax: 07 4632 9529
Email: bazlawyer@atlaw.net.au
Web: www.atlaw.net.au

Park View Chambers
123 Margaret Street
(P.O. Box 605)
Toowoomba Qld 4350

IMPORTANT NOTICE - LEGAL PRIVILEGE

This communication is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the addressee, you are notified that any transmission, distribution or replication of this message or its attachments is strictly prohibited. The legal privilege and confidentiality attached to this e-mail is not waived, lost or destroyed by reason of a mistaken delivery to you. If you have received this email in error, we would appreciate immediate notification by telephone and ask that the message be permanently deleted from your system.

From: Barry Atkins [mailto:bazlawyer@atlaw.net.au]
Sent: Friday, 23 September 2011 12:11 PM
To: 'Perrett, Carol'
Subject: Investigation of TTC - RQL not complying with Minister's direction

Dear Minister, Mr. Mike Kelly and Ms. Carol Perrett.

As you can read below RQL have compromised the integrity of the investigation of TTC, directed by the Minister, by refusing to have Ms. Freeman 're-investigate' her conclusions despite Mr. Burke being able to provide proof that the TTC Committee Members who were interviewed by her have lied to the investigator.

Mr. Burke and I question whether RQL have been impartial, from the outset, because:-

1. Despite Mr. Atkins twice offering to assist Ms. Freeman by being interviewed Mr. Atkins was not interviewed but Mr. Bolton from Hopgood Ganim, solicitors for TTC, was present during each interview by Ms. Freeman of the Committee Members;
2. Mr. Burke's letter to Shara Murray [general Counsel RQL] about TTC bullying him, and which referred to RQL Policy on Bullying, was not included in the brief to Ms. Freeman;
3. Nor was the RQL Policy on bullying which we think has statutory authority, [maybe as subordinate legislation] provided to Ms. Freeman;
4. With the consequence that Ms. Freeman did not address compliance with the RQL Policy on Bullying in her 'interim' report.

Mr. Orchard refuses to make available to Mr. Burke copies of documents, specifically copy of the Minutes of an Executive Sub-Committee Meeting held 5 & 6 November 2010 and a copy of the original letter of advice to TTC about Mr. Burke's membership, which Mr. Burke believes will prove a false declaration, sworn by the currently employed racing secretary Mr. Clancy, was filed in the Supreme Court in April 2011.

TTC refuse to make available to Mr. Burke copies of documents, specifically a copy of the Minutes of an Executive Sub-Committee Meeting held 5 & 6 November 2010 and a copy of the original letter of advice to TTC about Mr. Burke's membership, which Mr. Burke believes will prove that there has been a conspiracy to bully, attack, intimidate and harass him.

Mr. Burke is entitled to see these documents and letters by virtue of his position as a TTC Committee Member [confirmed and declared by the Supreme Court in April 2011].

One possible explanation for these circumstances is that if Ms. Freeman concluded that Mr. Burke was bullied by Committee Members of TTC in breach of RQL Policy on Bullying, then RQL may be considered liable for failing to enforce their own Policy on Bullying when RQL did not take action against TTC after Mr. Burke complained about being intimidated and harassed by TTC Committee Members on 10 February 2011. Ms Freeman has expressed her opinion, after listening to the recording of that incident that she understood why Mr. Burke felt intimidated and harassed.

I will send to you later today the summary of Ms. Freeman's analysis prepared by Mr. Atkins and Mr. Burke on Tuesday 20/9/11.

Barry Edward Atkins (B.A., LLB(Hons.))
Solicitor & Attorney
@LAW
Tel: 07 4639 3038
Fax: 07 4632 9529
Email: bazlawyer@atlaw.net.au
Web: www.atlaw.net.au

Park View Chambers
123 Margaret Street
(P.O. Box 605)
Toowoomba Qld 4350

IMPORTANT NOTICE - LEGAL PRIVILEGE

This communication is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the addressee, you are notified that any transmission, distribution or replication of this message or its attachments is strictly prohibited. The legal privilege and confidentiality attached to this e-mail is not waived, lost or destroyed by reason of a mistaken delivery to you. If you have received this email in error, we would appreciate immediate notification by telephone and ask that the message be permanently deleted from your system.

From: Barry Atkins [<mailto:bazlawyer@atlaw.net.au>]
Sent: Monday, 19 September 2011 1:00 PM
To: 'Anthony Burke'
Subject: RE: Investigation of TTC

Thank you Mr. Orchard,

While both Mr. Burke and I respect your opinion, as we can prove that the Committee Members have lied to Ms. Freeman, therefore logically her report is not completed.

Mr/ Burke's response will not be limited to submissions to what action is to be taken by RQL but will deal with the substantive issues as well and we expect that RQL is obliged to take appropriate action against those Committee Members who have lied to Ms. Freeman, as to intentionally mislead the investigator is a most serious offence under your Rules, Policies and the Racing Act.

A simple example of this is on page 11 at paragraph 6 wherein it is asserted that 'some members had not been present at the previous meeting'. This is not true and a lie in the Minutes repeated it seems by the Committee Members to Ms. Freeman. The truth is in the Minutes. The TTC have failed to follow Standing order 16 of the TTC Rules which have a direct impact and bearing on the issue of the funding of the defamation action by TTC.

Another straight forward example where Committee Members [and it seems Mr. Bolton] have lied to Ms. Freeman is at the last paragraph on page 12 which records the 'evidence provided by the committee members and Mr. Bolton that this [funding Mr. Clancy's legal costs arising out of his assault on Mr. Burke] was never something the Club agreed to do.' I will provide you with the evidence of this lie as soon as possible.

Ms. Freeman's report also reveals new breaches of the Rules by TTC which, arising out of the investigation, must be subject to an entitlement of Mr. Burke to complain about to RQL and, respectfully, RQL are then obliged to complete the investigation ordered by the Minister into any new allegations made by Mr. Burke which are based on evidence provided to Ms. Freeman by TTC Committee Members.

I specifically refer to the evidence that there was an executive Subcommittee Meeting on 5 and 6 November 2010. Mr. Burke became aware of this meeting, for the first time, on reading the report from Ms. Freeman.

The Executive Subcommittee have misled the Committee and breached Rule 30.10 of TTC in instructing Hopgood Ganim to provide advice [on two matters] because :-

1. there was no 'urgency connected with the management of the Club'; and
2. The executive subcommittee 'shall report there one [sic] to the next Meeting of the Committee' [but did not do so]

which is a mandatory obligation ['shall'] which has been breached by not reporting to the next Committee Meeting and by doing so the executive subcommittee has misled the Committee [and the members of TTC].

As this complaint, hereby made on behalf of Mr. Burke, arises directly out of the evidence given to Ms. Freeman, contained in her Report, in circumstances where @ LAW wrote to TTC's lawyers earlier this year seeking advice on whether any executive subcommittee meetings had been held, but TTC failed to inform Mr. Burke of the meeting held 5 and 6 November 2010 we expect that this matter will be referred to Ms. Freeman as a part of the existing brief to advise RQL.

Please advise as a matter of urgency if you refuse to adopt this course.

We are disappointed that RQL refuses to provide information that is within your control, which information has been withheld from Mr. Burke as part of the campaign of bullying [in breach of RQL's policies on bullying], and which information is crucial to Ms. Freeman being fully apprised of all relevant facts to enable her to provide an informed opinion to RQL.

We note that Ms. Freeman has not considered or addressed Mr. Burke's complaint about the misuse of confidential information in breach of RQL's Rules and Policies, provided by Mr. Burke to Mr. Healy.

It is imperative that RQL give us copies of the correspondence RQL had in its possession from Hopgood Ganim to TTC about Mr. Burke prior to 1/3/11 as with that documentation we can prove that Ms. Freeman has been misled by the Committee Members who she interviewed.

You should note that:-

1. We have requested copies of these communications; but
2. They have not been provided to us; and
3. That we do not expect they will be provided to us; despite
4. Mr. Burke having an entitlement to view those communications because:-
 - a. He is a member of the TTC; and
 - b. He is a Committee Member of the TTC; and
 - c. Under the Privacy Act.

If you initially give us nothing other than the first letter of advice from Hopgood Ganim about Mr. Burke's membership 'problems' I firmly believe we can show you and Ms. Freeman evidence of a conspiracy which is the root of Mr. Burke's allegations.

You must have a copy of this letter as it is specified in paragraph 2 on page 9 of the report.

If you fail to assist Mr. Burke to ensure Ms. Freeman is informed of all facts so she can uncover the truth then the investigation itself is a failure notwithstanding the already complete vindication of Mr. Burke and the evidence of serial breaches of relevant legislation Rules and Policies.

We will have a response to you by 28/9/11 but reserve our rights to make further submissions after we obtain copies of documents that are directly relevant to the investigation, which documents will prove that the Committee Members have lied to the investigator.

Barry Edward Atkins (B.A., LLB(Hons.))
Solicitor & Attorney
@LAW
Tel: 07 4639 3038
Fax: 07 4632 9529
Email: bazlawyer@atlaw.net.au
Web: www.atlaw.net.au

Park View Chambers
123 Margaret Street
(P.O. Box 605)
Toowoomba Qld 4350

IMPORTANT NOTICE - LEGAL PRIVILEGE

This communication is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the addressee, you are notified that any transmission, distribution or replication of this message or its attachments is strictly prohibited. The legal privilege and confidentiality attached to this e-mail is not waived, lost or destroyed by reason of a mistaken delivery to you. If you have received this email in error, we would appreciate immediate notification by telephone and ask that the message be permanently deleted from your system.

From: Jamie Orchard [mailto:jorchard@racingqueensland.com.au]
Sent: Friday, 16 September 2011 3:33 PM
To: 'Barry Atkins'
Subject: RE: Investigation of TTC

Dear Mr Atkins,

I wish to clarify one issue at the outset. You seem to be proceeding on the misunderstanding that the report provided to you is an "interim" report. That is not the case. The report provided to you is the Investigation Report prepared by the independent investigator Ms Freeman. RQL ensured that Ms Freeman had the full list of Mr Burke's allegations and access to all relevant witnesses and material to make a finding on those allegations and she has now done so.

The report was provided to you so that you understood the results of her investigation. This affords you an opportunity to make any comments you think appropriate prior to RQL determining what action, if any, to take in response to her findings. However by affording you an opportunity to comment on the report, it was not intended that the findings be re-opened for further investigation. I do not intend to have any of the matters re-investigated. Accordingly, while Mr Burke retains his rights to access certain information in the possession of the club, I do not intend providing further information directly from RQL.

I am satisfied (as is Ms Freeman) that she had access to everything she needed to form a view on the various matters. In particular, I note that Ms Freeman had what she considered to be the relevant Committee Minutes and the sub committee minutes of 5 and 6 November 2011 (to which you refer). Moreover Ms Freeman had available to her all correspondence that was in the possession of RQL and other material obtained directly by her in the course of her investigation.

Finally, I note that while the club was given 28 days to advise what it proposed to do in respect of the matters identified in the report, it has indicated that it may be providing that advice sooner than that, potentially next

week. Accordingly, if you have any comments that you believe RQL should take into account in determining what action, if any, to take please provide those comments as soon as possible.

Yours sincerely,

Jamie Orchard

Director of Integrity Operations



PO Box 63, Sandgate QLD 4017

P +61 7 3869 9742

F +61 7 3269 8268

RACING QUEENSLAND M 0417 791 596

E jorchard@racingqueensland.com.au

W www.racingqueensland.com.au

From: Barry Atkins [mailto:bazlawyer@atlaw.net.au]

Sent: Friday, 16 September 2011 12:10 PM

To: Jamie Orchard

Subject: Investigation of TTC

Dear Mr. Orchard,

I confirm my telephone recorded message yesterday that the Committee members who gave evidence to the investigator have lied to barrister Freeman.

I have not had the opportunity to read the interim report until Wednesday 14/9/11.

Specifically the evidence given that the TTC has not agreed to pay the legal costs of Aaron Clancy for the assault on Anthony Burke is not true.

I can prove they have lied once Mr. Burke and I inspect the minutes of the Committee meetings. Previously Mr. Clancy has denied Mr. Burke the right to have me as his legal representative present at the inspection of Minutes. Given Mr. Bolton was present when the evidence was taken by the investigator, there can be no objection to me being present when Mr. Burke inspects the Minutes.

To prevent argument and delay could you please direct TTC to make the entire Minute book available for Mr. Burke and I to inspect at the offices of RQL in Toowoomba next week. We are happy for a steward to be present during the inspection.

We note that the investigator was not provided with a copy of the November Minutes. Based on the interim report there is most certainly material in those minutes directly relevant to the investigation. Once we read the minutes we are happy to direct her attention to the relevant parts.

On our initial reading of the interim report there are **NUMEROUS** other instances of the individuals interviewed misleading the investigator.

For us to be able to provide evidence of probative value we need to see the Minutes of the executive sub-committee meeting held 5 and 6 November 2010. We firmly believe that Mr. Burke is entitled to see those Minutes in his capacity as a Committee Member, but again, to prevent delay, argument and cost we ask you to provide us with copies of those Minutes.

Similarly, to enable Mr. Burke to prepare a Response to the interim report, with a view to ensuring Barrister Freeman is fully apprised of all relevant facts pertaining to the investigation, we ask you provide us with copies of all letters in your possession from Hopgood Ganim to the TTC prior to 1/3/11 which was the earliest date there was an indication of possible litigation creating a suggestion of privilege.

These letters are crucial to the truth being uncovered by the investigator. All of these letters should have been tabled at previous Committee meetings and therefore should be available to Anthony to read. Also under the Privacy Act Anthony is entitled to see any letter that has any reference to him in.

We will write to TTC today requiring they make copies of all these letters available to us to read next week, but alert you to our concern that if TTC do not act appropriately to make them available we will turn to you to assist to prevent the final investigation report being provided to you in circumstances where Mr. Burke is effectively continued to be bullied by being denied access to material that he is entitled to see, particularly when the material he has a right to see in his capacity as a Committee member and crucially when that material is crucial to the Barrister [and RQL] being fully informed, accurately, of all relevant facts before the final report, consideration by RQL of the report, and consequential decisions by RQL are made.

Please send us, by email, copies of all letters in the Investigators control from Hopgood Ganim to TTC as soon as possible.

Barry Edward Atkins (B.A., LLB(Hons.))
Solicitor & Attorney
@LAW
Tel: 07 4639 3038
Fax: 07 4632 9529
Email: bazlawyer@atlaw.net.au
Web: www.atlaw.net.au

Park View Chambers
123 Margaret Street
(P.O. Box 605)
Toowoomba Qld 4350

IMPORTANT NOTICE - LEGAL PRIVILEGE

This communication is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the addressee, you are notified that any transmission, distribution or replication of this message or its attachments is strictly prohibited. The legal privilege and confidentiality attached to this e-mail is not waived, lost or destroyed by reason of a mistaken delivery to you. If you have received this email in error, we would appreciate immediate notification by telephone and ask that the message be permanently deleted from your system.

*****E-Mail Disclaimer*****

This email, together with any attachments, is intended for the named recipient only. This email may contain information which is confidential, of a private nature or which is subject to legal professional privilege or copyright. Accordingly, any form of disclosure, modification, distribution and/or publication of this email message is prohibited unless expressly authorised by the sender acting with the Authority of or on behalf of Racing Queensland Limited.

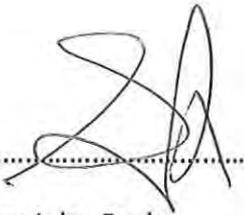
If you have received this email by mistake, please inform the sender as soon as possible and delete the message and any copies of this message from your computer system network. The confidentiality, privacy or legal professional privilege attached to this email is not waived or destroyed by that mistake.

It is your responsibility to ensure that this email does not contain and is not affected by computer viruses, defect or interference by third parties or replication problems (including incompatibility with your computer system).

Unless expressly attributed, the views expressed in this email do not necessarily represent the views of Racing Queensland Limited.

This is attachment marked "AB166"

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013

A handwritten signature in black ink, appearing to be 'AJB', written over a horizontal dotted line.

Anthony John Burke

A handwritten signature in black ink, appearing to be 'BA', written over a horizontal dotted line.

Barry Edward Atkins, Solicitor Witness

A13 166

Barry Atkins

From: Jamie Orchard <jorchard@racingqueensland.com.au>
Sent: Monday, 26 September 2011 4:01 PM
To: 'Barry Atkins'
Subject: RE: Investigation TTC

Mr Atkins,

As I advised previously, the letter was not provided during the investigation and I therefore do not have the date of the letter.

Regards,

Jamie Orchard

Director of Integrity Operations
PO Box 63, Sandgate QLD 4017
P +61 7 3869 9742
F +61 7 3269 8268
M 0417 791 596
E jorchard@racingqueensland.com.au
W www.racingqueensland.com.au



RACING
QUEENSLAND

From: Barry Atkins [<mailto:bazlawyer@atlaw.net.au>]
Sent: Monday, 26 September 2011 3:45 PM
To: Jamie Orchard
Subject: Investigation TTC

Dear Sir,

The only information we need before being able to complete our submissions by 28/9/11 is the date of the initial letter of advice from Hopgood Ganim to TTC about Anthony's membership.

While we do not accept that TTC have any right to with-hold a copy of the letter from us, we are willing to assist you in finishing the investigation if you can please just tell me the date of that letter.

Barry Edward Atkins (B.A., LLB(Hons.))
Solicitor & Attorney
@LAW
Tel: 07 4639 3038
Fax: 07 4632 9529
Email: bazlawyer@atlaw.net.au
Web: www.atlaw.net.au

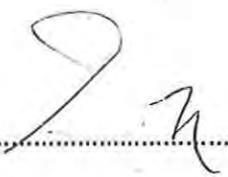
Park View Chambers
123 Margaret Street
(P.O. Box 605)
Toowoomba Qld 4350

IMPORTANT NOTICE - LEGAL PRIVILEGE

This communication is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the addressee, you are notified that any transmission, distribution or replication of this message or its attachments is strictly prohibited. The legal privilege and confidentiality attached to this e-mail is not waived, lost or destroyed by reason of a

This is attachment marked "AB/67"

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013



.....

Anthony John Burke



.....

Barry Edward Atkins, Solicitor Witness

AB 167

Barry Atkins

From: Barry Atkins <bazlawyer@atlaw.net.au>
Sent: Wednesday, 28 September 2011 4:40 PM
To: 'Jamie Orchard'
Cc: 'Anthony Burke'
Subject: Submissions by Mr. A Burke
Attachments: 11030 Submissions to RQ 280911.doc

Dear Mr. Orchard,

Attached are the submissions on behalf of Mr. Burke.

We note that Mr. Frappell has breached his agreed obligation of confidentiality to RQL by revealing [his version] of the contents of the investigators report to members of TTC.

In the recent annual report to members Mr. Frappell stated that the TTC was cleared of any wrong doing by the report, other than minor procedural irregularities.

He has no concept of integrity or of his duties, which attributes are ever present in his dealings and attacks on Mr. Burke.

We trust that he will be visited with the appropriate charges for all his wrongdoings including this latest misrepresentation designed to bolster his reputation at the expense of the truth and to further attack Mr. Burke.

