QUEENSLAND RACING COMMISSION OF INQUIRY

Commissions of Inquiry Act 1950

SUPPLEMENTARY STATEMENT PURSUANT TO SECTION 5(1) (d).

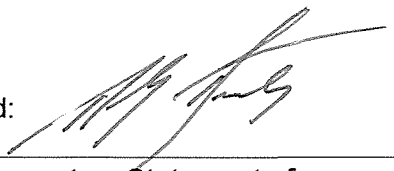
I, **ROBERT GEOFFREY BENTLEY** care of Level 10, 300 Adelaide Street, Brisbane, Queensland 4000. Company Director, do solemnly and sincerely declare as follows:

1. In this supplementary statement, I attach some documents which I have in my possession which I believe will better inform the Commission of matters raised in my earlier statement. I also comment on some of the allegations that have been made in statements by other people. It is not an exhaustive analysis of every allegation that is made against me but rather is the best that I can do given the short time that is available to me and the resources that are available to me.

2. Through the course of 2009, being the period leading up to the merger of the three codes, QRL prepared a paper, "A case for change". I referred to that paper in my earlier statement. Annexed and marked "**RGB 1**" is a copy of that paper.

3. Around the same time period, an issues paper was prepared as well by QRL which went to the government. Annexed and marked "**RGB 2**" is a copy of that issues paper.

4. In about May 2011, due to LNP policy and the general view in the industry that if the LNP won government at the next election, there was a concern held widely in RQL that RQL in its current form would not be permitted to continue as the control body. RQL sought advice from Barry Dunphy of Clayton Utz as to what the government could do that would affect a change in RQL. Annexed hereto and marked "**RGB 3**" is a copy of the discussion paper that Clayton Utz gave to RQL.

Signed:  Taken by: 

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5. The concern that I felt (and others at RQL obviously felt) that a change of government would bring about an immediate and substantial change in RQL was borne out by the events that occurred immediately after the election in March 2012. The speed with which the new LNP government wanted to step in and effect change in RQL was incredible, given that one could be forgiven for thinking that the new government would have far more important things to deal with than worrying about the control body of racing.

6. In response to correspondence dated 28 and 29 March 2012, I wrote to the new minister on 5 April 2012 setting out proposed arrangements during the transitional period. Annexed hereto and marked "**RGB 4**" is a copy of my letter to Minister Dickson dated 5 April 2012.

7. I also wrote to the director-general on 16 April 2012. Annexed hereto and marked "**RGB 5**" is a true copy of my letter to Mr Glaister, director general of the Department of National Parks, Recreation, Sport and Racing dated 16 April 2012.

DIXON

8. In relation to paragraph 4 of the statement of Mr Dixon dated 2 August 2013, I cannot recall Dixon asking me why we were using Contour.

9. In relation to paragraph 5, it would not be a matter of the BRC 'resisting' any urging on our part to use Contour. If it was money being spent by BRC then that was a matter for the BRC.

10. I am unable to respond to what Dixon says in paragraph 6 as I cannot recall any such discussions.

11. As to paragraph 11, Mr Williams was not working at QRL when the synthetic track at Toowoomba was being done. The reason Mr Sanders was involved in dealing with the synthetic track at Toowoomba was because he was the Chief Steward at the time. He had been involved in the initial investigations into the choice of synthetic track, and as there would be issues of safety involved, I believe it was appropriate that the views of the Chief Steward be listened to.

12. In relation to paragraph 27, the discussions initially were more generally in relation to dealing with media providers, and not simply Sky Channel.

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13. In relation to paragraphs 28 to 32, the reason for the BRC wanting the sign on fee to be refunded to Sky Channel was that it would be redistributed from Sky Channel to clubs, of which the BRC would obtain a much larger amount, being the largest metropolitan club. As far as I can recall:

    (a) the sign-on fee that was negotiated by the consultant engaged by RQL was paid direct to RQL;

    (b) it was not asked to be paid to RQL, but that is what eventually occurred;

    (c) The BRC played the lead role with the clubs in selecting to go with Sky Racing over TVN;

    (d) when Mr Dixon on behalf of the BRC wanted the sign-on fee refunded so that it could be paid directly to the race clubs, with BRC getting the lion's share. That is what happened.

FRAPPELL

14. In relation to paragraph 5 of Mr Frappell's statement dated 26 July 2013, he exaggerates his influence. What he says is not correct. I was the person pushing and negotiating with the DPI [Mr Vargese director of the DPI] in relation to pushing for vaccinations. Mr Frappell was a committee representative of the TBQA. In fact, I negotiated so that compensation went to the Blood Horse Breeders and Farriers. RQL mobilised staff to carry out extensive vaccinations for the industry.

15. I refer to paragraph 8 of Mr Frappell's statement. I dispute what he says. Mr Reid Sanders, the Chief Steward, was involved in discussions concerning the cushion track in Toowoomba. It was his professional opinion, as a matter of safety, that the racing should not be done on the inside track. That is properly a matter for the Chief Steward to express an opinion. I was certainly not going to go against what his advice was.

16. The use of the inside no2 track at Toowoomba was discounted by Mr Sanders as unsuitable for racing for, the following reasons. The track was too tight on the turns and field sizes would have to be severely reduced from available starting positions and would affect the quality of TAB wagering.

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17. Sky channel were concerned at the time over the state of the grass track [dust causing poor vision and cancellation of meetings due to minimal rain making the track slippery and unsafe].

18. I am also informed by Mr Stewart, the former chair of the Toowoomba Turf Club, and verily believe that the jockeys had concerns over safety. The jockeys refused to race on the no 2 inside grass track at Caloundra over safety considerations in 2012 and the Caloundra no 2 track is considerably bigger than Toowoomba inside number 2 grass track.

19. In relation to paragraph 9, I think Mr Frappell's recollection is incorrect. My view at the time, and I am sure I would have said it in these terms, was that if you have a cushion track then we would look to increase the number of race meetings to 70. As Toowoomba had been scheduled to have about 52 races per year, I believe this is how Mr Frappell comes up with the idea of the extra races. But it was not a matter of QRL choosing to allocate extra races just because the club decided to go with the cushion track. There would be a lot of other considerations to increase race meetings at any venue.

20. In relation to paragraph 10 and 14, Mr Frappell did not argue against the cushion track. In fact, my understanding is that he was in favour of it. If the Commission wants to explore this issue further then I think it should speak to Neville Stewart who was chairman of the Toowoomba Turf Club at the time.

21. In relation to paragraph 16 of Mr Frappell's statement, I am informed by Neville Stewart and verily believe that the closure of the membership was because those opposed to the cushion track were trying to stack the membership with numerous applications for membership and the problem was that with the facilities for members available at the track, the fire service advised him that it would be unsafe to have more than a certain number of members in attendance. I understand that if the files of the club are checked then the advice from the fire service will confirm this.

22. I am also informed by Mr Stewart and verily believe that when the matter went to the vote, due to complaints that had been made by those opposed to the cushion track who protested about proxy votes, no proxy votes were counted, but if they were counted, then the result would have been further in favour of the cushion track proposal.

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23. Mr Frappell is wrong in relation to paragraph 19 to 24 of his statement. QRL was not insisting on all funds being repaid. The costs of the cushion track were funded, in part, by a grant of about $4 million from the government (part of the $12 million fund that we secured from the government for urgently needed work on several tracks) and from further moneys put up by QRL (of about $6 million). However, there were other works done at the request of the club. It was those moneys that QRL wanted repaid. QRL started withholding moneys from the club to offset what the Toowoomba Turf Club wasn't paying. The terms of a settlement subsequently negotiated reflect this.

24. In paragraph 29 of his statement, his recollection is again faulty. The year of the election of board members was 2009, not 2010.

25. In relation to paragraphs 29 to 31, I did indeed speak to Peter McGaurin when he approached me. The conversation was pleasant and he asked how come Frappell and I were in dispute.

26. My reply was that I was disgusted with Frappell's behaviour that night, banging his fork loudly on the table during any speech that I or a board member gave. McGaurin was clearly embarrassed. I would be most surprised if McGaurin would say "Bentley's out to get you'.

HARRIS

27. I refer to the statement of Ms Harris dated 19 August 2013.

28. I deny the allegation that I asked Ms Harris to make a false statement about another board member and a member of the Harness Racing Board.

29. I dispute her allegation that I controlled the day to day operations of RQL. Mr Harris was only at RQL for a short time.

30. Ms Harris' perception of my interest in wagering information is, in my opinion, coloured by her allegiance to the former Harness Board. Of course, I would be interested in wagering information. I was chairman of RQL and by far the major source of funding of the company's business depended on the percentage of wagering revenue that was occurring. With the introduction of race information fees, it was important to know how RQL was progressing in the recovery of revenue from those sources.

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LETTE

31. I refer to the statement dated 30 July 2013 that Mr Lette has provided in relation to Queensland Harness Racing Limited. Attached to that statement is a summary of evidence prepared for Mr Lette in relation to the court case where that company sued Racing Queensland Limited and myself. Mr Lette, in his statement verifies the summary of evidence. I dispute that evidence. He fails to refer to the letter that I wrote to him on 5 February 2010, a true copy of which is annexed and marked "**RGB 6**". I know that the letter was in fact received by Queensland Harness Racing Limited on the morning of 8 February 2010.

MATHOFER

32. I refer to paragraph 70 of Mr Mathofer's statement dated 9 August 2013 where he says that he often supplied wagering information directly to me. This statement is correct and the supply of this information is not in conflict with any duties I may have had. I needed to keep a constant note of the wagering returns from each code as the inter code agreement ceased on the amalgamation and returns by code was important as to the health of each code. The situation needed monitoring as the Harness code was receiving a percentage of the revenue yet was producing less than that same percentage of the wagering return. In contrast, the Greyhounds were receiving a smaller percentage of the revenue than harness and were producing a higher percentage of wagering turnover.

REYNOLDS

33. In relation to paragraphs 11 to 13 of Ms Reynolds' statement dated 26 July 2013, I can only assume that she is not fully informed as to the true facts and is not aware of my letter to Mr Lette of 5 February 2010.

SEYMOUR

34. I also refer to the statement given by Mr Seymour dated 16 August 2013. He is critical of me in relation to alleged representations made by me leading up to the merger of the three codes which led to the litigation where Queensland Harness Racing Limited sue RQL and me. I note that Mr Seymour refers to a summary of evidence that he would give in respect of that case. Just like the summary of evidence of Mr Lette for that case, there is no mention of my letter to Mr Lette dated 5 February 2010. I am aware that a copy of that letter went to Mr Seymour's office on 8 February 2010.

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35. Unfortunately, I am prevented from adequately defending the attacks that are made on me about the issues in that case because RQL, under the current control of those in charge of the All Codes Board, refuses to waive privilege in respect of the files which I would need to adequately defend the attacks that have been made on me over this issue.

36. I believed, for good reasons, and still believe that RQL and I were on solid grounds to defend the case, that the case against RQL and me was very weak and was only being maintained against RQL and me until there was a change of government and policy.

WATSON

37. I refer to the statement of Ms Watson I believe her criticism of me is coloured by her removal as a director of RQL. She was only a director of RQL for a few months. She is not in a position to state how often I was at the office of RQL as she was not there all the time either.

38. I dispute her assertion that the vote on the board of RQL was often 5 to 2 with the harness racing (Bob Lette) and greyhound racing (Ms Watson) appointees (constantly outvoted. The board minutes will reflect the true situation.

ANDREWS

39. I refer to Mr Andrews' second statement dated 27 August 2013. Mr Andrews fails to mention that at the second vote that was taken in late 2009, when he was unsuccessful in being elected as a director, he in fact received the least number of votes of any candidate.

40. In relation to paragraph 8 of that statement, I say that Mr Lambert was a good director when he was engaged. However, I recall speaking to him on at least one occasion that he was spending too much time checking messages on his mobile phone during board meetings and if he could not give RQL his full attention then he should consider his position. Mr Lambert did admit that he had a heavy workload at the time. This was the rationale not to reconsider my decision to reopen the nomination process. I would have had no problem if Mr Lambert had wished to renominate at the time.

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LOGAN GREYHOUND FACILITY

41. I refer to paragraph 15 of the statement of Mr Stitt dated 3 September 2013. I say that leading up to the merger of the codes, I was not adverse to the retention of the proposed Logan facility for greyhound racing in future plans for racing facilities. However, as more investigation was carried out, it was ascertained that the planned facility had inadequate security. The land had underlying problems as it was previously used as a dead animal dump and methane breathers were still evident and working. Further, the financial viability of the completed facility would need to have been underpinned by catering, yet it could not be enough to support the proposed facility. An independent assessment was carried out on the proposed project and that led to scrapping of the plan. No one associated with the greyhound racing board disclosed to me any of these difficulties in the lead up to the agreement to merge the codes.

ADAM CARTER

42. I refer to the statement of Adam Carter dated 2 August 2013.

43. In relation to what he says in paragraph 53 of his statement, I say that I signed the Contour contract after it was brought to my attention that Contour did not have a formal written contract. I considered it an oversight and not deliberate as we were working with them constantly over a period of time. The lack of a formal contract was not brought to my attention earlier. I always considered that Contour was engaged by RQL as a preferred supplier. The lack of a formal written contract only came to light as part of the process when we were seeking reimbursement of expenditure from the government.

44. Mark Snowden was engaged early in 2010, having extensive industry experience in building project management and he reviewed the rates charged by Contour. My recollection is that the Contour rates were considered by him to be reasonable. I also asked him to review the rates in 2011 (I cannot recall the date). I recall that his opinion at that time was that the rates charged by Contour were satisfactory by his standard.

45. On signing of the contract I checked with Mark Snowden that the rates quoted were consistent with a letter on file which was the October fee proposal.

46. In relation to paragraph 64 of Mr Carter's statement, I do not believe what he says is entirely correct. I do not recall directly approving any invoices of Contour for such

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works. However, I certainly was aware and approved of contour working on design concepts for the infrastructure plan.

47. In relation to paragraph 73, I may have signed off on some invoices relating to the cushion track in Toowoomba, but I cannot recall. If I was in the office at the time, then if there was something that I had knowledge about then I probably did see some of the paperwork such as invoices.

48. In relation to paragraph 93 of his statement, I agree with Mr Carter that I would visit the office at Deagon two to three times a week on average. Sometimes it may have been more and sometimes less.

49. In relation to paragraph 94, on the departure of Wendy Thomas as board secretary, her office became vacant so I occupied it. Prior to that I occupied a small desk in the corner of the CEO's office and any discussions or meetings were held in the boardroom. Also during this period when Mal Tuttle had meetings I would work in the boardroom.

50. In relation to paragraph 95, Mal Tuttle never complained to me about this. However I concede that sharing the office would have been a distraction. What Adam Carter says probably did happen on occasions but I would normally conduct discussions in the boardroom if not was not booked for other meetings.

51. In relation to paragraph 97, I did not see anything unusual in my seeking information about the business from the executive. I believed directors were entitled to receive information.

52. I do not recall any such instances as Mr Carter refers to in paragraph 98.

53. In relation to paragraph 103, what Mr Carter says is not correct. RQL hired a leading media consultant on behalf of the clubs who liaised with the CEO. RQL paid for the consultant at no charge to the clubs. The deal was that RQL would engage a consultant and deal with the rights of the clubs for the purpose of obtaining the best outcome. Previously the clubs negotiated separately and the QTC [chaired by Kevin Dixon] obtained a superior outcome and the lesser clubs scrapped for the crumbs. On obtaining the best price for the amalgamated rights, the clubs would retain the right to accept or reject the deal. Under this new arrangement the share to each club would be sorted out in consultation with each club individually with the media consultant.

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54. The clubs retained the right to choose the media provider once the final bid was lodged. The clubs met and unanimously selected Sky Channel over TVN. There should be a record of that meeting. The bulk of the work and contact was between the CEO and the consultant and I attended meetings when requested. However. I was kept informed all through the process.

55. In relation to paragraph 104, the only correction I would make is that the TTC was to pay RQL for the maintenance of the track. Mr Carter's statement is around the wrong way. There is a contract for the maintenance of the cushion track.

56. In relation to paragraph 126, expiry of the Product and Programme Agreement was simply a reference point. It would be a time when major changes to the racing economy might take place. The infrastructure plan and obtaining government funding was the main consideration in my mind at the time.

57. In relation to paragraph 165, I do not recall Tony Hanmer being in the meeting with me when I spoke to the senior executives.

58. In relation to paragraph 168, the conversation was not as Adam Carter recalls. I said to him that I would want him as acting CEO if he accepted the role, and he said he would. I don't recall him asking if he had a choice.

59. In relation to paragraph 169, I dispute Adam Carter's recollection. My recollection is as stated in my earlier statement, that I spoke to Adam Carter to check that there was sufficient cash to make the payouts and he confirmed that this was the case but he would need to access a deposit with the bank at call. I instructed Adam Carter to have the payout figures checked.

60. In relation to paragraph 173, I do not believe I directed that the resigning senior executives be paid immediately. I had asked that the calculations be checked.

61. I refer to paragraph 47 of Mr Adam Carter's supplementary statement dated 30 August 2013. During the trip to the UK we travelled approximately 2,000 miles and visited numerous race tracks and training facilities that utilised a synthetic surface. On that trip were myself, Reid Sanders (chief steward), Tony Hanmer and Murray Weeding (Caloundra track manager). The trip to the USA was undertaken only by myself and Reid Sanders. The reason for that trip was as a result of hearing claims that the synthetic tracks are failing especially Santa Anita in California. The claims had been relayed to me by Neville Stewart who had been the chairman of the Toowoomba Turf

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Club. The trip was 4 days including travel. Mr Sanders and I learned that the Santa Anita track was failing due to incorrect maintenance, poor hygiene and people not following the manufacturer's instructions, and that the supplier who was asked to fix the track in Santa Anita had made it worse voiding the warranty. This is the prime reason that RQL did a maintenance contract with the Toowoomba Turf Club as we did not want such problems repeated in Toowoomba. The Toowoomba Turf Club were supportive to allow QRL to accept the responsibility of track maintenance.

WILLIAM SEXTON

62. In relation to the statement of Mr Sexton dated 30 August 2013, I do not propose to respond to matters that are outside of the relevant period covered by the terms of reference. Further, I do not accept his wild and unsubstantiated expressions of opinion. His comments about the selection of the cushion track as the type of synthetic track that was chosen are ill-informed. I will await a direction from the Commission as to whether it requires a response from me in relation to such comments.

MARK SNOWDEN

63. I refer to section 2.2, paragraph 1 thereof in the statement of Mr Snowden. I do not believe I attended most Project Control Group meetings. I attended from time to time when requested, and on those occasions my interest was to keep informed of where things were at as I may have had to give the government an update.

BARRY DUNPHY

64. I refer to the statement by Mr Dunphy dated 5 September 2013. In relation to paragraph 14 thereof, I say that at the time of giving instructions to Clayton Utz in May 2011 to take over the litigation brought by Queensland Harness Racing Limited against RQL and me in relation to the Albion Park issue, I was not aware that Clayton Utz had been acting for Queensland Harness Racing Limited in relation to advice on the redevelopment proposal for Albion Park. I only learned of that recently.

65. In relation to paragraph 30 of his statement, I do not recall being at the meeting on 4 July 2011 to which Mr Dunphy refers.

66. In relation to paragraph 34, I do not believe I actually agreed with the specific percentage of 50% as an increase to salary levels, but I do concede that I believe the

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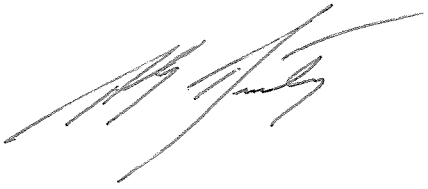
four executives in question should have a substantial increase. Clearly the figure of 50% was discussed at that time. Regardless of any view I may have expressed at that time, I don't believe that suggestion went to the board for approval, of if it did, then it certainly was not agreed.

67. In relation to the draft board paper that is mentioned in paragraph 36, I believe it was drafted as based on discussions held at the time but I do not believe that I actually drafted it. Regardless of who drafted it, it did not go to the board.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867*.

SIGNED AND DECLARED)
at Brisbane)
on 11 September 2013:)
in the presence of:)



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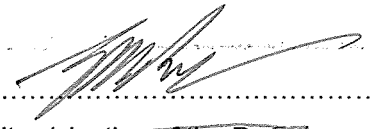

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Solicitor / ~~Justice of the Peace~~

QUEENSLAND RACING COMMISSION OF INQUIRY

Commissions of Inquiry Act 1950

ANNEXURE

Annexure **'RGB 1'** to the Supplementary Statement of **ROBERT GEOFFREY BENTLEY** authorised 11 September 2013 at Brisbane.

Robert Geoffrey Bentley

Solicitor

Annexure to Supplementary Statement of Robert Geoffrey Bentley

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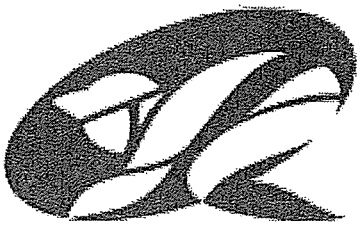


QUEENSLAND
RACING

QRL Constitution
The Case For Change

Overview

The purpose of this submission is to recommend a suitable structure for the Queensland Racing Industry (QRI) and follows discussions with the Premier, Honourable Anna Bligh and Treasurer, Honourable Andrew Fraser MP on a transparent and workable industry structure that encapsulates the best principles of independence and commercial governance for the control body structure for the racing industry.

The recommended structure is simple and commercially sound and recommends the amalgamation of the three racing codes in Queensland into a single control body structure.

Evolution of historical structures

Queensland has always led the way with structural reform in racing administration in Australia and has paved the way for other states to modernise their control body structure. In saying this, the existing Queensland model is a watered-down model of what was originally intended from the significant reforms made in 2001/02. The original model was compromised for political purposes and sectional interests existing at the time it was established.

Notwithstanding, Queensland, is still 5 years ahead of other States but the current governance model is not sustainable in the longer-term if Queensland is to maintain the strength of the current industry. There are numerous references in reform papers by various governments that espouse all the good principles of governance and control yet the final outcome in respect to racing administration is never the optimum model and leaves the industry still captive to the historic and compromised "colonial" system where race clubs hold sway over industry progress.

The club committee voting process

Before embarking on the rationale for the control body changes, it is well to examine how the club and industry associations arrive at their vote to cast at control body elections, and what percentage of the industry does the vote represent.

Race club elections are poorly supported, on average, a 20% vote is considered a good membership response. The clubs, through the constitution, control 9 votes at QRL elections. Those with the responsibility to vote represent a minority interest at best.

The industry associations fair no better, with the Queensland Breeders Association holding 1 vote, yet represent less than 50% of the industry with the 5 largest breeders not members.

The Trainers Association has 2 divisions with one organisation holding 1 vote and the other nil.

Should the clubs have a vote?

It can be seen that any notion that representation is important is not born out by the enthusiasm to participate. Most race club members have no interest in racing administration or racing integrity – what interests them is the social interaction at race clubs and punting.

The concern that has always been expressed by those that work within the racing industry and rely on it for their financial security has been that that club members paying $150 a year club membership fees and electing an amateur race club committee are indirectly controlling the future of the racing industry and the financial well-being of 30,000 employees within the QRI.

Club members are participants for their own pleasure and their involvement in the racing industry is a social activity. In contrast 30,000 Queenslanders rely on the racing industry for their livelihood and they need an independent control body to guard their future. The very notion that the racing industry can be controlled / influenced and its destiny directed by a minority of club members who have no financial interest in the industry is absurd.

The club membership exercising control over an industry is not a commercially sound model and the track record of the club system is abysmal. The clubs, with few exceptions, are poorly run, have little or no innovation, are racked with financial mis-management that borders on fraud but continue to agitate, cause disruption, and seek control of an industry that that they would have no possible ability to manage.

Race club committee members, as a general rule, have no financial interest in the racing industry and occupy these positions for the supposed 'prestige' that appointment to a club committee holds. They stand to suffer no adverse consequences from a decline in the health/performance of the racing industry.

What is even more concerning is that despite the lack of involvement these organisations and people have in the serious aspects of the racing industry Governments continue to listen to these vested interests and meet with them every time they want to agitate for their own self interests.

Observations on the Australian experience

From a review of recent Australian experience, the following observations can be made or conclusions drawn.

- *The role of State governments has been important in bringing about governance change. In some cases it was the State government with its various forms of vested interest (e.g. in industry tax revenue) that was pressing for change. There was widespread recognition that racing would be forced to change whether it wished to or not. However, the Australian advice was to keep the Government, so far as possible, at arms length. State racing authorities in Australia are very vulnerable to changes in state level government and even to changes of Minister.*

- *Control of state level racing authorities has, historically, been dominated by race clubs – many of the reforms have been to ensure that other stakeholders gain a more direct role in the governance process.*
- *Private ownership of the TABs (except in Western Australia) has created the need for the various parties involved in Thoroughbred racing to address important industry relationships e.g. with Tabcorp, as a common issue.*
- *During the various governance change processes, the dominant metropolitan race clubs were keen to maintain their position but rural racing clubs have had considerable political leverage.*
- *The principal objective of changes to governance structures has been to replace representative, club focused boards with skills-based boards to gain both an industry best interests focus and to improve the calibre of leadership.*
- *Although their influence at the governance level has been deliberately reduced, race clubs are still considered a very important component of the industry but in terms primarily of 'putting on the show' (i.e. mounting race meetings, gaining local sponsorship, providing a good on-course experience etc).*
- *There is general agreement about the preferable size (7-9) and necessary skills of boards capable of effective governance of the racing industry. These include racing industry knowledge, financial literacy, commercial savvy, political nous, ability and willingness to participate in the industry. Boards at the larger end of the size range are considered preferable because of the perceived workload (including the need for board members to be visible at racing events and other industry gatherings).*
- *Appointments should initially be of sufficient length (three to four years) to enable directors to get on top of the job and to enjoy extended but not unlimited terms (up to eight or nine years) provided their performance is satisfactory.*
- *Most current governance structures are compromises in the face of political realities and there are still unfulfilled ambitions for governance change – particularly in terms of the peak body having greater control over industry assets for the sake of achieving greater efficiency and effectiveness (e.g. distribution of venues, marketing, etc).*
- *Changes in governance structures and processes must be owned by and driven by the board.*

Current control body

The control body structure must be independent of the club system and those participants that the constitution and the *Racing Act* sets out to license and administer. The Government attempted to achieve this outcome with the enactment of the Racing Act and establishment of corporate entities as racing control bodies. However, due to political constraints that existed at the time and the impact of AR1[1] the government was not able to fully implement its

[1] The explanation of impact this rule had on appointments to control body board is explained later in the paper.

preferred model and had to compromise the final model that still provided considerable power to the club system.

