

# QUEENSLAND RACING COMMISSION OF INQUIRY

## AFFIDAVIT OF DAVID KENNETH FORD

I, **DAVID KENNETH FORD**, c/o Crown Law, State Law Building, 50 Ann Street, Brisbane in the State of Queensland, Deputy Director-General state on oath:

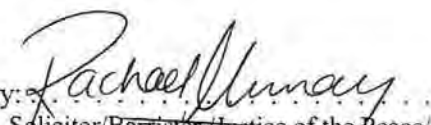
### Role and contextual background information

1. I am currently a Deputy Director-General, in the Department of Justice and Attorney-General (DJAG).
2. I joined the Queensland Government in 1978. I have worked since then in a variety of positions, mainly in Queensland Treasury, with approximately twenty years in regulatory areas, including gambling and wagering and, more recently, liquor and fair trading.
3. There is a significant difference between racing and wagering matters. There is interaction between the two, but they are discrete in terms of regulation, structure and legislation:
  - (a) Racing is essentially regulated by the *Racing Act 2002*. The *Racing Act* creates the framework for and governs the operations of the industry. Administration of this Act was, throughout the Relevant Period, the responsibility of the Office of Racing.
  - (b) Wagering is the placing of bets on races and other events. It is regulated by the *Wagering Act 1998*. The *Wagering Act* licenses persons to take those bets and approves the processes, procedures and mechanisms for this. The administration of this Act was, throughout the Relevant Period, the responsibility of what is now known as the Office of Liquor and Gaming.
  - (c) While the two regulatory agencies, their legislative bases and their operations are distinct, there are from time to time issues which involve both. This occurred during the Relevant period, as well as before the transition of the Office Racing into Treasury in 2007 and after the transition of the Office Liquor and Gaming into DJAG in 2011, as set out below.

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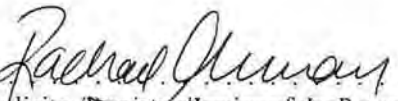
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Affidavit of David Ford


GR Cooper  
CROWN SOLICITOR  
11<sup>th</sup> Floor, State Law Building  
50 Ann Street  
Brisbane Qld 4000  
Telephone 07 3239 3734  
Facsimile 07 3239 3456


- (d) Relevantly, one of the key interactions between the two areas is that the bulk of the funding for racing is derived from the sale of rights to wager on its events. This is principally through the Product and Program Agreement between the racing industry and the exclusive Queensland wagering provider, Tatts Group.
4. Whilst my roles have to a large extent been in the area of gaming and wagering regulation, I have had some responsibility for racing matters. During the Relevant Period, my responsibilities included oversight of the Office of Racing between September 2007 and February 2011.
  5. On 13 September 2007 and 1 October 2007, respectively, the Office of Racing and Liquor Licensing Division each transferred from the former Department of Tourism, Fair Trading and Wine Industry Development to Treasury. At this time, I was a Deputy Under Treasurer in Queensland Treasury. I acquired responsibility for oversight of those two regulatory areas. Between 13 September 2007 and 26 March 2009, my responsibilities included CorpTech (until 1 July 2008), Motor Accident Insurance Commission, Portfolio Services (Treasury's Corporate Services function), Office of Gaming Regulation, Office of State Revenue, Office of Racing and Liquor Licensing Division.
  6. During this period, Gerard Bradley, the Under Treasurer, was the Chief Executive pursuant to the *Racing Act*. He delegated some of the responsibilities and functions of the Chief Executive to me as a Deputy Under Treasurer. Due to the Under Treasurer's other more pressing and urgent responsibilities, I had considerable capacity to exercise individual discretion in terms of approving briefing material and briefing the Treasurer. I had relatively free access to the Treasurer and the Treasurer's staff.
  7. I was on leave overseas between 3 March 2008 and 15 April 2008.
  8. On 26 March 2009, the Office of Liquor and Gaming and the Office of Racing transferred to Department of Employment, Economic Development and Innovation (DEEDI). At the same time, I assumed the position of Deputy Director-General, DEEDI. I remained responsible for Office of Liquor and Gaming, the Office of Racing, and the Office of Fair Trading.
  9. During this period, I reported successively to two Directors-General (Peter Henneken and Ian Fletcher), but oversight of racing matters was left largely to me. As DEEDI reported to four ministers, much of the contact with Minister Lawlor, the minister responsible for Liquor, Gaming, Racing and Fair Trading, was part of my role.

