QUEENSLAND RACING COMMISSION OF INQUIRY

Commissions of Inquiry Act 1950

FURTHER SUPPLEMENTARY STATEMENT PURSUANT TO SECTION 5(1)(d).

I, ALFRED JAMIE ORCHARD of c/- level 10, 300 Adelaide Street, Brisbane QLD 4000, do solemnly and sincerely declare as follows:

1. I refer to my statement dated 26 July 2013 and my supplementary statement dated 30 August 2013.

2. My legal advisers will make written submissions to the Commission of Inquiry addressing the terms of reference, and the potential findings that may be made against me. This statement addresses factual matters.

3. I set out in this supplementary statement my response to the potential findings set out in the Notice, as far as I can in the limited time that the Commission has allowed me, and with the limited understanding I have of the allegations.

4. Further, in this supplementary statement, I wish to refer to the supplementary statement of Tracey Harris dated 18 September 2013.

5. I recall that sometime after the merger of the codes in 2010, I had found out that harness handicappers were continuing a practice from before the merger in which they would contact two of the largest trainers after nominations had closed but before fields were drawn for race meetings and discuss the fields - whether the trainers wanted to add additional horses, move horses between races etc. I am not sure now how I came to learn of this practice. It may have been from another trainer, from a steward or someone else. I referred this conduct to the CMC and they referred it back to us to conduct the review before they would decide whether they needed to do anything. I appointed an independent investigator to conduct the review in that case. April

Signed: A J Orchard

Taken by:

Further Supplementary Statement of Alfred Jamie Orchard

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

Freeman, a barrister, conducted the investigation and submitted a report. We stopped the practice. I think we counselled the handicappers involved (who had engaged in the conduct for proper purposes – they were trying to ensure we had full fields) and reported the outcome to the CMC.

6. It was around this time that a review of the accounts of the Redcliffe Harness Club was undertaken. During that review, which led to the club's licence being suspended, a payment of $18,000 to the club from Harness Racing Queensland Limited (HRQ) shortly before the merger was identified. The chairman of the Redcliffe Club, Mr Ebert, indicated (either then or later) that it was an incentive payment and that the CEO of HRQ had told him that the money was better with the club than with RQL.

7. I attended a meeting with Ms Harris around that time with Paul Brennan and Bob Bentley. We wanted to understand the arrangements in place in respect of payments to the harness clubs. Ms Harris, who had come from HRQ, was hesitant to discuss the arrangements. She provided some information and said there would be records in the minutes and in certain emails to her. She did not want to tell us what discussions had taken place in respect of the payments - in respect of Redcliffe or the incentive scheme more broadly.

8. I was involved in the meeting because there was a potential integrity/licensing issue in relation to the club. I can't specifically recall why Mr Bentley and Mr Brennan were there but I think Mr Bentley was interested in the funding arrangements of the clubs under the predecessor bodies and Mr Brennan would be the same as I think he looked after payments to clubs. That is, there were two issues arising from this – how were clubs funded and what were the circumstances of the final payments to which Mr Ebert had alluded.

9. The discussion finished with me telling Ms Harris that she should get the minutes and emails and we would consider what to do once we had seen them. We didn't push her to explain the discussions she had before the merger but I said that if we did end up referring the matter to the CMC and they sent it back to us to review, we would need to discuss it further with her and we would need more details of the conversations at that point.

10. Essentially we were avoiding putting her in the position of discussing something she really didn't want to at that stage. She was not threatened but merely advised that we might need to come back to her.

Signed:  Taken by: 

11. My recollection is that the only discussion was general – around who authorised the payments, what was the process for authorisation etc. We did not know at that stage how the scheme worked so the discussion was necessarily quite general. At no stage was Ms Harris asked to indicate that certain people were involved. Mr Bentley certainly did not tell Ms Harris that he wanted her to say that particular individuals were involved. Ms Harris was quite defensive but we didn't know the process and so didn't put any names to her.