The constitution through necessity adopted the present voting structure at its inception when the QRL constitution needed to comply with a tightly administered Australian Rule of Racing A.R.1. The strict application of A.R.1 meant that there could be no "appointees" other than by clubs and industry associations to a control board. This 'rule' protected the status quo and kept governments out of the supervision of racing as well as protecting the traditional, inefficient, amateur administrations. In short, if a director candidate is not suitable to the clubs then there was no way of securing a control body position.

The strict adherence to A.R.1 and the 'appointments' no longer exist.

Currently, the QRL constitutional 'initial term' has expired leaving the control body directors in a 'no win' situation. Directors are reliant on the goodwill of the clubs and industry associations to effect their election or re-election. Decisions that are necessary to protect/enhance integrity, and vital for the progress of the industry, but may have a detrimental effect on a particular sectional interest, immediately alienates that sectional interest and directly influences the director's tenure.

The current election process of stakeholder voting on directors to hold office compromises director behaviour. This is unacceptable and poor governance and creates a serious integrity issue for the Government.

The current voting system is neither appropriate, nor commercially acceptable, for a regulatory control body responsible for the integrity of a code of racing.

The current system is open to manipulation and director candidates are not necessarily elected on merit - a candidate will be supported as a nominee of a sectional interest, and by any fair assessment, the process is compromised. I will deal with this later in this submission as an actual occurrence on two fronts applicable to the, *Andrews v QRL* Supreme Court trial.

Unfortunately, the 2009 election process has seen the start of the prostitution of the current constitutional voting process. Candidates for control body consideration or election going forward will be reliant on the club vote to be elevated to the control body board, unless urgent change is forthcoming.

The clubs are well aware that the current process affords them the opportunity to take control, a process that they have relentlessly pursued constantly since the establishment of the Queensland Thoroughbred Racing Board as the control body in 2002.

Pre 1981

Prior to 1981, the then Queensland Turf Club (QTC) was the body responsible for racing administration in Queensland. This model reflected the colonial structure of racing administration that had existed in Australia ever since European settlement and was modelled on the English model of racing administration that existed at the time.

This system championed the ruling class controlling what they referred to as the 'Sport of Kings" and was characterised by all the worst examples of upper class English society that was attempted to be replicated in the Australian colony. At the forefront of this structure was the QTC who subsequently had over 100 years involvement as the administrator of Queensland racing. Is it any wonder the QTC continues to agitate to a return to the past where race clubs ruled supreme with no oversight of their activities.

Notwithstanding the recent establishment of the Brisbane Racing Club (BRC) the former QTC committee members and their supporters continue to shape the actions of the BRC in the tradition of the QTC approach to racing administration.

1981 - 2001

In 1981, legislation established five principal clubs as the control bodies for the thoroughbred code in Queensland. However, the four regional principal clubs were effectively marginalised and controlled by the fifth – the QTC. In effect, the QTC still ran racing in Queensland.

Following a review by the Goss government in 1992, the five principal clubs were abolished and replaced with one control body, the Queensland Principal Club (QPC). The appointment of persons to the Board of the QPC was by direct nomination by clubs and regional associations. This resulted in major conflicts of interest for the members of the QPC who did not vote on matters in the interests of the thoroughbred code as a whole but in the interests of the race club that they represented. By 2001, the Board of the QPC had become so controlled by the vested-interests of race clubs it was incapacitated and unable to effectively make decisions.

In 2001, the Beattie government abolished the QPC and established the Interim Thoroughbred Racing Board to manage the process of transition to the Queensland Thoroughbred Racing Board that was established in 2002.

There is no doubt that the government in removing race club control would not want the industry reverting to, the *'old ways and old days'*, of the past.

2002

The government dispensed with the representative control body model and adopted a skills based board appointed to control the industry and bring forth a more permanent structure. Those that sought the control did not achieve their desired appointees on the board and protested at great lengths to overturn the decision. The tactic did not work despite negative publicity in the Courier Mail and the lobbying of Bill Carter and the QTC.

2004

The Beattie government, at the urgings of the then QTC / Bill Carter / Gordon Nuttal and the Courier Mail, were coerced through false information to schedule the Shanahan Inquiry with the purpose of giving legitimacy to a new representative structure with QTC and clubs in control.

Result - Failed

- Cost government $1 million
- Racing $500,000
- **Total cost $1.5 million**

2006

The Beattie government, again pushed by the same people, the then QTC / Bill Carter / Gordon Nuttal and the Courier Mail, determined to hold the Daubney Rafter Inquiry to investigate false accusations and that the independent body had failed in its duty of care and that there was corruption in the system.

It is interesting to note that the QTC sought and was granted approval to participate as a "friend to the Inquiry" and proceeded to attack the control body relentlessly suggesting corruption of senior staff and bullying of disgruntled employees. Throughout this entire process they were actively supported by Courier Mail journalist, Tuck Thompson at the behest of long-time QTC supporter Courier Mail journalist Bart Sinclair.

Result - Failed

- No corruption
- No bullying
- The inquiry made no adverse findings against QRL
- Cost to government $4 million
- Cost to QRL $3 million
- **Total cost $7 million**

2008

- QRL sought changes to the constitution on the grounds of certainty and to extend the term of the control body.
- Industry voted 14 to 1 in favour. Only dissent was the QTC.
- Following the declaration, Bill Carter considered there was a flaw in the process and engaged in a lengthy and expensive witch hunt.

- The matter was referred to the CMC, then ASIC, all for a negative result. Still not satisfied the matter was then referred the matter to the fraud squad of the QLD police.

Result

- No official misconduct; no breach of ASIC requirements.
- As a procedural requirement had not been complied with, the process was administratively flawed and therefore, could not be approved by the responsible Minister.
- Cost to industry $200,000
- **Total cost $200,000**

2009

William (Bill) Bernard Andrews v Queensland Racing Limited

Again, QRL has found itself the subject of litigation. QRL, in following the provisions of the company constitution found itself a defendant against existing board member Bill Andrews (plaintiff) with the decision delivered by Judge J Wilson on 23 October 2009.

Without recounting the nature of the litigation brought by Andrews (as it is bound to be fresh in everyone's mind), it is of significant importance to note that Andrews was in receipt of financial assistance by others prepared to co-fund the action brought by him. The action by Andrews was co-funded by the following:

- Basil Nolan – Vice President, Thoroughbred Breeders Queensland Association;
- Bob Frappell – Chairman, Thoroughbred Breeders Queensland Association – Class 'A' Shareholder representative, QRL;
- Kevin Dixon – Chairman, Brisbane Racing Club – Class 'A' Shareholder representative, QRL;
- Tom Treston – former committee member, Queensland Turf Club; and
- Dick McGruther – unsuccessful applicant for the vacant board position, QRL – deputy chairman, non-executive directors, Watpac – former auditor of QTC, when a partner with Bentleys MRI.

In respect of Mr McGruther, it should be noted that he is the deputy chairman, non-executive director of Watpac, and it needs to be remembered that Watpac has in existence, a memorandum of understanding with the Brisbane Racing Club that deals with the proposed development of both Eagle Farm and Doomben. Further, as tended in his evidence in the case, he confirmed that he had also applied for a position as a director of QRL after being encouraged to do so by former chairman of the QTC and current deputy chairman of the Brisbane Racing Club, Mr Bill Sexton.

Identifying and understanding the motives of those that have co-funded the *Andrews* action provides a great insight as to the underlying reason why the action was initiated. Clearly, there are those out there that believe that the

industry should be governed as it was prior to 1992, when the QTC reigned supreme as both a Principal Racing Authority (PRA) and a race club.

In terms of the orders that have subsequently been handed down, in short, QRL is required to recommence the election process for two new directors starting with the compilation of a shortlist of candidates by an independent recruitment agency.

Beyond the considerable financial cost of these inquiries, for extended periods of time, the board of QRL and senior staff were distracted assisting with information to ensure that the proprietary of the PRA, namely QRL, was protected. Not in any of these inquiries or court cases, has QRL been the plaintiff. In all instances, it has found itself defending its position.

The inquiries have emanated from disgruntled persons within the industry, who lack a preparedness to accept the necessary change that is vital for the Thoroughbred racing industry in Queensland to survive and prosper. This indeed is unfortunate and is a reflection of the influential few, who continue to support the notion of race club sovereignty. In the "Andrews versus QRL" case those who have co-funded the action are on the record as keen supporters of the QTC.

This is consistent with my previous comments in section "current control body."

The current circumstances and events surrounding the 2009 election are a mirror of the disruption and relentless pursuit of control that has dogged the industry in 2002 / 2004 / 2005 / 2006 / 2008. It seems obvious, that unless there is a new model as suggested in this submission, the past will be continuously repeated.

I recap the frustration around due process and the associated costs by the clubs relentless pursuit of control, and their desire to revert to the past administration structure. A system that featured dubious integrity practices, the pursuit of privilege and opened up the opportunity for manipulation and corruption.

If governments wish to distance themselves from racing, and genuinely want excellence from racing control, they need to properly empower the control body with effective legislation without the collar of political compromise to manage the industry.

Racing in Queensland is a significant industry. The control body needs the changes recommended, otherwise the path to mediocrity is certain.

Other models

The best examples of racing administration can be sourced by reference to Singapore, Hong Kong and Japan where total control of racing and wagering is government controlled and owned. The success of these racing industries

can be readily attributed to a total control of assets and administration. This is a critical issue. These racing control bodies can adapt to changing market conditions and maximise the allocation of available resources.

QRL can not attain this position, the luxury of owning the wagering licence has long past and the gifting of racecourses to clubs in the early part of 2001 and 2002 has restricted the progress that QRL can realistically achieve going forward.

Unfortunately, Australian racing administration models and the New Zealand model are of little help to draw inspiration. These models all set out to achieve a result but have been compromised in their delivery by the influence of the clubs watering down any structure that will reduce the club committee influence or prestige.

Queensland dispensed with a representative model in 2002 and introduced a skills based board, unfortunately because of the Australian racing rule A.R.1, Queensland retained a connection to the club system by allowing clubs to appoint directors through a convoluted election process, and destroying directors' independence.

The Queensland model worked well while there was an 'initial term' with no elections, but as the initial term has expired the industry is going through a period of trench warfare as the clubs see an opportunity to take control and revert to the pre 1990's.

Queensland can lead the Australian industry by adopting a model that will quickly be followed by other states in Australia, progressing a much needed national administration model.

The Australian and the Queensland industry will not fail by fierce competition from a changing wagering landscape. The industry will fail if it continues to be captive to an outdated club compromised control administration.

Stakeholders, as defined by those who derive their livelihood from this industry, want the club system dismantled and the industry put on a national footing of independent control. The stakeholders see the flaws in the system with the doyens of the club hierarchy using the system for privilege and proudly claim their amateur administration status. There is little wonder that the stakeholders and those that earn their living from the industry want a stable environment.

The question needs to be asked?

> *"How can an industry with a turnover of $16 billion, 250,000 employees grow and prosper to meet the challenges that are upon the industry with a club-centric system of control that continually challenges progress and defends the privileged position of club committees enjoying the largess and influence derived from their positions, and defending the status quo with fierce determination no matter the cost"*

If governments wish to distance themselves and practically devolve their commitment to racing then they need to empower the control body with effective controls without the collar of political compromise to manage this industry and overcome the challenges ahead.

The industry is significant especially in Queensland and unless the government is prepared to make change as recommended then the industry will suffer a rapid decline.

Why not change the current constitution?

As the change to the constitution requires a 75% vote this is in reality a 100% vote of both 'A' and 'B' members.

Any change to the constitution is rendered impossible under current conditions, as clubs will not agree to changes that diminish their perception of control. The current voting process even more so is a disincentive for change.

The reason for change is compelling however the constitutional voting process renders change impossible.

Industry issues

The cliché "at the crossroads" has often been used to emphasise a potential change in industry direction. At present though, it is more applicable than ever.

The previous section discussed the need for stability and the outcomes delivered as a result of having a stable board for a period of time. The issues we as an industry currently face require the attention of an experienced board that will not be distracted from the task at hand. Following are areas within which challenges exist.

- Wagering landscape
- Capital Infrastructure
- Alternative revenue streams
- Broadcast and Intellectual Property
- National Integration
- Dwindling attendances
- Country racing
- Decreasing participation

Stability of the Board

Over the last 4 to 5 years the QRL board has delivered, annually, strong financial outcomes. Most of these outcomes have been achieved in the face of considerable adversity. Notwithstanding, the board, as a result of director stability and through the certainty of the initial term, has grown the industry in

key areas. It is doubtful that any other Principal Racing Authority in Australia has the same score on the board as QRL, in terms of positive industry outcomes. It is emphasized that a stable board has underpinned the deliverables for the benefit of the industry. The following charts highlight some of those key outcomes.

QRL board achievements since 2006:

Listed below are major projects completed by QRL since 2006:

- $6.2M synthetic track installation at Corbould Park, Caloundra;
- $4.55M injection into TAB prizemoney levels over the past two years;
- $1.2M increased annual contribution to country racing from July 1, 2009, with minimum prizemoney levels at strategic meetings increased to $6k;
- $4.83M QTIS 600 Race, Bonus Series and Sale;
- $7.2M lighting installation covering both tracks at Corbould Park, Caloundra; and
- $600k investment into world class training equipment available to Queensland apprentices, jockeys and trackwork riders throughout the State.
- $10M synthetic track installation at Clifford Park, Toowoomba, commenced in February 2009;

Listed below are projects either commenced or due for commencement:

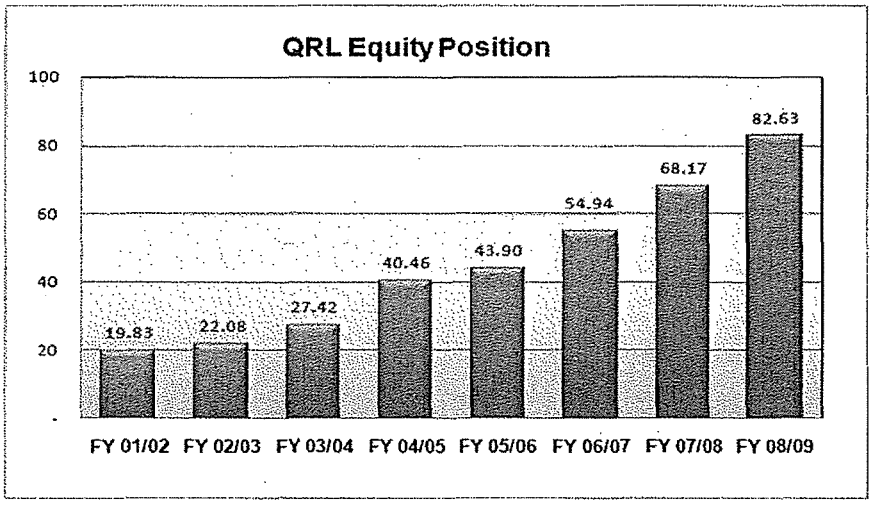
- $6M upgrade of Callaghan Park, Rockhampton, due for commencement in May, 2009; and
- $16M stabling project for 416 horses at Corbould Park, Caloundra, due for commencement in May 2009.

Listed below are projects under investigation by QRL:

- Major redevelopment of Gold Coast training and racing infrastructure;
- Stabling, training and commercial development at Deagon;
- Decentralised training and stabling;
- Cairns Jockey Club & Far North Queensland Amateur Turf Club amalgamation;
- Stabling and training development at Mackay; and
- Development of a Strategic Plan for racing in North Queensland to ensure that a sustainable racing industry exists.

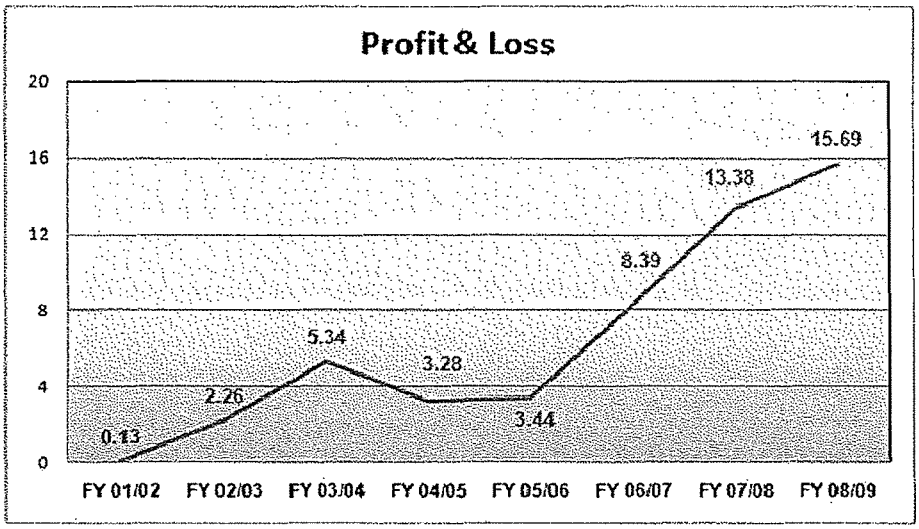
Financial KPI's

Financial Outcomes - Equity



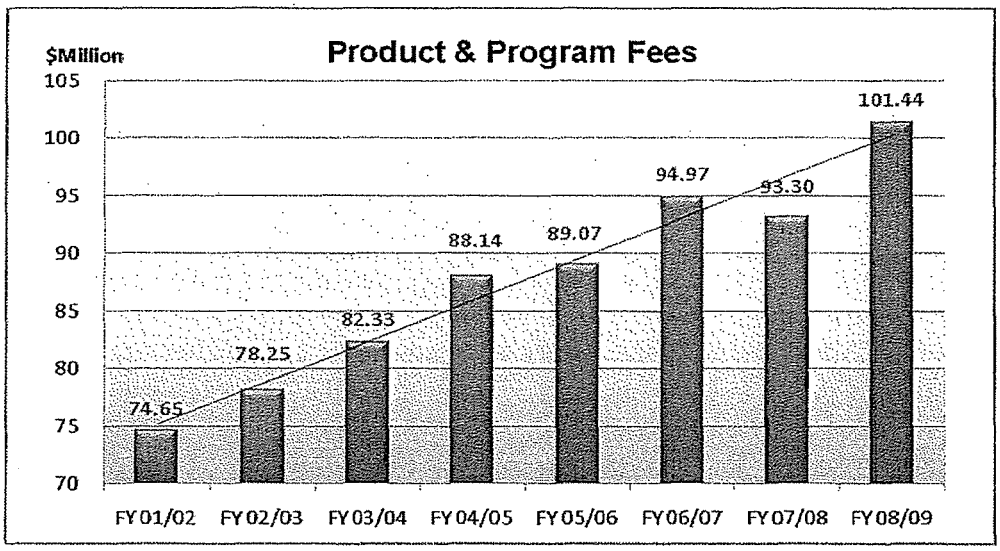
Queensland Racing's equity has increased to $82.63M.
Equity has continued to grow since FY 01/02 and has quadrupled from FY01/02 highlighting strong investment in the QLD racing industry

Financial Outcomes – Profit/Loss



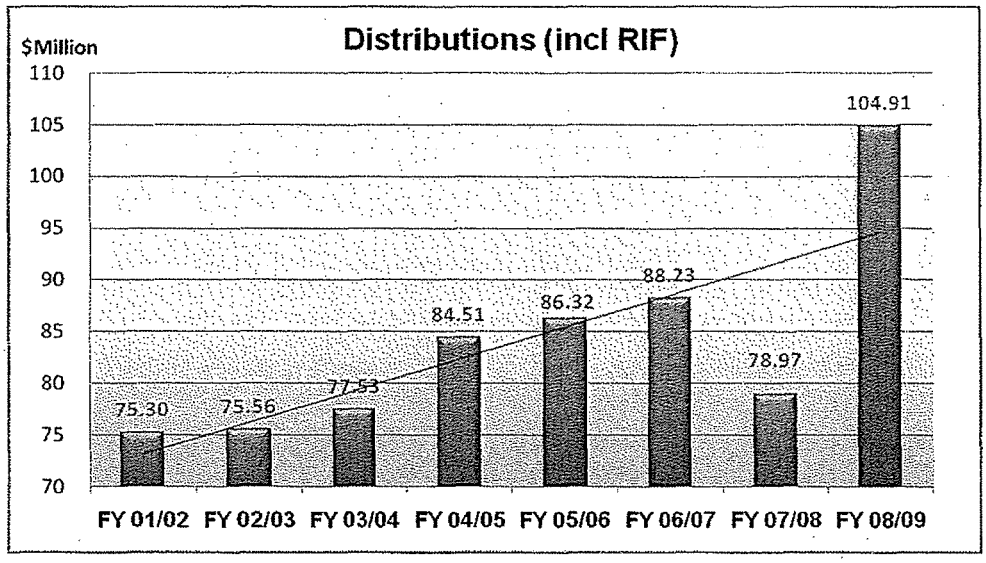
QRL continues to build a solid surplus position since FY01/02

Income generated from TAB wagering



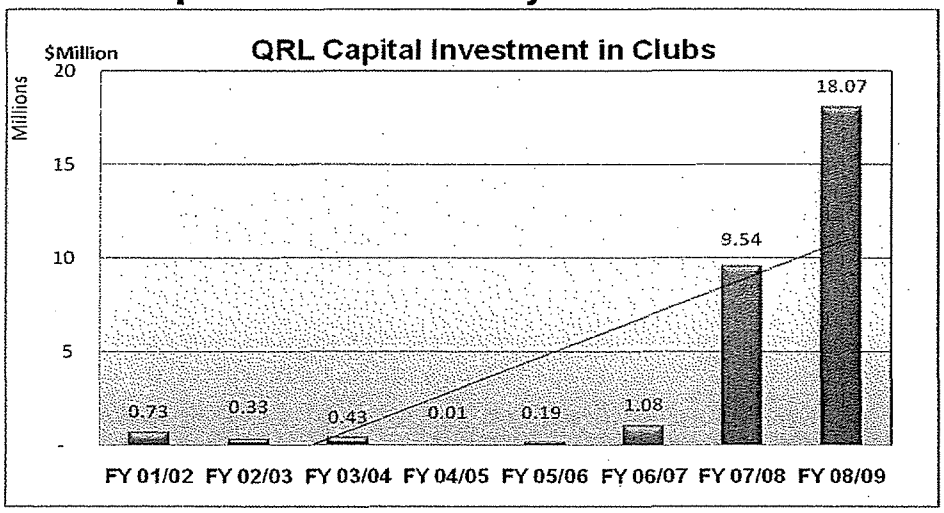
Product and Program Fees continued to grow in FY0809. In what promises to be a difficult year forecast for FY0910 is growth of around 1% in comparison to the 7% achieved in FY0809 due in part to the Global economic downturn

Distribution from QRL to Industry



Increased distributions to the industry in FY0809 include Race Information fees of $12.26 million and increases in Prizemoney and QTIS. Note Impact of E.I in 07/08.

Capital Investment by QRL in Clubs



QRL has substantially increased investment in capital projects for Clubs, including lighting and synthetic tracks for Toowoomba & Sunshine Coast TC, stabling for Sunshine Coast TC as well as major track upgrade at Rockhampton JC

Major Distributions

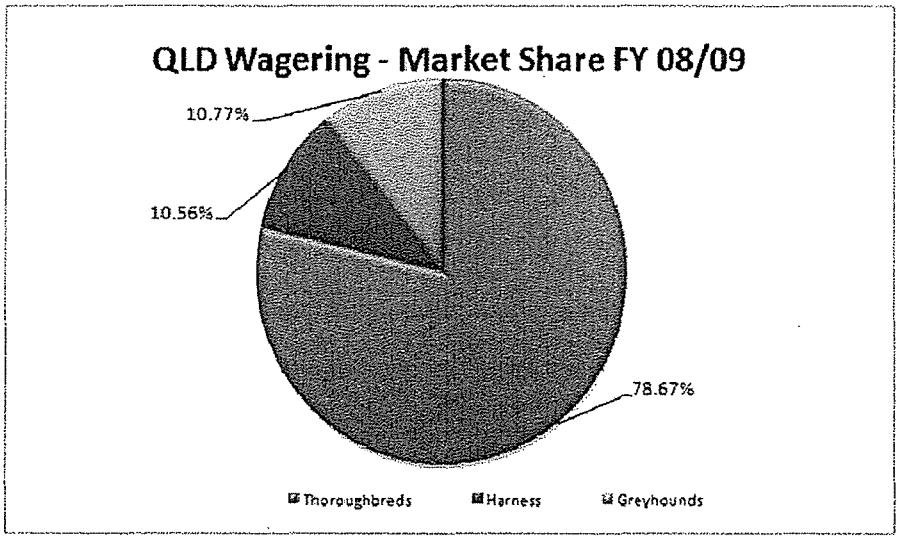
Major 2008/09 Financial Year distributions by QRL are as follows:

	FY08/09
Prizemoney / QTIS	$ 73.97M
Race Information Fees	$ 12.26M
Administration Subsidies	$ 7.90M
Jockey Riding Fee	$ 7.06M
Jockey Workcover	$ 1.71M
Unplaced Starters Rebate	$ 0.91M
Jockey / Trainer Public Liability	$ 0.24M
Industry /Apprentice Awards	$ 0.14M
Club Capital Works	$ 0.31M
Other	$ 0.41M
	$104.91M

Code comparisons of relevance

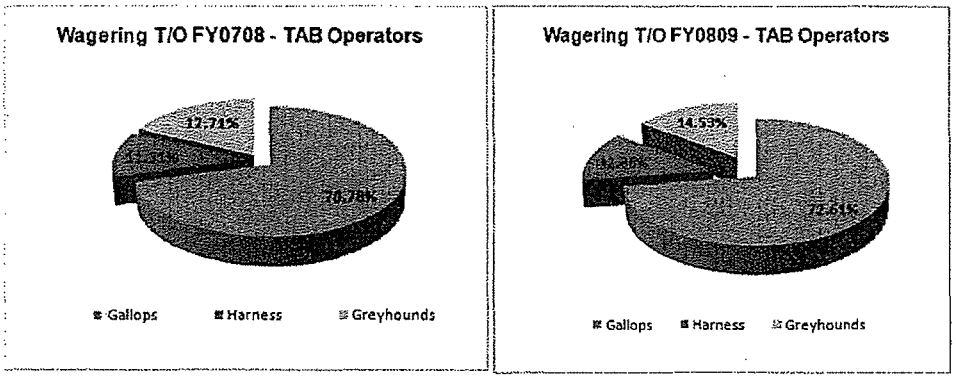
It can be seen from the following graphs that the Harness and Greyhound codes occupy a relatively minor footprint of the racing industry in Queensland.