  
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10. From 7 September 2009 to 21 October 2009, I was on leave overseas.
11. Between 16 August 2010 and 3 January 2011, I was on long service leave.
12. On 21 February 2011, the Office of Liquor and Gaming and the Office of Fair Trading transferred to the DJAG. At the same time, I assumed the position of Deputy Director-General in DJAG. The Office of Racing remained with DEEDI.
13. Since 21 February 2011, I have only had lateral interactions with the Office of Racing, in the context of wagering regulation.
14. Throughout the Relevant Period when my responsibilities included the Office of Racing, I met with Michael Kelly, the Executive Director of the Office of Racing regularly. I generally met with Executive Directors of all my line agencies on a fortnightly basis. I was also in regular informal communication with him via telephone and emails. Except in urgent circumstances, during this time, draft correspondence, memoranda, briefs and Cabinet material prepared for the Minister by the Office of Racing would pass through my office for endorsement.
15. By way of contemporaneous context, during the Relevant Period:
  - (a) Treasury was occupied with, amongst other issues, managing the State Budget during the difficult period of the global financial crisis and the downgrade of the State's credit rating, State Government asset sales, natural disaster recovery and CorpTech's involvement in, and the rollout of, the Queensland Government's Shared Services Initiative. Coupled with the fact that Treasury, by necessity, focuses its resource effort towards portfolios commensurate with their budget and policy significance, racing industry matters were not a high priority for Treasury.
  - (b) DEEDI was a new department, comprised of all or part of approximately nine previous departments. It contained a complex blend of responsibilities covering areas as diverse as primary industries, mines, energy, tourism, state development and employment as well as my areas of Liquor and Gaming, Racing and Fair Trading. In the context of the creation of a new department, integrating very different structures and cultures while continuing to provide "business as usual" services was a considerable effort. In addition, my own area was engaged with implementation of a major Liquor Act review, Liquor Licensing Division integration with the Office of Gaming Regulation, contentious Body Corporate

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changes and implementation of significant changes within Fair Trading resulting from the COAG process.

16. Matters relating to the racing industry were, on the whole, a minor part of my day to day activities and responsibilities.

**Responses to schedule to request dated 6 September 2013**

17. I have no independent knowledge or specific recollection about:
- (a) the procurement, contract management and financial accountability of the Relevant Entities during the Relevant Period;
  - (b) whether the Relevant Entities adhered to relevant policies, processes, guidelines and measures;
  - (c) the events surrounding all contractual arrangements between the Relevant Entities and Contour Consulting Engineers Pty Ltd, or the contracts entered between the Relevant Entities and Contour;
  - (d) the management policies, processes and guidelines or workplace culture and practices of the Relevant Entities during the Relevant Period;
  - (e) the involvement of the boards or members of the boards of the Relevant Entities in the exercise of identified functions;
  - (f) the corporate governance arrangements and operations of Racing Queensland and its Officers;
  - (g) the policies, rules and procedures within Racing Queensland, and the terms of employment contracts of its current and former directors and executives;
  - (h) the employment contracts, payouts, or actions of Mr Tuttle, Mr Orchard, Mr Brennan or Ms Reid; and
  - (i) the funds transfer in February 2012. This was after the conclusion of my direct involvement with racing matters.
18. I have no independent knowledge or specific recollection of the Queensland Race Product Co Limited and Tatts Group, save that:
- (a) I am aware , as indicated in paragraph 3(d) of this affidavit, of the significance of these arrangements for the funding of racing and that the arrangements between Queensland

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Race Product Co and Tatts Group (the arrangements) are a commercial transaction not a matter for government involvement in terms of wagering or racing regulation; and


- (b) I recall being informed, possibly by Michael Kelly, that a relevant entity was obtaining or had obtained legal advice on the arrangements. I now have no specific recollection of the content of any advice received.

