

**SUBMISSIONS OF THE HON. PETER LAWLOR
TO THE
QUEENSLAND RACING COMMISSION OF INQUIRY**

Terms of Reference

1. These are the submissions of the Hon. Peter Joseph Lawlor to the Queensland Racing Commission of Inquiry (the Commission).
2. By an order in Council dated 23 May 2013, under the *Commissions of Inquiry Act 1950* (Q), the Honourable Justice Margaret White AO is appointed to enquire in to the operations of the former racing control bodies in Queensland, namely Racing Queensland Limited ACN 142 786 874 (RQL) and its predecessor bodies which amalgamated in July 2010 (Queensland Racing Limited ACN 116 735 374, Greyhounds Queensland Limited ACN 128 067 247 and Queensland Harness Racing Limited ACN 128 036 000), and their controlled entities, including Queensland Race Product Co Limited ACN 081 743 722 (the relevant entities).
3. The Terms of Reference concern the relevant entities with respect to “events surrounding” various defined happenings together with considerations of various matters concerning, eg., “adequacy and integrity”, “appropriateness”, “procurement practices”; “corporate governance arrangements”; “policies, rules and procedures”, etc.: par (a); (b); (c); (e); (f) and (g)
4. The Terms of Reference require the Commission to make recommendations on: “any recommended legislative and all organisational changes to promote good corporate governance, integrity and a transparent and accountable culture for the new control body for racing the Queensland — the All Codes Racing Industry Board established under the *Racing Act 2002* (trading as Racing Queensland)”: paragraph 5.
5. The Terms of Reference concern the time from 1 January 2007 to 30 April 2012 (the relevant period).
6. Relevantly, the Terms of Reference include:
“whether there was sufficient and appropriate oversight by the responsible Minister, executive government and chief executive, including under the provisions of the *Racing Act 2002*, for the operation of the relevant entities”: par 3(d).

Minister for racing from 26 March 2009 to 20 February 2011

7. From 17 February 2001 until 23 March 2012 the Hon. Peter Lawlor (Mr Lawlor) was elected and served as member of the Queensland Parliament representing the electorate of Southport.¹
8. On 26 March 2009 Her Excellency the Governor appointed the Mr Lawlor as a member of the Executive Council of Queensland and Minister for Tourism and

¹ Prior to entering Parliament Mr Lawlor was a practising solicitor and had served as a Councillor on

Fair Trading.²

9. Mr Lawlor served as Minister for Tourism and Fair Trading until 21 February 2011.³
10. By *Administrative Arrangements Order (No. 1) 2009*⁴, Mr Lawlor, as Minister for Tourism and Fair Trading, was conferred with principal Ministerial responsibilities for:
 - (a) Tourism (excluding Licensing of Travel Agents)⁵;
 - (b) Fair Trading⁶ including:

² By Order in Council pursuant to under s. 43 of the *Constitution of Queensland 2001* being *Administrative Arrangements Order (No. 1) 2009* published in the Queensland Government Gazette Extraordinary, Vol 350, No 71, page 1310

³ *Administrative Arrangements Order (No. 1) 2011*, published in the Queensland Government Gazette Extraordinary, Vol 356, No 40, page 273

⁴ *Administrative Arrangements Order (No. 1) 2009* published in the Queensland Government Gazette Extraordinary, Vol 350, No 71, page 1310

⁵ responsible for 2 Acts of Parliament being *Tourism Queensland Act 1979*; *Traveller Accommodation Providers (Liability) Act 2001*