Market Share of QLD Wagering - UNiTAB



Thoroughbreds dominate UNiTAB wagering with approximately 78.67% of the domestic wagering market.

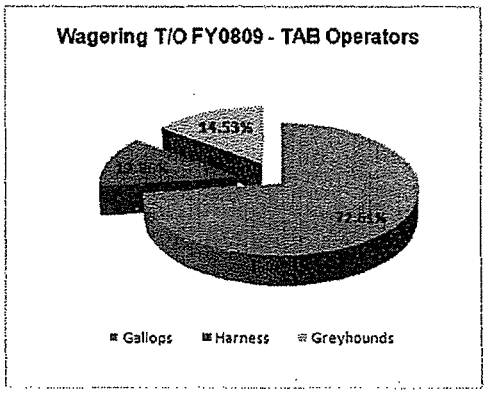
Market Share of QLD Wagering – All TAB Operators



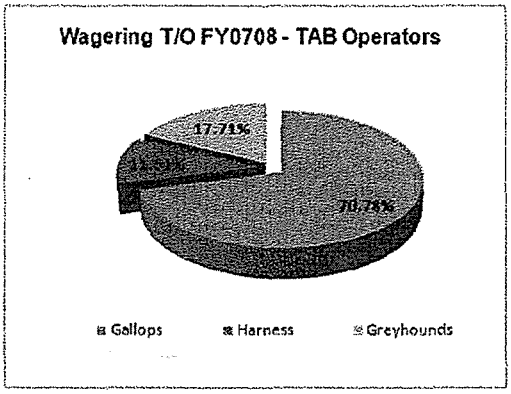
Thoroughbreds dominate All TAB wagering with approximately 71% in FY0708, increasing to 73% in FY0809.

FY0708				
	Gallops	Harness	Greyhounds	All QLD Product
Race Meetings	563	334	637	1,534
Races	3,863		5,827	9,690
Starters	39,212		41,828	81,040
Attendance/Admissions	787,731			787,731
Control Body Staff	162		27	189
Trainers	1,183	436	1,174	2,793
Jockeys/Drivers	274	304	n/a	578
Stable Hands/Attendants	2,111	218	656	2,985
Bookmakers	115	9	15	139
Clubs	136	7	9	152
$'000				
Surplus/Deficit	13,382	- 477	1,501	11,403.99
Prizemoney paid out	67,532	11,194	7,341	86,066.31
Product & Program fees	93,489	17,865	11,687	123,040.53

FY0809				
TAB Operator	Gallops	Harness	Greyhounds	All QLD Product
ACTTAB	23,422,444	3,045,280	3,290,501	29,758,224
NT TAB Pty Ltd	25,704,565	3,945,394	4,107,810	33,757,770
RWWA	121,026,165	38,844,998	48,856,105	208,727,268
SA Tab	84,814,498	17,570,604	18,168,171	120,553,273
TAB NSW	583,931,578	93,378,181	109,459,022	786,768,781
TAB Victoria	338,323,997	71,994,686	80,439,165	490,757,848
TOTE Tasmania	74,880,237	11,621,295	13,705,348	100,206,880
UNiTAB	432,986,596	58,097,268	59,274,357	550,358,221
	1,685,090,080	**298,497,705**	**337,300,479**	**2,320,888,264**
All	73%	13%	15%	100%
UNiTAB	79%	11%	11%	100%



FY0708				
TAB Operator	Gallops	Harness	Greyhounds	All QLD Product
ACTTAB	20,463,967	2,363,175	4,174,831	27,001,973
NT TAB Pty Ltd	18,522,056	2,703,104	4,117,607	25,342,767
RWWA	104,613,020	31,067,178	51,940,528	187,620,726
SA Tab	71,221,097	13,516,786	18,820,895	103,558,778
TAB NSW	508,540,423	74,048,344	117,813,215	700,401,982
TAB Victoria	290,206,860	56,054,518	87,573,762	433,835,140
TOTE Tasmania	48,940,465	7,317,819	10,466,275	66,724,559
UNiTAB	370,514,246	45,906,032	63,710,548	480,130,826
	1,433,022,134	**232,976,956**	**358,617,661**	**2,024,616,751**
All	71%	12%	18%	100%
UNiTAB	77%	10%	13%	100%



Option to integrate three codes of racing

This paper, for the consideration of the government, considers the integration of the three racing codes, namely the Thoroughbred, the Greyhounds and the Harness codes, in Queensland. It proposes the integration of all three codes into a single control body.

Due to the size and complexity of the thoroughbred code the suggested integration is based on the systems and structure of the existing thoroughbred control body, QRL.

Currently the three codes are governed by three companies, limited by guarantee which results in duplication and inefficiencies. Just as the QRL has actively pursued the integration of the two metropolitan racing clubs in Brisbane (the Brisbane Turf Club and the Queensland Turf Club), the three codes of racing need to have regard for the efficiencies that would be generated as a result of integration. Whilst no financial analysis has been undertaken in relation to the efficiencies that would be generated, when it is contemplated that there is duplication at most levels within each of the codes, it becomes logical that a single control body administrating the three codes of

racing in Queensland will deliver considerable efficiencies, and in turn benefits for each code of racing.

The benefits of amalgamating the three control bodies into one control body for the Queensland racing industry, include:

- streamlined strategic decision-making in the interests of the entire racing industry;
- single point commercial negotiation;
- the establishment of one licensing and training regime and system;
- enhanced integrity management systems and procedures; and
- coordination of asset redevelopments;

The smaller harness and greyhound codes which currently do not have the resources to replicate thoroughbred systems will benefit from the investigation, legal and appeal processes that now operate in the thoroughbred code.

While no staff would be displaced if the control bodies are amalgamated, over time as staff leave, there will be opportunities to reduce the number of staff. Staff from the three codes would benefit from increased career opportunities in the larger organisation.

Below in this paper under, 'Recommendations', the integration of the three codes is further discussed and the proposed new board structure considers an initial compilation of directors from the three codes of racing, and then ultimately the directors are simply being drawn from industry and commerce.

The current constitution was created in an entirely different set of circumstances. There was a different and stable income stream and the competition for the wagering dollar was present but not aggressive. The industry was resigned to a period of stability not prefaced by continuous elections.

The Australian Rule of Racing A.R.1 was relevant in that a constitution for a control body could not have 'appointees' to the control body unless by the industry. The framing of the current QRL constitution was of necessity, constrained in so much as it required industry representation for election to the control body board. This was considered by racing clubs as their protection of the system. The rule was introduced so as to stop government appointments or for that matter any outsiders no matter their qualifications to racing boards. This no longer applies, except that clubs continue to agitate in an endeavour to cling to this long dispensed crutch of protection.

The Australian racing industry is extensive and far reaching, it is complex and occupies a space in Australian industry and community that is rarely understood. The industry relies on integrity and a control body system that has a real separation from those participants and associations that it licences and controls.

There needs to be a complete understanding that the racing industry is entirely different from other sporting bodies and their participating clubs. The industry generates $16 billion in turnover contributes substantially to government taxes employs over 250,000 people full time and the opportunity for corruption and manipulation is an ever present danger.

I am proposing a simple structure that will meet all the governance expectations and will give a vastly superior control model for Queensland that will hopefully be replicated interstate as a forerunner to a national racing industry model. The structure and model will accommodate the Harness and Greyhound codes.

Recommendations

Action for Queensland

Stage1

1. Let the current election process play out. That is QRL will proceed to comply with the Supreme Court orders of Justice Wilson or any further orders handed down.

Result - that 2 new directors will be elected to the current QRL board under the existing constitutional process.

2. The government by legislation will revoke the three existing control body licences on the following grounds:-

    (a) The model no longer fits the current conditions in the racing industry;
    (b) A.R.1 no longer needs strict interpretation;
    (c) The government sees the need for a major upgrade of infrastructure in the racing industry and it is essential that the directors have security of tenure to effect the developments and structural change;
    (d) Remove the constant distraction of board elections and the associated lobbying of stakeholders who maintain a vested interest to achieve the best outcomes for their clubs at the expense of the wider industry;
    (e) Amalgamate the three [3] control bodies in one entity for efficiency and progression of developments; and
    (f) Apply the proper governance of separation of directors being elected by those who they are required to license and control.

Stage 2

1. A single control body to administer all regulated racing in Queensland will be established and licensed by the Government.
2. The constitution of the new control body will be broadly based on the current QRL constitution, with the necessary changes outlined below.
3. Transfer the staff, assets liabilities and responsibilities of the current three control bodies to the new control body.

Constitution of the new control body

Members

The only members of the company will be the directors. If a person ceases to be a director, they cease to be a member.

Founding Directors

As the largest of the three codes, the thoroughbred code generates by far, the most income and has the most contentious issues to deal with. Accordingly, the founding directors of the new control body will be the five QRL directors and one existing director from each of the current harness and greyhound control bodies.

The chair and deputy chair of the control body will be the chair and deputy chair of QRL who will hold these positions for the initial term.

Initial term

It is proposed that directors of the new control body be appointed for an initial term of five years, until 2015. During this period the directors would not be required to stand for election.

This period of stability is necessary to ensure that the considerable work necessary to properly implement the operations of one amalgamated control body for the Queensland racing industry is undertaken as effectively as possible in the interests of the three codes of racing. As this will be a period of significant change with a high work load, it is important that the directors are focused on control body issues and not distracted by elections.

In addition, it should be noted that the Product and Program Agreement expires on 1 July 2014. As the future income for the three codes of racing will be dependent on the outcome of the negotiation of a new agreement, it is imperative that this process is led by directors who understand the issues and are best placed to ensure a sound financial future for the Queensland racing industry.

Director's selection

The selection of directors will be by a panel of recruitment/management consultants acting independently of the new control body. The panel would be appointed as follows:

- One member appointed by the control body (those directors who are seeking reappointment will not vote or be part of the consultant's appointment;
- One member appointed by the Australian Institute of Company Directors; and
- One member appointed by the Director-General of the department responsible for racing.

Following initial guidance as to selection criteria as per the Racing Act and taking into consideration the suitability and skills required to complement the board their majority decision will be final. Board members will be selected on ability not popularity and this removes the industry lobbying for outcomes.

After the expiration of the initial term, directors are to retire on a rotational basis every two years.

Director Numbers

The new control body will have a maximum of 9 and minimum of 7 directors.

Remuneration

The remuneration of the directors will be determined by an independent organisation such as Mercers by benchmarking against companies of similar revenue and size. Remuneration reviews will be carried out every 2 years.

General meeting

In addition to the company's annual general meeting, the control body will hold a meeting each year to provide information to industry stakeholders.

Product Company

It is recommended that Product Co Pty Limited remains and as a sub-committee of the board of the control body.

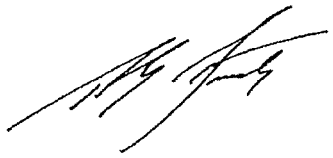
Other Issues

Code Funding

The allocation of funding to the three codes would be based on wagering performance.

Stamp Duty

Approval would be required to transfer of assets from the three existing control bodies to the new control body without paying transfer duty.



R.G. BENTLEY
Chairman

QUEENSLAND RACING COMMISSION OF INQUIRY

Commissions of Inquiry Act 1950

ANNEXURE

Annexure **'RGB 2'** to the Supplementary Statement of **ROBERT GEOFFREY BENTLEY** authorised 11 September 2013 at Brisbane.

Robert Geoffrey Bentley

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QUEENSLAND RACING

Queensland Racing Industry Issues Paper

Created for the consideration of the Hon. Peter Lawlor, MP, and the Queensland Government

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QUEENSLAND RACING

Introduction

May 2009

Queensland Racing Limited (QRL) is the control body responsible for the administration for thoroughbred racing in Queensland. Harness Racing Queensland (HRQ) and Greyhound Racing Queensland (GRQ) are the equivalent bodies for harness and greyhound racing respectively. The industry itself is a complex mix of sport, business, entertainment and community participation rolled into a product and pastime enjoyed by many.

There are a large number of participants that derive a living from their involvement in racing, across the three codes in Queensland – a living that may not otherwise be possible. Consumers enjoy the sport of racing, where the uncertainty of the outcome and the spectacle of racing horses and greyhounds, provides enjoyment to many. Surrounding the business, the sport of racing, is the indomitable community linkage that exists between racing clubs and residents reaching back decades or even centuries where race clubs were not only providers of entertainment opportunities but also of vital community facilities.

Since the 1980's there has been a shift between the role of the individual race club and the role of the principal racing authorities (PRAs). PRAs, including QRL, have taken on a greater role in terms of the vision and the strategic approach of the industry. Notwithstanding many barriers still exist, QRL remains of the view that much more significant reform is required within the Queensland racing industry to streamline and to more effectively use the resources within the industry. Arguably, the best example of this is the perception that many race club members hold the view that they own the racecourse at which their race club operates. This radical and self centred view has caused the industry much grief in recent times in Queensland, and QRL, as the PRA, has been unable to advance much needed industry projects.

The industry once again finds itself at crossroads where, notwithstanding QRL continues to pursue many initiatives, it often finds the barriers to progress are so significant that initiatives fall by the wayside.

By way of illustration, the 'Product and Program Agreement' negotiated in 1999 at the time of privatisation by the Government and the wagering provider (UNiTAB), places some onerous requirements on the industry. Any initiatives or innovations that may be beneficial to the industry are subject to a veto vote by the wagering provider. The requirement to provide a set number of TAB meetings irrespective of viability is an increasing challenge. The legislated amendment of 2005 requiring QRL to pay 7% of its revenue to country clubs that produce no industry revenue relieves the Government of a massive fiscal responsibility to fund 287 country events that are, in essence, the fabric of regional and rural communities. QRL, in addition to discharging this mandated obligation, provides an additional 6.5% of revenue to make country racing stakeholders and clubs viable. The total amount expended on country racing annually is over $13m.

There is no other industry in Australia that spends 13.5% of its revenue on a non revenue producing activity.

Within our industry there are some 30,000 people employed in fulltime, part-time and casual employment.[1] This large and significant industry generates gross state product (GSP) or otherwise economic spend of $855m per annum.[2] Notwithstanding this significant contribution to the state of Queensland, the level of traction that the industry has achieved with the state Government has been minimal. It is the incorrect and common view that gambling equals racing equals wealth. Sometimes championed within Government, this causes some politicians to think that the racing industry either does not, or will not, require any financial support to survive and prosper in Queensland.

Government Contribution to Football and Tennis

In the lead up to the March 2009 state election, Premier Anna Bligh, MP, confirmed a **$60m** election pledge to the construction of a stadium for the Gold Coast football club.

The Gold Coast football club will enter the Australian Football League (AFL) in 2011. The license for the Gold Coast football club became contingent on the finalisation of a land swap agreement between the state Government and the Gold Coast City Council (GCCC) that would involve the Government assuming ownership of Carrara Stadium and the surrounding land, plus the expected rubber stamping of a $40m federal grant. It is understood that the Premier's election pledge and commitment to the provision of **$60m** to the construction of the stadium was accredited with removing the final hurdle enabling the Gold Coast football club to become a reality and to participate in the league in 2011.

In addition to the support from Government, at all tiers, it is understood that the AFL will contribute $10m to the stadium redevelopment, as part of a substantial investment over a period of six years. In addition to the state Government's contribution to the development of a stadium at Carrara, there is a history of support for major sporting codes in Queensland. Lang Park (now known as Suncorp Stadium), which was redeveloped in 2003, was in receipt of substantial support from the state Government. According to media reports, the state Government's contribution to the redevelopment of Suncorp Stadium totalled **$280m**. In addition to this massive amount of financial support, the six-stage redevelopment of the Gabba (between 1993 and 2005 at a cost of **$125m)** also attracted substantial support from the state Government. The sport of tennis in Queensland has also recently benefited through the establishment of a new tennis facility at Tennyson.

[1] Size and Scope Study of Racing in Queensland, IER Pty Ltd, p.5, April 2009 (Copy of full report attached as Appendix A)

[2] Size and Scope Study or Racing in Queensland, IER Pty Ltd, p.5, April 2009

Whilst the thoroughbred racing industry understands these initiatives by Government and the public interest benefit, it fails to understand why it, as a substantial industry, has been unable to attract support from the state Government.

Employment and Taxation

As mentioned earlier, the racing industry is a substantial contributor to the economy in Queensland. Directly, the industry is responsible for $855m in economic spend or GSP and when induced and indirect impacts are included the Queensland racing industry contributes just over $1.44bn towards GSP.[3] The racing industry is responsible for the employment of 30,000 Queenslanders in fulltime, part-time and casual employment in the industry. Essentially, for every $1m of expenditure generated by the industry up to 22 fulltime positions are created or sustained. In real terms, it is likely that the 22 fulltime positions actually reflect more than 46 individuals working in fulltime, part-time and casual positions. To put this level of employment in perspective, the racing industry is an employer of considerably more individuals than the electricity, gas and water supply sector (20,900) and just below the communications sector (33,300).[4]

In relation to taxation, the activities of the racing industry generate more than $140m in revenue for the state and federal Governments. The state Government receives just over $103m in taxation revenue from the Queensland racing industry and whilst income tax and GST are not taxes paid specifically by the racing industry the $35.8m contributed from wagering is unique. Whilst it is considered a federal tax, as it is collected in this manner, the GST revenue does flow back to the state Government coffers via redistribution. The federal Government receives just under $37m in taxation revenue from the Queensland racing industry, as a result of taxes generated by those employed directly by the racing industry.[5]

Community Spectator Support

Mentioned earlier were the substantial contributions by the state Government to the major sporting codes in Queensland contrasted against the limited level of financial support provided for the racing industry. It is noteworthy that the latest Australian Bureau of Statistics revealed that, on a per person basis, over 16.1% of Queenslanders visit racecourses annually. This placed the racing industry higher than other major sports, including rugby league (16%), motor sports (11.9%) and AFL (7.4%). Approximately 500,000 Queenslanders attended at least one racing event, with similar numbers attending at least one rugby league game. This was followed by motor sports (366,000), AFL (228,000) and rugby union (188,000).

[3] Size and Scope Study of Racing in Queensland, IER Pty Ltd, p.5, April 2009
[4] Size and Scope Study of Racing in Queensland, IER Pty Ltd, p.5, April 2009
[5] Size and Scope Study of Racing in Queensland, IER Pty Ltd, p.6, April 2009

This paper provides a background to the key issues pertinent to the industry and provides a summary and set of recommendations for your consideration and that of the Queensland Government.

It is fair to say that in the absence of the Government accepting some re-engineering of industry funding by way of tax reform, our industry will decline, irrespective of the positive initiatives by the three codes.

QUEENSLAND RACING

Industry expectation

Background

In the lead up to the March 2009 state election, the Liberal National Party (LNP) released its racing policy, which proposed a number of new and additional funding streams. In essence, the policy promoted a funding boost to the racing industry and as a result, created heightened expectation that additional funds would flow into the industry on the basis that the LNP was successful.

The LNP confirmed it would provide an annual funding boost of $5.61m for the racing industries to be taken from wagering taxes received by Government. The thoroughbred racing component was identified as the following:

- *City Racing—$1 million*
- *Regional Racing—$1.5 million ($200,000 per TAB club—Gold Coast, Sunshine Coast, Ipswich, Toowoomba, Rockhampton, Mackay and Townsville, and $100,000 for non-TAB club Cairns)*
- *Country Racing—$1.36 million*
- *Up to 20 additional non-strategic country race meetings per year throughout Queensland, including the reinstatement of Kilcoy (3), Esk (3), and Bell (1) race meetings*
- *Return of $3,000 administration fee to non-strategic country race meetings*
- *QTIS boost—$500,000 additional funding spread over country, regional & city racing to add to existing QTIS scheme*
- *Training & recruitment of Jockeys, Trackwork Riders & Stablehands, and promotion of racing—$250,000*

The value of this commitment to the thoroughbred racing industry is $4.61m annually.

Whilst, QRL did not support the allocation of spending through which the LNP proposed to distribute the funding, it is fair to say that the industry welcomed the proposed boost. As a result of the election commitment by the LNP, the industry now has a heightened expectation that QRL, in collaboration with the state Government, will work to ensure a boost for the industry. It is conceivable that this boost could come via a redirection of wagering taxes that the Government receives annually from UNiTAB. This matter is explored in greater detail in a later section of this paper.

Issues

- Heightened industry expectation of Government support as a result of the LNP pre-election commitment.
- As will be discerned with other topics within this paper, the industry faces a funding shortage.
- Little or no visible financial support for the industry from the Government when other sports appear to be significant beneficiaries of capital funding from the Government.

QUEENSLAND RACING

QRL investigations conducted to commercialise industry assets

Following the appointment of the board of QRL in 2002 and then under instructions from the Queensland Government, QRL set out to investigate the commercial opportunities for progressing the industry.

It should be noted that the direct Government instructions to the new board were to act decisively, to commercialise the industry, and to make best use of the substantial industry assets that were currently under utilised.

The board, in 2003, completed a survey of the industry needs and formulated a strategic direction for the industry that has been frequently updated to reflect the current environment.

Notable outcomes are:

- Amalgamating the Brisbane Turf Club (BTC) and Queensland Turf Club (QTC) (completed 2009).
- Developing a substantial racing infrastructure at the Sunshine Coast (completed 2009).
- Upgrade Toowoomba track to metropolitan standard (completed 2009).
- Creating a substantial racing infrastructure on the Gold Coast (incomplete).
- Investigate the development of a training centre outside the metropolitan area (under due diligence).
- Reduce waste and administration (most efficient PRA in Australia).
- Rationalise country racing to make country and regional racing sustainable (completed 2003 / 2004).
- Reduce the TAB venues for more product from better venues (completed 2004).
- Grow QRL assets (2002 - $30m, 2008 - $92.5m).
- Raise the level of metropolitan prizemoney (2002 - $200,000 per meeting, 2009 - $380,000 per meeting)

The board has worked diligently to fulfil the expectations of Government, however, if the industry is to prosper there needs to be a realisation of the limitations imposed by inadequate funding, disproportional taxation, and legislative obligations that are restrictive and uncommercial. During the course of the board's tenure, many projects that would have been industry changing and would have benefited the Government substantially were derailed by populist votes, jealousy and in some cases sheer stupidity. The politicising of racing also defeated many projects that in the commercial world would have succeeded.

A chronological list of events is provided below:

2003 – Trade Coast
Investigations to sell Eagle Farm and Doomben and build a new and better facility at the current Trade Coast site, were met with great opposition from the committees of the BTC and QTC as they saw the possibility of their club rights pass to the control body.
The then Premier, Peter Beattie, advised QRL that this project was too difficult politically and he would provide assistance to secure an alternative site. If the site was Government owned land he would make it available.

2004 - Wacol
QRL approached the Government with the object of again disposing of Eagle Farm, Doomben and Ipswich, although this time including the Albion Park complex, to build a super, multi-purpose venue on Government land adjacent to the river at Wacol.

The project involved relocating Harness and Greyhound racing to a purpose built precinct and the amalgamation of the Ipswich Turf Club (ITC), BTC and QTC into a single entity operating from the Wacol site on a seven day basis. The project also included additional infrastructure, oncourse stabling, and a residential and commercial component.

The project was viable and had the support of many within the industry, including the ITC. The project again met with fierce resistance from the committees of the BTC and QTC, and making the decision to proceed became a political mine field rather than a pragmatic commercial decision. This eventually saw the demise of the project that would have substantially changed the industry.

2006 - Amalgamation
QRL again proposed that there be an amalgamation of the BTC and QTC, with Doomben being sold to fund a major upgrade of the Eagle Farm precinct.

A small section of the industry, not truly representative or commercially motivated caused a massive political upheaval that has eventuated in a second best outcome of the new club endeavouring to upgrade two facilities, neither of which can be developed to a superior standard.

The sale of Doomben may very well be the eventual outcome to develop a facility at Eagle Farm that will meet the needs of metropolitan racing going forward.

2006 - Palm Meadows
QRL has pursued the prospect of relocating racing from the current Gold Coast site at Bundall across to a Greenfield's site at Palm Meadows. The analysis of this possible project has taken some time given its complexities. The reason QRL undertook this work is that the Gold Coast Turf Club (GCTC) needs to expand and it can not do so on its current site at Bundall.

Approximately 400ha of land was available at Palm Meadows with the majority of that land being flood-prone. As a result of these hydrology and flooding issues, the available land has limited use and it became apparent that the land would be well suited for the development of a racecourse given the relative Greenfield nature of racecourses. The development limitations that exist with the land at Palm Meadows ensure its narrow use which is largely limited to some form of sporting development which would include golf, football playing fields and associated stadium, and racing. It is fair to say that the need for golf courses and sports fields with stadiums is now well catered for on the Gold Coast. The study undertaken by QRL was extensive and confirmed that the site provided a viable development option after having regard for hydrology issues, geotechnical issues and other relevant planning constraints.

The single biggest challenge in relation to the proposal resided with the financial model. In essence, even if the current Bundall site was developed, with the development profits used to offset the costs associated with a first-class racing development at Palm Meadows, a shortfall in excess of $100m existed. This also had regard for the residual development profit of Palm Meadows being included in the funding proposal. QRL, on Monday, January 5, 2009, met with the main landholder, Dr Stanley Ho, to present Dr Ho with the final results of the physical and financial outcomes of QRL's comprehensive feasibility study. Dr Ho expressed interest in the project and confirmed that on the basis a casino license formed part of the overall project he was interested and prepared to ensure that funding would be available for the development of Palm Meadows. It is noteworthy that the development of both Palm Meadows and Bundall would create significant employment in the region given that both developments would cost in excess of **$4bn**. This would have been the largest single project on the books of the Queensland Government and would have considerable flow on effects in terms of increased spend in south east Queensland as well as increased employment during tough economic times.

The issue of a gaming license would have made the project financially viable. The Treasurer, Hon. Andrew Fraser, MP, outlined in a meeting, in late 2008, that the Government would not give consideration to providing a further gaming license, notwithstanding the period of licence exclusivity in favour of Tabcorp, had expired. The issue of a gaming licence without tender was not asked for, only an opportunity to tender. It should be noted that Dr Ho also has a financial interest in making the project viable as a means of enhancing the opportunity to dispose of his real estate holdings at Palm Meadows.

