

Racing Queensland Limited
Corporations Act 2001 – Conflict of Interest

BRIEF TO COUNSEL

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With you

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DATE DELIVERED:

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We act for Racing Queensland Limited.

Its chairman, Mr Bob Bentley is a member of the board of Tattersalls Limited.

Background

1. Racing Queensland Limited is the control body of the Thoroughbred, Greyhound and Harness Codes of Racing in Queensland.
2. Tattersalls Limited is a publicly listed company which owns the privatised Totalisator Administration Board of Queensland (now Unitab). Unitab conducts the race wagering business pursuant to its Race Wagering Licence.
3. Pursuant to the terms of the product and program agreement, being an agreement entered into on 9 June 1999 between Unitab (TABQ –as it then was), Queensland Race Product Co Ltd, (Product Co) the members of which are the directors of the company from time to time. Mr Bentley is neither a director nor member of that company. The other directors of Racing Queensland are the directors and members of Product Co. The other parties to that agreement were the then control bodies which by virtue of amendments to the *Racing Act* since 2002 have progressively become Racing Queensland Limited today.
4. By force of that agreement, as amended by deed dated 1 October 2002, TABQ (now Unitab wholly owned by Tattersalls Limited) must pay to Product Co for the term of the agreement which expires after 15 years (i.e. by 2014) the fees set out in clause 10.1 that amount is the variable amount equal to 39% of the Gross Wagering Revenue for the month during the Agreement Term.
5. The amount was paid by Product Co to the control bodies for the codes of racing under what was before 30 June 2010 an agreement known as the Intercode Agreement. The effect the *Racing Act Amendment Act 2010* when the operations of the three control bodies were merged into that of Racing Queensland Ltd. Therefore all funds passing through Product CO now go to Racing Queensland Ltd.
6. There is a perception that Mr Bentley, sitting on the boards of both bodies, has a conflict of interest. The conflict is described by article of Bill Saunders appearing in the Courier Mail on 7 May 2011, a copy of which is briefed. Racing Queensland Limited was advised that there would be a presentation in the ABC 7.30 Report and indeed Mr Bentley was asked to and did participate in the discussion in an interview with Mr Greg Noy. A transcript of what Mr Bob Bentley said is **attached**. A link to the programs of 4 May 2011 and 5 May 2011 is at www.abc.net.au/iview/#!/series/7.30.
7. The issues that Mr Bentley advises he has excused himself from the Tatts Group Board Meeting are:
 - (a) The possibility of Tattersalls Limited making an offer for Sky Channel in late 2009. This occurred prior to Racing Queensland dealing with the Sky media rights. The Sky contract with the clubs had not expired. The contracts are between the clubs and Sky Television, not with Racing Queensland Limited (nor its predecessor, Queensland Racing Ltd).. In particular Mr Bentley instructs that:
 - (i) he had no part in discussions as to what took place when he was absent from the room;
 - (ii) he has no access to any board meeting minutes concerning the matter; and
 - (iii) he is not aware of the outcome of any offers made.
 - (b) So far as Mr Bentley is chairman of Racing Queensland Limited, a wagering program for each year is made between Queensland Product Co Ltd and Unitab (now Tattersalls). Any involvement by the management team at Racing Queensland on the directions of the Queensland Product Co Limited board to facilitate the preparation of the wagering program is done so without reference to the board of Racing Queensland Limited. Mr Bentley therefore has no involvement in the decision making program for the development of the wagering program. All negotiations between Queensland Product Co and Unitab has no involvement with the board of Racing Queensland Limited.

