

**QUEENSLAND RACING COMMISSION OF INQUIRY**

**AFFIDAVIT OF PETER HENNEKEN AM**

I, **PETER HENNEKEN AM**, c/o Crown Law, State Law Building, 50 Ann St, Brisbane in the State of Queensland, Chairman states on oath:

**PRELIMINARY**

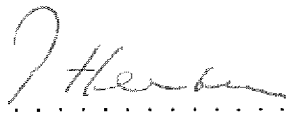
1. I have received two Requests for a Written Statement from the Commission dated 30 August 2013 and 6 September 2013.
2. Some documents were attached to the Requests and Crown Law has also provided me with copies of other documents that are relevant to my statement. However, I no longer have access to my inbox or calendar for the period while I was at the Department of Employment, Economic Development and Innovation ('DEEDI') and have not been able to personally search for other documents.
3. I have prepared this statement on the basis of my recollections after refreshing my memory from the documents available to me.

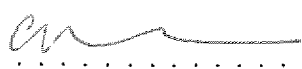
**ROLE**

4. I was the acting Director-General of DEEDI for the period 26 March 2009 to 13 November 2009. I took on that role at the request of Mr Ken Smith (the Director-General of the Department of the Premier and Cabinet at the time) on the basis that I would act in the role until a suitable candidate was appointed on a permanent basis.
5. Before March 2009, I was the Director-General of the Department of Industrial Relations and the Department of Employment and Industrial Relations. I was first appointed as the Acting Director-General of the Department of Industrial Relations in early 2001 and confirmed in that position on 27 September 2001. I had no direct involvement with the racing industry as part of those roles.

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Signed:  .....  
Deponent

Taken by:  .....  
Catherine Louise McLennan (Solicitor)

Affidavit of Peter Henneken

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CROWN SOLICITOR  
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6. I have over 40 years experience as a public servant, predominantly at the Queensland level but also at the Federal level. 25 years of this experience was at an executive level. I also have lengthy experience as Chair and/or Director on various Statutory Authorities/Government Corporations.
7. After my retirement from the Queensland Public Service, I was appointed as the Chair of Comcare. I held this position until 2012. I also continued as Chair of QLeave until this year. I am still a Trustee and Director of QSuper.
8. I am currently the Chairman of the Queensland Fitness, Sport and Recreation Skills Alliance, which is a not for profit industry workforce advisory organisation that leads and supports the workforce development efforts of its industry. I have been in this role since 2010. I am also a member of the Fair Work, Building and Construction Advisory Board.
9. In 2010, I was recognised as a member of the Order of Australia for my contribution to the Queensland Public Service, particularly in the areas of vocational education and industrial relations.
10. I have a Bachelor of Business and a Bachelor of Arts and am a Fellow of the Institute of Public Administration and a Fellow of the Australian Institute of Company Directors.

## **BACKGROUND**

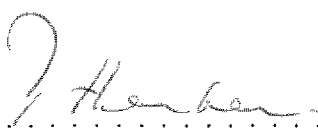
11. DEEDI was a very large department. It was formed in 2009 by the merger of three departments (Department of Primary Industries and Fisheries, Department of Mines and Energy and Department of Tourism, Regional Development and Industry) and parts of several other departments, including the Office of Liquor, Gaming and Racing and the Office of Consumer Affairs.
12. As Director-General of DEEDI, I reported to four different ministers, including Peter Lawlor (Minister for Tourism and Fair Trading) and Andrew Fraser (Treasurer and Minister for Employment and Economic Development).
13. Initially, I had three Associate-Director Generals assisting me in the administration of DEEDI. These were Bob McCarthy, Rob Setter and Dan Hunt. Bob McCarthy was given responsibility for tourism and industry development generally as well as liquor, gaming and racing. Bob McCarthy left DEEDI around April 2009 and from that time onwards I had two Associate-Director Generals.
14. In addition to Associate-Directors General, there were also Deputy-Director Generals. David Ford was the Deputy-Director General for Liquor, Gaming, Racing and Fair Trading. He initially reported to Bob McCarthy and later directly to me when Bob McCarthy left DEEDI.

15. DEEDI was responsible for numerous policy areas. As Director-General, it was not possible for me to be involved in the detail of every area. My Associate-Director Generals and Deputy-Director Generals focused on details and had defined areas of responsibility.
16. I recall that some of the major policy issues that David Ford and I were involved at the time were:
  - (a) glassing attacks and liquor licensing laws;
  - (b) the transfer of various consumer affair matters to the Commonwealth;
  - (c) issues regarding strata titles; and
  - (d) funding of the racing industry.
17. In addition to these matters, I was also involved in administering other parts of DEEDI that had significant ongoing and emerging policy issues.

