

Oaths Act 1867

STATUTORY DECLARATION

QUEENSLAND

TO WIT

I, Michael Anthony Kelly, of 111 George Street Brisbane in the State of Queensland, do solemnly and sincerely declare that:

1. I am the recipient of a Requirement to Give Information in a Written Statement issued pursuant to section 5(1)(d) of the *Commissions of Inquiry Act 1950* and dated 30 August 2013.
2. This declaration has been provided with restricted time to properly access relevant email communications and other departmental files provided by Crown Law. Accordingly the matters I have deposed to herein are derived from my own recollection, aided by the contents of Attachments 1, 2 and 3 provided by the Commission and the documents I have been able to review in the time allowed.

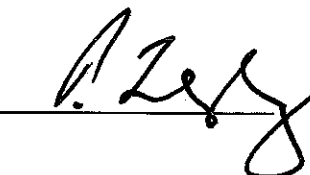
General comments

3. The Office of Racing is, and always has been, part of a government department – it is not, and never has been, a 'stand-alone', autonomous Office and has always functioned within the departmental frameworks established by the relevant Deputy-Director-General and Director-General. These frameworks were (and currently are) unremarkable and are what would be considered normal in any State government agency.
4. All correspondence, briefs and submissions prepared by staff of the Office of Racing for any Minister or Director-General were reviewed and approved by the relevant Deputy-Director-General and Director-General prior to its progression in accordance with departmental delegations. Specifically, Attachments 1 and 3 provided by the Commission followed this process.
5. The process used within the Department to develop Attachments 1 and 3 provided by the Commission is exactly the same as what is used today in the Department of National Parks, Recreation, Sport and Racing, and across government. It should be noted that no CBRC or Cabinet Submission was ever submitted to the Department's Cabinet Legislation and Liaison Officer for progression without the approval of the Deputy Director-General and Director-General.
6. Except for (2) below, the matters responded to relate to the development of Cabinet Submissions and these were prepared in draft form by the Office of Racing based on the direction, guidance and oversight of the responsible Ministers, central government agency representatives, the Deputy Director-General and the Director-General of the department.

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1. The origins and sources of the matters listed in Attachment 2, in particular but not limited to “imbalance in the industry – weakness of country racing”, “governance further rebalance power in favour of the professional management of the industry” and “amalgamate control bodies”, and the particular concerns to which each item relates.

Origins

7. Lachlan Smith (advisor to Minister Fraser) and Louise Foley (advisor to Minister Lawlor) were provided a draft Cabinet Budget Review Committee (CBRC) submission **(MK1)** on 14 October 2009 titled “Funding control bodies in the Queensland racing industry”. I believe that this draft of the CBRC submission is the same as Attachment 3 as provided by the Commission and was produced as a result of guidance provided by the then Director-General of DEEDI (Peter Henneken) on 13 October 2009 (Attachment 2 as provided by the Commission). **(MK2)**.
8. I was not directly involved in the CBRC submission process during the period 16 October 2009 – 9 November 2009 as I was on recreation leave.
9. Drafts of the CBRC submission were prepared prior to the 14 October 2009 draft. There was a draft submission in existence at 6 July 2009 and another one at 8 July 2009 that were early drafts as evidenced by them being a joint submission from Minister Fraser and Minister Lawlor **(MK3)**.
10. The draft submissions were dealt with according to normal departmental workflows and reviewed and amended as feedback was received from David Ford, Peter Henneken, Claire Maconachie, ministerial advisors and central government agency representatives so that further draft submissions could be produced by the Office of Racing for further consideration and review.
11. The matters identified above by the Commission, and additional matters outlined in Attachment 2 as provided by the Commission, were communicated to me and Mike Sarquis (acting Deputy Director-General, DEEDI in David Ford’s absence) concurrently by Peter Henneken on 13 October 2009 **(MK4)**.

Sources

12. Peter Henneken would have to detail the sources of the matters identified in Attachment 2 as provided by the Commission. I have no recollection of a meeting on 13 October 2009 that I understand Mike Sarquis and I attended with him or the issues discussed at the meeting but believe it would have been about the content of an earlier draft CBRC submission related to provision of funding to the Queensland racing industry and the type of issues he later identified in his guidance concerning amendments to be made to the draft CBRC submission.

