

Queensland Racing Commission of Inquiry

Submission on behalf of Queensland All Codes
Racing Industry Board trading as Racing
Queensland and Queensland Race Product
Co. Ltd

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2.0 Purpose of this Submission

2.1 Overview and Purpose

- (a) The Commission of Inquiry has invited submissions in respect of matters relevant to the Commission's Terms of Reference as set out in the *Commissions of Inquiry Order (No.1) 2013*.
- (b) QACRIB and QRPC have been granted leave to appear before the Commission and this Submission is provided by these entries in accordance with paragraph 13 of Practice Guideline No.2 (as varied).
- (c) The Commissioner may conclude that it is both necessary and desirable for recommendations to be made regarding the future corporate governance of the control body. Such recommendations are contemplated by the terms of paragraph 3(h) of the Order in Council.
- (d) By way of summary, the submissions made by QACRIB and QRPC focus on:
 - (i) the steps and actions already undertaken by QACRIB in response to the organisational and governance challenges and issues faced by QACRIB; and
 - (ii) the further steps and actions to be taken by QACRIB.

to not only respond to these challenges and issues but to enable QACRIB to better serve the interests of the racing industry as a whole.

3.0 Key Points

The key submissions are set out below.

3.1 New Structure

- (a) QACRIB consists of the Chairs of each of the Code Control Boards together with two direct Government appointees (see paragraph 5.1).
- (b) In accordance with ss.9AI and 9BT of the Racing Act, members of the Code Control Boards and QACRIB are appointed by the Governor-in-Council. Prior to the appointment of the members of the current QACRIB Board and the Code Control Boards by the Governor-in Council, the following independent selection process was undertaken:
 - (i) An external recruitment company, Eden Ritchie, was engaged to coordinate the appointment of members to QACRIB and the Control Boards.
 - (ii) The positions for all boards were publicly advertised and applications were sought from suitably qualified individuals. The requirements for a person to be eligible for appointment included:
 - A. Experience in business or financial management; law; leadership; marketing; or thoroughbred, harness or greyhound racing industry (as relevant);
 - B. The person had to be an "eligible individual" as defined in s.9 of the Racing Act;
 - C. Was suitable having regard to the person's character or business reputation, current financial position and financial background and their background;
 - D. Had a supporting recommendation from a current licensee, race club, industry association or stakeholder group.
 - (iii) From the applications, Eden Ritchie identified candidates that were appropriate for appointment to the boards and prepared shortlists of candidates.
 - (iv) The Minister established an independent Selection Panel (made up of former Governor Major General Peter Arnison, AC CVO, former Queensland Supreme Court Judge the Honourable William Carter QC and former Queensland Police Commissioner Jim O'Sullivan AC). The Selection Panel were provided with the details of the shortlisted candidates by Eden Ritchie.
 - (v) The Selection Panel was responsible for assessing shortlisted applicants and selecting those persons who were best qualified for appointment to the Code Control Boards and QACRIB.
 - (vi) The Selection Panel identified the best persons qualified for appointment and recommended their appointment to the respective boards.

- (c) The question of the appointment of the Chair of the control body (currently QACRIB) has been the subject of consideration by the Commission. Whilst there is merit in the appointment of a chair independent of each of the Code Control Boards (or the industry generally), a thorough consideration of the issues favours the view that an independent Chair is not necessarily appropriate. Although, it may be that the appointment of a Chair from outside each of the Code Control Boards is appropriate, subject to that person having relevant industry experience.
- (d) QACRIB as the control body for the racing industry is a regulator. It is not and should not be solely driven by profit. Nor does it make the normal business decisions that a corporation would make. The Chair of QACRIB needs to make decisions based on the policies of the Government and the sustainability of the industry even though those decisions produce only marginable profitability.
- (e) It is essential that the Chair and the majority of the members of the boards have a detailed understanding of the industries they are required to regulate. It is necessary to understand the various component parts of the thoroughbred, harness and greyhound industries to enable QACRIB to sustain and make viable the racing industry for the benefit of all participants. This knowledge provides the Chair with the necessary creditability within the industry itself. It is submitted that this creditability is of key importance to ensure industry confidence in the Chair and QACRIB as the control body more generally.
- (f) A totally independent Chair would not inherently understand that the first responsibility of QACRIB as the control body is to ensure the sustainability, viability and financial performance of the racing industry in Queensland, which may result in QACRIB having only marginable profitability. This is, of course, separate to the usual private sector company structure where an independent director may bring diverse experience to help to increase the overall company profit for the benefit of shareholders. The considerations for a racing industry control body (and the Chair of such a body) are different.
- (g) The current model, as outlined in paragraph 5.1 below, is effective in achieving the necessary degree of industry knowledge, by the appointment of the Chair of each of the Code Control Bodies to the Board of QACRIB as the control body whilst at the same time permitting the Government to appoint two experienced persons who in all likelihood will have detailed knowledge of the racing industry.

3.2 Oversight and external reporting arrangements

- (a) It is appropriate that there is a necessary degree of regulation by the Government of QACRIB as set out in the newly amended Racing Act.
- (b) In addition, those within the industry require a forum in which to voice their concerns.
- (c) An independent Racing Integrity Commissioner has now also been appointed who provides oversight of the integrity processes of QACRIB as the control body.

3.3 Internal management arrangements

- (a) As noted in paragraph 6.6 of this Submission, QACRIB has undertaken and continues to undertake a full review of its structure to ensure that appropriate lines of delegation and authority are in place and that those delegated lines of authority reflect the core functions and duties of QACRIB.

- (b) An internal human resources manager is soon to be appointed and appropriate procedures will be put in place to ensure that all relevant QACRIB policies are adhered to by the staff.
- (c) With respect to contracting, in paragraph 5.4, QACRIB has set out a detailed response to the recommendations made by Deloitte following their review of purchasing procedures. A new contract approval form is now required to be completed and safeguards are in place to ensure that each contract is properly approved and performed.

