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Mr Bob Bentley
Chairman
Racing Queensland Limited
PO Box 63
SANDGATE QLD 4017

1 August 2011

Our ref 12223/12955/80120739

Dear Bob

Remuneration of Senior Executive Staff

I refer to our previous discussions and to the request that we now review the legal advice dated 20 July 2011 provided to Racing Queensland Limited (Racing Queensland) by Messrs Norton Rose.

We have previously in this context provided advice on the legal obligations that are owed by the Board members particularly under sections 181 and 182 of the Corporations Act. We will not for the purposes of this advice repeat those earlier observations.

For convenience, we will address the issues that arise as follows:

- 1.0 Executive Summary
- 2.0 Background
- 3.0 Proposed 30% Increase in Salary
- 4.0 Broadening of the Redundancy Triggers set out in Clause 15.3 of the Employment Contracts
- 5.0 Variation of the Employment Contract Renegotiation Date
- 1.0 Executive Summary

Our key conclusions are that:

- (a) The proposed 30% increase in salary does not appear to be unreasonable in all of the circumstances.
- (b) However, the Board needs to carefully assess whether the flow on effect of the 30% increase into the TRV for each of the four senior executives for the purposes of their relevant termination payments (under clause 15.3 of their respective employment contracts) is, in all of the circumstances, reasonable and in the best interests of Racing Queensland. We suggest that there be a form of cap (in terms of the total number of

months of TRV equivalent) on the amount that can be paid under the terms of the revised clause 15.3. The value of the capped amount is for the Board to determine but we would suggest that a range of between 12 and 14 months might be considered. Our reason for raising this point is that the timing of the next State general election is really quite flexible and uncertain. In our opinion the next State general election could be as early as September 2011 or as late as June 2012. Our concern is that if the election is held very early, e.g. October 2011 and this then led to an activation of one of the clause 15.3 triggers, that the four executives would then become entitled to a termination payment of 20 months (at the increased 30% level) which, in terms of their current salary would be the equivalent of a 26 month payment. As that trigger would occur in circumstances where the employees were only effectively retained for 3 months from the date of incentive, it is our opinion that such a windfall outcome may be difficult for the Board to justify;

- (c) The variation in the current termination payment triggers as set out in clause 15.3 of the respective employment contracts of the four senior executives appears to be reasonable. However, we recommend that all of the additional triggers ought to have a significant impact in the role or duties of each of the four senior executives. We would not recommend that one of the triggering events that activate payment be a mere change in State Government alone, as that event of itself may or may not have implications for the employment of the four senior executives; and
- (d) The change in the contract renegotiation date in the employment contracts of the four senior executives appears to be reasonable.

1.0 Background

Since we first considered this issue, there has been a most unfortunate escalation in the public discussion about the future of Racing Queensland and the likelihood that an incoming LNP Government will move quickly to dismiss the current Board. The public discussion has now also gone so far as to suggest that two of the senior executives of Racing Queensland will be replaced if there is a change of Government. All of this public discussion has clearly and understandably unsettled the four key senior executives of Racing Queensland who now all believe that if there is a change of Government that their employment will be terminated in very public circumstances

and that their reputations within the racing industry and within the broader business community will then be adversely affected.

So the Board now has a serious dilemma in that four of the key members of its senior management team¹ are now both unsettled and distracted by the recent public discussion. At the same time, Racing Queensland has a very significant workload with which to cope over the next two to three years and the Board believes that keeping the four senior executives is critical to the future success of Racing Queensland. Unless the Board now takes some clear mitigating steps, there is a risk that one or more of those executives will commence looking for alternative employment to avoid the ignominy of the termination of their employment being played out in the public arena if there is a change of Government. The only countervailing factor seems to be that under their respective employment contracts, the four senior executives are required on resignation to give either six or seven weeks notice (depending on their age and period of service) and their entitlements in the event of a voluntary resignation are minimal.

Having regard to these matters, we note that the Board, at its meeting on 20 July 2011, considered these issues and decided for each of the four executives to:

- (a) Increase the TRV of each executive by 30% as from 1 July 2011. This increase is to be payable immediately on an ongoing basis throughout the balance of the current term of their employment contracts;
- (b) That the existing redundancy triggers set out in clause 15.3 of their current employment contracts i.e. if Racing Queensland ceases to be the approved Control Body, be expanded to include other "material adverse changes" such as a change in the State Government, a significant change in the make up of the Racing Queensland Board, a significant change in the reporting line for the relevant senior executive or a significant organisational restructure; and
- (c) That the obligation on Racing Queensland to renegotiate their respective employment contracts be moved from June 2012 to December 2012.

¹ The four senior executives are the Chief Executive Officer, Malcolm Tuttle, the Director Integrity Operations, Jamie Orchard, the Director Product Development, Paul Brennan and the Senior Corporate Counsel/Company Secretary, Shara Murray.

In the circumstances, it is probably best that we examine each of these proposed changes to the employment contracts of the four senior executives and that we then express our opinion on the risks that face the Board in relation to each of those changes.

2.0 Proposed 30% Increase in Salary

As we have previously indicated, even within Government circles, there are precedents for employees to be paid retention bonuses of between 20% and 25% to reflect either market demand for particular employment skills and specialties or when senior executives have been sought to be retained by a Government entity that is the subject of an ongoing privatisation process. In this latter instance, these retention payments have been made to keep the relevant executive management team in place until the new owners of the privatised body have taken control.