Thank you for your assistance.

Barry Edward Atkins (B.A., LLB(Hons.))
Solicitor & Attorney
@LAW
Tel: 07 4639 3038
Fax: 07 4632 9529
Email: bazlawyer@atlaw.net.au
Web: www.atlaw.net.au

Park View Chambers
123 Margaret Street
(P.O. Box 605)
Toowoomba Qld 4350

IMPORTANT NOTICE - LEGAL PRIVILEGE

This communication is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the addressee, you are notified that any transmission, distribution or replication of this message or its attachments is strictly prohibited. The legal privilege and confidentiality attached to this e-mail is not waived, lost or destroyed by reason of a mistaken delivery to you. If you have received this email in error, we would appreciate immediate notification by telephone and ask that the message be permanently deleted from your system.

Submissions to Racing Queensland Limited regarding the investigation report of Barrister Freeman

Preamble: The beginning is a very good place to start.

1. SPONSORSHIP

The facts are:-

- (a) The sponsorship agreement between Mr Burke's company and TTC was a written agreement expressed to be ongoing but capable of termination in writing by either party;
- (b) No decision was ever made by TTC to terminate the sponsorship agreement;
- (c) Barrister Freeman concludes that there is potential for civil litigation.

The absence of a decision by the TTC management / executive committee shows that in December 2010 there was an intention by the employed racing secretary Mr Clancy to punish Mr Burke - a concerted effort by Mr Clancy and the current chairman Mr Frappell.

The motive for the punishment was the implied criticism by Mr Burke in a press release about the lack of action by the current chairman and the current racing secretary about the sponsorship

It is true that an opinion was expressed to the committee at the December meeting to the effect that "no sponsorships would be renewed in their current form". No motion was moved, seconded, considered or passed.

This failing to act in accordance with the legal requirements of the executive committee is the same failing Toowoomba Turf Club tried to use against Mr Burke in the Supreme Court action by alleging that at the October meeting, despite Mr Burke advising the committee of a decision he had made to change the nominee of his corporate member (Jewels of the Range) from himself to his wife, no motion was passed.

This was the start of the campaign of bullying against Mr Burke for which the individuals Mr Clancy and Mr Frappell must be charged in breach of the RQL policy on bullying in the interests of:-

- i the TTC; and
- ii Mr Burke; and
- iii the industry as a whole

to show both to the Toowoomba community and the greater public that RQL will not tolerate bullying against any individual involved in the racing industry.

2. DECISION BY MR FRAPPELL TO PRETEND THAT MR BURKE WAS NO LONGER A MEMBER OF TTC AND NO LONGER A COMMITTEE MEMBER OF TTC

Facts:

- (a) The letter of opinion from Hopgood Ganim to TTC has never been revealed to Mr Burke;
- (b) No decision by TTC executive committee was ever made to seek an opinion from Hopgood Ganim;
- (c) TTC executive committee never made a decision to act upon the letter of opinion from Hopgood Ganim;
- (d) TTC executive committee never authorised Frappell to write the letter;
- (e) No executive sub-committee was held to authorise Mr Frappell to write the letter;
- (f) The opinion from Hopgood Ganim was wrong as declared by the Supreme Court on 20 April 2011;
- (g) The actions of Frappell, accepted by Barrister Freeman as appropriate in light of the letter of opinion from Hopgood Ganim (subsequently proved to be a wrong opinion) are incorrect based upon TTC's own lawyers statements made many times during the course of the conflict as follows:-

“TTC is controlled by its management committee. Until and unless the management committee makes a decision....”

The seeking of the opinion from Hopgood Ganim and the subsequent unilateral action without authority by Frappell constituted bullying in its most severe form as it was an attempt to exclude Mr Burke from the Toowoomba Turf Club and caused Mr Burke serious diminution in his public standing as a member of the club, as a member of the committee and as a member of the business community.

Mr Frappell wrote that letter without authority from the committee. The committee was not informed of the intended letter being sent. Nor was the committee informed of the alleged advice from Hopgood Ganim. Committee members John Morgan and John Scott were not aware of Frappell's letter of 14 February until after the letter had been sent.

It was intended to humiliate Mr Burke and was part of the concerted campaign of bullying against Mr Burke.

Mr Farppell must be charged with a breach of RQL policy on bullying because of his wrongful action in unilaterally, without authority of the committee, seeking to get rid of Mr Burke.

3. MOTION OF NO CONFIDENCE

Coming at the end, as a culmination of the concerted campaign of bullying against Mr Burke in circumstances where the club's solicitors Hopgood Ganim admitted in writing that the motion of no confidence was "of no effect", and Barrister Freeman also concluded the motion of no confidence was of "no effect", the only logical explanation for the motion of no confidence was to intimidate and continue the harassment of Mr Burke with a view to being able to utilise the presumed successful passing of the motion to publicly ridicule Mr Burke.

The motion of no confidence, standing alone, in circumstances which forced Mr Burke to take Supreme Court action at personal cost of between \$5,000.00 and \$10,000.00, constitutes an extreme act of bullying itself.

When considering the other twenty actions of bullying in between the time of sponsorship issue and the motion of no confidence, it is clear that there was a concerted campaign initiated and maintained by Frappell and Clancy against Mr Burke.

There was no legitimate reason for ostracising Mr Burke and attacking him in the way that they did.

Barrister Freeman expressed the opinion that each incident taken in isolation does not constitute a bullying act individually.

The only reasonable interpretation of the sequence and series of actions is that it was all part of the same pattern of bullying behaviour directed at Mr Burke to force him out of the Toowoomba Turf Club.

4. THE INCIDENT ON 10 FEBRUARY 2011

Even if Mr Frappell was entitled to act upon the opinion letter from Hopgood Ganim (which is denied) his actions in co-ordinating the attack on Mr Burke demonstrate his lack of understanding of appropriate proper good corporate governance in accordance with the rules of the Toowoomba Turf Club.

Barrister Freeman concludes that Mr Burke was right to feel intimidated and harassed by the actions of Frappell, Clancy and the other committee members in the circumstances which the Supreme Court described as clearly denying Mr Burke natural justice.

Frappell had the opportunity to take the letter of opinion to the committee seeking a decision of the committee to act in accordance with the rules and with the obligations of natural justice which would have required giving Mr Burke written notice of the allegations against him and giving him the opportunity to reply to those allegations.

The fact that no natural justice was afforded to Mr Burke and the rules applicable (which RQL in writing encouraged the club to utilise – which the club did not) shows that Frappell was intent on getting rid of Mr Burke without regard to due process.

This incident, both by itself and as part of the concerted campaign by Frappell proves the intent and action consistent only with bullying.

More importantly, that incident must be seen in the context of the continued intimidation and harassment of Mr Burke by:-

- i. the subsequent threat of defamation proceedings where Mr Frappell (wrongfully) used club members funds to pay for the legal threats of defamation action against Mr Burke; and
- ii. the ongoing actions by Frappell and Clancy.

If the incident, on its own, “does not constitute intimidation and harassment”, it must be the subject of a charge under 175(a) of the Rules of Racing.

Further, it is evidence in relation to the continued breach by Mr Frappell of the RQL’s policy on bullying.

5. LETTER FROM RQL TO TTC 18 FEBRUARY 2011

The fact is that this letter was not tabled as required under the Associations Incorporation Act and as required under the rules of TTC.

It is simply not true to say that all committee members were aware of the letter because they had been sent it by email because at least one member does not have an email address.

Clancy must be charged with a breach of the rules of racing for this misleading of the committee by the withholding of a letter.

Failure to charge Clancy with a breach of a relevant rule simply sends a message to the industry that various cliques and factions will be able to get away with the withholding of information from the other committee members.

6. ADVERTISEMENT FOR CASUAL VACANCY

Even accepting Barrister Freeman’s view that the club was acting in accordance with its perception of reality, the fact remains that after the decision of the Supreme Court, the club was obliged to correct the public record and refused to do so.

The refusal is part of the concerted campaign of bullying, harassment and intimidation utilising the advertisement to publicly deride Mr Burke, in breach of RQL’s policy on bullying.

Clancy subsequently misled the committee by refusing to table the nominations that were received in response to the public notice advertisement, and the club refused to write to those nominees advising them that there was no vacancy.

7. FAILURE TO PRESENT THE BURKE PERPETUAL TROPHY TO THE WINNER OF THE TOOWOOMBA CUP

Standing alone, this action of itself constitutes serious bullying and is in breach of rule 2 of the Toowoomba Turf Club.

It is a disgraceful act to refuse to present a perpetual trophy accepted formally by the club, merely because of the enmity felt by Clancy and Frappell to Mr Burke.

It is specious and fallacious to blame the failure on an “oversight” in circumstances where Clancy organised the major sponsor to be present to make a presentation to the winning connections of a substitute trophy, with a photo opportunity.

Further, despite requests by Mr Burke to retrospectively present his trophy, the club refused to do so. The refusal was a further act of bullying.

Further, the allegation that the failure to present the trophy was an “oversight” is a cover-up because several months prior to that assertion, at a committee meeting, Mr Burke was informed by Mr Gee that the failure to present the trophy was a direct result of the sponsorship being cancelled.

7. THE SLASHER

There is no evidence the slasher has been returned and the return alleged by Frappell to Ms Freeman has not been minuted.

Regardless of the possible return, Mr Frappell must be charged with a breach of Section 112 of the Racing Act because it is important to the racing industry that participants in the industry recognise their fiduciary duty to the respective clubs.

Even if the return of the slasher was in fact made, that only goes to mitigation of the penalty.

Even if the penalty is at the lower end, it is important to make a public statement so that the racing industry is aware of the ramifications of a breach of duty.

Based on the QCAT Eggleston case, the chairman of a respective club has a higher duty than members of the committee to know the rules and to comply with the rules.

8. ACCESS TO FINANCIAL RECORDS

Regarding 12

With respect, Ms Freeman has not understood the allegation. Ms Freeman asserts that the profit and loss statements are presented to the committee.

Ms Freeman concludes from her review of the minutes that the profit and loss were provided.

Mr Burke and Mr Atkins can both personally verify that on the 2 and 3 occasions respectively that they inspected the minutes, there were no financials attached to the minutes.

Further, there was no reference to the financials, particularly the approval for expenditure in those minutes sighted by Mr Atkins and Mr Burke personally.

Accepting Ms Freeman's view of the minutes that she has seen, it can only be that TTC has provided Ms Freeman difference minutes to the ones that are kept in the minute book.

This is a most important issue which must be re-investigated.

If the minutes kept in the minute book currently show financial statements including approval for expenditure, Mr Burke and Mr Atkins will both personally swear statutory declarations based upon their actual recall of their inspections, supported by the handwritten diary notes made contemporaneously at the time of those inspections, that there was no financial statements in those minutes.

During one of those inspections by Mr Atkins and Mr Burke a request was made of Mr Clancy for copies of the financials, but no financial statements were provided by Mr Clancy.

Notwithstanding the conclusion Ms Freeman comes to, the still remaining substantive issue is that payments made by the club were not authorised as required by the *Associations Incorporations Act*.

9. OMISSION OF MR. BURKE'S NAME IN THE WEETWOOD RACE DAY PROGRAMME

The issue IS important to this issue because Mr Atkins, in instructions from Mr Burke, wrote to the club's lawyers before the Weetwood Day advising that the anticipated failure to include Mr Burke's name as a committee member in circumstances where the issue was clearly in dispute, would constitute defamation of Mr Burke.

Regardless of the state of mind of the Club at the date of the Weetwood, following Mr Burke's successful application to the Supreme Court, Mr Burke requested the Toowoomba Turf Club publish in subsequent race day programmes an apology and correction for the omission of his name from the Weetwood race day programme.

This the club refused to do.

This refusal to remedy the failure to have Mr Burke's name listed as a committee member, is part of the conspiracy of campaign of intimidation and harassment and bullying against Mr Burke and must be visited with sanctions from RQL.

10. FAILURE TO GIVE MR. BURKE LEAVE OF ABSENCE ON MEDICAL GROUNDS

Toowoomba Turf Club was informed by Mr Burke's lawyers that the medical condition for which the medical certificate was issued was a direct result of the bullying of him by TTC.

Ms Freeman rightly concludes that there was no reason for TTC to question the medical certificate provided, and indeed the questioning itself constituted further bullying.

Ms Freeman rightly concludes that the leave of absence should have been given to Mr Burke.

The entire committee of the club must be charged with an appropriate offence under the relevant rules as well as this example looming large in the decision of RQL to charge individual committee members and the committee of the club as a whole with a breach of Racing Queensland's policy against bullying.

11. THE TAPE RECORDING OF THE 10 FEBRUARY INCIDENT.

Ms. Freeman has been misled by Clancy and Hopgood Ganim.

The tape recording was not "in the possession of the person who made the recording".

The solicitors for TTC admitted in writing that the tape recording was held by Mr Clancy "on behalf of the club". That must be the case because Mr Clancy participated in the incident on 10 February as the employed racing secretary.

Equally importantly is that Mr Burke required the tape recording to be produced to the committee so that those committee members who did not participate in the intimidation on 10 February could hear what transpired.

Mr Burke offered to obtain at his expense a transcript of the tape recording and undertook to provide a copy of that transcript to the entire committee.

Mr Clancy has misled the committee by failing to table the tape recording in his possession but, as admitted by the club's lawyers, "held on behalf of the club". Mr Clancy must be charged with an offence for his failure to provide his employer with a tape recording of an incident that occurred on the Turf Club grounds during a confrontation initiated by the Chairman of the club.

It is also evidence of the bullying.

12. THE RELEASE BY FRAPPELL OF THE 'WITHOUT PREJUDICE' LETTER FROM MR. BURKE'S LAWYERS

With respect, Ms Freeman has come to a conclusion which can only arise out of a misleading of her by the committee members.

There were no "negotiations between the parties in an attempt to resolve the disputes".

Mr Burke at all times informed John Morgan that any offer to resolve the matter must be made by the club's solicitors to his solicitors.

As such, it is not correct to say that Mr Burke has misrepresented the true context.

There was no context as asserted that there were negotiations.

Mr Burke was rightfully entitled to reveal what was an open offer to pay Mr Burke in exchange for his resignation.

The other issues that should have been the subject of any genuine negotiations, such as those listed in correspondence by Mr Burke's lawyers to fully and finally resolve all of the matters in dispute, were simply not canvassed.

When TTC, through its lawyers did make an offer to settle, the terms of the offer included withdrawing the complaints Mr. Burke had made to RQL, which was an entirely inappropriate term to require, and one which Mr. Burke would never have agreed to.

It is alleged that the club received legal advice about the release of the without prejudice letter, but no such legal advice has ever been tabled at any committee meeting.

Not only was the release of the without prejudice letter disgraceful, the covering letter from Mr Frappell was clearly defamatory when he used the heading "Burke Distorts the Truth Again".

Further in that covering letter Mr Frappell lied to the club members when falsely accusing Mr Burke of asking the committee to lie to the club members by saying that Mr Burke's resignation was on medical grounds when in fact, given the level of harassment, intimidation and bullying Mr Burke had been subjected to over the previous six months, in circumstances where his medical condition was a direct result of that bullying, it was the truthful reason why he would resign.

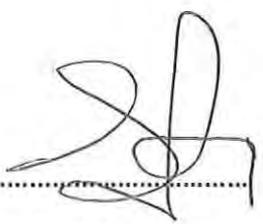
13. FUNDING OF CLANCY'S LEGAL COSTS

Ms. Freeman has been misled by those she interviewed.

In the May minutes it is recorded that TTC will pay Clancy's legal costs.

This is attachment marked "AB¹⁶⁸"

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a horizontal dotted line.

Anthony John Burke



A handwritten signature in black ink, appearing as a stylized 'BA' followed by a horizontal stroke, positioned above a horizontal dotted line.

Barry Edward Atkins, Solicitor Witness

AB 168

29 September 2011

Mr Barry Atkins
@ Law
Parkview Chambers
123 Margaret Street
TOOWOOMBA QLD 4350

By email: bazlawyer@atlaw.net.au



Racing Queensland Limited
A B N 62 142 786 874
Racecourse Rd Deagon QLD 4017
PO Box 63 Sandgate QLD 4017
T 07 3869 9777
F 07 3269 6404
E info@racingqueensland.com.au
W www.racingqueensland.com.au

Dear Mr Atkins,

RE: TOOWOOMBA TURF CLUB

I have had the opportunity of considering the submissions you have made regarding the investigation report of Barrister Ms April Freeman.

I understand from the submissions that you do not accept many of the findings or conclusions reached by Ms Freeman. I do not intend reopening the investigation and looking into additional matters. Instead RQL was seeking comments to assist in the determination of what actions should flow from those conclusions and findings reached by Ms Freeman.

I have considered each of the comments you have made and note that in respect of most of the areas you recommend that charges be laid against Mr Clancy and/or Mr Frappell.

Even having considered your submissions RQL does not believe it appropriate to proceed to lay charges in relation to the various matters that have been identified in this matter. Instead RQL will adopt the following approach in respect of five specific findings made by Ms Freeman:

Recording of Correspondence

RQL notes Ms Freeman's findings on page 17 and 18 of her report following effect:

Whist I accept that there are a number of emails sent by Mr Burke which were not tabled, I am satisfied that this was due to the sheer volume of correspondence received over this period, particularly from Mr Burke, as opposed to any sinister motive relating to misleading the Committee.

RQL is satisfied that the Club has addressed this issue given the advice that the Club has since early this year had in place an effective system for the proper treatment of incoming correspondence.

Payment of Legal Fees to HopgoodGanim in respect of personal defamation claim

RQL is satisfied that this issue has been addressed by Mr Frappell agreeing to refund to the Club the full amount paid to HopgoodGanim Lawyers and provide his agreement that no further costs will be paid on his behalf by the Club in respect of the matter.

Incident on 10 February 2011

RQL accepts Ms Freeman's comments that this matter falls at the lower end of the scale of seriousness and that RQL's initial action in requiring the Club to make the minutes available without precondition satisfactorily addresses the issue.

Breach of Section 59c of the Associations Incorporation Act 1981

In this respect RQL notes that the Club will take the finding into consideration in future when responding to members requests for access to financial documents and considers that this appropriately addresses the issue.

Mr Burkes request for leave of absence

RQL notes the Clubs position that it will take into consideration Ms Freeman's finding on this issue when responding to any future requests by Mr Burke or other Committee members for a leave of absence. RQL does not consider that any further action in this case is warranted.

Finally, while a number of the comments you made in the submissions could probably be rebutted, there is one specific comment I wish to address. In your item 13 you state that "in the May minutes it is recorded that TTC will pay Clancy's legal costs". I have reviewed the May minutes and can find no reference to the fact that the Club would pay Mr Clancy's legal costs.

I intend to put out a media release setting out these matters shortly.

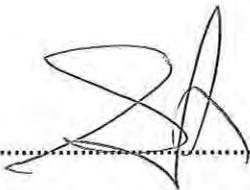
Yours sincerely,



A.J.Orchard
Director of Integrity Operations

This is attachment marked "AB 169"

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom.