8. Insofar as Mr Bentley is the chairman of Racing Queensland Limited he does not take part in any discussion or decision in relation to race fields legislation or the granting of authorities to corporate or on course bookmakers to use racing information or setting fees payable in relation to it.
9. Negotiation of Sky Channel contract (2010/2011): The thoroughbred race clubs appointed Racing Queensland Limited (or its predecessor Queensland Racing Limited) as their respective agent to negotiate with any and all broadcasters to maximise the fees payable to each club as a collective media rights contract.
10. The process involved in the Sky Channel Contract –
 - (a) resulted in QRL engaging a media rights company to assist in securing the best offer from the broadcasters to put to the clubs;
 - (b) offers from media company Sky Channel and TVN Ten were put to the clubs;
 - (c) the clubs voted upon which offer to accept and Racing Queensland did not determine which one was to be preferred;
 - (d) once the decision was made by the clubs on which offer the clubs authorised Queensland Racing to negotiate the contract terms with the successful company (Sky Channel).
11. Queensland Racing / Racing Queensland's role was to coordinate the process and ensure that the conditions for the fees to be paid were fair and just and that there was no condition that would put the Queensland racing industry some time in the future in an unfavourable position should there be a transfer of rights or sale of the media company that ultimately won the contract.
12. Tatts Group was not an interested party in that Contract and there was nothing advised by the board of Tattersalls Limited that there was any talk of activity pending or at that point in time intended.
13. Tabcorp is in competition with Tattersalls Limited in the wagering business and the owners of Sky Channel.
14. The obligations of directors of public companies (which both companies are) are dealt with in Part 2D,1 Division 2, and in particular section 195 of the Corporations Act, where a material personal interest exists in a matter that relates to the affairs of the company.
The director "must not (a) be present while the matter is being considered at the meeting ; or (b) vote on the matter".
15. There are exemptions where the other directors who do not have a personal interest in the matter pass a resolution stating the information required by section 195(2)(a) and stating that "those directors are satisfied that the interest should not disqualify the director from voting" or being present.,(section 195 (2) (b)) or ASIC makes a declaration or order under section 196 (See section 195(3)).
16. *Ford's Principles of Corporations Law*"14th edition at 9.100(p488) states the rule in this way:

"The conflict rule applies to an actual or possible conflict between the director's duty to the company and his or her duty to someone else—for example, to another company of which he or she is a director, or to a trust of which he or she is a trustee: Transvaal Lands Co v New Belgium (Transvaal Land and Development Co [1914] 2 Ch 488. However, the mere acceptance of of more than one fiduciary position cannot be allowed to trigger the prohibition automatically, since it is generally accepted that company directors may act as trustees or as directors of other companies or in some other fiduciary role, such as the role of solicitor. It appears that the prohibition is attracted only where there is an actual conflict between th duties owed in each relationship."

At p489 it goes on to say:

"Where a director of a company A is engaged in a transaction with company B of which he or she is also a director, the director must make full disclosure of his or her interest and, in some cases may be obliged to abstain from taking part in the negotiations or voting on the transaction: Jenkins v Enterprise Gold Mines NL (1992)6ACSR 539. In R v Byrnes (1995) 130 ALR 529;17 ACSR 551 @562, the High Court stated:

'A company is entitled to the unbiased and independent judgment of each of its directors. A director of a company who is also a director of another company may owe conflicting fiduciary duties. Being a beneficiary, the director of the first company must not exercise his or her powers for the benefit or gain of the second company without clearly disclosing the second company's interest to the first company and obtaining the first company's consent.'

17. As Mr Bentley discloses his conflict and does not seek to utilise an exemption by asking other directors to allow him to stay in the meeting and to participate in or vote on the proposal, it is arguable that he manages the conflict or potential conflict in a way that does not infringe the provisions of section 195(1) of the Corporations Act.

Counsel are briefed to advise as to whether the positions as director of Tattersalls Limited and a director and the chairman of Racing Queensland Limited held by Mr Bentley, given that:

1. Mr Bentley has declared the potential conflict of interest in each case; and
2. he exempts himself from any discussion on or participation in a decision of either company in relation to any matter in which it (and in the case of Tattersalls, its subsidiary) involves a decision with the other

the provisions of the *Corporations Act* are observed.

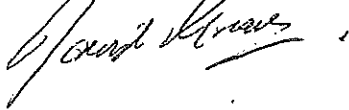
In this matter it may be useful to have a conference with Mr Bentley. If counsel wish a conference please advise.

Should Counsel require any further information or material would Counsel kindly contact David Grace on direct telephone number 3231 2421 or if not available then on 0417 722 718.

DATED this *9th* day of *May* 2011.

With compliments,

COOPER GRACE WARD



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