### **REQUEST DATED 6 SEPTEMBER 2013**

#### *Terms of reference 3(a), (b), (c), (e), (f) and (g)*

18. I have no independent knowledge or specific recollection about:
  - (a) the procurement, contract management and financial accountability of the Relevant Entities (as defined in the Request) during the Relevant Period (as defined in the Request);
  - (b) whether the Relevant Entities adhered to relevant policies, processes, guidelines and measures;
  - (c) the events surrounding all contractual arrangements between the Relevant Entities and Contour Consulting Engineers Pty Ltd or the contracts entered between the Relevant Entities and Contour;
  - (d) the management policies, processes and guidelines or workplace culture and practices of the Relevant Entities during the Relevant Period;
  - (e) the involvement of the boards or members of the boards of the Relevant Entities in the exercise of identified functions;
  - (f) the corporate governance arrangements and operations of Racing Queensland and its officers;
  - (g) the policies, rules and procedures within Racing Queensland, and the terms of employment contracts of its current and former directors and executives;

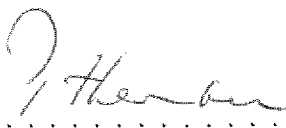
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- (h) the Queensland Race Product Co Limited and Tatts Group;
  - (i) the employment contracts, payouts, or actions of Mr Tuttle, Mr Orchard, Mr Brennan or Ms Reid; or
  - (j) the funds transfer in February 2012.
19. I was the Director-General of DEEDI for an eight month period from March to November 2009 and my involvement with the racing industry was limited to that time frame. Many of the matters referred to in the Request occurred in 2011 or 2012 when I was no longer in the public service.

***Term of reference 3(d) – Oversight***

20. My general recollection is that the government had a philosophy of encouraging the racing industry to govern itself and to be financially independent, as far as possible, from government. That philosophy had been in place for some time before I became Director-General of DEEDI.
21. The *Racing Act* prescribed the degree of oversight required by the Minister, Executive Government and Chief Executive and assigned certain powers to the Minister and Chief Executive.
22. Whilst I was the Director-General of DEEDI, I was the Chief Executive under the Racing Act and therefore had certain statutory powers. I do not recall anything that was brought to my attention that required or warranted the exercise of my powers in a way that would be of particular relevance to the Commission.
23. The day to day regulation of racing matters occurred through the Office of Racing. As part of the departmental structure, draft correspondence, memoranda, briefing notes and Cabinet material prepared for the Minister by the Office of Racing would pass through my office for approval. However, racing matters were only one of a very large number of other issues in which DEEDI was involved at the time.
24. I have been shown a copy of Mr Mike Kelly’s statement dated 2 August 2013 and asked to consider his comments at paragraphs 53 to 65 where he sets out the relationship and role of Ministers, the Executive Government and Chief Executives. I generally agree with Mr Kelly’s comments. It is a fair representation of how matters operated during my time as Director-general of DEEDI.

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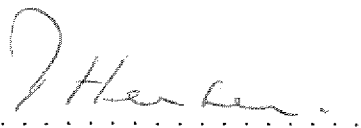
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 Catherine Louise McLennan (Solicitor)

25. I had periodic meetings with David Ford regarding matters under his control. There were also weekly meetings with Minister Lawlor. If there were issues concerning racing to be discussed at either series of meetings, then Mike Kelly would generally have attended.
26. I have also been shown a number of documents that provide examples of my involvement in the oversight of the racing control bodies.
- (a) Attached and marked as exhibit 'PH-1' is a Minister's briefing note about the Queensland Community Racing Scheme dated 7 July 2009 that was progressed through me to Minister Lawlor.
  - (b) Attached and marked as exhibit 'PH-2' is a Minister's briefing note about the Gold Coast Greyhound Racing Club dated 29 July 2009 that appears to have been progressed through me to Minister Lawlor, although it is not signed.
  - (c) Attached and marked 'PH-3' is a Minister's briefing note regarding a meeting with Bob McHarg dated 26 August 2009 that appears to have been progressed through me to Minister Lawlor.
  - (d) Attached and marked 'PH-4' is a Minister's briefing note regarding approval of the Control Body Assessment Program for 2009 dated 9 September 2009 that was progressed through me to Minister Lawlor.
  - (e) Attached and marked 'PH-5' is a Minister's briefing note regarding the outcome of the Control Body Assessment Program for 2008 dated 20 October 2009 that was progressed through me to Minister Lawlor.

**REQUEST DATED 30 AUGUST 2013**

***Issues paper***

27. I have been shown a copy of a Queensland Racing document entitled 'Issues Paper' that I understand was provided to the government in May 2009. I do not have any specific recollection of that document, although it is likely that I saw it at the time.
28. I have also been shown briefing notes dated 25 June 2009 and 5 October 2009 regarding the Industry Issues Paper. Those documents are self-explanatory and are attached and marked 'PH-6'. It appears both briefing notes were progressed through me to the Minister. The June briefing note is not signed by me or the Minister, but the October briefing note is signed by both me and the Minister.