3.4 Funding Arrangements for the control body and the clubs

- (a) QACRIB needs to ensure that both the commercial and its regulatory functions are properly administered. As to the commercial function of QACRIB, the funding of the clubs is an increasingly complex issue as there are many competing requirements for funds. QACRIB also needs to ensure that the clubs are provided with sufficient funding so that infrastructure is maintained and upgraded to allow events to be conducted safely, whilst at the same time ensuring that prize money is maintained at a sufficient level to keep the industry interested which will foster employment and activity in the industry.
- (b) It is necessary to ensure that special or vested interests do not gain control of industry funding. To achieve this goal, it is necessary for Government to make policies to maintain the integrity of the industry for all participants. QACRIB needs to be able to implement and operationalise the policies that the Government promotes on funding issues.
- (c) At present, there are two aspects to the funding of the Industry:
 - (i) One-off funding for specific projects. This is largely well controlled through the requirement that there be specific business cases prepared and submitted for scrutiny and approval; and
 - (ii) Funding through wagering revenue.
- (d) It is the second source of funding which is the focus of this section of this Submission.
- (e) With the establishment of QACRIB as the current control body the Government has created a model for funding which allows funds raised through wagering activity to be distributed to each club properly and fairly. However, this is still largely within the discretion of QACRIB as the control body.
- (f) QACRIB has developed and uses an algorithm which takes into account factors such as the number of race meetings, the revenue generated from those meetings, the number of animals in training at the venue, the number of stakeholders who use the venue as the place at which they develop their product and other additional factors to ensure that there is an appropriate distribution of the available funds to the clubs.
- (g) QACRIB considers that there should also be a further identifiable set of regulations that guide the control body as to what percentage of the funds received from wagering should be allocated to each of the relevant competing interests which may be summarised as:

- (i) The clubs (who need to maintain infrastructure, be sustainable and need assistance to stage events);
 - (ii) The prize money (to ensure the disbursement of funds to all industry participants); and
 - (iii) The control body to maintain its function and operations.
- (h) Such rules can apply to ensure that no control body misuses the available funds, for example, using all available funds for prize money and providing nothing for ongoing infrastructure maintenance. The QACRIB as the control body considers this is an appropriate role for Government to regulate after consultation with QACRIB.

3.5 Ownership of Assets

- (a) QACRIB considers that the concept of a control body seeking to provide funding to a club in exchange for some form of control is an inappropriate course for a control body (as a regulator) to take.
- (b) QACRIB considers that if an existing club requires funding to upgrade existing works then those funds should be provided to the club in accordance with an appropriately approved business case but not be conditional upon QACRIB obtaining control of the club assets through ownership or otherwise.
- (c) In the case of the creation of new venues, where there is no existing club or the existing clubs have disappeared, it may be appropriate for QACRIB to have underlying ownership of the newly created assets but to not control their use by the clubs other than in its role as the regulator. The ownership is to ensure that those assets remain available for the use of all participants in those codes in the locality. It may be that QACRIB, in consultation with the relevant industry board, would create the necessary legal structure to permit a local club to lease the asset so as to permit the conduct of racing at that venue. QACRIB would have no oversight of that asset, other than in accordance with, for example, the terms of a lease to enable it to maintain its regulatory functions.

3.6 Integrity in the industry

- (a) QACRIB notes that the Commission has commented on the possibility of dividing the regulatory function from the commercial function of the control body. It is submitted that this may be difficult to implement in practice. Integrity, in a racing sense, starts with the most junior licensed person and all participants through to the members of QACRIB. Such an approach is necessary to regulate ownership of animals, the welfare of animals, the supervision of licensees, the conduct of race meetings, the conduct of on-course and off-course betting and the clubs themselves.
- (b) QACRIB does not consider it practical to remove these various regulatory functions from the commercial operation of the control body. The commercial operation of the control body involves much more than the distribution of prize money. As part of a race day, stewards employed by QACRIB check the health of animals, confirm their identity, ensure licensees do not breach the rules of racing and supervise the conduct of individual races. These functions are regulatory but are also an important part of the commercial day to day operation of the control body.
- (a) QACRIB fully accepts that appropriate oversight of the control body needs to occur through the Office of Racing. Further, the members of QACRIB need be

appropriately aware of their duties and responsibilities and ensure that conflicts of interest do not occur. In paragraphs 6.2 and 6.3 submissions are made relating to the conflicts of interest issue and the role of the Board and management of QACRIB.

- (b) It is fundamental that the Government have a major role in ensuring integrity in the industry. It is not appropriate for QACRIB to be an independent entity with little supervision by the Government. The Government needs to have policies and regulations in place for QACRIB to follow. These policies and regulations need to clearly separate out the various functions. This process has commenced in Queensland. At present, after an investigation by stewards employed by QACRIB, there is a right of appeal to the Racing Disciplinary Board. Further, there now exists a Racing Integrity Commissioner, who is totally independent of QACRIB. These mechanisms promote confidence in the industry by ensuring that disaffected parties have clear rights of appeal, independent of QACRIB, see paragraph 5.1 below.

3.7 Stakeholder consultation

- (a) QACRIB supports stakeholder consultation and engagement. It seems (and QACRIB accepts) that there was a failure by the previous control body to consult widely prior to making important changes to the nature of the industry.
- (b) It is the intention of QACRIB that it will engage in appropriate and detailed consultation. Paragraph 6.5 of this Submission details the current stakeholder consultation and engagement processes.

4.0 Historical Background and Context

4.1 Overview

- (a) In this section of the Submission, QACRIB will examine the history and background to the structure of the regulatory framework governing the three codes of racing in Queensland over the last 10 years.
- (b) QACRIB submits that these issues are important and need to be discussed as an awareness of these issues is helpful in understanding the governance and other challenges of QACRIB and its predecessor entities.
- (c) In addition, it may provide a convenient summary for the Commission.

