

Oaths Act 1867

STATUTORY DECLARATION

QUEENSLAND

TO WIT

I, Michael Anthony Kelly, of 111 George Street Brisbane in the State of Queensland, do solemnly and sincerely declare that:

1. The Office of Racing is comprised of two units, the Office of Racing Regulation and the Racing Science Centre. A copy of the Office of Racing Organisation Chart is attached (**Attachment MK 1**) The Executive Director, Office of Racing is responsible for the operations of the Office of Racing. The Executive Director currently reports to the Director-General and in previous departments, reported to either the Deputy Director-General or Associate Director-General. These officers reported to the Director-General.

OFFICE OF RACING REGULATION

2. The Office of Racing Regulation currently consists of the following positions:
  - (a) Director, Investigations and Compliance (Carol Perrett);
  - (b) Four Principal Compliance Officers (Michael Duff, Roger Wilesmith, Kirsty Karauria, Chris Weder);
  - (c) One Principal Integrity Officer (Veterinarian) part time position (Vivienne Fischer);
  - (d) One Project Officer –Administration - (Carole Miller).

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## **FUNCTIONS PERFORMED BY THE OFFICE OF RACING REGULATION**

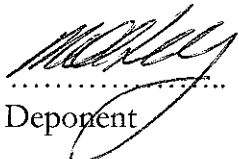
3. The following functions are performed by the Office of Racing Regulation:
- (a) provision of advice on racing issues to the chief executive and Minister;
  - (b) preparation of Ministerial briefs, speeches and letters;
  - (c) preparation of parliamentary and estimates briefs;
  - (d) preparation of Ministerial briefs and speaking points for the annual Australasian Racing Ministers' Conference;
  - (e) preparation of Cabinet submissions and briefs;
  - (f) all work associated with developing amendments to racing legislation;
  - (g) assessment of control body applications;
  - (h) performance of legislative responsibilities under the Racing Act 2002;
  - (i) liaising and supporting the Racing Animal Welfare and Integrity Board;
  - (j) monitoring and liaising with the control body;
  - (k) liaising with the Trustees of Parklands Gold Coast;
  - (l) administering funding schemes, including the Racing Industry Capital Development Scheme (RICDS), Training Track Subsidy Scheme and one-off grant allocations.

## **RACING SCIENCE CENTRE**

4. The Racing Science Centre (RSC) is the only accredited facility under the Act and is an internationally accredited racing laboratory. It is one of four national racing laboratories and the only one that holds ISO quality certification. It is funded by the control body on a cost recovery basis. It provides a range of scientific and professional racing integrity services to the control body. It analyses approximately 16,000 drug samples from thoroughbred, harness and greyhound

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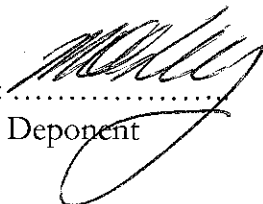
licensed animals each year. The current acting Director, RSC is Simon Stephens, (previously Alan Roberts) who reports to the Executive Director. The RSC has an establishment of approximately 24 full time equivalents and all are involved in the provision of drug control, animal welfare and associated integrity services to the racing industry.

## GOVERNMENT RACING POLICY

5. The policy position is reflected in the drafting of the *Racing Act 2002* (the Act). Section 4(1) of the Act has always stated that the main purposes of the Act are:
  - (a) to maintain public confidence in the racing of animals in Queensland for which betting is lawful; and
  - (b) to ensure the integrity of all persons involved with racing or betting under this Act; and
  - (c) to safeguard the welfare of all animals involved in racing under the Act.
6. The structure of the Act, prior to the amendments inserted by the *Racing and Other Legislation Amendment Act 2012* which commenced on 1 May 2013, reflected that government involvement was limited to matters of integrity. The Minister's power of direction was extremely limited. Section 45 of the Act (replicated in section 32C for approved control bodies only) permitted the Minister to direct the control body to make a new policy, review an existing policy, make rules of racing about a matter or review existing rules of racing. The Minister's power to give such directions was only available in the most exceptional of cases and then limited to circumstances where the Minister believed that the giving of a direction was necessary:
  - (a) to ensure public confidence in the integrity of the Queensland racing industry;

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- (b) to ensure the control body is managing its code of racing in the interests of the code;
  - (c) to ensure the welfare of the control body's licensed animals;
  - (d) to ensure the control body's actions were accountable and its decision-making processes are transparent; to ensure the control body's rules of racing have sufficient regard to the rights and liberties of individuals as mentioned in the *Legislative Standards Act 1992*, [section 4(3)].
7. The government's policy position, given effect under the Act, was that racing control bodies were independent of government and responsible for the management of the Queensland racing industry. See comments from Minister in Estimates Committee G transcript dated 22 July 2010, pages 45 – 46 and various correspondence (**Attachment MK 2**).
8. The government made it clear on numerous occasions that issues involving commercial and operational decisions taken by a control body, and the management of codes of racing, were not matters for government involvement. For example see:
- (a) response to Question on Notice 1148 – 21 August 2007 (**Attachment MK3**);
  - (b) letter to M. Thomas dated 22 February 2010 (Attachment MK4);
  - (c) response to Question on Notice 621 – 25 March 2010 (Attachment MK5);
  - (d) response to Question on Notice 833 – 18 May 2010 (Attachment MK6);
  - (e) response to Question on Notice 1018 – 8 June 2010 (Attachment MK7);
  - (f) response to Question on Notice 1810 – 15 September 2010 (Attachment MK8);
  - (g) letter to Bill Dixon dated 16 September 2011 (Attachment MK9); and
  - (h) letter to Andrew McDonald dated 17 February 2012 (**Attachment MK10**).

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9. The Directors and staff of control bodies were not employees or representatives of the government and this is clear from the scheme of operation of the Act and confirmed in correspondence from the Office of the Treasurer (**Attachment MK11**).
10. Crown Law had advised that the relevant Minister had very limited powers of direction/intervention over a control body and could use these only in exceptional circumstances. See attached legal advice in relation to the operation of section 45 of the Act as it stood prior to the 2012 amendments to the Act (**Attachment MK12**).

### **GENERAL**

11. Oversight of RQL and the operations of the Queensland racing industry covered a wide range of activities from the most simple, such as a request for information on when the racing ministry was first established (**Attachment MK13**) through to the most complex of matters such as amalgamation of three control bodies to create a single control body for racing. Simple issues were able to be addressed by the Office of Racing. As issues became more complex they involved a Deputy/Associate Director General, Director General, the responsible Minister and their staff and/or Cabinet.
12. It was common practice in all departments during the relevant period that all briefing notes and correspondence provided to the relevant Minister were endorsed/approved by the Deputy/Associate Director-General and Director-General prior to submission. All policy and legislative matters were considered by CBRC or Cabinet and followed the established government processes that involved the review and approval of submissions by the Deputy/Associate Director-General and Director-General, ministerial staff and external review and

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detailed oversight from government central agencies (Treasury and Department of Premier and Cabinet).

### **RACING QUEENSLAND LIMITED**

13. Racing Queensland Limited (RQL) was a company limited by guarantee, established under the *Corporations Act 2001* (Cth) and licensed as a control body under section 25 of the Act.
14. As a licensed control body, it was expected that RQL would comply with all laws and exercise its powers, duties and functions in an appropriate manner and in accordance with representations made to government. RQL had in place an internal audit committee that reviewed financial and corporate operations and was independently audited in accordance with Australian accounting standards. Directors were required to operate in the best interests of the company that had the primary function of being the control body for racing in Queensland.
15. Prior to the constitution of RQL being approved by the Minister it was reviewed and assessed by staff within the department, central government agencies and approved by Cabinet in 2010. A key oversight-related condition placed on RQL to protect the public interest involved controlling the remuneration payable to directors of the company and required that their remuneration levels be approved by the Chief Executive of the department (Ian Fletcher) and prevented the Directors from increasing their remuneration levels without the approval of the Chief Executive of the department. A condition was also placed on RQL's control body approval that prevented the company from changing its constitution without the approval of the responsible Minister.

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**SECTION 81 POLICIES**

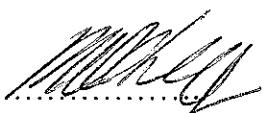
16. Section 81 of the Act specifies a range of mandatory policies that must be established by a control body. RQL was required to have all policies specified under section 81 of the Act and it was confirmed on a regular basis that these policies were in place. It was expected that RQL would operate in accordance with these policies and compliance with these was assessed through the conduct of section 46 assessments.

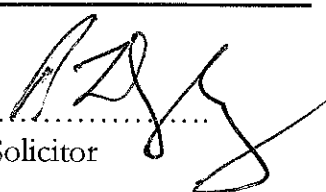
**ADDITIONAL POLICIES**

17. While not required under the Act the control bodies established other policies, in addition to those specified in section 81 of the Act, to assist in the operation of the control body. This issue was discussed with control body executive staff in the period 2008 – 2010 and a range of other policies were implemented by the control body. Examples of these include policies related to procurement, financial practice, betting by control body staff, risk management, event management, commercial decision making, community racing scheme trainers, provision of veterinary services at race meetings, complaint management, capital works and media accreditation.

**GOVERNMENT’S POWER TO DIRECT RQL**

18. Until the Act was amended in late 2012, the Minister/Government had very limited powers of direction over racing control bodies. Legal advice had been provided from Crown Law that confirmed the Minister’s limited powers of direction and the circumstances in which it could be used (**Attachment MK 12**).

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19. Senior Crown Law officers (Keyes and Sammon) explained the operation of the relevant sections of the Act concerning the limited ability for the Minister to issue directions to RQL at a meeting with the Deputy-Premier and Treasurer on 27 March 2012. In 2010, the Office of Racing had proposed that increased powers of ministerial direction be provided in the *Racing and Other Legislation Amendment Bill 2010* to the effect that the Minister had power to require a control body that had approval more than one code of racing, to provide reasons and justification for its decisions that have a detrimental impact on particular code of racing and also power to direct the control body to reconsider and make a new decision on a matter that had a detrimental impact on a particular code of racing. However, this proposal was not approved by Cabinet and increased powers were not included in the amending Act (Cabinet Decision 9206) (**Attachment MK 14**).
20. Notwithstanding amendments made to the Act in late 2012 providing a general direction power to the Minister in respect to a statutory control body, under section 9BM(2) of the Act, powers of direction were specifically prohibited over the following matters:
- (a) the allocation of race days, and the provision of funding, to clubs licensed by the all-codes board to hold race meetings;
  - (b) the prize money for races held for a board code of racing;
  - (c) a decision of the all-codes board for which there is a right of appeal to the disciplinary board or a right of review by the tribunal; and
  - (d) a decision mentioned in section 149S(2), namely:
    - (i) a decision relating to the eligibility of an animal to race or the conditions under which an animal can race;
    - (ii) a decision cancelling or suspending a licence for an animal, unless the cancellation or suspension relates to—

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- (e) a decision to take disciplinary action relating to the licence of a licence holder; or
- (f) a decision to take an exclusion action, under the control body's rules of racing, against a person;
  - (i) a decision about a protest or objection against placed animals relating to an incident that happened during a race or trial;
  - (ii) a decision relating to a dispute between a racing bookmaker licensed by a control body and a person who placed a bet with the bookmaker for a race; and
  - (iii) a decision to stop, restart, rerun, postpone or abandon a race.

