

**QUEENSLAND RACING COMMISSION OF INQUIRY**

*Commissions of Inquiry Act 1950*

STATEMENT PURSUANT TO SECTION 5(1) (d).

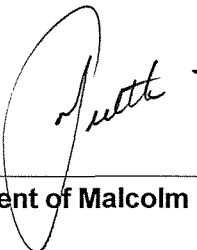
I, **MALCOLM NICHOLAS TUTTLE** of [REDACTED], Director – Business Development, do solemnly and sincerely declare as follows:

**BACKGROUND**

1. I commenced employment with the Queensland Turf Club ('QTC') at Eagle Farm as a part time swabbing steward in the late 1980's and then became a cadet stipendiary steward, in around 1990/91, initially part time, but then on a full time basis.
2. In 1992, when Bob Gibbs was the responsible minister for racing, the Queensland Principal Club ('QPC') was started. Before then, the QTC, as both a race club and a Principal Club, had some of its staff performing the duties of the control body but when the QPC started, relevant staff initially shared premises at Eagle Farm but then we moved to separate premises at Newstead.
3. Under the QPC, there were five regional associations. I applied to be the Regional Executive for the South East Queensland Racing Association, and with that role, I moved away from stewarding and into administration. I later became the Racing Manager for the QPC and in that role, I managed such tasks as the allocation of race dates, assisted with rule amendments and prize money distribution.

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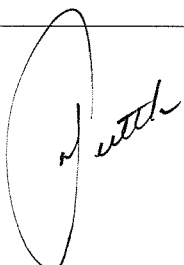
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**Statement of Malcolm Nicholas Tuttle**

**RODGERS BARNES & GREEN**  
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4. I continued with the QPC and then with the Queensland Thoroughbred Racing Board when that body became the control body for thoroughbred racing in 2002. Queensland Racing Limited (QRL) was established in about 2006 as a corporatised control body. I became the Chief Operations Manager, reporting directly to the Board of Directors. With the merger of the codes in 2010, I continued in that role as Chief Executive Officer for the new control body of all three codes, RQL.
5. Therefore, I had been involved in the racing industry, and heavily involved in the administration of the industry for some 23 years.
6. I ceased employment with RQL in March 2012. The circumstances of my departure are discussed later in this statement.
7. Through this statement, I provide information in relation to the matters raised in the terms of reference for this Commission of Inquiry. However, before doing so, I can provide the following further background information that is relevant to the terms of reference.
8. RQL (and its predecessor control bodies) is required to have a number of policies as stipulated in sections 81 and 82 of the Racing Act. For the most part, those mandated policies deal with specific functions related to racing, but some policies have broader application. In addition, RQL, and before it, QRL, had a number of other policies concerning various functions or operations of the business. For example, there would be policies for workplace, health and safety, human resources and so on.
9. There was a definite process adopted in relation to the preparation, approval and review of all such policies. The company's corporate counsel/company secretary would be responsible for maintaining the policies, having them reviewed and put to the Board for

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approval. Regardless of whether the policies were mandated under the Racing Act or not, the policies went to the Board for approval.

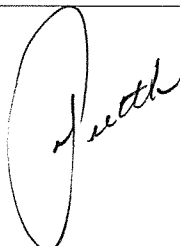
10. Having said that, I now make specific comments in relation to the broad categories of information that I have been asked to address by the Commission. My comments set out in this statement are to the best of my recollection, having regard to the fact that in the very short time that I have had to make this statement I have not had an opportunity to review much by way of source documents, minutes of meetings or other documents that may be in the possession of the control body and others.

**CONTRACT MANAGEMENT AND FINANCIAL ACCOUNTABILITY** (paragraph 3(a) of the Terms of Reference)

11. In respect of the procurement, contract management and financial accountability of the relevant entities during the relevant period, I say that a procurement policy was in place and was amended to reflect the state government purchasing policy for the Industry Infrastructure Plan ('IIP'). Contract management sat across a number of areas internally and could reside with an external consultant. I cannot now recall any specific contract management policy. The Manager would sign to confirm that they were satisfied that the work or services had been satisfactorily undertaken. On occasions I would countersign invoices for payment once they had been signed for payment by the relevant Manager. Much of the financial accountability in terms of payment resided with the finance department. At one stage, the finance department introduced the IPOS system which was designed to streamline the finance process associated with payment of invoices. In terms of the IIP, Mark Snowden was employed to manage the IIP procurement and contracts within a department that was established. An Industry Infrastructure Plan Control Group ('IIPCG') was also established to ensure on time on budget delivery of projects within the

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IIP. The IIPCG, in particular Adam Carter and Mark Snowden, reconciled preliminary engagements and early works undertaken.