⁶ responsible for 84 Acts of Parliament being *All Saints Church Lands Act 1924* *All Saints Church Lands Act 1960*; *Anglican Church of Australia Act 1895* *Anglican Church of Australia Act 1895 Amendment Act 1901*; *Anglican Church of Australia Act 1977*; *Anglican Church of Australia Constitution Act 1961*; *Anglican Church of Australia (Diocese of Brisbane) Property Act 1889*; *Ann Street Presbyterian Church Act 1889*; *Associations Incorporation Act 1981*; *Bills of Sale and Other Insh11ments Act 1955*; *Bishopsbourne Estate and See Endowment Trusts Act 1898*; *Body Corporate and Community Management Act 1997*; *Boonah Show Ground Act 1914*; *Building Units and Group Titles Act 1980 (Parts 4 and 5; sections 121 to 125; sections 127 to 132; Schedules 2, 3 and 4; sections 5, SA, 119, 133 and 134 jointly administered with the Minister for Natural Resources, Mines and Energy and Minister for Trade)*; *Business Names Act 1962*; *Charitable Funds Act 1958* *Chinese Temple Society Act 1964*; *Churches of Christ, Scientist, Incorporation Act 1964*; *Classification of Computer Games and Images Act 1995* *Classification of Films Act 1991*; *Classification of Publications Act 1991* *Collections Act 1966*; *Commercial and Consumer Tribunal Act 2003*; *Consumer Credit (Queensland) Act 1994 (including Consumer Credit Code)*; *Cooperatives Act 1997*; *Credit Act 1987*; *Credit (Rural Finance) Act 1996*; *Disposal of Uncollected Goods Act 1967*; *Factors Act 1892*; *Fair Trading Act 1989*; *Funeral Benefit Business Act 1982* *Guides Queensland Act 1970*; *Hire-purchase Act 1959*; *Introduction Agents Act 2001* *Land Sales Act 1984*; *Liens on Crops of Sugar Cane Act 1931* *Manufactured Homes (Residential Parks) Act 2003* *Mercantile Act 1867*; *Motor Vehicles and Boats Securities Act 1986* *Partnership Act 1891*; *Presbyterian Church of Australia Act 1900* *Presbyterian Church of Australia Act 1971*; *Property Agents and Motor Dealers Act 2000* *Queensland Congregational Union Act 1967*; *Queensland Temperance League Lands Act 1985* *Residential Services (Accreditation) Act 2002* *Retail Shop Leases Act 1994* ; *Retirement Villages Act 1999*; *Returned & Services League of Australia (Queensland Branch) Act 1956*; *Returned Servicemen's Badges Act 1956*; *Roman Catholic Church (Corporation of the Sisters of Mercy of the Diocese of Cairns) Lands Vesting Act 1945*; *Roman Catholic Church (Incorporation of Church Entities) Act 1994* ; *Roman Catholic; Church Lands Act 1985* ; *Roman Catholic Church (Northern Lands) Vesting Act 1941*; *Roman Catholic Relief Act 1830* *Sale of Goods Act 1896*; *Sale of Goods (Vienna Convention) Act 1986* *Salvation Army (Queensland) Property Trust Act 1930* *Scout Association of Australia Queensland Branch Act 1975*; *Sea-Carriage Documents Act 1996*; *Second-hand Dealers and Pawnbrokers Act 2003*; *Security Providers Act 1993*; *Storage Liens Act 1973*; *Tourism Services Act 2003*; *Trade Measurement Act 1990*; *Trade Measurement Administration Act 1990*; *Travel Agents Act 1988*; *United Grand Lodge of Ancient Free and Accepted Masons of Queensland Trustees Act 1942*; *Uniting Church in Australia Act 1977*; *Wesleyan Methodist Trust Property Act 1853*; *Wesleyan Methodists, Independents, and Baptists Churches Act 1838*; *Breakwater Island Casino Agreement Act 1984*; *Brisbane Casino Agreement Act 1992* ; *Cairns Casino*

- (i) Business Names;
 - (ii) Censorship;
 - (iii) Charities;
 - (iv) Consumer Services including Regulation of Retirement Villages;
 - (v) Consumer Affairs;
 - (vi) Consumer Credit;
 - (vii) Incorporated Associations;
 - (viii) Occupational licensing
 - Auctioneers and real estate agents;
 - Commercial agents;
 - Travel agents;
 - (ix) Profiteering prevention;
 - (x) Security providers;
 - (xi) Supervision of Commercial Acts
 - (xii) Trade measurement;
 - (xiii) Art unions;
 - (xiv) Casinos;
 - (xv) Golden Casket;
 - (xvi) Machine Gaming; and
- (c) Racing⁷.