21. Notwithstanding the changed government policy position since 2012 that was implemented through the passage of the *Racing and Other Legislation Amendment Bill 2012*, the current Minister/Minister's Senior Policy Advisor made clear that there is no general power of direction available to the Minister in correspondence to:

- (a) Ms Kym Neate that the Minister does not have the power to overturn decisions made by stewards of a control body (**Attachment MK15**);
- (b) Mr Steve Hogno that the Minister does not have the power, nor would it be appropriate for him to intervene in matters determined in the courts (**Attachment MK16**);
- (c) Ms Kerrina King that the Minister does not have the power to direct RQL on industry matters raised by her (**Attachment MK17**);
- (d) Mr David Pourre that issues concerning funding should be raised directly with the Chairman of RQL, not the Minister (**Attachment MK18**); and

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- (e) Ms Deb Frecklington MP and Adam Carter concerning the licensing of race clubs and racecourses and the allocation of race dates are the responsibility of the control body (**Attachment MK 19**).

**OFFICE OF RACING LEGISLATIVE RESPONSIBILITIES UNDER THE RACING ACT**

- 22. The responsibilities of the Chief Executive / Office of Racing Regulation under the Act include:
  - (a) undertaking assessments of applications for control body approvals under section 13;
  - (b) receiving the control bodies' annual plan for managing its code of racing under section 41;
  - (c) receiving notice about a change of executive officers under section 42;
  - (d) conducting annual audit/assessment program that has been approved by the Minister under section 46; and
  - (e) undertaking the functions of authorised officers under section 262.

**CONTROL BODY APPLICATION APPROVALS**

- 23. Sections 359 and 370 of the Act (Reprint 1, effective 1 July 2003) provided that the three statutory body control bodies (Queensland Thoroughbred Racing Board, Queensland Harness Racing Board and the Greyhound Racing Authority) were continuing control bodies for their relevant code of racing for a period of three years until 30 June 2006. It was intended that the three control bodies would transition to corporations law entities prior to 30 June 2006.
- 24. The conduct of assessments for all control body approval applications, and the transition to the single control body model were complex, high-impact activities

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that took many months to complete and involved the majority of staff of the Office of Racing Regulation. The documentation related to these assessments is extensive and is held by the department. Once the assessments were completed, the normal government processes related to consideration by the Director-General, Minister and Cabinet were then undertaken.

**2006**

25. The members of the thoroughbred control body, the Queensland Thoroughbred Racing Board established a company limited by guarantee, Queensland Racing Limited that applied to the Minister under section 10 of the Racing Act for a control body approval for the thoroughbred code of racing.
26. The Office of Racing Regulation conducted a complex and detailed assessment of Queensland Racing Limited's application for a control body approval and provided a report including a recommendation to the chief executive that the application be granted. There is an extensive report on this assessment held by the department.
27. The chief executive reviewed the office of racing assessment as required under the Act and recommended to the Minister that the application be granted. The assessment of the application included conducting of probity checks on all executive officers of the control body (**Attachment MK20**). The Minister approved that Queensland Racing Limited be approved as the control body for the thoroughbred code from 1 July 2006.
28. The *Racing Amendment Act 2006* facilitated the transfer of all assets, liabilities and staff from the statutory body to Queensland Racing Limited and as the harness and greyhound statutory body control bodies were not positioned to transition to

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corporations law entities, it provided that they continue to be the control bodies for those codes until 1 July 2008.

**2008**

29. The Office of Racing Regulation conducted a complex and detailed assessment of applications for control body approvals by Queensland Harness Racing Limited and Greyhounds Queensland Limited and provided a report including recommendations to the chief executive that the applications be granted. There are extensive reports on these assessments held by the department.
30. The chief executive recommended to the Minister that the applications be granted. The assessments included conducting of probity checks on all executive officers of the control bodies. **(Attachment MK21)** The Minister approved that Queensland Harness Racing Limited and Greyhounds Queensland Limited be approved as the control body for the relevant code from 1 July 2008.
31. The *Racing Amendment Act 2008* facilitated the transfer of all assets, liabilities and staff from the statutory body control bodies to the corporations.

**2010**

32. The approval of Racing Queensland Limited as the control body for the thoroughbred, harness and greyhound codes of racing was effected by the *Racing and Other Legislation Amendment Act 2010*. Accordingly, a section 10 control body approval application was not required to be lodged as Parliament approved the amalgamation of the three control bodies to form Racing Queensland Limited (RQL).
33. Notwithstanding the decision to effect the creation of RQL through legislative amendments, the Office of Racing Regulation conducted investigations on all

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employees who fell within the definition of 'executive officers' under the Act who had not previously been investigated.

34. The Office of Racing Regulation reviewed the constitution of RQL, the remuneration proposed for directors, staff entitlements after the amalgamation and required the control body to adopt specific requirements to protect the public interest.

#### **RECEIVING THE CONTROL BODIES' ANNUAL PLAN FOR MANAGING ITS CODE OF RACING UNDER SECTION 41**

35. Each year a control body is required to provide an annual plan for managing its code of racing. The Office of Racing Regulation ensured that these plans were provided in accordance with the requirements of the Act.

#### **RECEIVING NOTICE ABOUT A CHANGE OF EXECUTIVE OFFICERS UNDER SECTION 42**

36. In circumstances where there is a change of executive officer of a racing control body, such changes must be advised to the Office of Racing Regulation. On each occasion where any change occurred, the Office of Racing Regulation ensured that the relevant details were provided by the control body and that any necessary investigation, assessment and probity checking was undertaken.

#### **MINISTERIAL POWERS UNDER THE RACING ACT 2002**

37. The Ministerial powers available are as follows:

**Section 13** – Minister to refer an approval application to the chief executive

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for assessment and other action.

- all approval applications received by the Minister were referred to the Chief Executive for assessment. These applications were made in 2006 and 2008.

**Section 24** – Minister to consider and decide approval application.

- all approval applications, the assessment report and the Chief Executive's recommendations were provided to the Minister for consideration and decision.

**Section 45** - Minister may give a direction to control body about its policies or rules.

- not exercised.

**Section 46** - Program for auditing suitability of control bodies

- programs for auditing suitability of control bodies were provided to the relevant Minister in accordance with the requirements of the Act.

**Section 52** – Grounds for disciplinary action relating to the approval of a control body for its code of racing.

- no disciplinary action was taken against any control body.

**Section 53** – Show Cause Notice.

- No show cause notice was issued to a control body.

**Section 55** – Immediate suspension of an approval.

- No approval was suspended under this section of the Act.

**Section 56** – Censuring a control body.

- No censure was issued to a control body.

**Section 57** – Direction to control body to rectify matter.

- No direction was issued to a control body.

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**Section 58** – Minister may take certain action against a control body in particular circumstances (Action by Minister).

- No action under this section was taken by a Minister.

**Section 60** – Minister may request the auditor-general to audit a control body.

- In 2012, the Minister requested the Auditor-General to undertake an audit of control body activity related to payments made to former control body executive staff.

**Section 113** - Prohibition of disposal of certain assets of non-proprietary entity without the approval of the Minister obtained before the disposal.

- All applications for approval for the disposal of assets were taken in accordance with the requirements of this section of the Act. Disposals by Brisbane Turf Club and Queensland Turf Club were approved at various times.

**Section 116** – Membership of integrity board

- All members of the integrity board were appointed by the Minister, by gazette notice, and were qualified for appointment as board members.

**Section 120** – Minister to approve leave of absence of integrity board member.

- Not required to be exercised as no leave of absence sought.

## **CHIEF EXECUTIVE POWERS UNDER THE RACING ACT 2002**

38. The responsibilities of the chief executive/Office of Racing Regulation under the Act include:

**Section 13** - Undertaking assessments of applications for control body approvals.

- In 2006 the Office of Racing Regulation conducted a complex and detailed assessment of Queensland Racing Limited's application for a control body

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approval. There is an extensive report on this assessment (**Attachment MK20**).

- In 2008 the Office of Racing Regulation conducted a complex and detailed assessment of applications for control body approvals by Queensland Harness Racing Limited and Greyhounds Queensland Limited. There is an extensive report on these assessments (**Attachment MK21**).

**Section 14** - Chief executive must require advertising notice.

- Application notices were published.

**Section 15** – Receive written objections to an approval application.

- No written objections were received in response to applications received however, any submissions and comments received were incorporated into the report prepared for consideration by the Minister. As a result of submissions received, a condition was placed on the QRL approval that required it to undertake consultation with stakeholders and provide an outcome report to the Minister.

**Section 17** - Chief executive must call meeting of all approval applicants.

- Not required to be exercised as no additional approval applicants existed.

**Section 18** - Assessment of an approval application if only 1 application.

- Approval applications made in 2006 and 2008 were assessed by the Office of Racing Regulation, reviewed and assessed by the Chief Executive and recommendation made to the Minister as required under the Act.

**Section 19** - Assessment of an approval application if more than 1 application.

- This activity was not required to be exercised as there was not more than 1 application.

**Section 20** - Assessing approval applicant or approval applicants.

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- The chief executive decided whether the approval applicant was suitable to be approved as the control body for the application code in accordance with the provisions of section 20.

**Section 21** - Chief executive may require further information or documents to support approval application as part of investigations under section 20.

- The chief executive sought additional information and documents on all approval applications received as part of their consideration of the application.

**Section 22** - Chief executive must request fingerprints of business associates and executive associates of the approval applicant.

- The finger prints of all of business associates and executive associates were received for the purposes of having the Queensland Police Service undertake identity and criminal history investigations.

**Section 23** - Obtaining the criminal history of an individual.

- The chief executive sought, and was provided a report on the criminal history of all business associates and executive associates of an approval applicant.

**Section 29** – Receiving yearly fee for approved control body.

- The fee specified in the regulations was received each year for the relevant control bodies.

**Section 32** – Chief executive must destroy the fingerprints of any individual who is a business associate or executive associate of the approval applicant or the control the Minister refuses to grant an approval application to, or cancels an approval.

- Not required to be exercised

**Section 39** – Receiving control body program to audit licensed animals, clubs, participants and venues.

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- Each year the control body program required to be provided was received and reviewed.

**Section 41** - Receiving the control bodies' annual plan for managing its code of racing and eligible corporation status.

- Each year the relevant control bodies provided their annual plan for managing their code of racing. The Office of Racing Regulation ensured that these plans were provided in accordance with the requirements of the Act and they are held by the department.

**Section 42** - Receiving notice about a change of executive officers of a control body.

- On each occasion any change of executive officers occurred, the Office of Racing Regulation ensured it received notice and that the relevant details were provided by the control body and necessary investigation, assessment and probity checking was undertaken.

