

Oaths Act 1867

STATUTORY DECLARATION

QUEENSLAND

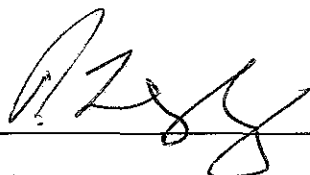
TO WIT

I, Michael Anthony Kelly, of [REDACTED] in the State of Queensland, do solemnly and sincerely declare that:

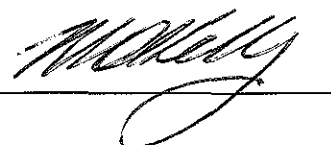
BACKGROUND

1. I am currently employed as the Executive Director, Office of Racing, Department of National Parks, Recreation, Sport and Racing ('the department').
2. I have been continuously employed in the Queensland Public Service since 1981 and in the Executive Director, Office of Racing role (or equivalent), in the various State Government departments that had administrative responsibility for the Racing Act 2002 (Qld) ('the Act') from 2003 to present.
3. These departments changed a number of times as a result of machinery of government changes and changes to administrative orders.
4. I have a Bachelor of Arts, Bachelor of Law and Graduate Diplomas in Legal Practice and Management.
5. I am being asked to recall events that occurred up to six (6) years ago in reference to specific questions from the Commission. I have not had access to departmental records related to any racing related issues since 15 July 2013 and, as such, I have recalled relevant events and details as best I can under the circumstances. There exists a significant amount of documentary records that are relevant to the issues and events outlined below and these are held by the department and Crown Law.
6. There are events that occurred as far back as 2002 that I believe have a direct and material influence on relevant activities of both the Government and racing control bodies during the period 1 January 2007 to 30 April 2012 (the relevant period) and prior to answering specific questions asked of me by the Commission, I wish to provide an environmental and operational context for such answers.

Solicitor



Witness Signature



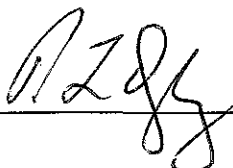
## RACING INDUSTRY STRUCTURAL CHANGE

7. There has been significant structural and operational changes made to the operating environment of the regulated racing industry in Queensland since the early 1990's. These changes have been actioned through the following primary activities:
- March 1992 - The Racing and Betting Amendment Act 1991 which came into effect on 1 March 1992 abolished the five principal club governance model and replaced it with one control body for thoroughbred racing in Queensland, the Queensland Principal Club. Harness and greyhound control bodies remained unchanged. These control bodies were statutory bodies.
  - 1999 – Privatisation of the former statutory TAB;
  - May 2001 - the Government undertook a review of the governance structure of the Queensland thoroughbred racing.
  - December 2001 - Interim Thoroughbred Racing Board Racing (a statutory body) established by the Racing and Betting Amendment Act (No. 2) 2001 as the control body for the thoroughbred code of racing.
  - April 2002 - Queensland Thoroughbred Racing Board (a statutory body) established by the Racing and Betting Amendment Act (No. 2) 2001 as the control body for the thoroughbred code of racing. Harness and greyhound control bodies remained unchanged.
  - 1 July 2006 – Queensland Racing Limited, a company limited by guarantee established under the Corporations Act 2001 (Cth) was granted a control body approval for the thoroughbred code of racing.
  - 1 July 2008 – Queensland Harness Racing Limited, a company limited by guarantee established under the Corporations Act 2001 (Cth) was granted a control body approval for the harness code of racing.
  - 1 July 2008 – Greyhounds Queensland Limited, a company limited by guarantee established under the Corporations Act 2001 (Cth) was granted a control body approval for the greyhound code of racing.
  - 1 July 2010 – Racing Queensland Limited, a company limited by guarantee established under the Corporations Act 2001 (Cth) was granted a control body approval for the thoroughbred, harness and greyhound codes of racing.

## GOVERNMENT RACING POLICY

8. Since the privatisation of the statutory TAB in 1999, the role of government in the regulation of the Queensland racing industry has been focused on matters related to the probity and integrity of the racing product being produced by the industry and ensuring public confidence in the racing product that is provided to the wagering marketplace.
9. Industry commercial operations and matters involving the day to day operations of racing have been steadily devolved to control bodies as they transitioned from a statutory body model to entities established under corporations law.

Solicitor

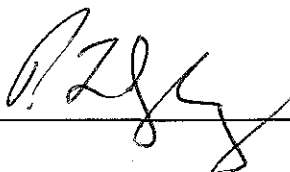


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10. The Act established a legislative regime that made control bodies responsible for the commercial operations of the industry and the management of the day-to-day operations of their codes of racing. The primary policy objectives of the Racing Bill 2002 introduced into Parliament on 17 September 2002 were to:
    - maintain public confidence in the racing of animals in Queensland for which betting is lawful;
    - ensure the integrity of all persons involved with racing or betting under the proposed Act;
    - safeguard the welfare of all animals involved in racing under the proposed Act; and
    - meet National Competition Policy obligations by removing legislative restrictions on competition that cannot be justified in the public interest.
  11. The Act commenced on 1 July 2003.
  12. Amendments to the Act during the period 2006 – 2010 gave further effect to the government's policy position by transitioning control body structural and governance arrangements from the statutory body model to entities established under the Corporations Act 2001 (Cth).
  13. Since 2006 (thoroughbred) and 2008 (harness and greyhound) the activities of racing control bodies have been governed by both the Act and the Corporations Act 2001 (Cth).
  14. The Act focuses on issues of eligibility for organisations and persons to be appointed to positions identified in the Act and the integrity of the racing product being produced, with control body commercial operations and corporate governance arrangements being primarily regulated through the provisions of the Corporations Act 2001 (Cth).
  15. The Board members and executive staff of the control bodies were 'executive officers' of the control body under the Act. The government expected, and relied on, both the Board members and executive staff of the control body companies to exercise their responsibilities lawfully and in accordance with the Act, corporations law responsibilities and the policies of the company.
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16. As executive officers of the control body under the Act, such persons had not only a responsibility to operate in accordance with established requirements of the Corporations Act and common law, but also with personal integrity. These integrity expectations are clearly evidenced in the scheme of operation of the Act.