Procedural Fairness

11. It is a fact that inquiries can have a profound effect on those who are involved with them—indeed, even the act of calling a person to appear before an inquiry may have a permanent negative impact on the reputation of that person.⁸
12. The mere fact of being called as a witness to a Royal Commission may damage that person’s reputation, even where that person is not the principal subject of an inquiry.⁹
13. Where an inquiry may operate to “destroy, defeat or prejudice a person’s rights, interests or legitimate expectations” the Commission is required to observe the principles of procedural fairness.¹⁰
14. Needless to say, the statutory powers conferred on the Commission, under the *Commissions of Inquiry Act 1950 (Q)*, must be exercised fairly¹¹, which includes

Agreement Act 1992 Casino Control Act 1982; Charitable and Non Profit Gaming Act 1999 Interactive Gambling (Player Protection) Act 1998; Jupiters Casino Agreement Act 1983; Keno Act 1996; Liquor Act 1992; Lotteries Act 1997; TAB Queensland Limited Privatisation Act 1999; Wagering Act 1998; Wine Industry Act 1994

⁷ being responsible for 3 Acts of Parliament being *Racecourse Act 1998, Racing Act 2002, Racing Venue Development Act 1982*

⁸ F Costigan, *Final Report of the Royal Commission on the Activities of the Federated Ship Painters and Dockers Union* (1984), vol 2 92–93, 98–100

⁹ See Peter Doody, *Commissions of Inquiry, Fairness, and Reasonable Apprehension of Bias: Protecting Unnecessary and Inappropriate Damage to Reputation* (2009) *Canadian Journal of Administrative Law & Practice* 19

¹⁰ *Annetts v McCann* (1990) 170 CLR 596, 598

¹¹ *Kioa v West* [1985] HCA 81; (1985) 159 CLR 550, Mason J (at 585); *Johns v Australian Securities Commission* (1993) 178 CLR 408

“disclosure of material to be relied upon by the decision-maker”.¹²

15. A Commission of Inquiry is under a duty to observe fair procedures when making decisions affecting those rights, interests or legitimate expectations.¹³
16. Reputation, both personal and commercial, is an interest that attracts the protection of the principles of procedural fairness.¹⁴
17. A cardinal aspect of procedural fairness is the requirement that a person who is liable to be affected by a decision must be given notice of all relevant matters, and given an opportunity to put his or her case (the ‘hearing rule’)
18. The Commission “cannot lawfully make any finding adverse to the interests of [a person] without first giving [that person] the opportunity to make submissions against the making of such a finding”.¹⁵
19. The Commission is under a general duty is to provide “an opportunity to be heard on the matters which pose a potential risk of adverse findings”,¹⁶ so that a person is not “left in the dark” as to the risk of adverse findings.¹⁷ The duty arises when an inquiry ‘has reached the stage of contemplating the making of an unfavourable finding against [a] person’.¹⁸ A person has the right to be heard on the subject matter of the potential adverse findings.¹⁹
20. It is trite to observe that the general duty of procedural fairness includes an obligation to base findings on probative evidence.²⁰
21. The probative evidence rule requires that an adverse finding of fact must be supported by rationally probative evidence and not merely raised as a matter of suspicion or speculation.²¹

¹² *Hall v The University of New South Wales* [2003] NSWSC 669 at [68]; see also Mason J in *Kioa* at 587

¹³ *Canada (Attorney General) v Canada (Commission of Inquiry on the Blood System)* [1997] 3 SCR 440, [55]; *R v Lord Saville; ex parte A* [1999] 4 All ER 860, 872–873, affirmed in *Lord Saville of Newdigate v Widgery Soldiers* [2001] EWCA Civ 2048, [7]

¹⁴ *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, 578; *New South Wales v Canellis* (1994) 181 CLR 309, 330.

¹⁵ *Annetts v McCann* (1990) 170 CLR 596, 600–601

¹⁶ M Harris, *Fairness and the Adversarial Paradigm: An Australian Perspective* [1996] Public Law 508, 516.

¹⁷ *Mahon v Air New Zealand Ltd* [1984] AC 808, 821.

¹⁸ *Annetts v McCann* (1990) 170 CLR 596, 600–601

¹⁹ Australian Law Reform Commission, *Making Inquiries Report A New Statutory Framework, Review of the Royal Commissions Act 1902 and related Issues*, Report 111 October 200; *Ibid*, 601

²⁰ *Australian Broadcasting Tribunal v Bond* [1990] HCA 33; (1990) 170 CLR 321 Mason CJ at [90]; [95]; [97]; [109]; Deane J at [1]; [3]–[5]; Dr Janet Ransley, *Taking Liberties—The Cole Royal Commission into the Building and Construction Industry* (2004).