**Section 44** – Receiving notice of event resulting in executive officer no longer being an eligible individual.

- No notices were received and no issues identified that activated this section of the Act.

**Section 46** - Conducting annual audit/assessment program that has been approved by the Minister.

39. These were conducted by the Office of Racing Regulation and were a key area of oversight of control body operations. The assessments were a detailed examination of identified risk areas and involved an extensive amount of work by officers from the Office of Racing Regulation. As a result of these assessments, both strategic and operational issues were identified that required action by racing control bodies and outstanding items requiring attention were followed up to

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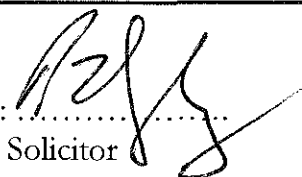
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ensure action was taken. An overview of each year's assessment and key findings is provided (at **Attachment MK 22**). This is merely a summary of the Assessments and reference should be made to the relevant departmental files to fully comprehend the scope and work involved in this area of oversight.


40. The following audits/assessment programs have been conducted since 2006:

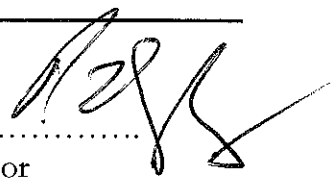
Year of Audit/Assessment	Audit/Assessment Program
2006	<ul style="list-style-type: none"> <li>• Level of compliance with the requirements of the <i>'Procedures about the way things for analysis are taken and dealt with'</i> developed by the Racing Animal Welfare and Integrity Board under section 115(3); and</li> <li>• Whether persons appointed as sample collection officials had undergone the appropriate sample collection training.</li> </ul>
2007	<ul style="list-style-type: none"> <li>• The preparedness of Queensland Racing Limited and the Queensland Harness Racing Board to deal with an emergency animal disease outbreak was assessed by assessing their respective roles in the response to contain and eradicate the equine influenza outbreak during 2007.</li> <li>• The preparedness of the Greyhound Racing Authority to deal with an emergency disease outbreak at a racing venue during the conduct of a race meeting was assessed by conducting a scenario based series of events that created an 'exercise' disease outbreak at a race meeting.</li> </ul>

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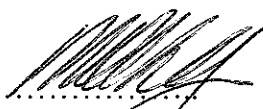
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Year of Audit/Assessment	Audit/Assessment Program
2008	<ul style="list-style-type: none"> <li>• The suitability of each control body's policy under section 81(g) of the Act regarding the control body's website and information accessible through its website, including its policies and rules required to be published on its website under sections 84 and 94;</li> <li>• The suitability of each control body's policy under section 81(o) of the Racing Act regarding the control body's record keeping about decisions;</li> <li>• How effectively the policies under section 81(g) and (o) had been implemented; and</li>   <li>• Each control body's compliance with the requirement in section 37(b) of the Act to have an information system that records all of the control body's actions under its licensing scheme relating to animals, clubs, participants and venues were implemented.</li> </ul>
2009	<ul style="list-style-type: none"> <li>• The suitability of each control body's policy under section 81(d)(i) of the Racing Act regarding the control body's education and training systems;</li> <li>• How effectively the policies under section 81(d)(i) have been implemented; and</li> <li>• The action, if any, taken by each control body in regard to section 82(1), 'A control body's policy about providing or participating in an appropriate education and training system for persons may</li> </ul>

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Year of Audit/Assessment	Audit/Assessment Program
	provide for the control body, by itself or together with another entity, to establish, manage or fund a facility or process for providing an appropriate system'.
2010	<ul style="list-style-type: none"> <li>• Racing Queensland's compliance with section 81 of the Racing Act, including consultation undertaken with stakeholders as part of its policy development process [section 81(a)];</li> <li>• Whether urgent policies made by the Board of Racing Queensland with effect from and including 1 July 2010, were reviewed within three months of publication, and did not have effect after 31 December 2010 (six months from publication) unless formal consultation on review of each of the policies had been undertaken; and</li> <li>• Whether each of the policies required under section 81 of the Racing Act met the form of each policy as required by section 81 of the Act.</li> </ul>
2011	<ul style="list-style-type: none"> <li>• Racing Queensland's compliance with section 109 of the Racing Act in ensuring all thoroughbred, harness and greyhound venues at which race meetings were to be conducted during the period 1 July 2011 to 30 June 2012 were licensed;</li> <li>• That all venue licences included the real property description of the licensed venue; and</li> <li>• How effectively the policy on 'the standard required of licensed venues, including criteria for different categories of venues' under section 81(k) had been implemented</li> </ul>

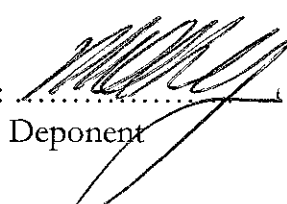
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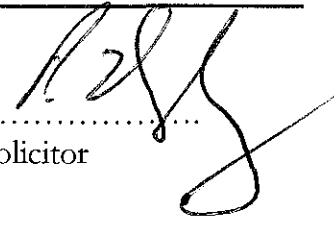
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Year of Audit/Assessment	Audit/Assessment Program
	in regard to the minimum standards of licensed venues.
2012	<ul style="list-style-type: none"> <li>• The processes and procedures the control body undertakes in the application and discharge of its integrity functions;</li> <li>• Whether the processes and procedures the control body undertakes in the application and discharge of its integrity functions are best practice; and</li> <li>• Whether there is sufficient regard to protecting the rights and liberties of individuals subject to racing industry disciplinary and administrative processes.</li> </ul> <p>Due to the need to develop and implement legislative changes to the Racing Act in 2012, the 2012 Assessment Program was not undertaken as planned. The Minister approved that the 2012 Assessment Program was taken to have been completed as a result of implementation of amendments to the Act in late 2012. The documentation has been requested to Crown Law and has not yet been provided.</p>

**UNDERTAKING THE FUNCTIONS OF AUTHORISED OFFICERS UNDER SECTION 262**

41. The main function of an authorised officer under section 262 is to investigate and enforce compliance with the Act. A compliance officer’s function to investigate compliance with the Act includes:

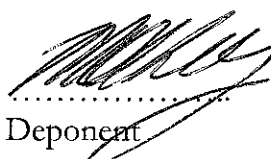
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- (a) monitoring each control body's activities for its code of racing about licensed clubs, participants and venues; and
  - (b) auditing each control body to assess whether the control body is complying with this Act, other than in relation to the welfare of licensed animals.
42. An integrity officer's function to investigate compliance with the Act includes-
- (a) monitoring each control body's activities for its code of racing relating to the welfare of licensed animals;
  - (b) auditing each control body to assess whether the control body is complying with this Act, in relation to the welfare of licensed animals; and
  - (c) auditing each accredited facility to assess whether it is complying with the conditions that apply under this Act.
43. The Executive Director, Director, Investigations and Compliance and the Principal Compliance Officers are appointed as both compliance and integrity officers. The Principal Integrity Officer is appointed an integrity officer only.

**COMPLIANCE OFFICER FUNCTIONS TO MONITOR AND AUDIT CONTROL BODIES**

44. The relevant provisions of the Act regarding monitoring and auditing of control bodies is contained in *Division 2 of Part 4 of Chapter 2 (Reprint 3 effective 1 January 2011)* entitled *Audit regime and other investigations* (sections 46 to 51).
- (a) Section 46 Program for auditing suitability of control bodies – brief details of audit programs conducted by the Office of Racing Regulation are outlined above and in attachment MK 22 however, extensive files on each of these assessments are held by the department and Crown Law. Due to the size of this documentation it has not been attached.

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(b) Section 47 (Investigations into suitability of a control body) and section 48 (Investigations into suitability of associate of control body) were amended by the *Racing and other Legislation Amendment Act 2012*. The amendments implemented a change in government policy to give the Minister and chief executive increased powers over a control body. Accordingly, restrictions on the chief executive's powers to investigate a control body and an associate of a control body were removed in the 2012 amendments so that the chief executive had wide power of investigation of a control body without the requirement to satisfy any pre conditions.

45. In 2010, when RQL was appointed as the control body for the three codes of racing, the Office of Racing Regulation investigated all employees whose role in the new control body resulted in them falling within the definition of 'executive officer', if they had not previously been investigated.

46. The conduct of such investigations included:

(a) completion of a 'Consent and Authority for Information about Executive Officer or Associate to be obtained for Chief Executive' under section 42 and a Personal Probity Form by the person, the subject of the investigation **(Attachment MK 23)**.

(i) a Personal Probity Form requires a person to provide proof of identity, details of current and past businesses conducted, current and past employment, personal details, details of any arrests, detentions and litigation, possible conflicts of interest and financial details.

(ii) criminal history, bankruptcy and ASIC searches were conducted and the results checked against the information provided in the Personal Probity Form. Any discrepancies were further investigated

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and the person contacted to confirm or explain any discrepancies and an assessment of explanations conducted.

**LEGISLATIVE AMENDMENTS**

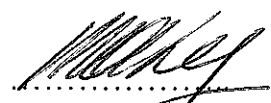
47. Since 2006 there have been a significant number of amendments made to the Act. The progression of these amendments followed the normal government, Cabinet and legislative processes with extensive involvement and oversight from across government. The relevant details of these amendments are outlined in **Attachment MK 24.**

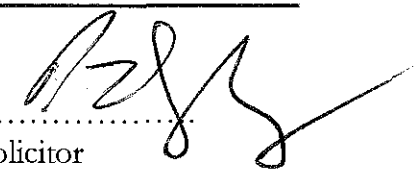
**CREATION AND MAINTENANCE OF APPROVED FORMS UNDER THE ACT**

48. Section 343 of the Act provides that the Chief Executive may approve forms for use under the Act. This responsibility was delegated to the Executive Director, Office of Racing. The Office of Racing Regulation was responsible for the development and maintenance of all approved forms issued under the Act. These were regularly reviewed to ensure they remained relevant and current for their purpose. A list of all approved forms is provided at **Attachment MK 25.**

**ONGOING MONITORING AND OVERSIGHT BY THE OFFICE OF RACING REGULATION**

49. While formal investigations have always been a small part of the work undertaken by the Office of Racing Regulation, there has always been ongoing monitoring and oversight of the control bodies on a daily basis. In addition to formal

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oversight activities undertaken in response to specific requirements in the Act, oversight also included being involved in all manner of day-to-day activities that arose in relation to the operation of the regulated racing industry.

50. When issues arose that needed to be addressed, such as reporting and addressing animal welfare incidents, drug testing protocols and arrangements and increased consultation with stakeholders, regulation of the control bodies was undertaken in an educative and conciliatory manner rather than by issuing of directions under the Act. It was never necessary to issue directions as all control body staff willingly provided any information and/or assistance when requested by the Office of Racing Regulation.
51. The Office of Racing Regulation had systems in place prior to the commencement of the Act in 2003 for regular reporting and communication with the control bodies. The General Manager, CEO or Chief Steward of the control bodies would contact generally either Carol Perrett or myself, but sometimes other officers on contentious/integrity related, animal welfare and other relevant issues. Depending on the issue, the chairs of the control bodies would also contact me.
52. If the Office of Racing Regulation became aware of an issue and had not been advised of the matter by the control body, the control body would be contacted and asked for a report on the matter. If the Minister's Office became aware of a matter, they would contact myself or Carol Perrett for further information, who would then contact the control body for a report if required.
53. Shara Reid (nee Murray), the Legal Counsel for QRL would provide information/an update on legal matters to either myself or Carol Perrett. David Grace of Cooper Grace and Ward Lawyers, QRL's legal advisers, would also provide information and updates to either Carol Perrett or myself and would provide information requested.

