



Our Reference: CCU-08/0347
Your Reference: Under Treasurer



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28/10/08

ASIC

Australian Securities & Investments Commission

22 October 2008

OFFICE OF THE
23 OCT 2008
UNDER TREASURER

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Mr Gerard Bradley
Under Treasurer
Treasury
Queensland Government
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Dear Mr Bradley

Thank you for your letter received by ASIC on 26 August 2008 addressed to the Australian Securities and Investments Commission ("ASIC"), concerning Queensland Racing Limited ("QRL").

You have advised that The Honourable Andrew Fraser, Treasurer of Queensland ("the Treasurer"), has referred allegations made against the Chair and Directors of QRL to your Department for review. Further, that as QRL is registered under the *Corporations Act 2001* ("the Act"), the allegations may constitute misconduct by one or more of the Board members that falls within ASIC's jurisdiction.

Material Provided

You have provided ASIC with the following documents:

1. Letter from the Crime and Misconduct Commission to yourself dated 25 August 2008;
2. Letter from Mr Gary Peoples to the Treasurer dated 11 August 2008;
3. Letter and attachments from W. J. Carter QC to the Treasurer dated 19 August 2008;
4. Letter and attachments from Mr Tim Ferrier of ClarkeKann Lawyers to Mr Michael Dart of the Office of the Treasurer and Minister of Racing dated 19 August 2008; and
5. Letter and attachments from R.G. Bentley, Chairman of QRL, to the Treasurer dated 12 August 2008.

ASIC's Process

Section 13 of the *Australian Securities and Investments Commission Act 2001* ("the ASIC Act") empowers ASIC to make such investigations as it thinks expedient for the due administration of the corporations legislation. Such investigative powers relate to matters where ASIC has reason to suspect that there may have been committed a contravention of:

- the corporations legislation; or
- the law of the Commonwealth, or of a State or Territory in this jurisdiction, being a contravention relating to the management or affairs of a body corporate, scheme or to a financial product.

ASIC does not, and is not required to, conduct a formal investigation into every report of misconduct that is made to it. However, ASIC conducts an assessment of each report of misconduct that we receive. Such an assessment will give consideration to the nature of the misconduct being reported and the state of the evidence to support such a report. In determining which matters ASIC will select for further action and formal investigation, consideration is given to a range of factors, including the likely regulatory effect of any available action. Further, ASIC is required to weigh up competing priorities that require the Commission's attention and address these priorities with the general goals of assisting consumers to make better financial decisions, strengthen the integrity of Australian corporations and sustain confidence in our financial markets.

ASIC's Decision

I refer to my meeting with Mr David Ford, Deputy Under Treasurer; Mr Chris Turnbull, Executive Director Portfolio Services; and Mr Mike Kelly, Director of Racing, at the offices of Queensland Treasury on Friday 17 October 2008. Mr Simon Temple, Senior Manager Deterrence, and Mr Peter Witham, Senior Analyst Misconduct & Breach Reporting, of ASIC were also in attendance.

As noted during our meeting, there are several aspects of the conduct identified in the material that do not fall within ASIC's jurisdiction. These include the outcome of the meeting of A Class Members called to vote on the special resolution, the amendments being proposed to the Constitution of QRL and proxy issues relating to non-corporate A Class Members. In respect of the remaining concern, that is the conduct of the Directors of QRL, I confirm that after making some enquiries and careful consideration of the material provided, ASIC has decided that we will not undertake a formal investigation.

ASIC's decision not to commence a formal investigation should not be interpreted as a conclusion that no misconduct can be made out or that ASIC has in some way approved the conduct.

Specific Issues

In responding more specifically to the issues raised in the correspondence received by the Treasurer, I note that it is not the role of ASIC to provide legal advice, either generally or to particular parties. The following information is not intended to be legal advice and may not be relied upon as such.

Director duties considerations

ASIC has considered the allegations regarding the conduct of QRL Directors in casting proxies at the relevant A Class Members Meeting where they may have had, or could be perceived to have had, personal conflicts of interests in the outcome of the vote.

ASIC notes the legal relationship between an appointed proxy holder and the person giving the proxy is one of agency. As such, the exercise of directed proxies as agents is not regarded as conduct in the role of a Director and therefore it is not a breach of the law that ASIC regulates.

ASIC has viewed the proxy forms that were given by A Class Members and there appears to be no evidence to suggest that these proxies were not exercised at the meeting in accordance with the directions given in the proxy forms. ASIC has decided not to formally investigate the allegations.

Queensland Country Racing Committee Proxy

The proxy from the Queensland Country Racing Committee ("QCRC") appears to be the most significant concern for those who contacted the Treasurer. It is generally alleged that the proxy holder failed to inform the other eight members of the QCRC of the A Class Members Meeting or to consult with the QCRC members regarding the proxy and the voting direction of that proxy.

As you will be aware, QCRC is a committee established pursuant to section 66 of the *Racing Act 2002 (Qld)* ("the Racing Act"). The operation, functioning and management of QCRC are not matters that fall within the laws that ASIC regulates. As such, ASIC does not have jurisdiction to consider alleged misconduct of persons acting in their capacity as QCRC members.

Notice of Meeting

There has been no genuine issue raised with ASIC regarding the adequacy of the disclosure contained in the Notices of Meetings dated 4 July 2008.

Townsville Turf Club

Concerns have been raised regarding the exclusion from voting at the A Class Members Meeting of the Townsville Turf Club ("TTC"). It is noted that the TTC representative did not take issue with the exclusion at the time and that TTC does not appear to have taken any further action in relation to the issue. While QRL's Constitution appears to permit a member to vote in person or by proxy, ASIC will not pursue this matter as remedies are available for the effected parties to pursue privately.

Director's remuneration

Mr Carter QC raises concerns that the fees of Directors of QRL have not been approved in accordance with the QRL Constitution ("the Constitution"). ASIC does not have a role in adjudicating the internal management of companies that are governed by constitutions. A company's constitution has the effect of a contract between the company and each member, and between the company and its directors and secretary. As such, any alleged non-compliance with the Constitution should be resolved between QRL and its members or, in the absence of a resolution between the parties, it is a matter for an effected person to consider making an application to the Court for adjudication.

The proposed amendments to the Constitution of QRL

Specific concern has been raised with the proposed amendments to the Constitution. This includes the length of uncontested terms of the current and any future Directors of QRL. This matter does not specifically raise an issue of misconduct for ASIC to action. Further, the approval for an amendment of the constitution of a company is generally a matter for the members.

However, in this case QRL must obtain the written ratification of the Treasurer before implementing any amendment to the Constitution. As you will be aware, this is a condition of the Control Body Approval Notice given to the QRL pursuant to section 26 of the Racing Act. As such, despite the apparent approval of the members of QRL, ratification or otherwise remains a matter for the Treasurer.

Going Forward

I would appreciate, if appropriate, being advised of any public comment that the Treasurer may make on the issue as this may be relevant for any future response that ASIC may make to contact from the media or the general public.

Yours sincerely

Marce Blake
 Marce Blake
 Regional Commissioner, Queensland

DUT		Brief report	✓
D/OUT		FYI	✓
MLU	<i>Just</i>	Ack Ltr	
AUT/ED	<i>Computer</i>	Journal	
F&TP	HRCS	Key Word:	
FMB	EIGR		
E&J	CRAM		
RESOURCES	SAM		
T&I	PS	✓	DUP 7/11/08.
OUT	SSIO		
CORPTECH	LSU		Notes: for necessary
GSO	QOGR		
MAIC	OSR		
RESR	QOGR		action