

QUEENSLAND RACING COMMISSION OF INQUIRY

AFFIDAVIT OF KENNETH JOHN SMITH

I, **KENNETH JOHN SMITH**, Trade Queensland, Queensland House, 392 Strand, London WC2R 0LT, United Kingdom, Agent-General for Queensland and Queensland Trade and Investment Commissioner, Europe, states on oath:

PRELIMINARY MATTERS

1. In this statement:
 - (a) 'Relevant Entities' means Racing Queensland Limited, Queensland Racing Ltd, Greyhounds Queensland Ltd, Queensland Harness Racing Ltd and their controlled entities including Queensland Race Product Co Ltd; and
 - (b) 'Relevant Period' means the period from 1 January 2007 to 30 April 2012.
2. I no longer have access to my inboxes or calendars for the period while I was at the Department of the Premier and Cabinet ('Department'). In order to assist the Commission with its inquiries, and particularly in order to answer the questions posed in the requirement addressed to me, I asked the Department to search for copies of any relevant emails and other documents that it appears I would have received whilst I was Director-General. I also requested copies of my electronic diaries for the relevant time. Those diaries commence in January 2007 but are more accurate for the period from 15 September 2007 onwards.
3. Crown Law and the Department have provided me with copies of some documents that have been located and are relevant to my statement, but I have not been able to personally search for other documents.
4. I have also referred to my personal notebooks from the Relevant Period while I was Director-General of the Department. Extracts of my notebooks relating to meetings referred to in this statement are attached and marked 'KS-1'. The notes record key points rather than verbatim minutes of the meetings and in many cases I did not keep notes where Departmental officers

Page 1

Signed:

Deponent

Affidavit of Ken Smith

Taken by:

Solicitor/Barrister /Justice of the Peace/
Commissioner for Declarations


- were present as they took responsibility for recording actions from specific meetings. At other times, I instead wrote on briefing notes or spoke directly to staff about follow up.
5. I have prepared this statement on the basis of my recollections after refreshing my memory from the documents available to me.

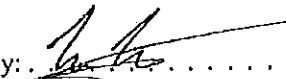
ROLE

6. I am currently the Agent-General for Queensland and Queensland Trade and Investment Commissioner, Europe. I was appointed to my position by the Governor in Council for a term from 5 July 2011 to 4 July 2016 and I am based in London.
7. Prior to my appointment as Agent-General for Queensland and Queensland Trade and Investment Commissioner, Europe, I was:
- (a) the Coordinator-General and Director-General of the Queensland Department of Infrastructure from 15 January 2007 until 13 September 2007; and
 - (b) the Director-General of the Department from 14 September 2007 to 2 July 2011.

REPRESENTATIONS TO RELEVANT ENTITIES

8. Any representations, that I am aware of, that were made by representatives of the Relevant Entities to representatives of the Government in relation to:
- (a) the consent, agreement or consultation required of the three codes of racing control bodies;
 - (b) industry infrastructure proposals;
 - (c) Government policy positions on the future oversight and regulatory role of the Minister and executive government in relation to the racing industry;
 - (d) proposed board membership of an amalgamated racing industry control body;
 - (e) the future role of racing clubs and club representatives; and
 - (f) the future role of the Queensland Country racing Committee and Country Racing Associations,
- are outlined in this statement in my description of the meetings I attended or in the documents I have attached.

Signed: 
Deponent

Taken by: 
Solicitor/Barrister/Justice of the Peace/
Commissioner for Declarations

DISCUSSIONS AND COMMUNICATIONS WITH RELEVANT ENTITIES

9. I am informed by Lucinda Kasmer, Special Legal Adviser in the Department, that the searches of my diaries have identified apparent appointments for meetings about racing issues pertinent to the Terms of Reference of the Inquiry. Attached and marked 'KS-2' is a bundle of printouts of those appointments with the relevant attachments. I discuss each meeting below in groups by reference to their subject matter.