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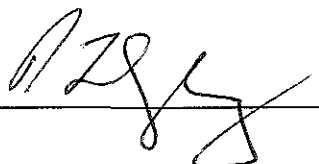


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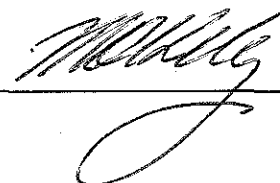


17. Notwithstanding the structural changes made to control bodies, key integrity and public confidence related issues were still addressed in the Act, for example:
- Ensuring only 'fit and proper persons' are appointed to control bodies (section 8 and 9);
  - Establishment of a control body audit regime (section 46);
  - Establishment of a 'mandatory policy requirement' for control bodies to ensure appropriate decision making and operation (section 81);
  - Obligation to have 'rules of racing' that have sufficient regard to rights/liberties of individuals [section 91 and 45(1)(e)];
  - Making 'rules of racing' publically available ( section 94);
  - Establishment of appeal mechanisms for persons aggrieved by a control body decision (section 150 – 154).
  - Strategic regulation of racing bookmakers (Chapter 6);
  - Establishment of the Racing Animal Welfare and Integrity Board (Chapter 4; Part 1);
  - Accreditation of drug testing facilities (Chapter 4; Part 2);
  - Prohibition on disposal of/dealing with assets by non-proprietary entities (sections 113; 113AA);
  - Requirement to adequately fund non-TAB racing (section 60B);
  - Deeming a control body to be a unit of public administration for the purposes of the Crime and Misconduct Act 2001 (section 59); and
  - Continued Auditor-General involvement in audit of a control body, if required (section 60).
18. It was the government's long-standing policy position that the commercial and operational decision making related to management of the codes of racing was the responsibility of a racing control body.
19. A control body had the primary function of managing their code of racing and was provided the powers necessary for performing this function and all other powers necessary for discharging their obligations under the Act (section 33).
20. The Directors of the 'amalgamated' control body, Racing Queensland Limited (RQL) were required to make decisions in the best interests of all the codes of racing while having regard to the interests of each individual code (section 34A).
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21. The powers provided to a control body and their obligations under the Act, when combined with both the common law, and statutory duties imposed on Directors and senior executives of the company under the Corporations Act 2001 (Cth), were designed to ensure the effective operation of the corporate control body model.

Solicitor



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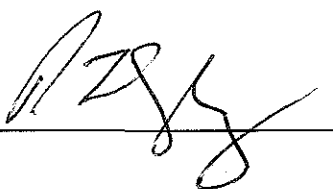
22. The government's policy approach during the relevant period is clearly articulated and evidenced in relevant Cabinet Papers, transcripts of Hansard and in correspondence to, and from, the relevant Racing Ministers. These documents are under the control of the department and Crown Law.

## 1. CONTRACT MANAGEMENT AND FINANCIAL ACCOUNTABILITY

### ***1.1 In respect of the procurement, contract management and financial accountability of the relevant entities during the relevant period what were the:***

- a. Policies;***
  - b. Processes;***
  - c. Guidelines; and***
  - d. Measures which were used to ensure contracts which were awarded delivered value for money.***
23. I believe that all control body entities, before amalgamation into the single RQL control body, had in place procurement policies of varying levels of detail that established processes and guidelines. Copies of this documentation should be available from the Queensland All Codes Racing Industry Board (QACRIB) that is the successor in law to RQL.
24. I am aware that RQL had in place a Financial Practice Manual (FPM) that detailed financial management policies and processes as I have seen the FPM. Part of the FPM was a Procurement Policy that identified procurement, contract management and financial accountability policies, processes and guidelines that I believe were intended to underpin procurement activity. One of the key features of the RQL policy was that procurement activities were to deliver value for money. A copy of the FPM is under the control of the department.
25. I am aware that the policy contained a provision that provided for some procurement activities to be undertaken in a manner not outlined in the policy but approved by the Board of RQL.
26. When RQL was developing the business case for the Beaudesert Industry Infrastructure Plan (IIP) project in mid-late 2011, it was identified by government that the RQL procurement policy was not specific enough in so far as procurement activities related to racing infrastructure projects being undertaken under the Racing Industry Capital Development Scheme (RICDS).
27. RQL was asked to develop and implement a more comprehensive infrastructure-related procurement policy for IIP projects and did so. There exists a considerable amount of documentation related to this matter that is under the control of the department.

Solicitor



Witness Signature



**1.2 In respect of the policies, guidelines and measures where they adhered to?**

28. I am not aware of the compliance standards of the former control body entities that existed prior to the establishment of RQL. However, former control body entities and RQL were audited on an annual basis and I do not recall any 'qualified' audit report ever being issued by the Auditor-General or any other auditor.

**1.3 Events surrounding all contractual arrangements between the relevant entities and Contour Consulting Engineers Pty Ltd ("Contour") including those contracts where Contour was contracted to manage contracts on behalf of the relevant entities.**

29. I do not recall ever seeing any contracts between the relevant entities and Contour and am not able to comment on them.