4.2 Transitions and Restructuring

- (a) In recent times, the structural framework surrounding the regulation of the three codes of racing in Queensland has undergone considerable change and variation. This change and variation has included changes to the legal status of the relevant regulatory entity (i.e. from a statutory body to a corporation and back to a statutory body) and changes in the model adopted in regulating the three codes of racing (i.e. a single regulator covering all three codes of racing or a separate regulator for each code of racing).
- (b) Largely, these restructures and changes have been facilitated by a statutory transfer from the old control body to a new control body under transitional provisions that have been incorporated into the Racing Act.
- (c) In comparative terms, it would be difficult to identify any other regulated industry sector that has been the subject to such high frequency regulatory restructures.
- (d) Set out below is a summary of these restructures and changes:
 - (i) On 1 May 2013, QACRIB was established as a statutory body by s.9 AA of the Racing Act and it replaced RQL as the control body for the three codes of racing in Queensland.
 - (ii) On 1 July 2010, RQL commenced as the approved control body for thoroughbred, harness and greyhound codes of racing under the Racing Act. Prior to 1 July 2010, there was a separate control body for each of the three codes of racing in Queensland.
 - (iii) **Thoroughbred** - In relation to the thoroughbred code of racing, QRL was established as the thoroughbred control body on 1 July 2006 and continued to be the thoroughbred control body until 30 June 2010. Immediately prior to 1 July 2006, a statutory body known as the Queensland Thoroughbred Racing Board had been the control body for thoroughbred racing in Queensland.
 - (iv) **Harness** - In relation to the harness code of racing, Queensland Harness Racing Ltd ACN 128 036 000 was established as the harness control body on 1 July 2008 and continued to be the harness control body until 30 June 2010. Prior to 1 July 2008, the Queensland Harness Racing Board was the control body for the harness code of racing in Queensland.

- (v) **Greyhound** - In relation to the greyhound code of racing, Greyhounds Queensland Ltd ACN 128 067 247 was established as the greyhound control body on 1 July 2008 and continued to be the greyhound control body until 30 June 2010. Prior to 1 July 2008, the Greyhound Racing Authority was the control body for the greyhound code of racing in Queensland.

- (e) These restructuring and transitional changes are also summarised in the table below:

Code of Racing	Immediately prior 1 July 2006	1 July 2006	1 July 2008	1 July 2010	1 May 2013
Thoroughbred Racing	Queensland Thoroughbred Racing Board	Queensland Racing Limited ACN 116 735 374	Queensland Racing Limited ACN 116 735 374	Racing Queensland Limited ACN 142 786 874	Racing Queensland
Harness Racing	Queensland Harness Racing Board	Queensland Harness Racing Board	Queensland Harness Racing Ltd ACN 128 036 000	Racing Queensland Limited ACN 142 786 874	Racing Queensland
Greyhound Racing	Greyhound Racing Authority	Greyhound Racing Authority	Greyhounds Queensland Ltd ACN 128 067 247	Racing Queensland Limited ACN 142 786 874	Racing Queensland

4.3 Impacts and Implications for Governance Arrangements and Frameworks

- (a) It is the view of QACRIB that the various organisational and governance challenges and issues that its predecessors historically have faced are (in some part) connected with the fluid nature (at a structural level) of the organisational framework that has been established for the regulation of the three codes of racing in Queensland in recent years.
- (b) The changes have included not only fundamental changes in the legal nature of the entity charged with regulatory responsibility (i.e. a statutory authority or corporate entity) but in addition, the very structure of the regulatory model established to regulate the industry changed (i.e. a separate regulatory body for each code of racing to an amalgamated single regulatory body for all three codes of racing in Queensland) (**Historical Factors**).
- (c) QACRIB does not seek to solely attribute the challenges and issues facing QACRIB to the regulatory and structural history of the three codes of racing and the nature of its predecessor entities. However, QACRIB submits that in order for the scope and nature of the issues and challenges that it is facing to be properly understood, and appropriate and sound responses developed and implemented, it is important that these Historical Factors and the impacts of such are identified and considered.

- (d) Against this background, QACRIB submits it that the Historical Factors have presented several organisational and governance related issues and challenges. The most obvious being:
- (i) **Records and recordkeeping management and practice:** Given that records have been transferred amongst several different entities, it is not surprising that there are historical gaps in the records which are now held by QACRIB. It is also difficult to identify individual officers who can assist in filling in any gaps given the passing of time. In terms of recordkeeping practices, it is also important to note that it has not always been the case that QACRIB's predecessor entities have been subject to the recordkeeping requirements as set out in the Public Records Act framework. Accordingly, the recordkeeping practices of the predecessor entities may not have been at the "best practice" level as is enshrined in the Public Records Act.
 - (ii) **Loss of corporate knowledge:** Organisational and structural changes have had an impact on staffing numbers and also on staffing placements. In respect of staffing placements, these changes have arisen with officers taking a different roles and responsibilities in the new entities. Consequently, there has been a loss of corporate knowledge and continuity of corporate knowledge and awareness due to staff leaving a relevant entity and / or staff being moved to new positions.
 - (iii) **Policies and procedures:** The changes in the legal nature and status of the entities charged with regulating the three codes of racing has required the continual review (both from a compliance aspect and to ensure that new policies, for example a policy for a newly established amalgamated single entity is then, in its terms, appropriate for all three codes of racing and is consistent with other policy positions).

5.0 Appointment of a New Board, Establishment of QACRIB and Key Actions

5.1 Appointment of a New Board, Establishment of QACRIB

- (a) In the period since 1 May 2012, there have been a number of changes to the regulatory framework for racing in Queensland.
- (b) In the period immediately following the Relevant Period (as that expression is used in the Order in Council), RQL continued as the control body for racing in Queensland. However, there were changes to the Board composition as from 1 May 2012 as follows:
 - (i) From 1 May 2012 - 31 July 2012, the RQL Board consisted of Kevin Dixon (Chair), Greg Hallam (Deputy Chair), Warwick Stansfield, John Falvey, Wayne Milner and Brad Ryan.
 - (ii) On 31 July 2013, Wayne Milner and Brad Ryan resigned from the Board. Due to the fact that the State was in the process of preparing legislation which would establish new regulatory arrangements for racing, the vacancies created by the resignations Mr Milner and Mr Ryan were not filled.
 - (iii) Accordingly, for the period 1 August 2012 until 30 April 2013 (when RQL ceased to be the control body), the RQL Board consisted of Kevin Dixon (Chair), Greg Hallam (Deputy Chair), Warwick Stansfield and John Falvey.
- (c) On 1 May 2013, the State's legislative reforms of the control body arrangements for racing came into effect with the establishment of:
 - (i) The QACRIB as the control body for Greyhound, Harness and Thoroughbred racing in Queensland; and
 - (ii) The Code Control Boards for each code of racing
- (d) The Board of QACRIB is made up of the Chairs of each of the Code Control Boards plus two direct Government appointees.
- (e) On 1 May 2013, the first stage of the integrity related legislative reforms came into effect with the establishment of the statutory position of the Racing Integrity Commissioner. The Racing Integrity Commissioner (currently Mr Jim O'Sullivan AC) is independent of QACRIB and provides independent oversight of the integrity processes of the control body (see <http://www.qric.qld.gov.au>).
- (f) The Racing Industry Commissioner's functions include conducting audits and investigations of the integrity processes of QACRIB, investigating complaints about an integrity process, reporting findings of audits and investigations and the making of recommendations arising from the audits and investigations conducted. An integrity process is widely defined and means a policy, process, system, action, decision or other matter affecting the integrity of or the public's confidence in a code of racing.
- (g) On 1 August 2013, the Racing Disciplinary Board (**RDB**) commenced operations. The RDB is an independent board established under Chapter 4A of the Racing Act

which replaced the First Level Appeal Committee which had been administered by RQL.