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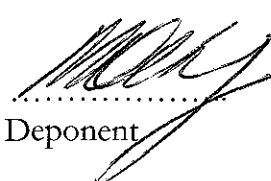
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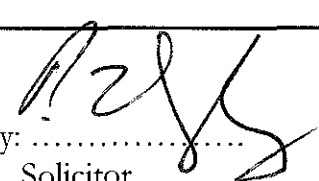
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54. When the control bodies were amalgamated in 2010, and RQL became the control body for the three codes of racing this process continued through the new control body structure.
55. David Grace continued to provide information/updates until Clayton Utz was appointed by RQL as its legal adviser. Barry Dunphy and, after Shara Reid resigned, Michelle Hutchinson, liaised with/provided updates and information requested by the Office of Racing.
56. Andrew Hedges, and after his resignation, Jamie Orchard, Director of Integrity Operations provided advice/updates on integrity related issues. Paul Brennan provided advice/updates on industry/club issues and Col Truscott, Country Racing Liaison Officer, located In Rockhampton, provided information in relation to country racing issues.
57. To enable the Office of Racing to monitor action taken by stewards, all steward's reports were provided to myself and Carol Perrett at the same time they were sent to other officers at Racing Queensland. These reports would be reviewed to identify strategic issues that may require follow up action. For example, amendments to section 352A the Racing Act to enhance drug control activity was directly related to issues identified in this process.

### **CMC/POLICE REFERRALS**

58. In 2008 matters concerning the conduct of QRL board elections were raised with the Minister (Andrew Fraser). The issues raised were initially investigated by the Office of Racing Regulation and it was identified that, if substantiated, these may amount to official misconduct. The Office of Racing Regulation recommend that the matter be referred for investigation to the CMC and such action was ultimately taken by the Under Treasurer (Gerard Bradley). Subsequently, ASIC and the

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Queensland Police Service also became involved in this matter (**Attachment MK 26**).

## **CMC/ASIC/POLICE INVESTIGATION OF PROXY ISSUE**

### **Queensland Racing Limited Request to Vary its Constitution**

59. In 2008, Queensland Racing Limited (QRL) proposed varying its constitution to, amongst other things, extend the initial term of directors from three to six years and remove the requirement for an independent recruitment consultant to be involved in identifying prospective board members and give this responsibility to the company secretary. QRL had obtained legal advice on this issue from Counsel and proposed this change to Government.
60. There was considerable public debate occurring on this issue and a range of complaints concerning the processes undertaken by QRL had been made to the Minister and the CMC. The Office of Racing Regulation sought legal advice from Clayton Utz on QRL's proposal (**Attachment MK 27**) and prepared a briefing note that recommended the proposed amendments to the QRL constitution not be approved. This recommendation was endorsed by the Deputy Under-Treasurer (David Ford) and the Under Treasurer (Gerard Bradley) and ultimately accepted by the Treasurer (Andrew Fraser) who did not approve QRL's request to amend the constitution (**Attachment MK 28**). The Treasurer made a statement to this effect in Parliament on 28 October 2008 (**Attachment MK 29**). Further specific details on this matter is provided below:
61. I believe that the Honourable William Carter QC (Carter) made a complaint to the relevant Minister (Andrew Fraser) on the 19th of August 2008, concerning a range of matters associated with the conduct of QRL activity related to proposed

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amendments to the QRL constitution. I believe that similar related complaints were made by Clarke Kann lawyers and Gary Peoples.

62. On the 22nd of August 2008, a briefing note to the Minister, endorsed by me and approved by David Ford, recommended that the Minister did not ratify the proposed amendments to the QRL constitution. The Minister deferred consideration of the issue until "matters of process had been investigated and assessed" (see attachment MK30).
63. I believe that Gerard Bradley referred Carter's complaint to the CMC for investigation around the 23rd of August 2008. I am unable to locate a briefing note on this matter however, I believe one exists under the control of the department that would confirm that I recommended that the matters raised be referred for CMC investigation.
64. The department had in place a CMC Liaison Officer who was responsible for the coordination of, and dealing with, all CMC matters. I believe Chris Turnbull was the CMC Liaison Officer and primarily dealt with this complaint. After reviewing statements made to the Commission, I believe that Chris Turnbull had a range of discussions with Helen Couper of the CMC on progressing the CMC investigation. I was not part of any such discussions.
65. I am now aware that on the 25th of August 2008, a letter was received by Gerard Bradley from the CMC that advised that the matter referred was not within the jurisdiction of the CMC and suggested that ASIC and/or the chief executive may be best placed to deal with the concerns raised (see attachment MK 31). I have obtained a copy of this letter from documents provided to the Commission by Gerard Bradley. While I was aware that the CMC had decided not to investigate the referred complaint, I do not believe that I had seen this letter previously. I hold this belief because all CMC related correspondence is tightly controlled by

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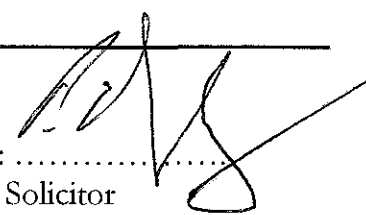
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the relevant CMC Liaison Officer and the 'action stamp' on the CMC letter identifies Chris Turnbull as the responsible Assistant Under Treasurer/Executive Director to deal with this matter. Had the letter been provided to me, I would expect the relevant notation to be made in the 'action stamp'.

66. On the 15th of September 2008, QRL requested a copy of a complaint made to the government (see attachment MK 32). It is my recollection that this request related to correspondence previously received from Carter concerning a range of matters associated with the conduct of QRL activity related to the proposed amendments to the QRL constitution.
67. On the 15th of September 2008, legal advice was provided by Barry Dunphy of Clayton Utz concerning proposed amendments to the constitution of QRL that speaks for itself (see attachment MK 33).
68. On the 25th of September 2008, QRL was advised that correspondence would not be released to them. I believe that this letter was drafted by staff of the Office of Racing, endorsed by me, approved by David Ford and forwarded to Gerard Bradley for final approval before being submitted to the Minister for consideration and signature. The original letter submitted for signature by the Minister was returned to the Office of Racing for amendment by Gerard Bradley. It was amended for Gerard Bradley's signature (see attachment MK 34).
69. On the 26th of September 2008, correspondence was received from Cooper Grace Ward lawyers who represented QRL that speaks for itself (see attachment MK 35).
70. On the 13th of October 2008, I received an email from Lachlan Smith that contained an email trail between Chris Turnbull, Michael Dart, Lachlan Smith, David Ford and Gerard Bradley concerning the progress of the ASIC investigation (see attachment MK 36).

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71. On the 15th of October 2008, I received a meeting request to attend a meeting between departmental officers and ASIC concerning the progress of the ASIC investigation (see attachment MK 37).
72. On the 17th of October 2008, I attended a meeting with ASIC representatives held in the 33 Charlotte Street building. At this meeting were Chris Turnbull, David Ford, myself and a range of persons from ASIC. Chris Turnbull, David Ford and I were briefed on the ASIC investigation. After the briefing from ASIC, David Ford decided that we were now in a position to finalise a brief to the Minister on the issue of the proposed amendments to the QRL constitution.
73. David Ford provided a briefing email to Gerard Bradley on the 17th of October 2008 at 3.05pm concerning the outcomes of the ASIC briefing which was copied to Chris Turnbull and me (see attachment MK 38). I note that there is no reference to any further investigation action to be initiated by the government. I believe the information set out in the email is accurate and speaks for itself.
74. On the 17th of October, 2008 at 5.34pm, I advised David Ford that I would finalise a briefing note on the issue of QRL's submission to vary its constitution, include options for consideration regarding the proposed QRL constitution and provide it to him for consideration on the following Tuesday. David Ford responded by email to me on the 17th of October, 2008 at 5.37pm. These emails speak for themselves (see attachment MK 39).
75. On the 23rd of October, 2008, the Office of the Under Treasurer received a letter from ASIC concerning QRL. From my recollection of the meeting with ASIC representatives it covers the range of issues discussed at the 17th of October, 2008 briefing. On the last page in the 'action stamp' section it is clearly marked for Chris Turnbull's attention as the responsible Assistant Under Treasurer/Executive

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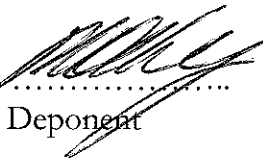
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Director (see attachment MK 40). I do not recall when I received a copy of this letter.

76. On the 24th of October, 2008, a briefing note was prepared by the Office of Racing concerning proposed amendments to QRL constitution (see attachment MK 41). I do not know if it was later amended as I have only been able to access this unsigned document however, a final copy will be held by the department. I note that neither the CMC letter dated the 25 August 2008 or the ASIC letter dated 22 October 2008 were attached to this briefing note. I do not have a detailed recollection of the circumstances but believe that if I had access to these documents at the time the briefing note was prepared they would have been attached to the briefing note as this was normal procedure. The advice received by Clayton Utz dated the 15 September 2008 that I did have access to was attached to the briefing note. The document I have accessed speaks for itself.
77. On 27 October 2008 at 5.57pm I received an email from Brendan Connell seeking my views on a statement that the Treasurer wanted to make concerning this matter (see attachment MK 42). Carol Perrett and I discussed the statement and referred to the guidance provided by David Ford in his 17 October 2008 at 3.05pm briefing email to Gerard Bradley concerning the content of a Ministerial Statement (see attachment MK 38). The text provided by Brendan Connell reflected the intent of David Ford in his 17 October 2008 at 3.05pm briefing email to Gerard Bradley. The attached response was provided to Brendan Connell on 27 October 2008 at 6.07pm (see attachment MK 42).
78. On 28 October 2008 at 9.28am, Chris Turnbull, Gerard Bradley and I were advised by email from David Ford that the Treasurer intended to table the letter received from ASIC. I believe 'table' refers to providing it to Parliament (see

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attachment MK 43). It is common parliamentary practice that when a member tables a document that a related statement is made.

