24 July 2013

Statement to Racing Commission of Inquiry

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Please find attached a written statement provided to the Inquiry in response to a document titled "Requirement to Provide Written Statement to Racing Commission of Inquiry" dated 5 July 2013.

If there are any queries or clarifications required concerning the statement please contact me as per the contact details set out below.

Yours sincerely

Michael Lambert

[redacted]

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I hereby certify that I have witnessed the signature of Mr Lambert in conveying this statement to the Inquiry.

M T Edelman
Solicitor, Admitted to Practice Law in NSW
24 July 2013

# Statement to Racing Commission of Inquiry

**Background**

My name is Michael Lambert and for the period from April 2002, when Queensland Racing was first established, until some time in the second half of 2009 I was a director on the board of Queensland Racing. In that capacity I was also the chair of the Audit Committee of the Board and a member of the board of Product Co, which oversighted the obligations of the various Queensland racing control bodies in respect to the Product and Program Agreement (PPA). I also was Queensland Racing's representative on the board of Racing Information Services of Australia (RISA) from the time that Queensland Racing joined RISA until my retirement from the board.

Prior to joining the board I had been the lead advisor to the Queensland Government on the review and restructure of then Queensland TAB which led to the creation of the PPA between the Queensland Racing codes and Queensland TAB. I subsequently advised the Queensland Government on the Initial Public Offering (IPO) of Queensland TAB.

I am currently a member of a number of boards and a consultant.

**Scope of Statement**

I have been provided with a copy of the Terms of Inquiry of the Commission. A number of the matters are expressed in very general terms such as items 1.1, 1.2, 2, 3, 4 and 8 on which I do not wish to comment beyond noting that in my period on the board I did not encounter matters that would raise concerns. On terms of reference 1.3 and 1.4, I have no information or experience to draw upon and items 5 and 7 occurred after the end of my period on the Board. Accordingly I have limited my submission to terms of reference 6.

**Queensland Race Product Co Limited and Tatts Group (paragraph 3 f of the terms of reference)**

I had involvement with respect to this matter on the basis of a number of my roles, namely as a member of the Board of Queensland Racing, a member of the board of Product Co, the chair of the Queensland Racing Audit Committee and, indirectly, as a member of the board of RISA.

By way of background, under the PPA entered into by the then three Queensland racing codes with the then Queensland TAB (subsequently UNITAB and then Tatts Group- referred hereafter as QTAB, referring to all these entities as successor organisations ) in 1998, each of the codes undertook to consult annually with Queensland TAB on the racing program and once agreed to supply the program and allow QTAB to conduct wagering on the program. As part of the agreement QTAB acquired through the Queensland racing control bodies access to and rights to wager on the Australian racing product and program. It needs to be noted that at the time of the execution of the PPA there was a Gentlemen's Agreement in place between each of the Australian racing control bodies in which each control body allowed each other control body free access to their racing product and program. Each racing control body had entered into an agreement with a wagering

organisation which paid a fee for access to and the ability to wager on that racing control body's product and program as well as having access to the overall Australian racing and product and program through the Gentlemen's Agreement.

The above arrangements were essentially the way that wagering organisations such as QTAB obtained the ability to conduct wagering on racing and in turn was the source of funding for each racing industry. The actual program of racing was supplied by RISA on behalf of the Australian racing industry to wagering organisations and book makers and for this RISA charged a fee for the publication of the information. This was a fee for the provision of the information in a convenient form and not a fee for the right to conduct wagering on the product and program.

In Queensland the three racing codes were members of Product Co which, as mentioned above, oversighted the relation of the racing industry with QTAB and the operation of the PPA. During my period at Queensland Racing the board was chaired by Tony Hanmer from Queensland Racing and I and Bill Andrews were the other representatives of Queensland Racing. The chair of Queensland Racing, Bob Bentley, was precluded from participation on Product Co owing to the fact that he was a director of QTAB.

During the mid-2000s there was considerable discussion in Australian racing about the trend of corporate bookmakers establishing operations in certain jurisdictions such as the Northern Territory and conducting wagering on Australian racing but without having to pay a fee, unlike bookmakers resident in the main jurisdictions and unlike wagering organisations such as the TABs . As the corporate bookmakers increased their market share, the revenue available to the TABs declined and hence the revenue available to the racing industry correspondingly declined. This was clearly unsustainable.