12. In the main, compliance with policies and processes was high. However, I should say that of relevance to the terms of reference, it must be understood how the work that was required in specific projects and in relation to the IIP came about.

13. For example, during the period when QRL was the control body for thoroughbred racing, there was some specific work that needed to be undertaken in relation to the tracks on the Sunshine Coast and in Toowoomba. Andrew Hedges, who was the Director of integrity services before Jamie Orchard came on board, took a submission, on behalf of the Board, to Government to obtain funding for the establishment of synthetic tracks. The need for such a track, particularly in Toowoomba, could, in my opinion, be easily seen. Toowoomba was suffering greatly from the drought. The town was looking at recycling water as a means of coping. This was a major issue for the entire township, not just the racing industry. The existing racetrack was in a poor state and required considerable water which was being trucked in. This water came at a considerable cost. The Government agreed to provide funding. The release of funds for those works was a matter for QRL and Government, so I assume that the Government was content with QRL compliance in satisfying itself that funding could be drawn down. The precise details of this I cannot recall now, as it goes back a few years.

14. It also needs to be remembered that the media and sections of the industry rarely agreed with anything that we proposed in terms of major works or changes that could be implemented. These proposed works included the, sale of Doomben so that Eagle Farm could be fully and properly developed, development of the trade coast site as a new site for metropolitan racing, development of Wacol as a new site for metropolitan racing, development of palm meadows as a more spacious site for the Gold Coast, and more

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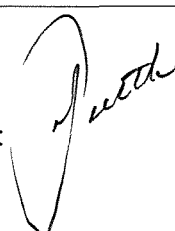
recently the commercial development of Albion Park and redevelopment of Deagon. So when we were seeking funds from Government for major infrastructure that was needed to improve facilities in the industry, work was needed on draft design, costings and plans that could be included in a confidential proposal to go to Government. The Chairman was very wary after having had so many earlier projects scuttled.

15. Contour Consulting Engineers Pty Ltd ('Contour') was first engaged by Arben Management which was engaged either by QRL or the SCRUT ('Sunshine Coast Racing Unit Trust'). I understand there were some concerns expressed about Arben's lack of site presence, on the works at the Sunshine Coast Turf Club. Arben was based interstate. Contour was working on the project and I understand was then engaged in an expanded role replacing Arben. This relationship with Contour developed over the years and Contour remained a trusted consultant with QRL and RQL.

16. I am aware that the Chair (Bob Bentley) had confidential discussions with race clubs about infrastructure upgrades and the future governance structure of clubs, identifying which areas would be managed in the future by the club and which area by the control body. I also understood he had confidential discussions with Government regarding wagering tax redirection to fund significant capital expenditure to improve the racing product. I was involved in some of these discussions.

17. This was the background of how we started to develop the IIP. It was an evolving process and had to be developed confidentiality. As the plans evolved, it was not really possible to identify at the start how much or how little design work and specialist skills would be required to put together a plan that was sufficiently detailed to meet what the Government might have expected. Proposals were subject to significant change following discussion with clubs and sections of the industry.

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18. It was therefore logical that RQL would use the services of Contour in helping to develop the IIP. Contour had already carried out work on tracks, had developed expertise and intellectual property in what may have been required and could be trusted to keep the details of what was being discussed confidential. Needless to say, it would have been impossible to go to specific tender with any engineering company when the outcome of preliminary work could not be predicted.

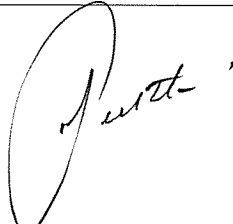
19. I should also add, at this point, that there has been a lot of false reporting about exactly what Contour had done or had been paid. It is not the case that Contour received hundreds of millions of dollars' worth of work. Contour was paid about \$5.5 million for its work over a period of about five years. They had undertaken specific work on some projects, had assisted in putting together the IIP, and they were involved in managing projects that eventually proceeded. But it should also be noted that each project that was in the IIP also needed to have separate business cases prepared and approved by Government, and then when the works that were required for each project were given the go ahead, Contour would go to tender to obtain contractors for the projects.

