

QUEENSLAND RACING COMMISSION OF INQUIRY

Commissions of Inquiry Act 1950

SUBMISSIONS

Part 4

Government oversight – Term of Reference 3(d)

Whether there was sufficient and appropriate oversight by the responsible Minister, executive government and chief executive, including under the provisions of the *Racing Act 2002*, for the operations of the relevant entities.

1. In the address given to the Commission in the public sitting on 15 July 2013, Counsel Assisting the Inquiry did not provide any better analysis of the elements of this Term of Reference but rather simply restated the text of the Term of Reference¹.
2. While this term of reference received some attention by the Commission of Inquiry during its public sittings, it is noted that the Commission has not issued any notice specifying potential adverse findings in relation to this term of reference against any of the parties on whose behalf these submissions are made. For that reason, the submissions directed to this term of reference will be brief.
3. During the examination of Mr Kelly of the Office of Racing, some adverse comment in relation to the degree of compliance with sections 39 and 41 of the *Racing Act* was implied, which if left unanswered, could suggest that one or more of the parties on whose behalf these submissions are made had omitted to do certain things.
4. At T11-20.34, in questioning Mr Kelly, Senior Counsel Assisting made the statement:

¹ Refer "Terms of Reference: Draft Break-Down of Issues for Inquiry (as at 15 July 2013)"
http://www.racinginquiry.qld.gov.au/__data/assets/pdf_file/0004/205087/TOR-Breakdown.pdf

Submissions (Part 4)

197907

RODGERS BARNES & GREEN

Lawyers

Level 10, 300 Adelaide Street

Brisbane QLD 4000

Tel: + (61 7) 3009 9300

Fax: + (61 7) 3009 9399

Email: admin@rbglawyers.com.au

Ref: GWR:AKM:130250

“Now, would you be good enough to go to tab 8 in the bundle, please? In folder number 2, I’m told. Now, the Commission’s review of the programs provided is set out in this table, and that’s not conclusive in the sense that if you think the review of the documents is wrong we invite you to comment or provide further statements, but it seems from this review that it was rare that in fact the control bodies provided their program as required under the legislation ... but the position at the moment is that the documents that are in the records of the control bodies seems to be represented by this table, and you can see that, regularly, the provision of the programs were out of time and weren’t in the appropriate form.”

5. The table² referred to by Senior Counsel Assisting purported to particularise the degree of compliance that control bodies had made with s. 39(1) of the *Racing Act*. That section states:

“By 31 December each year, a control body must give to the chief executive a copy of its program, for the following year, to audit periodically the suitability of every licensed animal, club, participant and venue to continue to be licensed.”

6. Insofar as QRL and RQL is concerned, the table indicated that the audit program was lodged within time in respect of the 2007, 2008, 2009 years but was late in respect of the 2011 and 2012 years, and that no audit plan was lodged for 2010. The table also indicated, in relation to QRL and RQL, that a form 9 was only lodged in respect of the 2009 year. In relation to those indications, the following should be noted:
- a. Unlike the requirement in s. 41 (referred to below), s. 39 does not make it mandatory that an approved form be lodged.
 - b. Counsel Assisting the Inquiry indicated in his statement referred to above that the table was compiled from the documents produced from the control bodies. Given the manner in which documents have been produced on behalf of the control bodies over several months, and are (by the Commission’s own admission) quite voluminous, and in the absence of any evidence to certify that disclosure of all relevant documents is complete, it is submitted that no finding can be made as to whether the table is accurate.