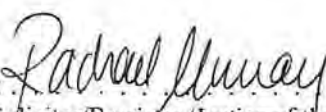
**Oversight by the Minister, the Executive Government, the Chief Executive**

19. The Racing Act sets out the degree of oversight assigned to, the Minister, Executive Government and the Chief Executive.
20. As set out in paragraph 6 of this affidavit, I had some responsibilities and functions delegated from the Chief Executive.
21. In the normal course of events, as set out in paragraph 7 of this affidavit, draft correspondence, memoranda, briefs and Cabinet material prepared for the Minister by the Office of Racing, would pass through my office for endorsement. In many (although by no means all) instances I would, as part of the arrangements with my Directors-General approve the submission of these materials directly to the Minister's Office without their being reviewed by the Director-General.
22. However, in the main, the effective day to day regulation of racing matters occurred through and on the advice of the Office of Racing.
23. As set out in paragraphs 13 and 14 of this affidavit, racing matters were of relative low priority to areas of responsibility during the relevant period, and formed only a minor part of my responsibilities. Following the privatisation of the TAB and commencement of the Racing Act, the Government had adopted a less intrusive role in the regulation and certainly the management of the industry.

**Other matters**

24. In preparing this statement, I have been shown a number of documents which relate to my involvement with racing matters and which may be relevant to the Commission's terms of reference.
25. On 2 September 2008, I attended a fortnightly catch-up meeting with Michael Kelly of the Office of Racing. During this meeting Mr Kelly mentioned the establishment of a racing capital development scheme and the possible diversion of wagering tax revenues to support


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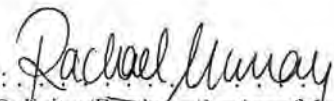
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this. This was the first mention to me, which I am aware of, of any such scheme. I took notes during that meeting. Exhibit **DF1** is a copy of my contemporaneous handwritten notes, and a transcribed copy of the relevant portion of those notes. These notes speak for themselves.

26. On 30 January 2009 and 6 February 2009, I attended meetings with the Treasurer and Bob Bentley, amongst others. These meetings were general updates on regional racing issues. I took notes during those meetings. Exhibit **DF2** is a copy of my contemporaneous handwritten notes of the meeting on 30 January 2009, and a transcribed copy of those notes. Exhibit **DF3** is a copy of my contemporaneous handwritten notes of the meeting on 06 February 2009, a transcribed copy of those notes and an email meeting invitation for this meeting. These documents speak for themselves.
27. On 27 May 2009, at another fortnightly catch-up meeting with Michael Kelly of the Office of Racing, Mr Kelly advised me that Bob Bentley and the Treasurer had discussed a package of funding based on the diversion of 50% of the wagering tax. I took notes during this meeting. Exhibit **DF4** is a copy of my contemporaneous handwritten notes of the meeting, and a transcribed copy of the relevant portion of those notes.
28. On 25 June 2009, I signed a Ministerial briefing note regarding the Queensland Racing Limited Industry Issues Paper. The briefing note sets out the basis of the proposed redirection of 50% of the wagering tax revenue to the racing industry. Exhibit **DF5** is a copy of that briefing note.
29. I have read a copy of the Issues Paper dated May 2009. However I did not and still do not have an in depth knowledge of the issues contained in it. I can not recall when I first received the Issues Paper.
30. On 30 June 2009, I attended a meeting with Bob Bentley, Bill Ludwig, Minister Lawlor and the Treasurer. Discussions at this meeting centred on the serious need for a capital injection into the racing industry and that 50% of wagering tax revenue could be leveraged to provide significant borrowing capacity. I took notes during this meeting. Exhibit **DF6** is a copy of my contemporaneous handwritten notes of the meeting, and a transcribed copy of those notes.
31. On 8 July 2009, my office received a copy of the draft CBRC submission discussed in the meeting on 30 June 2009. I understand the draft CBRC submission was prepared by the Office of Racing. Exhibit **DF7** is a copy of the draft CBRC submission and the email attaching it.