²¹ *Minister for Immigration and Ethnic Affairs v Pochi* (1980) 31 ALR 666 at 690 per I Deane J; *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 367 per Deane J; *GTE (Australia) Pty Ltd v Brown* (1986) 14 FCR 309; *Greiner v Independent Commission Against Corruption* (1992) 28 NSWLR 125 at 129 to 130; *Mahon v Air New Zealand Ltd* [1984] AC 808 at 821; In *Re Erebus Royal Commission (No 2)* [1981] 1 NZLR 618 (CA) at p 671 Lord Diplock, speaking for the Privy Council, considered a finding of fact made without any probative evidence to support it, amounted to a breach of natural justice.

22. In judicial review of the manner in which a Commission of Inquiry reached a decision and published adverse material about a person, a court will quash a finding in the report of an inquiry if the inquiry has direct or indirect legal consequences²², where the court may declare that a finding reached in breach of the principles of procedural fairness is a nullity.²³
23. As always, the governing consideration is that justice is, and is seen to be, done with the decision maker reasonably open to persuasion.²⁴
24. Importantly, there is no onus of proof placed on any witness or party granted leave to prove, or disprove, a draft finding.²⁵
25. Typically, counsel assisting may give notice of adverse matters through the identification of issues and possible adverse findings in an opening and closing statement.
26. Further, notice of adverse matters may be provided through the publication of evidence, the use of public hearings and the provision of transcripts of evidence to the person affected.²⁶ Providing draft adverse findings is another way of ensuring notice is given of such findings.²⁷

Criticisms of Mr Lawlor in the evidence

27. There are only two direct criticisms of Mr Lawlor in the material before the Commission.
28. The Hon. Bill Carter QC, who was not called as a witness, provided a statement to the Inquiry dated 23 August 2013 which was published on the Inquiry web page.²⁸ There are a number of attachments to the statement. The first attachment is Mr Carter's submission. There are two references to Mr Lawlor in these submissions as follows"
 - (a) "That the various Racing Ministers- Ms Merri Rose, Robert Schwarten, Andrew Fraser and P. Lawlor (2002-2012)- failed and/or refused to exercise sufficient and appropriate oversight of the various Bentley led control bodies (QTRB, QRL and Racing Queensland Ltd [RQL]) in spite of their statutory obligations to do so.": page 5 of 327 pages.
 - (b) "22.7.09 - Estimates Committee F - Minister Lawlor questioned re racing matters": page 106 of 327 pages.

²² *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564; *R v Collins; Ex parte ACTU-Solo Enterprises Pty Ltd* (1976) 50 ALJR 471

²³ *Greiner v Independent Commission Against Corruption* (1992) 28 NSWLR 125

²⁴ *Carruthers v Connolly* [1998] 1 Qd R 339 at 356.

²⁵ *Keating v Morris & Ors; Leck v Morris & Ors* [2005] QSC 243 at [34] referring to *Mahon v Air New Zealand Mahon v Air New Zealand* [1983] UKPC 29; [1984] AC 808 at 814-815.

²⁶ Par 15.8 on page 376 referring to N Owen, *Report of the HIH Royal Commission* (2003).

²⁷ *Ibid*, par 15.9; T Cole, *Final Report of the Royal Commission into the Building and Construction Industry* (2003), vol 2, [40]; M Harris, *Fairness and the Adversarial Paradigm: An Australian Perspective* [1996] Public Law 508, 517; Council on Tribunals (UK), *Procedural Issues Arising in the Conduct of Public Inquiries set up by Ministers* (1996), [7.11].