- (h) The role of the RDB is to hear and determine appeals by aggrieved persons against appealable decisions of a racing control body.
- (i) A decision of QACRIB as a control body is a formal decision and includes a decision of a steward, executive officer or any employee of QACRIB. An appealable decision of QACRIB as the control body includes any of the following:
 - (i) Refusal to grant or renew a licence;
 - (ii) Taking of disciplinary action relating to a licence;
 - (iii) Taking of an exclusion action against a person;
 - (iv) Imposition of a monetary penalty on a person; and
 - (v) Imposition of any other non-monetary penalty on a person.
- (j) On 1 August 2013, Mr Darren Condon was appointed as QACRIB's CEO under the Racing Act.
- (k) As a result of the establishment of QACRIB and the Code Control Boards there is now greater Government oversight in relation to racing and the activities of QACRIB and the Code Control Boards.
- (l) The reforms to the control body arrangements in conjunction with the establishment of the independent appeals process and the independent integrity oversight role of the Racing Integrity Commissioner, it is submitted, now provides both the appropriate framework for regulating racing in Queensland and provides confidence and credibility in dealing with the full range of integrity issues that can arise in the racing industry.
- (m) QACRIB does not consider that further reform in terms of separating the commercial and integrity functions of QACRIB would improve the governance or accountability of the control body. Rather, QACRIB considers that the integrity and stewarding operations of QACRIB are so intertwined and interrelated to operational requirements relating to racing that it would not be effective to seek to separate those functions.

5.2 Early Identification of Governance Issues

- (a) Upon the appointment of the new board members to RQL in 2012, it became apparent that there were several governance issues that required immediate action.
- (b) Therefore, several significant reports and actions have been undertaken by QACRIB. These were identified and initiated by the new Board of RQL. In particular, it was the new Board of RQL that initially identified the governance issues that were the subject of the QAO Report and the Deloitte Report and took appropriate steps and actions to understand these governance issues and concerns and commence the implementation of the reform processes.
- (c) To highlight this role the key events leading up to the preparation of these Reports can be summarised as follows:

- (i) On appointment to the role as Chairman to the RQL in April 2012, Mr Dixon undertook a review of several key policies and on undertaking that review, identified a substantial number of instances where the relevant policies and procedures had not been complied with by RQL staff (including, and in particular, in the dealings between Contour and RQL).¹
- (ii) As a result of this review, several actions were undertaken including²:
 - A. Mr Dixon delivered a briefing to the Honourable Steven Dickson MP, Minister for National Parks, Recreation, Sport and Racing, on 29 May 2012 in relation to the current status of RQL;
 - B. On 7 November 2012, a letter was sent to the Honourable Steven Dickson MP outlining the concerns held in relation to the dealings between Contour and RQL, and advising that a forensic audit would be undertaken of all projects involving Contour;
 - C. It is understood that the Honourable Steven Dickson MP subsequently referred the matter to the Auditor-General on approximately 14 November 2012;
 - D. On 20 November 2012, Mr Dixon confirmed with Mr Carter that the dealings between RQL and Contour had been referred to the CMC in accordance with s.38 of the CM Act;
 - E. On 23 November 2012, RQL prepared a draft report entitled 'Forensic Report - Contour'. The purpose of the draft report was to facilitate discussions between RQL, the Auditor-General and the CMC on 23 November 2012;
 - F. On 3 December 2012, RQL engaged Deloitte Touche Tomatsu to undertake an independent examination of its procurement processes. That resulted in Deloitte Touche Tomatsu preparing a report dated 29 April 2013 entitled 'Racing Queensland Limited - Examination of Procurement Processes'; and
 - G. That report set out various recommendations, which are in the process of being implemented by the current Board of QACRIB. A copy of the report was also provided to the CMC, the Minister for National Parks, Recreation, Sport and Racing and the Queensland Audit Office on 29 April 2013.
- (d) This sequence of events demonstrates that the new Board of RQL and QACRIB have sought to identify key governance issues and have had these issues appropriately managed and dealt with.

¹ See the statement of Kevin John Dixon sworn on 2 August 2013 at paragraphs 14 and 15.

² See the statement of Kevin John Dixon sworn on 2 August 2013 at paragraphs 16 to 22.

- (e) Set out below is further detail in respect of the key findings and actions undertaken in connection with the Auditor-General and the CMC.

5.3 QAO Report

Governance Issues Identified in the QAO Report

- (a) The key governance issues identified by the Auditor-General relate to the approval by the then Board of RQL of the Executive employee separation payout arrangements and the appropriate levels of information documenting the decisions and deliberations of the then RQL Board approving the Executive employee separation arrangements.
- (b) In respect of the content of Board papers, the QAO Report identified that there was inadequate recording of the RQL Board's deliberations and decisions in respect of the approval of the Executive employee separation arrangement. This was identified by the Auditor-General as poor governance practice.
- (c) In particular, it was identified in the QAO Report, at page 8 that:

"Board minutes did not adequately reflect the level of discussions and deliberations undertaken by the members in reaching their conclusions and decisions. Information provided by the directors and officers of the company during audit interviews confirmed that much of the information considered during the meetings was based on verbal rather than written submissions."
- (d) The Auditor-General also identified that two of the executives who stood to benefit financially from the separation arrangements were actively involved in the process of considering what the separation arrangements would be, and the process for the approval of such arrangements. This conflict of interest between their personal interests and the interests of the RQL were in the view of the Auditor-General not satisfactorily addressed by the Board.