² Government 8

- c. It would have been perhaps more appropriate to assess compliance from documents lodged with the Office of Racing itself, as the section requires, rather than from records of the control bodies.
 - d. Form 9 (which is available from the Office of Racing's web site)³ is only a form to accompany an audit plan – it is not a form for the audit plan itself. Clearly, the assertion made by Senior Counsel Assisting that programs “weren't in the appropriate form” is incorrect.
 - e. If no audit plan was lodged in respect of 2010 (which is not a safe assumption to make), then one would expect that such non-compliance would have been identified by the company's compliance auditors and brought to the attention of the audit committee and the board. No evidence has been adduced that any such issue was ever raised.
 - f. It also is contradicted by the evidence of Mr Kelly who said that all such plans were received and reviewed⁴.
 - g. The lateness of the lodgement of audit plans for 2011 and 2012 was not of such a degree as to raise any serious concern.
7. Senior Counsel Assisting also examined Mr Kelly in relation to compliance by the control bodies with s. 41 of the *Racing Act* which provides:
- “(1) Within 14 days after each anniversary day of the commencement of this section, a control body must give to the chief executive a plan for managing its code of racing for a period of at least 1 year starting on that anniversary day.
 - (2) Within 14 days after each anniversary day of a control body's approval effect day, the control body must give to the chief executive a notice about whether the control body has been an eligible corporation for the year before the anniversary day and is, on that anniversary day, an eligible corporation.
 - (3) A notice under subsection (1) or (2) must be in the approved form.”
8. The approved form referred to in section 41(3) is also available from the Office of Racing's web site⁵.

³ <http://www.nprsr.qld.gov.au/racing/pdf/form09.pdf>

⁴ Statement of M Kelly dated 27 September 2013, paragraph 38

⁵ <http://www.nprsr.qld.gov.au/racing/pdf/form10.pdf>

9. In examining Mr Kelly, Senior Counsel Assisting produced another table⁶ that purported to show the degree of compliance with s. 41, and commented⁷:

“Would you go to tab 16, please, of the bundle, and the analysis of the Commission so far is that on not one occasion was there compliance in any year with this... It looks at least to the Commission on the analysis of the documents that have been provided to it from the records that it wasn't complied with on any – the legislation wasn't complied with on any occasion...”

10. Insofar as QRL and RQL are concerned, the instances of alleged non-compliance can be summarised as follows:

- a. The required plan was late in 2007;
- b. There was no plan lodged in 2010;
- c. No notice was given as to the control body being an eligible corporation (other than in respect of 2007);
- d. No 'director approval' was given in respect of the plan.

11. For the following reasons, the above allegations cannot be supported:

- a. The plan in 2007 was lodged on Monday 16 July 2007. The due date for the lodgement of the plan was 14 days after 1 July, being 15 July, but as that day was a Sunday, the time is extended to the following business day⁸.
- b. Given the manner in which documents have been produced on behalf of the control bodies in a progressive manner over several months, and are (by the Commission's own admission) quite voluminous, and in the absence of any evidence to certify that disclosure of all relevant documents is complete, it is submitted that no finding can be made as to whether the table is accurate.
- c. If it is correct that RQL did not present a plan in 2010, then it should be noted that RQL commenced operations as the control body on 1 July 2010. It could hardly be expected that the new combined body would be in a position to

⁶ Government 16

⁷ T11-21.43ff

⁸ Section 38(2) *Acts Interpretation Act 1954*

lodge an all-encompassing plan for the management of all three codes of racing within 14 days of its commencement.

- d. It also is contradicted by the evidence of Mr Kelly who said that all such plans were received and reviewed⁹.
 - e. Compliance with s. 41 was required to be made by lodgement of the approved form. That form contains a declaration stating that the control body has been an eligible corporation at all times during the previous 12 months. While such a declaration could not be made in 2010 (for obvious reasons), if the approved form was lodged in respect of the other years (as the table suggests that it was) then it is contradictory to assert that the control body failed to give the required notification.
 - f. In any event, the Office of Racing was in receipt of a copy of the constitutions of QRL and RQL, from which there was no doubt that the entities were eligible corporations¹⁰.
 - g. If the approved form was lodged then, as it includes a statement to the effect that the directors approved the plan, it is contradictory to assert that the control body failed to advise of director approval.
12. No adverse findings can be made under this term of reference against any of the persons on whose behalf these submissions are made.

⁹ Statement of M Kelly dated 27 September 2013, paragraph 38

¹⁰ See definition of 'eligible corporation' in s. 8 of *Racing Act* 2002.