**MANAGEMENT** (paragraph 3(b) of the Terms of Reference)

20. As mentioned above, all statutory policies were in place and reviewed at the appropriate time. We also had numerous policies other than these in place. Management met every month and whilst these were largely informal meetings every Manager had an opportunity to raise and discuss any issues.

21. The culture within the organisation and amongst management was strong. We undertook a satisfaction and culture survey prior to RQL, as QRL, and rated well into the 90% range.

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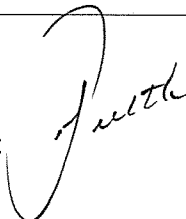
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22. The management team, in my opinion functioned well and worked well together. Board members were involved to varying levels either directly or as part of informal special purpose committees. A good example of management's ability in my view was the three code integration which took place largely in the absence of Director assistance and was seamless, delivering op-ex savings of about \$1.4 million in the first financial year. Based on advice from the Chief Financial Officer, further op-ex savings were on track to be delivered for the second financial year with an organisational review able to be undertaken in year three. This amalgamation was on track to deliver ongoing annual savings for the benefit of the three codes of racing. Combined with the potential benefits flowing from the optimum use of venues we were finally moving the industry in the right direction, albeit with little industry support.

23. Another example of how well the management team could organise and deploy resources when necessary was seen in the response during the Equine Influenza epidemic which had a devastating effect on the industry. It was reported at the time to have cost the New South Wales and Queensland industries in the order of \$1 billion. When vaccines became available, which was about 11.00 pm on a Friday evening, we marshalled our staff and resources so that by the following Monday morning, we had managed to inoculate over 2,500 horses. By comparison, my recollection is that the Department of Primary Industries managed to inoculate fewer than 50 horses in the same time frame.

24. Often Directors were involved in a range of initiatives. For example, the Chair had a significant involvement in infrastructure planning and delivery. This sort of involvement will have been for strategic reasons and he was able to use his unique understanding of the industry in this area. In relation to approval of the IIP funding, he was the person that dealt with government. He would know, first hand, what Government was expecting because of the discussions he was in. The Chair was in the office on most days and often dealt

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directly with the various Managers. It goes without saying he understood the industry well, and knew racing and infrastructure.

25. In terms of involvement with Board members, from my point of view I spoke mainly with Bob Bentley and Tony Hanmer. The informal Committees and formal Sub-Committees that were part of the structure and operation of the control body provide a good reference point in terms of Director involvement. Apart from myself, my observation was that Bob Bentley mainly dealt with Paul Brennan (on infrastructure and racing matters), Shara Reid (on corporate and legal matters), Adam Carter (on finance matters), Jamie Orchard (on integrity matters) and Mark Snowden on the infrastructure plan.

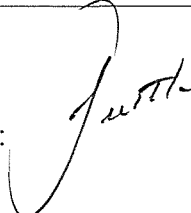
**CORPORATE GOVERNANCE** (paragraph 3(c) of the Terms of Reference)

26. In terms of the corporate governance arrangements of RQL, I note that we had a very experienced Chairman and Board. The Directors brought considerable experience from the business and corporate sectors with them and were able to apply this experience to their decision making. Many of the Directors held roles on other Boards and their experience covered areas such as, Banking, Corporate Strategy, Marketing, Legal, Government, Racing, Infrastructure, Finance and Investment.

27. When Board meetings were held, I attended most parts of most meetings. I observed robust discussion among the Board members. When a decision was made, there was then a consistent position expressed through the Chairman to the public as required.

28. I believe that the company, the Board and officers of the company acted in the best interests of racing at all times. I noted that dealing with potential conflicts of interest was a matter that was taken very seriously and members of the board were also cognisant of the

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issue. There would be a review of a conflicts register at every Board meeting. Where Bob Bentley was concerned, he went out of his way to ensure that his role as a Director of Tatts Group did not affect the control body. He would be absent from any discussion concerning dealings between the control body and Tatts Group. He had nothing to do with Queensland Race Product Co Ltd (Product Co).

29. One matter that is raised in the terms of reference is whether there were in place terms of employment in contracts restraining former Directors and Executives from seeking employment with RQL's contractors and suppliers. No, there wasn't.

**OVERSIGHT BY THE MINISTER, THE EXECUTIVE GOVERNMENT, THE CHIEF EXECUTIVE** (paragraph 3(d) of the Terms of Reference)

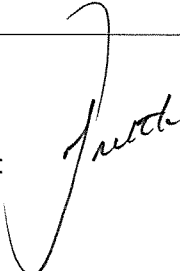
30. We submitted to Government an annual audit regime and business plan as required by the Racing Act. Business Plans for the IIP were submitted to the Racing Department (Mike Kelly or Carol Perrot) for initial consideration.