**1.4 In respect of contracts which were entered into between the relevant entities and Contour:**

- a. **Whether each contract was underpinned by procurement practices;**
- b. **Whether, for each contract, payment policies and processes:**
  - i. **were implemented; and**
  - ii. **were adhered to.**

30. Other than what I have read in the Deloitte's Report dated 24 April 2013 I have no further knowledge of this.

**2. MANAGEMENT**

**2.1 As to the relevant entities during the relevant period, the**

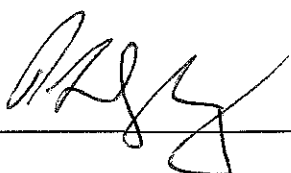
- a. **management policies;**
- b. **management processes;**
- c. **management guidelines; and**
- d. **workplace culture and practices**

**that were in place and whether each one:**

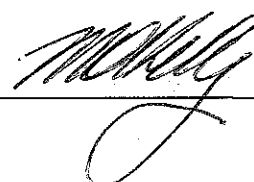
- a. **ensured integrity; and**
- b. **was adhered to.**

31. I am aware that the former control bodies, namely, Queensland Racing Limited, Queensland Harness Racing Limited and Greyhounds Queensland Limited had in place all mandatory policies as specified in section 81 of the Act.

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Witness Signature



32. I believe that the amalgamated control body, RQL, had in place all section 81 mandatory policies and had also established a range of additional non-mandatory policies, such as:
- Policy on Risk Management;
  - Policy on Event Management;
  - Policy for Racing Queensland Commercial Decision Making;
  - Rules of Racing Policy;
  - QCRS Trainer Policy;
  - Policy on Complaint Management System;
  - Policy on Veterinary Services to be Provided at Race Meetings and Trials; and
  - TAB Club Capital Works Policy.
33. I have no direct knowledge of the workplace culture or practices at control bodies as I was never employed by them. However, over approximately the last ten (10) years I observed their operation and interacted with Board members and staff of the various control bodies.

**2.2 The involvement of the boards or members of the boards of the relevant entities in the exercise of functions of:**

- a. the executive management team; and**
- b. other key management personnel, including the company secretary and those involved in integrity matters.**

34. I am aware that the Chairs of the individual control bodies, Queensland Racing Limited, Queensland Harness Racing Limited and Greyhounds Queensland Limited and the Chair and some other members of the Board of the amalgamated control body (RQL), were, at various times, involved in the exercise of functions by the executive management team and other key management personnel.
35. I would meet with the Chairs of the relevant entities on an as required basis and was also present at most meetings they attended with any other senior government officers and Ministers.

**3. CORPORATE GOVERNANCE**

**3.1 The corporate governance arrangements of Racing Queensland Limited in the relevant period.**

36. I was involved in preparing and arranging for former control bodies and the amalgamated control body to undertake specific targeted corporate governance training on a number of occasions and this training was provided by Barry Dunphy of Clayton Utz and the Crime and Misconduct Commission.

Solicitor



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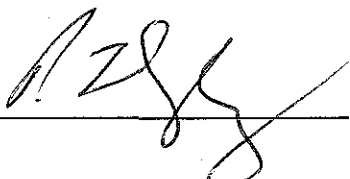
37. I believe the first of this type of training occurred in 2002 or 2003. As part of these training activities, specific presentations and activities were undertaken by officers of the Crime and Misconduct Commission and Clayton Utz. A comprehensive interactive workshop and a detailed corporate governance training manual was provided to participants.
38. When former racing control bodies were operating as statutory bodies all board members of these bodies had undertaken corporate governance training provided by Clayton Utz and been provided the government publication "Welcome Aboard - A Guide for Members of Queensland Government Boards, Committees and Statutory Authorities", as part of their induction process at the relevant times.
39. I was also responsible for arranging specific corporate governance training and 'good decision making' training for key executive staff and stewards of the control bodies. From my recollection, this training activity was well attended by between 20-30 key control body staff and was provided by Barry Dunphy of Clayton Utz. I am unsure of the actual date this training was conducted but records of it will be available from the department and Clayton Utz. It was held at the Powerhouse Hotel near Albion Park.
40. I was present at a meeting on 14 February 2012 at Parliament House between Tony Hanmer and the Treasurer where the issue of developing a new Product and Program Agreement was discussed in some detail. Tony Hanmer made it clear that Bob Bentley had no involvement in the issue due to him being a director of TattsBet. I believe David Ford and some other government officers were also present at this meeting.

**3.2 Whether Racing Queensland Limited and its Officers operated and acted:**


- a. with integrity;**
- b. in accordance with the company's constitution;**
- c. in the best interests of the company;**
- d. in the best interests of the racing industry;**
- e. consistently with the policies made pursuant to sections 81 and 83(2) of the Racing Act 2000 by relevant entities which were current during the relevant period; and**
- f. consistently with legislation including the Racing Act 2000 and the Corporations Act 2001.**

41. I had extensive dealing with RQL and its Officers over the relevant period and it is my opinion that, in so far as the matters I had direct knowledge of, that the relevant persons I dealt with operated with integrity and to the standards expected of persons in such positions. I did not witness, nor became aware of, any matter that would cause me to doubt the integrity of RQL Board members or executive staff.

Solicitor



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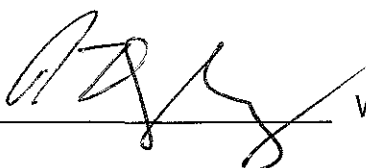
42. I believe that RQL and its Officers operated in accordance with the company's constitution and in the best interests of the company as they assessed those interests to be.
43. I may have made different decisions on a range of issues during the relevant period however, it was not my role to do so. While I still believe that some decisions taken by RQL were not ones I would have taken, I accept that it is easy to criticise decision-making when you are not the person making the decision and may not have all the relevant information at your disposal. In the racing industry, any major decision is usually a balanced judgement calls between competing priorities.
44. I find it difficult to answer the specific question concerning the 'best interests of the racing industry' as the 'the racing industry' can be somewhat difficult to define. Is it trainers, breeders, owners, jockeys, trackwork-riders, or does it include all persons in related up and down stream chains of production, such as feed merchants, veterinary surgeons, livestock transport companies, etc? Does it include punters? Is it TAB, non-TAB racing interests, or both?
45. If it is an amalgam of all these stakeholder groups, acting in their best interests is a balancing act – decisions that are good for one sector/group may, and usually will, have negative impacts on another.
46. I am not aware of any action taken by RQL that was not in accordance with the policies made pursuant to sections 81 and 83(2) of the Act or any action taken by RQL that breached the Act.
47. I am aware that some activities of RQL have been referred to ASIC for investigation regarding compliance with requirements of the Corporations Act 2001 (Cth) however, I am not presently aware of any action taken by RQL that has been found to be not in accordance with the requirements of that Act.