79. On 28 October 2008 at 9.35am, Gerard Bradley and I were copied into an email from Chris Turnbull to David Ford concerning action ASIC intended to take (see attachment MK 44).
80. On 28 October 2008 at 10.14am, The Treasurer made a statement to Parliament titled "Queensland Racing Ltd" which amongst other thing stated that he considered "this matter to be closed" (see attachment MK 45). This statement confirmed my understanding of the course of action approved by David Ford and Chris Turnbull.
81. On 1 April 2009 the Office of Racing sought a finalised copy of the document RAC-00069, which I believe is the 24th of October, 2008 brief to the Treasurer dealing with the proposed amendments to the QRL constitution prepared by the Office of Racing, endorsed by me, endorsed by David Ford and approved by Gerard Bradley. I do not believe a signed copy of the brief was able to be located (see attachment MK 46).
82. At a time I cannot recall if I was provided a copy of a Queensland Police Service Media Release (see attachment MK 47).
83. In the final paragraph of his correspondence dated 19 August 2008 William Carter requests of the Minister that, "you initiate independent enquiry into matters relating to the 6 August meeting and that such enquiry be undertaken, not by Racing Division, but preferably the CMC and/or ASIC". From the information available to me and my recollection of events this seems to be what occurred.

**Harness and greyhound referrals**

84. In 2009, the Office of Racing Regulation was advised of allegations against persons employed by Harness Racing Queensland and Greyhounds Queensland

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and recommended referral to the CMC for official misconduct investigation. On 9 July 2009, the Minister (Peter Lawlor) referred these issues to the CMC for investigation (see attachment MK 48). The outcome of this investigation was not made known to the Office of Racing however, this is not an unusual situation regarding CMC activity.

### **OVERSIGHT BY EXECUTIVE GOVERNMENT**

85. Oversight by Executive Government was by formal Cabinet/CBRC submissions that were drafted by the Office of Racing with considerable input from other areas within the department and central government agencies, in particular the Department of Premier and Cabinet and Treasury Department. These submissions followed normal government processes and were all approved by the Deputy/Associate Director-General, Director-General and Minister prior to submission.

### **INDUSTRY INFRASTRUCTURE PLAN**

#### **General**

86. Cabinet's and CBRC's initial 2009 approval required that all RICDS- funded projects be supported by individual project business cases that had to be approved by the Treasurer before any funding could be released to RQL. Due to the urgency of work required at Mackay, this IIP business case was approved by CBRC in 2011. Beaudesert was the first business case prepared by RQL after the Mackay business case and was developed by RQL, through feedback from Treasury and the Office of Racing Regulation, to provide a template for subsequent business cases to be submitted to government.

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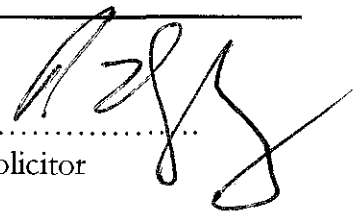
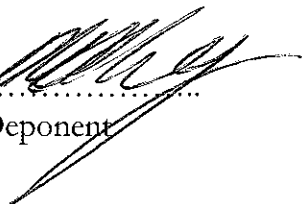
- 87. Individual IIP project business cases were prepared by RQL and submitted to the Office of Racing Regulation progressively, in draft form, for the department to provide feedback on their content. Feedback that was provided focused on ensuring that there was the necessary information included, and in sufficient detail, to allow Treasury Officers and the Treasurer to make a decision regarding individual business case and any release of RICDS funds.
- 88. The approval process for individual business cases required an assessment by Treasury Officers and once they made a recommendation to the Under Treasurer (Gerard Bradley) it was forwarded to the Treasurer for final decision.
- 89. Individual IIP project business cases were submitted to Treasury for consideration on a rolling basis and the Office of Racing, did not, and had no authority, to approve IIP business cases or funding from the RICDS. Once a business case had been approved and the Treasurer had authorised the release of funds to RQL this was communicated to the Office of Racing, funding deeds between the State and RQL drafted by Crown Law were executed by the State and RQL and approved first instalment payments made to RQL.

**RICDS FUNDING DEEDS**

- 90. All RICDS funding provided to RQL for the conduct of approved IIP projects and the reimbursement of costs incurred in the development of IIP business cases was subject to the execution of funding deeds prepared by Crown Law or DEEDI Legal Services officers.
- 91. The Office of Racing Regulation ensured that extensive safeguards were established in all funding deeds entered into with RQL that related to the expenditure of RICDS funds on approved IIP projects. All RICDS funding provided to RQL was provided under a relevant funding deed.

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92. Individual funding deeds were prepared by Crown Law on instructions from Carol Perrett and approved by myself. It was planned that compliance with the terms of funding deeds would have been assessed as part of future section 46 assessments to be undertaken and RQL was aware of this intention ( see statement of Adam Carter at paragraph 59 in relation to audit).
93. While there are numerous provisions in each deed, the general provisions that demonstrate oversight and the protection of the public interest include.

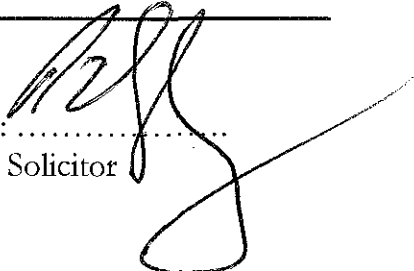
**IDENTIFICATION OF WHAT WAS “ELIGIBLE EXPENDITURE”**

94. "Eligible Expenditure" was identified and defined and generally means those costs or any expenditure as outlined in the Approved Business Case that is for the purpose of or directly attributable to the purposes set out in the deed, including:
- (a) design and technical advice relevant to the Program;
  - (b) excavation works necessary for the Program;
  - (c) construction and installation of the racetracks and buildings;
  - (d) all associated works necessary for the Program, including drainage works, electrical works, lighting works, irrigation works, road works and barrier works;
  - (e) third party project management fees for the Program; and
  - (f) such other costs agreed in writing, signed by the Department from time to time.
95. The control body could not commit or spend, or allow any third party to commit or spend, any Program Funds on anything other than eligible expenditure.

**IDENTIFICATION OF INELIGIBLE EXPENDITURE**

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96. "Ineligible Expenditure" was identified and means those costs or expenditure that are not within the meaning of specified Eligible Expenditure (or that are in relation to, for example, administration and management costs, and financial and Program reporting costs).

**AUDIT OF FUNDING PROVIDED**

97. The control body was required, upon request, to supply to the Department a copy of all successful tenders and associated contract documentation for any works, services or goods provided under the Program or using Program Funds. This provision was included specifically to allow for detailed audit of each IIP related activity funded from the RICDS.

**ACCESS TO WORKS SITE**

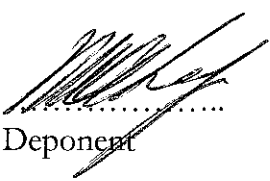
98. The control body was required to allow access to work sites to:

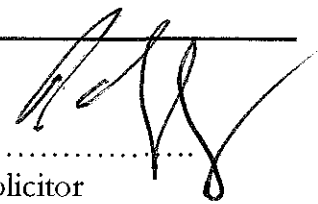
- (a) undertake Program monitoring or audits;
- (b) monitor the progress of construction and development being conducted as part of the Program; and
- (c) assess and forecast, with input from the Recipient's nominated representative, the value of the work in ground done or made under the Program or using Program Funds.

**PROGRESS REPORTING**

99. The control body was required to provide the Department with the reports as described in the deed and at the times and in the manner specified, and as otherwise reasonably requested by the Department. This provision was included

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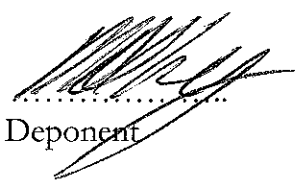
specifically to allow for detailed audit of each IIP related activity funded from the RICDS and to confirm information provided by the control body.

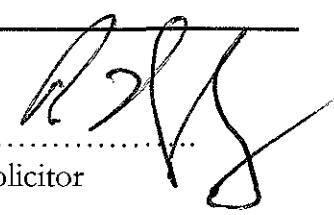
**ACCOUNTS**

- 100. The deeds required that the control body's accounting system must be structured:
  - (a) to enable the expenditure of the Program Funding to be properly and accurately identified, sourced, traced and reported upon to the Department;
  - (b) to ensure appropriate internal controls are in place to identify and prevent misuse or misappropriation of Program Funding; and
  - (c) to record interest earned on the Program Funding.
- 101. All Program Funds were required to be maintained in a separate bank account to enable identification and audit. This provision was included specifically to allow for the easy identification of specific RICDS funding to be used in the detailed audit of each IIP related activity funded from the RICDS.

**WARRANTIES AND UNDERTAKINGS PROVIDED BY THE CONTROL BODY**

- 102. Amongst other things, the control body represented and warranted to the Department that:
  - (a) the information contained in the Approved Business Case and the control body's application for the Program Funds and any other information provided by the control body to the Department in support of the application was accurate and not misleading in any particular;
  - (b) all information provided at any time was accurate and up to date;

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- (c) it does not have any interests or obligations that conflict with its interests and obligations under this Deed or will prejudice its ability to carry out the Program fairly and independently;
- (d) it has made full disclosure to the Department of all matters that relate to, or may be expected to adversely affect, the good reputation, character and standing of the control body and any related body, any director, senior officer or employee of the control body, or related body which may be involved in the Program, including matters relating to their acting in breach of their obligations under any law in the conduct of business or in any role as an officer of a company (for example obligations pursuant to the *Corporations Act 2001* (Cth)); and
- (e) the warranties, representations and undertakings given by the control body were continuing obligations.

**TERMINATION FOR CONVENIENCE**

103. The Department may terminate a funding deed for convenience, without cause, upon written notice to the control body. This provision was included specifically to allow for termination of funding should government policy or priorities change.

**RESTRICTION ON ASSIGNMENT**

104. The control body could not assign, novate, transfer, encumber or subcontract any or all of its rights or obligations under a funding deed to any other party, except with the prior written consent of the Department. This provision was included specifically to ensure the accountability of the control body.

**TREATMENT OF 'EXCESS PROGRAM FUNDS**

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105. "Excess Program Funds" were defined as any part or all of the Program Funds that has not been properly spent on or committed for Eligible Expenditure in accordance with this Deed (whether by the control body or a third party engaged by or on behalf of the control body), as at the Expiry Date or the date of termination of this Deed was to be returned to the department or otherwise dealt with only with approval of the department.

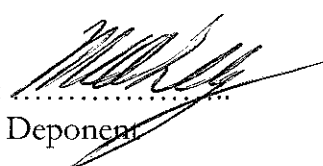
**STANDARD OF WORK TO BE UNDERTAKEN**

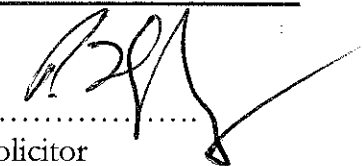
106. "Standards" of work were defined as the forms, licensing, standards and legal requirements specified in the funding deed, and included any licensing obligations required by law and any Australian standards relevant to the matter for which standards are required (or if there are no relevant Australian standards, then any relevant international standards). This provision was included specifically to allow for detailed audit of each IIP related activity funded from the RICDS and to ensure appropriate standards of IIP work outcomes.

**PURCHASING/PROCUREMENT POLICIES**

107. RQL had a procurement policy in place in July 2010 and it was expected that it would be adhered to in control body purchasing activities. RQL assured government that purchasing activity was being undertaken in accordance with their purchasing policy.

