

**QUEENSLAND RACING  
COMMISSION OF INQUIRY**

**STATEMENT OF JOHN GERARD O'CONNELL**

I, **John Gerard O'Connell**, C/o Crown Law, State Law Building, 50 Ann Street, Brisbane, an Assistant Under Treasurer in the State of Queensland state as follows:-

**Preliminary matters**

1. I have had limited time to prepare this statement. Although, I understand the summons from the Commission was issued to Crown Law at approximately 4:30pm on Tuesday, 13 August 2013, I received a copy of the summons on Thursday, 15 August 2013 (Wednesday, 14 August 2013 being the Exhibition public holiday).
2. I am on leave from 5pm, Friday 16 August 2013.
3. I leave Australia for an overseas trip on Monday, 19 August 2013. I do not return from overseas until 9 October 2013. I return to work on 14 October 2013.
4. I provide this statement on my recollections and upon the documents which I have been able to review in the limited time available.

**Role**

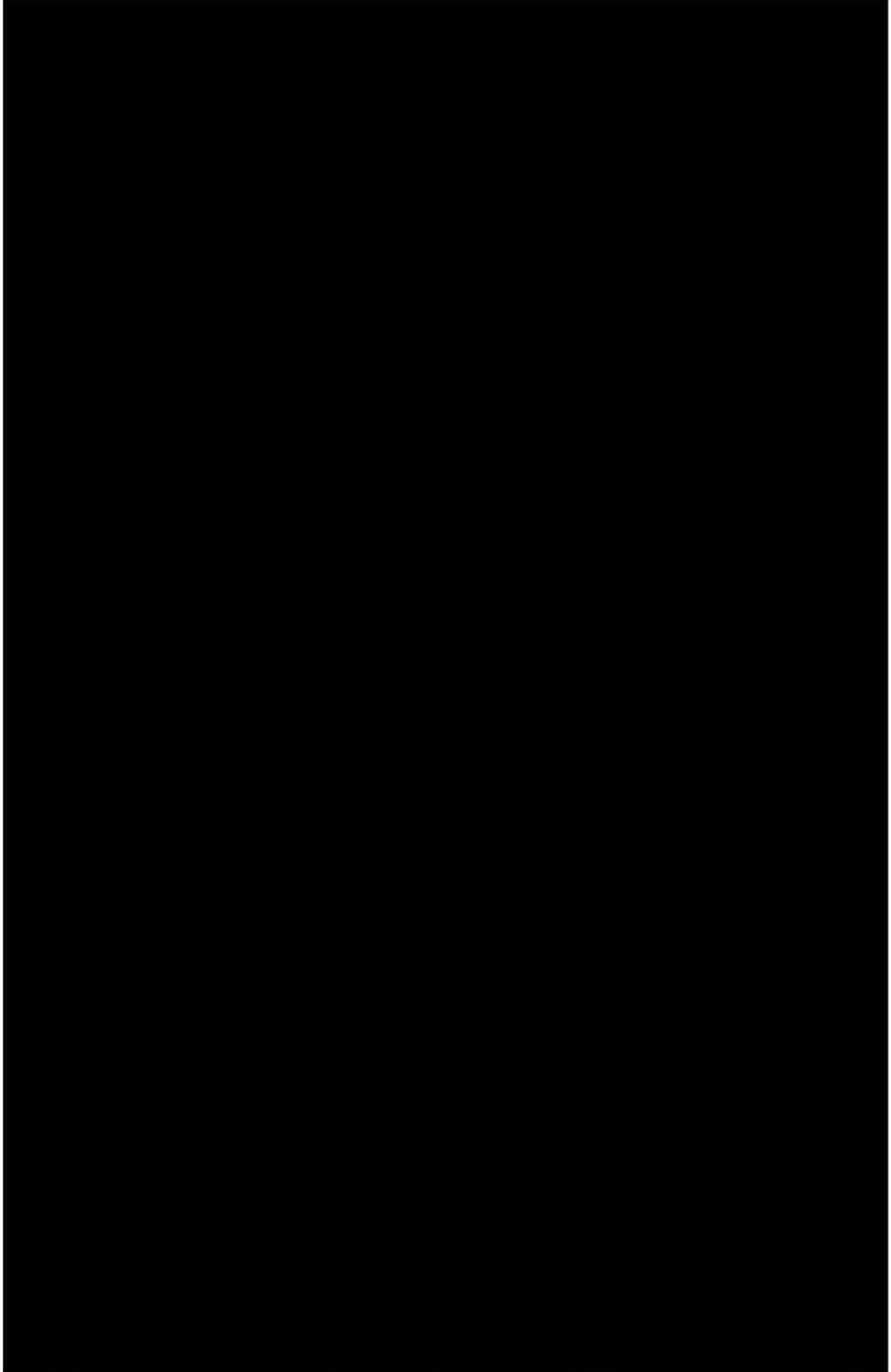
5. I have been an Assistant Under Treasurer in the Department of Treasury (Treasury) during the relevant period, 1 January 2007 to 30 April 2012.
6. I am currently the Assistant Under Treasurer in the Fiscal Division, assigned to the Transport and Main Roads Group.
7. In my current role of Assistant Under Treasurer, I have responsibilities relating to a Government Business Branch. A Business Branch is comprised of a group of Government departments. The departments comprising a business branch change as machinery of government changes occur. My fellow Assistant Under Treasurer/s and I each have responsibility for half or a third of the Government Departments, depending on structures at any time.