The refusal to consider a casino licence rendered this exciting project unviable.

Issues

- The prospect of developing world first-class racing facility was lost.
- Cost to upgrade the existing site at Bundall is estimated to be in excess of **$50m**.
- Limited prospects to expand thoroughbred racing in the Gold Coast precinct without an upgrade of Bundall.
- Opportunity to consolidate TAB racing further will be lost.
- Tourism potential is being lost through the Gold Coast not being in a position to offer a quality, tourist orientated racing experience.

QUEENSLAND RACING

Projects underway and funded by QRL

Corbould Park Development

Background

In 2006, QRL, through the Sunshine Coast Racing Unit Trust (SCRUT) purchased Corbould Park from the local council. QRL was of the view that it needed to secure the facility from the local council in the best interests of the thoroughbred racing industry in Queensland. In doing so, a trust was formed with the Sunshine Coast Turf Club (SCTC) to administer and manage the development of the facility. Corbould Park was purchased in 2006 for $5.95m and valued in 2008 at $20m.

QRL has invested significantly in the development of Corbould Park. The recent installation of a Cushion Track was followed by the installation of lights to facilitate twilight and night racing on both the Cushion Track and turf course proper. It is noteworthy that this is the only facility in Australia that has the capacity to conduct night race meetings on either a synthetic or a turf track. The capital investment of both the track and the lights equates to **$14m** with just over $4m provided by the state Government as part of the funding that was set aside for the installation of synthetic tracks.

Oncourse stables are also planned at a cost of **$11.5m** for stage one. In the case of the Corbould Park development there is sufficient surplus land available for commercial development to allow the master plan to proceed independent of any industry capital requirement.

In terms of further progress, QRL has recently developed a master plan for the entire Corbould Park site, which includes the potential for commercial development to increase the revenue that could flow into the industry (copy of master plan attached as Appendix B). It is important to have a master plan so that Governments at all levels can understand the proposed overall development. Whilst the funding of such a master plan provides enormous challenges, it also provides significant opportunities for the industry.

Issue

- Funded by QRL $14m, with no further industry funding required.

Clifford Park Track and Lighting

Background

In line with its program of capital development, QRL is in the process of installing a Cushion Track at Clifford Park and, as part of its development of the Toowoomba Turf Club's (TTC) facility, the lighting will be upgraded.

For years now, the TTC has battled to maintain a reasonable turf racing surface on the course proper, due to the number of race meetings allocated to the club and the fact that the Downs region had, for a long period, been in the grip of a significant drought. Water shortage at Clifford Park had seen the course proper deteriorate significantly during the winter months where, on occasions, only a small of amount of rain has caused race meetings to be abandoned due to the unsafe nature of the well worn surface. To improve the conditions for stakeholders in the Toowoomba area, QRL has committed to over **$12.6m** in expenditure to replace the turf course proper with a Cushion Track and to upgrade the lighting. The works have commenced and are scheduled to be concluded by June 2009.

It bears mentioning that the very public campaign, which was anti-installation of the Cushion Track, was initiated by those that are not so much anti-synthetic tracks, but anti-QRL. Unfortunately, the campaign fuelled by a number of those in the Brisbane racing scene became very public, and, as a result, QRL suspects that the participation levels and the wagering that occurs on Cushion Track meetings at Corbould Park is being negatively impacted by the poor publicity about the installation of a Cushion Track at Toowoomba. Already the installation at Corbould Park has proven to be a success, with a number of race meetings being conducted in conditions that would have otherwise caused meetings to be cancelled. The acceptance of Cushion Tracks in south east Queensland will take some time, but in due course, with more exposed race form, these will be accepted as part of the daily wagering appetite by customers across Australia.

Issues

- The main issue in respect of the TTC is the additional $2m that QRL will now be required to commit to upgrade the cabling that stems from the initial installation of the lights at Clifford Park.
- Total funding by QRL $12.6m
- The capital cost is a direct investment by QRL and as such is treated as QRL expenditure and will affect the profit and loss account for FY2008/09.

Callaghan Park Upgrade

Background

As with many other facilities in Queensland, QRL has also invested in the upgrade of Callaghan Park, Rockhampton. The Rockhampton Jockey Club (RJC) conducts 43 race meetings a year, with the majority of these (33) attracting TAB coverage.

In line with our commitment to upgrade facilities, QRL has commenced a project to upgrade the course proper at a cost of **$6m**. This upgrade removes the home turn loop that currently exists between the two tracks. Once this upgrade has been completed, the broadcast of races from Callaghan Park will provide more substantial and quality vision that will lead to increased wagering on meetings. In terms of oncourse stabling, 100 boxes presently exist and ideally this number would be increased, however, lack of available funding is an issue.

Issues

- As with the development of other venues, the single biggest issue is the lack of funding for these developments and the fact that in many cases, the capital development becomes part of the club assets, as opposed to industry assets.
- Funded by QRL - $6m.

Essential projects to be funded by tax redirection

Gold Coast Turf Club (GCTC) Upgrade

Background

In a previous section, this paper discussed the proposed project to develop a Greenfield's site at Palm Meadows. This topic is inextricably linked to that proposed development, as had the Palm Meadows project proceeded, there would be no need to consider a second best outcome which is an upgrade of Bundall, the facility at which the GCTC currently conducts race meetings.

A long term strategy of QRL is to decentralise metropolitan racing to an extent that a number of metropolitan meetings would be conducted on the Gold Coast each year. QRL envisages that metropolitan meetings will not be centralised in Brisbane, but a number of major meetings will be conducted on the Gold Coast, to not only benefit racing, but also tourism. The lack of a quality facility on the Gold Coast hampers QRL in the delivery of this strategy. To upgrade the racing and training facilities and provide for a reasonable upgrade, a budget somewhere in the order of **$50m - $60m** would need to be established.

Another significant issue that needs to be considered is Magic Millions (MM) wishing to further upgrade the quality and standing of its race series and along with this, a quality racing venue is required. An upgraded venue is not only required for this series, but is also a requirement for the Gold Coast to host its share of major meetings. It must be stressed that an upgrade of the GCTCs facility at Bundall is not designed solely to accommodate a once only MM meeting per year rather its purpose is to strengthen thoroughbred racing on the Gold Coast and to support QRL's strategy to decentralise metropolitan race meetings

Each year the owners of MM claim that the race will be moved unless the facilities are upgraded at the GCTC. No one would question the value associated with MM hosting their main race each year at the Gold Coast. The flow on benefits to the economy are substantial in terms of spend on food, entertainment and accommodation. It seems that the company is now seriously starting to look further a field and if their reasonable needs are not met, Queensland could lose the race series.

Only this month, QRL met with a representative of MM who was seeking permission and support to move the MM race day to Eagle Farm further centralising high quality race meetings in Brisbane, which is in stark contrast to QRL's strategy to decentralise metropolitan race meetings.

From a GCTC standpoint, a move of the MM race day to Eagle Farm, away from the Gold Coast, or to any other venue for that matter, will deliver a financial disaster to the club, and the City of the Gold Coast. In addition, this will cause QRL to redirect scarce funds to subsidise the GCTC for the loss of their main race day.

Issues

- Substandard facilities at the Gold Coast.
- Cost of a reasonable upgrade estimated at **$50m – $60m.**
- Lack of club or industry funding to finance upgrade.
- Loss of MM race day and series.

Mackay Turf Club (MTC)

Background

As with the other provincial clubs located in regional Queensland, the MTC complex at Ooralea Park requires a significant upgrade. For this club to remain a TAB club, significant expenditure will be required on the course proper, the training tracks will require an upgrade, and the development of oncourse stabling is essential.

Whilst QRL has been able to reduce the number of venues producing TAB race meetings, it also increases the risk of significant track wear and tear. An option to increase the level of TAB activity at Mackay exists, but only on the basis that we are able to upgrade the facility inline with the abovementioned comments. In the absence of being able to improve the course proper, training facilities, and develop oncourse stabling, Mackay will cease to be a TAB venue.

To increase the presentation of race meetings at Mackay, a significant amount of expenditure is required for the overall upgrade. An amount in the order of **$1.2m** is required to renovate the course proper, upgrade the training facilities and establish approximately 100 stables oncourse, to ensure the ongoing viability of the club, as one which facilitates the running of TAB covered race meetings.

Issues

- The lack of funding available to proceed with the abovementioned developments.
- The likely removal of the MTC as a TAB race club in the absence of being able to upgrade the Ooralea Park facility.
- Downgrading of Mackay as a significant racing centre.
- Funding required – **$1.2m**

Cairns Jockey Club (CJC) and Far North Queensland Amateur (FNQA) Race Club

Background

The CJC is a race club in Queensland that has been the recipient of considerable racing development funding over the last ten years. On more than one occasion the club has been 'bailed out' to secure its future. Mainly, these circumstances have come about as a result of a lack of harmony within the racing industry in the Cairns district.

More recently, the club finds itself faced with legal action by 'Trafalgar' and a precarious financial situation that, if not addressed, would see the closure of racing in Cairns indefinitely. On February 29, 2004, the members of the CJC passed a resolution by majority vote for the sale of Cannon Park to proceed by way of public tender, or expressions of interest. The intention of the existing committee was to partner with Trafalgar to identify an alternative venue for racing in the Cairns district, enabling the mixed use development of Cannon Park by Trafalgar, with Trafalgar financing the relocation of racing in Cairns to a Greenfield's site.

Following a very public campaign in 2006, an alternative committee headed by Mr Tom Hedley, was elected at the annual general meeting on November 19, 2006. The committee that was ultimately elected had campaigned on the basis they would retain racing at Cannon Park and would not entertain the relocation of racing to an alternative site. In an interview with the Cairns Post immediately after the election of the committee, Mr Hedley, CJC president, is reported to have said that, "*there were no guarantees, (his) aim was to get rid of Trafalgar within a year. It would be better if it was a week's time, but a year's time hopefully. And the plan is if we can get rid of Trafalgar, we want to start on that (Cannon Park upgrade) building the first week after the amateurs next year*".

Trafalgar have argued that this statement evidences "*a lack of good faith to meet its obligations under the agreement*". On February 2, 2007, the board of QRL further considered its position regarding the sale of the Cannon Park complex. After considering the results of the documented due diligence process, the board resolved to withdraw its 'in-principle' approval for the sale of the Cannon Park complex. On February 19, 2007, Trafalgar's solicitors wrote to the CJC rescinding the agreement and advising that, "*Proceedings will be commenced in the Supreme Court... for breach of contract against its current president and committee members for the torte of unlawful interference with contractual arrangements*". On February 27, 2007, Trafalgar lodged an action against the CJC and the 12 individual members of the committee. Trafalgar are continuing with their proceedings. The CJC finds itself in a precarious situation, to the extent that QRL will provide funding to the CJC to obtain an opinion in relation to the legal matter involving Trafalgar. It should also be noted that the CJC is bordering on insolvency.

The CJC has total liabilities of $988,000 in total and is in no position to repay its creditors.

In addition to this most serious matter, Cannon Park also requires considerable work on the facility and it is anticipated that the overall cost to QRL to re-establish the racing amenity to a reasonable standard will be in the order of **$1.5m**.

The future of the CJC and Cannon Park has a significant bearing on the long standing FNQA Race Club. Known as the "Cairns Amateurs", the club conducts two race meetings annually, one a non-TAB meeting and the second covered by the TAB. Across the two days the club hosts between 20,000 and 25,000 patrons at the race meetings. As with the MM at the Gold Coast, the Cairns Amateurs delivers a massive boost to the economy and both local and state Governments are aware of this, as it is reflected in the level of interest shown in the meetings held by this club. Put plainly, its future is in the balance just as the future of the CJC is.

Issues

- Legal action by Trafalgar against the club and the individual committee members.
- The nominal claim by Trafalgar of $100m.
- QRL having to fund legal costs of the CJC currently $30,000; should Trafalgar continue with the court action a defence of the CJC in court could range upwards of $400,000.
- The club lacks the capacity to meet current financial obligations; total liabilities of $988,000.
- The club is insolvent without QRL guarantees.
- If the CJC falls over, so too does the highly successful FNQA race meetings. The Cairns Amateurs have an obligation to the Cairns City Council of $150,000 and the Government has extended funding to this event in conjunction with the 'City of Cairns Festival' through Queensland Events Corporation.
- In the order of **$1.5m** is required to establish Cannon Park as a reasonable racing facility, meet workplace health and safety obligations, and secure the Cairns Amateurs Carnival as an ongoing event.
- Overall funding required to ensure racing continues at Cannon Park is approximately **$2.8m**.

Deagon Training Facility

Background

QRL undertook a detailed study of the Deagon training facility with a view to upgrading the equine component of the training facility, with the majority of the cost associated with the upgrade to be derived from a commercial development proposed for approximately 5ha of the existing site.

A review as to the need to retain the Deagon facility is currently underway in the context of QRL moving to procure Wadham Park, which is to be upgraded to facilitate the training of approximately 800 horses.

In analysing the proposed development at Deagon, it became apparent that there was a substantial shortfall in the funding model. The proposed equine development planned to cover approximately 30ha was costed at $85m, if the development proceeded to the standard proposed by QRL. The commercial development of 5ha of land, bordering Racecourse Road, would provide in the order of $40m in terms of development profit over a period of seven years, on the basis that QRL assumed the role of developer, with fixed-build contracts in place. This approach was seen as the most viable for QRL given that the development was based on an affordable housing model. Whilst QRL would bear the majority of the risk, it was felt that in the circumstances, QRL needed to adopt this approach to maximise the revenue that would flow from the development. The development revenue was to be used to offset the significant costs associated with the new equine precinct.

In the circumstances, QRL has elected to put on hold the proposed development at Deagon given that the funding gap is approximately **$45m** (with no escalation of costs included) and that QRL has signed a contract to purchase the Wadham Park complex, as being a more commercial option.

It is understood that Government, both local and state, have some concerns in relation to the future of Deagon. This concern is understandable, as the Deagon facility has formed an integral thread of the racing industry since the late 1800's. Unfortunately, with options in relation to the facility being limited, QRL would be forced to incur a significant cost to upgrade the current Deagon complex to meet standards that are reasonably expected within the thoroughbred industry.

At present, the facility has the capacity to accommodate the training of up to 230 horses, without the tracks incurring an unreasonable amount of wear-and-tear. The single greatest issue at Deagon is the lack of water that is available all year round to ensure that the track is presented in a suitable and safe condition. QRL would be prepared to consider the ongoing use of Deagon favourably, however, to do so will require a significant upfront capital injection and ongoing funding support from Government. For training facilities to remain viable in this day and age, their use must be optimised and this generally occurs through the installation of a synthetic track, which has the capacity to absorb greater wear-and-tear than customary turf tracks.

Issues

- If a decision is taken to close training at Deagon it will cause disruption to the Deagon stakeholders and business community.
- For training to continue at Deagon in the longer term, significant Government subsidies will be required, including an upfront capital injection.
- The development of approximately 5ha at Deagon, enabling the establishment of an upgraded equine precinct, does not fully fund the costs associated with the equine precinct upgrade, leaving a short fall of approximately **$45m** (without the inclusion of an allowance for the escalation of costs).
- Current status on hold, future to be decided.

QUEENSLAND RACING

Industry projects for future funding

Wadham Park one (1) and Wadham Park two (2)

Background

QRL, on March 23, 2009, signed a contract for the purchase of two properties in the Beaudesert region, at Canungra, commonly known as Wadham Park 1 and Wadham Park 2 (Wadham Park). The complexes are reasonably well appointed as private training venues and represent two lots of approximately 33ha providing considerable opportunity for further development.

The purchase of these properties, subject to due diligence, is scheduled to occur on July 1, 2009. A significant amount of investment will be required to deliver two state-of-the-art training facilities, both for horses and people wishing to participate in the thoroughbred racing industry in Queensland.

Progressively, QRL will be required to invest approximately **$40m** in both facilities to increase the number of stables at each venue and upgrade the training tracks and access. The overall development will also require the construction of accommodation onsite to facilitate training needs in regard to the further development of the curriculum for apprentice jockeys, trainees and stablehands, to meet industry resource needs.

The intention of QRL is to significantly restructure the method by which training and education is delivered to our industry by introducing an academy style educational facility to train our young apprentices, in a live in situation that will deliver not only career skills, but life skills and discipline, which are sadly lacking in most industry training.

QRL has been concerned at the current circumstances where young apprentices, both male and female, are, on occasions, exposed to less than satisfactory workplaces and the inherent dangers of living away from home at a young age.

The development of Wadham Park will give the industry, and Queensland, a unique opportunity to lead the way in developing a continuous base of skilled young Queenslanders. These young apprentices (for example 25 per annum) once trained will find immediate employment, and, in addition, will have the necessary life skills to make a worthwhile contribution to society.

The training centre will have the capacity to offer education and training to overseas students in due course, but in the initial stages, the urgent shortage of skilled employees in Queensland will take priority. It is anticipated that the training centre at Wadham Park will provide training and education for approximately 250 people annually.

The benefits for the Queensland Government in developing these properties include:

- increased employment in south east Queensland;
- increased spend in south east Queensland;
- 250 training and education and 400 permanent fulltime jobs; and
- the further development of one of the largest industries in Queensland.

The benefits for the Queensland thoroughbred racing industry include:

- improved training facilities for horses;
- improved training and educational facilities for people to work in the industry;
- increased supply of fit racehorses;
- the capacity to market the facility both interstate and internationally to increase industry participation; and
- the capacity to showcase Wadham Park demonstrating a commitment to excellence.

QRL has also written to the Queensland Government seeking ex gratia relief from the payment of stamp duty associated with the purchase of Wadham Park.

Issues

- Lack of funding to meet the immediate costs of development **($40m)**.
- On the basis that the purchase to procure Wadham Park does not proceed, the Beaudesert Race Club (BRC) facility requires a $3m upgrade.
- Upfront urgent relief funding of $1m is needed.

Industry Education and Training

Background

Despite the size and economic impact of the racing industry there are no public providers of training such as TAFE or Ag Colleges as in other states. The industry has delivered training through self funded training entities based at Deagon and at QRL regional offices.

In 1995, the Queensland Racing Industry Training Centre (QRITC) was established at Deagon. Initially funded by the state Government through the Department of Tourism, Sport and Racing, much of the infrastructure was funded from the international training programs conducted there between 1996 and 2004. The success of that program allowed for the construction of facilities.

In 2000, QRITC became Queensland Race Training (QRT) Pty Ltd, a company owned by the Thoroughbred and Harness boards. QRT was heavily subsidised by

the thoroughbred industry. Due to the entry of lower standard and heavily marketed competitors for the international training programs, QRT was unable to cross subsidise from those programs to support domestic training and increasingly required substantial assistance from QRL.

In 2004, QRT was wound up with QRL taking over the facilities, the training and the costs.

QRL became the industry's registered training organisation located at Deagon and providing training based on the National Training Package for the Racing industry.

Currently, QRL provides all training across the state for apprentice jockeys, trainee trackwork riders and stablehands and thoroughbred and harness trainer courses.

This structured training is delivered from Deagon, but the industry's ability to provide the required intensity of technical skills for the critical horse related components is hampered by lack of facilities and insubstantial funding.

The thoroughbred racing industry is reaching the crossroads in terms of recruitment, induction, up-skilling and retention. It is a large and very traditional industry where most have learnt their skills by "hands on" workplace training. This includes the employers, as well as the employees. This reliance on handed down knowledge and skills has implications, such as:

- there is a lack of acceptance for structured training which is not seen as part of work;
- there are many low skilled or partly skilled workers with insufficient training and supervision;
- there is a high turnover of workers at entry level;
- transient workers even in skilled areas such as trackwork contribute to inefficiencies and wasted resources;
- employers lack basic management skills in key areas contributing to turnover of workers;
- suitable employers for apprentices and trainees are difficult to find and workplace issues frequently require intervention;
- dissemination of new knowledge and skills, research and legislation is slow and ineffective;
- career paths are not clearly identified to workers; and
- industry image suffers due to poor employment practices.

The combined effect of these issues is that the industry will increasingly struggle to compete for and retain workers, especially those looking for a secure, defined career path.

Additionally, the level of skills and training delivery must be raised to allow the industry to make the most of its current workforce and ensure that industry work practices are based on skilled and trained workers, up to date technical knowledge, good workplace practices and offering secure, safe and clearly defined career paths to achieve this substantial financial assistance is required.

Issues

- Lack of financial assistance will prevent the development of sufficient skills to work in this industry.
- The development of an appropriate facility at Wadham Park is essential for training and will cost in the order of **$1m**.

QUEENSLAND RACING

Wagering taxation

Background

The redirection of wagering tax back into the racing industry, as has occurred in other states, would not only be a lifeline for the industry, but it would also provide the industry with an opportunity to strategically reinvest the funding to further increase the economic benefit to the state of Queensland and create additional jobs.

The Queensland wagering taxes paid to the state Government equate to approximately **$35.8m** per annum.[6] The wagering tax regimes in other states have either been reviewed with taxation benefits flowing back to the industry or alternatively been subject to submissions to the various state Governments in Australia.

The Victorian racing industry is currently working with the state Government to formulate a new funding model once the joint venture agreement with Tabcorp ceases in 2012. Currently the Victorian racing industry receives benefits in the order of $80m per annum from Tabcorp gaming revenue. This revenue will be withdrawn and a new model developed to ensure the Victorian racing industry is not disadvantaged. A figure recently released by Ernst and Young shows that taxation on wagering in Victoria could fall to as low as 2.55% for the industry to be no worse off. [7]

The three codes of Racing in New South Wales (NSW) have provided submissions to the NSW Office of Liquor, Gaming and Racing in relation to the review of wagering in NSW - the *Cameron Report*. One of the recommendations in the *Cameron Report* is a nationally coordinated approach to the regulation and taxation of the wagering industry. Proposed changes to the state taxation that affects the NSW racing industry also forms an important part of the submissions made by the NSW racing industry. In terms of South Australia (SA), the SA Government has abolished all state taxation on racing. The SA racing industry has been a major beneficiary as it will be in receipt of **$8.5m** per annum of additional revenue in the 2012/13 fiscal year. The process of totalisator tax withdraw is to be implemented over a four year period commencing 2008/09. [8]

The Tasmanian racing industry is also working with the Tasmanian Government to formulate a new funding model that delivers sustainability and revenue predictability for the Tasmanian racing industry. Integral to the discussions has been the need for an appropriate level of capital works to be undertaken in Tasmania, to continue to deliver the Tasmania racing product. Similar to Victoria, the Government in Tasmania has guaranteed that the Tasmanian racing industry will not be worse off by these arrangements. In terms of Western Australia (WA), the racing industry has

[6] Size and Scope Study of Racing in Queensland, IER Pty Ltd, p.6, April 2009
[7] Size and Scope Study of Racing in Queensland, IER Pty Ltd, p.3, April 2009
[8] Size and Scope Study of Racing in Queensland, IER Pty Ltd, p.13, April 2009

received significant capital support from the Government ($20m over three years) and received a reduction of 5% state tax on total turnover. The WA industry has a distinct advantage compared to other jurisdictions, including Queensland, when it comes to competing for the entertainment and gambling dollar, as electronic gaming machines are only located within the Burswood Casino.[9]

The Northern Territory (NT) racing industry is also negotiating with the state Government in relation to a new funding model, which is not based on wagering turnover or net wagering revenue. It is estimated that the negotiation and the new funding arrangement will be completed in the coming months. Government revenue in the NT is significantly enhanced by the growth of corporate bookmakers' turnover (in excess of **$2bn**) of which the state Government receives 0.33%.

The Queensland racing industry faces significant challenges in terms of sustainability and ongoing growth. Already, as a result of the decision to sign a contract to purchase Wadham Park, there has been a high level of consternation expressed by participants in the Deagon region in relation to the future of training in that facility. QRL, given tight financial constraints, has an obligation to develop the industry within its own means, in an efficient and an effective manner.

Apart for the $12m funding for the installation of three synthetic tracks and $2m per annum to offset the costs associated with the provision of training tracks, all capital funding to be expended within Queensland racing industry has been provided from within the industry itself. Whilst this is not a preferred option, QRL has been forced to consider industry debt to fund significant industry initiatives. In line with the decision taken by the SA Government, the three codes of racing in Queensland are of the view that the Queensland Government should redirect wagering tax to the industries, on the basis that the industries can demonstrate that the strategic investment of those funds can deliver outcomes of interest to the state Government. This outcomes should include increased economic spend and employment within the industry.

As highlighted earlier, wagering tax paid to the state Government is approximately $35.8m per annum and a redirection of some of this tax to the industries would provide assistance across the three Queensland racing codes.

Issues

- The Queensland racing industry will be left behind by other states as they benefit from the redirection of wagering taxes and new funding models.
- In the absence of being able to maintain the current levels of industry participation, the economic contribution to the state and the level of employment within the industry will diminish.

[9] Size and Scope Study of Racing in Queensland, IER Pty Ltd, p.13, April 2009

Government contribution to other sports

Background

In the lead up to the March 2009 state election, Premier Anna Bligh, MP, confirmed a **$60m** election pledge to the construction of a stadium, for the Gold Coast football club, enabling it to enter the AFL competition in 2011.

The license for the Gold Coast football club became contingent on the finalisation of a land swap agreement between the state Government and the GCCC that would involve the Government assuming ownership of Carrara Stadium and the surrounding land, plus the expected rubber stamping of a $40m federal grant. It is understood that the Premier's election pledge and commitment to the provision of **$60m** to the construction of the stadium.

In addition to the support from Government, at all tiers, it is understood that the AFL will contribute $10m to the stadium redevelopment, as part of a substantial investment over a period of six years. In addition to the state Government's contribution to the development of a stadium at Carrara, there is a history of support for major sporting codes in Queensland. The Lang Park (now known as Suncorp Stadium) redevelopment project, which commenced in 2003, was in receipt of substantial support from the state Government. According to media reports, the state Government's contribution to the redevelopment of Suncorp Stadium totalled **$280m.** In addition to this massive amount of financial support, the six-stage redevelopment of the Gabba (between 1993 and 2005 at a cost of **$125m)** also attracted substantial support from the state Government. Queensland tennis has also been a major beneficiary in recent times with the establishment of new tennis centre at Tennyson.

Whilst the thoroughbred racing industry understands these initiatives by Government, it fails to understand why it, as a substantial industry, has been unable to attract reasonable support from the state Government. The level of support from the Government to the racing industry in more recent times, has consisted of a $2m grant per annum to offset the substantial cost associated with the preparation and training of thoroughbred racehorses and, in addition, a recent commitment of $12m for the installation of three synthetic tracks that will cost closer to **$30m**.