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29. I do not recall discussing the Issues Paper with Minister Lawlor, Treasurer Fraser or staff from the Office of Racing, but it is likely that it would have been raised at the regular meetings described in paragraph 25. I am also not aware of any discussions that occurred between Queensland Racing and Minister Lawlor or Treasurer Fraser regarding the Issues Paper. This may have occurred.

***CBRC Submission 3756***

30. I recall departmental officers preparing a CBRC Submission relating to funding of the racing industry during my time as Director-General of DEEDI. I do not recall when work first started on the draft submission nor being involved in any detail until an advanced draft was provided for my comment. It would have been part of the normal process that a copy of the draft submission would not have been given to me until it had been reviewed by David Ford and he was satisfied with it.

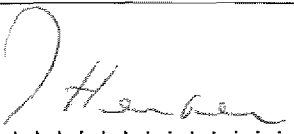
31. I have been shown a document entitled 'D-G's feedback on original CBRC Submission 13/10/09'. A copy of that document is attached and marked 'PH-7'. I believe this is a document that I or my secretary prepared to reflect my comments on a draft of the CBRC Submission. This document would have been provided to departmental officers to assist them in incorporating my comments into the submission.

32. I have also been shown a draft version of the CBRC submission with a handwritten note stating 'Incorporates D-Gs feedback from 13/10'. A copy of that document is attached and marked 'PH-8'.

33. I have also been shown a copy of a further draft submission that contains handwritten notes that I have identified as being my own. A copy of that document is attached and marked 'PH-9'. There are two sets of notes on the draft submission – mine and my secretary's. My secretary re-wrote my notes so that they were easier to read.

34. I have also been shown an email from myself to Mike Sarquis with further comments on the CBRC Submission dated 21 October 2009. A copy of that email is attached and marked 'PH-10'. In addition I have been shown an email from me to David Ford dated 3 November, which contains further comments from me on the CBRC Submission. That document is Exhibit 16 to Mike Kelly's supplementary statement dated 16 September 2013.

35. I do not have an independent recollection of the sequence of events concerning these documents or the drafting of the CBRC submission. However, after reviewing these documents, I believe that:

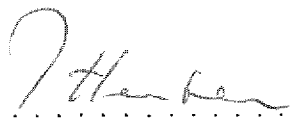
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- (a) A draft of the submission was provided to me around October 2009 and I provided the comments set out in exhibit PH-7.
  - (b) A further draft was provided to me, or my office, incorporating my comments of 13 October 2009, being the document in exhibit PH-8.
  - (c) I provided handwritten comments on an updated version of the submission, being the document in exhibit PH-9.
  - (d) The document upon which I made handwritten notes (exhibit PH-8) is not identical to the draft submission in exhibit PH-8. I believe PH-9 is a later version of the submission.
  - (e) I provided further comments on the draft submission by way of email on 21 October 2009 as set out in exhibit PH-10 and again on 3 November 2009 as set out in exhibit 16 to Mike Kelly's supplementary statement dated 16 September 2013.
  - (f) I also recall attending a meeting at which I discussed my comments on the draft submission, but I do not remember who attended that meeting or when it occurred.
36. It is almost certain that I saw the final submission before it was signed and lodged by Minister Lawlor, but I do not recall any further details about the submission process.

*My feedback on the draft submission*

37. I have been asked to describe the origin and source of the matters listed in exhibit PH-7.
38. I have also been shown a copy of Mike Kelly's supplementary statement dated 16 September 2013 in which he comments on exhibit PH-7.
39. The document sets out matters that I wanted the departmental officers to clarify or address in more detail in the draft submission. My concern was to make sure that CBRC was aware of the current state of the racing industry and the risks of investing more money without addressing fundamental financial viability and efficiency issues. I understood, from my own experience and discussions with departmental officers, that the racing industry was not growing relative to other industries and that there were a number of risks associated with it, including revenue leakages (from online bookmakers), a lack of capital investment and dysfunctional and dispersed governance arrangements.
40. Initially, I thought that one option was to do nothing, but I must have gleaned from various discussions, that doing nothing was not an option and that there was a desire within government to do something to address the issue.