.....
Anthony John Burke

A handwritten signature in black ink, appearing as a stylized 'BA' with a horizontal line extending to the right.

.....
Barry Edward Atkins, Solicitor Witness

E jorchard@racingqueensland.com.au

W www.racingqueensland.com.au

AB 169

From: Anthony Burke [mailto:ajsrburke@optusnet.com.au]
Sent: Thursday, 29 September 2011 3:58 PM
To: Jamie Orchard
Subject: Findings
Importance: High

Mr Orchard,

I have read the release re the findings of Barrister Ms April Freeman's report, that did identify faults in the Toowoomba Turf Club that would not have been advised to RQL without my effort of notifying the Racing Office of the Minister and RQL.

Although I see that the Toowoomba Turf Club have agreed to correct these matters, it makes me pained to feel that I will not be safe from further actions against myself for standing up for what was morally correct. I can see the media report from the Toowoomba Turf club now, before it is even released as I know what spin will be put on it.

When I look back now, and contemplated suicide, I wonder why I stopped.

Anthony Burke

[FREE Animations for your email - by IncrediMail!](#)

[Click Here!](#)

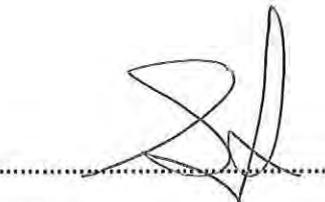


*****E-Mail Disclaimer*****

This email, together with any attachments, is intended for the named recipient only. This email may contain information which is confidential, of a private nature or which is subject to legal professional privilege or copyright. Accordingly, any form of disclosure, modification, distribution

This is attachment marked "AB/70"

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a vertical stroke and a horizontal stroke at the bottom.

Anthony John Burke

A handwritten signature in black ink, appearing as a cursive 'BA' followed by a horizontal stroke.

Barry Edward Atkins, Solicitor Witness

Barry Edward Atkins (B.A., LLB(Hons.))

Solicitor & Attorney

@LAW

Tel: 07 4639 3038

Fax: 07 4632 9529

Email: bazlawyer@atlaw.net.au

Web: www.atlaw.net.au

AB 170

Park View Chambers

123 Margaret Street

(P.O. Box 605)

Toowoomba Qld 4350

IMPORTANT NOTICE - LEGAL PRIVILEGE

This communication is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the addressee, you are notified that any transmission, distribution or replication of this message or its attachments is strictly prohibited. The legal privilege and confidentiality attached to this e-mail is not waived, lost or destroyed by reason of a mistaken delivery to you. If you have received this email in error, we would appreciate immediate notification by telephone and ask that the message be permanently deleted from your system.

From: Jamie Orchard [<mailto:jorchard@racingqueensland.com.au>]

Sent: Thursday, 29 September 2011 4:18 PM

To: bazlawyer@atlaw.net.au

Subject: FW: Findings

Importance: High

Mr Atkins,

I have received the following disturbing email from Mr Burke. In particular I am concerned by his last line. I urge you to contact your client immediately to ensure that he is not at risk and that he has access to whatever assistance he may require.

Jamie Orchard

Director of Integrity Operations



PO Box 63, Sandgate QLD 4017

RACING
QUEENSLAND

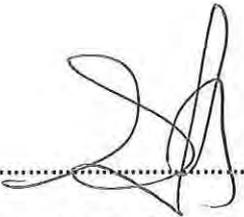
P +61 7 3869 9742

F +61 7 3269 8268

M 0417 791 596

This is attachment marked "AB/71"

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a vertical stroke and a horizontal stroke at the bottom.

Anthony John Burke

A handwritten signature in black ink, consisting of a large, stylized 'B' followed by a horizontal stroke and a vertical stroke at the end.

Barry Edward Atkins, Solicitor Witness

AB 171

jurisdiction but nonetheless, I request that you desist from making any further such public comment about the issues involving your client and the Toowoomba Turf Club. The issues have clearly taken a personal toll on your client and I believe that it is now in his interests and in the interests of the Club and the racing industry generally that the parties move on without any further public discussion of the issues which have now been addressed.

Jamie Orchard

Director of Integrity Operations



PO Box 63, Sandgate QLD 4017

P +61 7 3869 9742

F +61 7 3269 8268

M 0417 791 596

E jorchard@racingqueensland.com.au

W www.racingqueensland.com.au

From: Barry Atkins [mailto:bazlawyer@atlaw.net.au]

Sent: Thursday, 29 September 2011 4:34 PM

To: Jamie Orchard

Subject: RE: Findings

Importance: High

Well, why wouldn't he feel suicidal after almost a year of TTC attacking him when all he was doing was trying to properly fulfil his role as a Committee member, and then RQL wash their hands of the entire sordid affair.

It is a sorry state of affairs that 24 different proven instances of bullying – on average once a week – is not considered 'bullying'.

I have communicated with Mr. Burke by email several times this afternoon.

He has written to me that he is not up to talking.

I have specifically asked him "Are you OK?".

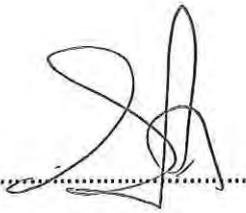
I have asked him if he is considering suicide in the same email.

I will advise you when I have more information

12/12/2012

This is attachment marked "AB 172"

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013



.....

Anthony John Burke



.....

Barry Edward Atkins, Solicitor Witness

Park View Chambers
123 Margaret Street
(P.O. Box 605)
Toowoomba Qld 4350

AB 172

IMPORTANT NOTICE - LEGAL PRIVILEGE

This communication is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the addressee, you are notified that any transmission, distribution or replication of this message or its attachments is strictly prohibited. The legal privilege and confidentiality attached to this e-mail is not waived, lost or destroyed by reason of a mistaken delivery to you. If you have received this email in error, we would appreciate immediate notification by telephone and ask that the message be permanently deleted from your system.

From: Jamie Orchard [mailto:jorchard@racingqueensland.com.au]
Sent: Friday, 30 September 2011 2:07 PM
To: 'Barry Atkins'
Subject: RE: Findings

Mr Atkins,

I have been provided with the various emails you have sent to the letsgohorseracing website. Mr Lingard, the editor of that site, sent them to Mr Frappell for comment but has now decided not to publish them as he believes it to be in the best interests of the industry that everyone move on.

I appreciate that you do not fall within the purview of the Rules of the racing industry and are not therefore subject to RQL's

12/12/2012

Page 4 of 8

jurisdiction but nonetheless, I request that you desist from making any further such public comment about the issues involving your client and the Toowoomba Turf Club. The issues have clearly taken a personal toll on your client and I believe that it is now in his interests and in the interests of the Club and the racing industry generally that the parties move on without any further public discussion of the issues which have now been addressed.

Jamie Orchard

Director of Integrity Operations



PO Box 63, Sandgate QLD 4017

P +61 7 3869 9742

F +61 7 3269 8268

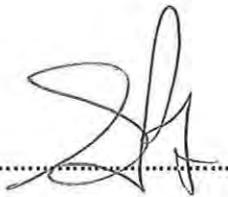
M 0417 791 596

E jorchard@racingqueensland.com.au

W www.racingqueensland.com.au

This is attachment marked "AB 173"

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013



.....

Anthony John Burke



.....

Barry Edward Atkins, Solicitor Witness

AB 173

From: Anthony Burke
Date: 22/05/2012 10:03:58 PM
To: jewels of the range
Subject: FW: public comments by B Atkins re TTC and A. Burke

-----Original Message-----

From: Barry Atkins
Date: 30/09/2011 3:16:59 PM
To: 'Anthony Burke'
Subject: FW: public comments by B Atkins re TTC and A. Burke

Bloody Bob better bloody believe I will not let him get away with telling lies about you in the future.

Barry Edward Atkins (B.A., LLB(Hons.))

Solicitor & Attorney

@LAW

Tel: 07 4639 3038

Fax: 07 4632 9529

Email: bazlawyer@atlaw.net.au

Web: www.atlaw.net.au

Park View Chambers

123 Margaret Street

(P.O. Box 605)

Toowoomba Qld 4350

IMPORTANT NOTICE - LEGAL PRIVILEGE

This communication is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the addressee, you are notified that any transmission, distribution or replication of this message or its attachments is strictly prohibited. The legal privilege and confidentiality attached to this e-mail is not waived, lost or destroyed by reason of a mistaken delivery to you. If you have received this email in error, we would appreciate immediate notification by telephone and ask that the message be permanently deleted from your system.

From: Barry Atkins [<mailto:bazlawyer@atlaw.net.au>]
Sent: Friday, 30 September 2011 3:16 PM
To: 'Jamie Orchard'
Subject: public comments by B Atkins re TTC and A. Burke

Dear Mr. Orchard,

12/12/2012

I have just returned to my office having appointments out of the office this morning.

I am pleased to advise you, as I said I would when I found out , that Mr. Burke is not going to kill himself. I spoke to him this morning.

I advised him during that conversation that I would prefer that my [accurate and legitimate] comments were not published on letsghorseracing so that the parties could try and finalise the outstanding issues by mediation and resolution of the several matters remaining.

Mr. Burke and I ask RQL to write to TTC advising that it is in the interests of all the parties that they participate in a mediation to resolve the outstanding issues.

I expect that any payment of compensation to Mr. Burke should be sanctioned by RQL with appropriate confidentiality clauses.

In relation to my written comments to letsghorseracing I note that:-

Mr. Frappell broke his agreement of confidentiality in releasing to TTC members information contained in the Investigator's report;

Mr. Frappell misrepresented the truth of the report;

That I am not bound by any such obligation of confidentiality [as admitted by you].

Please ensure that Mr. Frappell understands that if he or any other member or employee of TTC publicly attack Mr. Burke in the future, by lying about the facts or misrepresenting the truth, even using what Ms. Freeman called 'clumsy' language, I will have no hesitation in telling the world at large the truth about the conduct of the Committee Members of TTC, particularly the truth about Mr. Frappell.

In relation to your belief stated yesterday that TTC is not funding Mr. Clancy's personal legal costs I have now received information that the statement I read in the Minutes was subsequently changed so that Mr. Clancy's legal costs are being paid by TTC , but under Rule 42 TTC Rules which indemnifies employees. Nonsensical when the legal costs arise from an assault by the employee on a committee member.

Finally, I dispute your interpretation of Ms. Freeman's report "that RQL's initial action in requiring the Club to make the minutes available without precondition satisfactorily addresses the issue.[Feb10 incident]"

The issue in relation to which Mr. Burke reserves his rights against both TTC and RQL jointly and severally is that no action was taken by RQL after the incident of 10 February was reported by Mr. Burke to RQL and that that inaction by RQL enabled the subsequent campaign by TTC Members against Mr. Burke of bullying, intimidation and harassment to occur.

My client denies Ms-Freeman's conclusion that, in law, he is not covered by the Workplace Health and Safety Act because he is a volunteer. Mr. Burke reserves his rights against TTC and RQL in relation to a claim for compensation from the bullying.

Thank you for your concern for Mr. Burke expressed to me yesterday.

Barry Edward Atkins (B.A., LLB(Hons.))

Solicitor & Attorney

@LAW

Tel: 07 4639 3038

Fax: 07 4632 9529

Email: bazlawyer@atlaw.net.au

Web: www.atlaw.net.au

Park View Chambers

123 Margaret Street

(P.O. Box 605)

Toowoomba Qld 4350

IMPORTANT NOTICE - LEGAL PRIVILEGE

This communication is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the addressee, you are notified that any transmission, distribution or replication of this message or its attachments is strictly prohibited. The legal privilege and confidentiality attached to this e-mail is not waived, lost or destroyed by reason of a mistaken delivery to you. If you have received this email in error, we would appreciate immediate notification by telephone and ask that the message be permanently deleted from your system.

From: Jamie Orchard [mailto:jorchard@racingqueensland.com.au]

Sent: Friday, 30 September 2011 2:07 PM

To: 'Barry Atkins'

Subject: RE: Findings

Mr Atkins,

I have been provided with the various emails you have sent to the letsghorseracing website. Mr Lingard, the editor of that site, sent them to Mr Frappell for comment but has now decided not to publish them as he believes it to be in the best interests of the industry that everyone move on.

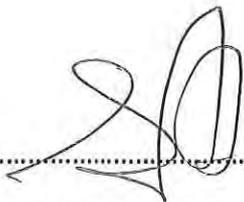
I appreciate that you do not fall within the purview of the Rules of the racing industry and are not therefore subject to RQL's

12/12/2012

This is attachment marked "AB 174 "

Specified in the list of attachments in the Statutory Declaration

of Anthony John Burke sworn 6 August 2013

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a vertical stroke and a loop.

.....
Anthony John Burke

A handwritten signature in black ink, consisting of a stylized 'B' followed by a horizontal stroke and a loop.

.....
Barry Edward Atkins, Solicitor Witness

AB174

Dear Carol,

Mr. Burke has resigned from TTC as a Committee member effective today due to the health issues caused by the actions of TTC in harassing and bullying him, and due to the inaction of RQL in not stopping the harassment and bullying from the moment Mr. Burke complained to RQL in February 2011.

Given the Minister directed RQL to investigate Mr. Burke's allegations we draw to your attention that in relation to the Report:-

1. RQL refused to 'reinvestigate' the issues after our submissions identifying serious flaws in the Report; and
2. The Report did not address the issue of RQL's own Policy on harassment and bullying which states that Committee Members are covered by the Policy [which adopts the Workplace Health and safety Act in which is embodied a Code of Conduct about bullying and harassment.

It is our belief that Barrister Freeman got the law wrong and RQL are culpable in failing to consider our submissions and in failing to ensure RQL's own Policy was considered appropriately rather than adopting a conclusion that was wrong in law[not merely her interpretation of the facts] and which conclusion did not accurately identify or deal with aspects of RQL's Policy where it differed from the legislative framework under the Act.

Barry Edward Atkins (B.A., LLB(Hons.))

Solicitor & Attorney

@LAW

Tel: 07 4639 3038

Fax: 07 4632 9529

Email: bazlawyer@atlaw.net.au

Web: www.atlaw.net.au

Park View Chambers

123 Margaret Street

(P.O. Box 605)

Toowoomba Qld 4350

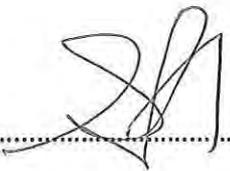
IMPORTANT NOTICE - LEGAL PRIVILEGE

This communication is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the addressee, you are notified that any transmission, distribution or replication of this message or its attachments is strictly prohibited. The legal privilege and confidentiality attached to this e-mail is not waived, lost or destroyed by reason of a mistaken delivery to you. If you have received this email in error, we would appreciate immediate notification by telephone and ask that the message be permanently deleted from your system.

13/12/11

This is attachment marked "AB 175"

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013



.....

Anthony John Burke



.....

Barry Edward Atkins, Solicitor Witness



TOOWOOMBA TURF CLUB INC.
Clifford Park Racecourse

RULES

Printed September, 2009

Hursley Road, Toowoomba, QLD 4350 PO BOX 6037 Toowoomba West, QLD 4350
Phone (07) 46 34 60 66 Fax (07) 46 33 12 56

"Light years ahead of the rest"

RULES of the TOOWOOMBA TURF CLUB INC.

RULE (1) – NAME OF THE CLUB, etc

The Club shall be called 'TOOWOOMBA TURF CLUB INC.' and shall consist of all persons who have been, or shall herein under be, duly elected Members in manner hereinafter provided, and who have, paid their Annual subscription in advance to the end of the current financial year.

RULE (2) – OBJECTS

The objects of the Club are:-

1. To promote, conduct and hold race Meetings including night racing for the recreation and enjoyment of Members, for the association of persons interested in or connected with horse racing, and for the improvement in the breed of horses in Queensland.
2. For the furtherance of the last-mentioned object, to encourage horse racing by the promotion of race Meetings and the giving of prize stakes and rewards for horse races.
3. To do all such things as are incidental or conducive to the attainment of such objects.
4. To apply the profits, if any, and other income of the Club to the promotion of the above objects; and the payment of any dividends to Members of the Club is prohibited.
5. Provide, establish, install and maintain any facility or amenity including a Clubhouse, Meeting rooms, educational and recreational facilities as would promote, foster support or encourage the objects of the Club.

RULE (3) – CONSTITUTION OF THE CLUB

The Club shall consist of all male and female persons who have been duly elected as Members thereof, under the provisions of the Rules and By-Laws heretofore in force, or who shall hereafter be elected as Members thereof in accordance with these Rules, and who continue to be Members pursuant to such repeated Rules and By-Laws of these Rules.

RULE (4) – REPEAL

All existing Rules of the Toowoomba Turf Club in force at the commencement of these Rules are hereby repealed. Provided however, that nothing herein contained shall effect anything done or commenced or contracted to be done under such repealed Rules.

RULE (5) – POWERS OF THE CLUB

1. To take over the funds and other assets and the liabilities of the present unincorporated association known as the 'Toowoomba Turf Club'.
2. To subscribe to, become a Member of and co-operate with any other association, Club or organisation, whether incorporated or not, whose objects are altogether or in part similar to those of the Club provided that the Club shall not subscribe to or support with its funds any Club, association or organisation which does not prohibit the distribution of its income and property among its Members to an extent at least as great as that imposed on the Club under or by virtue of Rule (39). 10.
3. In furtherance of the objects of the Club to buy, sell and deal in all kinds of articles, commodities and provisions, both liquid and solid for the Members of the Club or persons frequenting the Club's premises.
4. To purchase take on lease or in exchange, hire and otherwise acquire any lands, buildings, easements or property, real and personal, and any rights or privileges which may be requisite for the purposes of, or capable of being conveniently used in connection with, any of the objects of the Club: Provided that in case the Club shall take or hold any property which may be subject to any trusts the Club shall only deal with the same in such manner as is allowed by law having regard to such trusts.
5. To enter into any arrangements with any Government or Authority that are incidental or conducive to the attainment of the objects and the exercise of the powers of the Club: to obtain from any such Government or Authority any rights, privileges and concessions which the Club may think it desirable to obtain, and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions.
6. To appoint, employ, remove or suspend such managers, clerks, secretaries, servants, workmen and other persons as may be necessary or convenient for the purposes of the Club.