**EMPLOYMENT CONTRACTS: TUTTLE, ORCHARD, BRENNAN, REID** (paragraph 3(c) of the Terms of Reference)

31. In 2011, the Human Resources and Remuneration Committee considered a paper and made recommendations to the Board. The Board recommended several amendments to a number of employment contracts. When RQL was set up in 2010, our employment contracts were transferred to the new control body and our responsibilities increased.

32. Subsequent to the abovementioned Board meeting, Paul Brennan spoke to me about the pressure he was under with the reform in terms of infrastructure, changes to venues and

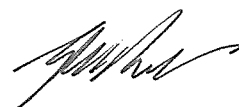
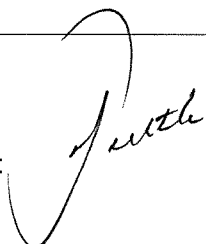
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venues becoming redundant. We were being heavily criticised by many sections of an industry that desperately needed reform but didn't want it or wanted reform only if it suited. Some events, occurring at various times, which contributed to making our work challenging included, a rally facilitated by Graham Quirk in the park opposite Deagon about retaining Deagon for thoroughbreds, the ongoing Deagon campaign to retain Deagon for thoroughbreds, I understand Jim Murdoch applied to heritage list the house at Deagon, harness clubs had initiated legal action against RQL, Greyhounds had Logan off the agenda only for it to come back on the agenda and they wanted out of Albion Park which the harness industry wanted to retain, criticism in various forms of media asserting that after the next election the Board was gone, senior Executives were gone, and numerous meetings with industry were hostile and yet we were pushing ahead with significant infrastructure reform, harness racing industry reform and race club governance reform. The harness industry also had numerous meetings at either Albion Park or Marburg to rally the troops to oppose industry changes. I understand that in relation to the proposed development of Albion Park the proposal complied with the Council's own neighbourhood plan but Council took a position that no approval would be given for the proposed development.

33. Bob Bentley joined the discussion Paul and I were having and Bob instructed that he wanted to discuss this matter with Shara, Paul, Jamie and I in the morning. Bob understood the angst in the industry at the time as he was present at many of the meetings that often deteriorated. He also understood how difficult it was going to be to keep forging ahead with the reform as he had witnessed first-hand numerous projects that had been scuttled previously. We all met with Bob and we explained our feelings and outlined the risk that key people would start looking around for other employment, given the stressful environment that we had to work in. Shara had kept a folder of the disparaging media at the time which clearly showed the immense public pressure that we



were under. I understand Tony Hanmer subsequently provided that folder to the Auditor General's Office but I don't know where it is now.

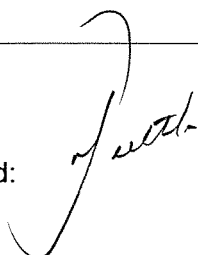
34. Basically, by 2011, it was becoming apparent that the longer we stayed in the organisation and pursuing the issues that were ahead of us, the more likely that it would be that if the Government changed and the Board changed then we would probably be unemployable in the industry. I had been with the control body for over 20 years and I faced the prospect that I could not get out then, and probably get reasonable employment in the industry or some related field utilising the skills and experience I had gained, or I would have to find employment in another field altogether at a later stage.

35. The Chair asked that we set out our feelings in a co-signed letter to him. We did this and provided the correspondence to Bob. From memory, the letter went to the Board and Bob had started obtaining advice from Clayton Utz about the circumstances and what could be done for the four persons he identified. As we had effectively entered into the renegotiation of our contracts, Jamie Orchard suggested that we should consider obtaining separate advice and suggested Norton Rose. This proposition was put to the Chair and he agreed and confirmed a budget to do that.

36. The four Executives had several discussions and whilst we had a termination trigger in our existing contracts of a change to RQL as the control body, it was felt that a stronger trigger should be proposed and agreed to advance the proposition of a change of Government as a trigger. After all, given everything that was being said in the industry and the associated politics, it was beyond doubt that if the Government changed then we'd all be out of a job.

37. I understand Bob Bentley subsequently asked Norton Rose to comment on advice that Clayton Utz had given. A Board paper was prepared with a suite of recommendations from

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the Chair to change the existing employment contracts. These were discussed by the Board in the absence of any Executive and subsequently accepted.