²⁸ <http://www.racinginquiry.qld.gov.au/documents/statements>

29. Part of the Inquiry documents is a letter of 6 August 2013 from Mr Carter QC to Mr Lawlor, criticising Mr Lawlor in his answers to Estimates Committee F on 22 July 2008 concerning the appointment of QRL directors and his call for Ministerial Intervention (the Carter letter).²⁹
30. The Carter letter takes umbrage with Mr Lawlor’s statements and makes criticism as follows:
- (a) Referring to Mr Lawlor’s statement that “Decisions on the process . . . for the appointment and selection of Directors to Queensland Racing are not matters which the Minister has any involvement in”; and
 - (b) Referring to Mr Lawlor’s statement that “Whilst I may be concerned about it (the process) I do not have any control over it and I will not interfere . . .”;
 - (c) “the process was "flawed"”;
 - (d) “what steps will the Minister take to remedy the situation?”
 - (e) “not only should you intervene (your comment concerning "misconduct" is noted), but that if you do not you will have failed to exercise your ministerial responsibilities under the Racing Act”;
 - (f) “Accordingly for the Minister to fail to intervene here involves a failure to recognize the Ministerial responsibilities.”;
 - (g) “In Chapter 1 Part 4 Divisions 1, 2 and 3 of the Racing Act (Sections 46-58). These Include the giving by the Minister of a direction to a Control Body; the definition of an annual program for assessing the on-going suitability of a Control Body which the Minister has to apply; and the requirement for Investigation of a Control Body with provisions for disciplinary action against a control body by the Chief Executive In a proper case (Section 45).”
 - (h) “Division 1 empowers the Minister to give a direction of the kind referred to in Section 45(2) “to ensure that the control body's actions are accountable and its decision- making processes are transparent.”
31. In a supplementary statement by Mr Kevin Dixon, Chairman of the Queensland All Codes Racing Industry Board (trading as Racing Queensland), who was not called as a witness, attached a letter dated 14 May 2010 to Mr Lawlor referring to an article written by Nathan Exelby in the Courier Mail, and titled “Outrage at top secret racing plan”, stated in part:
- (a) “... last night Mr. Lawlor said he had not seen a draft constitution even though he described parts of it in Parliament last month”;
 - (b) “Mr. Lawlor claimed yesterday he had not been provided with a draft constitution.”
32. Mr Dixon wrote, if Mr Lawlor had been correctly reported, the statements did not appear to align with his discussions with Mr Lawlor on 27 April 2010. The relevant aspects are:
- (a) On 13 April- in the second reading speech, Mr Lawlor outlined elements of

²⁹ Parliamentary privilege provides that any statement made in Parliament is absolutely privileged and cannot be made the subject of inquiry in a court of law or other constituted authority: see s. 9 of the *Constitution of Queensland 2001* incorporating Article 9 of the *Bill of Rights 1688*, the ninth article of which declares:” That the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place outside of Parliament.”; see also *Parliamentary Papers Act 1992*, Sections 3(3)(a) - (g) which provides that “proceedings in Parliament” include “giving evidence before the House, a committee or an inquiry”.

- the constitution;
- (b) On 27 April, at a meeting, Mr Lawlor outlined elements of the constitution;
 - (c) On 30 April, QRL confirmed the constitution had been drafted and submitted to Government;
 - (d) On 30 April, the Office of Racing confirmed to BRC that it had a draft of the constitution;
 - (e) On 13 May, Mr Lawlor apparently claimed not to have been provided with or seen a copy of the draft constitution
33. In a further letter dated 14 May 2010 Mr Dixon wrote to Mr Jamie Orchard, Director of Integrity Operations complaining that “if Mr Lawlor had been reported correctly it may be that his statements are false and misleading.”
34. Queensland racing legislation reposed various statutory powers, functions and duties in the Minister as it applied during Mr Lawlor’s time as Minister for Racing.³⁰
35. Relevantly, Mr Michael Kelly, Executive Director, Office of Racing, Department of National Parks, Recreation, Sport and Racing, in his statement identified the Minister’s power and their exercise under the racing legislation:
- (a) Section 13 -Minister to refer an approval application to the chief executive 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.
 - (b) 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.
 - (c) Section 45 - Minister may give a direction to control body about its policies or rules. Power not exercised.
 - (d) Section 46 - Program for auditing suitability of control bodies. All programs for auditing suitability of control bodies were provided to the relevant Minister in accordance with the requirements of the Act.
 - (e) 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.
 - (f) Section 53- Show Cause Notice. No show cause notice was issued to a control body.
 - (g) Section 55 -Immediate suspension of an approval. No approval was suspended under this section of the Act.
 - (h) Section 56 - Censuring a control body. No censure was issued to a control body.
 - (i) Section 57 -Direction to control body to rectify matter. No direction was issued to a control body.
 - (j) Section 58 - Minister may take certain action against a control body in

³⁰ *Racing Act 2002; Racing Amendment Act 2005 No. 7; Racing Venues Development Amendment Act 2005 No. 38; Racing Amendment Act 2006 No. 18; Racing Amendment Act 2008 No. 24; Racing And Other Legislation Amendment Act 2010 No. 22; Racing And Other Legislation Amendment Act 2012 No. 42; Wagering Act 1998; Gaming Act 1991; the Interactive Gambling (Player Protection) Act 1998*