7. To remunerate any person or body corporate for services rendered, or to be rendered, and whether by way of brokerage or otherwise in placing or assisting to place or guaranteeing the placing of any unsecured notes, debentures or other securities of the Club, or in or about the Club or promotion of the Club or in the furtherance of its objects.
8. To construct, improve, maintain, develop, work, manage, carry to advance the Club's interests, and to contribute to, subsidise, or otherwise assist and take part in the construction, carrying out, alteration or control thereof; subject however to having complied fully with the Covenants of the lease agreement between the Club and the Trustees of the Toowoomba Racecourse.
9. To invest and deal with the money of the Club not immediately required in such manner as may from time to time be thought fit.
10. To take, or otherwise acquire, and hold shares, debentures or other securities of any company or body corporate.
11. In furtherance of the objects of the Club to lend and advance money or give credit to any person or body corporate; to guarantee and give guarantees or indemnities for the payment of money or the performance of contracts or obligations buy any person or body corporate, and otherwise to assist any person or body corporate.
12. To borrow or raise money either alone or jointly with any other person or legal entity in such Manner as maybe thought proper and whether upon fluctuating advance account or overdraft or otherwise to present or secure any moneys and further advances borrowed alone or with others as aforesaid by notes secured or unsecured, debentures or debenture stock perpetual or otherwise, or by mortgage, charge, lien, or other security upon the whole or any part of the Club's property or assets present or future and to purchase, redeem or pay-off any such securities.
13. To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments.
14. In furtherance of the objects of the Club to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Club.
15. To take or hold mortgages, liens, or charges, to secure payment of the purchase price, or any unpaid balance of the purchase price, of any part of the Club's property of whatsoever kind sold by the Club, or any money due to the Club from purchasers and others.
16. To take any gift of property whether subject to any special trust or not, for anyone or more of the objects of the Club but subject always to the provision in sub-Rule (4).
17. To print and publish any newspapers, periodicals, books or leaflets that the Club may think desirable for the promotion of its objects.
18. In furtherance of the objects of the Club to amalgamate with any one or more incorporated associations having objects altogether or in part similar to those of the Club and which shall prohibit the distribution of its or their income and property among its or their Members to an extent at least as great as that imposed upon the Club under or by virtue of Rule (39). 10.
19. In furtherance of the objects of the Club to purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any one or more of the incorporated associations with which the Club is authorised to amalgamate.
20. In furtherance of the objects of the Club to transfer all or any part of the property, assets, liabilities and engagements of the Club to any one or more of the incorporated associations with which the Club is authorised to amalgamate.
21. To make donations for patriotic, charitable or community purposes.
22. To do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the Club.

RULE (6) – CLASSES OF MEMBERS

The Membership of the Association shall consist of ordinary Members, and any of the following classes of Members:-

- (a) Life Members;
- (b) Honorary Members;
- (c) Junior Members;
- (d) Long serving Members;
- (e) Social Members;
- (f) Corporate Members;

RULE (7) – MEMBERSHIP

1. Every person who at the date of incorporation of the Association was a Member of the unincorporated association and who on or before the day of incorporation agrees in writing to become a Member of the Association shall be admitted by the Management Committee to the same class of Membership of the

- Association as that Member held in the unincorporated association, and shall not be required to pay any further.
2. Every applicant for Membership of the Club (other than the Members of the unincorporated Club referred to in sub-Rule (1) another Member, both of whom shall be Members for a period of at least three years. The application for Membership shall be made in writing, signed by the applicant and the proposer and seconder and shall be in such form as the Committee from time to time prescribes.
 3. **LONG SERVING MEMBERS:-**
Any Member who has been a Member of the Club for a continuous period not less than 35 years may at his/her option be exempted from payment of the Annual subscription of Members as provided by Rule (10) hereof. A Member exempted under this Rule from payment of the Annual subscription of a Member shall be classes as a Long Serving Member and be entitled to all privileges of a Member.
 4. **HONORARY MEMBERS:-**
The Committee may admit distinguished visitors as Honorary Members during any race Meeting. No Honorary Member shall be permitted to hold office or attend or vote at any Meeting of the Members of the Club.
 5. **LIFE MEMBERS:-**
On the recommendation of the Committee, any person who has rendered valuable services to the Club may be appointed to Life Membership at an Annual General Meeting. Notice of such intention shall be given with the Notice of Annual General Meeting. Life Members shall be entitled to all privileges of the Club and shall be bound by these Rules."

RULE (8a) – JUNIOR MEMBERS

A person who has attained the age of sixteen years but has not yet attained the age of eighteen years may be admitted as a Junior Member of the Club, if he/she specially applies for Junior Membership. All of the Rules of the Club shall apply to Junior Members subject to the following variations:

1. A Junior Member shall not be required to pay an entrance fee
2. The Annual subscription payable by Junior Members shall be one half of the subscription payable by ordinary Members.
3. Junior Membership shall entitle a Junior Member to attend the Meetings of the Club but shall not be entitled to vote or to be eligible for election to the Committee of the Club or to a Trustee of the Club.
4. The Committee requires satisfactory evidence of the age of any candidate for Junior Membership.
5. For the year commencing on the first day of July, following his/her 18th birthday, a Junior Member who so desires may continue as an ordinary Member of the Club and in that case shall not pay the entrance fee fixed by Rule (11) of these Rules provided he/she has been a Junior Member of the Club for at least two years, and in the case of one year, shall pay half the entrance fee and the Annual Subscription fixed by Rule (10) of these Rules.
Each Junior Member will receive one only guest's badge in addition to his/her own badge of Membership.
6. Junior Members shall not be served alcoholic beverages.

RULE (8b) – SOCIAL MEMBERS

All Rules of the Club shall apply to Social Members subject to the following variations:

1. Social Membership shall entitle the Social Members to attend the Meetings of the Club but the Social Member shall not be entitled to vote or to be eligible for election to the Committee of the Club or to be a Trustee of the Club.
2. The Annual and entry subscriptions payable by a Social Member shall be determined by the Committee from time to time.
3. The Committee may from time to time make such by-laws as they deem fit governing the rights and privileges of Social Members.
4. Each Social Member shall receive one guest's badge.
5. Social Members and the holders of guests' badges issued to Social Members shall not be entitled on presentation of their badge or ticket of Membership to free admission to the Course for any race Meeting conducted by the Toowoomba Turf Club Incorporated or any Racing Body and shall not be entitled to rights and privileges to which ordinary Members are entitled on such occasions.

RULE (8c) – CORPORATE MEMBERS

1. All Rules of the Club shall apply to Corporate Members and to the nominees of Corporate Members subject to the following variations:
2. Corporate Membership shall be in the name of a company, firm or corporation which will nominate in writing one natural person ("the nominee") to receive the rights, benefits, privileges, duties, obligations and disabilities of Membership for the subscription year or part thereof.
3. Subject to the provisions of clause 8c4 a Corporate Member may substitute a nominee for the current nominee by dually notifying the Secretary in writing.
4. A Corporate Membership can be cancelled by the Committee if the nominee in any way breaches any of the Rules of the Club, provided however that the Committee in the absolute discretion may invite the Corporate Member to nominate a substitute nominee.
5. The rights, benefits, privileges, duties, obligations and disabilities which apply to the nominee will be transferable to the substitute nominee.
6. Only the nominee will be eligible to attend Meetings of the Club and will be entitled to one vote on any matter brought before any Ordinary, Special or Annual General Meeting of the Club.
7. The nominee will not be eligible to be elected to the Committee of the Club unless that person has held that nomination for a minimum of three consecutive years.
8. That person shall be removed from the Committee should a nominee so elected cease to be the nominee for whatever reason.
9. The nominee shall not be entitled to Membership of the Club in his own right.
10. A current Member of the Club may appoint application to the Committee be granted Corporate Membership in the name of his nominated firm, company or corporation, at which time he ceases to hold Membership in his own right.
11. A Corporate Member upon payment of the Annual subscription for the current year shall be entitled to receive a ticket or badge of Membership for that year and shall be entitled to seven guest tickets or badges for every race Meeting held by the Club in the year. The Committee may refuse to replace any ticket or badge that has been lost.
12. A Membership entrance fee of \$100 shall be charged for a Corporate Membership. The Committee shall decide any alteration in the entrance fee.
13. The Annual subscription charged to Corporate Members shall be \$500. The Committee shall decided any alteration to the Annual subscription.
14. Corporate Members shall be entitled to the naming rights to one race conducted by the Club during every year of Membership and any other privileges deemed appropriate by the Committee.

RULE (9) –ADMISSION AND REJECTION OF MEMBERS

- (a) Candidates for admission shall be nominated by two Members of the Club, both of whom shall be Members for a period of three years. The application for Membership shall be made in writing, on the prescribed form signed by the applicant and his proposer and seconder.
- (b) At the next Meeting of the Committee after receipt of any application for Membership, such application shall be considered by the Committee, who shall thereupon determine upon the admission or rejection of the applicant, providing that ballot may be demanded by any Member of the Committee.
- (c) When a candidate has been duly elected notice to that effect shall be sent to him/her by the Secretary, with a request to remit the entrance fee and his/her first subscription as provided by the Rules.
- (d) When a duly elected candidate has paid such fees, he/she shall become a Member of the Club, and entitled to all privileges, and shall be bound by the Rules and By-Laws of the Club.
- (e) Any person whose application for Membership has been rejected may within one month of receiving written notification thereof, lodge with the Secretary a written notice of his or her intention to appeal against the decisions of the Committee.
- (f) Upon receipt of a notification of intention to appeal against rejection of Membership, the Secretary shall convene, within three months of the date of the receipt by him of such notice, a Committee Meeting, giving seven days notice to the appellant of such Meeting to enable him/her to answer any allegations or allegation impediment resulting in the rejection of his/her application, so that the Committee could reconsider their previous decision of rejection, by means of a secret ballot by the Committee .

RULE (10) – ANNUAL SUBSCRIPTION

The Annual subscription of Members shall be eighty dollars, payable on admission, and thereafter the subscription shall become due and payable on the first day of July each year, in advance. The Annual subscription for pensioners and Senior Card holders shall be fifty percent of the current ruling subscription. The Committee shall decide any alteration in the Annual subscription. Members joining after July 1 shall be charged on a pro rata basis.

RULE (11) – ENTRANCE SUBSCRIPTION

An entrance fee of \$50 may be charged all new Members. The Committee shall decide any alteration in the entrance fee.

RULE (12) – RULES RELATING TO CESSATION OF MEMBERSHIP

1. **MEMBERSHIP MAY CEASE:-**
If any Member shall fail to pay his subscription within three months of its becoming due and payable at the discretion of the Committee.
2. **MEMBERSHIP SHALL CEASE:-**
 - a) If any Member be disqualified by the Stewards or authorised Officials of any Racing Club, Trotting Club or Greyhound Racing Club.
 - b) If the Committee is satisfied that any Member has been guilty of improper conduct, riotous or objectionable behaviour at any race Meeting, or of any misconduct which in the opinion of the Committee, merits expulsion; or is in default in payment of any stake or forfeit; provided that, upon payment of same, a defaulting Member may be reinstated to Membership if a majority of the Committee so decide.
 - c) If, at the end of any period covered by a Member's subscription the Committee shall decide that continuance of any person's Membership would be, in the opinion of the Committee, detrimental to the interests of the Club, the Committee may authorise the removal of such person's name from the records of Membership, and thereafter such person shall cease to be a Member of the Club. In any such case the Member shall be entitled to receive a notice, and be dealt with as provided in sub-sections (e) and (f) hereof.
 - d) No Member shall be expelled unless first given at least seven days' notice in writing informing him/her of the allegation or allegations against him/her and requiring him/her to answer such allegations or allegation to the Committee, and to show cause to the Committee why, in the interests of the Club, he/she should not be expelled.
 - e) A Member may answer and show cause orally before the Committee at the time appointed by such notice, or in writing to the Committee before or at the time appointed, and if he/she fails to answer and show cause aforesaid the Committee may proceed in the absence of the Member or in the absence of such answer and cause shown.
 - f) Provided further that any Member so expelled or suspended shall be entitled to appeal to the Members of the Club at a Meeting to be called specially to deal with such appeal and the decision of the Members at such Special Meeting shall be final and conclusive. Any Member desirous of appealing to Members as aforesaid shall give notice thereof in writing within seven days after the decision and shall deposit, together with the sum of one hundred dollars, with the Secretary of the Club who shall thereupon call a Special Meeting of the Members of the Club to be held not later than twenty-one days after the receipt of the notice of appeal. All such notices calling such Meeting shall be given in writing addressed to the last known place of abode of Members, postage prepaid and shall be deemed to be good service of such notices – any practice to the contrary notwithstanding should the appeal be upheld the deposit of one hundred dollars shall be refunded to the Member.

RULE (13) – PERSONS CEASING TO BE MEMBERS FORFEIT CLAIM IN THE CLUB.

All persons ceasing to be Members, whether by retirement, expulsion, death, neglecting to pay the Annual subscription or otherwise, shall forfeit, ipso facto, all right to, or claim upon, the Club or its property.

RULE (14) – NOTICE of RENEWAL of ANNUAL SUBSCRIPTION and DATE of ANNUAL GENERAL MEETING

Members shall be advised of the Annual subscription due prior to the commencement of the financial year and such notice shall be accompanied by advice of the date of the Annual General Meeting.

RULE (15) – REGISTER OF MEMBERS

1. The Committee shall cause a Register to be kept in which shall be entered the names and residential addresses of all persons admitted to Membership of the Club and the dates of their admission.

2. Particulars shall also be entered into the Register of deaths, resignations, terminations and reinstatements of Membership and any further particulars as the Committee or the Members at any general Meeting may require from time to time.
3. The Register shall be open for inspection at all reasonable times by any Member who previously applies to the Secretary for such inspection.

RULE (16) - MANAGEMENT AND AUDIT

The Management of the business and the control of the Club shall be vested in a Committee consisting of ten Members of the Club. The Committee, in addition to the power and authorities by these Rules expressly conferred upon them, may do all such acts and things as they may deem necessary and expedient for conducting the business and carrying into effect the objects of the Club. The Committee shall, at its first Meeting after the Annual Meeting, elect one of its number to be Chairman, Deputy Chairman, and shall also elect a Treasurer, of whom shall hold office until the next Annual Meeting. Should the office of Chairman, Deputy Chairman, or Treasurer, become vacant at any time for which such Meeting is convened, the Members present shall elect one of their number to act at such Meeting.

The first auditor of the Club shall be appointed at the inaugural Meeting of the Club, and shall hold office until the first Annual General Meeting, unless previously removed by resolution of the Members at a general Meeting, in which case the Members shall appoint an auditor to act until the first Annual General Meeting,

An auditor (not a Member of the Committee) shall be elected at the Annual General Meeting, who shall audit the books of account and power to call for the production of all books, papers, accounts, and documents relating to the affairs of the Club. The Committee and Auditor shall hold office until their successors are elected.

Should a vacancy for Committee occur, for whatever reason, the Secretary shall put in motion the necessary actions to conduct a ballot in accordance with the procedures laid down in Rule (29).

If such vacancy occurs after the 30th day of March in any year, the position shall remain vacant and be filled at the time when vacancies outlined in Rule (29) are being filled.

RULE (17) - RETIREMENT OF COMMITTEE MEMBERS

The five Members of the Committee longest in office shall retire annually, and, in the event of any dispute arising between two or more retiring Members as to who shall have been longest in office, the same shall be decided to lot.

The length of time a Member of Committee has been in office shall be computed from the Member's last election.

RULE (18) - NOMINATION OF OFFICE BEARERS

The following provisions shall apply to the nomination of office bearers of the Club:-

1. No candidate shall be eligible for election as a Member of Committee unless he or she has had three years of continuous Membership.
2. No Member of the Club, who is, or becomes a licensee in connection with Racing, trotting or Greyhound racing, shall be eligible for election as a Member of the Committee.
3. All candidates for election on the Committee, and as Auditor, whose consent in writing has been previously obtained, shall be nominated in writing, by at least three Members, and such nominations shall be in the hands of the Secretary at least twenty-one days prior to the Annual General Meeting. Annual General Meeting notification to be advertised in the local press, naming retiring Committee Members. .
4. The names of such candidates, with their consent, in writing, shall thereupon be posted by the Secretary on the Notice Board in the Club's Office.
5. In all cases, candidates, and their nominations must have their subscriptions paid at the time nominations are received.
6. Each Member of the Retiring Committee Members shall be eligible for re-election without nomination as aforesaid, provided his subscription for the current year has been paid by the date fixed for the closing of nominations, and provided also that by such date he has given written notice to the Secretary of his willingness to again serve as Committee man.
7. Any candidate so nominated, desiring to withdraw from the election, may do so by notice to the Secretary up to 9:30am on the day after the date fixed for the closing of nominations.

8. A retiring Committee man offering his services, and any new candidate nominated as aforesaid, and any new candidate nominated as aforesaid, shall be re-elected as, of course, if the total number of nominees, for the vacancies is equal to or less than the number of vacancies.
9. When more candidates offer themselves to serve than there are vacancies, a postal ballot will be held, in accordance with these Rules.

RULE (19) – WITHDRAWING FROM MEMBERSHIP

Every Member shall be liable for his subscription for the ensuing year unless he shall have given notice to the Secretary, in writing on or before the first day of June of his intention to withdraw from the Club.

RULE (20) – DUTIES, PRIVILEGES, AND DISABILITIES OF MEMBERS

- (a) Each Member, immediately after election, shall communicate his/her address to the Secretary, and shall notify the Secretary of any change of address. The Secretary shall keep a register of the address of all Members and changes therein. The registered address of a Member shall be considered his/her address for all the purposes of these Rules, and all letters and notices delivered at or sent by post to the registered address of the Member shall be deemed to be sufficient delivery of same. If no address be given, all letters and notices addressed and posted to the last known place or abode of the Member shall be deemed sufficient.
- (b) On payment of the subscription for the current year, each Member shall be entitled to receive a ticket or badge of Membership for that year, and also shall be entitled to receive two guests' tickets or badges for each Meeting held by the Club in the year, excepting pensioner or Senior Card Member, who shall be entitled to one guest's badge only. The Committee may refuse to replace ticket that has been lost.
- (c) A Member's ticket or badge shall not be transferable.
- (d) Each Member shall (during the currency of the racing year for which it has been issued) be entitled, on presentation of his/her badge or ticket of Membership, to free admission to the course for any race Meeting conducted by the Toowoomba Turf Club Inc., of himself/herself, his/her private motor vehicle, and also on the like presentation to free admission of himself/herself to the grandstand and to any stand erected on the course for the exclusive use of Members during any such Meeting. Such ticket of Membership does not, however, entitle him/her to admission to the parade enclosure nor to any other part of the course from which Members or the public may be excluded by resolution of the Committee.
- (e) Each Member shall have the right to vote on any matter brought before any Annual or Special General Meeting of the Club for decision, provided that no Member shall be competent to vote or enjoy any of the privileges of a Member during the time his/her subscription is in arrears.
- (f) Each honorary guest's ticket or badge shall entitle the holder thereof for the time being to free admission to the course and grandstand, during any race Meeting of the current year for which such ticket or badge was issued by the Club.
- (g) A Member's son, under the age of eighteen years, shall, on production of an honorary guest's ticket or badge, be entitled to the like full admission to the course and grandstand, as the holder of such ticket or badge, as provided by paragraph (f) of this Rule.
- (h) Any Member permitting his/her ticket to be misused shall forfeit all rights to Membership, and such ticket shall be automatically cancelled.
- (i) Members must produce their tickets or badges at the race gate provided for admittance of Members, otherwise admission charges for non-Members shall be paid.

RULE (21) – ANNUAL GENERAL MEETING

The Annual General Meeting of the Club shall be held on the earliest convenient date between the first day of July and the thirtieth day of September, both days inclusive. Fourteen days' notice accompanied by a copy of the Annual report and Balance Sheet, shall be given to Members prior to the date of Meeting.