8. During the relevant period, the Business Branches to which I was assigned were:
- a. 1 January 2007
    - Health and Community Services Branch
    - Resources Branch
  - b. 10 April 2007
    - Fiscal Strategy Branch
    - Financial Management Branch
  - c. 20 October 2008
    - Transport, Infrastructure and Government Services Branch
    - Resources and Economic Development Branch
  - d. 7 November 2011
    - Transport, Infrastructure and Government Services Branch
    - Health and Community Services Branch (part)
    - Resources and Economic Development Branch (part)
  - e. 9 January 2012
    - Transport, Infrastructure and Government Services Branch
    - Health and Community Services Branch (part)
    - Queensland Reconstruction Authority
9. By way of example of the departments comprising a business branch, the Resources Branch included the departments of Natural Resources and Water, Mines, Energy and Environmental Protection.
10. During November/December 2011, I transitioned responsibility for a number of Departments, including the Racing Portfolio to fellow Assistant Under Treasurer Stuart Booker. From January 2012 to June 2012, I was not responsible for the Racing Portfolio.

11. As an Assistant Under Treasurer in the structures outlined in 8 above, I:
  - a. had 20 to 30 people reporting to me (about 12 to 15 per Business Branch); and
  - b. saw 10 to 20 Cabinet submissions, with additional Cabinet Budget Review Committee submissions, per week.
12. Due to the limited time available to provide this statement, I have not fully detailed the structure of Treasury. However, I understand another Treasury deponent will fully explain these matters.
13. The Department which administered the Racing Portfolio at various times came under different Business Branches. I again understand another Treasury deponent will fully explain these matters.

**Cabinet Submissions and Cabinet Budget Review Committee (CBRC) Submissions generally**

14. The standard practice for Cabinet and CBRC submissions is for the Minister proposing the submission to have their Department prepare the submission for the Minister's approval. The Minister would then sign the submission and it would be lodged with the Cabinet Secretariat who would circulate it to the relevant Ministers and departments, including Treasury.
15. All Cabinet and CBRC submissions are circulated to Treasury.
16. The Treasury Analyst assigned to that Department would then review the submission and prepare a briefing note to the Treasurer, setting out Treasury's position on the submission. The Treasury Analyst would provide the briefing note to his/her Branch Director for clearance. It then be provided to the appropriate Assistant Under Treasurer, who would then review and endorse (or revise) it. The Assistant Under Treasurer would provide it to the Deputy Under Treasurer and/or the Under Treasurer to approve and submit to the Treasurer.
17. For convenience and ease of understanding, I address the various submissions I have been asked to comment on in chronological order.



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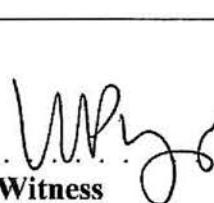
  
John Gerard O'Connell

Document No: 4490758

  
Witness



John Gerard O'Connell



Witness

**Cabinet Budget Review Committee Submission No 4210 for 7 July 2011**

35. I have no specific recollection of this CBRC Submission. I again expect it would have passed through me, via the process referred to in paragraph 16.
36. I can generally recall the issues and some of the various elements addressed in the submission, but I do not recall it as a stand-alone submission.
37. As stated under the heading Objective, this submission proposed:
  - a. An extension of the wagering tax sharing arrangement;
  - b. Approval of the business case for urgent works at Mackay; and
  - c. To ratify a previous decision of the Treasurer to advance funding from the Scheme, relating to flood relief work.
38. Treasury's policy position in respect of the Submission is set out in paragraphs 82 to 84, on page 14 of the body of the Submission. Treasury did not support the extension of the wagering tax arrangements (paragraph 83) and I recall this is for the same reasons set out in paragraphs 22 and 23 of this statement.

**Matter to note of briefing on 30 January 2012**

39. As stated in paragraph 10 of this statement, I was not assigned to a Business Branch covering the Racing portfolio at the time of and would have had no involvement in any Matter to Note as referred to in the summons, on 30 January 2012.