Amalgamation of racing industry control bodies

27 October 2009


10. I attended a meeting on 27 October 2009 regarding the proposed amalgamation. I have some notes regarding this meeting and they are contained in exhibit KS-1.
11. The calendar appointment for this meeting in exhibit KS-2 attached a handwritten note addressed to 'Sue'. It is likely the note was prepared within the Premier's office and that the 'Sue' was Sue Cox, the Premier's diary secretary at the time. I cannot identify the author of the hand written note.
12. My recollection of this meeting is that:
- (a) The attendees were Premier Bligh, Treasurer Fraser, Bill Ludwig, Bob Bentley, Mike Kaiser, Lachlan Smith and me.
 - (b) The broad topics discussed were the need to improve, and in some cases, rationalise racing infrastructure and the need for governance reform.
 - (c) Bob Bentley raised a specific funding issue regarding the Gold Coast and particularly retaining the Magic Millions Carnival as there was a threat to move the event from the Gold Coast to Sydney because of poor facilities.
 - (d) After discussing various infrastructure issues and the industry's request for significant capital grants from Government, focus turned to the current litigious environment within the racing industry and issues between the three control bodies. In this context, Bob Bentley raised the need for a new governance model for the industry.
 - (e) Bob Bentley strongly promoted the need for a new governance model for the industry;
 - (f) The requirement for rolling elections was seen by Messrs. Bentley and Ludwig as not providing for stable governance of the industry. They outlined their preference for a more commercial, as opposed to representational, model for the governing board. They saw

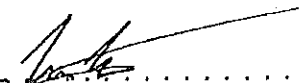
this occurring by allowing board appointments to be made on the basis of merit rather than by election.

- (g) There was also an issue raised about the terms of appointment for individual Board members, but I cannot recall the specific issues involved apart from the general points raised in (f) above.
 - (h) No commitment for funding was given at the meeting. The Premier outlined the budget context and the fact that mid year review ('MYR') was progressing and an announcement on the MYR outcomes was likely in early December.
 - (i) The Premier also gave no commitment to support the proposed Governance model;
 - (j) At the end of the meeting, Bob Bentley was asked by the Premier to provide further advice to Lachlan Smith and myself regarding options for a new governance model for the industry.
 - (k) The action taken by me or my officers following the meeting was to organise follow up discussions with Mr Bentley on governance issues and work with Treasury and the Office of Racing on an analysis of the infrastructure funding request in the context of Mid Year review deliberations by CBRC.
13. After the meeting of 27 October 2010, Bob Bentley sent a letter dated 10 November 2011 to me attaching the 'QR Case for Change' document. A copy of that letter (without the attachment) is attached and marked 'KS-3'. This letter would have been referred to the appropriate officers within the Department.
14. I have been shown an email from Nicholas Lindsay to Carol Perrett dated 16 November 2009 regarding the 'QR Case for change'. A copy of the email is attached and marked 'KS-4'. The email refers to issues that were required to be brought to 'Ken's attention'. It is likely that 'Ken' is a reference to me. I did not receive this email and I cannot recall seeing the comments on the QR Case for Change document, but it is likely they formed the basis of a briefing to me in preparation for my meeting on 20 November 2009 (discussed below).

20 November 2009

15. I attended a further meeting about the proposed amalgamation on 20 November 2009.
16. Dr Pradeep Philip, the Associate Director-General in the Department, signed a briefing note for me in preparation of this meeting. A copy of that briefing note is attached and marked 'KS-5'. The briefing note sets out general background information for me to review before

Signed: 
Deponent

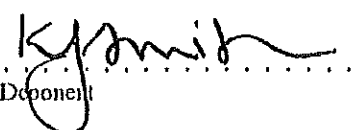
Taken by: 
Solicitor/Barrister /Justice of the Peace/
Commissioner for Declarations

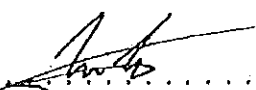
the meeting so I had an understanding of the likely matters to be raised for discussion. This is a standard process for most external and many key internal meetings.