**3.3 In the relevant period were there in place policies, rules and procedures within Racing Queensland Limited to:**

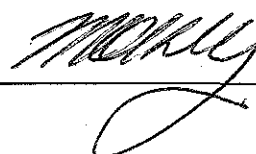
- a. identify and manage conflicts of interest; and**  
**b. minimise the risk of directors and executives improperly using their position and information for personal or financial gain.**

48. I am aware that the Board of RQL had relevant processes in place and undertook corporate governance training as I have detailed previously in this statement.
49. I am aware that a Code of Conduct was developed by the Queensland Thoroughbred Racing Board in around 2004.

Solicitor



Witness Signature



50. I believe an updated version of the 2007 Code was approved for the RQL control body and used in the amalgamated control body environment sometime after 1 July 2010. I am aware that RQL had in place an Audit Committee and a Human Resource and Remuneration Committee as part of their corporate governance framework. Copies of the former and current codes of conduct would be available from the QACRIB.

51. Ever since the commencement of the Act in 2003, control bodies have been units of public administration under the Crime and Misconduct Act 2001, to the extent of the control body's operations for the purposes of performing its function under the Act. These provisions were included in the Act to ensure the oversight and jurisdiction of the Crime and Misconduct Commission. The relevant provisions of the Act applied to RQL.

**3.4 Within Racing Queensland Limited during the relevant period were there in place terms of employment in contracts restraining former directors and executives from seeking employment with Racing Queensland Limited's contractors and suppliers.**

52. I have no knowledge of the terms of any contracts of employment for RQL directors or staff.

**4. OVERSIGHT BY THE MINISTER, THE EXECUTIVE GOVERNMENT, THE CHIEF EXECUTIVE**

**4.1 Oversight of the operations of the relevant entities in the relevant period by:**

- a. the responsible Minister;**
- b. the Executive Government; and**
- c. the Chief Executive.**

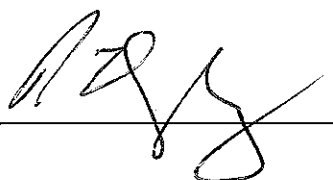
53. I refer to previous information provided at the beginning of my statement outlining the government's policy position regarding racing and the responsibilities of racing control bodies during the relevant period.

Ministers and Executive Government

54. The relevant responsible Ministers had varying degrees of involvement in racing matters, largely dependent upon the issues arising at the time they were Minister and their experience within the regulated racing industry.

55. All Ministers during the relevant period had many meetings with industry stakeholders and I usually attended these. There is also a range of correspondence from relevant Ministers to persons who had initially written to, or emailed, the relevant Minister on industry issues. Details of persons involved, issues discussed and relevant briefing papers prepared would be available from the department.

Solicitor



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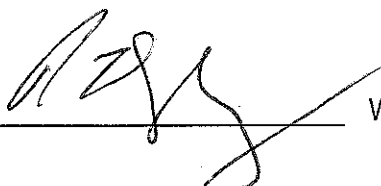


56. All relevant Ministers considered the various programs developed under section 46 of the Act for assessing the suitability of control bodies to manage the relevant codes of racing and approved the conduct of such assessments.
57. Cabinet was involved in matters related to the racing industry on an as required basis. There were a number of amendments made to the Act during the relevant period and all of these followed the normal government process that involved Cabinet consideration of, and subsequent approval, of all proposed amendments.
58. Cabinet and CBRC were also involved in decision-making concerning the establishment and operation of the RICDS, the approval of the various IIPs developed by RQL and all amendments made to the IIP over the relevant period.

#### Chief Executives

59. Directors-General of the relevant departments responsible for administration of the Act had varying degrees of involvement in the racing portfolio depending upon the issues arising at the time and their competing responsibilities in other areas of the relevant department.
  60. In all relevant government departments except the current one (NPRSR) where I report to the Chief Executive (John Glaister), I reported to a Deputy or Associate Director General (Craig Matherson, David Ford and Robert Setter) who then reported to the Chief Executive (Michael Kinnane, Gerard Bradley and Ian Fletcher).
  61. I had at least weekly meetings with the relevant Deputy or Associate Director General at which current industry issues would be discussed, relevant updates were provided and guidance sought as required. During some periods, these meetings would be far more frequent depending on issues arising.
  62. All briefing notes and ministerial correspondence followed normal government procedural processes and correspondence my staff or I generated was approved by the relevant Deputy or Associate Director-General and Director-General prior to submission to the Minister's Office for action. There would be many of these held by the department.
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63. Any proposals for legislative amendments followed the usual government process with extensive involvement and oversight being provided by central government agencies prior to final consideration at Cabinet level.

Solicitor



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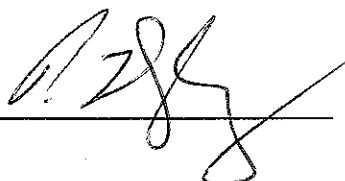


64. When racing control bodies were established as statutory bodies under the Act, specific provisions were included that specified they did not represent the Crown and made them capable of suing and being sued, acquiring, holding and disposing of land and other property, granting and taking leases of land and other property and of doing and suffering all such other acts and things that may apply to a body corporate.
65. I was delegated responsibility for a range of the Chief Executive's functions in accordance with the relevant departmental delegations. Copies of these will be available from the department.