Response to the Recommendations made in the QAO Report

- (e) The new Board of RQL and subsequently of QACRIB has undertaken steps including engaging an external consultant to provide advice in relation to its corporate documents and registers. As part of this process, the consultant has provided advice to QACRIB in relation to the preparation of draft Minutes. This has included the consultant attending a QACRIB Board meeting for the purpose of then providing feedback to the minute taker in relation to the Board papers and draft minutes. The consultant has also reviewed QACRIB's corporate registers and documents.
- (f) RQL, and subsequently QACRIB, has implemented the following steps after the release of the QAO findings:
 - (i) An external review has been conducted of the QACRIB conflicts and wagering declaration that is completed by all QACRIB staff and Board members.
 - (ii) Training has been provided to all Board members in relation to governance and conflicts of interests. This training was compulsory and attended by all Board members. This training was also provided to all managers employed by QACRIB.

- (iii) QACRIB now takes a more holistic approach to identifying and managing conflicts of interest. Although QACRIB considers that the external training is important, QACRIB considers that training alone is not sufficient. Board members of QACRIB and of the Code Control Boards are provided with the opportunity to obtain advice from the Corporate Counsel upon appointment and on an ongoing basis. A number of Board members have taken up this opportunity. Further, the management of potential conflicts are now reviewed on an ongoing basis to ensure that the management of any potential conflicts remains appropriate.

5.4 Deloitte Report

- (a) On 3 December 2012, RQL engaged Deloitte (with the agreement of the QAO and the CMC) to undertake a review of certain of RQL's procurement practices. As noted above, the events leading up to this engagement can be summarised as follows:
 - (i) For the period 1 July 2007 to 31 October 2012, Contour Consulting Engineers Pty Ltd (**Contour**) acted as the project manager for a number of the capital infrastructure projects managed by RQL and its predecessor entities.
 - (ii) Upon joining RQL in April 2012 as a director and Chairman, Kevin Dixon undertook a review of current RQL policies and procedures and the implementation of and compliance with the policies by the management of RQL. In the course of that review, Mr Dixon identified a number of instances where the relevant policy or procedure had not been complied with by RQL staff, including, in particular, in relation to the dealings between Contour and RQL.³
 - (iii) On 29 May 2012, Kevin Dixon briefed the Minister for Racing about the current status of RQL.⁴
 - (iv) On 7 November 2012, Mr Dixon directed Adam Carter (then acting CEO) to write to the Minister for Racing advising the Minister of the issues with respect RQL's procurement processes involving Contour.⁵
 - (v) The Minister subsequently referred the matters raised by RQL to the Queensland Audit Office.⁶
 - (vi) On 20 November 2012, RQL notified the CMC of its concerns in accordance with s.38 of the *Crime and Misconduct Act 2001* (Qld).⁷
 - (vii) On 29 November 2012, the CMC and the QAO agreed for Deloitte to undertake a forensic investigation on behalf of RQL.⁸

³ See the statement of Kevin John Dixon sworn on 2 August 2013 at paragraph 15.

⁴ See the statement of Kevin John Dixon sworn on 2 August 2013 at paragraph 16.

⁵ See the statement of Kevin John Dixon sworn on 2 August 2013 at paragraph 17.

⁶ See the statement of Kevin John Dixon sworn on 2 August 2013 at paragraph 18.

⁷ See the statement of Kevin John Dixon sworn on 2 August 2013 at paragraph 19.

- (b) On 29 April 2013, Deloitte provided RQL with a final copy of the report entitled "Examination of Procurement Processes" (**Deloitte Report**).⁹
- (c) The Deloitte Report made several recommendations in respect of the measures that should be adopted by RQL to improve its procurement related processes and procedures including (at Section 7, page 27 of the Deloitte Report):
- (i) Developing and delivering appropriate training on expected procurement processes within management. This was to include a number of key areas such as value for money, when to gain competitive quotes, providing awareness of the contracts register, understanding of conflicts of interest and completing appropriate documentation (**Recommendation 1**).
 - (ii) Updating and maintaining RQL's (now QACRIB) contract register. This was to include developing appropriate Key Performance Indicators for personnel responsible, ensuring management were aware of their responsibilities and incorporating the contract register into the Purchasing Policy (**Recommendation 2**).
 - (iii) Developing appropriate contract templates to provide consistency and completeness (**Recommendation 3**).
 - (iv) Conduct analysis on the procurement system to identify potential duplicate and/or false payments, in particular when changing or updating systems as there can be significant potential for errors and system manipulation (**Recommendation 4**).

Response to Recommendations

- (d) Since 1 May 2012, a Risk Consultant has been appointed.
- (e) In addition, a separate Compliance and Risk position is to be created within QACRIB. This position will have the responsibility for the creation and implementation of a more integrated and robust compliance and risk framework with QACRIB.
- (f) Set out below are the details regarding QACRIB's response to the specific recommendations made by Deloitte.
- (g) In relation to Recommendation 1, a procurement training program has been developed internally. This training program covers:
- (i) An introduction to QACRIB's purchasing policy; and
 - (ii) What is value for money and how it is measured.

An overview of the training program has been provided to Managers in the Corporate Services team. The training program is currently being refined and will be delivered to QACRIB staff over the next three months.

⁸ See the statement of Adam Bret Carter sworn on 2 August 2013 at paragraph 67.

⁹ See the statements of Adam Bret Carter sworn 2 August 2013 at paragraphs 67 to 68 and Kevin John Dixon sworn 2 August 2013 at paragraph 21.

Procurement training was also provided to the industry infrastructure group and some corporate services staff by Clayton Utz Lawyers.

Key staff, including legal staff and QACRIB's risk consultant, have attended the training, including:

- (i) Legal staff - public sector procurement training; and
- (ii) Risk Consultant - training by the Institute of Internal Auditors.

As a result of that training, changes are being made to QACRIB's procurement processes.

- (h) In relation to Recommendation 2, QACRIB's contract register is now updated and reviewed on a regular basis. Although there remain historical 'gaps' in the contract register, there is now a greater understanding within the organisation in relation to the process that is to be followed once a contract is executed.

A Contract Approval form is now completed for all new contracts entered into by QACRIB. The completed form and any supporting documentation (for example, a copy of the Board resolution approving the contract) are kept with the signed copy of the contract in the contracts register (both electronic and hard copy).