17. The meeting on 20 November was about both governance and infrastructure funding. I have some notes regarding this meeting and they are contained in exhibit KS-1. My recollection of this meeting is that:
- (a) The attendees were Bob Bentley, Bill Ludwig, Lachlan Smith and me.
 - (b) The discussion focused on the control body amalgamation proposal.
 - (c) Bob Bentley wanted an early government decision and announcement about the issue.
 - (d) Bob Bentley referred to the fact that Western Australia were proposing a similar amalgamation and pointed to that as a benchmark for changes in Queensland.
 - (e) Bob Bentley raised an issue with the election process for the control bodies and the fact that Bill Ludwig was up for election in March of the next year.
 - (f) The issue of the importance of retaining the Magic Millions on the Gold Coast was also raised during the discussions.
 - (g) The outcome was that Queensland racing would come forward with a firm proposal, including an analysis of the legal issues by 21 December 2009.
 - (h) The action taken by me or my officers following the meeting was to ensure that the Premier and Departmental Officers were apprised of the discussions and the next steps.
18. There is no doubt in my mind that Mr Bentley in particular believed that there was an urgent need for the amalgamation of the 3 racing control bodies and that Government should endorse the proposals prepared by Racing Queensland..
19. Following this meeting, Bob Bentley wrote to me and Lachlan Smith by letter dated 23 November 2009 highlighting the urgency in the restructure of the racing industry. A copy of that letter is attached and marked 'KS-6'.
20. After this meeting, the Cabinet Budget Review Committee ('CBRC') made its decision regarding funding of control bodies in the Queensland racing industry (Decision Number 2863) on 26 November 2011.

18 December 2009

21. I convened a further meeting with the stakeholders about the proposed governance changes to the racing industry on 18 December 2009. My recollection of this meeting is that:
- (a) The attendees were Bob Bentley, Bob Lette, Kerry Watson, Ian Fletcher, David Ford, Mike Kelly, Lachlan Smith and me.

Signed: 
Deponent

Taken by: 
Solicitor/Barrister/Justice of the Peace/
Commissioner for Declarations

- (b) The matters discussed focussed on the position of the 3 codes on the amalgamation proposal.
 - (c) The outcome was support in principle for the changes, although there were outstanding issues relating to Board composition and assurances for treatment of each of the codes.
 - (d) The action taken by me or my officers following the meeting included briefing of the Premier and my own Departmental Officers on the outcomes of the meeting.
22. I attended a pre-briefing meeting with Ian Fletcher, David Ford, Mike Kelly and Lachlan Smith immediately before this meeting. It is common to have such meetings so that government representatives can discuss relevant issues before meeting with third parties.

CBRC Submission

23. Around the time of the meetings about the proposed amalgamation, CBRC Submission 3756 (later Decision Number 2863) was being prepared by the Office of Racing. The policy officers within the Department were consulted on that submission.
24. I have been shown a copy of a briefing note that was prepared for the final submission dated 5 November 2009. A copy of that briefing note is attached and marked 'KS-7'. The briefing note was prepared by Justin Murphy and signed by Bronwen Griffiths. There is a space for me to also sign as Director-General, but my initial does not appear on the briefing note. That was probably because of my other work commitments on the day, and the fact that I was out of the office or involved in meetings and teleconferences on the day. The briefing note would have needed to be submitted to allow for circulation of the Cabinet Committee bag.
25. I note that the Departments did not support CBRC Submission 3756. I understand that Queensland Treasury also did not support the Submission. I had no concerns with the position outlined in the Department's briefing note. In my experience, it is not unusual for Cabinet or CBRC to make a decision contrary to recommendations from the Department or Queensland Treasury, or for that matter, the recommended positions put to Ministers by their own Departments as part of the decision making process. It is the prerogative of the Executive Government to make such decisions. In public administration, this would be seen to result in more informed decision making through a process of contestability.
26. My understanding at the time was the CBRC decision regarding funding was connected to the amalgamation proposal for the racing control bodies, which was the subject of later Cabinet consideration.