32. On 13 July 2009, I sent an email to John O'Connell in Treasury, noting that the CBRC submission was to be prepared in consultation with Treasury, and attaching a copy of a version the draft submission. Exhibit **DF8** is a copy of that email.
33. On 13 August 2009, I attended a meeting a fortnightly catch-up meeting with Michael Kelly of the Office of Racing. During this meeting Michael Kelly advised that the Government was interested in a CBRC submission relating to the racing industry and the funding of control bodies in the Queensland Racing Industry. I took notes during this meeting. Exhibit **DF9** is a copy of my contemporaneous handwritten notes of the meeting, and a transcribed copy of the relevant portion of those notes.
34. On 21 October 2009, I returned from leave overseas. Michael Sarquis that day provided me with a handover debriefing. He mentioned that Bob Bentley and Bill Ludwig were to meet with the Premier and Treasurer on Tuesday to discuss several issues. I took notes during this debriefing. Exhibit **DF10** is a copy of my contemporaneous handwritten notes of the debriefing, and a transcribed copy of the relevant portion of those notes.
35. At the handover briefing, or around that time, I also was provided with a Ministerial briefing note, which updated the Minister on the Queensland Racing Industry Issues Paper. Exhibit **DF11** is a copy of that briefing note, which speaks for itself.
36. On 22 October 2009, I attended a fortnightly catch-up meeting with Carol Perrett of the Office of Racing. My diary indicates that Michael Kelly was on leave. Ms Perrett informed me that the Director-General had requested a redraft of the CBRC submission. She also advised that Bob Bentley and Bill Ludwig were to meet with the Premier and Treasurer on Tuesday to discuss several issues, including the term of Queensland Racing Limited Board members and funding for the industry. I took notes during this meeting. Exhibit **DF10** is also a copy of my contemporaneous handwritten notes of the meeting, and a transcribed copy of the relevant portion of those notes.
37. I did not attend the meeting between Bob Bentley, Bill Ludwig, the Premier and Treasurer referred to in paragraph 37 of this affidavit, nor do I have any independent evidence that it actually took place.
38. On 4 November 2009, I received an email from Lachlan Smith which raised issues identified by the Treasurer's Office with, and sought clarification of some points in, the draft CBRC submission. I replied to that email and provided some comments in response. Exhibit **DF12**

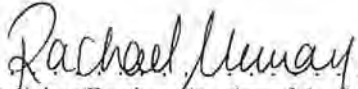
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is a copy of that email string. The document sets out the issues raised, clarifications sought and comments provided.

39. The emails referred to in paragraph 38 discuss the economic forecasts presented in the draft submission. At some point prior to 4 November 2009 (which I cannot further particularise), I received a copy of an informal report prepared by the Office of Economic and Statistical Research. It is this report which I referred to in the first bullet point of my email to Lachlan Smith. Exhibit **DF13** is a copy of that report.
40. On 4 November 2009, Carol Perrett amended the draft CBRC submission to incorporate Lachlan Smith's comments. She sent that draft to me by email. Exhibit **DF14** is a copy of that email.
41. I have been asked whether the CBRC submission was simply an adoption of the Issues Paper. I do not consider this to be true. The Government directed DEEDI to prepare a submission to provide financial support to the racing industry for capital purposes. The CBRC submission offers three options for the provision of support, including the industry's preferred model which is estimated in the submission to have a total cost to government of some \$250 million over twelve years. The option recommended in the submission is rather more modest, offering \$100 million over five years to support targeted key infrastructure projects and subject to the amalgamation of the three code control bodies.
42. I note the CBRC submission (number 3756) was signed by the Minister on 26 November 2009. Further, I note the CBRC decision, number 2863 was even more limited than the recommendation of the submission, offering a hypothecation of 50% of wagering tax revenues over four years (estimated at \$85 million) and with payments subject to receipt and approval of specific business plans for each project.
43. On 18 December 2009, I attended a meeting with members of the racing industry and the Directors-General of DEEDI and the Department of Premier and Cabinet. The industry was told that the Government was considering the industry's request and the discussion focussed on the position of the three codes on the amalgamation proposal. I took notes during this meeting. Exhibit **DF15** is a copy of my contemporaneous handwritten notes of the meeting, and a transcribed copy of those notes.
44. I have been asked whether I attended a pre-briefing meeting with Ian Fletcher, Michael Kelly, Lachlan Smith and Ken Smith prior to the meeting on 18 December 2009. I have no