QACRIB is investigating its options to develop a database to improve the usability of the contract register and ensure that staff are able to see the key dates. QACRIB intends, in the near future, to incorporate the contracts register into such a database in order to improve functionability.

The following further improvements are also noted:

- (i) Because of the changes which have been made in relation to the contract template documentation, the Legal Team is usually aware of contracts at an earlier stage in the process. Therefore, it is less likely that a contract will not be included into the contract register .
- (ii) The Contract Approval Form is a checklist which covers the steps prior to execution and the steps post execution.
- (iii) It is now a performance measure for the Legal Team that if they review a contract, they must complete the Contract Approval Form and attach all relevant supporting documentation. Further, it is a requirement that the contract approval form is completed as part of the process of the creation of the contract and is to be included in the contract register. This is something that will be measured and reported against in the Performance Review process.
- (iv) It is intended that a spot audit will be undertaken on a quarterly basis to ensure that contract approval forms are being completed and that appropriate supporting documentation is being filed with relevant contracts in the contract register.
- (v) In addition to the above, a scanned copy of each contract and supporting documentation is now being taken. This is being done to ensure that if the original documentation is removed from the contract register (as has occurred in the past) that QACRIB has an appropriate internal record of the contract.

- (i) In response to Recommendation 3, a suite of template contract documentation has now been implemented including:
- (i) Contract Request Form;
 - (ii) Contract Approval Form;
 - (iii) Template Agreement Shell;
 - (iv) Template Deed Shell;
 - (v) Termination Deed;
 - (vi) Sponsorship Agreement;
 - (vii) Services Contract;
 - (viii) Venue Management Agreement; and
 - (ix) Licence Agreement.

In implementing the template contract documentation, QACRIB considers that the Contract Request and Contract Approval process are an integral part of improving QACRIB's overall contract and procurement processes. The Contract Request Form ensures that the Legal Team is aware of the intended commercial terms and the understanding by the Business Unit of the terms of the proposed agreement.

The Contract Approval Form is designed to be a checklist for the different stages of the contract development process that will assist both the Business Unit and the Legal and Compliance Teams in ensuring that all required steps and checks have been undertaken.

If a new contract is required to be drafted by QACRIB, the Legal Team within QACRIB is now involved in that process from the start. A Contract Request form is completed which provides an overview of the proposed arrangement/contract and outlines the key terms of the agreement. The Legal Team will then consider what type of contract is required in consultation with the relevant manager and prepare the draft agreement.

The process enables QACRIB to identify at an early stage whether there are any gaps in the process. For example, if the Contract Request is for a loan document to be prepared, it will be identified that the Treasurer's Approval may be required under the *Statutory Bodies Financial Arrangements Act 1982 (Qld)* at an early stage rather than that issue being picked up at a late stage.

The above process is a far more streamlined internal process and enables routine contracts to be prepared and reviewed in a much more efficient manner. It also highlights in a step by step way the issues that need to be considered for each contract.

- (j) In relation to Recommendation 4, QACRIB has engaged KPMG as its internal auditors after conducting a tender process for the appointment. Under the audit plan, the internal auditors will review the purchasing processes of QACRIB, including the issues raised in Recommendation 4.

5.5 Compliance Issues - Audit and Review

- (a) As detailed in Section 4.2 of this Submission, QACRIB has been the subject of several restructures which have contributed toward several governance challenges including regulatory compliance issues. In this section of the Submission, QACRIB will further detail these challenges and will outline the response that has so far been adopted by QACRIB.
- (b) As part of the transition from RQL to QACRIB, it was identified that there had been a piecemeal and inconsistent approach to compliance. As part of this process, QACRIB has undertaken an audit of its legislative compliance obligations as a statutory body.
- (c) QACRIB has identified the following two priorities which are underway:
 - (i) Preparation of a Detailed Statutory Compliance Manual. QACRIB is currently preparing a detailed Statutory Compliance Manual. It is intended to implement this Manual in early 2014 ; and
 - (ii) Preparation of a Racing Queensland Delegations Manual. This manual is intended to be wide ranging document that will cover both financial and non-financial delegations. Although the transitional provisions in the Racing Act provided for the transfer of polices from RQL to QACRIB, QACRIB considers, that as a statutory body, it should be aiming for best practice. Accordingly, it is currently undertaking a full review of its internal delegations to prepare a concise, consolidated delegations manual for the whole organisation. This is intended to improve all internal decision making processes and ensure that there is appropriate accountability and transparency in the decisions made by QACRIB. Examples of non-financial delegations that will be covered include licensing decisions.
- (d) The purpose of undertaking this exercise is to ensure that the organisation has an increased level of understanding of its legislative obligations under the Racing Act as well as under broader legislative frameworks (for example, Workplace Health and Safety, Environment and Public Sector Accountability). This is an ongoing process for the organisation.

5.6 Other Actions to Date

- (a) In addition to the responses and actions as detailed in paragraphs 5.3 and 5.4 above a range of other governance related actions, reforms and general improvements have been identified by QACRIB together with steps to implement these actions and reforms. These are noted in the statement of Adam Carter dated 2 August 2013 as follows:
 - (i) The updating of the purchasing procurement delegation policy. Financial and non-financial delegations were reviewed across the organisation and new delegations were imposed which are now strictly enforced;
 - (ii) The review of the corporate structure of the organisation, including the creation of clear lines of reporting. By way of example, there has been a reduction in the number of departments reporting directly to the Chief Executive Officer. There are now only three lines of reporting, being the

General Manager (Corporate Services), General Manager (Operations) and the Chairman of Stewards (Integrity and Stewarding);