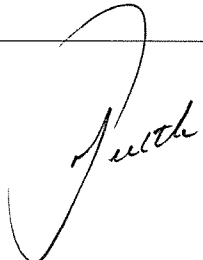
38. In the lead up to the election which was held in March 2012, the hostility towards us from some sections of the industry did not let up. When the LNP was elected, I met with Shara, Paul and Jamie on the following Monday. We were all of a mind that there was no point hanging around and it was obvious to us that we would lose our jobs. Therefore, we all gave our notices.

39. My fears that I had felt the previous year were well founded. I did some work on and in the coffee shop/bakery business that my partner ran. I spoke to several contacts in the Human Resource field and the consistent feedback I received was that the poor press I had received was not likely to do me any favours in pursuing a CEO role in the sporting sector. I eventually joined Chandler McLeod in about July for a while, promoting Executive coaching services and their suite of products designed to improve organisational performance. While seeking to promote those services to Contour later in the year, Contour offered me a position as Director of Business Development.

**QUEENSLAND RACE PRODUCT CO LIMITED AND TATTS GROUP** (paragraph 3(f) of the Terms of Reference)

40. In 2008, I was with Bob Bentley when we had a meeting with David Grace of Cooper Grace Ward. I can't recall specifically what the meeting was about now. In any event, the matter of the proposed race information legislation came up and either at that meeting or a later meeting I used a whiteboard to step David through the process in terms of the race information proposal that was a talking point in the industry with, from memory, legislation in draft form. I asked David to consider the position of the QTAB in respect of it having to

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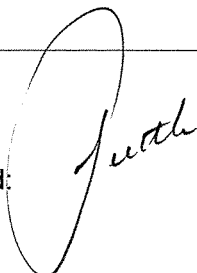
pay a fee or whether it was able to offset the fee against the fees payable to Product Co as product fees.

41. David Grace subsequently looked at the issue, and provided the advice. David's advice seemed to turn on the meaning of the words 'supply' and 'use' of the racing information and material. This was a bit of an issue at or about this time as other states had had a couple of false starts in terms of their legislation with matters before the courts. The advice suggested that the TAB may be required to pay the fee and that it may not be able to offset it.

42. Tony Hanmer who was the Chair of Product Co, asked that I meet him at the Sofitel one day which I did. After initial discussions with Bob, I did not discuss the matter with Bob Bentley any further as it was a matter that he would not be involved in, due to his role as a Director of Tatts Group. So my discussions were with Tony Hanmer on this issue.

43. I did not attend the Product Co meeting when the advice was to be initially discussed (in... about December 2008). However, I was present a subsequent meeting when the matter was further discussed. David Grace was also there and I believe Michael Lambert was on speaker phone attending remotely. As far as I am aware, Product Co did not pursue a further opinion in respect of David Grace's advice, but I don't know what else the Board of Product Co did or did not do. I understand that Michael Lambert subsequently provided a written memorandum of his view of the matter.

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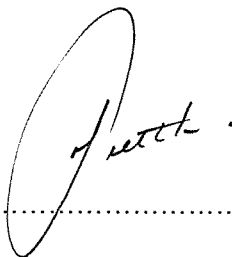
44. It should be noted that the whole race information fee issue developed over a period of time. Issues that had to be considered were, what price would we charge wagering operators, whether the fee ought to be based on turnover or profit, which charging method was lawful, should there be a floor for wagering operators, could losses be carried forward, how RQL would collect the fees from various users, how we would treat outstanding debts, how we would treat operators that did not have approval to operate with our information, how would we interact with Government on legislative breaches, and where various legal challenges were at throughout the process.

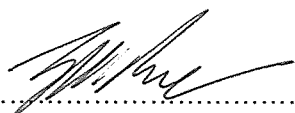
**FUNDS TRANSFER IN FEBRUARY 2012: QUEENSLAND GOVERNMENT TO RACING QUEENSLAND LIMITED INFRASTRUCTURE TRUST ACCOUNT** (paragraph 3(g) of the Terms of Reference)

45. I am not sure about this apart from suggesting that the funding would be unlikely to be released unless we had submitted business cases for approval. These business cases were submitted to the Government's Racing Department for consideration and transmission to Treasury.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867*.

**SIGNED AND DECLARED** )  
at Brisbane )  
on 26 July 2013 )  
in the presence of: )

  
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Solicitor / Justice of the Peace