As a consequence the various racing industries sought the support of their respective governments to enact what was termed race fields legislation. Unfortunately this process was not handled in a coordinated manner through the Australian Racing Board but by each State racing organisation. What emerged was a series of state based race fields acts in which the racing industry in each jurisdiction imposed a fee on wagering organisations for wagering on the product and program of that jurisdiction. NSW was unique in this area as its Product and Program agreement with Tabcorp, did not allow for any offset of the fee it obtained from Tabcorp against any subsequent fees introduced by other racing organisations. In contrast, in the case of Queensland the PPPA stated that in the event that QTAB was charged a fee for access to part or all of the Australian racing product and program, that fee would be offset against the fee payable to Queensland Racing.

I cannot remember the particular circumstances but after a request from Queensland Racing , David Grace of Cooper Grace Ward wrote to Queensland Racing on the 18 November 2008 with advice on the following question: "whether the provision by Racing NSW South Wales of Australian Racing Product to UNiTAB for a fee , pursuant to NSW legislation, entitles UNiTAB, pursuant to clause 10.2© of PPA, to deduct the amount paid to Racing NSW from the amount of the Product fee payable under clause 10.1 to Product Co".

The advice provided made a distinction between the right of having **access** to race fields information and the right to **use** that information for wagering purposes. It concluded that the clause which allows QTAB to offset a charge against the fee payable to Queensland Racing ,clause 10, relates only

to the right of access to information, not to the use of that information for wagering purposes. Thus the legal advice concluded that QTAB had no right to deduct the race fields fee paid to Racing NSW against the fee payable to Queensland Racing. At the board meeting that considered that advice it was concluded that it was a Product Co matter and needed to be addressed by Product Co.

When the matter was discussed at Product Co, there was some resistance by the chair to undertaking any action on the basis that the advice was considered uncommercial and if pursued would create poor relations with QTAB. While I had some sympathy with the view that the distinction made in the letter of advice between access to information versus use of information was not commercially valid, I took the position that the legal advice raised an important matter that needed to be resolved and could not be ignored. In response it was argued by the chair of Product Co. that the cost of obtaining the opinion of a senior counsel, estimated to be between $25,000 and $50,000, was too expensive. The counterargument was that the quantum of the fees involved was many multiples of this and that not to pursue the matter would be in conflict with our corporations law responsibilities.

Eventually, after considerable delay and resistance, it was agreed that the chair of Product Co would in the first instance write to the Government and clarify what was the intent of the Government as expressed in the PPA in regard to providing access versus providing the right to use the information in clause 10. It was felt if the Government was able to clarify the intention then the matter could be resolved, not on the basis of legal interpretation of wording that could be faulty, but in terms of what had been the intention when the PPA was drafted and then executed. In the event that the Government confirmed that it had intended to make a distinction between access and use in clause 10, then we could pursue the matter with QTAB and seek to have the deductions refunded and avoid any further deductions. Alternatively, if the Government advised that there was no intention to make such a distinction and that it was intended to allow an offset for a fee payable for either access to or use of information, then we would then seek to amend the agreement to make that clear. Unfortunately the wording of the chair's letter to the Government was so general that it did not convey the issue and the response back from the Government unsurprisingly did not address the issue.

At the meeting at which we received the Government response to our letter it was agreed that we should go back to the Government, as suggested in the Government letter, and set out clearly what was the issue and obtain their specific advice. I was very surprised in subsequent conversation with the Product Co. chair after the meeting that he had decided not to follow up on the agreed course of action because the Grace Cooper letter was not directed to Product Co. I rejected this position on the basis that the Queensland Racing board had already asked Product Co to address the matter but could not get a positive response from the Product Co chair.

Subsequently, given the lack of action or intention to act of the Product Co. chair, I wrote to the board of Queensland Racing on 23 June 2009, setting out the background to the matter and with a recommendation that a letter be drafted by management to issue to the Minister for Racing seeking to clarify the specific intention of the Government in drafting section 10 of the PPA. I had discussed this matter with Mike Kelly, the head of the department of racing who supported this course of action. My memo to the board pointed out that the matter needed to be resolved and to not act

would leave "the Board open to the accusation that it acted to favour UNiTAB at the substantial cost of the industry and possibly leaves open members of the board to legal action by members of the racing industry".

Despite the representation to the board no action was taken at that time and as far as I am aware no subsequent action was taken.

**Conclusion**

In my view the board of Queensland Racing was deficient in the pursuit of its duties in respect to this matter. It obtained a legal advice that needed to be followed up but failed to undertake any action to that effect. I am not saying that this resulted in a loss of substantial revenue though there is that possibility. However, regardless of the ultimate outcome, the board failed to act and allowed an important issue to remain unresolved.