**Release of funds under Cabinet Budget Review Committee Decision No 2863 and Cabinet Budget Review Committee Decision No 3255**

40. The process for the release of funds under Decision 2863 was that the CBRC would approve a capital work programs based on advice from Treasury and the Department of Employment and Economic Development.

41. This process changed under Decision 3255 in that pursuant to paragraph 6 of that Decision, the funds would be available upon acceptance of the business cases by Treasury (and not the Cabinet Budget Review Committee).
42. I point out that it is the Treasurer who accepts the business cases, and not Treasury. Treasury would provide advice to the Treasurer on the business cases.
43. I understand the general process for the release of funds under the relevant Racing Industry Capital Development Scheme, other than for the Mackay Business Case, which obtained CBRC approval, was a two part process.
44. The process was:
  - a. the agency would submit a business case to Treasury for a particular capital works project; and
  - b. upon approval from the Treasurer, a letter from the Treasurer to the Minister would be sent, setting the amount of funding approved and any conditions on that funding. The Office of Racing would release the funds to Racing Queensland Limited.

#### **Mackay Business Case**

45. By way of background, I note that a letter from Minister Mulherin was transferred to my area on 28 June 2011. The Minister requested the approval of the Treasurer for the Mackay Business Case. A briefing note to the Treasurer and a reply to the Minister was prepared. The briefing note, which I endorsed, noted that pursuant to the CBRC Decision 2863, the Treasurer did not have the delegated power to approve the request. Annexure “**JO’C 1**” to this statement is a true and correct copy of the work flow document for the Minister’s letter, the briefing note to the Treasurer and the draft reply to the Minister.
46. Subsequently, CBRC Decision 3255 was then passed. It approved the Mackay business plan, as per paragraph 3 of the Decision.

### **Other Business Cases**

47. CBRC Decision 3255 also determined that the position as regards other business cases for each project was that they were to be submitted for approval through Treasury.
48. As outlined in paragraph 10 of this statement, I was not attached to a Business Branch at the time of the approval of these other business cases which covered the Racing Portfolio and do not recall having any involvement in the Treasury briefing of these business cases.
49. I do not have any recollection of the assessment or approval of the business cases for releasing funds, other than for the Mackay Business Case as set out in paragraphs 45 and 46 of this statement.

### **Other relevant matters**

50. In the short time available to me, the only other documents which show my involvement in the preparation and endorsement of any other matters relevant to the Commission, are attached and marked Annexure "JO'C2". I have attached these for completeness at this stage and believe that they should be largely self-explanatory. However, should the Commission wish for me to further expand upon these, I would be happy to do so upon my return from overseas.
51. I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867*.

Dated at *Brisbane* this *18* day of *AUGUST* 2013.

*John Gerard O'Connell*  
John Gerard O'Connell

*W.H.P.*  
Witness  
*MERION JOHN PUGH*  
*SOLUNTOZ*

ANNEXURE JO'C1



QTO-12187, as requested was done as an FYI and did not happen. Thanks  
Di.

Diane Fahey to: John O'Connell  
Cc: Jozef Latten, Jayne Dempsey

15/08/2013 02:02 PM

**Diane Fahey**  
Executive Officer and Ministerial Coordinator  
Office of the Under Treasurer  
Queensland Treasury & Trade  
**Executive Building, 100 George Street Brisbane, Qld 4000**

Phone (07) 3035 1931



— Forwarded by Diane Fahey/TO/QTreasury on 15/08/2013 02:02 PM —

**QTO-12187**

Department - FYI Comple

**Ministerial**

Document Number: QTO-12187

Requested By:

Other agency reference number: CTS05333-11

Topic Summary: Racing Industry Capital Development Scheme and proposed urgent capital works for Ooralea Park Racecourse Mackay

Keywords: OLGR

Correspondence Dated: 22/06/11

Received: 24/06/11

Date Due: FYI - No reply required

Completion Date: 07/07/11

Responsible DUT: Alex Beavers

Ministerial Letter



2011062715045504.PDF

**Author / Destination**

Name: Tim Mulherin MP

Title: Minister for Primary Industries and Fisher and Rural and Regional Queensland Member for Mackay

Organisation:

**Assigned To**

Group: OBSOLETE - R&ED (JOC)  
Responsible Officer:

Keep Confidential: Yes

Policy Advisor: Jonathan Scott

**Response**

Response Document



R-TY\_TO-791997-BN\_-\_Treasurer\_-\_RICDS\_and\_Proposed\_Urgent\_Capital\_Works\_at\_Ooralea\_Park\_R



R-TY\_TO-792004-Letter\_Treasurer\_to\_Minister\_Mulherin\_re\_Funds\_from\_RICDS\_for\_Capital\_Works\_at