Therefore, we believe that the 30% uplift in salary as a concept is not an unreasonable approach. However, as we have previously advised, making these retention payments after certain timelines or milestones have been met by the employees would give rise in an overall sense to a lower risk profile from the Board's perspective.

One point about the proposed 30% increase is that it will apply for the remainder of the balance term of the employment contracts of the four senior executives. This increase in TRV will also then flow through into the calculation of any "redundancy payment" under the expanded version of clause 15.3 of the employment contracts.

So, our view on this aspect of the proposed employment contract variation is:

- (d) That the payment of a 30% salary retention increase conceptually is reasonable in the current circumstances; and
- (e) That the Board in the current circumstances needs to be satisfied that the overall increase in salary for each of the four senior executives together with the associated increase in the entitlements regarding relevant total termination payments under clause 15.3 of their employment contracts and under any general redundancy scheme is, when one weighs up all of the relevant factors, both reasonable and in the best interests of Racing Queensland. We would note in this regard from the spreadsheet that was included with the Board papers that if all four senior executives activated their redundancy entitlements in February 2012 that the extra termination payments

(for the four senior executives) will in total amount to an additional \$677,000 liability for the company. We presume that this figure has been calculated and reflects the flow through of both the 30% increase in their individual TRVs together with the effect of any further payments that will be made under the proposed general Racing Queensland wide redundancy scheme.

Of course, under the relevant employment contracts of each of the four senior executives the actual size of any termination payment will depend on when the material adverse change occurs and then whether the individual executives trigger their termination rights under clause 15.3 of their respective employment contract. For example, if there is a change of Government at the State Government level and Racing Queensland is restructured and/or fundamentally reformed in April 2012 by the new Government, the four executives (if they were all to terminate their employment at that time) would be entitled to approximately 14 months pay together with any additional general redundancy payments. However, if it took the new Government until December 2012 to implement any restructuring process, the payments under the expanded clause 15.3 of the respective employment contracts would then only be seven months salary plus any additional general redundancy payment.

One other area of difficulty is that we cannot be sure when the State election may be held and so there is considerable uncertainty about when a triggering event may actually occur under clause 15.3 of the relevant employment contracts. Under the constitutional and electoral framework in Queensland, the next State election can be held as late as mid June 2012. On the other hand, it is generally accepted that the Governor will grant an early State election if the request is made by the Premier within the last six months of the 3 year Parliamentary term.

On this basis the Premier could ask for a State election to be held as early as September/October 2011. Our concern is that if the election is held very early, e.g. October 2011 and this then led to an activation of one of the clause 15.3 triggers, that the four executives would then be entitled to a termination payment of 20 months (at the increased 30% level) which, in terms of their current salary would be the equivalent of a 26 month payment. As that trigger would occur in circumstances where the employees were only effectively retained for 3 months from the date of incentive, it is our opinion that such a windfall outcome may be difficult for the Board to justify.

To mitigate this risk, we suggest that there be a form of cap (in terms of the number of months) on the amount that can be paid under the revised clause 15.3. This is an amount for the Board to determine but we would suggest that a range of between 12 and 14 months might be considered.

3.0 Broadening of the Redundancy Triggers set out in Clause 15.3 of the Employment Contracts

As we have already advised, we have serious reservations whether an employee triggered termination under clause 15.3 of the current employment contracts would give rise to a genuine redundancy situation. This is because the focus of the clause is on the termination of individual employment arrangements rather than the redundancy of the relevant positions i.e. on the basis that they will then not be required as part of the ongoing structure of Racing Queensland. It is incomprehensible that the current duties undertaken by the four senior executives will in any future management structure of Racing Queensland all cease to exist or, in that sense, become redundant in terms of the ongoing operation and management of Racing Queensland.

In our view, however the proposed broadening of the trigger events as set out in clause 15.3 of the relevant employment contracts would not necessarily be unreasonable. One observation would be that the trigger ought to have a significant impact in the role or duties of each of the four senior executives. We would not recommend a trigger that is activated by a change in the State Government alone as that event may or may not have implications for the employment of the four senior executives.

We also suggest that to the extent that changes in reporting lines for the relevant senior executives or operational structures are added in any trigger points, that it should be made very plain that only significant or substantial changes will operate as a relevant trigger. It would not be in the interests of Racing Queensland to allow the four senior executives to seek a termination payment for what might only be a minor change in their reporting arrangements or a minor variation in the structure of Racing Queensland. This is primarily a drafting issue which can be addressed in the new expanded clause 15.3 as it is being developed.

4.0 Variation of the Employment Contract Renegotiation Date

This proposal is that the obligation on Racing Queensland to renegotiate the respective employment contracts be moved from a nominated date of June 2012 to December 2012. This suggested change is made to allow sufficient time for an assessment to be made of the potential

effect of any structural reforms of Racing Queensland both on the role and the employment terms and conditions of the four senior executives.

We do not see that this change has any financial impact on Racing Queensland and it seems to us to be a reasonable variation in all of the circumstances.

If you have any questions in relation to our advice, do not hesitate to contact us.

Yours sincerely



Barry Dunphy, Partner
+61 7 3292 7020
bdunphy@claytonutz.com

