

## BRIEFING NOTE

FROM	Treasury		
FOR	Treasurer		
SUBJECT	QUEENSLAND RACING LIMITED CONSTITUTION		
Contact Officer:	Carol Perret, Director, Investigations and Compliance, Office of Racing	Record No: QTO-02676	Date: 14/07/2008
Requested by:	Lachlan Smith, Ministerial Policy Advisor	Date Approval Required By: 14/07/2008	

### PURPOSE

To provide policy advice on the proposed amendments to the Queensland Racing Limited (QRL) constitution.

### BACKGROUND

Attached is a brief prepared by the Legal Services Unit (LSU) that sets out a summary of the changes proposed to the QRL constitution and a summary of advice provided to QRL by David Jackson QC and Andrew Herbert of Counsel.

The proposed amendments seek to:

- Extend the initial term of directors from 3 to 6 years; and
- Change the process for the appointment of directors.

### ISSUES

LSU has not identified any legal impediment to the proposed amendments to the QRL constitution but raise some issues in relation to whether it is appropriate for the directors of QRL to be appointed for an initial term of six (6) years and suggest that a term of four (4) years may be more appropriate.

In addition to this issue there is a number of policy-related matters that should be considered.

#### Independent Recruitment Consultant

The proposed changes remove the requirement for an independent recruitment consultant to prepare a short list of applications by reference to the selection criteria contained in Appendix A of the constitution and for this process to be undertaken by the company secretary.

The Counsel for QRL refer to the cost involved in engaging an independent recruitment company and that there is no good reason to do this if the company secretary is competent to undertake this process.

An independent recruitment company has the professional expertise to review applications against the selection criteria, independent of any real, or perceived, influence from QRL. It is considered that this requirement provides an important safeguard from an integrity perspective to ensure independence and impartiality in the short-listing of applicants. Under the proposed arrangements, it could be argued that the company secretary may be influenced by the views of the board in short-listing applicants.

The use of an independent recruitment company has been a fundamental aspect of the recruitment and appointment of board members to the thoroughbred control body since 2001 and has provided a good defense against criticism of the recruitment process. Furthermore, the use of an independent recruitment process was a primary consideration in assessment of recent corporatisation applications by the harness and greyhound control bodies.

The removal of this requirement has the very real potential to be criticised on the basis that it will undermine the integrity of the recruitment system. It is considered that the argument of cost savings to QRL is not a sufficient reason to change this aspect of the recruitment process.

#### **Government Policy on Racing**

Since the privatisation of the Queensland TAB in 1999, it has been government policy to devolve responsibility for the day to day operations of the racing industry to the industry. This policy has been implemented by the *Racing Act 2002* (the Racing Act) which:

- provides for a corporation whose directors are appointed in accordance with its constitution, to be the control body for each code of racing (rather than a statutory authority with members appointed by the Minister);
- devolves wide ranging powers to each control body and limits the government's role to matters of integrity; and
- provides the Minister with very limited powers regarding the internal operations/governance arrangements of racing control bodies.

It was envisaged that an application from a control body to amend its constitution would not be considered by you as the Minister responsible for racing, until the proposed amendment had been approved by the members of the company. In this way the Government, and you specifically, are removed from the negotiation and initial decision-making process.

This approach is consistent with the approval process under the Racing Act for the disposal of land by race clubs which requires the approval of the members of the relevant club and the approval of the control body before an application can be made to the Minister responsible for racing to approve of the disposal.

This approach limits government involvement in industry decision-making while still providing a safeguard to ensure decisions of an inappropriate nature that may impact on the integrity of racing, or that may be unlawful, are not made. It was envisaged that the Minister would ratify the decisions of the members of the club and the control body unless there were sound grounds to justify a refusal.

~~If the members of the company support the proposed amendments, a decision by you to refuse to grant approval must be made on grounds that can be justified and is able to withstand legal scrutiny.~~

#### **Formal Application for Approval**

It is understood that you have been provided with a copy of the documents that have been forwarded to the members of the company under cover of a QRL "with compliments" slip. You have not been formally requested to approve the proposed amendments to the constitution.

In the circumstances you should not make any comment or make any decision on the proposal to amend the QRL constitution prior to being formally requested to approve the proposed amendments. Despite arguments advanced by QRL to date that the proposed amendments have widespread industry support it is likely that certain sections of the industry will remain opposed to these changes and have demonstrated a tendency to resort to legal challenge of such decisions. Accordingly, any advice or comments made on an informal basis could form the basis of a legal challenge to your decision.

#### **Appropriate Term for Directors**

Counsel for QRL stated:

"While there is no specific term of years that can be indicated as being either appropriate or inappropriate in this context, we are of the opinion that appointing directors for a term of six years before initial retirements are to occur does not offend any established principles of proper corporate governance in the specific context of the role and function of Queensland Racing, and is generally consistent with an approach that persons or entities charged with a public regulatory role should be permitted to undertake that task without being required to regularly seek continuing support and approval from the very persons in respect of whom they are required to exercise control and regulation, and potentially to make adverse, but proper, decisions."

It has been suggested by LSU that a term of 6 years may have the potential risk of fostering a board which becomes stagnant and without fresh ideas. While that may be true of some boards, the directors of QRL (Bentley, Hamner, Lambert, Ludwig and Andrews) have shown no signs of being devoid of fresh ideas, with the thoroughbred code undergoing probably the greatest period of reform and improvements in its history. The board of QRL has implemented wide ranging reforms to the industry which has seen record product fee payments from UNITAB to the three codes of racing in Queensland and significant increases in prize money. The board has continued to lobby at the Australian Racing Board level for better classes of races for

Queensland, continues to implement enhancements to race programming and has a program of wide ranging infrastructure projects planned across the State.

In the circumstances it would seem axiomatic that the current QRL Board is unlikely to suffer from either stagnation or a lack of fresh ideas.