Response Type: Normal Response  
Submit via: OUT  
CLLO: No  
File Number: TO2009/32619  
First Submitted: Michael Buckby on 01/07/2011  
Signed:  
Comments:

Comments Summary

Date & Time	Person	Action	Comment
16/08/12 11:36	Jayne Dempsey	Read access: Jamie Overton	share document
07/07/11 16:37	Jayne Dempsey	FYI Completed	FYI complete for Michael Buckby
07/07/11 16:01	Sue Stoneman	User Comment	Jonathan Scott has okayed changed to FYI. Pls FYI complete.
06/07/11 10:57	Jayne Dempsey	User Comment	Could you please change the status to FYI as this issue is now being handled by CBRC and the Minister will get his reply from the Cabinet Secretary. CBRC submission received on the same matter. Response being held pending CBRC decision 7 July 2011.
01/07/11 16:50	Michael Buckby	Submitted	
28/06/11 10:12	Bernice Manickam	Ministerial sent to Action Officer: Michael Buckby	Michael, as discussed. Thanks.
28/06/11 09:46	Jamie Overton	Ministerial sent to Action Officer: Bernice Manickam	
28/06/11 08:53	Jayne Dempsey	Ministerial Transferred	
28/06/11 08:39	Debbie Seagrott	Ministerial Transferred	
28/06/11 08:39	Debbie Seagrott	Ministerial Relieved	

Last 10 of 14 comments

Sh

pc

**CHANGE OF STATUS/EXTENSION REQUEST**

Document Reference Number: QTO-12187  
Extension: (Please insert X if applicable)   
Change of Status: (Please insert x if applicable)   
Topic Summary: X  
Racing Industry Capital Development Scheme  
and proposed urgent capital works for Ooralea  
Park Racecourse Mackay

Date Document Received: 24/9/11  
Has Interim Letter been sent: Y/N: N  
Original Response Date: 1/7/11  
Current Response Date: 1/7/11  
Current Status: Reply required  
Allocated Division: RED

**Change Request / Status Details**  
New Response Date:  
New Status:  
Reason for Change: FYI  
These issues have now been raised in a CBRC  
Minister Mulherin will get his response through the  
Cabinet Secretary



## BRIEFING NOTE

<b>FROM</b>	Treasury		
<b>FOR</b>	Treasurer Minister for State Development and Trade		
<b>SUBJECT</b>	<b>Racing Industry Capital Development Scheme and Proposed Urgent Capital Works at Ooralea Park Racecourse, Mackay.</b>		
Contact Officer:	Natalie Barber – Director, Resources and Economic Development Branch Ph 322 44475, Mb 0412 566 242	Record No: QTO-12187	Date: 30 June 2011
Requested by:	Jonathan Scott		Date Approval Required By: 4 July 2011

### PURPOSE

1. The purpose of this submission is to seek your:
  - Approval not to advance Racing Queensland Limited (RQL) \$4.946 million from the Racing Industry Capital Development Scheme (RICDS) for urgent capital works at Ooralea Park Racecourse, Mackay; and
  - Signature on the letter to the Minister for Agriculture, Food and Regional Economies, The Honourable Tim Mulherin MP, advising your decision not to approve the requested \$4.946 million advance and requesting the preparation of a submission for consideration by CBRC.

### BACKGROUND

2. On 26 November 2009, CBRC (Decision No. 2863) approved the implementation of the RICDS, where 50% of the net wagering tax received is to be directed to the RICDS up to a maximum of \$85 million over four years. These funds are to be used to rebuild racing facilities across the state. The decision stated that industry would submit business cases on priority capital works to be funded by the RICDS and that CBRC would approve the capital works program based on advice from Treasury and DEEDI on industry submissions.
3. RQL commissioned inspections of the Ooralea Park Racecourse facilities in 2010 that identified issues with the racing and public facilities which require rectification.
4. Minister Mulherin wrote to you on 22 June 2011 seeking your approval to advance RQL \$4.936 million from the RICDS so that urgent works may be undertaken to address the workplace health and safety related capital works at the Ooralea Park Racecourse and to ensure the racecourse may continue to operate as a TAB racing venue. A business case for the proposed works has been prepared by RQL and Minister Mulherin also seeks your approval of the business case.
5. In March 2011, \$2.65 million was released to RQL from the RICDS for flood remediation works (\$1.65 million) and to assist country race clubs in meeting minimum health and safety standards (\$0.7 million).

### ISSUES

6. The letter from Minister Mulherin requests your approval to release \$4.946 million from the RICDS and proposes that should your approval be provided, that in accordance with CBRC's Decision 2863, CBRC's ratification of your decision will be sought.