As mentioned earlier, the thoroughbred racing industry is a substantial contributor to the economy in Queensland. Directly, the industry is responsible for $855m in economic spend or GSP and when induced and indirect impacts are included, the Queensland racing industry contributes just over $1.44bn towards GSP.[10] The racing industry is responsible for the employment of 30,000 Queenslanders in fulltime, part-time and casual employment in the industry. Essentially, for every $1m of expenditure generated by the industry up to 22 fulltime positions are created or sustained. In real terms, it is likely that the 22 fulltime positions actually reflect more than 46 individuals working in fulltime, part-time and casual positions. To put this level of employment in perspective, the racing industry is an employer of

[10] Size and Scope Study of Racing in Queensland, IER Pty Ltd, p.5, April 2009

considerably more individuals than the electricity, gas and water supply sector (20,900) and just below the communications sector (33,300). [11]

In relation to taxation, the activities of the racing industry generate more than $140m in revenue for the state and federal Governments. The state Government receives just over $103m in taxation revenue from the Queensland racing industry and whilst income tax and GST are not taxes paid specifically by the racing industry, the $35.8m contributed from wagering is unique. Whilst it is considered a federal tax, as it collected in this manner, the GST revenue does flow back to the state Government coffers via redistribution. The federal Government receives just under $37m in taxation revenue from the Queensland racing industry, as a result of taxes generated by those employed directly by the racing industry.[12]

Mentioned earlier were the substantial contributions by the state Government to major sporting codes in Queensland and contrasted against the limited level of financial support provided for the racing industry. It is noteworthy that the latest Australian bureau of statistics revealed that, on a per person basis, over 16.1% of Queenslanders visit racecourses annually. This placed the racing industry higher than other major sports, including rugby league (16%), motor sports (11.9%) and AFL (7.4%). Approximately 500,000 Queenslanders attended a racing event, with similar numbers attending one or more rugby league games, this was followed by motor sports (366,000), AFL (228,000) and rugby union (188,000).

Notwithstanding limited financial support from the state Government, QRL has initiated projects involving significant capital development, including:

- the purchase of Wadham Park 1 and Wadham Park 2 - $20m;
- the proposed upgrade of Wadham Park over three years - $40m;
- the purchase of Corbould Park - $5.95m;
- capital investment at Corbould Park for the installation of the Cushion Track and lights of $14m ($4m provided by the state Government);
- the proposed installation of 250 stables at Corbould Park - $11.5m;
- the installation of a Cushion Track and upgrade of the lights at Clifford Park – $12.6m ($4m provided by the state Government); and
- the upgrade of the Rockhampton course proper - $6m.

In addition to these outlined above, significant costs will be incurred for the upgrade of the MTC facility at Ooralea Park, improvements required for the Townsville Turf Club at Cluden Park and also the rescue package that is required for the CJC to ensure that racing in Cairns, including the conduct of the successful Cairns Amateurs race meeting, is able to continue.

[11] Size and Scope Study of Racing in Queensland, IER Pty Ltd, p.5, April 2009
[12] Size and Scope Study of Racing in Queensland, IER Pty Ltd, p.6, April 2009

Issues

- Substantial investment required by QRL for capital infrastructure within the industry in the absence of any significant financial support from the Government.
- State Government's considerable financial support of capital investments in high profile sports, whilst financial support has been lacking for the thoroughbred racing industry.
- Inequity between the contribution to the economy and employment between the various high profile sports in Queensland and the racing industry, and lack of recognition for the racing industry's contribution in this regard.

Suggested financial model for industry tax redistribution

The following funding model is predicated on the bare minimum of urgent requirements, with the bulk of future redistribution of tax relief going to the Gold Coast.

The 'redirection of tax model' that follows takes into account current Government financial constraints.

The upgrade of the Gold Coast is a most pressing need for the thoroughbred racing industry and whilst it takes precedence the issues outlined at Cairns, Mackay and Deagon also are all major priorities.

The proposed model seeks a 25% redirection of wagering tax in the first year, climbing to 35% redirection to the industries in the second year, and finally 50% redirection in the third year. The figure of 50% has been arrived at as it provides the minimum amount required in the third year of redirection to fund essential industry initiatives that are outlined in this paper.

Possible QRL funding model

The following two pages contain an example of how taxation redirection could be utilised from a thoroughbred racing standpoint. It will also be noted that the proposed break-up of any tax redirection is based on the percentages contained in the Queensland racing industry, "Intercode Agreement".

QUEENSLAND RACING

Queensland Racing Limited
Capital Development

	Total
Total Capital Required	75,600,000
Proposed Funding Model	
Repayments - Years	10
Interest Rate	8.0%
Interest Per Annum	6,048,000
Principal Capital Repayment	7,560,000
Total Annual Repayment Principal Plus Interest	13,608,000

		QRL	Harness	Greyhounds
		76%	14.50%	9.50%
Estimated Annual Wagering Tax for 3 codes	35,800,000	27,208,000	5,191,000	3,401,000

Tax Relief		% of Estimated Annual Wagering Tax Returned to the Industry for 3 codes	Tax Relief Allocated Over period	QRL Portion 76% of Wagering Tax Relief {1}	Interest on Loan of $75.6M @ 8% p/a {2}	Balance Available for Capital Contribution {1} - {2}	Terms of Repayment	Repayment of Loan
Tax Reduction Year 1	Scenario {a}	25%	8,950,000	6,802,000	6,048,000	754,000	Interest Only	6,048,000
Tax Reduction Year 2	Scenario {b}	35%	12,530,000	9,522,800	6,048,000	3,474,800	Interest Only	6,048,000
Tax Reduction Year 3	Scenario {c}	50%	17,900,000	13,604,000	6,048,000	7,556,000	Principal Plus Interest	13,604,000
Tax Reduction Year 4	Scenario {c}	50%	17,900,000	13,604,000	6,048,000	7,556,000	Principal Plus Interest	13,604,000
Tax Reduction Year 5	Scenario {c}	50%	17,900,000	13,604,000	6,048,000	7,556,000	Principal Plus Interest	13,604,000
Tax Reduction Year 6	Scenario {c}	50%	17,900,000	13,604,000	6,048,000	7,556,000	Principal Plus Interest	13,604,000
Tax Reduction Year 7	Scenario {c}	50%	17,900,000	13,604,000	6,048,000	7,556,000	Principal Plus Interest	13,604,000
Tax Reduction Year 8	Scenario {c}	50%	17,900,000	13,604,000	6,048,000	7,556,000	Principal Plus Interest	13,604,000
Tax Reduction Year 9	Scenario {c}	50%	17,900,000	13,604,000	6,048,000	7,556,000	Principal Plus Interest	13,604,000
Tax Reduction Year 10	Scenario {c}	50%	17,900,000	13,604,000	6,048,000	7,556,000	Principal Plus Interest	13,604,000
Tax Reduction Year 11	Scenario {c}	50%	17,900,000	13,604,000	6,048,000	7,556,000	Principal Plus Interest	13,604,000
Tax Reduction Year 12	Scenario {c}	50%	17,900,000	13,604,000	6,048,000	7,556,000	Principal Plus Interest	13,604,000

Funding Proposal

Year 1	QRL to fund interest Only
Year 2	QRL to fund interest Only
Year 3 onwards	QRL to Fund Principal plus Interest

Total Capital Required to cover the following Projects in the next 2 years

Years	Project	TOTAL	FY0910
FY0910 to FY1112	Gold Coast	58,000,000	58,000,000
FY0910 to FY1112	Cairns and FNQA Race Clubs	2,800,000	2,800,000
FY0910 to FY1112	Stables and Upgrade Mackay Turf Club	1,200,000	1,200,000
FY0910 to FY1112	Retention of Deagon	1,000,000	1,000,000
FY0910 to FY1112	Upgrade of Training Facilities Wadham Park	5,600,000	5,600,000
FY0910 to FY1112	Brisbane Racing Club - Plans and Financial Assistance During Construction	5,400,000	5,400,000
FY0910 to FY1112	QRL Integrity	1,600,000	1,600,000
		75,600,000	**75,600,000**

Other issues

Race club employment of staff in integrity functions

Background

Recently, there have been several incidents involving race club staff, that, due to lack of performance has caused the industry a degree of grief and bad press, which has led to a lack of confidence in the Queensland thoroughbred racing industry. Two incidents in particular that are worth making reference to involve staff at the QTC and the MTC.

In reference to the QTC, QRL stewards were required to open an inquiry into the use of non-compliant equipment at Eagle Farm. It became apparent that the racecourse manager had provided a set of illegal spurs to be used during a jump-out at Eagle Farm, which consequently lead to a breach of the rules and penalties being issued. It is a less than desirable situation when the PRA is required to take action against race clubs staff, in this instance, senior staff, due to a lack of integrity.

In relation to the MTC, QRL was required to investigate an allegation that the racecourse starter and barrier attendants were consuming alcohol during the conduct of a TAB race meeting at Mackay. Subsequent to breath testing the starter and barrier attendants, it was determined that staff were indeed consuming alcohol while attempting to perform important integrity related functions on behalf of the industry. Subsequently, the MTC released these people from its employment.

These two items present an area of concern that QRL will address. When it comes to the industry, integrity can not be compromised, irrespective of cost, as it is quite simply the foundation upon which the industry is built. QRL will move to assume complete responsibility and the employment of starters, assistant starters, barrier attendants and other staff performing integrity related functions who may be currently employed by race clubs. This will occur in a staged manner and the indicative cost will be in the order of **$1.6m** annually.

Issues

- Increasingly QRL is required to incur additional costs to protect and promote the integrity of the industry.
- Associated costs with the employment of these additional persons will be met by QRL.
- To meet the cost associated with the provision of these integrity functions, owners will be required to forgo any proposed prizemoney increases, as the cost associated with these functions will be ongoing and annual.
- The industry is required to fund the Government analytical laboratory at a cost of $2.6m annually.

Ownership of racecourse land

Background

One of the single biggest issues facing the control body is the ownership of racecourse land. Effectively, with the land being gifted to individual race clubs, the members of the club have a say in respect of the development of industry assets, and it is reasonable, in this day and age, to question the rights of race club members to do so.

QRL had firsthand experience in respect of the authority that the membership of a race club has in relation to blocking industry initiatives. For example, QRL held the view that it was no longer necessary to maintain two metropolitan racecourses in Brisbane separated only by Nudgee Road. Our view was that this was akin to two Ballymores, two Gabbas or two Suncorp Stadiums being located side-by-side. The then proposition by QRL that only one racecourse was needed was largely defeated on the basis of emotion and cultural differences between the two clubs, namely the BTC and the QTC.

It is disappointing when members of race clubs hold such power that the development of the industry, in this case metropolitan racing in Brisbane, is thwarted by those who simply pay an annual subscription to attend race meetings and access facilities that are not otherwise afforded to the general public. One of the fallacious arguments against the disposal of one racecourse, was that one track could not accommodate the number of race meetings. This is not unreasonable if the current facilities were to be retained without any development, in particular, widening of the course proper. Logically, if a track is 30m wide and handles 50 race meetings at present, if the width of the track was to be doubled, effectively employing two true rail positions, then it is probably that the redeveloped race track would handle double the number of race meetings. This sensible and logical argument was lost in translation, as overwhelming emotion took centre stage. History now provides that the BTC and the QTC will amalgamate into the Brisbane Racing Club from July 1, 2009, and that the newly formed club will proceed with a development that covers both racecourses. The concern that QRL has in respect of this approach is quite simply that in time to come, when it is recognised that only one racecourse is really required, that parts of each facility will be disposed of making it impossible to properly develop Eagle Farm.

Nevertheless, with ownership of racecourses held by race club members, it provides for a situation where only the second best outcome can be achieved. It means that development proposals are generated from club level and promoted to QRL for consideration. This process does not provide for an approach that fully considers the state-wide development of industry assets in a coordinated and integrated fashion. Rather, it is an ad hoc approach generated initially by each race club, considered by QRL in the context of other development proposals that it is aware of at the time. As a second best position, QRL is in the process of implementing a policy that enables the distribution of part of any funds generated as a result of a racecourse development to other clubs in that jurisdiction. To some extent, and on the basis that this policy is able to be implemented, QRL can redirect some funding in the best

interest of racing within a region, as opposed to the self promotion of individual race clubs.

Our preferred position is that QRL assumes ownership of all industry assets. A flow on effect of this, which should not be understated, is the capacity to exploit, in the best interests of the industry, other assets, including broadcast rights. Previously, individual clubs have established agreements with Sky Channel and their approach to date has been to do the best they possibly can for themselves. This approach can, of course, come at the expense of other clubs within the industry. In an endeavour to bring some sense to this desperate approach in terms of broadcast, QRL has facilitated meetings of TAB clubs and has engaged a consultant to move forward to value the collective broadcast in Queensland. Again, this is an example of a second best outcome that is caused by race club members, essentially owning racecourses in Queensland.

Issues

- The PRA does not have the proper capacity to coordinate and fully integrate a capital development program.
- The development of racecourses is generally promoted on an ad hoc basis with clubs proposing various developments.
- The assets are currently held by race club members and should be held by the industry as a whole and not by individual clubs within the industry.
- Broadcast issues flow from race club members (race clubs) owning the racecourse and assets.
- An optimum development program for the industry will never be delivered whilst race clubs promote narrow development proposals that serve to benefit individual clubs and have little or no regard for the needs of the broader industry.

QRL Constitution and Elections

Background

Constitution and Election Process of QRL

The terms of approval of QRL as the control body of the Thoroughbred Racing Code included a provision (condition 4) that changes to the constitution are to be approved by the responsible Minister of Racing.

Any change to the Constitution of QRL also requires the approval of its members by special resolution and, in practical terms, that means that the Class 'A' Members must in their vote, support the amendments or the amendments will not be permitted (*Corporations Act 2001 (Cth)*).

In light of the above, on Wednesday, August 6, 2008, a General Meeting was held to consider the following Special Resolutions to amend the Constitution of the Company:

That the Constitution of the Company be modified, with effect from the date that the Minister under the Racing Act 2002 (Qld) approves the amendments by:-

a) *replacing the reference to clause 17.2 in the definition "Advertising Notice" to clause 17;*

b) *adding the definition "Approval" in clause 1.1 as "Approval" "means an approval issued to the Control Body pursuant to section 26 of the Racing Act".*

c) *changing the definition of "Initial Term" where it appears in clause 1.1 and throughout the Constitution to "Initial Control Body Term" as set out in the attached Constitution in clause 1.1 and to replace the words "Initial Term" where used throughout the Constitution with "Initial Control Body Term" and amending the definition to "Initial Control Body Term" means the term of six years from 1 July 2006 and expiring on 30 June 2012".*

d) *changing the definition of "Shortlist" where it appears in clause 1.1 to "Combined Shortlist" and amending the definition to: "Combined Shortlist" "means the shortlist of Director Candidates who are selected by each class, formulated in accordance with the procedure referred to in clause 17" and to replace the term "Shortlist" where used throughout the Constitution to "Combined Shortlist".*

e) *adding the definition of "Subsequent Control Body Term" after the definition of "Selection Criteria" in clause 1.1 as: "Subsequent Control Body Term" means the term of any approval by the Minister under Division 6 of Part 2 of the Racing Act of the Control Body for the thoroughbred code of racing in Queensland subsequent to the "Initial Control Body Term".*

f) *removing the definition "Independent Recruitment Consultant" from clause 1.1 of the Constitution and elsewhere throughout the Constitution where it appears;*

g) *deleting the provisions of clause 15 and replacing them with the provisions set out in clause 15 (paragraphs 15.1 to 15.16 inclusive) in the attached Constitution;*

h) *amending clause 16.1 to replace the words "will be" after "the Company" with "is";*

i) *deleting the provisions of clause 17 and replacing them with the provisions set out in clause 17 (paragraphs 17.1 to 17.12 inclusive) in the attached Constitution;*

j) *amending clause references throughout the document due to the amendments to clauses 15 and 17;*

k) *deleting the signing provisions in the Constitution as this amended version of the Constitution is not the Constitution as adopted by the first members; and*

l) *deleting the provisions of Appendix B Part II and the words "Part 1" as there are no longer two separate parts to Appendix B and replacing the word "Ballot" where it appears in the heading with "Selection".*

Proposed adoption of the amendments to the Constitution

The board of QRL believed that the existing Constitution of QRL should be amended to reflect the need for continued stability and continuity of the board of directors of a regulatory body during a time of important changes to the industry.

With respect to the amendments proposed, members were advised that should the Constitution of QRL not be amended, then, commencing late 2008:

a) QRL will, given the length of time for the process of selection currently set out in the Constitution each year commencing at the AGM in 2009, be constantly in director selection mode;

b) the industry will be put to regular annual expense in relation to advertising and the engagement of an Independent Recruitment Consultant; and

c) a significant amount of QRL staff time will be devoted to the annual director selection/election processes; and

d) all directors will be required to retire and seek re-election each alternate year in rotation, making it very difficult to maintain any continuity of membership so as to develop long-term forward-thinking policies.

The proposed changes extended the time for the commencement of changes to the makeup of the board from (currently) the Annual General Meeting (AGM) 2009 to the Annual General Meeting in 2012 (the first AGM following the completion of the Initial Control Body Term of six years from July 1, 2006 to June 30, 2012).

At the AGM in 2012, 50% of the board (rounded up if that is not a whole number) shall retire, but shall be eligible for re-election. The balance of the directors shall retire at the AGM in 2014. There are no other retirements by rotation during the term of the Approval of the Control Body.

In a Subsequent Control Body Term, which if it occurs, will commence at the end of each prior Term, an election for 50% of directors will occur in the first year (17.1) and in the third year of the Term for the remaining sitting directors. Following this, no further election will be held prior to end of the Subsequent Control Body Term.

In summary, after the Initial Control Body Term expires, the whole board retires in two retirement events during the first and third years of each Subsequent Control Body Term.

The changes to the selection of directors involved:

a) the removal of the Independent Recruitment Consultant provisions;

b) amending the definition of "Initial Term" to "Initial Control Body Term" and amending the definition to include dates as these dates are now known;

c) deleting Part II of Appendix B – this would have simplified the selection process. It would have enabled a Selection Committee to determine the best candidate or candidates from a Shortlist determined through the process set out in Appendix B of the Constitution which involves the Class A Members and Class B Members respectively determining their preference of candidates from nominations. It would have changed a collegiate approach of Class A members to the decision on directors to be included on the Shortlist (which may not have regard to the talent required on the board of QRL) to an approach that takes account fairly and equitably of the views of both Class A Members and Class B Members. From a corporate governance perspective it provided both greater consistency to a control body's term of office and rotation at the end of each term of office. It would have struck a balance between industry having a voice on the composition of the board of the control body and the need for the board to act independently during its term as approved control body for the thoroughbred racing industry in Queensland; and

d) the introduction of an independent person to sit on the Director's Selection Committee, who is to be selected with the agreement of Class A Member Representatives and Class B Members or chosen independently if agreement cannot be reached. This independent person would bring further experience and an independent approach to the selection of directors, which from a corporate governance perspective strengthens the integrity control that QRL needs to carry out its functions and duties without fear or favour. This change would also ensure that there cannot be a drawn vote at the selection process, and a ballot will always determine the outcome.

Members' Vote

On Wednesday, 6 August 2008, four (4) meetings were held:

1. Class 'A' Member Representative Meeting – 10:12am

   The business of this meeting was:

   (a) Confirmation of the Class 'A' Member Representative Minutes of 4 February 2008

   (b) To remove Mr Bob McHarg[13] as the Authorised Representative of the Class 'A' Members, and

   (c) To appoint a new Authorised Representative of the Class 'A' Members.

   Mr Neville Stewart was appointed as the Authorised Representative of the Class 'A' Members.

2. Class 'A' Member Meeting – 10:35am

   The vote was carried out by a show of hands pursuant to section 250J of the *Corporations Act 2001 (Cth).*

[13] Mr Bob Mcharg was unable to act as the Authorised Representative of the Class 'A' Members due to being overseas at the time of the vote of the Class 'A' Members.

Pursuant to section 250L (3) (c) of the *Corporations Act 2001* (Cth), a poll was demanded immediately after the voting results on a show of hands was declared.

A poll was conducted, which 75% or more of Class A Members approved the changes to the Constitution by Special Resolution (14 votes 'In Favour' and one vote 'Against').

By Ordinary Resolution, it was resolved that the poll papers be destroyed.

3. Class 'B' Member Meeting – 11:18am

   The Chairman advised that the Class A Members had earlier met and resolved to approve the motion by special resolution.

   The vote was carried out by a show of hands pursuant to section 250J of the *Corporations Act 2001* (Cth), which 75% or more of Class B Members approved the changes to the Constitution by Special Resolution.

4. General Meeting - 11:24am

   Class 'A' Authorised Representative – Mr Neville Stewart, and

   Class 'B' Authorised Representative – Mr Robert Bentley.

   The Chairman told the meeting that the amendments proposed by the Resolution will have no force or effect unless:

   - 75% or more of Class A Members approve the Resolution at the Class 'A' Meeting;
   - 75% or more of Class B Members approve the Resolution at the Class 'B' Meeting; and
   - the Minister approves the amendments proposed by the resolution.

   The Chairman told the meeting that the Class A and Class B Members had approved the changes by Special Resolution at their respective meetings.

Outcome

Following initial complaints by a QTC committeeman, Mr David Dawson, and a follow up by Mr Bill Carter, the election process of QRL was referred to ASIC, the Crime and Misconduct Commission, and the Queensland Police (Fraud and Corporate Crime Group) for investigation.

- All three agencies cleared the conduct of QRL, its directors and executive officers.

- Prior approval by ASIC was received for the changes and the procedures carried out
- The most pre-eminent constitutional lawyer Mr David Jackson QC advised on the entire process

If the approval of the Minister is not obtained, the amendments have no force or effect.

As a result of the investigations, the responsible Minister at the time did not provide his approval, and as such, QRL has begun its yearly selection process of directors.

Currently under the Constitution, you have a selection process, whereby you have, in essence, the permanent engagement of an independent recruitment consultant, at a cost of approximately $60,000 per year, who will shortlist the applicants by reference to the selection criteria contained in the Constitution. I note that not only will this be a constant expense on the industry; a consultant who has no knowledge of the thoroughbred racing industry, will be determining the shortlist of directors who sit on the board of the Company, who acts as the control body for the thoroughbred code of racing. Furthermore, probity checks will be conducted on all director candidates who have been short listed for the vacant positions. It is noted that these yearly expenses will be considered a misuse of industry funds.

The timetable for the selection of directors is outlined below:

- Advertising:-

  (a) Australian Financial Review – Friday, 3 April 2009
  (b) Brisbane Courier Mail – Saturday, 4 April 2009
- Advertising Notice provided to Class A and Class B Members:
  Thursday, 2 April 2009
- Telephone screening and ad response:
  Week commencing Monday, 6 April 2009
- Closing date for nominations:
  Friday, 29 May 2009
- Interviews and preparation of shortlist & reference checking:
  Week commencing Monday, 1 June 2009
- Presentation of shortlist:
  Week commencing Monday, 9 June 2009
- Shortlist provided to Class A and Class B Members:
  Week commencing Monday, 29 June 2009
- Selection Committee convened:
  Week commencing Monday, 3 August 2009
- Announcement of Directors selected:
  QRL AGM – Friday, 6 November 2009

Issues

- As a result of unfounded allegations, the Minister did not endorse the Constitutional changes that were supported 14 votes to 1 and widely supported by the industry.
- The board will be in ongoing election mode.
- Industry funds are used to engage a recruitment agency.

Industry Reform

Background

The structure of the Queensland racing industry in respect of race clubs and the authority that race clubs still have requires review. One needs only to point to recent examples of dysfunctional behaviour that has reflected poorly on the entire industry or has acted as a barrier to industry progress.

The industry is now in a situation where there needs to be further delineation between the responsibilities of the race club and the responsibilities of a PRA. Recent examples of how race clubs can be dysfunctional are as follows:

- The Cairns Jockey Club (CJC) is essentially insolvent and has been the recipient of many millions of dollars in handouts in the last decade. It finds itself faced with legal issues to the extent that the company Trafalgar is taking the club on legally and yet the club does not have the financial resources to mount a challenge to the Trafalgar case. This is an embarrassing situation for both the industry and Government, given the level of interest in the FNQA race meeting. A course of action available to QRL would be to withdraw the club license rather than spend industry funds on a defence to a course of action caused by the committee of the CJC.
- The Mackay Turf Club (MTC) is another club responsible for a highly embarrassing situation, whereby recently, its starter and barrier attendants were found to be consuming alcohol during a TAB race meeting. Many in the industry, in Central Queensland, are of the view that this type of behaviour should be condoned and it is not a significant issue. This demonstrates a lack of understanding of what the industry is about and the professional level to which we should aspire to attain a higher status within the Australian racing industry. The actions of the starter and barrier attendants consuming alcohol during a race meeting, not only caused issues in respect of a prevailing level of workplace health and safety, but it was an embarrassment to the entire racing industry in Queensland.
- The Brisbane Turf Club (BTC) committee after originally agreeing to the disposal of Doomben withdraw its support based on pressure being placed on the committee by members of the club. Whilst QRL publicly supports the development of a metropolitan master plan, its preferred position would be to dispose of Doomben and properly develop Eagle Farm. In years to come, this will

still be a topic of conversation and yet there is no available mechanism to the PRA to cause this to happen, rather, it is a significant industry issue that is determined by members of a race club that pay a few hundred dollars annually for their membership subscription.

- In relation to the Gold Coast Turf Club (GCTC), no doubt had the Palm Meadows project proceeded there would have been issues surrounding the membership vote to relocate from Bundall to Palm Meadows. In discussions with the then committee of the GCTC, a number of the committee were of the view that the club must have ownership of a facility for it to be able to recommend the relocation to the membership. In essence, the members of race clubs hold the asset for the purpose of racing and it is unlikely that a membership of a race club will ever be able to dispose of an asset and then distribute the funds amongst the members. Having said this, however, of significant concern to QRL is that the industry is not in a position to facilitate significant developments in an integrated manner or develop a Greenfield site for racing while club members have the final say.
- In respect of the Townsville Turf Club, it has been responsible for the worst financial management performance of all TAB clubs in Queensland, except for the SCTC. These issues are of significant concern to the board of QRL as club's fail to recognise the importance of adherence to QRL policy and its requirement to ensure that race clubs, in particular TAB race clubs, are managed to the standard required. The Townsville Turf Club for a number of years has not been able to satisfy the financial reporting required by QRL and has been incapable of producing its business plan, setting out the direction for the club for any given financial year. In short, its performance has been appalling and, in some ways, the club has failed to recognise that it is no longer a PRA and that it is a TAB race club that is required to give effect to its responsibilities with the appropriate standard of integrity and probity. In regard to its inability to recognise that it fills the role of a race club, comparisons can be drawn to its brother club, the QTC.