108. In 2011 it was identified by the Office of Racing Regulation that the RQL Purchasing Policy did not contain enough detail related to the conduct of IIP-related purchasing activity. The Office of Racing Regulation requested RQL to develop and implement specific IIP-related purchasing process that would be used to ensure the transparency of RQL processes and assist in the safeguarding of the

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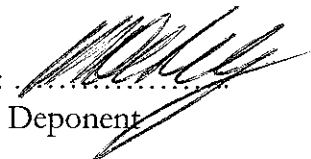
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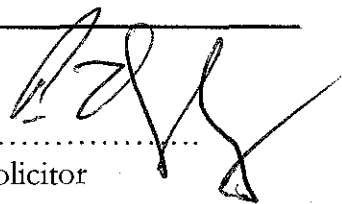


public interest related to expenditure of RICDS funding being provided by government to RQL. The IIP policy was implemented by RQL in late 2011 (**Attachment MK 49**). As part of this process there was considerable communication between the Office of Racing Regulation and RQL (**Attachment MK 50**).

### **SOME EXAMPLES**

109. An email dated the 9th of November, 2011 from Malcolm Tuttle to Mike Kelly, copied to Carol Perrett and in which Malcolm Tuttle seeks confirmation of the issues discussed regarding the Racing Industry Capital Development Scheme, including RQL's purchasing policy, project budgets, project managers and related matters (**Attachment MK 51**).
110. An email dated the 10th of November, 2011 Carol Perrett responded to Malcolm Tuttle, copied to Mike Kelly and advised that the intent of statements from the State Purchasing Policy would be incorporated into all future funding agreements and referred to specific references in the State Purchasing Policy in regard to probity and accountability in procurement that are relevant to RQL (**Attachment MK 52**). The emails of the 9th and 10th of November, 2011 were referred to in the minutes of item 6 of the Industry Infrastructure Plan Control Group meeting held on the 10th of November, 2011, together with an email from Tony Hanmer dated the 6th of November, 2011 and an email from Malcolm Tuttle dated the 5th of November 2011 which "discuss the levels of probity and transparency required to satisfy RQL's obligations" (**Attachment MK 53**).
111. Item 5 in the aforesaid minutes outlines steps to be taken to ensure transparency and reasonable levels of probity. The minutes note that the project manager,

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Contour, had multiple roles at Mackay and that this was less than ideal. It was noted that RQL was required to commence the Mackay project urgently.

112. Item 4 of the minutes of the Industry Infrastructure Plan Control Group meeting held on the 8th of December, 2011 stated that IIPG were of the view that Mr Mark Snowden should promote to government the establishment of a working group consisting of himself, a representative from the Office of Racing and a representative from Treasury. This approach was not supported by Treasury. By email dated the 21st of December, 2011 from Gerard Foley, Principal Treasury Analyst to Mike Kelly, copied to Carol Perrett, Stuart Booker, Michael Buckby and Natalie Barber it was confirmed that the Office of Racing was the primary Government point of contact for Queensland Racing. In effect the Office of Racing was the conduit for all information passing between Queensland Racing and Treasury Department and vice versa.
113. The Office of Racing made it clear to Racing Queensland that the information provided to support the reimbursement of RQL's internal and external costs incurred in the development of business cases under the RICDS had to be correct as it would be audited. For example, see email dated the 23rd of December, 2011 from Carol Perrett to Adam Carter copied to Malcolm Tuttle and Mike Kelly which outlined issues identified by the Office of Racing in relation to the reimbursement of RQL's internal and external costs in the development of business cases under the RICDS. This issue is also referred to in Adam Carter's statement to the Commission at paragraph 59. These audits were planned to be conducted under section 46 however, were not commenced as a result of the Commission of Inquiry being foreshadowed in June 2012.

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114. RQL represented to government that it would undertake IIP activity in accordance with their purchasing policy and this is evidenced in representations made in approved IIP business cases.

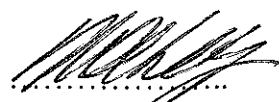
**INFRASTRUCTURE PAYMENTS-URGENCY**

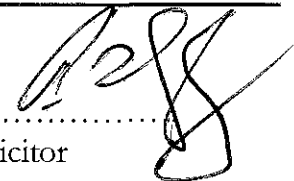
115. A review of the minutes of RQL’s Industry Infrastructure Plan Control Group meeting on 23 November 2011 under Item 8 Other Business states: “Mr Brennan suggested that some business cases, for example Cairns and Beaudesert, to be fast tracked to ensure approval prior to the next election being called, as it will have implications on the 2011/12 race date schedule if these business cases are not approved.” (Attachment MK 54)

116. Items 4 and 5 of the minutes of RQL’s Industry Infrastructure Plan Control Group meeting on 1 December 2011 shows RQL’s frustration at the time taken by government to approve business cases (Attachment MK 559). However, while the Office of Racing was aware of this frustration, it would not send the business cases to Treasury until satisfied that all necessary steps to ensure accountability had been taken.

**REIMBURSEMENT OF BUSINESS CASE PREPARATION COSTS  
INCURRED BY RQL (\$2.79 MILLION)**

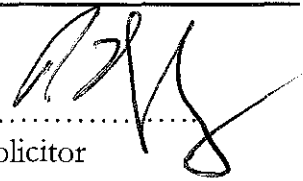
117. RQL was reimbursed \$2.79 million for developing IIP business cases (\$2,596,290.58 for external costs and \$200,000 for internal costs). This expenditure had been incurred by RQL from their own funds, and approved by the Treasurer on 5 December 2011. In incurring these IIP related costs no government funds had been expended by RQL.

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118. RQL provided copies of relevant invoices and details of staff time related to the development of IIP business cases and certified these as appropriate for reimbursement. This certification was given by the CFO/CEO of RQL.
119. All invoices provided by RQL were initially checked by the Office of Racing Regulation to ensure they related to eligible expenditure items. All invoices provided by RQL were then provided to Treasury Officers for checking again as to their appropriateness and for determination of the reimbursement claims made.
120. The Office of Racing did not have the authority to approve any reimbursement payment as this was the responsibility of Treasury Officers and ultimately the Treasurer. All payment authorisations were made by Treasury as evidenced in the email from Stuart Booker dated 23 February 2012 (**Attachment MK 56**). Upon receipt of this payment approval from Treasury, a funding deed was executed between the State (by the Associate Director-General, Robert Setter) and RQL, and the relevant payment made to RQL. I am aware of the comments made by the former Chief Financial Officer of DEEDI, Susan Middleditch at paragraph 21 of her statement to the Commission detailing that, in her view, a funding deed for the reimbursement may not have been necessary. A funding deed was prepared by the Office of Racing and executed to ensure accountability in the reimbursement process and provide safeguards outlined in the deed.
121. The funding deed was drafted by Crown Law and included safeguard provisions that specified:
- (a) If, at any time, the State forms the reasonable opinion or otherwise becomes aware that the State has made payments of the Funds to which the control body is not, in whole or part, entitled, the State may by written notice require the repayment of the Funds, and the control body must repay the identified funds to the State.

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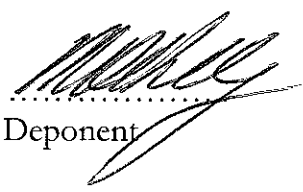
- (b) The control body must keep at all times proper and adequate books of account in relation to the control body's costs being reimbursed and, if required, provide a copy of such accounts to the State.
  - (c) The State may immediately terminate the funding deed if any information the control body gave the State is false or misleading in any material respect. In such circumstances, the State may set off money due to the State from the control body, against money due to the control body under another RICDS funding agreement.
122. It was planned that compliance with the terms of this funding deed would have been assessed as part of future section 46 assessments undertaken.

**INDUSTRY INFRASTRUCTURE PLAN – FIRST INSTALMENT PAYMENTS ONLY**

123. While the total RICDS funding approved for IIP projects totalled up to an amount of \$110 million, each individual project was required to be supported by a Treasury approved business case. Each project business case identified scheduled payments related to progress of the project.
124. Total IIP payments made to RQL totalled \$12.48 million and represented first instalment payments only. All payments were governed by a funding deed. This approach was taken as it is normal government process to reduce risk associated with grant payments by only making payment on the achievement of agreed milestones. The balance of IIP payments were not made. Compliance with the terms of funding deeds would have been assessed as part of future section 46 assessments undertaken.

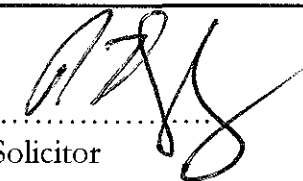
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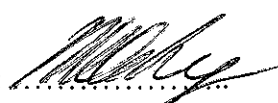
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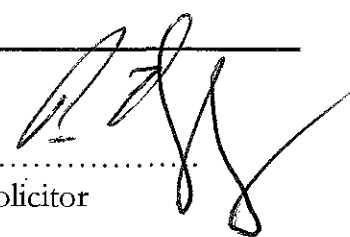


**OVERSIGHT OF RICDS PAYMENTS TO RQL**

125. An audit of all RICDS payments made to RQL and their use was intended to be assessed under the section 46 assessment processes. It was made clear to Bob Bentley, Mark Snowdon, Adam Carter and Paul Brennan that the RICDS was a significant commitment of funds by government to RQL and the funding would be subject to assessment and audit. This issue was stressed on a number of occasions when Office of Racing Regulation staff attended meetings between Minister Mulherin and Bob Bentley and RQL staff. The issue was also addressed in meetings between the Office of Racing Regulation, Treasury officers and RQL staff. There is an email to this effect from Carol Perrett to Adam Carter, Malcolm Tuttle and Mike Kelly dated 23 December 2011 (see attachment MK 57). . The intent to audit IIP activity is also identified at paragraph 59 of Adam Carter’s first statement to the Commission. The section 46 assessment of RICDS expenditure was not undertaken because of the suspension of IIP activity in March 2012 and the 2012 assessment was targeted at a review of the Act to implement new control body structural models, the establishment of the Racing Disciplinary Board and Racing Integrity Commissioner function. This change of focus was approved by the Minister (attachment has been requested of Crown Law. Not yet provided. Attachment MK 58). The relevant amendments to the Act were made in late 2012 through the passage of the *Racing and Other Legislation Amendment Bill 2012*.

**APRIL 2012 REVIEW OF IIP PROJECTS**

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126. In April 2012, RQL was directed by the Government to review all previously approved IIP projects and develop a new infrastructure strategy. RQL confirmed the need to undertake:

- (a) Gold Coast project – phase 1 of the redevelopment;
- (b) Beaudesert project – completed with reduction in scope of works as it was not to become a TAB racing venue; and
- (c) Cairns project – completed with no change to previously approved project plan.