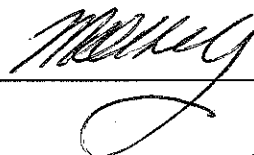
Payments to Tuttle, Orchard, Brennan and Reid

66. This issue arose before a Chief Executive had been appointed to the department and I was required to deal with it.
67. On the morning of 27 March 2012, I was phoned by Helen Gluer (Under Treasurer) concerning media reports related to termination payments made to former employees of RQL (Messers Tuttle, Orchard, Brennan and Ms Reid) and asked to attend a meeting that morning with the Deputy Premier (Mr Seeney) and Treasurer (Mr Nicholls) to brief them on this matter.
68. In preparation for the meeting I believe I had a telephone discussion with Bob Bentley concerning the issue to ascertain the background to the payments. The meeting commenced at approximately 0930hrs in the Treasurer's office in the Executive Building and a range of ministerial staff attended including Paul Leven of the Premier's staff. I cannot recall who the others attending were.
69. I was asked how the payments could be stopped and advised that I had been told by Bob Bentley that they had already been made. I was asked what options existed to recover the money paid by RQL and was told by the Treasurer that there must be a way to direct RQL to recover the money from their former employees by issuing RQL a ministerial direction under the Act.
70. I explained that there were very limited powers of direction available under the Act and, it was my opinion that those that did exist (i.e. section 45) were not intended to address this type of situation.
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71. I stated that unless RQL could be shown to have acted unlawfully and the former employees knew this, or were involved in some unlawful activity, it would be unlikely that the payments would be unlawful. I advised that even if that view was formed by the Government, unless the former employees voluntarily repaid the money, it would likely end in a contested hearing and, in that case, it would be up to a Court to make a determination on the issue and recovery action if appropriate.

Solicitor



Witness Signature



72. I advised that it had to be recognised that the payments were not made by the government and did not involve public monies so our standing in the matter was questionable if the matter progressed to a contested hearing. It was my impression that the Treasurer wanted to take immediate action and I told him there was certainly no quick fix available that I could see.
73. It was agreed that I should get Crown Law advice on this matter and that we would meet again in the afternoon to progress the matter.
74. Upon leaving the meeting, I briefed Carol Perrett and made contact with Mr Gerard Sammon (Assistant Crown Solicitor) to get the necessary advice and arrange for him to attend the afternoon briefing.
75. On the afternoon of 27 March 2012 at approximately 1400hrs I attended the meeting that had been arranged earlier in the day. At this meeting were the Deputy Premier, the Treasurer, Paul Leven, Gerard Sammon, Carol Perrett, myself, a range of ministerial staff and a Senior Deputy Crown Solicitor who I believe was Tony Keyes. The meeting was held in the Treasurer's Office in the Executive Building.
76. The advice provided by Messer's Keyes and Sammon will be held by the department and Crown Law.
77. On the 28 March 2012 at approximately 1030hrs I attended a meeting with the Auditor-General, Andrew Greaves, at his Office regarding him commencing an audit of RQL related to the payments made to Messer's Tuttle, Orchard, Brennan and Ms Reid. A number of staff from the Auditor-General's office were in attendance as well. I think one of them was Michael Hyman however, I cannot recall who the others were.
78. It was agreed that I would draft the appropriate correspondence for the Deputy Premier's consideration. I did this and a letter was sent to the Auditor-General requesting an audit. A copy of this letter will be on departmental files.
79. The Auditor-General undertook the audit and produced a report for government titled 'Racing Queensland Limited: Audit by arrangement' and I believe it was tabled in Parliament.

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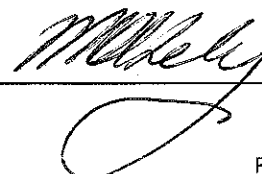
**5. EMPLOYMENT CONTRACTS: TUTTLE, ORCHARD, BRENNAN, REID.**

80. I had no role in, or was aware of the contents of, the employment contracts of Tuttle, Orchard, Brennan or Reid, or the actions of RQL Directors and senior executives in relation to these matters, until related issues were reported in an RQL press release and the media on 26 March 2012.

Solicitor



Witness Signature



81. Once I became aware of this matter I informed Robert Setter by email. A copy of this email is held by the department.
82. I attended a meeting with the Treasurer and others on this matter as referred to above.
83. I was the departmental Officer responsible for meeting with and briefing the Auditor-General on this matter and arranging for his audit. Other than what is in the public domain I have no further knowledge of these matters.

## 6. QUEENSLAND RACE PRODUCT CO LIMITED and TATTS GROUP


### 6.1 *The operations of the relevant entities in the relevant period with respect to the arrangements between Queensland Race Product Co Limited and Tatts Group (formally UNITAB) concerning fees paid by Tatts Group for Queensland wagering on interstate races through Tattsbet ("Fee Arrangements").*

84. As part of the arrangements implemented when the former statutory TAB was privatised in 1999, the Queensland Government issued a 99 year wagering licence to UNITAB (now the Tatts Group). The first 15 years of this licence was exclusive, meaning that the Government could not license any other wagering operator until expiration of the exclusivity period on 30 June 2014.
85. As part of the privatisation arrangements, a condition on issuing any wagering licence was that the Tatts Group and the racing industry must establish appropriate commercial arrangements for the ongoing funding of the racing industry. Accordingly, the Tatts Group and the racing industry negotiated the Product and Program Agreement (program agreement) which is the primary funding mechanism for the industry.
86. The program agreement requires the Tatts Group to pay to Queensland Race Product Co Limited (Product Co), as representative of the control bodies, 39% of its gross wagering revenue.
87. In 2010-11 the program agreement provided the racing industry \$128.42 million in gross revenue. In 2011-12 it provided \$131.3 million.
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88. As far as I am aware, the government is not a party to any agreement between Product Co and the Tatts Group and responsibility for managing the program agreement has rested with Product Co, the Tatts Group and racing control bodies since 1999.