RULE (22) – QUORUM AT AND ADJOURNMENT OF ANNUAL AND SPECIAL GENERAL MEETINGS

1. At any general Meeting the number of Members required to constitute a quorum shall be double the number presently on the Management Committee plus one.
2. If within half an hour from the time appointed for the commencement of a general Meeting a quorum is not present, the Meeting, if convened upon the requisition of Members of the Management Committee of the Association, shall lapse. In any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Management Committee may

- determine, but not later than 14 days, and if at the adjourned Meeting a quorum is not present within half an hour from the time appointed for the Meeting, the Members present shall be a quorum.
3. The Chairman may, with the consent of any Meeting at which a quorum is present (and shall if so directed by the Meeting), adjourn the Meeting from time to time and from place to place, but no business shall be transacted at any adjourned Meeting other than the business left unfinished at the Meeting from which the adjournment took place. When a Meeting is adjourned for thirty days or more, notice of the adjourned Meeting shall be given as in the case of an original Meeting. Save as aforesaid it shall not be necessary to give any notice of an adjourned or business to be transacted at an adjourned Meeting.

RULE (23) – BUSINESS AT AN ANNUAL MEETING

The business to be transacted at every Annual General Meeting shall be:

- a) The receiving of the Management Committee s report and the statement of income and expenditure, assets and liabilities and mortgages, charges and securities affecting the property of the association for the proceeding financial year.
- b) The receiving of the auditors reports upon the books and accounts for the proceeding financial year.
- c) Any matters brought forward by the Management Committee ;
- d) Any business notified, in writing, to the Secretary by any Member at least 14 days before the Meeting.
- e) The election of Members for the Management Committee ; and
- f) The appointment of an auditor

RULE (24)

The Secretary shall convene a Special General Meeting –

- a) When directed to do so by the Management Committee ; or
- b) On the requisition in writing signed by not less than half the Members presently on the Management Committee or not less than one-tenth of the number of ordinary Members presently on the Membership register or double the number of Members presently on the Management Committee plus one, whichever is greater.
- c) On being given a notice in writing of an intention to appeal against the decision of the Management Committee to reject an application for Membership or to terminate the Membership of any person.

RULE (25)

1. The Secretary shall convene all General Meetings of the association for not later than fourteen days from the date of receipt of notice in accordance with provisions of Rule (24)(a),(b) or (c). and ten days notice thereof shall be given to Members.
2. The manner by which such notice shall be given shall be determined by the management Committee; provided that notice of any Meeting convened for the purpose of hearing and Committee, shall be given in writing. Notice of a General Meeting shall clearly state the nature of business to be discussed thereat.

RULE (26)

Unless otherwise provided by these Rules, at every general Meeting –

1. The president shall preside as Chairman, or if there is no president, or if he is not present within fifteen minutes after the time appointed for the holding of the General Meeting or is unwillingly to act, the vice-president shall be the Chairman or if the Vice-President is not present or is unwillingly to act, then the Members present shall elect one of their number to be Chairman of the Meeting;
2. The Chairman shall maintain order and conduct the Meeting in a proper and orderly manner;
3. Every question, matter or resolution shall be decided by a majority by a vote of the Members present;
4. Every Member present shall be entitled to one vote and in the case of an equality vote the Chairman shall have a second or casting vote, provided that no Member shall be entitled to vote at any General Meeting if his Annual subscription is in more than one month in arrears at the date of the Meeting;
5. Voting shall be by the show of hands or a division of Members, unless not less than one fifth of Members is present demand a ballot, in which even there shall be a secret ballot. The Chairman shall appoint two Members to conduct a secret ballot in such a matter as he shall determine and the result of the ballot as declared by the Chairman shall be deemed to be the resolution of the Meeting at which the ballot was demanded.

RULE (27) – ELECTION OF CANDIDATES

In the event of there being any candidate or candidates nominated for election in excess of the number required, the election shall be by postal ballot.

RULE (28) – MODE OF VOTING

At all Meetings of Members (except for the election of Committee and auditor and at all Committee Meetings), the mode of voting shall be by show of hands, and at all Meetings the Chairman shall have a deliberate, and in the case of equality, a casting vote.

RULE (29) – VOTING BY BALLOT OR POSTAL BALLOT

Should the number of Members offering themselves for election as Member of the Committee be in excess of the vacancies then an election by postal ballot shall take place in accordance with the following provisions:

1. A Presiding Officer and two Poll clerks, none of whom shall be the Secretary or Member of the Committee, shall be appointed by the Committee.
2. The Secretary should make application to the post master, Toowoomba, for a free post box during the first week in August for the purpose of conducting the ballots for the election of the Committee and/or auditor. All envelopes returning ballot papers should be posted to the Presiding Officer bearing the address of the Free Post Box number so allotted. Any ballot paper envelope handed into the office of the Club shall be posted without delay.
3. The Secretary shall provide the Presiding Officer with a locked ballot box with a cleft or opening therein capable of receiving the envelopes containing the ballot papers. The Presiding Officer shall seal the box and retain the key, and deliver such ballot box to the Postmaster Toowoomba, to be kept under his custody and control, so that all ballot papers returned to the Free Post Box number can be deposited therein.
4. The Secretary, within seven days from the close of nominations, shall forward to each Member, at his prescribed address, two envelopes of unequal size, the larger envelope addressed to the Presiding Officer showing the Free Post Box number, together with a printed registered number of the Member, and the small envelope endorsed "voting paper", enclosing with these envelopes a ballot paper showing the full names of the candidates nominated (distinguishing the names of the Members of the existing Committee by an asterisk opposite their names) together with instructions as to the number of appointments to be allotted for and the mode in which the candidates are to be selected. The instruction shall be framed in such a way as to ensure secrecy with respect to the ballot.
5. Each Member desiring to vote shall strike out name or names (as the case may be) of the candidate or candidates he may not desire to vote for, retaining on the ballot paper the required number of candidates necessary to fill the vacant larger envelope sign his name, and after enclosing the smaller envelope in the larger envelope, return the documents to the Presiding Officer.
6. The Presiding Officer, on being satisfied on the personal application of any Member that such Member has not used the original ballot paper sent to him, may issue another ballot paper so issued.
7. After the close of the Ballot at five o'clock in the afternoon of the day fixed for the ballot the Presiding Officer shall collect from the Postmaster, Toowoomba, the locked ballot box and return some to the place of the count of the ballot, and who shall, in the presence of Poll Clerks and any candidate desirous of being present, open the ballot box, and then and there proceed with the ballot. He shall first satisfy himself and the Member (by reference to the number on the larger envelope) is qualified to vote. If the Member is qualified to vote, the Presiding Officer shall open the larger envelope, extract the smaller envelope, and place it, unopened, in the ballot box. He shall reject all the larger envelopes not properly vouched for, or in respect of which the Member so desiring to vote has no qualification, and shall at convenient time subsequently destroy the same unopened. When all ballot papers have been so dealt with, the Presiding Officer shall reopen the ballot box, open the smaller envelopes so approved of, and proceed to examine the and count the number of votes recorded. He shall reject as informal all ballot papers which do not comply with the conditions of the subclause.
8. At the conclusion of the count, the Presiding Officer shall make out a written statement certifying the result of the ballot, and the successful candidates for the position of Office Bearers, as appears from such ballot. Such statement shall be signed by the Presiding Officer, and Poll Clerks. The Presiding Officer's statement, duly certified declaring the successful candidates duly elected to office, shall be forwarded to the Chairman of the Club not later than 12 noon on the day of the Annual Meeting.
9. If the number of candidates nominated for election as Office Bearers is less than the number of vacancies, the Chairman of the ensuing Annual Meeting shall declare all the candidates so nominated duly elected, and the Annual Meeting shall thereupon proceed to fill up the remaining vacancies. In case there are no nominations

for the positions in question, such Annual Meeting shall fill up all the vacancies. In case the Annual Meeting shall fail, or refuse, insofar as such Meeting fails or refuses to fill such vacancies or delegate such duty, the Members of the Committee already elected and holding office shall fill such vacancies. The Chairman shall, in the case of an equality in votes, have a second or casting vote.

10. The voting papers used in the election of the Committee will be held, as a record, for at least thirty days after the election and may be inspected at any reasonable hour in the day by any candidate.

RULE (30) -FUNCTION AND POWERS OF THE COMMITTEE

The Committee shall be entrusted to have full control of the assets of the Club and absolute authority regarding the conduct of all of the affairs of the Club, except insofar as is expressly provided by the Rules of Racing and in these Rules and subject to any subsequent resolutions of Members carried at a general or special Meeting. In particular, without derogating from the general powers herein before conferred, the Committee shall exercise and perform the following powers:

1. To borrow or raise money in such manner and at such rate of interest as the Committee shall think fit, either for the purpose of the Club or for any other purposes within the discretion of the Committee.
2. To give indemnity that may seem expedient.
3. Either alone, or with any other person or persons, to guarantee or become liable for the payment of money with or without interest thereon (including money payable or to become payable under a fluctuating overdraft), or by any corporation or person whatsoever or whomsoever.
4. To secure any moneys borrowed by the Club as aforesaid or to secure any indemnity or guarantee to be given as aforesaid and for the purposes aforesaid to enter into such mortgages, charges, or liens as the Committee may approve over the whole or any part of the Club's property and assets (whatever present or future) and, in particular, over the Club's freehold land, if any.
5. To sell, transfer, exchange, lease, or take on lease or otherwise alienate or acquire any freehold or other property of the Club.
6. To convene Special General Meetings of the Club.
7. To appoint a Secretary and fix his salary, and, if occasion arises to suspend or dismiss such Secretary and appoint another in his place.
8. To prepare and issue programmes and fix the dates for all race Meetings to be held during the tenure of office; to prepare the conditions of and advertise to be run in succeeding years such races as they in their judgement shall think fit; to make regulations in regard to the course or exercise or training ground.
9. To delegate any of their powers to sub-Committees consisting of subject to such conditions and directions as they shall think fit and to appoint a Secretary to serve any sub-Committee so delegated, whose duty it shall be to prepare reports of all sub-Committee Meetings and to circulate such reports to all Members of the Management Committee.
10. The chairman, the Treasurer and one other Member of the Committee shall constitute an executive Committee which may issue instruction to the Secretary and servants of the Club in matters of urgency connected with the management of the affairs of the Club during the Intervals between Meetings of the Committee, and where any such instructions are issued shall report there one to the next Meeting of the Committee.
11. To fix from time to time the charges for admission of the public to the course, grandstand and saddling paddock.
12. To fix from time to time the fee which any bookmaker shall be required to pay before being entitled to bet on the course; also to fix the amount and nature of the guarantee any bookmaker shall be required to provide.
13. To expel any Member of the Club in exercise of the powers conferred upon it by these Rules or the Rules of Racing.
14. To make by-laws for the conduct and government of the proceedings at their own Meetings, and the business to be transacted thereat, and such by-laws to amend or repeal and substitute other bylaws in lieu of those repealed, but so that no such by-laws shall be inconsistent with the Rules for the time being of the Toowoomba Turf Club Inc.
15. To provide when there is in these Rules no provision or sufficient provision in respect of any matter or thing necessary to give effect to these Rules in what manner and form the want of provision or insufficient provision, shall be supplied: To provide for any purposes. Whether general or to meet particular cases that may be convenient for the administration of these Rules, or that may be desirable or necessary to carry out the objects and purposes of the Club.
16. If within half an hour from the time appointed for commencement or a Committee Meeting a quorum is not present, the Meeting if convened upon the requisition of Members of the Committee, shall lapse. In any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Committee may determine, and if at the adjourned Meeting a quorum is not present within half an hour from the time appointed for the Meeting, the Meeting shall lapse.

17. The Committee may delegate any of its powers to a sub Committee consisting of such Members for the Club as the Committee thinks fit. Any sub-Committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Committee.
18. A sub-Committee may elect a Chairman of its Meetings. If no such Chairman is elected or if at any Meeting the Chairman is not present within ten minutes after the time appointed for holding the Meeting, the Members present may choose one of their number to be Chairman of the Meeting.
19. A sub-Committee may meet and adjourn as it thinks proper questions arising at any Meeting shall be determined by a majority of votes of the Members present, and in the case of an equality of votes, the question shall be deemed to be decide in the negative.
20. A resolution in writing signed by all the Members of the Committee for the time being entitled to receive notice of a Meeting of the Committee shall be as valid and effectual as if it has been passed at a Meeting of the Committee duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more Members of the Committee.
21. To appoint a Secretary to the Trustees of the Racecourse and fix his or her remuneration and if occasion arises, to suspend or dismiss such Secretary and appoint another in his or her place.
22. The Committee may refuse entry to the racecourse or remove from the racecourse any person that the Committee in its sole discretion seems unsuitable.

RULE (31) –MEETINGS OF MANAGEMENT COMMITTEE

1. The Management Committee shall meet at least once every calendar month to exercise its functions.
2. A special Meeting of the Management Committee shall be convened by the Secretary on the requisition, in writing, signed by not less than one-half of the Members of the Management Committee, which requisition shall clearly state the reasons why such special Meeting is being convened and the nature of the business to be transacted thereat.
3. At every Meeting of the Management Committee a simple majority of a number equal to the number of Members elected and/or appointed to the Management Committee as at the close of the last general Meeting of the Members, shall Member constitute a quorum.
4. Subject as previously provided in this Rule, the Management Committee may meet together and regulate its proceedings as it thinks fit: Provided that questions arising at any Meeting of the Management Committee shall be decided by a majority of votes and, in the case of equality votes, the question shall be deemed to be decided in the negative.
5. A Member of the Committee who is interested in any contract or arrangement made or proposed to be made with the Club shall disclose his interest at the first Meeting of the Committee at which the contract or arrangement is first taken into consideration, if his interest then exists, or, in any other case, at the first Meeting of the Committee after the acquisition of his interest.

If a Member of the Committee becomes interested in a contract or arrangement after it is made or entered into shall disclose his interest at the first Meeting of the Committee after he becomes so interested.

No Member of the Committee shall vote as a Member of the Committee in respect of any contract or arrangement in which he is interested and if he does so his cote shall not be counted.

6. Not less than fourteen days notice shall be given by the Secretary to Members of the Management Committee of any special Meeting of the Management Committee. Such notice shall clearly state the nature of the business to be discussed thereat.
7. The president shall preside as Chairman at every Meeting of the Management Committee, or if there is no President, or if at any Meeting he is not present within ten minutes after the time appointed for holding the Meeting, the Vice-President shall be Chairman or if the Vice-President is not present at the Meeting then the Members may choose one of their number to be Chairman of the Meeting.
8. If, within half an hour from the time appointed for the commencement of a Management Committee Meeting, a quorum is not present, the Meeting, if convened upon the requisition of Members of the Management Committee, shall lapse. In any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Management Committee may determine, and if at the adjourned Meeting a quorum is not present within half an hour from the time appointed for the Meeting, the Meeting shall lapse.

RULE (32) –DUTIES OF COMMITTEE

The Committee shall, within fourteen days of the Annual General Meeting, appoint a Secretary, and at a convenient time before each race Meeting, appoint a Secretary, and at a convenient time before each race Meeting appoint Stewards, a Judge, Starter, Clerk of the Scales, Clerk of the Course, and Timekeeper, who may be selected from the Committee or

other Members of the Club, or any other suitable persons. The Committee shall present to the Annual General Meeting a report of the proceedings and transactions for and on behalf of the Club during the preceding financial year.

RULE (33) –DUTIES OF COMMITTEE

The Trustees for the time being of the Toowoomba Racecourse, acting in relation to any of the affairs of the Club shall be indemnified and secured harmless out of the funds of the Club against all actions, costs, charges, losses, damage, and expenses which they or any of them shall or may incur or sustain by or by reason of any act done, concurred in or omitted in or about the execution of their duty or supposed duty in their respective offices except such (if any) as they shall incur or sustain by or through their own wilful neglect or default.

RULE (34) – FINANCIAL YEAR

The financial year of the Club shall begin on the first day of July and ended on the thirtieth day of June next following ten days' notice hereof be given to Members.

RULE (35) – FORFEITURE OF SEAT BY COMMITTEEMAN

Any Member of the Committee, except the Chairman, who shall without leave of the Committee absent himself from three consecutive Committee Meetings, shall cease to be a Member thereof.

RULE (36) – REMOVAL FROM OFFICE OF COMMITTEE MEMBERS

The office of a Member of the Committee becomes vacant if the Member....

- (a) Ceases to be a Member of the Committee by virtue of the act, or if he becomes prohibited from being a holder of such office by reason of any order made under any other act.
- (b) Becomes a bankrupt or makes arrangements or composition with his creditors generally.
- (c) Becomes of unsound mind, or a person whose person or Estate is liable to be dealt with in any way under the law relating to mental health.
- (d) Resigns his office in writing to the Club.
- (e) If he is removed by an Ordinary Resolution of a General Meeting or a Special Meeting convened to deal with such resolution.
- (f) Provided always that nothing in this Rule shall effect the operation of Rule 40 of the Rules of the Club.

RULE (37) –DUTIES OF SECRETARY

The Secretary shall cause full and accurate minutes of all questions, matters, resolutions and other proceedings of every Management Committee Meeting and general Meeting to be entered in a book to be open for inspection at all reasonable times by any financial Member who previously applies to the Secretary for that inspection. For the purposes of ensuring the accuracy of the recording of such minutes, the minutes of every Management Committee Meeting shall be signed by the Chairman of that Meeting or the Chairman of the next succeeding Management Committee Meeting verifying their accuracy. Similarly, the minutes of every general Meeting shall be signed by the Chairman of that Meeting or the Chairman of the next succeeding general Meeting: Provided that the minutes of any Annual General Meeting shall be signed by the chairman of that Meeting or the Chairman of the next succeeding general Meeting or Annual General Meeting.

A copy of the Treasurer's statement, presented to the monthly Committee Meeting of all monies received or paid out since the proceeding Meeting and the balance whether in the bank or in hand shall be embodied in the minutes.

He shall give all notices of Meetings and of all propositions to be brought before them; to make subject to directions of the Committee all disbursements of the funds of the Club by cheque to be drawn on the bank at which the account of the Club is key and countersigned by him, to obtain receipts and discharges for the same to carry out all the instructions of the Committee.

The Committee may at any time and for such period or periods as they may in their discretion think fit appoint a person to be acting Secretary and such person shall during the period of appointment carry out the duties of Secretary.

RULE (38) –THE HONORARY TREASURER

It shall be the special duty of the Honorary Treasurer to inspect and verify all vouchers and check the monthly expenditure. At each monthly Committee Meeting, he shall submit a financial statement which shall cover all financial

transactions of the previous calendar month. The balance at the end of the month shall be carried forward to the succeeding statement. The financial statement shall be signed by the Treasurer, Secretary, and endorsed by the Chairman after confirmation by the Committee.