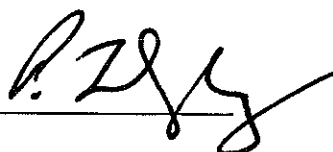
Concerns to which item relates

Nature and size of industry

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13. This section was not addressed in early draft submissions and it was included in the 14 October 2009 draft submission to highlight the nature and size of the racing industry.

How the industry works

14. This section was not addressed in any great detail in early draft submissions and more detail, in accordance with Peter Henneken's feedback, was included in the 14 October 2009 draft submission to outline in greater detail how the industry functioned.

Challenges

15. The feedback provided by Peter Henneken contained the heading "challenges" and these matters had not been directly addressed in earlier draft submissions. The matters he identified were addressed in the 14 October 2009 draft submission.

Imbalance in the industry – weakness of country racing

16. The section included within the 14 October 2009 draft submission, was included as a result of Peter Henneken's feedback and relates to issues identified in the "Issues Paper".

Rebalance power in favour of the professional management of the industry

17. This section was included in the 14 October 2009 draft submission as a result of Peter Henneken's feedback and outlines that while there was an expectation from government that the racing industry operate in a commercial manner, there were external constraints placed on the control bodies that prevented full commerciality in their decision making.

18. An example of such a situation existed with the Cairns Jockey Club that had a poor financial track record, considerable current debt and, as a result of decisions taken by a former committee and then overturned by the new committee, faced the possible loss of the Cannon Park racecourse (that the club owned freehold) if they were unable to successfully defend an action against them by a property development company (Trafalgar Group). The action could not be defended without funding from the thoroughbred control body and this diverted funds from other industry priorities. Also, due to the strategic nature of racing in Cairns, Minister Lawlor and Minister Fraser became concerned that a significant industry asset could be lost through commercial litigation so the government became involved in attempting to assist in resolving the issue. A bundle of relevant documents is attached (MK5).

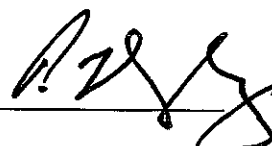
Amalgamate control bodies

19. The amalgamation of the three racing control bodies was not addressed in earlier draft submissions as I believed it was not within the scope of what was required until Peter Henneken provided feedback to Mike Sarquis and me on 13 October 2009.

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20. I cannot comment directly on why Peter Henneken wanted the amalgamation issue included in the 14 October 2009 draft submission. I do not recall exactly when the issue of control body amalgamation was first raised but believe it would have been some time after the "Issues Paper" (MK6) was provided to the government by the control bodies in May 2009 but before it was set out in the "Case for Change" document in November 2009. I recall both Lachlan Smith and Louise Foley raising the issue with me and seeking my views.

21. Peter Henneken's guidance required that this matter be addressed in the 14 October 2009 draft submission and while it was, very limited detail was included as significant legislative change would be required to amalgamate individual racing control bodies. They would have to be actively involved in the process for it to work and any amalgamation would have to be the subject of separate Cabinet Submission processes (Policy, Authority to Prepare and Authority to Introduce) if it was ultimately decided to progress this matter.

2. In describing item 1 above, whether or not the sale or redevelopment of Albion Park Paceway was being considered by the Government and/or a control body representative at that time.

22. In 2000, Albion Park was owned by the State of Queensland and the Department of Public Works was engaged around this time by a former Director-General, David Williams, to review the future usage of the venue and produce a report that would identify what should happen to the asset. This report was the "Litfin Report" (prepared by Gavin Litfin of Public Works) and would be held by the department. It is my recollection that the report recommended that the venue be sold and a new facility developed at an alternative site.

23. The ownership of the Albion Park asset was transferred from State ownership to the joint ownership of the harness and greyhound control bodies in July 2003.

24. The greyhound control body, through the relevant Chairs (Phil Bennett and Kerry Watson), supported the sale of Albion Park to release funds to develop a new, stand-alone greyhound facility. This was the position of the greyhound control body in July 2006 and, from my recollection, it never changed (MK7).

25. There existed some frustration within government that the harness and greyhound control bodies had not been able to decide on the future use of the asset in the nearly four (4) years they had owned it and Minister Fraser wrote to all parties concerning this issue (MK8).

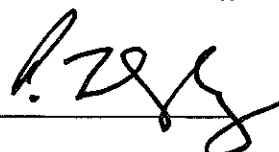
3. Discussions held with the Minister for Tourism and Fair Trading, including the Minister's staff, prior to and immediately after the drafting of Attachment 2.