These are but a few examples whereby the image/future development of racing in Queensland is determined by individual race clubs. QRL proposes that a white paper be prepared for discussion in consultation with the Government, dealing with a number of these administrative/governance issues within the industry, whereby we collectively explore a broader membership approach to thoroughbred racing in Queensland with industry assets held by the PRA, as opposed to the individual race clubs.

It is also proposed that as part of the reform paper, the country racing structure be reviewed, identifying its funding source and administrative framework. More on this issue follows later in this paper.

Issues

- Clubs and their membership own industry assets and this can be a barrier to industry progress.
- Funding of non-TAB or country racing is a drain on scarce industry resources.

Beaudesert Race Club (BRC)

Background

The BRC currently conducts six race meetings per year and has in training approximately 220 horses at its facility. QRL has signed a contract for the purchase of Wadham Park, and on the basis the purchase is confirmed, a review will need to be undertaken in relation to the need to continue with the training of thoroughbred racehorses at the Beaudesert track, given its close proximity to Wadham Park.

On Monday, April 6, 2009, a meeting was held with the BRC committee and the Beaudesert trainers to brief them in relation to the contract that QRL has on Wadham Park. The president of the BRC, Mr Terry McKinnon, has met with QRL on several occasions highlighting the difficult financial position the club currently finds itself in.

A number of allegations suggesting improper conduct by the president of the BRC have surfaced in recent times. In correspondence dated March 7, 2009, (should have been dated April 7, 2009) a number of club members requested that the president of the BRC stand down by not later than noon on Thursday, April 9, 2009. The correspondence outlined that in the absence of the president standing down the BRC management committee would be required to facilitate a special general meeting, pursuant to the club's Constitution. The members of the BRC that have signed the request for a special general meeting suggested that the current makeup of the BRC management committee was formed unconstitutionally. Leaving aside the legality of the issue, which has been referred back to the race club itself for resolution, this provides a further example of the members of race clubs exercising authority in areas where they should have no jurisdiction. The dissatisfied members of the BRC are seeking the removal of the president on the basis that he has somehow colluded with QRL to close down the BRC. This is factually incorrect. An amount of harm will be done to Terry McKinnon's reputation, who, in the opinion of QRL, has taken a mature industry approach to the fact that QRL plans to further develop Wadham Park as a showcase facility for the industry.

The view taken by a number of members of the BRC that by removing the president of a club, they will be successful in preserving all that currently exists at Beaudesert is inappropriate. It highlights the jurisdiction that many members of race clubs believe they have in respect of the facility on which training and racing is conducted. At the end of the day, the membership of race clubs should be entitled to elect a committee that has jurisdiction in respect of the activities that occur and coincide with the holding of a race meeting and should not be positioned so that they are able to thwart industry reform and progress.

Issues

- Race club committees and members have an unreasonable amount of authority in respect of the development/disposal of assets.
- A review of the way in which industry assets are held, including landholdings, is critical to the proper empowerment of the PRA to initiate industry wide, integrated developments for the future benefit and welfare of the racing industry in Queensland.

QUEENSLAND RACING

Country racing options

At a meeting on December 1, 2008, between representatives of QRL and the Queensland Country Racing Committee (QCRC), QRL confirmed the delivery of an enhanced $13.1m annual country racing funding package to country stakeholders for a three year period, commencing July 1, 2009.

QRL consulted widely during 2008 with a broad cross section of country racing stakeholders, and this enabled the delivery of a robust funding and race date schedule that will enhance the viability of country racing within Queensland. The overall amount of $13m represents a 13.5% of revenue commitment to country racing when the legislated obligation is to provide 7% of revenue.

The revised funding package represents a 10% or $1.2m increase to QRL's contribution to country racing.

The revised racing schedule removed the majority of regional race date clashes and populated the country race-less Saturdays, which were endemic in the previous schedule. QRL's model provides enhanced continuity and delivers maximum opportunities for stakeholders.

The changes provide for a two tiered funding model, through the recognition of strategic status to 28 non-TAB clubs that will conduct 185 race meetings, representing 65% of the country racing program. These meetings will carry minimum prizemoney levels of $6,000 per race, or $4,000 to the winner, an increase of 50% on the previous minimum level.

Each of the eight regions has a minimum of three strategic tiered clubs and the increased investment in these centres will ensure a viable and sustainable racing industry that is maintained within each region on the basis that the funding level can be sustained.

Highlighted below are the benefits provided to country racing that will commence from July 1, 2009, which clearly highlights the expenditure by QRL on areas other than prizemoney.

Expenditure Item	QRL Annual Contribution
Removal of Unplaced Starter Fees	$359,230
Provision of Sky Channel vision at all Non-TAB meetings	$110,000
QTIS Funding	$446,400
QTIS 600 Funding	$200,000
Feature Funding	$325,000
Administration Payments to Clubs	$558,000
Jockey's Riding Fees	$2,056,100
Subsidisation of Jockey's Insurance	$600,000
Provision of QRL Services, Travel, QCRC and RISA	$887,500
Prizemoney	$7,600,000
Total	**$13,142,230**

QRL will no longer fund the administration of non-TAB clubs that were not included within the strategic funding tier. The majority of these clubs race one or two times per year and these race meetings are considered community events.

It was agreed at the Country Racing Forum conducted during June 2008 that QRL's contribution to these meetings, which exceeds $32,000 per meeting for prizemoney and race day expenses, is a significant contribution to a community event.

QRL will continue to support these clubs with minimum prizemoney levels of $4,000 per race and the provision of race day services at no charge to the club only on the basis we can afford to do so. These services cost QRL in excess of $10,000 per meeting.

The financial capabilities of QRL are not inexhaustible and when considering that our total commitment to country racing exceeds $13m or 13.5% of the product fee revenue paid to the industry, it clearly highlights that QRL's contribution to country racing is well above our 7% obligation under the *Racing Act 2002*.

There needs to be urgent recognition from Government and local councils, of the significant contribution made by QRL in supporting community events that return no revenue to the industry. The provision of community events should not be the responsibility of the racing industry. In running the business of racing we continue to come under fire from the many professionals in the industry who rely on QRL to take decisions that will ensure the overall business remains sustainable into the future.

There must be a balance of support for country racing and the need for Queensland to have a strong and viable professional industry.

Set out below are two options QRL will be forced to consider should it be unable to maintain the funding levels to non-TAB racing.

Option 1 – Complete Downsize & User Pays

- Continue to provide funding for the conduct of 287 meetings.
- Reduce prizemoney contributions from $8.5m to $7.2m. This would result in prizemoney levels of $4,700, a significant reduction from the proposed $6,000 levels at strategic meetings.
- Remove the $3,000 administration subsidy paid to strategic clubs. All Clubs would be required to pay QRL a fee of $3,500 to offset the costs associated with the conduct of their race meeting.
- Instead of all country starters participating for FREE, the connections of each horse would be required to pay $200 to offset jockeys riding fees and insurances.

Option 2 – Rationalisation & User Pays

- Removal of funding for 68 non-strategic meetings. This will result in the removal of funding to 58 clubs.
- Reduce prizemoney contributions from $8.5m to $7.2m. The current prizemoney levels of $6,000 and $4,000 at Strategic and Non-Strategic meetings respectively to be maintained.
- Remove the $3,000 administration subsidy paid to strategic clubs. All Clubs would be required to pay QRL a fee of $3,500 to offset the costs associated with the conduct of their race meeting.
- Instead of all country starters participating for FREE, the connections of each horse would be required to pay $200 to offset jockeys riding fees and insurances.

Country racing costs

Background

As a result of legislation introduced by the then Minister, Robert Schwarten, QRL is required to provide not less than 7% of its Product and Program fee in support of country racing. 7% of the annual Product and Program fee equates to approximately $7.2m. QRL, however, provides $13m in support of country racing annually, which equates to approximately 13.5% of the product fee.

As stated on several occasions earlier in this paper, the provision of this funding to non-TAB or country racing in Queensland provides no return revenue for the industry. In many ways the funding of these race meetings is really for the social fabric of country towns and is a hangover from a non-TAB racing program of the past. However, if QRL was to reduce the level of annual funding there would be a significant issue made of it that would ripple not only throughout the industry, but also into the halls of political power in Queensland.

Country racing is often a hot topic, in particular, when QRL implements necessary reform. It will be clearly observed that the current level of support by for country racing is well in excess of the required 7% per annum, yet there are no tangible returns for this industry that the majority expect to be conducted as a business.

Issues

- Queensland country racing is funded by QRL with no returns provided to the business of racing.
- Considerable cost borne by the industry that would otherwise facilitate increases for the business of racing.
- Contribution determined by Queensland Government legislation and yet the Government expects QRL to run the industry as a business.

Prizemoney levels

Background

Prizemoney is the most commonly used barometer to determine both the viability and status of a thoroughbred racing industry. The board of QRL, since April 2002, has been able to achieve annual financial surpluses to the point where the board has established a program of capital investment and development. The possible procurement of Wadham Park, as mentioned, will signal the end of the board's capacity to meet the costs of further capital improvements for the industry. A line of credit is being considered by the board as an option to fund future improvements. However, the ability to provide ongoing incentives to owners and associated participants has a direct correlation to the level of annual income and the capacity to sustain that level of income on an ongoing basis is of critical importance to the industry.

The period of equine influenza (EI) saw the industry move through a difficult time and whilst there has been a reasonable response in terms of wagering on Queensland thoroughbreds, we are yet to achieve the heights that were formally established prior to the onset of EI. As a result of this, we are now faced with an increasing challenge to drive revenues to the point where we are able to utilise that income on an ongoing basis to increase prizemoney.

Set out below is a table that highlights the standard level of prizemoney at metropolitan Saturday, metropolitan midweek and provincial race meetings in the more substantial thoroughbred racing states in Australia.

	Metropolitan	Metro Mid-Week	Provincial
Queensland			
Average Per Race	$47,500	$13,000	$10,500
NSW			
Average Per Race	$70,000	$27,000	$15,000
VIC			
Average Per Race	$65,000	$28,000	$14,000
WA			
Average Per Race	$50,000	$21,562	$10,594

As can be discerned from the above table, in terms of standard prizemoney, Queensland has slipped well below WA. Already considerably behind both NSW and Victoria, Queensland has now relinquished third position to WA, which has, in recent times, been able to substantially increase its prizemoney. Midweek metropolitan meetings in Queensland are only marginally stronger than those conducted at the provincials. Unquestionably, there needs to be a strategy developed in consultation with Government, so that our standard levels of prizemoney can be increased at all TAB race meetings. Whilst it could be argued that races such as the Stradbroke Handicap, of $1m, will continue to attract the best available sprinters, there is no

doubt that feature prizemoney also needs to be reviewed given the additional competition that we now face from our Asian neighbours and their capacity to attract our best sprinters to their carnivals. Long gone are the days when the Queensland Winter Racing Carnival formed an integral part of a top line thoroughbred's program in Australia. Often these days, the best sprinters will head to Asia given the substantial prizemoney levels that have been achieved in places such as Hong Kong and Singapore.

QRL needs to sustain a viable racing industry in this state and will address this issue through improved performance and analytical review of the racing program. However, there is no possibility of maintaining prizemoney levels and significantly addressing the issue of poor facilities concurrently, given that QRL will be required to meet interest payments on any line of credit to fund capital upgrades.

Issues

- Diminishing prizemoney relativity.
- International options for Winter Carnival horses.
- No capacity to increase owner benefits.
- Likely industry decline in the absence of increased annual revenue.

Harness Racing Queensland (HRQ)

Capital Development

HRQ is currently in a critical position when it comes to funding immediate capital infrastructure requirements for its TAB venues and development of a training centre. The closure in 2008 of the Russ Hinze Grandstand at Albion Park, the principal harness racing track in Queensland has dramatically affected the business of harness racing in Queensland.

The loss of this vital facility at Albion Park has severely impacted on our ongoing income streams to the extent of in excess of $1m per annum, specifically by way of attendances, sponsorship, catering, beverage and oncourse wagering. Funding of $4m has had to be commercially sought to undertake the demolition of this condemned structure. Further funding of $20m is required to construct a new grandstand facility and works required for the harness track is required. On current income levels this would not be commercially achievable.

Additionally the Government's decision to re-develop the Parklands site for an alternative use by 2012 removes another key asset from harness racing. It is important to record that the Parklands complex was developed some time ago using funds from the disposal of the land owned by the then Southport Harness Racing Club. With these funds (approximately $13m) locked in at Parklands HRQ have no resources available to purchase an alternative site and fund the infrastructure to develop a harness racing facility. This is all the more important due to the Albion Park issue, as the Parklands track is now the major venue for harness racing and was the track for the very highly successful 2009 Inter Dominion Championships. These championships generated over $8.6m in local spend, and generated direct and indirect employment of 83 fulltime equivalent positions.

The Redcliffe venue is also in need of an urgent injection of capital funding to arrest ever increasing repairs and maintenance expenditure. Conservatively HRQ is facing capital development costs of $60m plus at Albion Park and a replacement for Parklands.

Training

Marburg and the area to the south west has seen a growth in harness racing activity in recent years. The board has identified Marburg as a long term strategic area for Harness Racing training and with the probable closure of Rocklea racing opportunities for hobbyists are to transfer to Marburg. Funding for the future development at Marburg is required.

Prizemoney

The industry has achieved only marginal increases in prizemoney at the cost of a reduction in the number of venues and race meetings conducted. This has caused a domino effect with a downturn in the number of owners, breeders and trainers participating over the past decade in turn dramatically affecting the harness racing product. This negative cycle needs to be remedied expediently with the injection of increased revenues.

Integrity

It is vital to the professional conduct of the sport that increased funding be provided to ensure the integrity of the harness racing product to our clients, the wagering public. This needs to be facilitated by greater awareness and detection of prohibitive substances.

Greyhound Racing Queensland (GRQ)

GRQ was unable to meet the deadline regarding the submission of this paper, due to an increased workload at present. A section covering GRQ issues will be provided at a later date.

QUEENSLAND RACING

Summary

The Queensland racing industry (three codes), as previously outlined, is a significant contributor to the economy of Queensland in terms of GSP and, furthermore, the employment it provides. In many quarters, the racing industry is considered to be the third or fourth largest industry in the state.

Major sporting codes in Queensland have been significant beneficiaries of Government grants, whilst the racing industry has received little additional funding in comparison. Sports such as rugby league, AFL and tennis, which contribute to the Queensland economy to an inferior extent when compared to racing, have been major recipients in terms of stadium upgrades and developments over the last decade.

Other racing jurisdictions states in Australia have successfully made submissions to their relevant state Governments in respect of wagering tax relief, in that taxation revenue has been redirected from Government coffers back into the industry to enable the various industries to grow and prosper. Arguably, one of the most significant beneficiaries of taxation reform has been the New Zealand racing industry, a neighbouring competitor to ourselves in Queensland. The growth of the industry in New Zealand has been considerable as a result of the financial support given to it by the New Zealand Government. SA, for example, will benefit to the extent of 100% taxation relief in 2012, ensuring substantial increases to prizemoney and other benefits delivered to participants in that state.

The section on prizemoney in this paper highlighted the deficiency that exists in association with our prizemoney here. Standard prizemoney levels have for a period of time, been inferior to those that have existed in both NSW and Victoria, however, we have now slipped behind WA in terms of our standard prizemoney. QRL had been able to increase prizemoney to reasonably competitive levels to the point where interstate and New Zealand interest has been expressed in relation to participating in our industry here in Queensland. Previous prizemoney levels did enough to generate this interest, however, our lack of quality infrastructure often dissuaded industry participants, in particular trainers, from relocating.

This paper also sets out an array of capital development programs that QRL has embarked upon in respect to the improvement of our facilities here in Queensland, notwithstanding the capital improvement often finishes up in the hands of club members. Unfortunately, the cash assets of QRL have now reached a level where it would be imprudent for the board to allow them to reduce any further. Therefore, to continue with the program of capital improvements within the industry, necessary to ensure the growth and prosperity of the industry, QRL will need to go into substantial debt. This will be seen as a sinister action by many within the racing industry and it is certainly not the desired position of the board.

On balance, we have two significant issues that both flow from a lack of available funding. The first is the fact that our prizemoney is slipping behind and as a result of that, participation will decline within the industry. The second is that we have embarked on a process of capital development for the industry, with a view to generating increased interest and participation, and have now reached a stage where we are unable to fully complete the capital development program in the absence of going into substantial debt. It is with these matters, and other issues raised in this paper foremost in our minds, that we make the following recommendations to the state Government.

QUEENSLAND RACING

Recommendations

1. **It is recommended that the Queensland Government commits to the redirection of a portion of wagering tax to be returned to the Queensland racing industry, with the redirection to be implemented over a period of three years, to be utilised primarily on infrastructure initiatives.**

   The Queensland Government is encouraged to commit to the redirection of a total of 50% of wagering tax to be returned to the Queensland racing industry, in a staged way over three years.

   This paper has outlined a range of capital development options across the three codes which include, significant improvement planned for the Gold Coast, the retention of Deagon, the retention of Cairns and their FNQA race club. Also highlighted are the infrastructure issues currently being faced by both the Harness and Greyhound codes. It is proposed that 25% be redirected in the first year, 35% in the second year and 50% in the third year. This approach not only softens the impact on Queensland Government revenue, it enables the racing industry to effectively plan for its future. The redirected tax, should it be returned to the industry, provides opportunities to not only invest in capital development but, given that the revenue is ongoing and annual, provide increased benefits to grow the participation level across the three codes. For example, as reported early in this issues paper, IER outlines that for every $1m in expenditure generated by the racing industry, up to 22 fulltime positions are created or sustained. In real terms, it is likely that 22 fulltime positions actually reflect more than 46 individuals working in fulltime, part time and casual positions. Our industry, the racing industry, is responsible for the employment of approximately 30,000 people in fulltime, casual and part time positions.

   Taking into account Wadham Park alone, a development at this facility would cater for the training of approximately 800 horses in that region. Given the staff and level of activity required to sustain that number of horses in training, along with the veterinary hospital located at Wadham Park, approximately 200 people will be provided with fulltime employment as a result of the Wadham Park development. IER suggests that the increased spend in that region alone will be in excess of $20m annually should QRL be able to procure with Wadham Park and proceed with the development. This is simply an example of the positive economic impacts that this level of investment delivers.

   The Queensland Government is called on to give serious consideration to the request to return 50% wagering tax to the three codes.

2. **It is recommended that the Queensland Government commits to working in collaboration with the racing industry to develop discussion papers dealing with issues such as asset ownership, the administration and funding of country racing and the future role of the race clubs and their membership.**

   Outlined in this paper are a range of issues that stem from the ownership of racecourses effectively residing with the race club. The Queensland racing industry is ineffective in that it is unable to affectively prepare a coordinated and properly integrated capital development program for the industry. Arguably, the two most substantial assets held within the industry are controlled by race clubs; namely the racecourse land and the rights in relation to broadcast that flow as a result of the race clubs owning the land.

   Race clubs these days are responsible for the organisation of an event that coincides with the race meeting and nothing more. Whilst some may suggest that QRL has sufficient authority under the provisions of the *Racing Act 2002* to mete out punishment to clubs that are non-compliant through the withdrawal of prizemoney or race dates, the board of QRL does not view this as a satisfactory solution to the issue. At the end of the day, it would be the industry participants impacted through these suggested actions just as much as any race club. The preferred position of QRL is that the ownership of the asset resides with the PRA and that suitable lease arrangements are put in place to enable the operation of the relevant race clubs. Also highlighted, is the fact that broadcast issues would also be solved should the asset ownership reside with the PRA allowing the PRA to exploit broadcast rights as a whole thus increasing the revenue that flows into the industry as opposed to individual clubs negotiating on their own behalf.

   Country racing is an issue that often raises its head, in particular when reform is implemented. Non-TAB or country racing delivers little or nothing to the business of thoroughbred racing; rather, it continues to be a drain on the financial assets of the industry. It is recommended that the Government in collaboration with the racing industry develop a discussion paper in relation to this topic that deals with alternative administrative and funding structures for country racing.

QRL overview of outcomes of 50% of redirected funding

Needs

- GCTC upgrade – cost of reasonable upgrade $50-60m.
- CJC and FNQA - $2.8m to cover current debt and upgrade to facility.
- Stables and upgrade of Mackay Turf Club - $1.2m.
- Deagon retained – upgrade of $1m.
- Upgrade of training at Wadham Park - $5.6m.
- Brisbane Racing Club plans and financial assistance during construction - $5.4m.
- QRL integrity function - $1.6m.

QUEENSLAND RACING

Industry outcomes with no support from Government for the redirection of 50% of wagering tax

- The development of the GCTC will proceed with part funding from the sale of Deagon.
- Shut down racing in Cairns.
- No upgrade of MTC.
- Disposal of Deagon with revenue to fund other needs.
- Limited development of Wadham Park if QRL proceeds with the purchase.
- No financial assistance to the Brisbane Racing Club during the planning stage of the development.
- Some integrity functions will be required to remain in the hands of race clubs.
- Country racing – funding downgrade to meet legislated requirement only.
- Potential outcome is that no TAB racing will be conducted north of Rockhampton.

QUEENSLAND RACING

QUEENSLAND RACING COMMISSION OF INQUIRY

Commissions of Inquiry Act 1950

ANNEXURE

Annexure **'RGB 3'** to the Supplementary Statement of **ROBERT GEOFFREY BENTLEY** authorised 11 September 2013 at Brisbane.

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CLAYTON UTZ

Racing Queensland Limited

Discussion about Potential Restructuring Issues

Confidential and Subject to Legal Professional Privilege

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Contents

1. Introduction

1.1 Overview and Purpose

We have been asked to provide advice to the Chair of Racing Queensland Limited (**Racing Queensland**) in respect of the extent of the State's power to legislatively alter the existence or structure of Racing Queensland.

Racing Queensland is a corporation that has been established under the Corporations Act 2001 (Cth) (**Corporations Act**). It has also been appointed as a "control body" within the meaning of s.26 of the Racing Act 2002 Qld (**Racing Act**) in respect of the three codes of racing being thoroughbred, harness and greyhound racing.

In practical terms, this means that Racing Queensland is the State regulator of racing in Queensland and has oversight of the operation, management and administration of the three codes of racing.

The regulatory framework within which Racing Queensland has been appointed as the control body and which then confers on Racing Queensland its regulatory powers, functions, roles and responsibilities can be described as a "hybrid" regulatory framework. This is because the Racing Act now confers regulatory powers and functions on a non-government entity, being a corporation incorporated under the Corporations Act. The more usual regulatory frameworks are established using either an independent statutory body or some form of government controlled entity (for example, through controls over the appointment of members and directors or with an ability to give statutory or non-statutory directions as to how State funds should be applied). However, Racing Queensland is quite unique in that it is a non-government entity incorporated under the Corporations Act and is not subject to the usual types of State control.

Having regard to the issues presented by this regulatory framework, we have been asked to consider the steps that could be taken in the future by the State to restructure the current regulatory framework and/or to facilitate the removal of Racing Queensland as the approved control body. In particular, we have been asked to consider both the powers and limitations on the State to undertake such actions and to consider what steps, if any, Racing Queensland could initiate to preserve the current regulatory structure of the racing industry.

1.2 Structure of this Paper

In dealing with the above issues, this Paper will set out:

(a) An overview of the current structure and operations of Racing Queensland (Section 3 of this Paper);

(b) The status of Racing Queensland, (including the Board of Racing Queensland (**Board**)) under the Racing Act and the nature of the control body regulatory framework that is established under the Racing Act (Section 4 of this Paper);

(c) The capacity of the State Government to remove Racing Queensland as currently constituted, as the appointed Control Body under the Racing Act in the following circumstances:

(i) **Scenario One** - By action to remove Racing Queensland as the control body under the Racing Act as currently drafted; and

(ii) **Scenario Two** - By action to remove Racing Queensland as the control body by the exercise of legislative power in enacting specific legislation (including by amendments to the Racing Act) facilitating such a removal; and

(iii) **Scenario Three** - By action to remove the current directors of Racing Queensland under the Racing Act (as currently drafted) or by the exercise of State legislative power to facilitate such removals.

Each of these options will be discussed at Sections 5, 6 and 7 of this Paper; and

(d) The strategies and steps, if any, that Racing Queensland may now initiate to preserve the current structure of the racing industry (Section 8 of this Paper).

2. Executive Summary

Our key conclusions are as follows:

(a) Under the Racing Act as currently drafted, the only express mechanism which is available to the State to alter the existence or structure of Racing Queensland is to cancel the approval of Racing Queensland as a control body. Such a cancellation can only occur if the Minister is satisfied that the grounds for disciplinary action exist. Another alternative is if under s.24AA of the Acts Interpretation Act 1954 (**Acts Interpretation Act**) the Minister were to seek to revoke his current approval of Racing Queensland as a control body following the same process that is required under the Racing Act to grant such an approval;

(b) The State currently has no legislative ability to directly interfere with the assets of Racing Queensland or the tenure of its directors;

(c) In the event that the approval of Racing Queensland as a control body is cancelled, the Constitution of Racing Queensland requires that the Board must call a general meeting to resolve to wind up Racing Queensland and then deal with its assets by transferring same to a successor control body;

(d) The State Parliament has a broad plenary power to enact legislation, limited only by restrictions contained in the Constitution of Australia 1901 (Cth) (**Commonwealth Constitution**);

(e) Section 109 of the Commonwealth Constitution provides that a State law will be invalid to the extent that it is inconsistent with a law of the Commonwealth. As Racing Queensland is established under a Commonwealth law, (being the Corporations Act). However, the Corporations Act expressly gives the State a broad power to "opt out" of the Corporations Act in respect of particular bodies or matters. Therefore, as a matter of practicality, we do not consider that s.109 of the Commonwealth Constitution will effectively operate to prevent the State from enacting legislation pertaining to the restructuring of Racing Queensland;

(f) Given its broad legislative power, the State could theoretically enact legislation to deal with a wide range of matters relating to the structure of Racing Queensland, including in relation to winding up, the appointment and removal of directors, the control by the State and even as regards the details of the provisions to be included in the Constitution of Racing Queensland

(g) However, if the State wished to disband Racing Queensland, in our view the simplest method, because of the provisions contained in the Constitution of Racing Queensland, would be for it to legislatively cancel the approval of Racing Queensland as a control body. This would, unless the Constitution of Racing Queensland can be amended have the flow-on effect of winding up Racing Queensland and divesting it of its assets;

(h) Although the State could we believe act to legislatively remove the current directors of Racing Queensland, this would be an extraordinary step, particularly in the absence of any proven misbehaviour. It would also be in breach of the fundamental legislative principles contained in the Legislative Standards Act 1992 and be likely to attract political controversy.

