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2 June 2011

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Our ref 12223/12955/80120739

Dear Shara

Amended Executive Employment Arrangements

We refer to your meeting with Barry Dunphy and Brett Cook on 25 May 2011 and to your email dated 26 May 2011 in relation to the above matter. We have been asked to provide legal advice to Racing Queensland Ltd (RQL) about the proposal to offer varied employment arrangements to certain executive and administrative personnel.

We have been briefed with a copy of the current contracts of employment of the relevant personnel and we have examined those contracts.

For convenience and in order to meet your timeframe, we will summarise in this letter our general concerns about the legal issues that appear to arise. If necessary, we can further elaborate on our reasons. In addition, we can assist with any re-drafting of contractual terms in due course.

Before we set out our comments, we will briefly summarise the background details as we understand it.

Background

The Board has resolved that RQL's executive and managerial staff need to be retained and provided with additional security of tenure to safeguard business continuity. In addition, key executive assistants are to be offered revised contractual conditions with incentives similar to the executive and managerial staff.

The objective is to reinforce the stability of the executive workforce during the period between now and 2014 by which time RQL must negotiate and achieve some fundamentally important milestones that are critical to the continuation of the racing industry in Queensland e.g. the renegotiation of the Product Fee. As a consequence, the Board has resolved that the existing employment arrangements for 9 key executives be extended by 12 months up to and including 30 June 2014. Additionally, the Board resolved that Wade Birch be offered an employment agreement to expire on 30 June 2014 and that 6 executive assistants be offered varied employment agreements expiring on 30 June 2013. The Board also resolved that the Chairman was to approve the terms relevant to the agreements and the extension of the agreements.

We confirm that, in our opinion, RQL is fully justified in seeking to structure its employment and remuneration policy to gain the maximum advantage for the company and to preserve its business continuity and corporate knowledge throughout this critical period. The fact that the period happens to coincide with a looming election and the predicable prospect of some political "argy bargy" only adds to the merit and logic

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of the Board's strategy. What is important however is that the Board pursues its objective in a sustainable manner and in a manner that will not inadvertently damage the company.

The Contract Variations

We understand from your instructions that the Board has communicated its intention that enhanced "redundancy" entitlements should also be offered to the relevant employees so that if unilateral termination of their employment does occur that the staff will be fully compensated.

It is appropriate to set out the relevant clauses of the conditions of employment as they are proposed to be varied in order to meet these requirements:

- "15.3 Should RQL as the control body for the 3 codes of racing receive a show cause notice that could cause it to cease as the control body for the 3 codes of racing, a notice suspending its licence as a control body for the 3 codes of racing or any other direction or notice that could cause it not to remain as the control body for the 3 codes of racing, RQL will immediately provide you the opportunity to take redundancy. The redundancy payment will be at least equivalent to the TRV you would have been entitled to receive had you remained employed for the period of the term of the contract.
- 15.4 Should any director of RQL as the control body for the 3 codes of racing, receive a show cause notice that could cause him or her to cease being a control body director for the 3 codes of racing, or any other direction or notice that could cause him or her not to remain as a control body director for the 3 codes of racing, other than for official misconduct, or if a director of RQL ceases to be a director for the 3 codes of racing as a result of legislative amendment, RQL will immediately provide you with the opportunity to take redundancy. The redundancy payment will be at least equivalent to the TRV you would have been entitled to receive had you remained employed for the period of the term of the contract.
- 15.5 If RQL offers you redundancy for any reason including in accordance with clause 15.3 and 15.4, then you will be given 6 weeks' written notice and will be paid a payment equivalent to the TRV you would have been entitled to receive had you remained employed for the period of the contract. Provided that if you accept a redundancy including in accordance with clause 15.3 and 15.4 RQL may accept a shorter period of notice than 6 weeks and may waive the notice period in its entirety. If the notice period is shortened or waived in its entirety by RQL, RQL will still be required to pay the notice period out in full."

For the reasons that we will explain, we are of the view that the proposed variations are not the optimal means for the Board to achieve its objectives. Indeed they appear to us to pose some legal risks for both the Board, the company and its other officers.

Later in this advice we have set out the broad parameters that we believe may help the company address the objectives that the Board seeks to achieve.

The Executive Arrangements

Under the existing executive contracts, the position is that if RQL ceases to be the control body for the 3 codes of racing, or if RQL terminates employment for any reason other than a reason relating to fault on the part of the employee, then RQL is provide to the employees the opportunity to take a redundancy. The termination payment is the equivalent of the Total Remuneration Value of the contract remaining at that time.

The draft proposals as set out in the above clauses significantly vary that approach by significantly extending the triggers for redundancy.

In our opinion, the extended redundancy clauses raise the following issues of concern for both the directors and officers of RQL in terms of the duty of good faith and proper purpose under section 181 and 184 of the Corporations Act:

- (a) The Board resolution authorises an extension of the contracts of the 9 executives and the offering of new contracts to the executive assistants. This necessarily enlarges the TRV of the contract that must be paid in the event of redundancy.
- (b) There is no Board resolution confirming the changes to the "redundancy arrangements". This is of concern given that the revised arrangements could have a significant impact upon the financial interests of the company;
- (c) The obligation to *immediately provide staff with the opportunity to take redundancy* when the listed triggering events occur, appears to us to be inconsistent with the concept of redundancy (where the employer determines when and how a redundancy arises) with consequent implications for the treatment of the termination payment as an eligible termination payment or a redundancy payment for taxation purposes;
- (d) In any event, it may be doubtful as to whether the primary objective of securing the retention of key staff is best served by *immediately* providing an opportunity to take redundancy at a time when (under the proposed clauses) one would expect that the company would require "all hands" to respond to any formal disciplinary processes under the provisions of the Racing Act 2002; and
- (e) The quantum of the extended redundancy measures (now that the contracts are being extended by 12 months) appears to us to be overly generous when compared with prevailing commercial practice.