Solicitor

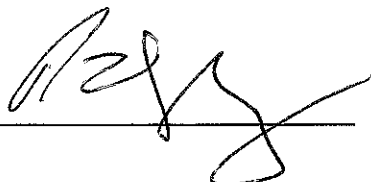


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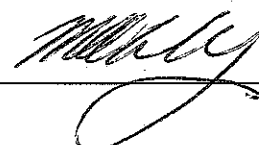


89. It is my understanding that the Queensland Government has no statutory obligation to be involved in the collection or management of racing industry funding under the program agreement, or the race information fee regime established under section Chapter 3 Part 6 of the Act.
90. As a result of the race fields legislation introduced by NSW in 2008 all Australian jurisdictions progressively introduced basically similar race fields legislation to allow racing industry control bodies to charge a fee for the use of their jurisdiction's race information by wagering operators and bookmakers.
91. Amendments were made to the Act in 2009 that provided for racing control bodies to authorise the use of their race information by issuing an authority and, as part of this authority, to charge and collect fees from all wagering operators and bookmakers who used the race information. The relevant provisions are set out in Chapter 3, Part 6 of the Act.
92. The Tatts Group uses a significant amount of interstate racing product to generate wagering activity and revenue. They are liable to pay fees to interstate control bodies for their use of this interstate product under the race fields legislation applying in those jurisdictions.
93. I have seen the program agreement and it is my understanding that a specific clause of the program agreement addresses this issue and provides for the Tatts Group to recover any fee payments they incur from other jurisdictions by deducting such fees from the program fee payable under the program agreement. It is my understanding that the relevant clause included in the program agreement has been there since 1999. In 2010-11 this resulted in \$30.7 million being deducted from the program fee paid to Product Co and subsequently, RQL. In 2011-12, it was \$26.4 million. I am not aware of figures from previous years, but these would be held by the QACRIB.
94. It is my understanding that the deduction of interstate product fees paid by TattsBet from revenue payments to Product Co under the program agreement is based on the interpretation of the relevant section of the program agreement. I do not have a copy of the agreement but it is available from the QACRIB, the department, Tatts Group and Crown Law.
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95. Government involvement in this matter was focused on ensuring there was appropriate legislation in place to ensure that racing control bodies were able to charge a fee to wagering operators, bookmakers and any other entities that used Queensland race product for commercial gain.
96. The government took extensive advice in the development of the race information fee regime that is included within the Act. This advice was provided by Crown Law and private counsel and will be available from the department. The particular focus of the

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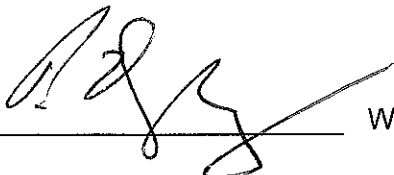
advice sought related to ensuring that any provisions included in the Act did not offend Section 92 of the Constitution as interpreted by the High Court of Australia in cases such as the Betfair case.

97. I am unable to comment in any detail on the internal decision making processes of Product Co or racing control bodies on this matter.
98. I am very familiar with the relevant sections of the Act and was involved in developing drafting instructions to the Parliamentary Counsel when they were being drafted.

**6.2 How Queensland Race Product Co Limited responded to the introduction of race information fees.**

99. I clearly remember Tony Hanmer advising me that he believed NSW was intending to abandon the former 'gentlemen's agreement' and move to implement a race fields regime in that jurisdiction. To the best of my memory, this would have been sometime in early 2008. He was concerned about the impact this would have on racing industry revenues but recognised the commercial approach being taken by Racing NSW and the NSW government. This NSW action was not unexpected as the issue of a race fields regime had been gathering momentum at industry forums and conferences for some time. I had had discussions with other interstate racing officials on the matter for some considerable time.
100. Tony Hanmer did seek my advice on the possibility of Queensland taking similar action should NSW legislate and I told him it was my view that once one jurisdiction walked away from the 'gentlemen's agreement' the floodgates would open and everyone would have to respond. It was my view that legislation was the only appropriate response to ensure an outcome.
101. It was my view that Tony Hanmer had a good understanding of industry revenue flows and clearly understood that any race information fees imposed by Queensland would have to be commercially sustainable, otherwise wagering operators would simply not use Queensland product, except for major feature races.
102. As time progressed and the government decided to implement a face fields regime under the Act, I discussed legislative options, and the government's proposed response, with Tony Hanmer, Bob Lette, Kerry Watson, Malcolm Tuttle, Darren Beavis and Shara Reid. There were many discussions held however, I cannot recall the specific dates of these at this time.

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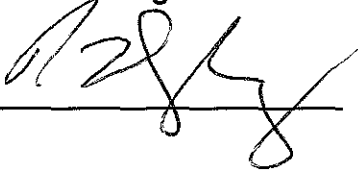
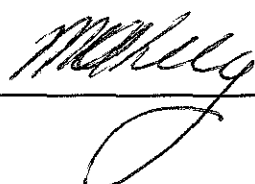
**6.3 Whether there was legal or other expert advice obtained by the boards of the relevant entities as to the effect on fees payable by the Tatts group to Queensland Race Product Co Limited as a consequence of race information fees being introduced.**

103. I am aware that Queensland Racing Limited sought legal advice in respect to the introduction and operation of race information fees and the impact this had on payments received under the programme agreement.
104. I know advice was provided by David Grace of Cooper Grace Ward.
105. I do not recall seeing, or being told that Queensland Harness Racing Limited or Greyhounds Queensland Limited had sought, advice on this matter.
106. I have seen a copy of the advice provided by David Grace to Queensland Racing Limited and I was provided this by Malcolm Tuttle. A copy of the advice from David Grace is held by the department.