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41. My recollection of the matters identified in PH-7 are as follows:

- (a) I wanted the submission to contain further information about the matters identified at Points 1 and 2 regarding 'Nature and size of the industry' and 'How the industry works'.
- (b) Point 3 regarding 'Challenges' identified matters that I thought were relevant and should be discussed in more detail for the following reasons:
  - (i) 'long term revenue trends' – I felt it was important that the racing industry be viable and self-supporting in the long term and the submission needed to address this point;
  - (ii) 'supporter demographics' – I wanted the submission to explain how the demographics of racing supporters may affect its long term viability;
  - (iii) current state of assets' and 'workplace health and safety issues with facilities' – I was aware that there were a number of facilities that were in a state of disrepair and felt that was a matter that needed to be addressed specifically;
  - (iv) 'imbalance in the industry – weakness of country racing' – I wanted the submission to highlight the possibility that the racing industry may be viable in south-east Queensland, but may not in country areas;
  - (v) 'governance structures' – this refers to the fact that Queensland Racing and the clubs did not have a cohesive working relationship; and
  - (vi) 'loss of income to unregulated bookmakers' – this is self-explanatory.
- (c) Point 4 regarding 'Strategies to consider' drew on my discussions with departmental officers as well as my own experience. I was not promoting any particular outcome, but was simply suggesting matters to consider and explain in the submission. I thought it was important to look at other organisational, structural and strategic issues and not just commit additional funding to the industry. In my view, the answer did not lie in simply giving the industry more money and we also needed to look at other issues, including governance. This is the overarching concept that I wanted the submission to address in more detail and is reflected in my comment 'rebalance power in favour of the professional management of the industry'.
- (d) On this matter my attention has also been drawn to paragraphs 19 to 21 of the further statement of Mike Kelly dated 16 September 2013 concerning the proposal to amalgamate control bodies. Mr Kelly's statement suggests that I may have been the first person to raise this matter with him for inclusion in the CBRC Submission. I cannot



recall whether it was my idea or whether it had come up in other discussions I had with other officers, Minister Lawlor or Treasurer Fraser. In any case, I strongly supported the idea as it would have made the industry more efficient, focused on the optimal use of facilities and given it a single voice in negotiations with holders of wagering licences.

(e) Point 6 regarding 'Options'. These options are the ones that I thought should be included in the submission and they reflected the issues that I had identified in the note and my disinclination to simply give the industry more money without looking to make organisational and other changes to make the industry viable in the long term.

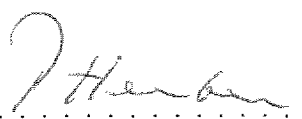
42. I have been asked whether or not the sale or redevelopment of Albion Park Paceway was being considered by the government or a control body representative at this time. I cannot recall anything about the sale or redevelopment of Albion Park Paceway or whether it was being considered by government or a control body representative.

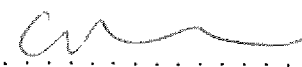
#### **DISCUSSIONS WITH MINISTERS AND OFFICE OF RACING**

43. I had weekly meetings with Minister Lawlor and Treasurer Fraser. At these weekly meetings, it is likely that we discussed the draft CBRC submission and the issues identified to in exhibit PH-7. However, I cannot recall any details of those meetings or receiving any directions from Minister Lawlor or Treasurer Fraser regarding the submission.

44. I had regular (weekly or fortnightly) meetings with David Ford. Sometimes he may have brought Mike Kelly from the Office of Racing along to a particular meeting if we were discussing a racing issue, such as during the preparation of CBRC Submission 3756. I would have discussed the draft submission and issues in exhibit PH-7 generally with David Ford, and possibly Mike Kelly.

45. I have been asked specifically about discussions between myself and Office of Racing staff and Minister Lawlor or Treasurer Fraser about endorsing and progressing option 3 in the CBRC submission. I do not recall discussing option 3 in particular or any other matter relating to amalgamation or structural reform of the racing industry.

Signed:   
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**AUTHORITY TO PREPARE CABINET SUBMISSION**

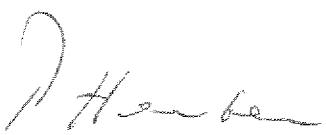
46. I cannot recall having any involvement with a Cabinet Submission about Authority to Prepare the *Racing and Other Legislation Amendment Bill*. I do not know when a direction was first received by DEEDI to start preparing any such submission.

**OTHER MATTERS**


47. I do not recall attending any meetings with Bob Bentley or other representatives of the control bodies while I was Director-General of DEEDI. I previously had contact with Mr Bill Ludwig during my time as Director-General of the Department of Industrial Relations, but that was not in connection with racing matters. I do not believe I had any reason to meet with him while I was at DEEDI.

48. All of the facts and circumstances deposed to in this affidavit are within my own knowledge and belief, except for the facts and the circumstances deposed to from information only, and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by PETER HENNEKEN AM on 24 September 2013 at Brisbane, Queensland in the presence of:

  
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Deponent

  
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Catherine Louise McLennan (Solicitor)

Signed:   
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Deponent

Taken by:   
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Catherine Louise McLennan (Solicitor)