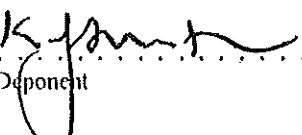
27. I was not personally involved in the consultation about the draft submission or the CBRC decision, but would have been in attendance at meetings of the Committee of Budget Officials and CBRC where the submission was discussed and the final decision by Executive Government was made.
28. I note that the briefing note is dated 5 November 2011, before the meeting on 20 November 2011. I would not have disclosed any information about the CBRC Submission or the Department's position at that meeting as it would not have been appropriate to do so.

Other matters relating to the amalgamation

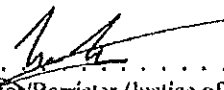
29. I have been shown a briefing note from me to the Premier dated 4 February 2010 regarding the amalgamation of the racing control bodies. A copy of that document is attached and marked 'KS-8'. The briefing note states that a meeting was held on 23 December 2009 between the control bodies to discuss the amalgamation but that Queensland Harness Racing did not support the proposed board composition. I recommended to the Premier that she sign the attached letter to Bob Bentley.
30. Ultimately, all of the control bodies agreed to the amalgamation and Cabinet Submissions were prepared for the authority to prepare and authority to introduce legislation effecting the amalgamation. I signed the briefing notes in relation to Cabinet Submissions 7290. I have seen a copy of the briefing note for Cabinet Submission 7372 but I did not sign it. I was involved in a number of meetings out of the office that particular day. A copy of those briefing notes is attached and marked 'KS-9'. I cannot recall details of the specific consultation process for these Cabinet Submissions and I would not have been personally involved in them.
31. Following these Cabinet Submissions, to the best of my recollection, my involvement with the amalgamation ended.

Proposal for Queensland Government funding scheme for racing infrastructure

32. The meeting on 27 October 2009 that I have discussed above involved discussion of both governance and infrastructure funding.

Signed: 

Deponent

Taken by: 

Solicitor/Barrister/Justice of the Peace/
Commissioner for Declarations

Synthetic tracks

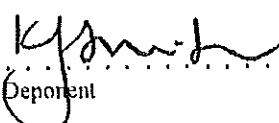
33. I attended a meeting with Bill Ludwig, Malcolm Tuttle and Andrew Hedges on 23 January 2007 in relation to the synthetic tracks project. That meeting occurred while I was Coordinator-General and Director General of the Department of Infrastructure. Stuart Booker, who was the Deputy Coordinator-General at the time, also attended the meeting.
34. At the meeting, we discussed the proposal to install synthetic racetracks at a number of racecourses. The outcome of the meeting was that Queensland Racing would work with Mr Booker to prepare a business case for the government to consider.
35. Attached and marked 'KS-10' are documents relevant to my involvement with the synthetic tracks proposals. The documents are self-explanatory.


Palm Meadows

36. I attended a meeting on 29 October 2007 with Queensland Racing and PricewaterhouseCoopers regarding the Palm Meadows racing proposal. This meeting was about the future of racing on the Gold Coast.
37. I have been shown a Director-General's briefing note dated 26 October about this meeting that was attached to the relevant diary entry in KS-2. I note that is not signed and appears to be a draft only. I cannot recall if I received a finalise copy of this briefing note.
38. Attached and marked 'KS-11' are documents relevant to my involvement with Palm Meadows. The documents are self-explanatory.

Strategic Plan

39. I attended a meeting with then Premier Anna Bligh, then Deputy Premier, Paul Lucas, then Treasurer Andrew Fraser, and then Minister responsible for Racing Peter Lawlor, Bob Bentley, Bill Ludwig and staff from the Premier's Office on 18 August 2010. The meeting was about the racing strategic plan. Discussions included proposals for significant rationalisation of facilities.
40. I attended a further meeting about the strategic plan with Bob Bentley, Anna Bligh, Andrew Fraser, Peter Lawlor, and Lachlan Smith on 9 November 2010. I have some notes regarding this meeting and they are contained in exhibit KS-1. The meeting was about the racing strategic plan, particularly Albion Park. The discussions included the future of Albion Park and Mr Bentley's proposals to redevelop the site. I was asked to obtain Crown Law advice

Signed: 
Deponent

Taken by: 
Solicitor/Barrister/Justice of the Peace/
Commissioner for Declarations

about the capacity of Racing Queensland to sell the Albion Park site (the advice is contained within exhibit KS 13).