7. Treasury notes that this request is not consistent with CBRC's Decision 2863 in that the decision provides for CBRC to approve the capital works program, rather than yourself. There is no delegated power for you to make decisions in respect of the RICDS.
  8. Treasury considers that a CBRC submission should be prepared as soon as possible so the matter may be considered by CBRC at the earliest opportunity. This has been discussed with DEEDI's Office of Racing Regulation at officer level and DEEDI is now preparing a CBRC submission.
  9. The business case states that the standards at Ooralea Park Racecourse are falling below that required for TAB racing and if not addressed, the racecourse will lose its TAB status. It also lists a variety of works to be undertaken, many of which appear to 'upgrades'. The CBRC submission should clearly state what works are required to bring the racecourse up to the TAB standard, what the cost of this will be and who has verified these costs.
  10. Treasury considers the business case should also clearly state what works are required to bring the racecourse up to the TAB standard, the costs and the financial implications if these works are not completed.

## **RECOMMENDATION**

- ### 11. That you:

- Do not approve the business case or the advance of \$4.946 million from the Racing Industry Capital Development Scheme for urgent capital works at Ooralea Park Racecourse, Mackay; and
  - Sign the letter to the Minister for Agriculture, Food and Regional Economies, The Honourable Tim Mulherin MP, advising your decision not to approve the business case and the \$4.946 million advance. The letter also requests further information to be included in the business case and requests the preparation of a submission for consideration by CBRC.

**Gerard Bradley**  
**Under Treasurer Date / /**

<input type="checkbox"/> Approved	<input type="checkbox"/> Not approved	<input type="checkbox"/> Noted
Treasurer Minister for State Development and Trade	Comments	

Name:	<b>Action Officer/Author:</b> Michael Buckley	Director. Natalie Barber	(Initials)	<b>ED/AUT:</b> John O'Connell	(Initials)	<b>OUT:</b>	(Initials)
Branch/Division:	Resources and Economic Development	Resources and Economic Development					
Telephone:	323 79999	322 44475					
Date:	30/06/2011	30/06/2011	30/06/2011			/ /	

\* This officer may be required to provide further detailed information regarding the issue



QTO-12187

The Honourable Tim Mulherin MP  
Minister for Agriculture, Food and Regional Economies  
GPO Box 46  
BRISBANE QLD 4001

Thank you for your letter of 22 June 2011 seeking my approval of the business case for capital works at Ooralea Park Racecourse, Mackay, and my approval for the release of \$4.946 million from the Racing Industry Capital Development Scheme for these capital works.

Approval for the release of funds from the Racing Industry Capital Development Scheme should be sought from Cabinet Budget Review Committee. Discussions have taken place at officer level between Treasury and the Office of Racing Regulation within the Department of Employment, Economic Development and Innovation and a submission is now being prepared for consideration by Cabinet Budget Review Committee. The business case and submission should state what works are required to bring the racecourse up to the TAB standard mentioned in your letter, the estimated costs of these works and the financial implications should the work not be completed.

Should your officers wish to discuss this matter further, they may contact Ms Natalie Barber, Director Resources and Economic Development Branch on 322 44475.

Yours sincerely

**ANDREW FRASER**

**BRIEFING NOTE**

<b>FROM</b>	Treasury		
<b>FOR</b>	Deputy Premier, Treasurer and Minister for Infrastructure		
<b>SUBJECT</b>	Meeting with Queensland Racing Limited regarding ongoing issues with the Brisbane Turf Club and Queensland Turf Club.		
Contact Officer:	Ashley Andersen, Resources Branch, 3224 4060	Record No: TRO-19370, TRX-00774	Date: 19/3/2007
Requested by:	N/A	Data Approval Required By:	21 / 03 / 07

**PURPOSE**

1. To note the possible issues for your meeting with Queensland Racing Limited on Wednesday 21 March 2007.

**BACKGROUND**

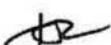
2. You are meeting with Mr Bill Ludwig and Mr Bob Bentley on 21 March 2007. Items for discussion include: an update on the Gold Coast Turf Club project; Metropolitan Race Club Merger; and a request to amend legislation and funding for synthetic tracks.
3. Bob Bentley (Chairman) and Bill Ludwig are both board directors of Queensland Racing Limited (QRL).

**ISSUES****Gold Coast Turf Club Project**

4. The QRL has submitted a proposal to the Minister for Local Government, Planning and Sport for the development of a world class track for horse racing at Palm Meadows. The commitments sought from the State include a \$76M loan to QRL on highly favourable terms, a \$2M grant for project development work, construction of a dedicated railway station near the new racetrack and stamp duty relief on the initial purchase.
5. Strategic Asset Management (SAM) has undertaken a review of the proposal and has identified a large number of issues in relation to the proposal. The key issues have been provided to you in a previous brief TRX-00709 (copy attached). SAM has recommended that the documentation provided on the proposal to establish a new thoroughbred racing facility on the Gold Coast does not justify Government support for the project.