- (iii) The full implementation of an IPOS system in or about May 2012;
- (iv) The introduction of process maps for procurement methods. This highlighted key aspects of infrastructure and non-infrastructure purchasing;
- (v) Procurement training to the industry infrastructure group, provided by Clayton Utz Lawyers;
- (vi) The introduction of a business process review group, to focus upon efficiencies across the organisation;
- (vii) The introduction of new template contracts as settled by Clayton Utz Lawyers;
- (viii) The maintenance of an updated contracts register;
- (ix) The appointment of a contracts administrator;
- (x) The engagement of a full-time risk management consultant;
- (xi) A detailed due diligence was undertaken as part of the transition from RQL to QACRIB, by Clayton Utz Lawyers. Responses to the material risks identified in this report are set out below;
- (xii) The review of all policies of QACRIB, including those mentioned above as well as human resources policies and the introduction of a fraud policy and control plan;
- (xiii) The introduction of single source monthly compliance reporting in respect of statutory obligations and funding deeds;
- (xiv) The introduction of quarterly plans, which are subsequently reviewed and reported to the Board of QACRIB;
- (xv) A deliberate shift in the focus of the organisation, to seek to work more collaboratively with stakeholder groups within the industry. This has included the implementation of a customer service charter, the scheduling of quarterly meetings with the stakeholder groups for the purposes of sharing information, as well as internally, creating a new mission statement for the organisation entitled 'CARE' (Collaborate Assist Regulate Enable) to seek to enhance workplace culture; and
- (xvi) The introduction of weekly corporate service meetings, and monthly management meetings with agendas, minutes, and action lists ensuring that staff are more accountable.¹⁰

¹⁰ See the statement of Adam Bret Carter sworn 2 August 2013 at paragraphs 288 to 289.

6.0 Specific Governance Challenges and Responses

6.1 Overview

- (a) Since the establishment of the new regulatory model and QACRIB as the new regulatory agency, a number of governance related issues and challenges associated with RQL have been identified.
- (b) In response, QACRIB has been identifying and implementing mechanisms, practices and procedures to address these governance related issues and challenges.
- (c) In this Section of the Submission, these governance related issues and challenges are identified and discussed. QACRIB will also highlight the responses that have been developed and implemented to date to ensure that these issues and challenges are appropriately managed going forward.
- (d) QACRIB notes that while these issues and challenges have been considered separately, many of these issues are interconnected and in some cases, one particular governance issue has facilitated or contributed towards the development of other governance issues.

6.2 Understanding the Role of the Board and the Risks of a Managerial Board Culture

- (a) QACRIB has identified that a key governance challenge that was present prior to the establishment of QACRIB was an understanding, both at a Board level and at the organisational level, of the proper and appropriate role of the Board.
- (b) It has become clear that the RQL Board was a "hands on" Board and became too focused on the day to day operations and management of RQL as opposed to being responsible for the strategic direction and oversight of RQL.
- (c) In support of this observation, the following submissions are made:
 - (i) The evidence provided to the Commission of Inquiry indicates that in his capacity as Chairman of the RQL Board, Mr Bentley took a "hands on" role such that he had a personal office at RQL premises and was constantly visiting his office and involved on a day-to-day basis with the operation and management of RQL.¹¹
 - (ii) A Board, and in particular the Chairperson of a Board, becoming involved at this level of detail with the day-to-day management and operation of the entity in question is a clear governance issue and is routinely recognised as not being the appropriate role for a Board or an individual member of that Board including the Chairperson;
 - (iii) The key risk for a Board adopting this approach is that the Board is at a greater risk of failing to undertake its proper role in terms of oversight and strategic responsibility for the direction of the whole organisation.
- (d) In response to these issues QACRIB has taken the following actions:

¹¹ See the statement of Adam Bret Carter sworn 2 August 2013 at paragraphs 91 to 104.

- (i) Training on conflicts of interest and governance has been provided to the Board and the executive staff of QACRIB. This training has covered the following core areas:
- A. The legislative and Policy Frameworks applicable to Board Members of QACRIB and the Code Control Boards. This included an overview of QACRIB's roles and responsibilities under the Racing Act as well as other legislative regimes which apply to QACRIB as a statutory body (for example, *Right To Information Act 2009*(Qld), *Information Privacy Act 2009*, *Crime and Misconduct Act 2001*, *Statutory Bodies Financial Arrangements Act 1982* (Qld));
 - B. Governance including the role of the various Boards;
 - C. Duties of Board members under the Racing Act and at common law; and
 - D. Understanding and the management of conflicts of interest.
- (ii) QACRIB has identified that training alone is not sufficient and constitutes only one aspect of a broader approach to improving governance standards. In this regard, the approach that has been implemented by QACRIB includes:
- A. Appropriate training to both Board members and staff;
 - B. Establishing clear protocols and charters for each Board. This includes communication protocols;
 - C. Providing for an ongoing review process. For example, Board Charters and Communication Protocols adopted by the Boards in May 2013 are now being reviewed after 6 months. This ensures the Boards remain aware of the protocols and that the protocols and charters remain relevant;
 - D. Improving the quality and timeliness of information provided to the Boards. For example, Board papers are now reviewed by the CEO and Corporate Counsel and are provided to the Boards a minimum of 5 days prior to the meeting wherever possible. There are now only limited exceptions when Board Papers are provided outside of this timeframe.
- (iii) On the appointment of the new Board changes to RQL's (now QACRIB) organisational structure were made to move the structure away from a "flat" managerial structure to a more pointed hierarchical structure so as to limit the number of persons directly reporting to the CEO and the chief financial officer.¹² The effect of this cultural change in terms of the Boards dealing directly with management is that, by limiting the reporting roles, it is now more difficult for Board members to identify staff who have responsibility for matters so as to prevent direct contact by individual Board members.

¹² See the statement of Kevin John Dixon sworn on 2 August 2013 at paragraphs 9 to 13.

- (iv) As part of each Board's Charter, a communication protocol has been adopted which outlines the process for communication between Board Members and QACRIB staff.

6.3 Understanding Conflicts of Interest

- (a) It has become clear that the previous Board (prior to 1 May 2012) and some RQL officers had, at times, difficulties in identifying and appropriately managing and dealing with conflicts of interest.
- (b) It is QACRIB's view that there are inherent difficulties in having board members (especially the Chairman) holding Board positions on the industry control body and any wagering entities (especially Tatts). It is submitted that the day to day operations of QACRIB involve decisions to be made at a Board level which are not able to be made without having regard to the interests of both the QACRIB and Tatts. It is often the case that those interests will not be aligned. For example, decisions in relation to race programming or changes to the race program are made on a regular basis. The interests of QACRIB and Tatts will not always be aligned in relation to these types of decision. A decision to transfer a race meeting or call off a race, may have a negative impact on QACRIB and a positive impact for Tatts or vice versa.
- (c) In dealing with the need to improve awareness and management of conflict of interest issues, to date QACRIB has undertaken the following actions:
 - (i) Training has been provided to Board Members and staff (both general and conflict of interest training). Further training will also be provided in relation to this issue;
 - (ii) QACRIB's Conflicts and Wagering Requirements Declaration Form has been externally reviewed and revised.
 - (iii) As part of the transition from RQL to QACRIB, employees were provided with an opportunity to update their conflict declarations. Employees have also been reminded of their obligation to continually update their conflict declarations if there are any changes. It is intended that employees will complete a declaration on an annual basis. This is designed to ensure that employees remain aware of their obligations in relation to conflicts of interest.