RULE (39) – FUNDS AND ACCOUNTS

1. The funds of the Club shall be banked in the name of the Club in such banks as the Committee may from time to time direct.
2. Proper books and accounts shall be kept and maintained either in written or printed form in the English language showing correctly the financial affairs of the Club and the particulars usually shown in books of a like nature.
3. All monies shall be banked as soon as practicable after receipt thereof.
4. All amounts of twenty dollars or over shall be paid by cheque signed any two of the president, Secretary, treasurer or other Member authorised from time to time by the Committee .
5. Cheques shall be crossed 'not negotiable' except those in payment of wages, allowances or petty cash recoupment's which may be open.
6. The Committee shall determine the amount of petty cash which shall be kept on the impress system.
7. All expenditure shall be approved or ratified at a Committee Meeting.
8. As soon as practicable after the end of each financial year the treasurer shall cause to be prepared statements containing particulars of –
 - a) The income and expenditure and sources and application of funds for the financial year just ended; and
 - b) The assets and liabilities and of all mortgages, charges and securities affecting the property of the Club at the close of that year.
9. All such statements shall be examined by the auditor who shall present his report upon such audit to the Secretary prior to the holding of the Annual General Meeting next following the financial year in respect of which such audit was made for inclusion in the Annual report.
10. The income and property of the Club whencesoever derived shall be used applied solely in promotion of its objects and in the exercise of its powers as set out herein and no portion thereof shall be distributed, paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to or amongst the Members of the Club provided that nothing herein contained shall prevent the payment in good faith of interest to any such Member in respect of monies advanced by him to the Club or otherwise owing by the Club to him or of remuneration to any officers or servants of the Club or to any Member of the Club or other person in return for any services actually rendered to the Club provided further that nothing herein contained shall be construed so as to prevent the payment or repayment to any Member of out of pocket expenses, money lent, reasonable and proper charges for goods hired by the Club or reasonable and proper rent for premises demised or let to the Club.

RULE (40) –DOCUMENTS

The Committee shall provide for the safe custody of books, documents instruments of title and securities of the Club.

RULE (41) – DISOLUTION AND DISTRIBUTION OF SURPLUS

Subject to the provision of the 'Racing and Betting Act 1980-1983 Amended' the Club may only be dissolved by a resolution of a majority of not less than two-thirds of the Members voting at any Special General Meeting of the Club called for such purpose.

If the Club shall be wound up in accordance with provisions of the 'Racing and Betting Act 1980-1983 As Amended' and there remains after satisfaction after all its debts and liabilities, any property whatsoever, the same shall not be paid or distributed among the Members of the Club but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Club, and which shall prohibit the distribution of its or their income and property among its or their Members to an extent at least as great as is imposed on the Club or such institution or institutions to determine by the Members of the Club.

Notwithstanding the provision of this Clause the Club shall not be wound up unless the consent of the Minister of Racing is first obtained.

RULE (42) – INDEMINTY OF COMMITTEE, STEWARDS AND SECRETARY

The Committee, stewards, and Secretary shall be indemnified from the funds of the Club against all damages and the costs of any legal proceedings that may be instituted by or against them in consequence of the performance of their duties.

RULE (43) – RULES OF RACING

The Rules of Racing of the body for the time being have authority Queensland in that behalf shall be the Rules of Racing of the Toowoomba Turf Club Inc.

RULE (44) – BY-LAWS

The Management Committee made from time to time may, amend or repeal by-laws, not inconsistent with these Rules, for the internal management of the Club and any by-law may be set aside by a general Meeting of Members.

RULE (45) – ALTERATION OF RULES

1. Subject to the provisions of the Associations Incorporation Act, these Rules may be amended, rescinded, or added from time to time by a special resolution carried at any General Meeting: Provided that no such amendment, recession, or addition shall be valid unless the same shall have been previously submitted to and approved by the Under Secretary, Department of Justice, Brisbane.
2. Notice of resolution to be moved at such Meetings shall be lodged with the Secretary not less than twenty-one days before the Meeting to be so called, and shall be posted in the Secretary's Office, Toowoomba Turf Club Inc., and sent to each Member of the Club by the Secretary not less than 14 days prior to the day of Meeting.

RULE (46) –INTERPRETATION OF RULES

The interpretation of Rules at any Meeting shall be left to the Chairman.

RULE (47) –COMMON SEAL

The Committee shall provide for a Common Seal and for its safe custody. The Common Seal shall only be used by the authority of the Committee and every instrument to which the seal is affixed shall be signed by a Member of the Committee, and shall be countersigned by the Secretary or by a second Member of the Committee or by some other person appointed by the Committee for the purpose.

RULE (48)

Words in these Rules importing the singular include the plural and plural the singular unless the context requires otherwise.

For the purpose of these Rules, the term 'person' means any male or female person who has attained the age of 18 years.

For the purpose of these Rules, the term 'Member' means any male or female person who has been duly elected as a Member pursuant to the within Rules.

For the purpose of these Rules, where a Member and/or office bearer of the Club and/or the Committee is a female, the word 'he', 'his', 'him', wherever they respectively appear shall be read as 'she', 'her', and 'her'.

RULE (49) –REFUSE NOMINATIONS

All nominations for any race to be run at any Meeting of the Club shall be subject to the approval of the Committee, which may decline to receive or accept any nominations without giving reasoning for so doing.

RULE (50) – RULES TO BE SUPPLIED TO MEMBERS

These Rules shall be printed, and a copy thereof shall be supplied to each Member, free of charge, upon application to the Secretary; and they shall be binding upon every Member of the Club, whether he shall have received a copy of the same or not. Any further copies can be obtained from the Secretary.

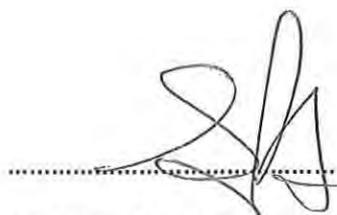
STANDING ORDERS AND RULES OF DEBATE

1. The order of business shall follow the agenda prepared by the Chairman and Secretary. Members shall introduce new business only after completion of the business set out on the agenda. The first item on the agenda shall be the confirmation of the minutes as a correct record.
2. Should any matter of urgency arise, a Member may move a suspension of Standing Orders for a stated period of time to allow the urging question to be discussed.
3. When the chairman rises to address the Meeting, all others must remain seated. Any person wishing to speak must rise and address the Chairman.
4. No interruption of a speaker is allowed except on a point of order, which must be taken immediately the alleged brief has occurred.
5. No more than two Members in addition to the mover and seconder may speak to a motion unless another Member speaks against such motion.
6. All remarks shall be addressed to the Chairman, and any questions to another Member shall be put through the Chairman.
7. The Chairman's ruling on all points of order and procedure shall be final, unless a motion is moved, seconded and carried 'that the Chairman's ruling must be disagreed with.' The mover may speak briefly in support of his motion, and the Chairman must explain why his ruling was given. The Chairman takes the vote.
8. No discussion shall take place except on a motion or amendment dually moved and seconded, and put in writing if so required by the Chairman.
9. Only one amendment upon any motion shall be entertained and decided at a time, and if any amendment is carried, it shall be held to have negatived the original motion and stand in its place.
10. It shall be competent, when one amendment has been dealt with, to receive other amendments one at a time in like manner to be discussed and decided until the subject is finally disposed of.
11. No Member shall propose more than one amendment upon any one motion and no Member shall speak more than once upon either motion or amendment, except the mover of a motion who shall have the right of reply. Any Member seconding a motion or amendment without remark shall not be held to have spoken thereon.
12. No person may move or second more than one amendment to an original motion, but the mover and seconder of a motion or amendment may speak to subsequent amendments.
13. An amendment may not be moved or seconded by any person who has already spoken to the original motion or to a previous amendment.
14. No motion or amendment which has been moved and seconded shall be withdrawn without the unanimous consent of the Meeting.
15. No Member may speak on any motion after it has been put to the vote.
16. Any subject having once been decided cannot be reopened at the same Meeting, or at any other, except by notice of motion; and no resolution, Rule, or by-law passed at one Meeting shall be amended or rescinded by another by a vote by numerically less than the one which it was previously passed.
17. A proposition that "the question be now put" shall take precedence of all matters before the Meeting, and upon it no discussion shall be allowed.
18. Any Member who has not already spoken may move the adjournment of the debate, the adjournment of the Meeting, or "that the Chairman leave the chair". The two adjournment motions may be amended, but only as to time and place. These motions may not be moved a second time until a reasonable period has elapsed.
19. Should a Member not vote on any question before the Meeting his omission to do so shall be counted as a vote in the negative.
20. No question that is decided by the Rules of the Club shall be put to a vote.
21. Any three Members not satisfied with the results of the voting may demand a division.

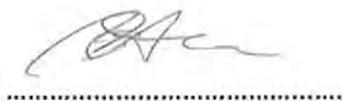
This is attachment marked "AB 176"

Specified in the list of attachments in the Statutory Declaration

of Anthony John Burke sworn 6 August 2013

A handwritten signature in black ink, consisting of a large, stylized 'A' and 'B' intertwined, positioned above a horizontal dotted line.

Anthony John Burke

A handwritten signature in black ink, appearing to be 'BA', positioned above a horizontal dotted line.

Barry Edward Atkins, Solicitor Witness

AB/176

2-2 (e)



bj
g
dy

Racing Queensland Limited

RISK MANAGEMENT POLICY

COMMENCEMENT DATE

This policy comes into effect on 1 July 2010.

PURPOSE

The *Racing Act 2002* authorises Racing Queensland Limited (RQL) to develop policies for the sound management of the industry. In addition, RQL's role is to initiate, develop and implement policies it considers conducive to the development and welfare of the racing industry and the protection of the public interest. A key component of RQL's suite of policies is the risk management policy.

The purpose of this risk management policy is to outline the RQL preferred risk management approach and methodology to assist racing clubs in the development of appropriate risk management capabilities.

OBJECTIVES

The objectives of this policy are to ensure that:

- a consistent approach to the management of risk is adopted within racing clubs
- all significant risks to racing clubs are identified, evaluated and managed
- the process of management of risk enhances the performance of racing clubs.

BACKGROUND

RQL recognises the importance of a structured approach to risk management. This industry based policy is intended to provide guidance for racing clubs in developing the capability to better understand potential threats and their consequences for their business. It will also assist racing clubs to make more informed decisions about risk management options, including whether to accept, transfer, reduce, or share those risks.

The benefits of effective risk management include:

- improved planning and performance
- the opportunity to minimise the cost of losses arising from crisis events
- greater protection for business assets and income flow through the identification of risk
- a better understanding about the need to achieve a balance between the costs (financial and non-financial) involved in mitigating risk, against the benefits derived from the activity, in order to achieve an appropriate level of business resilience
- improved stakeholder relationships
- improved information for decision making
- enhanced reputation.

Risk management is particularly important within the Queensland racing industry due to:

- the complexity of the industry

- the criticality of maintaining integrity within the industry
- stakeholder expectations
- the high probability of a variety of threats including equine or canine disease.

SCOPE OF POLICY

This policy sets out RQL's preferred risk approach, vision, definition, and methodology for the Queensland racing industry. The policy has been designed to provide a platform for racing clubs to develop sound risk management understanding and practices.

POLICY STATEMENT

In accordance with RQL's vision, all racing clubs should develop an appropriate and continuous level of risk management capability. In order to achieve this level of risk management, RQL will assist by:

- defining the risk approach for the racing clubs
- providing an appropriate level of support to racing clubs.

APPLICATION

✕ This policy applies to all RQL clubs and other significant entities with a commercial interest in the Queensland racing industry. The racing club's risk management plan should reflect the complexity and size of the individual organisation. *Relevant appendices to this policy have been developed with their individual applicability based on a club's TAB status.*

✕ DOCUMENT PRECEDENCE

Should there be any conflicting information provided in this policy document, the following list of precedence applies:

1. Racing Act 2002
2. Australian Rules of Racing 2008
3. RQL Regional Rules of Racing
4. RQL Local Rules of Racing
5. Greyhounds Australasia Rules
6. Australian Harness Racing Rules & Regulations
7. RQL Risk Management Policy.

PRINCIPLES OF RISK MANAGEMENT

AS/NZS 31000:2009 Risk Management contains a comprehensive list of risk management principles. The risk management principles captured below reflect AS/NZS 31000:2009 but have been contextualised for RQL clubs.

Integration of risk management with business planning

Risk management is an integral component of business planning. A first step in the annual business planning process is the identification and assessment of risks, in particular assessing whether there have been any significant changes in your club's risk profile.

Full racing club commitment

Leadership needs to be shown by the Board and Chief Executive of each club to ensure that all racing clubs are committed to the process. In turn this commitment should be extended down to all staff by involving them in the risk management process and where appropriate, assigning specific responsibilities with risk management to individuals.

It is important to note that in smaller organisations the major responsibility for risk management may befall on only one or two individuals.

Review, monitoring and reporting of risks

Formal mechanisms for review, monitoring and reporting of identified risks should be in place.

Cost benefit assessment

Risk treatment options enable the management of identified risks at a tolerable or acceptable level within financial and/or other policy constraints. Although all risks can never be eradicated,

RISK REPORTING AND TRAINING REQUIREMENTS

TAB clubs are required to submit a risk management plan to RQL by the 30th September each year. In addition, **TAB and strategic non-TAB clubs** are required to submit a Club Risk Reporting Form ([Appendix G](#)) when there has been a significant material deterioration of a risk. This form is designed to highlight and communicate in a consistent manner any changes in a club's risk profile (e.g. new service/event offering) to RQL.

KEY CONTACTS

Key contact points at RQL are the:

- Chief Financial Officer *MT 3-1(c)*
- Business Analyst
- Senior Corporate Counsel/Company Secretary *SM*

Racing clubs must nominate and report to RQL on the designated risk management officer. These details must also be stated in the risk management plan.

REFERENCES

This policy has been developed using the following standards and guides:

- AS/NZS 31000:2009 – Risk Management – Principles and Guidelines
- HB 327:2010 – Communicating and Consulting about Risk (Companion to AS/NZS 31000:2009)

AUTHORITY AND OTHER INFORMATION

Racing Act 2002

Australian Rules of Racing 2008

Greyhounds Australasia Rules

Australian Harness Racing Rules & Regulations

APPENDICES

Appendix A	Key terms and abbreviations (all clubs)
Appendix B	Risk Management process overview (non-TAB clubs)
Appendix C	Risk Management process in detail (TAB and strategic non-TAB clubs)
Appendix D	Risk Register Worksheet (all clubs)
Appendix E	Roles and responsibilities organisational structure (TAB and strategic non-TAB clubs)
Appendix F	Risk Management Plan Outline (TAB and strategic non-TAB clubs)
Appendix G	Club Risk Reporting Form (TAB and strategic non-TAB clubs)

REVIEW

This policy was reviewed on 1 September 2010.

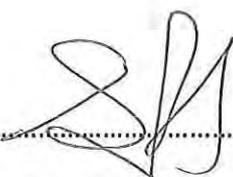
Next review date will be 1 May 2012.

This policy was made by Racing Queensland on 1 July 2010 under s.81(w) of the *Racing Act 2002*. For further information contact Adam Carter, Chief Financial Officer by phoning (07) 3869 9702 or emailing acarter@racingqueensland.com.au

This is attachment marked "AB/77"

Specified in the list of attachments in the Statutory Declaration

of Anthony John Burke sworn 6 August 2013



.....

Anthony John Burke



.....

Barry Edward Atkins, Solicitor Witness

AB177

Racing Queensland Limited

RULES OF RACING POLICY

2.2 by
dy
e.

DATE POLICY WAS MADE

This policy was made on 1 July 2010.

COMMENCEMENT DATE

This policy came into effect on 1 July 2010.

PURPOSE

The *Racing Act 2002* (Act) authorises Racing Queensland Limited (Racing Queensland) to make policies for the sound management of the industry.

The purpose of this policy is to ensure that the integrity of thoroughbred, harness and greyhound racing in Queensland is maintained by providing for Racing Queensland to make Rules of Racing in relation to all matters related to, or in connection with, racing. In this context, making Rules includes adopting the Australian Rules of Racing, the Australian Rules of Harness Racing and the Australasian Rules of Greyhound Racing.

The additional purpose of this policy is to enable Racing Queensland to satisfy the requirement in section 91 of the Act for the control body to make rules of racing, necessary for the good management of racing.

POLICY STATEMENT

Racing Queensland is committed to ensuring that the integrity of thoroughbred, harness and greyhound racing in Queensland is maintained.

A critical component of Racing Queensland's approach to integrity is the implementation of a comprehensive set of Rules of Racing which apply to all relevant industry participants and which address all matters related to, or in connection with, racing.

Those Rules of Racing may be made either by:

- the making of Local Rules of Racing; and/or
- the adoption of Australian Rules of Racing, the Australian Rules of Harness Racing or the Australasian Rules of Greyhound Racing.

The matters in relation to which Racing Queensland will make Rules include:

- Powers of the Australian Racing Board, Harness Racing Australia, Greyhounds Australasia, Racing Queensland and Stewards;
- Registration of clubs and meetings;
- All matters concerning racehorses, harness racing horses and greyhounds including but not limited to ownership, transfers and leasing;
- Conduct of race meetings including but not limited to nominations and entries and types of races;
- Preparation for, conduct of and deciding results in individual races;
- Licensing and conduct of industry participants;
- Course telecasts;
- Objections and complaints;

- Offences, enforcement and punishments; and
- Any other matter related to any of the foregoing matters or otherwise related to, or in connection with, racing.

APPLICATION

This policy applies to all persons participating in, or in any way connected with, thoroughbred, harness and greyhound racing in Queensland.

PROCEDURES

Racing Queensland will give effect to this policy by making Rules of Racing, either by the making of Local Rules of Racing (for the thoroughbred, harness or greyhound codes of racing) or by the adoption of Australian Rules of Racing, the Australia Rules of Harness Racing or the Australasian Rules of Greyhound Racing.

RULES

Racing Queensland may make Rules of Racing in relation to any matter to which reference has been made in this Policy.

REVIEW

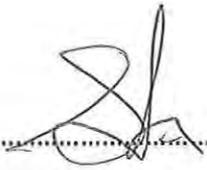
Review date will be July 2012.

REVISION HISTORY

Version	Date	Description
1.01	July 2010	Board adopted under exceptional circumstances
1.02	September 2010	Board confirmed this policy continued to have effect

This is attachment marked "AB 178"

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013



.....

Anthony John Burke



.....

Barry Edward Atkins, Solicitor Witness

Racing Act 2002
Adopted by RQL 1-7-10

AB 178

Section 81(i)

Queensland Racing Limited

POLICY ON THE FORMATION, MANAGEMENT AND LICENSING OF CLUBS

COMMENCEMENT DATE

This policy comes into effect on 2 July 2004.

PURPOSE

The *Racing Act 2002* (the Act) authorises Queensland Racing Limited (Queensland Racing) to make policies for the sound management of the industry. Section 81(i) of the Act requires Queensland Racing to make a policy on the formation and management of clubs eligible to be licensed to hold race meetings.

Race clubs are the mechanism by which the racing industry delivers its "product" to its customers. The racing industry depends on properly formed and soundly managed race clubs for its continued prosperity.

Proprietary race clubs are race clubs that conduct races for profit. They are businesses, as opposed to the not-for-profit race clubs, which exist to run race meetings for the benefit of members.