(i) However, given the plenary power of the State to enact legislation, we do not consider that there is much that Racing Queensland can do to protect itself from State Government initiated restructuring. However, we would recommend that Racing Queensland take the following steps being:

(i) To continue to closely supervise its operations to ensure that Racing Queensland does not fall foul of any of the provisions of the Racing Act pertaining to disciplinary action, to avoid giving a future State Government any reason to cancel the approval of Racing Queensland as a control body; and

(ii) If possible, to investigate in detail the removal of clause 24 from its Constitution so that Racing Queensland will then not automatically be required to wind itself up and divest its assets upon the cancellation of its control body approval. One would need to fully investigate whether such a step would raise any specific compliance issues for Racing Queensland under its control body approval, the applicable taxation laws and under the Corporations Act given its current status as a company limited by guarantee.

3. Overview

3.1 Current Structure of Racing Queensland

The overall structure of Racing Queensland can be described in the following terms:

(a) Racing Queensland is a company incorporated under the Corporations Act, is limited by guarantee and does not have a share capital. Like any incorporated company, the specific details regarding the operation and administration of Racing Queensland are primarily to be found in the Constitution of Racing Queensland. In practical terms, this gives the Racing Queensland members, responsibility for such matters as defining the objects of the company and the appointment and removal of directors; and

(b) As a control body, Racing Queensland is then the recipient of relevant statutory and regulatory responsibilities and functions. The functions of Racing Queensland and the powers that it has in respect of those functions are conferred on Racing Queensland by legislation (namely, the Racing Act).

The key details relating to the structure of Racing Queensland as a corporate entity can be described in the following terms:

(a) Racing Queensland was established with the object of exercising the powers and performing the functions of a control body.[1] The income and property of Racing Queensland must be applied solely towards the promotion of this object;[2]

(b) The members of Racing Queensland are those persons who are the directors of Racing Queensland from time to time.[3] A person becomes a member of Racing Queensland when he or she becomes a director of the company and ceases to be a member of Racing Queensland when he or she ceases to be a director of the company.[4]

(c) The Board of Racing Queensland consists of seven directors, including a Chairman and Deputy Chairman.[5] Directors must retire in rotation, two at every Annual

[1] Clause 3.1 of the Constitution of Racing Queensland.

[2] Clause 3.2 of the Constitution of Racing Queensland.

[3] Clause 4.1 of the Constitution of Racing Queensland.

[4] Clauses 4.2 and 4.3 of the Constitution of Racing Queensland.

[5] Clauses 13 and 14 of the Constitution of Racing Queensland.

General Meeting held in an Election Year (being 2014 and then every second year thereafter).[6] Following a selection process and confirmation that a candidate is "eligible" to hold such an appointment,[7] the appointment of a candidate is announced by the Chairman at the Annual General Meeting.[8]

(d) Racing Queensland may, by ordinary resolution of its members, remove a director from office before the expiration of his or her term of office.[9] The Constitution sets out certain circumstances when the office of a director will become vacant, for example if the director dies, is convicted of a criminal offence, becomes bankrupt, becomes ineligible to be a director for any reason under the Corporations Act, ceases to be a director or member, resigns, is absent from three consecutive meetings of the Board without notice, is guilty of unbecoming conduct, or ceases to be an eligible member under the Racing Act.[10]

3.2 Current Operations of Racing Queensland

The principal activity of Racing Queensland is to encourage, control, supervise and regulate the administration of thoroughbred, harness and greyhound racing in Queensland.

Racing Queensland is, in effect, an amalgamation of the three previous control bodies for the three different codes of racing. Prior to 1 July 2010, there were three entities which held approvals under the Racing Act as control bodies being:

(a) Queensland Racing Limited, in respect of thoroughbred racing;

(b) Greyhounds Queensland Limited, in respect of greyhound racing; and

(c) Queensland Harness Racing Limited, in respect of harness racing,

(Former Control Bodies).

By virtue of certain transitional provisions inserted into the Racing Act by the Racing and Other Legislation Amendment Act 2010, as from 1 July 2010 the approvals of those control

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[6] Clause 12.8 of the Constitution of Racing Queensland.

[7] For the meaning of "eligible individual", see s.9 of the Racing Act 2002.

[8] See clause 15 of the Constitution of Racing Queensland.

[9] Clause 12.11 of the Constitution of Racing Queensland.

[10] Ibid.

bodies were cancelled and a new approval was granted to Racing Queensland in respect of all three codes of racing.[11]

The assets and liabilities,[12] employees,[13] and rights and obligations[14] of the Former Control Bodies were then transferred to Racing Queensland. The amalgamation was said at the time to be necessary to avoid duplication of effort, reduce administrative overheads and to drive efficiencies.[15]

As the control body for all three codes of racing, Racing Queensland is now responsible for regulating all aspects of racing in Queensland, including the licensing of venues and participants, assessing performance, promoting racing and allocating prize money.

[11] Section 428 of the Racing Act.

[12] Section 429 of the Racing Act.

[13] Section 432 of the Racing Act.

[14] Section 435 of the Racing Act.

[15] See Explanatory Memorandum, Racing and Other Legislation Amendment Bill 2010, at 2.

4. The Status of Racing Queensland under the Racing Act

In this section of the Paper, we will consider the control body regulatory framework that is established under the Racing Act, including the appointment and responsibilities of a control body, the specific obligations of Racing Queensland and the role and establishment of the Board of Racing Queensland within this framework.

4.1 The Regulatory Framework

At a general level, the regulatory framework under the Racing Act establishes a process whereby the Minister may approve an independent, non-State owned corporation as the "control body" for a particular code of racing. The control body then has responsibility for regulating all aspects of that particular code of racing in Queensland.

Only an "eligible corporation" may apply for approval as a control body, being a corporation that is registered under the Corporations Act that has a constitution that, at all times, requires at least 3 directors and persons appointed or employed as executive officers of the corporation to be "eligible individuals".[16]

The Minister may approve a corporation as a control body if the Minister decides that the corporation is suitable to be approved as a control body for the particular code of racing.[17]

A control body approval continues in force until it is cancelled.[18] Prior to 2010, such control body approvals only lasted for a six year period. However, this was considered to result in unnecessary cost and administrative burden,[19] and so the Racing Act was amended to allow an approval to be held for an indefinite period.

As previously discussed, the regulatory framework for racing in Queensland is rather unique, in that the control body is an independent entity from the State, yet it derives its functions and powers with respect to racing from the Racing Act. Furthermore, although it does not form part of the State, a control body falls within the scope of the Crime and Misconduct Act 2001 and is also subject to auditing by the Auditor-General in accordance with the provisions of the

[16] Section 8 of the Racing Act.

[17] Section 26 of the Racing Act.

[18] Section 28 of the Racing Act.

[19] See Explanatory Memorandum, Racing and Other Legislation Amendment Bill 2010, at 3.

Auditor-General Act 2009. [20] Both of these governance obligations are usually reserved for government controlled entities.

4.2 Racing Queensland as a Control Body

Under the Racing Act, the function of a control body is to manage its code of racing.[21] In the case of Racing Queensland, this function extends to the management of thoroughbred racing, harness racing and greyhound racing.

A control body has the powers that are necessary for performing its functions and all other powers necessary for discharging the obligations imposed on the control body under the Racing Act.[22]

Section 34 of the Racing Act sets out the powers of Racing Queensland as a control body. The list is extensive but includes:

(a) the licensing of animals, clubs, participants and venues;

(b) assessing the performance of licensed animals, clubs, participants and venues;

(c) preparing and implementing plans and strategies for developing, promoting and marketing the commercial operations of the code of racing;

(d) distributing amounts as prize money or for research and analysis; and

(e) allocating funding for venue development and other infrastructure relevant to the code of racing.

As Racing Queensland manages more than one code of racing, Racing Queensland must make decisions under the Racing Act which are in the best interests of all of the codes of racing whilst having regard to the interests of each individual code.[23]

Racing Queensland may also charge a fee for its services, but that fee must reflect the reasonable costs to Racing Queensland of providing the service.[24]

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[20] See ss.59 and 60 of the Racing Act.

[21] Section 31 of the Racing Act.

[22] Section 33(2) of the Racing Act.

[23] Section 34A of the Racing Act.

[24] Section 35 of the Racing Act.

The State currently has a limited ability to control the operations of Racing Queensland under the Racing Act. The main control provisions are summarised below.

Firstly, Racing Queensland must on an annual basis submit to the chief executive a plan for managing its code of racing.[25]

Secondly, Racing Queensland is required to notify the chief executive within 14 days if:

(a) there is a change in an executive officer of Racing Queensland;[26]

(b) Racing Queensland ceases to be an "eligible corporation;[27] or

(c) an executive officer of Racing Queensland ceases to be an "eligible individual".[28]

The chief executive of the Department may also investigate Racing Queensland to determine whether it is suitable to continue to manage its code of racing. However, this may only occur if the chief executive suspects that Racing Queensland is no longer suitable to continue to manage its code of racing, or, if the investigation is undertaken as a part of an audit program approved by the Minister.[29]

The primary way by which the State may interfere with the day to day operations of Racing Queensland is through the Minister's ability to give a direction to Racing Queensland to make a new policy, review an existing policy, make rules of racing about a matter or review existing rules of racing, if that is considered necessary:[30]

(a) to ensure public confidence in the integrity of the Queensland racing industry;

(b) to ensure Racing Queensland is managing its code of racing in the interests of the code;

(c) to ensure the welfare of Racing Queensland's licensed animals;

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[25] Section 41 of the Racing Act.

[26] Section 42 of the Racing Act.

[27] Section 43 of the Racing Act.

[28] Section 44 of the Racing Act.

[29] Section 47 of the Racing Act.

[30] Section 45 of the Racing Act.

(d) to ensure Racing Queensland's actions are accountable and its decision-making processes are transparent; or

(e) to ensure Racing Queensland's rules of racing have sufficient regard to the rights and liberties of individuals as mentioned in s.4(3) of the Legislative Standards Act 1992.

4.3 The Role and Establishment of the Board

The Board of Racing Queensland is established in accordance with the Constitution of Racing Queensland.

The Constitution of Racing Queensland provides that the management of the company is a responsibility of the Board. The Board may exercise all powers of the company as are not, under the Corporations Act or the Constitution, required to be exercised by the company in general meeting.[31]

The Board may also make by-laws for the general management and running of the company,[32] and may borrow money, mortgage or charge the company's property and issue debentures and other securities.[33]

We note that the State currently does not have any real control over the establishment or as regards the role of the Board of Racing Queensland.

[31] Clause 16.1 of the Constitution of Racing Queensland.

[32] Clause 16.2 of the Constitution of Racing Queensland.

[33] Clause 16.3 of the Constitution of Racing Queensland.

5. Scenario One - Removal under the Current Racing Act

Our review of the Racing Act indicates that the State current has no ability to exercise powers over the assets of Racing Queensland or to affect the appointment and/or removal of its directors. Therefore, the extent of the State's current powers over Racing Queensland operate primarily through its ability to cancel the approval of Racing Queensland as a control body.

5.1 Powers of the Minister to cancel the approval of a control body

On 1 July 2010, the Minister approved Racing Queensland as the control body for thoroughbred, harness and greyhound racing in Queensland.[34] This approval of Racing Queensland as a control body now continues until it is cancelled.[35]

Cancellation as a result of disciplinary action

The Racing Act gives to the Minister an express power to cancel an approval as a control body only as a result of disciplinary action.[36] The Minister may take disciplinary action against Racing Queensland if:

(a) it is no longer an eligible corporation;

(b) an executive officer of Racing Queensland is not an eligible individual;

(c) Racing Queensland is no longer suitable to manage the code;

(d) Racing Queensland contravenes a provision of the Act, whether or not a penalty is provided for the contravention;

(e) Racing Queensland fails to comply with a condition relating to its approval;

(f) Racing Queensland contravenes a direction given by the Minister under section 45 of the Racing Act;

(g) Racing Queensland fails to take disciplinary action under Chapter 3 of the Racing Act in respect of a licence holder when Racing Queensland was required to do so; or

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[34] See ss.428(2) and (3) of the Racing Act.

[35] Section 28 of the Racing Act.

[36] See s.58(2)(c) of the Racing Act.

(h) in its approval application, or a notice or other document given by Racing Queensland to the Minister or chief executive, Racing Queensland stated something that it knew was false or misleading in a material particular.[37]

These grounds are expressly stated to be the only grounds for which disciplinary action may be taken.[38]

If the Minister believes a ground exists to take disciplinary action, the Minister must give Racing Queensland a show cause notice, with a show cause period of at least 28 days after the giving of the notice.[39] If, after considering Racing Queensland's response to the show cause notice the Minister still believes that a ground for disciplinary action exists, the Minister has a range of options available to him. Those options include suspension, variation or cancellation of the approval of the control body.[40]

Revocation without cause

Section 28 of the Racing Act states that a control body's approval continues in force until it is cancelled. It is not totally clear whether s28 of the Racing Act was meant to allow the Minister to revoke an approval without cause, that is, in addition to the Minister's express power of cancellation as a result of disciplinary action than under the Racing Act.

However, we would also note that Section 24AA of the Acts Interpretation Act provides that:

"24AA **Power to make instrument or decision includes power to amend or repeal**

If an Act authorises or requires the making of an instrument or decision—

(a) the power includes power to amend or repeal the instrument or decision; and

(b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision."

However, s.4 of the Acts Interpretation Act then provides that the application of any of the provisions of the Acts Interpretation Act may be displaced, wholly or partly, by a contrary intention appearing in any other Act.

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[37] Section 52(1) of the Racing Act.

[38] Section 52(3) of the Racing Act.

[39] Sections 53(1)-(3) of the Racing Act.

[40] Section 58(2) of the Racing Act.

The power to repeal or amend a decision can only be exercised if the decision-maker is not *functus officio*. A decision-maker will considered to be *functus officio* if they have performed a statutory duty or exercised a statutory power which is then not capable of being exercised on more than one occasion. Justice Gummow in the decision of Minister for Immigration Local Government & Ethnic Affairs v Kurtovic described the *functus officio* principle as follows:[41]

> "... in any given case, a discretionary power reposed by statute in the decision-maker may, upon a proper construction, be of such a character that it is not exercisable from time to time and it will be spent by the taking of the steps or the making of the statements or representations in question, treating them as a substantive exercise of the power. The result is that when the decision-maker attempts to resile from his earlier position, he is prevented from doing so not from any doctrine of estoppel, but because his power to do so is spent and the proposed second decision would be ultra vires. The matter is one of interpretation of the statute conferring the particular power in issue".

Additionally, in the case of Firearm Distributors Pty Ltd v Carson, Justice Chesterman of the Queensland Supreme Court stated that the power to amend or repeal a decision in s.24AA of the Acts Interpretation Act was not available where the decision making process was completed.[42]

In our view, there is nothing contained in the Racing Act which would indicate, by a clear contrary intention, that s.24AA of Acts Interpretation Act has been displaced. The nature of the power to approve a control body does not appear to be a power that can only be exercised once. Therefore, we consider that the better view is that s.24AA of the Acts Interpretation Act could operate to allow the Minister to repeal a decision to approve Racing Queensland as a control body.

However, in repealing his decision, the Minister would be required to act in accordance with s.24AA(b) of the Acts Interpretation Act, which states that the power to repeal an earlier decision must be exercised in the same way and subject to the same conditions, as the power to make the instrument or decision.

We would also note that the approval of Racing Queensland as a control body was taken to have been made under s.26 of the Racing Act.[43] Therefore, if the Minister were to seek to revoke the current control body approval of Racing Queensland, the Minister would be required to follow the same process set out in Chapter 2, Part 2 of the Racing Act with respect

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[41] (1990) 21 FCR 193 at 211.

[42] [2001] 2 Qd R 26 at 29 [33] and 32 [40].

[43] Section 428(3) of the Racing Act.

to the granting of an approval. This process includes assessment by the chief executive and preparation of a report for the Minister's consideration. The Minister would also be required to then afford natural justice/procedural fairness to Racing Queensland before the Minister took the step of revoking the approval of Racing Queensland as a control body.[44]

We consider that a decision of the Minister to revoke the approval of Racing Queensland as a control body could be made subject to judicial review in the Supreme Court by Racing Queensland under the terms of the Judicial Review Act 1991 if the relevant procedural/administrative processes required by law were not followed. However, this limitation would not apply if the State sought to cancel the current control body approval of Racing Queensland by the passing of special legislation.

5.2 Status of Racing Queensland once approval is cancelled

From a legislative perspective, cancellation of the approval of Racing Queensland as a control body would not directly operate to alter the corporate status of Racing Queensland. It would simply be the case that Racing Queensland would no longer be permitted to carry on the activities of a control body.

However, under the Constitution of Racing Queensland, in the event that Racing Queensland ceased to be a control body under the Racing Act, the Board is then required to call a general meeting at which meeting the members are to then resolve to wind up the company.[45]

Furthermore, upon the winding up or dissolution of Racing Queensland, if any property remains after the satisfaction of its debts and liabilities, that property must be given or transferred to a control body or to the control bodies for thoroughbred, harness and greyhound racing in Queensland as approved by the Minister at or before time of dissolution. If no such approval has been granted by its Minister, the property will be transferred to an institution(s) with similar objects to Racing Queensland, as determined by a Judge of the Supreme Court of Queensland.[46]

5.3 Practical Issues

On the basis of the Racing Act as currently in force the only option available to the State, without further legislative amendment would be to cancel the approval of Racing Queensland

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[44] See Re Minister for Immigration and Multicultural Affairs; Ex parte Miah (2001) 206 CLR 57 and s.20(2)(a) of the Judicial Review Act 1991.

[45] Clause 24.2 of the Constitution of Racing Queensland.

[46] Clause 24.1 of the Constitution of Racing Queensland.

as a control body. This might be done by two different means: either as a result of disciplinary action or by revoking the relevant statutory approval following the same process that is required for granting the approval[47].

The cancellation of the approval of Racing Queensland control body would not operate to alter at law the existence or structure of Racing Queensland. Racing Queensland would still continue to exist (at least for a period of time) as a corporate entity, although the primary purpose for its establishment would no longer exist.

However, as a matter of practical reality, the cancellation of the approval of Racing Queensland as a control body would then result in the winding up of Racing Queensland and the divesting of its assets to a successor control body. This is because of the provisions in the Constitution of Racing Queensland.

We have not been provided with any information regarding the conditions surrounding the approval of Racing Queensland.[48] For example, we are unaware whether it was a condition of the Minister's approval that Racing Queensland include in its Constitution a provision effectively requiring it to wind itself up on ceasing to be a control body. We are also unaware as to whether Racing Queensland must notify the Minister if it proposes to amend its Constitution.

Racing Queensland may wish to investigate in detail the removal of clause 24 from its Constitution so that Racing Queensland will then not automatically be required to wind itself up and divest its assets upon the cancellation of its control body approval. One would need to fully investigate whether such a step would raise any specific compliance issues for Racing Queensland under its control body approval, the applicable taxation laws and under the Corporations Act given its current status as a company limited by guarantee

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[47] See s.24AA of the Acts Interpretation Act 1954.

[48] See s.428(3) of the Racing Act.

6. Scenario Two - Exercise of Legislative Powers

In this section of the Paper we will consider the ability of the State Government to enact new legislation to alter the status or existence of Racing Queensland.

6.1 Scope of the Legislative Powers of the Queensland Parliament

In Queensland, the legislative power of the Queensland Parliament is derived from s.8 of the Constitution of Queensland, which states that the Legislative Assembly has the power to make laws for the "peace, welfare and good government of the colony in all cases whatsoever".[49]

The scope of this power is also confirmed in the Australia Act 1986 (Cth), which declares that the powers of each State Parliament "include full power to make laws for the peace, order and good government of that State that have extraterritorial operation".[50] These provisions confer a "plenary" power and do not constrain State legislative power in any way.[51]

Given the plenary nature of these powers, State legislation will not be void for uncertainty,[52] or lack of due process,[53] but may be struck down if the law provides for the abdication of power to another law-making body.[54]

6.2 Limitations on the Legislative Powers of the Queensland Parliament

As State Parliaments are conferred with plenary power, the only limits on a State's legislative power are those which may be found, expressly or impliedly, in the Commonwealth Constitution.

The Commonwealth Constitution contains a number of restrictions on State legislative power, including:

(a) that the States are restricted from raising and maintaining naval and military forces, taxing property owned by the Commonwealth[55] and issuing coinage and legal tender.[56]

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[49] Section 2 of the Constitution Act 1867; s.8 of the Constitution of Queensland 2001.

[50] Section 2(1) of the Australia Act 1986 (Cth).

[51] Union Steamship Co of Australia Pty Ltd v King (1988) 166 CLR 1 at 10; see also Mobil Oil Australia Pty Ltd v Victoria (2002) 211 CLR 1 at 23 per Gleeson CJ and 33 per Gaudron, Gummow and Hayne JJ.

[52] Scott v Moses (1957) 75 WN (NSW) 101.

[53] R v Smith [1974] 2 NSWLR 586.

(b) the Constitutional guarantee of the absolute freedom of interstate trade, commerce and intercourse[57] and prohibition on discrimination against residents of other States;[58]

(c) if a State law is inconsistent with a valid Commonwealth law, the Commonwealth law will prevail to the extent of the inconsistency;[59]

(d) a State may not abridge the implied constitutional freedom of political communication;[60]

(e) State legislation must observe the constitutionally entrenched separation of judicial power at Federal level;[61] and

(f) the States cannot impose duties of customs and excise or grant bounties on the production of goods.[62]

Apart from these key limitations in the Commonwealth Constitution, the State power to make laws is unlimited.

6.3 Key Limitation on the Queensland Parliament's Legislative Capacity - s.109 of the Commonwealth Constitution

Section 109 of the Commonwealth Constitution provides that where a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail and the former shall, to the extent of the inconsistency, be invalid.

As Racing Queensland is established under the Corporations Act which is a Commonwealth law the State may be restricted from enacting legislation which is inconsistent with that Act.

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[54] Cobb & Co Ltd v Kropp [1967] 1 AC 141; Powell v Apollo Candle Co Ltd (1885) LR 10 App Cas 282; see also Dean v A-G(Qld) [1971] Qd R 391; Tonkin v Brand [1962] WAR 2; Pauls Ltd v Elkington [2001] QCA 414.

[55] Section 114 of the Commonwealth Constitution.

[56] Section 115 of the Commonwealth Constitution.

[57] Section 92 of the Commonwealth Constitution.

[58] Section 117 of the Commonwealth Constitution.

[59] Section 109 of the Commonwealth Constitution.

[60] Australian Capital Television Pty Ltd v Commonwealth (1992) 177 CLR 106.

[61] Also known as the "Kable doctrine", see Kable v Director of Public Prosecutions (NSW) (1996) 189 CLR 51.

[62] Section 90 of the Commonwealth Constitution.

The power to legislate with respect to corporations is not within the exclusive constitutional domain of the Commonwealth. Therefore, the fact that a State law pertains to the regulation of corporations will not automatically make it constitutionally invalid. It would have to be considered whether the two laws are inconsistent.

There are three different ways in which a State law may be inconsistent with a Commonwealth law being:

(a) ***Direct inconsistency*** - Where it is impossible to obey both laws. For example, a State law may require that you *must* do X and a Commonwealth law requires that you *must not* do X;[63]

(b) ***"Conferral of rights" test*** - Where a State law alters, impairs or detracts from the operation of a law of the Commonwealth;[64] and

(c) ***The Commonwealth law "covers the field"*** - Where a Commonwealth law evinces an intention, either expressly or impliedly, to cover the field in respect of its subject matter such that any State law on the same subject matter will be invalid.[65]

Finally, in the event that there is inconsistency in terms of s.109 of the Commonwealth Constitution the State law will only be valid to the extent of that inconsistency.[66]

Inconsistency under the Corporations Act

Of relevance, Part 1.1A of the Corporations Act expressly deals with the interaction between the Corporations Act and State and Territory laws. Because the States referred their legislative powers to the Commonwealth for the Corporations Act to be enacted, the Corporations Act contains specific carve out provisions which allow the States to elect to legislate with respect to particular matters that would be otherwise be dealt with by the Corporations Act.[67]

Section 5E of the Corporations Act expressly states that the Corporations Act is not intended to exclude or limit the concurrent operation of any law of a State.

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[63] R v Licensing Court of Brisbane; Ex parte Daniell (1920) 28 CLR 23.

[64] Australia Boot Trade Employees Federation v Whybrow & Co (1910) 10 CLR 266.

[65] Clyde Engineering Co Ltd v Cowburn (1926) 37 CLR 466.

[66] Butler v Attorney-General (Vic) (1961) 106 CLR 268.

[67] See Govey and Manson, "Measures to address Wakim and Hughes: How the Reference of Powers Will Work", (2001) 12 Public Law Review 254 at 262.

Specifically, the Corporations Act is not intended to limit a State from enacting legislation that would:

(a) impose additional obligations or powers on a company or its directors;

(b) impose limits on the interests a person may have in a company;

(c) prevent a person from being a director of, or involved in the management of, a company; or

(d) require a company to have a constitution or have particular rules in its constitution.[68]

However, the section will not apply if there is a direct inconsistency between a State law and the Corporations Act.[69]

Therefore, there is a clear legislative indication in the Corporations Act that the Corporations Act is not intended to "cover the field" with respect to corporations.[70]

Section 5F allows a State law to declare a matter to be "excluded matter" for the purpose of the whole or specified provisions of the Corporations Act. The term "Matter" is defined to include an act, omission, body, person or thing.[71] The effect of such a declaration will be that the declared provisions of the Corporations Act will not apply in the State in relation to an excluded matter.[72] However, it should be noted that the declaration will only operate to exclude the Corporations Act *within* the geographical area of the State.[73]

Section 5G of the Corporations Act is also intended to prevent s.109 inconsistencies by allowing a State or Territory to limit the application of the Corporations Act. This section applies only if the State law is not capable of operating concurrently with the Corporations Act.[74]

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[68] Section 5E(2) of the Corporations Act.