MEETINGS REGARDING GOVERNMENT POLICY

Magic Millions

41. On 11 August 2008, I had a meeting with Events Queensland about the Magic Millions. The attendees were Des Power, Michael Denton, Pat Vidgen and me. I have some notes regarding this meeting and they are contained in exhibit KS-1. We discussed funding of the event and the adequacy of Bundall facilities and Palm Meadows as an alternative. In particular, I recall that there were discussions about proposals to establish the world's richest two year old event. Events Queensland believed that retaining Magic Millions was a major advantage for the Gold Coast and Queensland in terms of the economic multipliers for the region, but this was hampered by the state of facilities at the Bundall track.
42. On 16 July 2009, I met with Gerry Harvey to discuss the Magic Millions. The attendees were Gerry Harvey, Katie Page, Peter Lawlor, Stephen Beckett and me. I have some notes regarding this meeting and they are contained in exhibit KS-1. The note refers to a meeting on 17 July, but I believe this is an error (in my notations) and the meeting did occur on 16 July. The discussion focussed on the adequacy of facilities on the Gold Coast and that if improvements could not be made the threat that the event would move to Sydney. In particular, I recall that I was asked to follow up with Events Queensland in an attempt to secure the Magic Millions event on the Gold Coast
43. The issue with the Magic Millions was ultimately resolved by Events Queensland when sponsorship arrangements were negotiated and secured. I recall being involved in discussions regarding those sponsorship arrangements with the Premier and her officers, Events Queensland, and Treasury.
44. Attached and marked 'KS-12' is a bundle of documents relevant to my involvement with the Magic Millions.

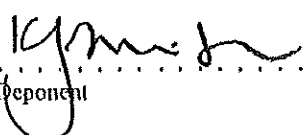
Kevin Seymour

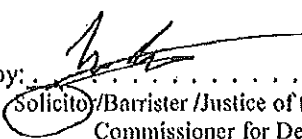
45. I met with Kevin Seymour on 9 July 2010. David Hourigan from the Department also attended. This meeting was about another development matter not associated with the Racing Industry.

46. I recall requesting legal advice from Crown Law regarding the proposed sale of Albion Park, as outlined in paragraph 40 of this statement.
47. On 29 November 2010 I met with Kevin Seymour, with Premier Bligh and Treasurer Fraser. I have some notes regarding this meeting and they are contained in exhibit KS-1. The meeting with Kevin Seymour was specifically about the Albion Park dispute and Bob Bentley's handling of the amalgamation of the racing entities. Mr Seymour was complaining about the treatment of Queensland Harness Racing and the proportion of revenue allocated to it. There were discussions about the value of the Albion Park facility with Mr Seymour disputing Mr Bentley's estimates of the value of the site. Mr Seymour raised concerns that key harness racing resources were being sold to support the thoroughbred part of the industry. He was concerned that the Board of Racing Queensland did not properly represent the industry. Mr Seymour also expressed a lack of confidence in Mr Bentley's capacity to act in the best interests of all codes. He also expressed a view that the decision making process by the new industry body was "abominable" and that he may be forced to take legal action and proceed with an advertising campaign, particularly against any proposal to sell Albion Park.
48. Mr Seymour took legal action against Queensland Racing and Bob Bentley in an attempt to prevent the sale of Albion Park as he believed he had a personal commitment from Mr Bentley not to sell the facility. I personally requested my Department obtain Crown Law advice regarding the State joining the proceedings as a party. The advice from Crown Law was that the State did not have standing to be joined as a party. At a later time as the case progressed, Treasurer Fraser requested that I obtain further advice from Crown Law, but the advice remained the same. Copies of both advices were provided to the Treasurer but I am not sure what happened in relation to this advice or of the case itself.
49. Attached and marked 'KS-13' is a bundle of documents relevant to my involvement with Mr Seymour and the Albion Park facility. The documents are self-explanatory.