26. David Ford advised John O'Connell (Assistant Under Treasurer) that on 30 June 2009 he had attended a meeting between Minister Lawlor, Minister Fraser and QRL representatives where the issue of redirection of wagering tax for infrastructure expenditure was raised. A very early draft CBRC submission on this matter was

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prepared as a joint CBRC submission from Minister Fraser and Minister Lawlor, and was provided to John O'Connell by David Ford. The Office of Racing prepared the draft CBRC submission based on David Ford's guidance (MK 9).

27. While I do not recall the details, there would have been discussion with Minister Lawlor's staff on the content of the draft submission provided to John O'Connell. Subsequently, meetings were arranged with Treasury Officers (John O'Connell, Alex Beavers, Ashley Anderssen, Samuel Blake and Natalie Barber) and Officers from the Department of Premier and Cabinet (Peter Downey and Justin Murphy) to progress the CBRC submission based upon their feedback and further drafts were developed. A bundle of relevant emails is provided as MK10.

28. On 14 August 2009, David Ford and I were advised by Louise Foley that the Department of Premier and Cabinet wanted additional options developed and included in the next version of the draft CBRC submission (MK 11). These were developed as requested and the draft CBRC submission now contained five (5) options for consideration (MK 12).

29. On 8 September 2009, I was advised by Rachele Cameron from Minister Lawlor's office that the CBRC submission was not going to be considered by CBRC as initially planned. Discussions on the way forward were held with Louise Foley and Lachlan Smith and they advised they would progress the matter. Mike Sarquis (acting in David Ford's position) was advised concurrently so he could brief Peter Henneken on the status of the submission. The draft CBRC submission at this stage contained six (6) possible options for consideration by CBRC (MK13).

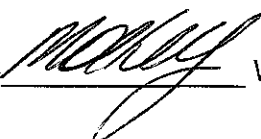
30. The issues identified by Peter Henneken outlined in Attachment 2 provided by the Commission were actioned by me providing them to Carol Perrett and Kirsty Karauria from the Office of Racing on the evening of 13 September 2009 with instructions that a new draft CBRC submission be prepared that addressed the feedback items provided (MK14). The draft submission produced on 14 October 2009 addressed the feedback issues provided to Mike Sarquis and myself by Peter Henneken.

31. While I cannot recall the detail of any discussions with Minister Lawlor's staff after receiving the feedback contained in Attachment 2 provided by the Commission, I believe I would have discussed it with Louise Foley as the issue of amalgamation of the control bodies was now clearly an issue under serious consideration and would require a significant amount of work if it was to be actioned.

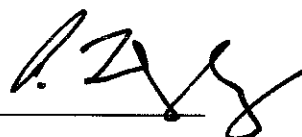
4. Discussions held with the Treasurer and Minister for Employment and Economic Development including the Treasurer's staff, prior to and immediately after the drafting of Attachment 2.

32. I am aware that a need for investment in racing infrastructure had been recognised by both the government and racing industry control bodies prior to the development of the draft CBRC submission. I was aware that the thoroughbred control body had investigated a number of possible infrastructure projects such as the development of

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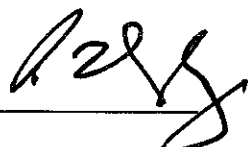


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a site at Wacol (in 2004) and then at Palm Meadows (in 2006), and the greyhound control body had investigated the feasibility of developing a greenfield site to replace the Albion Park facility (2006 and ongoing). I had attended a number of meetings and discussions with Ministers, Treasury and departmental officers on these matters.