**6.4 Any action taken or not taken as a consequence of the legal or other expert advice and whether there were reasons for taking or for not taking action in accordance with the advice.**

107. I received correspondence from Malcolm Tuttle seeking the governments views on the advice that had been provided by David Grace to Queensland Racing Limited and on the operation of the program agreement.
108. I received a number of emails from Tony Hanmer (that included the email trail of his correspondence with Michael Lambert) and Malcolm Tuttle on this issue. Copies of the relevant emails are held by the department.
109. I had departmental files checked for any relevant information concerning the operation of the program agreement and made inquiries with the Office of Liquor and Gaming along the lines requested by Malcolm Tuttle. I was unable to ascertain any useful information concerning the operation of race information fees and the program agreement.
- ~~110. I discussed this matter with David Ford at a number of our weekly management meetings.~~
111. I subsequently wrote back to Malcolm Tuttle. Copies of relevant correspondence is under the control of the department.

**6.5 When the race information fees were introduced or at any other time in the relevant period, whether the directors and senior executives of the relevant entities acted in relation to the fee arrangements:**

Solicitor  Witness Signature 

- a. *in good faith;*
- b. *consistently with their responsibilities;*
- c. *consistently with their duties and obligations;*
- d. *in the best interests of the company or companies of which they were directors or senior executives.*
- e. *Whether the actions of the directors and/or senior executives of the relevant entities relating to the fee arrangements were influenced by a conflict of interest when race information fees were introduced or at any other time during the relevant period.*

112. To the best of my recollection, the members of the relevant entities that I had involvement with concerning the introduction, and ongoing operation of race information fees were Tony Hanmer, Bob Lette, Kerry Watson, Malcolm Tuttle, Paul Brennan, Mike Godber, Darren Beavis, Adam Carter, Shara Reid, Martin Knibbs, Danny Ryan and Reid Sanders.

113. I am not aware of any of them having, or being influenced by, any conflict of interest in this matter.

**6.6 *Whether, in relation to the fee arrangements, the directors and the senior executives of the relevant entities used their position to gain a personal advantage when race information fees were introduced or at any other time in the relevant period.***

114. I am not aware of directors or senior executives of the relevant entities using their position to gain a personal advantage.


**7 FUNDS TRANSFER IN FEBRUARY 2012: QUEENSLAND GOVERNMENT TO RACING QUEENSLAND LIMITED INFRASTRUCTURE TRUST ACCOUNT**

**7.1 *Events surrounding the approved transfer of funds by the Queensland Government to the Racing Queensland Limited Infrastructure Trust Account in February 2012.***

115. In around June 2012, I prepared documentation for my own use that identified RICDS, IIP and associated funding activity and have referred to this information in answering this question.

~~116. The Cabinet Budget Review Committee (CBRC) approved the establishment of a Racing Industry Capital Development Scheme (RICDS) in November 2009.~~

Solicitor

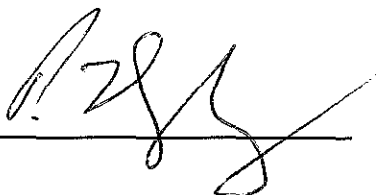


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117. The development of the Industry Infrastructure Plan (IIP) which identified key racing infrastructure projects had commenced some time in 2009 and had been ongoing since before the former separate control bodies were amalgamated to form RQL in 2010.
118. RQL released the Original IIP in December 2010 and it contained a range of infrastructure projects valued at approximately \$200 million. RQL owned the Albion Park harness and greyhound facility and the Original IIP relied on the sale of the venue to generate revenue that would fund part of the Original IIP. The balance of funding was to be provided by the government via a redirection of wagering tax collected for four (4) years and the compensation payment already made by the government related to the loss of the greyhound facilities at the Parklands Gold Coast venue.
119. RQL provided government with a Revised IIP in May 2011 that contained projects to the amount of approximately \$110M. The Revised IIP identified urgent infrastructure works, and longer-term projects, that could be delivered without relying on funds from the sale of Albion Park as had been proposed in the Original IIP. The Revised IIP was approved by CBRC on 7 July 2011 and a one (1) year extension to the tax redirection was approved.
120. In January 2012, RQL submitted an Amended IIP to government on the basis that the proposed greyhound and harness facility at Deagon, contained in the Revised IIP, was unlikely to be approved by the Brisbane City Council and the court case involving the potential sale of Albion Park was still ongoing. Cabinet approved the Amended IIP on 30 January 2012.
121. It is my recollection that Cabinet's and CBRC's initial 2009 approval required that all RICDS- funded projects must be supported by individual project business cases that had to be approved by the Treasurer before any funding could be released to RQL. A copy of the relevant Cabinet and CBRC Decisions are available from the department.
122. Individual IIP project business cases were prepared by RQL and submitted to the Office of Racing progressively, in draft form, for the department to provide feedback on their content.
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123. This feedback focused on ensuring that there was the necessary information included, and in sufficient detail, to allow Treasury Officers and the Treasurer to make a decision regarding individual business case and any release of RICDS funds.

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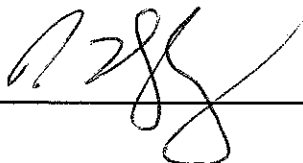


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124. The approval process for individual business cases required an assessment by Treasury Officers who, from memory were Stuart Booker, Natalie Barber and Gerry Foley. I believe that once business cases had been assessed by them, they made a recommendation to Gerard Bradley and he then recommended a course of action to the Treasurer.
125. Individual IIP project business cases were submitted to Treasury for consideration on a rolling basis with Beaudesert being the first one. I cannot recall the actual dates of submission but think it was during the period from mid 2011 – early 2012. There will be documentation held by the department and Treasury that will identify actual dates. Treasury Officers assessed each business case and made recommendations on them.
126. I had no authority to approve IIP business cases or funding from the RICDS. Authority to approve IIP business cases and the release of RICDS funds rested with the Treasurer in accordance with relevant CBRC and Cabinet decisions and he was provided advice on exercising these powers by his department.
127. Once a business case had been approved and the Treasurer had authorised the release of funds to RQL, funding deeds between the State and RQL were drafted by Crown Law and then executed by both parties. Once a funding deed had been executed the first instalment payment identified in the approved business case was made to RQL.
128. A number of payments were made to RQL on 17 February 2012 which was two days before the commencement of the caretaker period. I want to make it clear that this was the final administrative step in a long process that had commenced with initial Cabinet-level approvals in 2009, legislative change in 2010, CBRC approvals in July 2011 and further Cabinet approval in January 2012.
129. It is my understanding that the IIP payments made to RQL in February 2012 totalled \$9.68 million and were made on 17 February 2012. A further IIP payment of \$2.79 million was made on 5 March 2012. Total IIP payments made in February - March 2012 were \$12.48 million.
130. In respect to the payment made on 5 March 2012 (\$2.79 million) this was for the reimbursement of RQL's costs associated with developing IIP business cases. The reimbursement of these costs was approved by the Treasurer in early December 2011 but actual payment did not occur until 5 March 2012 because of:
- the need to check and confirm the appropriateness of all costs being claimed by RQL; and
  - Treasury Department not advising of their approval of RQL's certified invoices until 23 February 2012.