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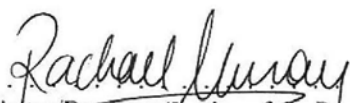


independent recollection or contemporaneous notes of that pre-briefing meeting. I accept it could have occurred as such meetings are common and allow government representatives to discuss relevant issues before meeting with third parties.

45. At the meeting of 18 December 2009, it was indicated that the government was seeking a response by 4 January 2010 on the need for a single control body and the structure of the control body. A meeting accordingly was convened on 4 January 2010, which I attended. I recall at that meeting it was agreed the term of the constitution of the control body was to align with the current terms of the Product Agreement. I recall the discussion seemed to conclude with an offer from the government of funding of \$85 million over four years if the industry restructured. I took notes during this meeting. Exhibit **DF16** is a copy of my contemporaneous handwritten notes of the meeting, and a transcribed copy of those notes.
46. On 18 January 2010, I signed a Ministerial briefing note regarding the proposed amalgamation of the racing control bodies. The briefing note sought the Minister's approval of a letter to Bob Bentley. Exhibit **DF17** is a copy of the briefing note and the letter to Bob Bentley signed by the Minister.
47. I have been shown a Ministerial briefing note for a meeting between Minister Lawlor, myself and Michael Kelly on 28 January 2010. While my diary includes reference to that meeting, I do not recall attending the meeting nor do I have any contemporaneous notes of the meeting. Exhibit **DF18** is a copy of that briefing note.
48. On 3 February 2010, I attended a fortnightly catch-up meeting with Michael Kelly of the Office of Racing. During this meeting Mr Kelly advised me that the amalgamation of the control bodies was going ahead. I took notes during this meeting. Exhibit **DF19** is a copy of my contemporaneous handwritten notes of the meeting, and a transcribed copy of the relevant portion of those notes.
49. On 17 February 2010, I attended a fortnightly catch-up meeting with Michael Kelly of the Office of Racing. During this meeting Mr Kelly advised me that Cabinet Submission No 7290 had been signed. I took notes during this meeting. Exhibit **DF20** is a copy of my contemporaneous handwritten notes of the meeting, and a transcribed copy of the relevant portion of those notes.