Under previous racing legislation, proprietary race clubs were prohibited. The Act removed this statutory prohibition. Currently, all Queensland race clubs are non-proprietary race clubs. However, this may change if a corporation applies to Queensland Racing for registration as a race club.

(The Act provides that a licensed club that was a non-proprietary club at the time it was licensed but subsequently became a corporation would continue to be considered non-proprietary for the purposes of the application of its revenues and profits and disposal of its assets.)

Mismanagement of race clubs and instances of harassment, discrimination, misconduct and unsafe work practices can cause great harm to the individuals involved, as well as reduce productivity and damage the image of the Queensland racing industry.

It is in the interest of the racing industry and the public generally that the industry is a safe place to work, free from unsafe work practices, unlawful discrimination, harassment and misconduct.

The purpose of this policy is to ensure Queensland race clubs, whether they are proprietary or non-proprietary, are properly formed and managed and that they provide a work environment free from unsafe work practices, harassment, unlawful discrimination and misconduct.

POLICY STATEMENT

Club Formation

Queensland Racing will ensure that race clubs are properly constituted under either the *Associations Incorporations Act 1981* (for clubs formed as incorporated associations) or the *Corporations Act 2001* (Cth) (for clubs formed as corporations) before it licenses these clubs.

Application for a Licence

In accordance with the Act and the Rules of Racing, clubs shall apply for registration on or before 1 July each year. Accompanying their application, clubs must provide a written statement showing:

- The name of the race club
- The names of all office bearers connected with the club
- A national police certificate for each executive officer of the club. (Amended 6 May 2005)
- The course where the club proposes to hold race meetings
- The club's constitution
- A list of members of the club

In accordance with the Rules of Racing, a race club committee must not contain more than two licensees as members unless the club has obtained written permission from Queensland Racing. A licensee must not hold the position of race club secretary without written permission from Queensland Racing Limited. (For the purposes of this rule, a person holding a permit to train his or her own horses shall not be deemed to be a licensee.)

Race club committee members and executive officers must be of good character. In accordance with section 88 of the Act, Queensland Racing will not licence a club if a committee member or executive officer is a bankrupt or has a conviction, other than a spent conviction, for:

- an offence under the Act or previous racing legislation
- an indictable offence, or a summary offence that involved dishonesty, fraud, stealing or unlawful betting
- an offence under another state's laws about racing or betting.

Should a national police certificate contain a conviction other than those listed above, Queensland Racing will consider the relevance of the conviction. Queensland Racing will not license a club if it considers that such a conviction shows evidence that the person is not of sufficient good character or is unsuitable to be associated with the administration of a race club. In doing this, Queensland Racing may consider the person's character, business reputation, current financial position and financial background.

Race clubs must pay the prescribed licence fee to Queensland Racing.

Grant of a Licence and Conditions

Licences granted by Queensland Racing Limited to clubs carry the following conditions:

1. (a) If a club cancels or abandons the race meeting or attempts to cancel or abandon a race meeting without the consent of Queensland Racing, the club agrees that Queensland Racing's representatives who control races at race events, together with all horses, jockeys, owners, trainers, bookmakers, and other persons involved in the conduct of race events and betting on licensed venues and in the transmission by sound or video of the race events, may enter the licensed venue with all equipment, vehicles and other property for the purposes of conducting the race event, and broadcasting and telecasting that event and the conduct of betting and to do such acts and things as are necessary for or incidental or convenient to the conduct of the race meeting for the club.

(b) If a club cancels or abandons or attempts to cancel or abandon an event without the consent of Queensland Racing and Queensland Racing believes that it is in the best interests of the management of the code of racing for the event to be held, the club consents to an injunction restraining it from in any way interfering with the carrying on of the event under the control Queensland Racing for the club.

(c) These provisions apply notwithstanding any provision of any other Policy or Rule.
2. Queensland Racing has the power to impose such other conditions on a licence issued to a club as it determines necessary.

Proprietary Race Clubs

A proprietary race club must be formed in accordance with the *Corporations Act 2001* (Cth). The club must be registered under the *Corporations Act 2001* (Cth) and have a constitution that requires, at all times, at least three directors and that persons appointed or employed as executive officers of the corporation are eligible individuals. An eligible individual is a person who:

- is not affected by bankruptcy action
- is not subject to an exclusion action under any control body's rules of racing
- is not disqualified from managing corporations under the *Corporations Act 2001* (Cth).

In addition to provisions above relating to the good character of race club committee members and executive officers, a proprietary club must provide a national police certificate for each person who is a business associate or executive associate of the proprietary race club.

Club Management

Queensland Racing will oversee the financial management and performance of all Queensland race clubs to ensure they are properly managed.

All Queensland race clubs, whether proprietary or non-proprietary, must manage their finances according to the Act, the Rules of Racing and the Financial Management Procedures Manual for Queensland Thoroughbred Race Clubs and under section 34(2) of the Act, must comply with a direction from Queensland Racing in relation to the club's operations or racing venue. The Financial Management Procedures Manual for Queensland Thoroughbred Race Clubs is available on the Queensland Racing website.

Non-proprietary race clubs must comply with Queensland Racing's Policy on Spending by Non-proprietary Licensed Clubs and Policy on Disposal of Assets by Non-proprietary Licensed Clubs.

In accordance with the Rules of Racing, race clubs must forward to Queensland Racing within 90 days of the end of the financial year a properly audited balance sheet and profit and loss statement showing the operations of the club for the financial year just concluded.

Within 30 days of a race club's annual general meeting, the club must forward to Queensland Racing a written report on its activities over the year and a copy of any corporate, strategic, business or other plan the club may have adopted in that period.

Safe Working Environment

Queensland Racing requires race clubs to take all reasonable steps to provide a safe working environment for their officials, other staff and licensees by fostering a culture of high ethical standards and support for whistleblowers and by not tolerating unlawful discrimination, harassment or unsafe work practices.

Race clubs must provide information and training to their officials and staff to help ensure they are aware of their rights and responsibilities under relevant legislation, including:

- *Anti-Discrimination Act 1991*
- *Disability Discrimination Act 1992*
- *Human Rights and Equal Opportunity Commission Act 1986*
- *Public Sector Ethics Act 1994*
- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984*
- *Whistleblowers Protection Act 1994*
- *Workplace Health and Safety Act 1995*

Race club managers and supervisors must model appropriate standards of behaviour and use staff meetings regularly to discuss ethical standards and expectations of appropriate behaviour.

Race clubs must not tolerate offensive, explicit or pornographic calendars, literature, posters and other materials in the workplace.

Disciplinary Action

Queensland Racing will take disciplinary action against a club that contravenes the Act, *Associations Incorporations Act 1981*, *Corporations Act 2001 (Cth)*, the Rules of Racing, the Financial Management Procedures Manual for Queensland Thoroughbred Race Clubs, Queensland Racing's policies or directives or legislation providing for a safe working environment.

Queensland Racing will periodically audit race clubs to ensure they continue to be suitable to be licensed.

APPLICATION

This policy applies to all race clubs licensed by Queensland Racing, whether they are proprietary or non-proprietary.

DEFINITIONS

Business associate – a person Queensland Racing believes will be associated with the ownership or management of the operations of a proprietary race club.

Conflict of interest – refers to a conflict between a private interest and official duty. For example, being in a position to use public office, knowledge and access to resources or influence for improper purposes or private interests. Conflicts of interest can be real or apparent. A real conflict of interest exists when a reasonable person would conclude that the official's private interests interfere, or are likely to interfere, with the proper performance on his or her official duties. An apparent conflict of interest exists when there is an appearance that an official's private interests may interfere with the proper performance of his or her official duties although, in reality, this may not be the case.

Direction (from Queensland Racing) – a written direction given by Queensland Racing to a race club relating to the club's operations or racing venue. Queensland Racing may require a club to do something or refrain from doing something.

Disciplinary action (by Queensland Racing against a club) – may include cancelling, suspending or varying the club's licence or imposing a monetary penalty.

Discrimination – occurs when a person is treated more or less favourably than another person would be under similar circumstances. Discrimination is unlawful when it is on the basis of an attribute described in the *Anti-Discrimination Act* (i.e. sex, marital status, pregnancy, parental status, breastfeeding, age, race, impairment, religion, political belief or activity, trade union activity, lawful sexual activity,

sexuality, gender identity, family responsibilities; or association with, or relation to, a person identified on the basis of any of the above attributes).

Eligible corporation – a corporation that is registered under the *Corporations Act 2001 (Cth)* and has a constitution that requires, at all times, at least three directors and that persons appointed or employed as executive officers are eligible individuals.

Eligible individuals – an individual who is not affected by bankruptcy action, does not have a disqualifying conviction, is not subject to an exclusion action under any control body's rules of racing and is not disqualified from managing a corporation under the *Corporations Act 2001 (Cth)*.

Executive associate – an executive officer of a corporation, partner, trustee or another person Queensland Racing believes will be associated with the ownership or management of the operations of a proprietary race club.

Executive officer – a person who is concerned with or takes part in a corporation's management, which is to include as a minimum, the President/Chair, Vice President/Chair, Treasurer and Secretary/CEO. (Amended 6 May 2005)

National police certificate – a document known as a “national police certificate” available from the Commissioner of Police.

Non-proprietary race club – a not-for-profit race club. A non-proprietary race club has a constitution that both:

- (a) provides for the application of all of the club's profits and other income to the promotion of the club's objects and
- (b) prohibits the payment of dividends to the members of the club.

Official misconduct – generally means conduct that involves:

- behaviour which is dishonest or not impartial in the exercise of powers or authority (e.g. soliciting or receiving benefits);
- behaviour which adversely affects or could adversely affect, directly or indirectly, the honest or impartial exercise of powers or authority (e.g. allowing personal relationships to affect decisions, or using sexual harassment to obtain a gain at the expense of the public);
- a breach of trust placed in a person by reason of his or her employment (e.g. to breach the confidentiality of matters of a personal nature);
- misuse by any person of information or material acquired in connection with his or her employment, either for the benefit of the person or another person (e.g. disclosing confidential or privileged information to an unauthorised other person); and
- which constitutes or could constitute a criminal offence or a disciplinary breach that provides reasonable grounds for termination of employment.

Proprietary race club – a for-profit race club.

Proprietary racing – racing where the persons conducting the race meeting receive a share of the profits, instead of the profits being returned to the code of racing for use as prize money.

Sexual harassment – is any unwanted, unwelcome or uninvited behaviour of a sexual nature that makes a person feel humiliated, intimidated or offended.

Spent conviction – a conviction for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act and that is not revived under section 11 of that Act.

Whistleblower – a person who discloses information about official misconduct, maladministration, negligent or improper management of public funds, reprisal, or danger to persons or the environment in the public interest to an authority that is able to investigate and remedy the matter.

PROCEDURES

Roles and responsibilities

Queensland Racing

Queensland Racing will:

- assess race clubs' licence applications to ensure all the required information is provided and that the club is properly constituted
- conduct investigations to ensure that club committee members, executive officers and other people associated with the ownership or management of race clubs are of good character and suitable to hold such positions
- analyse race clubs' financial statements, annual reports and strategic and business plans to ensure the clubs are properly managed
- regularly audit the operations of race clubs to ensure their continued suitability to be licensed.

Race Club Secretaries

Race club secretaries must ensure their club provides full documentation for its licence application.

Race Club Treasurers

Race club treasurers must ensure their club provides its annual report, properly audited balance sheet and profit and loss statement and copies of any corporate, strategic, business or other plan the club may have adopted during the financial year.

Review

This policy was review in August 2008.

Next review date will be August 2010.

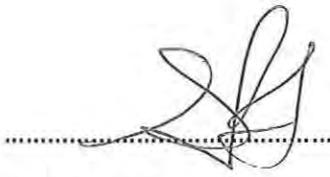
Rules of Racing

Race clubs must comply with the Rules of Racing that govern the formation and management of race clubs.

This policy was made by Queensland Racing Limited on 2 July 2004 under s.81(i) of the *Racing Act 2002*. For further information contact Malcolm Tuttle, Chief Operations Manager, by phoning (07) 3869 9730 or emailing mtuttle@queenslandracing.com.au.

This is attachment marked "AB / 79 "

Specified in the list of attachments in the Statutory Declaration
of Anthony John Burke sworn 6 August 2013

A handwritten signature in black ink, consisting of stylized, overlapping loops and lines, positioned above a horizontal dotted line.

Anthony John Burke

A handwritten signature in black ink, appearing as a series of connected, fluid strokes, positioned above a horizontal dotted line.

Barry Edward Atkins, Solicitor Witness

Section 81 p | **Racing Queensland Limited**

**AWARENESS OF DUTIES POLICY, INCLUDING SEXUAL
HARASSMENT, BULLYING AND UNLAWFUL
DISCRIMINATION IN THE RACING INDUSTRY**

DATE POLICY WAS MADE

This policy was made on 1 July 2010.

COMMENCEMENT DATE

This policy comes into effect on 1 July 2010.

DATE POLICY WAS AMENDED

This policy was amended on 3 September 2010.

PURPOSE

The *Racing Act 2002* (Act) authorises Racing Queensland Limited (Racing Queensland) to make policies for the sound management of the industry. Section 81(p) of the Act requires Racing Queensland to make a policy on making its officials, other staff and licensees aware of their duties under laws such as the *Anti-Discrimination Act 1991*.

It is in the interest of the Queensland racing industry and the public generally that the industry is a safe place to work, free from unsafe work practices, unlawful discrimination, sexual harassment, bullying, victimisation and misconduct. Racing Queensland will not tolerate these forms of behaviour and will take action when necessary to prevent sexual harassment, bullying, victimisation and unlawful discrimination from occurring in the industry.

Racing Queensland has developed policies and practices to make its workplace safe and productive, such as:

- A Code of Conduct and Ethics, which details the standard of behaviour expected of its employees
- A Whistleblower Policy, which gives guidance and support to employees who encounter or disclose improper conduct
- An Harassment, Discrimination and Bullying Policy that applies to all Racing Queensland Board members, officials, other employees, workers and agents, including contractors, consultants, work experience students and other volunteers
- An employment contract that states that employees have a duty to not endanger health and safety and must uphold the Code of Conduct and Ethics
- A draft Workplace Health and Safety Policy and Procedures
- Training for staff on their rights and responsibilities regarding workplace safety, harassment, discrimination and whistleblowing
- A Harassment and Discrimination Referral Officer to provide advice and support to staff that experience harassment or discrimination.

Racing Queensland also provides information and support for licensees who experience harassment and discrimination.

The purpose of this policy is to help ensure that the racing industry is free from unsafe work practices, sexual harassment, unlawful discrimination, bullying, victimisation, and misconduct by making Racing Queensland officials, and other staff and licensees aware of their responsibilities in this regard.

POLICY STATEMENT

Racing Queensland will foster a culture of high ethical standards and support for whistleblowers and will not tolerate unlawful discrimination, sexual harassment, bullying, victimisation or unsafe work practices.

Racing Queensland will provide information and training to its officials and other staff and licensees to help ensure they are aware of their rights and responsibilities under relevant legislation, including:

- *Anti-Discrimination Act 1991*
- *Disability Discrimination Act 1992*
- *Human Rights and Equal Opportunity Commission Act 1986*
- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984*
- *Whistleblowers Protection Act 1994*
- *Workplace Health and Safety Act 1995*
- *Crime and Misconduct Act 2001*
- *Trade Practices Act 1974*

Information provided for officials and other Racing Queensland workers will take the form of an HR Policy on Harassment, Discrimination and Bullying. This will be provided as part of employee inductions and on a regular and ongoing basis and information will be posted on staff noticeboards. Officials and other Racing Queensland staff will also receive regular training about the Harassment, Discrimination and Bullying Policy and its implications for conduct and behaviour.

Racing Queensland managers and supervisors will model appropriate standards of behaviour and use staff meetings regularly to discuss ethical standards and expectations of appropriate behaviour.

Racing Queensland encourages all race clubs, licensees and other employers within the racing industry to:

- model appropriate standards of behaviour and clearly articulate expected standards of behaviour for their employees
- develop codes of conduct and policies on sexual harassment, bullying and unlawful discrimination
- provide training to staff on their rights and responsibilities regarding the prevention of sexual harassment, bullying and unlawful discrimination
- provide support for employees who have experienced sexual harassment, bullying or unlawful discrimination.

Racing Queensland stewards will use their powers under the Rules of Racing to investigate allegations of sexual harassment and discrimination made against licensees, lay charges and impose penalties.

Racing Queensland has an appointed Harassment and Discrimination Referral Officer, who provides advice and support to Racing Queensland officials, employees and workers who experience sexual harassment, bullying and unlawful discrimination.

APPLICATION

This Policy applies to Racing Queensland officials, all licensees, race club officials and other participants in the Queensland racing industry and provides standards of conduct for them to observe.

DEFINITIONS

'Discrimination' occurs when a person is treated more or less favourably than another person would be under similar circumstances. Discrimination is unlawful when it is on the basis of an attribute described in the *Anti-Discrimination Act* (i.e. sex, marital status, pregnancy, parental status, breastfeeding, age, race, impairment, religion, political belief or activity, trade union activity, lawful sexual activity, sexuality, gender identity, family responsibilities; or association with, or relation to, a person identified on the basis of any of the above attributes).

'Licensee' refers to a person who holds a licence issued by Racing Queensland.

'Official misconduct' generally means conduct that involves:

- behaviour which is dishonest or not impartial in the exercise of powers or authority (e.g. soliciting or receiving benefits);
- behaviour which adversely affects or could adversely affect, directly or indirectly, the honest or impartial exercise of powers or authority (e.g. allowing personal relationships to affect decisions, or using sexual harassment to obtain a gain at the expense of the public);
- a breach of trust placed in a person by reason of his or her employment (e.g. to breach the confidentiality of matters of a personal nature);
- misuse by any person of information or material acquired in connection with his or her employment, either for the benefit of the person or another person (e.g. disclosing confidential or privileged information to an unauthorised other person); and
- which constitutes or could constitute a criminal offence or a disciplinary breach that provides reasonable grounds for termination of employment.

'Racing Queensland policies' refers to policies from time to time adopted by Racing Queensland.

'Race club official' includes committee members of the club and all other persons employed or remunerated by the club, whether full-time, part-time, permanent, fixed-term, contract or casual.

'Sexual harassment' refers to any unwanted, unwelcome or uninvited behaviour of a sexual nature that makes a person feel humiliated, intimidated or offended.

'Statutory obligations' refers to obligations imposed from time to time by legislation including, where relevant and without limitation, obligations imposed on licensees, race club officials and other racing industry participants by the: *Anti-Discrimination Act 1991*, *Crime and Misconduct Act 2002*, *Financial Administration and Audit Act 1977*, *Public Records Act 2002*, *Racing Act 2002*, *Statutory Bodies Financial Arrangements Act 1982*, *Whistleblowers Protection Act 1994* and *Workplace Health and Safety Act 1995* and any relevant regulations made pursuant to statute.

'Whistleblower' refers to a person who discloses information about official misconduct, maladministration, negligent or improper management of public funds, reprisal, or danger to persons or the environment in the public interest to an authority that is able to investigate and remedy the matter.