[69] Section 5E(4) of the Corporations Act.

[70] See R v Credit Tribunal; Ex parte General Motors Acceptance Corporation (1977) 137 CLR 545 at 562 per Mason J.

[71] Section 5F(6) of the Corporations Act.

[72] Section 5F(2) of the Corporations Act.

[73] See Re Queensland Power Trading Corporation T/A Enertrade and ASIC (2006) 24 ACLC 120.

[74] Section 5G(2) of the Corporations Act.

If a State wished to enact legislation which is inconsistent with the Corporations Act, the State must include a provision in its legislation declaring the legislation to a "Corporations legislation displacement provision" (either generally or in relation to a specific provision of the Corporations Act).[75]

Provided that a Corporations legislation displacement provision is included in the State legislation then:

(a) the Corporations Act will not prohibit the doing of an act, or impose liability for doing an act, that is specifically authorised by the State legislation;[76]

(b) the Corporations Act will not prohibit the State legislation from specifically requiring a company to be subject to the direction and control of a particular person, or requiring the directors to comply with instructions given by a particular person;[77]

(c) the State legislation may also provide for the calling or conduct of a meeting, in which case Chapter 2G of the Corporations Act will not apply;[78]

(d) the State legislation may also provide for a scheme of arrangement, receivership, winding up or other external administration of a company, in which case Chapter 5 of the Corporations Act will not apply;[79]

(e) the State legislation may also provide for the inclusion of a particular provision in a company's constitution, even though the procedures of the Corporations Act have not been complied with;[80] and

(f) a provision of the Corporations Act does not operate to the extent that is necessary to ensure that no inconsistency arises between a provision of the Corporations Act and the State legislation.[81]

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[75] Section 5G(3) of the Corporations Act.

[76] Section 5G(4) of the Corporations Act.

[77] Section 5G(5) of the Corporations Act.

[78] Section 5G(7) of the Corporations Act.

[79] Section 5G(8) of the Corporations Act.

[80] Section 5G(9) of the Corporations Act.

[81] Section 5G(11) of the Corporations Act.

The effect of s.5G of the Corporations Act is that, provided that a Corporations legislation displacement provision is contained in the State legislation, the State legislation must be obeyed and given effect to, despite there being a provision of the Corporations Act that would otherwise stand in its way. [82]

It can be seen, therefore, that the State has retained a very broad ability to exclude aspects of the Corporations Act. In our view, s.5G of the Corporations Act operates to give to the State very broad legislative powers with respect to the regulation of corporations, without the risk of the State legislation being struck down as being inconsistent with the Corporations Act.

6.4 Legislative options which may be open to the State

Option 1 - Cancel the Approval of Racing Queensland as a Control Body

The Racing Act as currently drafted only expressly allows the Minister to cancel the approval of Racing Queensland as a control body if a ground for disciplinary action can be established.

However, there is no restriction on the State further amending the Racing Act to allow the Minister to cancel a control body's approval on any grounds that the Minister considers appropriate, or on no grounds at all.

The approval of Racing Queensland as a control body is an entitlement which was conferred by State legislation and there is no prohibition on it being taken away by State legislation. We note that the approvals of the Former Control Bodies were effectively revoked by State legislation.[83]

Legislative cancellation of the approval of Racing Queensland as a control body would have the effect that, in accordance with the current Constitution of Racing Queensland, the members of Racing Queensland would then be required to resolve to wind up Racing Queensland and transfer its assets to a successor control body.

Option 2 - Wind up Racing Queensland and/or Divest Racing Queensland of its Assets

As discussed above, provided that the State includes a Corporations Act displacement provision in any special purpose or new legislation, the State may be able to legislate with respect to corporations in almost any manner that it wishes to.

Therefore, the State could theoretically legislate to:

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[82] HIH Casualty and General Insurance Ltd v Building Insurers' Guarantee Corporation [2003] NSWSC 1083.

[83] See s.428(1) of the Racing Act.

(a) Exempt all or part of the Corporations Act from applying to Racing Queensland;

(b) Include particular provisions in the Constitution of Racing Queensland;

(c) Provide that Racing Queensland is subject to the control of a particular person (for example, the Minister);

(d) Require Racing Queensland to comply with instructions given by a particular person (for example, the Minister or chief executive of the Department); or

(e) Provide for a scheme for the external administration of Racing Queensland.

In our view, the clearest way that the State might act to legislatively wind up Racing Queensland is set out in the Racing and Other Legislation Amendment Act 2010, which gave Racing Queensland its approval as a control body.

Prior to 1 July 2010, the Former Control Bodies were all Corporations Act companies which held approvals under the Racing Act as a control bodies.

Section 428 of the Racing Act provided that the approvals held by the Former Control Bodies were cancelled as from midnight on 30 June 2010 and that the Minister was to then grant an approval to Racing Queensland to be the control body for thoroughbred racing, harness racing and greyhound racing.

Section 429 of the Racing Act provided that as from 1 July 2010:

(a) anything that was an asset or liability of a Former Control Body immediately before 1 July 2010 became an asset or liability of Racing Queensland;

(b) an agreement or arrangement in force immediately before 1 July 2010 between a Former Control Body and another entity was taken to be an agreement or arrangement between Racing Queensland and the other entity; and

(c) any property that was, immediately before 1 July 2010 held by a Former Control Body on trust or subject to conditions continued to be held by Racing Queensland on the same trust or subject to the same conditions.

Importantly, s.430 of the Racing Act stated that:

> "Each former control body's constitution is taken to include, and to have always included, a provision allowing a director of the former control body to give the former control body's agreement to the enactment of provisions having the effect of provisions set out in this part, in particular, provisions—

(a) cancelling the former control body's approval and giving, to the new control body, an approval as the control body for all codes of racing; and

(b) divesting the former control body of its assets and liabilities and vesting the assets and liabilities in the new control body; and

(c) stating that no compensation is payable to the former control body or its members or directors for any action taken under this part."

We understand that this provision was inserted to provide the directors of the Former Control Bodies with protection against liability for giving their consent to what would otherwise have been an act not in the commercial interests of their respective corporations.[84]

We would note that ss.429 and 430 were declared to be Corporations Act displacement provisions for the purposes of s.5G of the Corporations Act.[85] As discussed above, because the Corporations Act was expressly displaced by sections 429 and 430 of the Racing Act, there would be no argument under s.109 of the Commonwealth Constitution that those provisions of the Racing Act were inconsistent with any provisions of the Corporations Act.

Given the broad legislative power which the State has by virtue of its plenary power and s.5G of the Corporations Act, we do not consider that it would be necessary for the State to first obtain the consent of Racing Queensland prior to cancelling its approval or divesting it of its assets.

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[84] See Explanatory Memorandum, Racing and Other Legislation Amendment Bill 2010, at 2.

[85] Section 431 of the Racing Act.

7. Scenario Three - Removal of the Board

In this section we will consider what actual or potential powers may be available to the State to remove directors of the Board of Racing Queensland.

7.1 Current Power to Remove Directors of the Board under the Racing Act

There is currently no ability under the Racing Act for the State to remove a director of Racing Queensland. The State's power extends only to removing the approval of Racing Queensland as a control body. Cancellation of the approval of Racing Queensland as a control body will not necessarily affect the status of the directors of Racing Queensland appointed under its Constitution.

7.2 Removal under Constitution of Racing Queensland

As discussed in section 3.1 of this Paper, the Constitution of Racing Queensland provides for a rotating retirement of two directors every two years following the expiry of the initial term (being the period to 30 June 2014). Four months prior to the holding of an Annual General Meeting a director selection process will take place.[86]

This process involves the appointment of an independent recruitment consultant to identify persons who are eligible to act as a director under the Racing Act and who meet the requirements specified in Appendix A of the Constitution.[87] A selection committee is to be convened, which will include the Chairman of the Board, a sitting director of an ASX Top 200 listed company, and a person appointed by the Director-General of the Queensland Government department responsible for racing in Queensland.[88]

The selection committee will determine by majority vote who should be the person to fill the vacancies,[89] which will be given effect to at the next AGM.[90]

Racing Queensland may, by ordinary resolution of its members, remove a director from office before the expiration of his or her term of office, if the director:

(a) dies;

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[86] Clause 15.1 of the Constitution of Racing Queensland.

[87] Clause 15.2 of the Constitution of Racing Queensland.

[88] Clause 15.4 of the Constitution of Racing Queensland.

[89] Clauses 15.6-15.8 of the Constitution of Racing Queensland.

[90] Clause 15.9 of the Constitution of Racing Queensland.

(b) is convicted of a criminal offence;

(c) becomes bankrupt;

(d) becomes prohibited from being a director by virtue of the Corporations Act;

(e) ceases to be a director by operation of a provision of the Corporations Act;

(f) ceases to be a member;

(g) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the Corporations Act relating to mental health;

(h) resigns as a director by notice in writing to the Company;

(i) is absent from three consecutive meetings of the Board without previously having obtained leave of the Board;

(j) ceases to be an eligible individual under the Racing Act; or

(k) is guilty of any conduct which in the opinion of the Board is unbecoming of a director of the company or is prejudicial to its interests.[91]

7.3 Limitations and Practical Issues

At present the only way by which a director of Racing Queensland might be legitimately removed is through the process set out in the Constitution of Racing Queensland. We note that, provided a director continues to meet the definition of "eligible individual" in the Racing Act,[92] the power of appointment and removal of directors lies entirely with Racing Queensland.

However, given the broad scope that the State has to "opt out" of the Corporations Act scheme, we consider that it not would be beyond the legislative power of the State to enact legislation affecting the appointment or removal of the directors of Racing Queensland. Such legislation could potentially provide for:

(a) inserting a provision in the Constitution of Racing Queensland, or amending the current provisions of the Constitution, pertaining to appointment and removal of directors;

---

[91] Clause 12.11 of the Constitution of Racing Queensland.

[92] See s.8 of the Racing Act.

(b) providing that the appointment and removal of directors was to be subject to the direction or approval of the Minister; or

(c) even removing, by legislation, the current directors of Racing Queensland.

We note that paragraph (c) is likely to be the only option which could have the legal effect of immediately removing all of the directors of Racing Queensland.

However, in our view, it would be quite an extraordinary step for the State Parliament to seek to remove directors of a corporation who had all been validly appointed under the processes set out in that corporation's Constitution if there was no suggested or proven misbehaviour. Such facilitating legislation would potentially be inconsistent with the usual fundamental legislative principles contained in s.4 of the Legislative Standards Act 1992 and clearly would then be the subject of close political scrutiny.

The real issue would be how would the removal of the directors sit in terms of the State's grand plan for further reforming the structure of the racing industry in Queensland.

8. Possible Strategies for Racing Queensland

8.1 Security of Current Racing Queensland Structure

As the Racing Act currently stands, the tenure of Racing Queensland is reasonably secure, in that Racing Queensland cannot be removed as the control body unless grounds for disciplinary action exist or, if the Minister proceeds to institute the process of seeking to revoke the approval of Racing Queensland as a control body. Furthermore, there is no current provision in the Racing Act that would allow the State to interfere with the existence or corporate structure of Racing Queensland.

However, should Racing Queensland have its approval as a control body cancelled, then this will effectively mean the end of Racing Queensland under the terms of its current Constitution. This is because, in accordance with clause 24 of its Constitution, the members of Racing Queensland must then resolve to wind it up and transfer its assets to its successor control body.

Although the current legislative position of Racing Queensland is reasonably secure, the State would not be prevented from enacting legislation in the future which altered this position. As we have demonstrated in this Paper, the State's legislative power is plenary and limited only by the restrictions contained in the Commonwealth Constitution. Specifically, any argument that the State cannot enact legislation which is inconsistent with the establishment of Racing Queensland under the Corporations Act would not have very strong prospects of success, given that the State has a very broad ability to "opt out" of the Corporations Act regime.

There are a broad range of legislative steps that the State could potentially take to alter the structure or existence of Racing Queensland. However, given that the Constitution of Racing Queensland already contains a clause effectively requiring Racing Queensland to automatically wind itself up upon losing its approval as a control body, in our view, if the State wished to disband Racing Queensland, the simplest and cleanest method would be to simply legislate to cancel the approval of Racing Queensland as a control body. Such a step would legally be less controversial, as there would be no potential s.109 inconsistency argument with the operation of the Corporations Act. Because of the provisions currently contained in the Constitution of Racing Queensland, this step would also have the flow-on effect of winding up Racing Queensland and transferring its assets.

8.2 Options and Strategic Actions

Unfortunately, given the wide plenary power of the State to make legislation, in our view there are very few steps which Racing Queensland can take to protect itself from a future restructuring of the racing industry in Queensland. Clearly, the most effective State actions

will involve the passing of State legislation and/or the commencement of natural justice processes which will involve some time.

However, we suggest that Racing Queensland should take the following steps to minimise the relevant risks being:

(a) To continue to closely supervise its operations to ensure that Racing Queensland does not fall foul of any of the provisions of the Racing Act pertaining to disciplinary action, to avoid giving a future State Government any reason to cancel the approval of Racing Queensland as a control body; and

(b) To investigate in detail the removal of clause 24 from its Constitution so that Racing Queensland will then not automatically be required to wind itself up and divest its assets upon the cancellation of its control body approval. One would need to fully investigate whether such a step would raise any specific compliance issues for Racing Queensland under its control body approval, the applicable taxation laws and under the Corporations Act given its current status as a company limited by guarantee.

QUEENSLAND RACING COMMISSION OF INQUIRY

Commissions of Inquiry Act 1950

ANNEXURE

Annexure **'RGB 4'** to the Supplementary Statement of **ROBERT GEOFFREY BENTLEY** authorised 11 September 2013 at Brisbane.

Robert Geoffrey Bentley

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5 April 2012

RACING QUEENSLAND

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Honourable Steve Dickson MP
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Queensland Government
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Dear Minister

RE: PROPOSED ACTION REGARDING RACING QUEENSLAND LIMITED

Reference is made to recent correspondence from the Honourable Jeff Seeney MP dated March 28, 2012, and March 29, 2012. I advise that I have reviewed in detail the notices that were attached to the letter of March 28, 2012.

I wish to again assure you that Racing Queensland Limited (**RQL**) intends to conduct itself, during this transitional period pending the proposed restructure by your Government of the control and management of the Queensland racing industry, as if it were in a quasi caretaker mode.

Dealing initially with the issue raised in the letter of March 29, 2012, being whether a replacement director will now be appointed by the Board following the resignation of Mr Lette, the Board's view was to not pursue that option given that sufficient Board members remain to still form a quorum of directors.

In relation to the issues raised in the letter of March 28, 2012, as RQL intends pending the restructure of the control and management of the Queensland racing industry to operate in a quasi caretaker mode, it has no in principle or fundamental objection to the matters highlighted in this correspondence.

However, I wish to highlight for your consideration some practical implications of the measures RQL have been asked to consider and implement. This is done in a spirit of cooperation and to avoid any unintended practical or legal consequences.

For this purpose I attach an initial submission that I have had prepared. This submission is in two parts.

I hope that you find this submission constructive and of assistance.

Yours sincerely

R. G. BENTLEY
Chairman

Cc. Hon. Jeff Seeney MP (emailed)
Deputy Premier, Queensland Government

Cc. Mr Mike Kelly (emailed)
Executive Director, Office of Racing

Submissions of Racing Queensland Limited

Submissions regarding the Notice of direction under s.45 of the Racing Act 2002

1.1 Racing Queensland Limited has been directed to undertake a review of its policy entitled "*Policy of Employment of Non Licensed Staff*" so as to amend the policy so that it provides that:

> "Without the written approval of the chief executive officer of the Department responsible for racing and the administration of the Racing Act, Racing Queensland Limited is not to:
>
> 1. terminate the employment of any staff;
>
> 2. employ any new staff;
>
> 3. make any redundancy/termination payments to any staff."

1.2 Racing Queensland Limited accepts the direction not to terminate the employment of any staff without approval.

1.3 Racing Queensland Limited submits in relation to the employment of staff that:

(a) A simple and timely method is required to obtain approval for the employment of new staff. While Racing Queensland Limited is agreeable that it will not fill any of the vacancies created by the recent resignation of several senior staff without the approval of the chief executive officer of the Department, the proposed new approval process for new racing operational staff should not impact upon the orderly and professional conduct of the Queensland Winter Racing Carnival;

(b) For example, Racing Queensland Limited has recently agreed to a request by the Stewards for additional employees to assist with the management of integrity during the Winter Racing Carnival;

(c) It may therefore be appropriate to develop a framework under which

(i) appointments to "non-controversial" and wages type positions could perhaps be notified to the chief executive (without seeking prior approval) or alternatively the chief executive officer of the Department could give a deemed or blanket approval for the filling of such positions;

(ii) there is a reasonable time frame around the giving of approval with a provision that approval will be deemed to be given unless a notice of refusal to approve is given within a short period of time say 3 business days;

(iii) reasons are to be provided if the approval is refused; and

(iv) there is an agreed procedure for addressing liability for any claims for loss or damage if an approval is refused.

1.4 With respect to the payment of redundancy and termination payments to staff of Racing Queensland Limited:

(a) There needs to be an exception for lawfully incurred obligations under valid and enforceable contracts of employment that cannot be avoided as a matter of law (bearing in mind that it is intended that termination for redundancy will only occur with the approval of the chief executive officer of the Department);

Invitation to apply for additional conditions on Racing Queensland Limited's Control body approval under the Racing Act 2002

1. Racing Queensland Limited has been invited to apply for a variation to its control body approval by adding the following condition:

> "Racing Queensland Limited must obtain the approval in writing of the chief executive of the department responsible for the administration of the Racing Act prior to:
>
> 1. paying any accounts, debts or other payments, however described, in excess of $20,000;
> 2. terminating the employment of any person employed by Racing Queensland Limited;
> 3. employing any person; or
> 4. entering into any contract or legally binding agreement where the consideration is in excess of $20,000.
>
> The payment of prize money published in the April 2012 edition of the Racing Calendar and effective as at 28 March 2012 is exempt from the above requirement to obtain approval."

2. Racing Queensland Limited does not oppose the thrust of these conditions. However, to make the proposed arrangements workable both legally and practically Racing Queensland Limited submits that:

(a) The suggested threshold of $20,000 is too low for practical implementation purposes;

(b) Also, the suggested prohibition on paying accounts, debts or other payments should not apply in respect of the making of everyday operational expenses such as the payment of utility charges, telecommunications, the payment of wages and salaries, taxes and similar non-controversial operational expenses. These types of payments might be able to be carved out of the relevant categories requiring approval or perhaps a blanket approval in this regard could be given by the chief executive officer of the Department;

(c) The directors of a company cannot lawfully under the Corporations Act request or acquiesce in any arrangement where they are seen to be abrogating their authority to pay the debts of the Company as and when they become due and payable. This could result in the directors potentially being seen to be acting in breach of their legal duties under the Corporations Act. Also, because the Corporations Act is a Commonwealth law even a direction that is validly made under a State law cannot override any inconsistent requirements as set out under the Corporations Act;

(d) The directors also have a separate common law duty to creditors that might also be breached if Racing Queensland Limited is not able to pay due and lawful payments. Again, there may be a need for a carve out or to provide a blanket exception for payments that are already legally due and payable by Racing Queensland Limited.

(e) Finally, we would note that by becoming the effective approving authority for all significant payments and staffing decisions the chief executive officer of the Department will it seems become under the Corporations Act, a de facto director of Racing Queensland Limited with all of the liabilities and obligations of an appointed director of Queensland Racing Limited. This would not be an issue if there was some form of relevant statutory protection in the Racing Act 2002 (as there is in s.83 of the Government Owned Corporations Act for shareholding Ministers). However, there does not appear to be any form of equivalent protection for the chief executive officer under the Racing Act 2002 or in any other Act. This is not an issue of specific concern for Racing Queensland Limited but it is mentioned as a matter of completeness.

QUEENSLAND RACING COMMISSION OF INQUIRY

Commissions of Inquiry Act 1950

ANNEXURE

Annexure **'RGB 5'** to the Supplementary Statement of **ROBERT GEOFFREY BENTLEY** authorised 11 September 2013 at Brisbane.

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16 April 2012

Mr John Glaister
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Dear Mr Glaister

Transitional Proposal - Changes to the Board of Directors of Racing Queensland Limited (Racing Queensland)

I refer to the recent discussions between the Department and the legal representatives of Racing Queensland Limited.

In reviewing the possible options two relevant issues have emerged which may affect the mechanics of any transitional plan being:

(a) That as part of the anti-discrimination proceedings brought by Ms Kerry Watson against Racing Queensland Limited, the company has previously provided to the Queensland Civil and Administrative Tribunal (**QCAT**) an enforceable undertaking that the Board of Racing Queensland Limited would not appoint a director in replacement of Ms Watson until the matter is determined by the Anti-Discrimination Commission or Ms Watson withdraws the complaint. This undertaking has been in place for several months and it effectively means that the directors of Racing Queensland Limited, at this stage, may only appoint casual vacancies to the Board to bring the total number of Board members up to six directors. It could be possible for the company to seek to withdraw the undertaking but this may be practically difficult as the undertaking was given to avoid an injunction application being pursued on behalf of Ms Kerry Watson with QCAT. I **attach** copies of relevant correspondence in relation to the giving of the undertaking; and

(b) That so far as the positions of Chairman and Deputy Chairman are concerned, they are protected under clauses 13 and 14 of the Constitution of the company until after the Initial Term (which expires at the conclusion of the Annual General Meeting that takes place after 30 June 2014). However, under clauses 13.5 and 14.5 of the Constitution, once the resignations of Mr Bentley and Mr Hanmer are legally effective the majority of the Board can then appoint a new Chairman and Deputy Chairman during the Initial Term.

Subject to the above points, the Board of Racing Queensland Limited proposes to the Government that the necessary changes in the composition of the company be voluntarily given effect to by the taking of the following steps being:

(a) That on Tuesday 17 April 2012 three current Directors being Mr Ludwig, Mr Hanmer and myself will tender their resignations effective on 30 April 2012;

(b) That on Tuesday 17 April 2012 one State nominee will be appointed to the Board of Racing Queensland Limited. Only one State nominee can be appointed to the Board tomorrow in light of the existing undertaking that has been given by the company to QCAT. I look forward to advice from the Government on the name of the initial State nominee to the Board of Racing Queensland Limited. Obviously, the Board will require from the Department confirmation

that the State nominee is believed to be an eligible individual in terms of section 9 of the Racing Act 2002. The State nominee will also need to sign a consent form which is a requirement under the Corporations Act. We have prepared and **attach** a draft form of consent to assist in this regard; and

(c) That at the next Board meeting of Racing Queensland Limited to be held on 1 May 2012 there will still be a quorum of three Directors consisting of the initial State nominee, Mr Ryan and Mr Milner. At this Board meeting up to three further State nominee Directors could then be appointed to the Board of the company. This step will ensure that the Board then has up to six members. This approach will also mean that the existing undertaking given by the company to QCAT in respect of the Kerry Watson vacancy will also be complied with.

At an appropriate point in time, Racing Queensland Limited would wish to make a very brief public statement in the following terms before any announcement by Government is made:

> "The Board of Racing Queensland has resolved to put forward a plan to the Government that will enable the company and the current directors to properly discharge their statutory duties and responsibilities while at the same time allowing the Government to commence the implementation of its stated objective to restructure the broader racing industry in Queensland."

I look forward to your confirmation that the suggested arrangements are acceptable to the Government and should now be progressed.

Yours sincerely

R Bentley
Chairman

QUEENSLAND RACING COMMISSION OF INQUIRY

Commissions of Inquiry Act 1950

ANNEXURE

Annexure **'RGB 6'** to the Supplementary Statement of **ROBERT GEOFFREY BENTLEY** authorised 11 September 2013 at Brisbane.

Robert Geoffrey Bentley

Solicitor

Annexure to Supplementary Statement of Robert Geoffrey Bentley

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QUEENSLAND RACING

February 5, 2010

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Mr Bob Lette
Chairman
Queensland Harness Racing Limited
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Dear Bob

I am in receipt of your correspondence of 3 February 2010 and the various letters attached.

The consultation that the harness board carried out with the A Class members is a matter for your board, irrespective of any opinion that the other codes have as to the need or validity to consult.

The harness board has asked that three matters outlined in your correspondence and listed below be resolved as a matter of urgency.

1. *The long term guarantee of Albion Park as the home and racing headquarters for harness racing has been agreed. Confirmation should be provided that "long term" is at least 30 years.*

2. *Any ongoing income stream generated by Clubs from future investments of their funds will (be) retained by the Clubs (e.g. catering operations).*

3. *In the event that Government determines that harness racing should be relocated from Parklands, the present day value of harness racing's investment in that track be returned to the harness sector or invested in a replacement facility for harness racing.*

The matters outlined above are a matters for the incoming 3 code board. Neither the current board of QRL nor myself as Chair of Queensland Racing, have any mandate to decide these outcomes or furnish any guarantees. I understand from the correspondence from the Queensland Government that it has outlined its position that it will not be mandating any guarantees in future legislation.

The assurances being sought in your correspondence seek to lock a future board of 3 codes into an impossible situation having to agree on issues that may not be economically feasible or affordable. The purpose of the new control body

If Race Information fee legislation falls over, Harness and Greyhounds would struggle to return a future surplus.

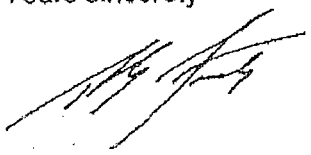
Analysing the figures above and your comments on fiduciary duties of directors it would seem that the amalgamation of the 3 codes would be a decision that should be made with confidence.

Amendments to the *Racing Act 2002* will no doubt deliver significant safeguards to ensure that the control body must make decisions that are in the best interests of all codes as a whole, whilst still having regard for the existence and welfare of each individual code.

In terms of good governance and compliance with the obligations on Directors imposed under the provisions of the *Corporations Act 2001*, you can take heart from the fact that the principles of good governance will continue to be applied in the future, just as they have been in the past by any QRL Director going forward.

I am prepared to facilitate a meeting to discuss any issue but stress that no binding decision or guarantee is capable of being made.

Yours sincerely



R.G. BENTLEY
Chairman

cc. Hon. Peter Lawlor MP
Minster for Tourism and Fair Trading