12. I can't really recall what came of this issue. After the Redcliffe suspension, I think we satisfied ourselves that there was no need to go to the CMC. I don't believe we needed to refer again to Ms Harris.

13. I refer to the notice dated 10 October 2013 that I received advising of potential adverse findings that could be made against me. I wish to respond to the matters set out in the notice as follows:

    a. I accept that, as an employee, I owed duties to my employer, RQL;

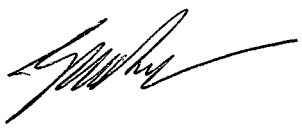
    b. My legal representatives will address in submissions whether my duties were as set out in the letter from the Commission dated 17 October 2013;

    c. I do not accept that when an employee negotiates with his employer concerning his remuneration, he has a duty to his employer that conflicts with his personal interests;

    d. In this particular case, there was no conflict because the Board was taking its own legal advice and I, together with my three colleagues, was taking legal advice. Our lawyers at Norton Rose never advised us that there was any problem with any conflict;

    e. I was not making any decision on behalf of RQL or the Board;

    f. The amendments that were made to my employment contract were made after each of the Board and the employees had the opportunity to take legal advice as to what was possible;

Signed:  Taken by: 

g. It was not for me, but for the board, to judge what was in the best interests of RQL. I do not agree that the amendments to the employment contracts were not in the best interests of RQL. Whilst the circumstances of each employee must be considered individually (and not always collectively as the Commission has done), at a time when I was definitely considering leaving my employment with RQL, as discussed further below, RQL secured my services until at least the next State election;

h. I accept that the contract of employment that I was offered on 5 August 2011 was favourable to me, and was sufficient to persuade me to stay in my employment;

i. I personally did not put any specific terms to the board, nor did I personally seek any amendments to my contract of employment. Shara Murray dealt with these matters. I was pleased when the board decided to offer terms that had been suggested by Norton Rose. It was open for the board to reject what Norton Rose had suggested and in that event I would have then decided whether what was offered was sufficient to convince me to stay at RQL. If nothing had been offered I would have left my employment;

j. I believe that the terms that were negotiated were commensurate with my skills and experience;

k. At the relevant time, I in fact was minded to leave RQL. I was actively looking for job opportunities. I was looking at newspapers and in particular, the Friday edition of the Australian Financial Review and Weekend Australian where suitable positions for my skill set and experience would likely be advertised. These were the newspapers most likely to advertise roles suitable for someone of my seniority. (That is incidentally where I found my current role). I also started searching the Executive section of the Seek website and the Queensland government jobs portal. In addition to this, I had decided that I would look at returning to work overseas. I had worked in the Middle East previously and I considered returning. As I had learnt the Arabic language while working there, understood and had spoken about Islamic Finance etc in conferences in various countries, I was confident I could return to that area for work, in financial services regulation or compliance. Accordingly, I was actively searching roles at that time, in the Middle East (and Asia) using the websites Gulf Jobs Market.com and Efinancialcareers.com. I was actively

Signed: Taken by:

seeking such a role as I knew I had to have another job before the election (whenever that may take place).

l. I have since checked my old home computer and I can say that on 31 May 2011 I had drafted a new curriculum vitae. Between 29 May and 5 June 2011 I drafted an application for a Queensland government position which had been advertised. The position was of a senior administrative legal role (which I do not wish to identify in this statement but I have told my solicitors of the role so they can inform the Commission on a confidential basis if so requested);

m. When the Board made the offer it did, particularly with the security of a redundancy arrangement in the event of a change in government, it meant that I could stay until the election to see if there was an improvement in the situation such that I could retain my position post election. I knew I could do so as if the situation did not improve, I had the security of the redundancy payment to find a role after the election;