127. I believe that all other original IIP projects are under continued consideration by RQL and government.

## INFRASTRUCTURE PAYMENTS – URGENCY

### Mackay Business Case – Why Was It Urgent?

128. Workplace health and safety issues

- (a) letter from Australian Jockey's Association to RQL dated 18 April 2011 (**Attachment MK 59**);
- (b) letter from RQL to the Chair of the Mackay Turf Club cc to Minister Mulherin dated 10 June 2011 (**Attachment MK 60**);
- (c) e-mail from Mike Kelly to Rob Setter dated 14 June 2011 (Attachment MK 61);
- (d) e-mail from Paul Brennan to Carol Perrett dated 21 June 2011 (Attachment MK 62);
- (e) e-mail from Mike Kelly to Chris McJannett dated 8 July 2011 attaching speaking points (Attachment MK 63); and

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- (f) e-mail from Paul Brennan to Carol Perrett dated 8 July 2011 confirming restrictions on use of the Mackay facilities to ensure public safety at race meeting (Attachment MK 64).

**Beaudesert Business Case – Why Was It Urgent?**

129. RQL planned to close the Gold Coast Turf Club to undertake required infrastructure works. The timing of the works at the Gold Coast was critical so as not to disrupt the Magic Millions carnival and sales or Winter Racing Carnival meetings. In preparation for the closure of the Gold Coast, Beaudesert was to be upgraded to a TAB-standard venue (and remain as such) and be used as a training centre for horses relocated from the Gold Coast.

- (a) Beaudesert was required to be operational prior to commencement of Gold Coast project – letter from RQL to Office of Racing dated 22 December 2011; (**Attachment MK 65**);
- (b) letter to Kevin Page dated 13 December 2011 (**Attachment MK 66**).

**Reimbursement of RQL Business Case Preparation Costs – Why Was It Urgent?**

130. At the request of government, the thoroughbred control body had incurred significant costs in the planning and assessment of previous infrastructure proposals at Wacol and Palm Meadows.

- (a) RQL stated that they could no longer afford to meet and carry such planning costs at the expense of other industry priorities, when approval of infrastructure projects may not be provided by government.
- (b) The Treasurer approved reimbursement of RQL's costs in developing individual IIP business cases.

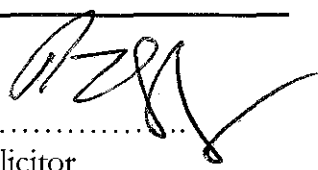


- (c) RQL advised that non-reimbursement, or delays in reimbursing them for IIP business case development costs meant that funds were not available for other on-going industry purposes and had a negative impact on their cashflows.

### **TREASURY INVOLVEMENT IN APPROVING RELEASE OF RICDS FUNDING**

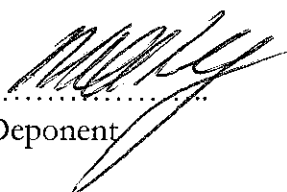
131. The Treasurer was the approving authority for the release of RICDS funding to RQL. CBRC had identified that such release would only be available upon the approval of the relevant project business case. These business cases had to be assessed by Treasury and a recommendation on its content and the release of funds was required to be made to the Treasurer.
132. I believe that the Treasury Department did scrutinise and carefully assess all relevant matters as part of developing recommendations for the Treasurer's consideration and decision that related to the release of public monies. Whether Treasury allocated sufficient time and/or resources to the assessment of business cases was not a matter that involved me or the Office of Racing.
133. The Office of Racing was responsible for ensuring that RQL business cases identified the scope of works RQL was intending to undertake and that these made sense from a technical racing perspective, were in an appropriate format, and contained the necessary information, to allow Treasury to assess the business case and make the relevant recommendations on it to the Treasurer.
134. I have seen statements to the Commission made by Gerald Foley and Stuart Booker and make the following comments:
135. I have seen a statement prepared by Gerald Foley and at paragraph 23 he confirms that Treasury had initially assessed the Beaudesert business case and then

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requested additional information to progress their assessment for the purpose of making relevant recommendations on it to the Treasurer. I believe this is indicative of the process related to all business case assessments.

136. The response provided by me to the matter raised by Mr Foley at paragraph 25 of his statement was not a “message to hurry up and approve the business case” nor was it intended to be. What it conveyed is that a decision by Treasury on the business case was becoming a matter to which there was some urgency attached, particularly as there was now public expectations raised as a result of the media statement issued by the Minister. The decision Treasury made on any business case was not material to me. What was sought was a decision one way or the other. Treasury Officers did not seem to comprehend that there was a considerable amount of work that had to be done by both RQL and the Office of Racing once they had made their decision on the RQL business cases – regardless of what that decision was. For example, if Beaudesert was not going to proceed as proposed by RQL then the Gold Coast project had to be reviewed and amended significantly. If Mr Foley was, or felt that he was, under some pressure to “approve” the business case that was not coming from me.
137. My approach to the issue of Treasury’s decision on business cases submitted by RQL is clearly evidenced in my email dated 3 January 2012 where I state, “if further delay in a decision on the Beaudesert business case is unavoidable, RQL will have to wait and readjust their plans” (**Attachment MK 67 and Booker SP3**)
138. Mr Foley confirms that “a fair bit of time” was spent on analysis of the Beaudesert case. The issue of the approaching caretaker period and how Mr Foley responded to this was not a matter that I had any involvement or control over.
139. Mr Foley made it clear to me that his view, and that of Mr Booker, was that the Office of Racing was the point of contact for dealings with RQL and he did not

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want to have direct contact with them (refer email dated 20 December 2011 – Attachment MK 68). This was the same view expressed by Mr Booker verbally.

140. I believe that his email to me was generated as a result of a conversation he had with Bob Bentley concerning the content of one of the RQL business cases. Mr Booker made it very clear to me in a telephone conversation that he expected all dealings with RQL would be done via the Office of Racing and he did not want to be involved in discussions with them. He emphasised the point that Treasury did not deal directly with industry representatives.
141. While I believe it would have been more efficient for Treasury to discuss some issues direct with RQL as they were raising questions on the content of some of the business cases and could have clarified matters direct with RQL, I was happy to comply with Mr Booker's request. This is supported by Mr Booker's statement in paragraph 24 of his affidavit where he states, "Further questions were asked of the revised business case. These questions were put by Treasury to the Office of Racing to be sent on to RQL for a response."
142. I do not recall the dates of telephone discussions with Stuart Booker but agree some did occur. My dissatisfaction with the business case assessment process was the lack of feedback being provided by Treasury Officers to Office of Racing staff on how the assessments were progressing. Staff of the Office of Racing would seek information from Michael Buckby and Gerald Foley who worked for Mr Booker however, they seemed unable to advise where in the assessment process individual business cases were and when a decision was likely to be forthcoming.
143. There were regular enquiries from RQL to Minister Mulherin's Office on the status of the Treasury assessments and when a decision was likely. I know RQL was expressing particular concern in respect to the Beaudesert and Gold Coast business cases due to the strategic nature of these projects and time constraints on

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delivering the infrastructure works should the business cases be approved. If they were not approved, then alternative plans would have to be developed and this would take considerable time and disrupt racing in south east Queensland. Due to the numerous telephone conversations with staff of Minister Mulherin's office, I know this issue was being made known to that office.

144. The Minister's Office would regularly contact me for an update on the status of the Treasury considerations as the RICDS and IIP had been an ongoing issue for nearly two years and there was a sense of urgency around seeing some actual outcomes delivered for industry participants. Robert Setter was also concerned regarding the lack of activity related to approved IIP projects and the reimbursement of RQL costs related to the development of business cases (**Attachment MK 69**). The progress of the Industry Infrastructure Plan was a regular topic of discussion with the Associate Director-General, Robert Setter, at our management meetings. It was embarrassing to me that I was unable to provide any updates on the status of the assessments when asked, particularly when any decisions or recommendations on the RQL business cases would be made by Treasury Officers. Although I knew that any final decision on the release of funds was one for the Treasurer, the Treasury assessments and recommendations related to the business cases carried a lot of weight. This was the issue of dissatisfaction that I discussed with Mr Booker – the lack of information flowing back to me and the Office of Racing generally.
145. I agree that a lot of work was done by Treasury officers in assessing the RQL business cases. This merely confirms the level of involvement and effort Treasury put into their evaluation and assessment of the business cases.
146. The weaknesses that Treasury identified in business cases were made known to RQL, as per the communication protocol established by Mr Booker, and business

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cases were amended by RQL in an attempt to address the issues identified by Treasury Officers in their initial assessments of all business cases. It was my belief that Treasury spent a lot of time on undertaking detailed assessments of all RQL business cases so that a recommendation could be made to the Treasurer regarding release of funds for a project.

147. A Treasury briefing note dated 1 December 2011 and titled, "Racing Queensland Limited- Racing Industry Capital Development Scheme" (**Attachment MK 70 and included in Booker SPB 16**) deals with the reimbursing of RQL costs associated with development of IIP business cases. This briefing note was prepared by Mr Booker's team, and approved by Gerard Bradley and then Andrew Fraser. At paragraph eight it states in part, "Treasury considers that it is reasonable to provide RQ access to limited funds from the RICDS to meet the cost of procuring external consultants assisting in the preparation of the business cases where the capital improvement projects are significant and have an associated delivery risk." Recommendation number one of the briefing note states in part, "Approve the provision of up to \$2.75M to Racing Queensland under the Racing Industry Capital Development Scheme to meet the cost of procuring external consultants assisting In the preparation of business cases and capped Internal costs of \$200,000 per annum."
148. The Office of Racing had no authority to release any RICDS funds to RQL until a release was approved by the Treasurer. The Treasurer's letter of 5 December 2011 approves reimbursement of costs incurred by RQL associated with the development of business cases however, any release was subject to RQL substantiating and confirming the appropriateness of all disbursements.
149. The Office of Racing confirmed that the requested reimbursement was for work that was within scope of the approval and provided all relevant supporting

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documentation to Treasury Officers for them to check and confirm the appropriateness of the RQL claims, independent of the assessment undertaken by the Office of Racing.

150. Treasury's review of the claims and proposal to approve the release of funds is identified in the emails contained in Attachment SPB16 to Mr Bookers affidavit from:

(a) Michael Buckby to Stuart Booker, Natalie Barber and Gerald Foley dated 21 February 2012 at 05:03 PM which states in part, "Treasury has reviewed the information provided and approves that the requested \$2,596,290.58 (engaging external consultants) and \$200,000 (RQL Internal costs) be released to RQL"; and

(b) Natalie Barber to Stuart Booker, Michael Buckby and Gerald Foley dated 16 February 2012 at 11:42:52 AM which states in part, "Agree with Michael that the request for funds have received the appropriate approval and can proceed to be paid."

151. The approval to release of funds was confirmed by Stuart Booker in his email to me dated 23 February 2012 at 5.22PM which states in part, "Treasury has reviewed the information provided and approves that the requested \$2, 596,290.58 (engaging external consultants) and \$200,000 (RQL internal costs) be released to RQL." (**Attachment MK 71**). This correspondence confirms my belief that Treasury was responsible for approving the release of these funds. Also, the Treasurer's approval letter to Bob Bentley dated 5 December 2011 clearly identifies Mr Booker as the point of contact for further information related to the costs reimbursement issue(**Attachment MK 72**).