PROCEDURES

Racing Queensland has established a manual, which deals with sexual harassment, bullying and unlawful discrimination in the racing industry. This manual will serve as a guide for licensees and participants in the racing industry who are not Racing Queensland officials or workers. Racing Queensland officials and workers should refer to the HR Policy on Harassment, Discrimination and Bullying to obtain further detail on these matters.

Roles and responsibilities

Racing Queensland officials and other staff

In accordance with the Code of Conduct and Ethics, all Racing Queensland officials and other employees must maintain the highest standards of professionalism, probity, diligence and integrity. They must ensure they understand their responsibilities under this Policy, the Code of Conduct and Ethics, the Racing Queensland HR Policy on Harassment, Discrimination and Bullying, Awareness of Duties Policy, Whistleblowers Policy and draft Workplace Health and Safety Policy and Procedures. They have a duty to disclose breaches of the code, the policies or any official misconduct they may encounter.

Racing Queensland managers and supervisors

Racing Queensland managers and supervisors must model the highest standards of ethical behaviour; provide a work environment for their staff that is free of unsafe work practices, unlawful discrimination, bullying, victimisation and harassment. They must regularly discuss the ethical standards and behaviour expected of their staff. They must act on any ethical or behavioural breaches they become aware of and provide support to staff who experience harassment or discrimination or who disclose misconduct.

Licensees

Under the Rules of Racing, licensees have a responsibility not to act in an improper, unseemly or dishonourable way in connection with racing or to engage in conduct prejudicial to the image, interests or welfare of racing.

Review

Next review date will be July 2012.

Rules of Racing

Rules of Racing will not be made for this policy.

Racing Queensland Limited

MANUAL SEXUAL HARASSMENT, BULLYING AND UNLAWFUL DISCRIMINATION IN THE RACING INDUSTRY

Application

This manual is made in reference to Racing Queensland Limited's (Racing Queensland) *Awareness of Duties Policy, including Sexual Harassment, Bullying and Unlawful Discrimination in the Racing Industry* (Awareness of Duties Policy).

Part 1 Purpose

It is in the interests of the Queensland racing industry, those who work or participate in the industry and the public generally, that the industry be free from sexual harassment, bullying, victimisation and unlawful discrimination. Racing Queensland will not tolerate these forms of behaviour.

All licensees, race club officials and other participants in the Queensland racing industry must comply with Racing Queensland's Awareness of Duties Policy and this manual. Racing Queensland officials, workers and employees are covered by a separate Racing Queensland HR Policy on Harassment, Discrimination and Bullying and should refer to that policy and its associated documents instead of to this manual.

The purpose of this manual is to:

1. provide standards of conduct for observance by all licensees, race club officials and other participants in the Queensland racing industry, and
2. help foster an environment free from sexual harassment, bullying, unlawful discrimination and victimisation within the industry by making all licensees, race club officials and other participants aware of their responsibilities regarding the prevention of sexual harassment, bullying, unlawful discrimination and victimisation.

Part 2 Introduction

All people have the right to work in an environment and participate in an industry that is free from sexual harassment, bullying, unlawful discrimination and victimisation.

Instances of sexual harassment, bullying, unlawful discrimination and victimisation can cause great harm to the individuals involved and the organisations concerned.

The effects on individuals may include stress, loss of confidence, poor work performance, anger, depression, relationship problems, damage to reputation and unemployment.

The consequences for organisations may include low staff morale, high staff turnover, reduced productivity, damage the organisation's reputation, reduced customer patronage, lower profits and exposure to fines and legal costs through vicarious liability.

The damage may spread beyond the organisations directly involved to include the image and reputation of the wider industry.

Part 3 Definitions

'Race club official' includes committee members of the club and all other persons employed or remunerated by the club, whether full-time, part-time, permanent, fixed-term, contract or casual.

'Licensee' refers to a person who holds a licence issued by Racing Queensland.

'Racing Queensland policies' refers to policies from time to time adopted by Racing Queensland.

'Statutory obligations' refers to obligations imposed from time to time by legislation including, where relevant and without limitation, obligations imposed on licensees, race club officials and other racing industry participants by the: *Anti-Discrimination Act 1991*, *Crime and Misconduct Act 2002*, *Financial Administration and Audit Act 1977*, *Public Records Act 2002*, *Public Sector Ethics Act 1994*, *Racing Act 2002*, *Statutory Bodies Financial Arrangements Act 1982*, *Whistleblowers Protection Act 1994* and *Workplace Health and Safety Act 1995* and any relevant regulations made pursuant to statute.

'Vicarious liability' means an employer is liable for the acts committed by an employee in the course of his or her work. The acts must be committed in the course of employment, while the employee is acting within the scope of the employee's authority and performing the employment duties, or be acts incidental to the employment duties. A defence against vicarious liability is that the employer has taken reasonable steps to prevent the acts from occurring.

Part 4 Racing Queensland's practices

Racing Queensland encourages all licensees, race clubs, and other participants within the racing industry to:

1. model appropriate standards of behaviour and clearly articulate expected standards of behaviour for their employees
2. develop codes of conduct and policies on sexual harassment, bullying and unlawful discrimination
3. provide training to staff on their rights and responsibilities regarding the prevention of sexual harassment, bullying and unlawful discrimination, and
4. provide support for employees who have experienced sexual harassment, bullying or unlawful discrimination.

Employers in the racing industry may contact Racing Queensland for preliminary advice on these measures to prevent sexual harassment, bullying and unlawful discrimination.

Part 5 Equal opportunity

The *Anti-Discrimination Act 1991* and *Sex Discrimination Act 1984* (Commonwealth), prohibit discrimination, victimisation, sexual harassment and vilification in certain circumstances, such as employment and the provision of services.

Sexual harassment may involve behaviour that would also be an offence under the criminal law – for example, physical assault, indecent exposure, sexual assault, stalking or obscene communications. Sexual harassment may be a breach of an employer's common law duty to take reasonable care for the health and safety of employees. It can also be a breach of occupational health and safety legislation.

Federal anti-discrimination legislation further prohibits discrimination on the basis of criminal record, medical record or social origin.

It is in the best interest of the Queensland racing industry that all employers within the industry practice equal opportunity in the recruitment, training and retention of staff.

Employees should be valued according to how well they perform their duties. They should be treated on their merits, without regard to race, age, sex, relationship status or any other factor not applicable to the position.

All racing industry employees should be able to work in an environment free of discrimination, victimisation, sexual harassment and vilification. These behaviours are unacceptable and they should not be tolerated under any circumstances.

Racing industry employers should take appropriate action to ensure their workplaces are equal opportunity workplaces and are free from sexual harassment, bullying and unlawful discrimination.

Part 6 What conduct is objectionable?

6.1 Sexual harassment

Sexual harassment happens if a person:

- (a) subjects another person to an unsolicited act of physical intimacy, or
- (b) makes an unsolicited demand or request (whether directly or by implication) for sexual favours from the other person, or
- (c) makes a remark with sexual connotation relating to the other person, or
- (d) engages in any other unwelcome conduct of a sexual nature in relation to the other person,

and the person engaging in the conduct described in paragraphs (a), (b), (c) or (d) does so:

1. with the intention of offending, humiliating or intimidating the other person, or
2. in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.

Sexual harassment can take many different forms and may include physical contact, comments, jokes, propositions, the display of offensive material or other behaviour that creates a sexually hostile working environment. Examples of sexual harassment include:

- (a) uninvited touching, uninvited kisses or embraces
- (b) smutty jokes or comments
- (c) making promises or threats in return for sexual favours
- (d) displays of sexually graphic material including posters, pinups, cartoons, graffiti or messages left on notice boards, desks or common areas
- (e) invitations to go out after prior refusal
- (f) "flashing" or sexual gestures
- (g) sex-based insults, taunts, teasing or name-calling
- (h) staring or leering at a person or at parts of their body
- (i) sexually explicit conversation
- (j) persistent questions or insinuations about a person's private life, or
- (k) offensive phone calls, letters, e-mail messages or computer screen savers
- (l) stalking.

Sexual harassment is not behaviour based on mutual attraction, friendship and respect. If the interaction is consensual, welcome and reciprocated, it is not sexual harassment.

Sexual harassment must not be tolerated in the workplace or in any work-related context such as the races, work functions and business trips.

Sexual harassment can arise from a single incident – it depends on the circumstances. Some actions or remarks are so offensive that they constitute sexual harassment in themselves, even if they are not repeated. Other single incidents, such as an unwanted invitation out, may not constitute harassment if they are not repeated and are polite and respectful.

There is no onus on the person being harassed to say he or she finds the conduct objectionable. Many people find it difficult to speak up. All employees are responsible for their own behaviour. If you think the behaviour may offend, then do not do it!

All licensees, race club officials and other racing industry participants must ensure that they do not sexually harass another person in the workplace or in any work-related context such as the races, work functions and business trips. These laws apply to interactions with people other than fellow employee or workers and extend to interactions with industry participants or members of the public that occur in the course of someone doing their job in the racing industry.

6.2 Bullying

A person is subjected to bullying if the person is subjected to repeated behaviour, other than behaviour amounting to sexual harassment, by a person, including the person's employer or a co-worker or group of co-workers of the person that:

- (a) is unwelcome and unsolicited, and
- (b) the person considers to be offensive, intimidating, humiliating or threatening, and

- (c) a reasonable person would consider to be offensive, humiliating, intimidating or threatening.

Bullying does not include reasonable management action taken in a reasonable way by the person's employer in connection with the person's employment, including legitimate disciplinary action and performance management.

Bullying is also known as mobbing or workplace harassment.

Bullying can occur between people in any direction within a workplace, for example:

- laterally (a co-worker harassing another co-worker)
- upwards (a worker harassing a manager/supervisor)
- downwards (a supervisor/manager harassing a worker).

Bullying may occur in one-to-one situations, in front of managers or supervisors, co-workers, clients or customers or by written, visual, electronic communications such as letters, drawings, emails or telephone communications. It may be direct or indirect.

Examples of bullying include, but are not limited to:

- (a) abusing a person loudly, usually when others are present
- (b) repeated threats of dismissal or other severe punishment for no reason
- (c) constant ridicule and being put down
- (d) leaving offensive messages on email or the telephone;
- (e) sabotaging a person's work, for example, by deliberately withholding or supplying incorrect information, hiding documents or equipment, not passing on messages and getting a person into trouble in other ways
- (f) maliciously excluding and isolating a person from workplace activities
- (g) persistent and unjustified criticisms, often about petty, irrelevant or insignificant matters
- (h) humiliating a person through gestures, sarcasm, criticism and insults, often in front of customers, management or other workers
- (i) spreading gossip or false, malicious rumours about a person with an intent to cause the person harm.

All licensees, race club officials and other participants in the Queensland racing industry must ensure that they do not bully another person in the workplace or in any work-related context such as the races, work functions and business trips.

6.3 Unlawful discrimination

Unless a statutory exemption applies, discrimination, whether direct or indirect, may be unlawful when it is on the basis of an attribute described in the *Anti-Discrimination Act* and occurs in a specified area of activity, for example, in employment or in the provision of services.

Direct discrimination occurs if a person treats or proposes to treat, a person with an attribute less favourably than another person without the attribute is or would be treated in circumstances that are the same or not materially different.

Indirect discrimination occurs if a person imposes, or proposes to impose, an unreasonable requirement:

- (a) with which a person with an attribute does not or is not able to comply; and
- (b) with which a higher proportion of people without the attribute comply or are able to comply.

Discrimination may involve:

- (a) making offensive "jokes" about another worker's racial or ethnic background, sex, sexual preference, age or disability
- (b) expressing negative stereotypes about particular groups, for example "married women shouldn't be working"
- (c) judging someone on their political or religious beliefs rather than their work performance
- (d) using selection processes based on irrelevant attributes such as age, race or disability rather than on skills and merit.

Discrimination occurs when someone is treated unfairly or badly compared to others, often because they are seen as different. It is against the law to discriminate against people because of:

- (a) Sex (ie whether someone is male or female)
- (b) Sexuality (covers people who are heterosexual, lesbian, gay or bi-sexual)
- (c) Gender identity (where a person identifies as a member of the opposite sex by living or wanting to live as someone of that sex, or a person of indeterminate sex, who seeks to live as a member of a particular sex)
- (d) Marital or parental status
- (e) Pregnancy or breastfeeding
- (f) Race
- (g) Age
- (h) Impairment (whether physical, intellectual, psychiatric or mental disability, injury or illness, including whether they are HIV+ or use a guide dog, wheelchair or some other remedial device)
- (i) Religion
- (j) Political belief or activity
- (k) Trade union activity
- (l) Lawful sexual activity

It is also against the law to discriminate against a person because they associate with or are related to someone who has any of these attributes or personal characteristics.

All licensees, race club officials and other participants in the Queensland racing industry must ensure that they do not unlawfully discriminate against another person in the workplace or in any work-related context such as the races, work functions and business trips.

6.4 Victimisation

The law in Queensland protects people who have made, may intend to make, or have helped someone else make, a complaint of discrimination, harassment or vilification. This includes people who have agreed to be witnesses in relation to another person's complaint. A person must not be punished or harassed for complaining about unfair treatment they believe is against the law or because someone thinks they are about to complain or because they have helped someone with a complaint.

It is against the law to victimise someone (treat them unfairly) just because they have:

- (a) said they shouldn't be discriminated against
- (b) made a complaint about the discrimination at work, or to the person who has treated them unfairly
- (c) sent a complaint about discrimination to the Anti-Discrimination Commission
- (d) given advice or information about discrimination to someone else, or acted as a witness for someone who has been discriminated against.

Under the *Anti-Discrimination Act*, victimisation happens if a person (the respondent) does something, or threatens to do something, to the detriment of another person (the complainant):

- (a) because the complainant, or a person associated with, or related to, the complainant:
 - (i) refused to do something that would contravene the *Anti-Discrimination Act* or
 - (ii) in good faith, alleged, or intends to allege that a person committed an act that would contravene the *Anti-Discrimination Act* or
 - (iii) is, has been, or intends to be, involved in a proceeding under the *Anti-Discrimination Act* against any person or
- (b) because the respondent believes that the complainant, or a person associated with, or related to, the complainant is doing, has done, or intends to do one of the things mentioned in paragraph (a)(i), (ii) or (iii) above.

All licensees, race club officials and other participants in the Queensland racing industry must ensure that they do not victimise another person in the workplace or in any work-related context such as the races, work functions and business trips.

6.5 Vilification

A person must not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of race, religion, sexuality or gender identity of the person or members of the group.

Workplaces can be considered public places. This means that any conduct which can possibly be observed by the public or any sort of communication either verbal or in writing to the public can be considered to have happened in a public place.

Examples of vilification include:

- (a) placing a poster or sticker on the customer service counter which incites others to

- hate people because of their race, religion, sexuality or gender identity
- (b) hate graffiti written on work toilet walls which incites hatred because of race, religion, sexuality or gender identity
 - (c) wearing of symbols, badges or clothing in the workplace with slogans that incite hatred
 - (d) an employee abusing a person because of their race, religion, sexuality or gender identity in the workplace which encourages others to hate people of that race, religion, sexuality or gender identity
 - (e) a work colleague making a speech in the work cafeteria that incites hatred of people because of their race, religion, sexuality or gender identity.

All licensees, race club officials and other participants in the Queensland racing industry must ensure that they do not vilify another person in the workplace or in any work-related context such as the races, work functions and business trips.

Part 7 Roles and responsibilities

7.1 Race clubs

Race clubs should develop codes of conduct and policies for the prevention of sexual harassment, bullying, unlawful discrimination and vilification. These policies must cover all race club committee members, employees and club members.

7.2 Race club officials, licensees and other racing industry employers

Race club officials, licensees and other racing industry employers must model the highest standards of ethical behaviour and provide a work environment for their employees that are free of unsafe work practices, sexual harassment, bullying, unlawful discrimination and victimisation, especially in workplaces where there are young and vulnerable people.

Club officials, licensees and other employers should regularly discuss with their employees the ethical standards and behaviour expected of them. They must act on any ethical or behavioural breaches they become aware of and provide support to employees who experience harassment, bullying, discrimination or victimisation or who disclose misconduct.

If officials, licensees or other employers become aware of inappropriate conduct, they do not have to wait for a complaint to be lodged before taking action. As with their other areas of management responsibility, if they become aware of a problem, they are expected to respond to that problem.

Part 8 Vicarious liability

Under the *Anti-Discrimination Act*, employers may be liable for discrimination, sexual harassment, bullying or vilification which happens in the workplace; unless they can show they have taken reasonable steps to prevent it.

Employers therefore must ensure that all employees are treated fairly and are not subject to any of these behaviours. They must also ensure that people who make complaints, or who are witnesses, are not victimised in any way.

Any reports of discrimination, victimisation, sexual harassment, vilification and bullying must be treated seriously and dealt with promptly, confidentially and impartially.

Disciplinary action should be taken against anyone who discriminates against, victimises, sexually harasses, vilifies or bullies a co-worker. Disciplinary action may involve a warning, transfer, counselling, demotion or dismissal, depending on the circumstances.

Part 9 What to do if you have a complaint

If you have concerns regarding sexual harassment, bullying, unlawful discrimination or victimisation, you should seek advice and assistance. Your concerns may relate to behaviour you are subjected to or behaviour you have witnessed that is directed at another person.

In the first instance you should consult your employer's policies on preventing sexual harassment, bullying and unlawful discrimination, should such policies exist. These policies should give you guidance on how to make a complaint within your organisation.

If for any reason it is not appropriate for you to seek advice from your employer or make an internal complaint, there are other options available to you. You should choose the option that you are most comfortable with.

You may contact Racing Queensland's Harassment and Discrimination Referral Officer, Ms Shara Murray, by phoning 3869 9777.

You can contact the Anti-Discrimination Commission Queensland on 1300 130 670. The Anti-Discrimination Commission website has information on how to make a complaint. Visit www.adcq.qld.gov.au for more information.

If you or someone you know has been sexually assaulted, you can call the Sexual Assault Helpline on 1800 010 120 for free, confidential help. The helpline is available 16 hours a day, from 9am to 1am.

Part 10 What are the consequences for perpetrators of sexual harassment, bullying, unlawful discrimination or victimisation

Sexual harassment, bullying, unlawful discrimination or victimisation are serious matters and may have severe consequences.

Employers should take appropriate disciplinary action against a perpetrator of sexual harassment, bullying, unlawful discrimination or victimisation. The action taken will depend on the circumstances but could include measures such as:

- counselling the perpetrator
- officially warning the perpetrator
- placing the perpetrator on a performance improvement plan
- directing the perpetrator to undertake remedial training
- directing the perpetrator to attend mediation with the complainant
- re-assigning the perpetrator to alternative duties

- demoting the perpetrator
- dismissing the perpetrator.

Part 11 What are the consequences for people who make malicious, frivolous or vexatious complaints

Making a complaint of sexual harassment, bullying, unlawful discrimination or victimisation is a very serious matter.

Just as there are serious consequences for perpetrators, so to there are serious consequences for people who make malicious, vexatious or frivolous complaints.

The action taken against malicious, vexatious or frivolous complainants will depend on the circumstances but may include the measures against perpetrators listed above.