n. It is entirely wrong to suggest that I made a false representation to RQL concerning the fact that I would likely leave my employment unless RQL agreed to amendments of the kind sought, for several reasons. First, while I cannot specifically recall the conversations that I may have had with Mr Bentley or other members of the board in the relevant period from, say, May to July 2011, I believe that I had made my intentions clear that I was concerned for the security for my family and our future. I believe this message was also communicated in the letter that I signed on 5 July 2011. I was not particularly tied to the racing industry. I had not worked in the industry before joining RQL and I did not see that my future had to necessarily be in the racing industry. I also considered myself as apolitical – I was not tied to one side of politics or the other. Yet I was concerned that with the ever mounting criticism of RQL, I would be seen as being aligned with one side of politics. Given my area of speciality and regulation and enforcement, it was not a good thing to be seen as being aligned. Therefore I would have likely left my employment had changes to my employment contract not been offered;

o. Secondly, as an admitted legal practitioner, a former senior employee of ASIC, and as someone with international experience in regulatory regimes, I take extreme offence at the suggestion that I lied to my former employer. I did not do so;

Signed: Taken by:

p. Thirdly, I was not involved in discussions concerning the contract amendments, apart from signing the letter of 5 July 2011 and attending one meeting at Norton Rose. Whilst Shara Murray kept me updated as to what was going on, I did not have any other involvement until the revised contracts were available for signature;

q. I knew, and subsequent events confirmed my belief to be true, that if I left RQL then it would take me some to find a position that was suitable to my level of skill and experience. As it was, I had to move interstate to take up a suitable position which became available in July 2012 at the Financial Ombudsman's Service;

r. If I did not receive the substantial pay increase and the security of a significant payout in the event that there was a change of government then I would have continued looking for alternative employment and would have left as soon as I found a suitable position. The letter from the commission seems to suggest that the fact that I was on a TRV of $230,000 meant that I would not leave. That in itself was certainly not enough to keep me there - I was earning more than that in my earlier roles overseas and the subsequent (my current) role is worth more than that;

s. I was sick and tired of the abuse that I was receiving from various sections of the racing industry. Either I or decisions for which I was responsible within my integrity area featured regularly on websites where criticism flowed freely. One example was over the notorious 'bikini sprint' – a promoter wanted to have girls in bikinis run along the race track between horse races. I thought that was highly distasteful and wrong on several levels and so I made it quite clear that such a practice would not be occurring. I received a huge amount of abuse and criticism for my stance on the matter;

t. So clearly, I did not want to stay at RQL and it was going to take something significant in my employment terms to keep me there;

Signed: _____ Taken by: _____

u. I do not believe that I ever saw the draft advice from Clayton Utz dated 2 June 2011 which has now been shown to me. I don't think it came to my attention. I had no role in instructing Clayton Utz or dealing with any advices from them in relation to the matter. It follows that I could not have failed to disclose this draft advice to the Board;

v. I do not recall seeing the draft advice from Norton Rose dated 15 July 2011 that has recently been shown to me but it appears to have been emailed to me at the time. I understand that the advice went through some amendment with consultation from someone at RQL. I do not believe that I took part in any such process. I cannot recall seeing any draft changes to the advice;

w. In my view Norton Rose were acting for the four executives (including me) and Clayton Utz were acting for the board. However, my recollection is that we wanted to make sure that any terms that were negotiated on our behalf were such that would be appropriate for the board to agree. In my preliminary discussion with Murray Procter of Norton Rose when I arranged for him to act for us, I recall I made it clear that he was to be acting for and advising us. In the first meeting that we had with him, I recall the issue on whose behalf he would be acting came up in conversation. My recollection after that was that he was acting for us, but we expressed our concern to ensure that what the board eventually offered would be within their powers and duties;

x. As stated in my earlier statement, at paragraph 27, I asked Shara Murray to confirm that the Board had before it all of the legal advice;

y. I acted with integrity, in good faith, in the best interests of RQL and the racing industry, consistently with my fiduciary duties to RQL, consistently with my contract of employment and in accordance with RQL's Code of Conduct in all of my dealings with my employer, including the re-negotiation of my employment contract.

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

SIGNED AND DECLARED)
at Brisbane on 19 October 2013) .....
in the presence of:)

.....
Solicitor