**Metropolitan Race Club Merger**

6. Brisbane Turf Club Ltd (BTC) conducts race meetings at Doomben racecourse and Queensland Turf Club Ltd (QTC) conducts race meetings at Eagle Farm racecourse. BTC and QTC entered into a Joint Venture Agreement (note the Joint venture is not a legal entity) on 31 October 2005 to govern the future development of the Brisbane Racing Precinct, which encompasses both racecourses. Under the agreement the two clubs were to develop the racecourses to complement each other and to work towards a full merger in five to seven years.



7. On 6 February 2006 Cabinet noted (Decision No. 1628) the Joint Venture Agreement and approved funding of \$12M to address access, workplace health and safety and public safety issues within the precinct.
8. Cabinet also noted that in the event the merger between the BTC & QTC does not proceed, a component of the \$12M funding would be required to be repaid.
9. The *Racing Act 2002* authorises QRL to make policies for the sound management of the racing industry. QRL's Metropolitan Racing Policy for Brisbane came into effect on 2 January 2007 and states the need to establish a single international racing venue in Brisbane. In order to achieve this goal, the policy provides details for a merger between BTC and QTC.
10. QRL want Eagle Farm racecourse to be the single facility and to sell of Doomben racecourse. The proceeds from the sale, believed to be in the range of \$130M to \$140M, would go to the merged club and be used for the re-development of Eagle Farm racecourse.
11. The Doomben racecourse is freehold land owned by BTC Ltd. The Courier Mail reported on the planned sale and merger of the clubs last November 2006 and reported the BTC could launch legal action against any move to sell the land.
12. Previously, QRL explored the possibility of selling both courses and establishing a "supertrack" initially situated on a Greenfield site at Wacol.
13. The merger has received significant media attention due to the interests of members from both clubs, media reports have focussed on the loss of green space in inner northern suburbs and potential traffic problems caused by residential development in the event of the sale of the Doomben racecourse.
14. Members of BTC voted against merging and selling Doomben Racecourse at a Special General Meeting on Friday 16 February 2007. BTC has made it clear that any merger will not be considered whilst the Metropolitan Racing Policy is in place, and has emphasized that if there is to be any merger of the two clubs, the Doomben racecourse is to be retained.

#### **Request to Amend Legislation**

15. QRL advise that current legislation does not provide the Control Body (QRL became the Control Body on 1 July 2006) with clear authority in some areas. These include: picture and broadcast rights where the clubs have their own contracts with Sky Channel; intellectual property rights where the clubs claim ownership; and the ability to cause race clubs to do certain things. The issue for the QRL is that the club members are seen to stifle industry progress.
16. Treasury's Legal Services Unit has examined QRL's submission (copy attached) that the *Racing Act 2002* be amended to cover ownership of intellectual property, picture and broadcast rights. Their advice is this falls outside the sphere of the State's legislative power. Intellectual property and the associated rights are governed by Commonwealth legislation (for example, under the Copyright Act 1968 and the Trade Marks Act 1995).
17. Most intellectual property relevant to the racing industry would be subject to copyright protection (for example, broadcasts and picture rights). The position under the Copyright Act is that copyright is owned by the author of the work, unless another ownership arrangement has been entered into. The Copyright Act leaves it to the parties to negotiate an agreement for the ownership of copyright.



18. So the State of Queensland cannot pass legislation containing deeming provisions for the ownership of intellectual property rights, as this is inconsistent with the provisions of the Commonwealth legislation, and will therefore be invalid under section 109 of the Commonwealth Constitution.
19. The proposal for legislation to vest the management and exploitation of industry assets in the QRL and not individual race clubs would involve the State in the compulsory acquisition of private assets.

#### Funding For Synthetic Tracks

20. Mr Bentley wrote to the Minister for Local Government, Planning, Sport and Recreation on 6 March 2007 (see attached letter) canvassing the Government's commitment to possibly diverting the \$12M approved funding (Decision No. 1628), for safety and access issues, to providing synthetic tracks for two of the four proposed racetracks (Caloundra, Gold Coast, Brisbane and Toowoomba. The QRL advise the current cost to lay down one racetrack is approximately \$6M - \$7M per track.
21. Cabinet noted (Decision No. 1628) that the works that can be funded under the \$12M allocation is not to include capital improvements that are normally the responsibility of the BTC and QTC.
22. Accordingly, if the approved funding was to be applied to an alternate use, a new approval would be required.