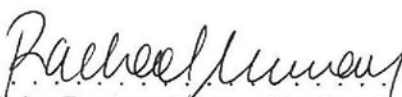
  
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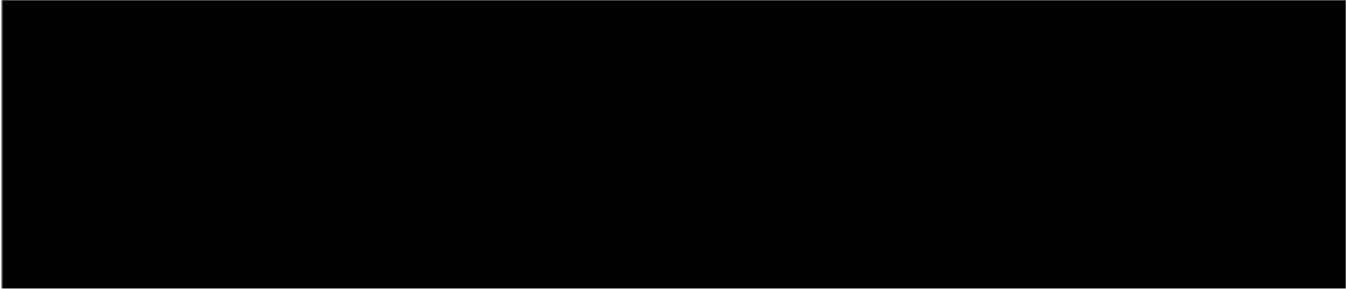
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- [REDACTED]
51. On 23 February 2010, I attended a post-Cabinet catch-up meeting with Minister Lawlor. He advised that further discussions with the Treasurer on a couple of racing issues were needed. I took notes during this meeting. Exhibit **DF22** is a copy of my contemporaneous handwritten notes of the meeting, and a transcribed copy of those notes.
  52. On 3 March 2010, I attended a fortnightly catch-up meeting with Michael Kelly of the Office of Racing. During this meeting Michael Kelly advised me that Bob Bentley was keeping the Ministers up to date with the progress of the amalgamation. I took notes during this meeting. Exhibit **DF23** is a copy of my contemporaneous handwritten notes of the meeting, and a transcribed copy of the relevant portion of those notes.
  53. On 23 March 2010, I reviewed and endorsed a Ministerial briefing note regarding the proposed amendments to the *Wagering Regulation 1999* and *Racing Regulation 2003*. Amendments to the Regulations were required as a result of the *Racing and Other Legislation Amendment Bill 2010*. Exhibit **DF24** is a copy of that briefing note.
  54. On 31 March 2010, I attended a meeting a fortnightly catch-up meeting with Michael Kelly of the Office of Racing. During this meeting Mr Kelly advised me that the Bill to amalgamate the racing bodies and establish the Racing Industry Capital Development Scheme was finalised. Exhibit **DF25** is a copy of my contemporaneous handwritten notes of the meeting, and a transcribed copy of the relevant portion of those notes.

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56. On 25 May 2010, I reviewed and endorsed a briefing note to the Governor regarding the Racing and Other Legislation Amendment Bill 2010. I recall the Governor was signing the Bill in her assenting capacity and asked for a briefing on the bill. This was a straightforward process, but was uncommon. I was not involved in the preparation of the briefing note, but I would have seen it in the iterative process on its way to the Director-General for signoff. Exhibit **DF27** is a copy of that briefing note.

  
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- 58. As noted in paragraph 4 of this affidavit, in February 2011, I ceased to have any responsibilities in connection with the Office of Racing.
- 59. On or around 4 August 2011, I received a letter from the Office of Racing, advising that subsequent to and as a result of the CBRC Decision No 3255 on 7 July 2011, the *Wagering Act 1998* would need to be amended. Exhibit **DR29** is a copy of that letter.
- 60. My staff prepared a briefing note to me, dated 28 September 2011, on the proposed amendments outlined in the letter of 4 August 2011. I reviewed and endorsed that briefing note. Exhibit **DR30** is a copy of that briefing note.
- 61. On 29 September 2011, I responded to the letter dated 4 August 2011, relying on the advice provided in the briefing note of 28 September 2011 advising that the matter had been assigned to an officer in the Office of Regulatory Policy to prepare the necessary amendments. Exhibit **DR31** is a copy of that letter.
- 62. I reviewed and endorsed two Ministerial briefing notes regarding the Minister's meetings with the president of the Mackay Greyhound Race Club and representatives of the Cairns Greyhound Race Club. Exhibit **DR32** is a copy of those briefing notes dated 28 April 2008.
- 63. All of the facts and circumstances deposed to in this affidavit are within my own knowledge and belief, except for the facts and the circumstances deposed to from information only, and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by DAVID KENNETH FORD on 16 September 2013 at Brisbane in the presence of:

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Deponent

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Solicitor/~~Barrister~~/Justice of the Peace/  
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