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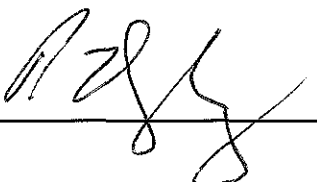
131. I believe that the \$2.79 million paid to RQL on 5 March 2012 was the only payment made during the caretaker period which commenced on 19 February 2012.
132. The department was fully aware that care was required in making any payments during the caretaker period. Prior to making this payment the appropriateness of this course of action was questioned by Mark Bermingham (DEEDI A/Chief Executive Officer) and confirmed as appropriate by Susan Middleditch (DEEDI Chief Financial Officer) and Robert Setter (DEEDI Associate Director-General).
133. Robert Setter approved the payment and the necessary administrative action was taken by the Office of Racing, under my direction, to complete the payment transaction and arrange for the transfer of funds to RQL. A copy of the relevant email concerning this issue dated 29 February 2012 is under the control of the department.
134. I would like to emphasise that while the actual payments were made in February - March 2012, these payments related to projects that had been the subject of consideration and decision by RQL and government since as early as mid-2010.


**7.2 The basis upon which the transfer of funds was made.**

135. The transfer of funds was made as initial payments were due under the terms of the relevant funding agreements between the State and RQL.

**7.3 Was any influence exercised by directors of Racing Queensland Limited in relation to having the transfer made.**

136. The Directors and senior management of RQL were keen to have IIP project funding made available to RQL as soon as possible so that identified projects could commence detailed planning and construction. This was made clear on many occasions.
137. There was particular concern expressed by the RQL Board and senior staff over delays to the commencement of the Beaudesert IIP project because it was planned that Beaudesert would be the venue that would become a temporary training facility for horses unable to use the Gold Coast Turf Club while that project was being undertaken, and be upgraded to a TAB racing venue.
- 
138. RQL stressed that delay in the completion of Beaudesert would impact on the commencement of the Gold Coast Turf Club project which was a key priority for the government and the industry.
139. I am aware that RQL made a number of representations to the government concerning the need to commence the Beaudesert project as soon as possible and he pointed out that delays on a decision regarding the Beaudesert project had

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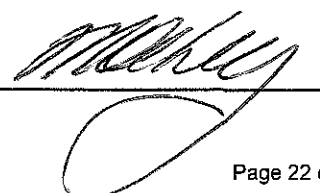
significant consequences for the industry in general, and the Gold Coast project in particular. There would be a range of letters and emails on this matter under the control of the department.

140. RQL advised government that the Cairns IIP project was a priority for the industry and work needed to commence after the wet season in north Queensland. Accordingly, RQL was keen to have a decision made on this project as soon as possible and stressed its importance with the government. I am aware that Bob Bentley and Paul Brennan made representations to the government on this issue and also spoke to me about it on a number of occasions. There would be a range of letters and emails on this matter under the control of the department.
141. The Revised IIP proposed the establishment of a combined harness and greyhound facility at Deagon however, once the Deagon plan was abandoned in late 2011/early 2012, RQL decided to proceed with the development of the Logan IIP project and it gained momentum quickly as greyhound stakeholders had been very vocal concerning the needs of their code and the importance of continued greyhound product under the program agreement.
142. The former greyhound control body, Greyhounds Queensland Limited, had previously identified the Logan site as the most suitable for a new greyhound facility as far back as late 2009 and now it was back on the agenda, RQL wanted a decision made on this project as soon as possible as there was considerable stakeholder dissatisfaction with the delay in establishing a new facility. There would be a range of letters and emails on this matter under the control of the department.
143. RQL was also focused on having the costs associated with the development of IIP project business cases being reimbursed to them as soon as possible. Former control bodies had previously expended considerable funds on planning for infrastructure projects that had not proceeded, such as the development of new racing venues at Wacol and Palm Meadows, which had been completely funded by them.
144. At the request of government, Queensland Racing Limited had incurred significant costs in the planning and assessment of these earlier infrastructure proposals at Wacol and Palm Meadows and RQL explained that they could no longer afford to meet and carry such planning costs at the expense of other industry priorities.
- 
145. RQL advised that delays in reimbursing them for IIP business case development costs meant that funds were not available for other on-going industry purposes and had a negative impact on their cashflows.

Solicitor



Witness Signature



**8. ANY OTHER RELEVANT MATTER**

**8.1 Any other matter relevant to the Commission's Terms of Reference.**

146. I have nothing further to add.

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

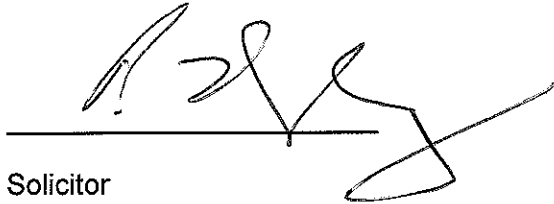
**DECLARED AND SIGNED at Brisbane**

this Second day of August, 2013

Witness



Before me:-

  
Solicitor