#### RECOMMENDATION

23. That you note the possible issues for your upcoming meeting with Queensland Racing Limited.

Gerard Bradley  
Under Treasurer Date / /

<input type="checkbox"/> Approved	<input type="checkbox"/> Not approved	<input type="checkbox"/> Noted
Deputy Premier's Comments		
Anna Bligh Deputy Premier	Senior Policy Advisor	Policy Advisor
/ /	/ /	/ /

Name:	Action Officer/Author:	Director:	(Initials)	ED/AUT:	(Initials)	DUT:	(Initials)
Branch/Division:	Michael Webster	Bob McAulay		John O'Connell			
Telephone:	Resources	Resources					
Date:	322 42643	322 44475		322 51865			
	16/3/2007		/ /	/ /		/ /	

\* This officer may be required to provide further detailed information regarding the issue

JP

## BRIEFING NOTE

FROM	Treasury		
FOR	Treasurer		
SUBJECT	Queensland Harness Racing Board and Greyhound Racing Authority - Request for Approval under the <i>Statutory Bodies Financial Arrangements Act 1982</i> to Form Companies		
Contact Officer:	Gregory Tonks, Fiscal and Taxation Policy Branch, (07) 322 58482	Record No: TRO-20235	Date: 04/10/07
Requested by:	N/A	Date Approval Required By:	/ /

### PURPOSE

1. The purpose of this brief is to seek your approval under the *Statutory Bodies Financial Arrangements Act 1982* (SBFA Act) for the Queensland Harness Racing Board (QHRB) and the Greyhound Racing Authority (GRA) to establish companies in preparation for the submission of applications for approval as control bodies under the *Racing Act 2002* (Racing Act).

### BACKGROUND

2. As you will be aware, since the privatisation of TABQ Limited in 1999, the Government has been progressively removing itself from the day-to-day operations of the racing industry in Queensland. The Racing Act established the framework for the future regulation of the State's racing industry, including scaling back the State's involvement in routine operational matters. Matters involving the day-to-day operations of the industry have been gradually devolved to control bodies constituted for the three codes of racing.
3. The Racing Act sets out a framework for effecting the transition of control bodies from statutory authorities constituted under that Act to companies registered under the *Corporations Act 2001* (Corporations Act).
4. In December 2005, the then Minister for Public Works, Housing and Racing granted approval for Queensland Racing Limited (QRL), a company limited by guarantee, to be the control body for the thoroughbred code of racing in Queensland, with effect from 1 July 2006.
5. The *Racing Amendment Act 2006* provided for the dissolution of the existing Queensland Thoroughbred Racing Board and the transfer of its assets, liabilities and employees to QRL as the new thoroughbred control body. The amending legislation provided that QRL is the legal successor of the Thoroughbred Racing Board.
6. While the thoroughbred code of racing had sufficient capability and resources to successfully transition from a statutory body to a corporate structure, the QHRB and the GRA are significantly smaller bodies with fewer resources and assets. To enable further consideration as to the structure and operations of these control bodies within a corporate environment, the *Racing Amendment Act 2006* extended the operation of these control bodies as statutory authorities until 30 June 2008.

## ISSUES

7. From 1 July 2008, corporations approved by the Treasurer (as the responsible Minister) under chapter 2 of the Racing Act are to act as control bodies for harness racing and greyhound racing.
8. The existing control bodies are statutory bodies for the purposes of the SBFA Act. Under that Act, forming or participating in the formation of a company falls within the definition of a type 1 financial arrangement. Where a statutory body is not conferred the express power to undertake a particular type 1 financial arrangement under its authorising Act, the Treasurer's approval is required under section 60A of the SBFA Act.
9. The QHRB and the GRA have recently submitted applications (via the Office of Racing) seeking approval to form companies (Queensland Harness Racing Limited (QHRL) and Greyhounds Queensland Limited (GRL) respectively). Subject to your approval under the SBFA Act, it is proposed that the new companies will make applications to be the control bodies for the respective codes of racing by the end of October 2007. It is further proposed that a submission will be presented to Cabinet seeking endorsement of the decision by end-November 2007.
10. Prior to 30 June 2008, legislation will be required to facilitate the transfer of the employees, assets, liabilities and responsibilities of the current statutory control bodies to the proposed new control bodies.
11. The applications under the SBFA Act have been subject to a detailed assessment by the Office of Racing with reference to the framework set out in Queensland Treasury's *Guidelines for the Formation, Acquisition and Post-Approval Monitoring of Companies*. The Office of Racing's assessment indicates that all relevant considerations set out in that document have been addressed satisfactorily.
12. The corporate model and governance arrangements proposed are closely based on the framework developed for the thoroughbred racing code, and have been developed with expert advice from Corrs Chambers Westgarth and Malleson Stephen Jacques.
13. Each of the existing control bodies proposes to establish a company limited by guarantee. Draft constitutions have been prepared and submitted with the applications. The draft constitutions provide that the objects of the companies are to exercise and perform the functions of a control body under the Racing Act. While the constitutions do not state that the Treasurer's approval is required to amend the objects (as a condition subsequent to approval under the SBFA Act), it is proposed that the Minister responsible for the Racing Act will place a condition on the control body approval providing that any amendment has no effect unless endorsed by the Minister.
14. The constitutions provide for two classes of members, Class A and Class B. Class A members comprise industry representatives, while Class B members are the directors, who will be required to possess suitable skills and expertise. Consistent with the QRL model, there will be no Government members of the companies.
15. However, if the proposed companies are successful in obtaining control body approvals under the Racing Act, their operations will be monitored and audited under the Racing Act. In addition, under section 60 of the Act, the responsible Minister may request the Auditor-General to audit the companies.