- particular circumstances (Action by Minister). No action under this section was taken by a Minister.
- (k) 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.
 - (l) 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.
 - (m) 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.
 - (n) Section 120- Minister to approve leave of absence of integrity board member. Not required to be exercised as no leave of absence sought.
36. Mr Lawlor rejects the criticisms of Mr Carter QC and Mr Dixon, as having been made out, or at all are warranted.
37. Mr Lawlor accepts however the right of any person to exercise free speech especially when it comes to scrutinizing elected representatives and Ministers of Government.³¹
38. As Minister for Tourism and Fair Trading Mr Lawlor was responsible for the administration of 91 Acts of Parliament that span an extraordinary wide variety and range of matters.
39. The courts have long recognized that the functions of a Minister are so multifarious that the business of government could not be carried on if he or she were required to exercise all his or her powers personally.³²

³¹ *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520; [1997] HCA 25; *Coleman v Power* [2004] HCA 39; (2004) 220 CLR 1; *Australian Capital Television Pty Ltd & New South Wales v Commonwealth* [1992] HCA 45; (1992) 177 CLR 106; *Australian Broadcasting Corporation v O'Neill* [2006] HCA 46; 80 ALJR 1672; 229 ALR 457; *Wotton v Queensland* [2012] HCA 2; *Hogan v Hinch* [2011] HCA 4; (2011) 243 CLR 506 at 543–544 [49] per French CJ; [2011] HCA 4; see also *Theophanous v Herald & Weekly Times Ltd* [1994] HCA 46; (1994) 182 CLR 104 at 123–125 per Mason CJ, Toohey and Gaudron JJ; [1994] HCA 46; *Levy v Victoria* (1997) 189 CLR 579 at 594–595 per Brennan CJ, 613–614 per Toohey and Gummow JJ, 622–624 per McHugh J, 638–642 per Kirby J; [1997] HCA 31; cf *APLA Ltd v Legal Services Commissioner (NSW)* [2005] HCA 44; (2005) 224 CLR 322 at 351 [28]–[29] per Gleeson CJ and Heydon J; [2005] HCA 44; (2012) 246 CLR 1 at 15 [25] per French CJ, Gummow, Hayne, Crennan and Bell JJ; [2012] HCA 2; *Attorney-General (SA) v Corporation of the City of Adelaide* [2013] HCA 3 (27 February 2013); *Monis v The Queen* [2013] HCA 4 (27 February 2013)

³² *O'Reilly v State Bank of Victoria Commissioners* [1983] HCA 47; (1983) 153 CLR 1 per Gibbs C.J. at par 6; Lord Greene M.R. in *Carltona Ltd v Commissioners of Works* (1943) 2 All ER 560, at p 563; *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* [1986] HCA 40; (1986) 162 CLR 24 at 37–38 per Mason J; [1986] HCA 40; *Re Patterson; Ex parte Taylor* [2001] HCA 51; (2001) 207 CLR 391 at 449–453 [176]–[188] per Gummow and Hayne JJ; [2001] HCA 51; *Plaintiff M61/2010E v Commonwealth of Australia; Plaintiff M69 of 2010 v Commonwealth of Australia* [2010] HCA 41 French CJ, Gummow, Haye, Heydon, Crennan Kiefel and Bell JJ.

40. Plainly, to this extent a minister is reliant upon the officials of his Department for recommendations and advice.³³
41. As a Minister, Mr Lawlor necessarily relied upon Departmental public servants to assist him by making recommendations and advice including, as Commissioner White observed, in answering letters, such as those referred to above from the Hon. Bill Carter QC and Mr Dixon.³⁴
42. Nowhere in the evidence before the inquiry is there any suggestion that Mr Lawlor was requested by his Department to exercise any statutory, or other, power, reposed in him as Minister responsible for Racing and that he failed to do so.
43. The focus of the Commission of Inquiry under paragraph 3(d) of the Terms of Reference is restricted to the sufficiency and appropriateness of Ministerial oversight “for the operation of the relevant entities”, (underlining added).
44. The Carter and Dixon letter are confined to criticisms of Mr Lawlor about statements made by him about his understanding about his control of the appointment of directors to a relevant entity and allegedly about whether he saw a draft constitution of a relevant entity.
45. These criticisms are not about the operation of the relevant entities.
46. In reviewing Mr Lawlor’s responsibility for racing for anything that occurred between from 26 March 2009 to 20 February 2011, with the Commission having the benefit of hindsight, paragraph 3(d) of the Terms of Reference, ought be judged in light of the nature of the decision-maker and the decision itself, using the information (and the inherent uncertainties) when the decision was made.³⁵

³³ For example, Christos Mantziaris, *Interpreting Ministerial Directions to Statutory Corporations: What Does A Theory of Responsible Government Deliver?* (1998) 26 *Federal Law Review* 309 (38 pages); E Finer, *The Individual Responsibility of Ministers* (1956) 54 *Public Administration* 377; and C Turpin, *Ministerial Responsibility: Myth or Reality?* in J Jowell and D Jaensch (eds), *The Changing Constitution* (2nd ed, 1989) 53 at 56; G J Lindell, *Responsible Government* in P D Finn (ed), *Essays on Law and Government vol 1: Principles and Values* (1995) at 82.