6.4 Ownership of assets by the Control Body

- (a) There has been widespread debate regarding the position adopted by RQL as an owner of assets and infrastructure that was constructed as part of the Industry Infrastructure Plan.
- (b) Some of the criticism of this approach was directed at what had seen as RQL forcing clubs into a position where funding (or other benefits) would be withheld unless the clubs agreed to allow RQL to have ownership or part ownership of the clubs assets.
- (c) The current position of QACRIB is set out in a summary way at paragraph 3.5 above.

6.5 Stakeholder Consultation and Engagement

- (a) It has been raised that the former RQL Board (prior to 1 May 2012) and RQL generally had difficulties in undertaking appropriate and meaningful stakeholder consultation and engagement.
- (b) The need to undertake more consultation with the industry sector is a key focus of QACRIB.
- (c) This is to ensure that stakeholder consultation and engagement processes are implemented in order to enable the restoration of meaningful relationships but also as a mechanism to assist QACRIB in making well informed decisions in respect of matters across the whole industry sector.
- (d) In response to these issues, QACRIB has undertaken the following actions:
 - (i) Implemented quarterly meetings with the Clubs;¹³
 - (ii) Appointed a Club Development Officer in order to assist the Clubs;
 - (iii) Implemented the "We Run As One Campaign" designed to unite the industry (across all codes and sectors). As part of the campaign, QACRIB is actively engaged with the industry. The industry has been provided with opportunities to provide QACRIB with feedback. Further details about the campaign can be obtained from <http://werunasone.com.au>;
 - (iv) Engaged with industry groups (for example the Breeders, Owners, Trainers and Reinpersons Association). This engagement includes holding workshops with the industry groups and its members at which QACRIB employees can respond to questions and concerns.

6.6 Corporate Structure and Reporting Relationships

- (a) It is apparent that the overall corporate structure of RQL, including the relevant reporting relationships and structures, caused difficulty in the broader management and operation of RQL.
- (b) In particular, the structure of RQL was very much a "flat structure" and as such was lacking a clear hierarchical based reporting and management framework. This is an issue in itself as a flat management structure can cause difficulties in terms of identifying responsibilities and accountabilities for roles and positions.¹⁴
- (c) The flat management structure was also critical to facilitating the RQL Board taking on a managerial style role in respect of its relationship with RQL. In this regard, individual Board members were readily able to identify and approach managers and less senior officers directly as opposed to approaching the CEO. In referring to the issues associated with a flat management structure in general terms, we would note the submissions made in paragraph 6.2 of this Submission in relation to this issue.

¹³ See the Statement of Adam Bret Carter sworn on 2 August 2013 at paragraph 289(p).

¹⁴ See the statement of Kevin John Dixon sworn on 2 August 2013 at paragraphs 9.

- (d) On the appointment of the new RQL Board, the observation was made that there were 7 separate areas each reporting directly to the then CEO. The prospect of having 7 separate areas each reporting directly to the CEO is indicative of an incredibly flat management structure that would require the CEO to be across a high level of detail in respect of the management and operation of RQL;
- (e) It has also been observed that the flat management structure meant that staff felt constrained in their roles and that any steps that they undertook had to first be approved by or discussed with either the then CEO or Mr Bentley (the then Chairman). This in turn caused a culture of staff awaiting directions as opposed to those staff proactively undertaking and discharging their employment related responsibilities;
- (f) The management structure at RQL also led to there being a lack of direction and consistency in the exercise of assigning or allocating specific tasks to officers with the most appropriate skill set to deal with those issues.
- (g) It has also been noted that the practice of staff in RQL was very much to await the Board Chairperson to provide them with direction as to what was required of them rather than them taking their own initiative. The fact that staff were actually waiting for direction from the Board Chairperson is indicative of a range of governance issues and challenges.¹⁵
- (h) In response to this particular governance issue, QACRIB has undertaken the following approach and implemented the following actions:
 - (i) The corporate structure of QACRIB has changed so that a more hierarchical structure to the organisation has been established;
 - (ii) The CEO is undertaking a review of the corporate structure of QACRIB to implement a structure which more appropriately reflects QACRIB's core functions and duties as the control body;
 - (iii) As part of the corporate structure review, a position for an internal Human Resource Manager has been created and a recruitment process for this position is currently underway.
- (i) There has been a move to ensure that staff are appropriately assigned to undertake tasks based on their experience and qualifications as opposed to any other type of consideration.

6.7 General Decision-Making Processes

- (a) QACRIB has identified that the general decision-making processes and procedures adopted across RQL were largely lacking in structure and consistency. Contributing factors in this regard included:
 - (i) Misunderstanding of roles and responsibilities of individual officers in the decision-making processes and consequently a lack of ownership and accountability in the decision-making process and final decisions;
 - (ii) Lack of expertise and allocation of decision-making processes according to expertise, skill and past experience;

¹⁵ See the statement of Kevin John Dixon sworn on 2 August 2013 at paragraph 12

- (iii) Failures to make decisions in a systematic and procedurally correct manner exposing RQL to legal risks such as judicial review proceedings;
 - (iv) A lack of forward planning and proper processes in the lead up to decision-making processes; and
 - (v) Lack of transparency or accountability in relation to decision-making processes.
- (b) In response to this particular governance issue, QACRIB has undertaken the following approach and implemented the following actions:
- (i) The introduction of an IPOS system, which requires that purchase orders be raised with the appropriate delegation and, when invoices are raised, they are matched against the appropriate purchase order;¹⁶ and
 - (ii) The actions outlined in paragraph 6.6(h) above.

¹⁶ See the statement of Adam Bret Carter sworn on 2 August 2013 at paragraphs 42 to 44 and 74