Complaint and Investigation

It is important, in our opinion that the Board now carefully considers how these new arrangements are to be implemented in practice. We suggest that the Board take a "hands on" approach. As you are aware, in the lead up to a State general election, matters of public interest can be easily politicised and it is not beyond the bounds of contemplation that the cut and thrust of the political process may require the Board to respond to enquires and complaints.

The directors would be well aware of the requirements of the Corporation Act with respect to their civil and criminal obligations of good faith.

Section 181 of the Corporations Act set out the civil obligations of directors and other officers. They must exercise their powers and discharge their duties in good faith in the best interests of the corporation and for a proper purpose.

Section 184 then creates a criminal offence if a director or other officer is reckless or intentionally dishonest and fails to exercise their powers and discharge their duties in good faith in the best interests of the corporation and for a proper purpose.

It is relevant to note that a company like RQL is subject to the regulatory oversight of the Australian Securities and Investment Commission (ASIC), an independent Commonwealth authority with a well resourced and experienced investigative arm. If ASIC was to receive a complaint that the Board, through its decision making, had acted recklessly and in a manner not in the best interests of the company, (so as to engage the offence provisions in s.184 of the Corporations Act) we believe that as the responsible regulator, ASIC would probably formally investigate such a complaint. An effective defence to such an investigation is to have a full and compelling record of the resolutions taken by the Board and the reasons for the Board's decisions.

The Executive Assistants

We have several similar concerns about the extension of full TRV payout as a redundancy entitlement to the executive assistants. It seems to us that such an arrangement is:

- (a) Inconsistent with the Board's formal Termination of Employment Policy and Procedures that was authorised by the Remuneration and Nominations Sub-Committee on 1 July 2010. (See clause 1.3 of the Policy that allows for a maximum of 16 weeks pay as compensation for redundancy);
- (b) Inconsistent with the provisions of the current contracts for these officers (that accurately reflect the termination entitlements provided for under the Fair Work Act 2009 and the Board's Policy document); and
- (c) Inconsistent with the usual commercial practice when it comes to the redundancy of executive support staff.

We would recommend that the Board expressly resolve to pass any non-typical entitlements to the executive assistants so that there is a very clear paper trail of the Board's reasoning and decision making underpinning this particular measure.

- In fact, we recommend that the whole package, once it is determined be recorded in a detailed Board paper that the Board can consider and resolve upon so as to achieve the stated objectives.

Parameters for a Retention and Termination Payment Framework

We thought that it may assist RQL if we identified broad parameters under which it might restructure its retention and termination payment position for its key staff during this vital period for the organisation. Our comments are necessarily at a high level at this point in time. Ultimately, we would recommend that the levels of incentive and entitlement be set out for each employee, taking into account their individual position, entitlements and history with the company. We have set out this material in the attachment to this advice.

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Drafting

Finally in this preliminary advice, we confirm that we would be happy to assist with the redrafting of contractual provisions to best achieve the objectives of the Board, once the Board has had an opportunity to consider the matters we have raised and confirmed its position with respect to the provision of added performance, retention and termination entitlements.

Yours faithfully

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Attachment

Executive and Management Team	Amount of Incentive
Termination for Misconduct	Nil as per existing contracts
Termination for Poor Performance	1 Months pay (5 weeks to meet statutory requirements)
Termination without cause	Termination payment for notice and payment of all accrued entitlements of the equivalent of between 6 months pay (TRV) to a maximum of 9 months (TRV). The figure is to be determined having regard to the seniority and length of employment. Our recommended figure is 6 months.
Redundancy payment	Severance in accordance with the Fair Work Act
Retention Bonus	A new clause in the contract under which the officer is paid a retention payment payable in instalments annually to retain their services for a set period (e.g. until 2014), as follows 20% year 1, 20% year 2, 60% year 3 on achieving retention date. The payment may be made or paid to a "bank" to accrue, and then be payable either on the relevant retention date being achieved or on termination, whichever is earlier. The quantum of the retention payment must be determined by the Board that the executive is critical to the business continuity. Figures that might be considered could include an amount equivalent to their current annual TRV, split over 3 years, or 6 months of their TRV over 3 years.
Short Term Incentive Payments	A defined amount paid as an additional benefit upon termination for every Key Performance Measure achieved during the balance of the contract up until the date of expiry (e.g. negotiation of a new Product Fee to the satisfaction of the Board). The defined Measure would vary for individual officers

Executive Support	Amount of Incentive
Termination for Misconduct	Nil as per existing contracts
Termination for Poor Performance	1 Months Notice (5 weeks to meet statutory requirements)

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Termination without cause	Not applicable due to unfair dismissal rights
Additional Benefit on redundancy	Severance in accordance with the Fair Work Act
Retention Bonus	While this would be less common for administrative and support staff, if the Board determined that retention of the relevant employees is critical to business continuity, an appropriate retention payment plan could also be extended to these employees. The structure of the plan could be similar to that outlined for the executives.

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