³⁴ See observations by Commissioner White in QRCOI Hearing Transcript Day 14, 14 October 2013, page 14-25, line 36

³⁵ adopting by analogy the approach of the Courts when reviewing decisions of trustees: Donald, Scott *Prudence under Pressure* [2009] UNSWLRS 10 at page 10; “It is very easy to be wise after the event; but in order to exercise a fair judgment with regard to conduct of trustees at a particular time, we must place ourselves in the position they occupied at that time, and determine for ourselves what, having regard to the opinion prevalent at that time, would have been considered the prudent course for them to have adopted.”: *Re Chapman* [1896] 2 Ch 763 at 777-8, per Lopes J; The courts are loath to review the exercise of a trustee’s discretion absent evidence of some improper motive: per Northrop J in *Clerical Administrative and Related Employees Superannuation Pty Ltd v Bishop, Wilkinson, Thohey and Wall* (1997) 76 IR 139; *Wilkinson v CARE* [1998] FCA 51; *Attorney-General (Cth) v Breckler* [1999] HCA 28; (1999) 197 CLR 83 at [7] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ) [7] and [58] (Kirby J). The Courts have declined to intervene simply because they may hypothetically have come to a different view from that reached by the trustee: *Maciejewski v Telstra Super Pty Ltd* [1999] NSWSC 341; *Re Beloved Wilkes Charity* (1851) 3 Mac & G 440; 42 ER 330 per Lord Truro LC. In determining whether a person had reasonable grounds for expressing an opinion or making a prediction as to a future matter, it is necessary to judge the matter as at the date of the representation: *Lyndel Nominees Pty Ltd v Mobil Oil Australia*

47. Similarly, Mr Lawlor should not be criticized for any policy deficiencies or approaches in the *Racing and Other Legislation Amendment Act 2010* (Q) as this was a legislative act, as distinct from Ministerial oversight, being an administrative act, or omission.
48. It is well recognized that Cabinet consists of the Premier and other Ministers: s. 42(1) of the *Constitution of Queensland 2001* (the *Constitution*),³⁶ where the Cabinet is collectively responsible to the Parliament: s. 42(2) of the *Constitution*.
49. Governments act, or in all events, are constitutionally required to act in the public interest.³⁷
50. The consideration, balancing and determination, from time to time, of competing public interests are properly vested in executive governments³⁸, answerable to Parliament and ultimately the people, which apart from the ballot box often leaves little room for challenge.³⁹
51. Queensland is a liberal democracy,⁴⁰ “in which members of Parliament decide the laws under which we shall live and cabinet ministers hold positions of great power in regard to the execution of those laws [where] a cabinet minister is under an onerous responsibility to hold his office and discharge his function without fear or favour to anyone.”⁴¹
52. Parliament, in accordance with principles of democracy, derives its authority from the people⁴², through elections regulated in an open and transparent way⁴³

Ltd (1997) 37 IPR 599 at 625; *Sykes v Reserve Bank of Australia* (1998) 88 FCR 511 at 513, *City of Botany Council* [2001] NSWCA 94 at [83].

³⁶ Cabinet in Queensland is recognized by formal enactment in the *Queensland Constitution* in addition to the rules of convention and practice: Enright, C, *Judicial review of Executive Action*, Branxton Press, Sydney 1985 at par 17.