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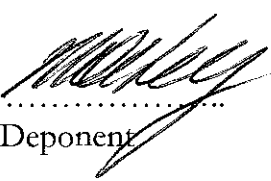
152. Based on this advice of Treasury's review and approval of the RQL reimbursement claim a funding deed was entered into with RQL and the funds released.

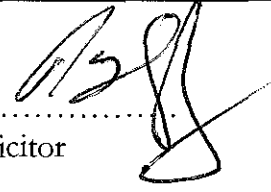
**Re: COOPER GRACE AND WARD ADVICE**

153. On 21 October 2008, I sent an email to a range of Control Body Executive Staff relating to the conduct of a briefing on "race fields legislation". I arranged this briefing for the purposes of explaining the intent of the proposed Queensland race fields legislation and to discuss the procedures and processes that the government believed the control bodies were required to put in place as a result of the intended legislation. (see attachment MK 73).

154. On 18 November 2008 I advised the relevant government officers in other Australian jurisdictions that the Queensland race fields legislation had been introduced into the Queensland Parliament on 12 November 2008. This was not unusual, as this group of officers readily provided information to each other on what was happening in their respective jurisdictions as evidenced in the response I received from Denis Harvey, Director of the South Australian Office of Racing (see attachment MK 74). As all jurisdictions were implementing their own version of race fields legislation, there was consultation and information sharing within this group of government officers across Australia. This process is on-going today.

155. On 1 December 2008, I was provided with a copy of advice from Cooper Grace Ward that had been provided to Queensland Racing Limited on 18 November 2008 (see attachment MK 75). A draft of the proposed race fields legislation had previously been provided to the three control bodies as part of the consultation being undertaken on the proposed legislation related to race fields legislation. It is my understanding that Cooper Grace Ward had been engaged by Queensland

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Racing Limited to review the proposed legislation. On 5 December 2008, I was provided with a copy of a media release issued by Queensland Race Product Co Ltd (Product Co) related to the passage of the race fields legislation (see attachment MK 76).

156. On 14 December 2008 I was copied into an email from Tony Hanmer to Carol Perrett that contained an email trail of correspondence between Malcolm Tuttle, Tony Hanmer and Shara Murray. The email included a copy of a letter from Racing Victoria Limited to Bob Bentley and speaks for itself (see attachment MK77).
157. On 18 December 2008, I was provided with a copy of a letter from Tabcorp to Bob Bentley. I advised Lachlan Smith, David Ford and Carol Perrett of such receipt and provided them people with a copy of the letter (see attachment MK 78). The letter identifies a number of issues and speaks for itself.
158. On 18 December 2008, I received an email from Tony Hanmer titled "Grace advice" that included an email trail of correspondence between Tony Hanmer and Michael Lambert (see attachment MK 79). I was aware that there was a disagreement between Directors of Product Co concerning the advice received from David Grace as I had received telephone calls from both Malcolm Tuttle and Tony Hanmer concerning this matter. My position was, and remained throughout, that the government was not a party to the Product and Program Agreement and this was a commercial matter for Product Co and the three control bodies to decide, and it was not appropriate for me to provide any assessment or recommend any course of action. This was not my role and I was not qualified to do so.
159. On 31 March 2009 I received undated correspondence from Product Co seeking the Queensland Government's view on the commercial intent of the Product and

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Program Agreement (Product Agreement) when it was drafted and the impact of the race fields legislation on the Product Agreement (see attachment MK 80). I do not recall the exact dates but both Malcolm Tuttle and Tony Hanmer had telephoned me prior to receipt of the undated correspondence advising me that Product Co would be writing to the government on this matter.

160. I prepared a draft response to the Product Co correspondence (see attachment MK 81). I was able to produce this response quickly as after the telephone calls from Malcolm Tuttle and Tony Hanmer I had expected correspondence to be forthcoming from Product Co due to the difference of opinion that I knew existed between Tony Hanmer, Michael Lambert and Malcolm Tuttle on how to deal with the Cooper Grace Ward advice and the tone of the email correspondence I had seen on this matter.
161. I do not recall the exact date but I had discussed the issue of the disagreement between Tony Hanmer, Michael Lambert and Malcolm Tuttle with David Ford at one of our regular management meetings. We were of the same view – the commercial operations of the control bodies and Product Co were not a matter that government was going to involve itself in and this policy position had been made very clear by Racing Ministers. The government was not a party to any of the agreements/contracts and did not want to become involved in any dispute – the commercial activities of the racing industry were the responsibility of the three control bodies and Product Co.
162. The reason I provided a draft response to Tony Hanmer was because he was the Chair of Product Co and was the person who had written to me. It was provided in an attempt to ensure that he, Michael Lambert and Malcolm Tuttle, were aware that the government was not going to become involved in the commercial operations of the industry, provide quasi-legal advice to Product Co or suggest an

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answer to a dispute between Directors. It was a Product Co responsibility to address any issues they thought arose as a result of race fields legislation and this was communicated. I told Tony Hanmer that he needed to sort this issue out with Michael Lambert and Malcolm Tuttle. It was my belief that Tony Hanmer would make Michael Lambert and Malcolm Tuttle aware of my draft response and resolve the issue amongst themselves.

163. I am aware that this issue of me providing a draft response to Tony Hanmer was raised in Commission hearings on the 20 September 2013 and again on 26 September 2013 and I want to point out that the draft provided on the 1 April 2009 (see attachment MK 81) contains the same information as provided in my letter of the 28th of May, 2009 (see attachment MK 82). My position on this matter was always that Product Co should seek their own legal advice on the issues raised in the Grace correspondence.
164. A record of a phone message dated the 23 June 2009 (see attachment MK 83) indicates that I was requested to return a telephone call to Michael Lambert in relation to this matter. I believe I spoke to Michael Lambert on either the 23 or 24 June 2009 by telephone. I do not recall the exact details of the conversation however, it related to him seeking the government's view on the Grace advice, on the intent of the Program Agreement and related commercial matters. I do recall that I advised him that if QRL wanted this type of information it should request this formally by writing to the Minister.
165. Notwithstanding my advice to Michael Lambert that any request should be addressed to the Minister, I received correspondence dated the 23 July 2009 from Malcolm Tuttle on behalf of Queensland Racing Limited that enclosed the 18 November, 2008 advice of Cooper Grace Ward (see attachment MK 84). This

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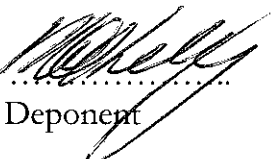
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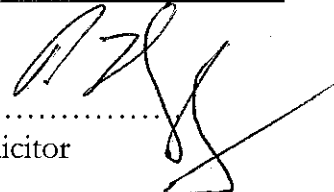
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correspondence sought an interpretation of aspects of the Program Agreement and the intention of the same.

166. I received correspondence dated the 4 September 2009 from Malcolm Tuttle enquiring as to the status of the 23 July 2009 letter and I responded to this on 9 September 2009. The relevant email trail is attached (see attachment MK 85).
167. On 13 September 2009 I received an email from Tony Hanmer that included the email trail of my 9 September 2009 response to Malcolm Tuttle (see attachment MK 86). I believe that in a telephone conversation with Shara Reid around this time on another topic, she indicated to me that an advice on the "Grace advice" was going to be sought.
168. I cannot recall the exact date but I discussed the 23 July 2009 request with David Ford at one of our management meetings and we were of the same view this was a commercial matter related to the Program Agreement to which the State is not a party. This was a matter for Queensland Racing Limited to resolve, not the government. For completeness, I did cause a search of the Office of Racing files to be conducted and checked with officers from the Office of Liquor and Gaming Regulation as to whether there was any information they held that may explain the 'intent' behind the Program Agreement, other than what is obvious on the face of that document. I believe that I sent a request to, and received email communication from the Office of Liquor and Gaming Regulation confirming that they held no relevant information on the issue. I have not been able to find this email however, many emails for the relevant period that I have requested through my legal representatives have been unable to be supplied to me by Crown Law.
169. On 8 December 2009, I requested Carol Perrett and John Patterson to prepare a response letter to Malcolm Tuttle regarding his letter of 23 July 2009 (see

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attachment MK 87). The response was prepared and sent by me to Malcolm Tuttle on the 6th of January, 2010 (see attachment MK 88). I believe that I made it clear in this letter that no view could be provided other than what had already been provided.

170. I am aware that the issue of delay in responding to Malcolm Tuttle's letter of 23 July 2009 was raised in the Commission hearing on 26 September 2013. It is not usual that correspondence would not be answered more quickly however during the period from June 2009 to January 2010 there was a significant workload for the Office of Racing and some of the matters being dealt with included:

- (a) QRL raising the issue of redirection of wagering tax for infrastructure with Minister Lawlor and Minister Fraser;
- (b) work on assessing the RQL tax redirection proposal and developing options for the redirection of tax ;
- (c) planning for implementation of the RICDS was undertaken and numerous versions of CBRC submissions were drafted ;
- (d) Cabinet Submission and drafting instructions prepared for amendments to the Act related to implementation of wagering monitoring systems ;
- (e) the amalgamation of Control Bodies comes onto the agenda as a result of Peter Henneken's direction (14 October 2009). The scope of the proposed CBRC submission is now very different and progressing it requires far more consultation with central government agencies. Concurrently, contingency planning commences for possible future ATP submission so the Office of Racing is positioned to progress amalgamation activity should CBRC endorse amalgamation of the three control bodies.

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- (f) Mike Kelly absent on leave 16 October 2009 – 9 November 2009. The taking of this leave was seriously considered however, as it involved international travel and had been planned and paid for some time previously it was not cancelled. This placed significant extra workload on both Carol Perrett and John Patterson in particular.
- (g) QRL 'Case for Change' document produced;
- (h) planning for meeting with three control bodies on 18 December 2009 to propose amalgamation is undertaken;
- (i) advice received that Ken Smith is "expecting a Cabinet Submission early next year on structural reform issues in the racing industry" ;
- (j) planning for a Policy/ATP Cabinet Submission related to amalgamation of the control bodies undertaken. By 7 December 2009 the Office of Racing was working on the submission;
- (k) Significant involvement required with control bodies re possible amalgamation during 18 December 2009 – 4 January 2010;

171. In addition to the strategic issues being dealt with during this period, the normal day-to-day business of the Office of Racing was being attended to that involved dealing with the operations of the Racing Science Centre, ministerial correspondence, preparation of speaking points, production of meeting briefs, internal government management meetings, etc. All in all this was a very busy time for the Office of Racing.

172. I reject any suggestion that I purposely delayed responding to the correspondence of Malcolm Tuttle dated 23 July 2009 on the request of any person. It was my belief that the matters that were raised in the correspondence were commercial

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and legal matters for RQL to address. A recommended course of action on how to deal with issues included in the Grace advice had been provided to Product Co in May 2009 and all control bodies were aware of this, in particular Malcolm Tuttle, Tony Hanmer and Michael Lambert . My advice on this issue has always remained the same – seek your own legal advice.



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

**DECLARED AND SIGNED** at Brisbane

this Twenty-seventh day of September, 2013

Witness

Before me.

  
  
Solicitor