16. The Office of Racing advises that consultation meetings on the proposed corporate structures have been held with key stakeholder representatives for each code, including racing clubs and key participants' associations (i.e. breeders, trainers etc). The Office advises that all representatives are satisfied with the draft constitutions.
17. Treasury Department's Legal Services Unit (LSU) has also reviewed the draft constitutions, and identified no substantive issues of concern. A more detailed review of relevant documents will be undertaken in the context of assessing the applications for approval of the control bodies.
18. The Office of Racing further advises that all employees will be transferred to the new companies on the same terms and conditions as their current employment, with annual accrued and annual long service leave entitlements carried over. It is understood that consultation with relevant unions will be undertaken on the new arrangements.
19. A more detailed briefing on matters related to the operationalisation of the new arrangements will be provided in the context of briefing you on the applications for approval of control bodies under the Racing Act.
20. As you will be aware, the Racing Act provides detailed direction on matters to be addressed in an application for approval as a control body, including specific information to be incorporated in applicants' plans for developing, operating and managing the racing code and an implementation timetable. The Act also sets out assessment procedures to be followed by the responsible Director-General, including provisions relating to public notification and the provision of written objections to an application.

#### **FINANCIAL IMPLICATIONS**

21. Each of the control bodies currently receives its income from UNITAB Limited under commercial agreements, and applies its funding to managing, regulating and providing prize money for the relevant code of racing. There is to be no funding or guarantees provided by the State.
22. It is understood that ex gratia duty relief is likely to be sought for the transfer of assets from the QRHB and the GRA to the new control bodies. The main asset owned by each of the existing control bodies is a 50% interest in Alton Park Raceway. Based on the most recent annual report of the QRHB, each body's interest is valued at \$18.212 million. The total duty payable will be around \$1.6 million.

*[Signature]*

## RESULTS OF CONSULTATION

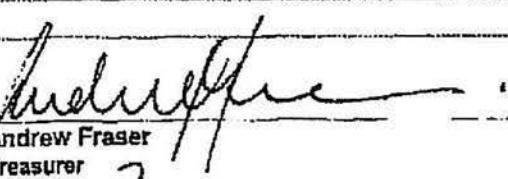
23. The Office of Racing has been consulted in the preparation of this brief, and has confirmed its support for the applications.

## RECOMMENDATION

24. It is recommended that:

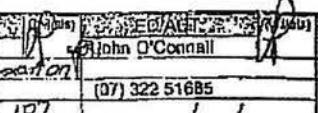
- pursuant to section 60A of the SBFA Act, you grant approval for the QHRB and the GRA to register companies under the Corporations Act (approval instruments are attached for your signature); and
- you note that applications for approval of the proposed companies as control bodies under the Racing Act will be submitted by late October 2007, and a submission presented for Cabinet consideration by late November 2007.

  
\_\_\_\_\_  
Gerard Bradley  
Under Treasurer Date 5/10/07

<input type="checkbox"/> Approved	<input type="checkbox"/> Not approved	<input type="checkbox"/> Noted
Treasurer's Comments		
 _____ Andrew Fraser Treasurer 11/10/07		

Action Officer/Author	Director	REC/ADM	RECD/ADM	Index
Gregory Tonks	Leigh Pickering	John O'Connell		188

\* This officer may be required to provide further detailed information regarding the issue  
G107-081Fiscal and Taxation Policy\ALISBFA Addendum TRO-20235 (gpt) T\_Racing companies.doc





*Statutory Bodies Financial Arrangements Act 1982*

**SPECIFIC APPROVAL UNDER PART 7, DIVISION 3**

Pursuant to section 60A of the *Statutory Bodies Financial Arrangements Act 1982*, I hereby grant specific approval for the Queensland Harness Racing Board, constituted under the *Racing Act 2002* (Racing Act), to register a company under the *Corporations Act 2001*. The company shall be established for the purpose of facilitating an application for approval as a control body under the Racing Act.



ANDREW FRASER  
Treasurer

11/10/07