³⁷ *Attorney General (NT) v Heinemann Publishers Pty Limited* (1987) 10 SLWLR 86 per McHugh JA at p191; *Commonwealth of Australia v John Fairfax and Sons Ltd & ors* (1981) ALJR 45 Mason J at p 49 “which best serves the advancement of the interest or welfare of the public, society or the nation and its content will depend on each particular set of circumstances”: *McKinnon v Secretary, Department of Treasury* [2005] FCA FC 142 per Tamberlin J (at 245)

³⁸ The public interest is a concept of wide meaning and not readily limited by precise boundaries [where] opinions have differed, do differ and doubtless always will differ as to what is or is not in the public interest: *Right to Life Association (NSW) Inc v Secretary, Department of Human Services and Health* (1995) 128 ALR 238 per Lockhart J. The interest of a section of the public is a public interest but the smallness of the section may affect the quantity or weight of the public interest so that it is outweighed by [another public interest]. [But] it does not, however, affect the quality of that interest: *Sinclair v Mining Warden at Maryborough* (1975) 132 CLR 473 at p 487 per Jacobs J; What is ‘in’ the public interest will depend almost entirely on the “rich and variable” circumstances in which the question arises: *McKinnon v Secretary, Department of Treasury* [2005] FCA FC 142 per Tamberlin J at 245

³⁹ see *Harburg Investments P/L as trustee for Peter Victor Francis Harburg v The Honourable Terrence Michael Mackenroth* [2005] QCA 243, per McPherson and Jerrard JJA and White J at [3]

⁴⁰ *State of Queensland v. Allen* [2011] QCA 311 at [19] referring to *Electrolux Home Products Pty Ltd v Australian Workers’ Union* [2004] HCA 40; (2004) 221 CLR 309 at 329 [21]

⁴¹ *R v. Nuttall* [2010] QCA 64 Chief Justice, Holmes and Fraser JJA at [50] referring to *R v Jackson & Hakim* (1988) 33 A Crim R 413.

⁴² As set out in the preamble to the *Constitution*: “The people of Queensland, free and equal citizens of Australia...adopt the principle of the sovereignty of the people, under the rule of law, and the system

by secret ballot.⁴⁴

53. Any policy or other criticisms in the Racing legislation from 26 March 2009 to 20 February 2011, within the Terms of Reference, is not a matter that should be visited upon Mr Lawlor.

No criticism that Mr Lawlor did not give “sufficient and appropriate oversight [as] the responsible Minister”

54. Mr Lawlor has not received any notification from the Commission of any possible adverse finding open to be made against him by the Commission in Terms of Reference paragraph 3(d) Mr Lawlor that as Minister for Racing from 26 March 2009 to 20 February 2011 that he did not give “sufficient and appropriate oversight [as] the responsible Minister” (or on any other basis under any other Term of Reference) in any statement by the Commissioner, Counsel Assisting⁴⁵, any other Counsel, any witness, or in any question put to Mr Lawlor on examination under oath⁴⁶.
55. It follows therefore, no criticism of adverse reflection can, or should be, made against Mr Lawlor by the Commission of Inquiry.

Mark Plunkett
Counsel for the Hon. Mr Lawlor
21 October 2013

of representative and responsible government, prescribed by this Constitution...[built] a society based on democracy, freedom and peace.” “The lines of accountability of the whole administration run from the lowliest official up through the minister to the cabinet, the parliament and ultimately, and only by that circuitous route, to the elector”: Parker R. S. (1978) *The Public Service Inquiries and Responsible Government*, 349-53 cited in Rhodes R. A. W. and Wanna J. (2009) *Bringing the Politics Back in: Public value in Westminster Parliamentary Government*. *Public Administration* 87: 161-183; Rhodes R. A. W., Wanna J. and Weller P. M. (2009) *Comparing Westminster*, Oxford: Oxford University Press. The “parliamentary system”, is a “close union, the nearly complete fusion of the executive and legislative powers”: Walter Bagehot, *The English Constitution, 1867*, London, Chapman & Hall; Edited by: Paul Smith, University of Southampton, 2001; Bogdanor, Vernon. *The Monarchy and the Constitution*. 1997: OUP. p. 41; R A W Rhodes. John Wanna, Patrick Weller, *Comparing Westminster*, Oxford, 2009, ISBN: 9780199695584, page 5

⁴³ *McLindon & Anor v Electoral Commission of Queensland* [2012] QSC 44

⁴⁴ *Tanti v Electoral Commission of Queensland & Anor* [1995] QSC 208; *Caltabiano v Electoral Commission of Queensland & Anor (No 3)* [2009] QSC 186

⁴⁵ page 2- 4, line 35; page 2-8, line 40-45; page 2-9, lines 20-25; 8-64, line 15

⁴⁶ QRCOI Hearing Transcript Day 14, 14 October 2013, pages to 14-2 to 14-37