OTHER MATTERS


50. As part of my role as Director-General of the Department, I reviewed and responded to Ministerial correspondence to the Premier and dealt with other matters regarding the racing industry. These matters were various and not directly relevant to the matters outlined in the Request from the Commission so I have not covered all of them in detail in this statement.

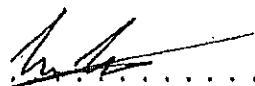
Signed: 
Deponent

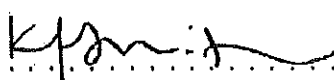
Taken by: 
Solicitor/Barrister/Justice of the Peace/
Commissioner for Declarations

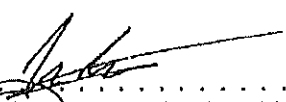
51. The diary appointments in exhibit KS-1 indicate that there may have been meetings scheduled on 7 and 8 December 2009. I have looked at my diary and no meeting appears to have occurred with the Treasurer on those days. There are two emails in exhibit KS-1 that would appear to show that the meetings scheduled for 7 and 8 December 2009 were cancelled. I also note that the diary entry for the meeting on 9 December 2009 states that there had not yet been a response to the meeting request. In any event, I cannot recall that meeting.
52. Throughout October 2007 I attended a number of meetings with racing industry representations about Equine Influenza outbreak and control measures. Bob Bentley or other Queensland Racing managers attended these meetings, as well as representatives from other peak groups affected by Equine Influenza. My diaries indicate that meetings were held on 2 October 2007, 23 October 2007 and 30 October 2007.

Sworn by KENNETH JOHN SMITH on 5 September 2013 at London, United Kingdom in the presence of:


.....
(Deponent)


.....
Solicitor/Barrister/Justice of the Peace/
Commissioner for Declarations
ADMITTED AS A LEGAL PROFESSIONAL
IN THE AUSTRALIAN CAPITAL TERRITORY.
MATTHEW EVAN TAYLOR SMITH

Signed: 
.....
Deponent

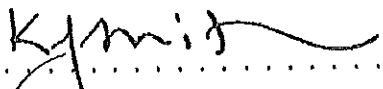
Taken by: 
.....
Solicitor/Barrister/Justice of the Peace/
Commissioner for Declarations


QUEENSLAND RACING COMMISSION OF INQUIRY

CERTIFICATE OF EXHIBITS – KENNETH JOHN SMITH

Bound and marked "KS-1" to "KS-13" are the exhibits to the affidavit of Kenneth John Smith sworn on: 5 September 2013.

Exhibit	Description	Date	Pages
KS-1	Extracts from Ken Smith's notebooks	Various	1 to 12
KS-2	Extracts from Ken Smith's diaries	Various	13 to 40
KS-3	Letter Queensland Racing to Ken Smith re Case for Change	10.11.2009	41 to 65
KS-4	Email Nick Lindsay to Justin Murphy re QR Case for Change with attachment	18.11.2009	66 to 72
KS-5	Director-General's briefing note re Queensland Racing – Meeting on 20 November 2009	19.11.2009	73
KS-6	Letter Queensland Racing to Ken Smith	23.11.2009	74 to 75
KS-7	Briefing Note re CBRC Submission 3756	05.11.2009	76
KS-8	Premier's Briefing Note re Amalgamation	04.02.2010	77 to 80
KS-9	Briefing note re Cabinet Submissions 7290 and 7372	17.02.2010	81 to 82
KS-10	Email Mike Kelly to John Paterson re Synthetic track	29.05.2007	83 to 85
KS-11	Documents relating to Palm Meadows proposal	Various	86 to 136
KS-12	Documents relating to Magic Millions	Various	137 to 185
KS-13	Documents relating to Kevin Seymour	26.11.2010	186 to 232


Deponent


Solicitor/Barrister/Justice of the Peace/
Commissioner for Declarations

Certificate of exhibits – Ken Smith

GR Cooper
CROWN SOLICITOR
11th Floor, State Law Building
50 Ann Street
Brisbane Qld 4000
Telephone 07 3239 6703
Facsimile 07 3239 6022