33. I believe there was a meeting held between Bob Bentley, Malcolm Tuttle, the Treasurer, the Racing Minister, ministerial staff and David Ford that I attended in early – mid 2009 related to the need for enhanced infrastructure and associated funding to support its development. I do not recall the date of the meeting however, it would have been before the “Issues Paper” was provided to government in May 2009. I received a copy of the “Issues Paper” on 21 May 2009 **(MK15)**.
34. Subsequently, as a result of the meeting and the matters raised in the “Issues Paper” I believe that I was directed to prepare a draft CBRC submission to address racing infrastructure funding options via the redirection of wagering tax. This direction would have been verbally provided by David Ford or the Minister and the normal process of developing a draft CBRC submission would have commenced.
35. Draft CBRC submissions titled “*Funding of control bodies in the Queensland Racing Industry*” existed as at 6 July 2009 and at 8 July 2009 **(MK3)** and these would have been developed in response to the initial direction by David Ford or the Minister to develop a draft CBRC submission. These early draft submissions identify three options:
- Fully implement the Racing Industry proposal;
 - Not support the Racing Industry Proposal (Status Quo); and
 - Partially Implement the Racing Industry proposal.
36. As it was initially planned that the CBRC submission would be jointly proposed by Minister Fraser and Minister Lawlor some discussions would have occurred with the Treasurer’s advisor (Lachlan Smith) and Treasury Officers concerning progressing the draft submission and the options for consideration that were to be included in the submission. I do not recall the specifics of any such discussions.
37. The items outlined in Attachment 2 provided by the Commission were actioned quickly when provided to me and Mike Sarquis by Peter Henneken as identified above in this statement.
38. I believe that further discussions would have occurred with Lachlan Smith after the 14 October 2009 draft submission was produced as the issue of amalgamation of the control bodies was now clearly an issue under consideration and significant work would be required to address this matter in a Policy/ATP/ATI submission process as it was not something that could be implemented via a CBRC submission.
39. I received an email trail from David Ford on 3 November 2009 that addresses issues raised by Peter Henneken and shows copies of the draft CBRC submission had been provided to Alex Beavers and Dennis Molly **(MK16)**.

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40. There is an email trail dated 4 November 2009 that contains issues raised by Lachlan Smith with David Ford and the relevant responses that were provided to him, Alex Beavers, Louise Foley, Peter Henneken, Carol Perrett and me (MK17).

41. There is an email trail dated 24 -25 November 2009 that identifies that discussions were occurring between David Ford and Gerard Bradley concerning mechanisms to deliver a wagering tax rebate to fund the Racing Industry Capital Development Scheme. An email from David Ford to Louise Foley dated 25 November 2009 identifies that a meeting on this issue was conducted. I did not attend this meeting but was copied into these emails (MK18).

5. Discussions held between the Director-General and Office of Racing staff with the Minister and/or Treasurer (including staff) to endorse and progress the two Option 3s on top and bottom of page 2 of Attachment 3.

42. I do not have any direct knowledge of discussions between the Director-General and the Minister and/or Treasurer (including staff) to endorse and progress the two Option 3s on top and bottom of page 2 of Attachment 3 provided by the Commission. I am aware that Minister Lawlor and Minister Fraser's staff were involved in email communication with Peter Henneken.

43. I have located a draft of the CBRC submission dated 4 November 2009, titled, "Draft CBRC Sub - 4-11-09 (David's Version)" that identifies Option 3 as the preferred option. Email correspondence over 3 - 4 November 2009 related to this submission identifies that a range of persons from the department, Treasury, Premier and Cabinet and Minister Lawlor's Office were involved in reviewing the draft submission as it then stood (MK19).

44. Attachment 3 provided by the Commission is an early draft CBRC submission that I believe was produced on 14 October 2009 in response to guidance provided to Mike Sarquis and me by Peter Henneken. I believe this as it seems evident from sections that are not finalised, reference still being made to options contained in Attachment 1 but no longer evident in Attachment 3 and subsequent drafts of the submission produced after 14 October 2009. For example, a subsequent draft CRBC submission with what I believe are handwritten comments from Peter Henneken existed at 19 October 2009 (MK20) and this was after Attachment 3 provided by the Commission was produced.

6. When a direction was first received by the department to commence drafting an Authority to Prepare submission to Cabinet for the Racing and Other Legislation Amendment.

45. I do not recall when a direction was provided to the department however, once it had been identified by Peter Henneken on 13 October 2009 that the amalgamation of control bodies was a matter to be considered in the CBRC submission and Option 3 was subsequently identified as the preferred Option, planning for this possible outcome commenced as it was recognised that significant amendments would have

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to be made to *Racing Act 2002* (Qld) to achieve an amalgamation of control bodies. As part of this planning a range of initial Crown Law advice on this process was sought on 19 October 2009 and provided by Crown Law officers Christopher Maxwell, Brent Manning and Melinda Pugh (MK21).

46. I believe that once the 4 November 2009 draft CBRC submission had been progressed from David Ford to Alex Beavers and Dennis Molloy (MK19) and Minister Lawlor briefed on the CBRC submission, further planning would have commenced for a possible Policy/APT submission. Once the CBRC decision was made on 26 November 2009 (MK22) and Nick Lindsay advised that Ken Smith was expecting a Cabinet Submission quickly on structural reform of the control bodies (see below) I believe work on the Policy/APT submission would have progressed very quickly. Direction to commence work on the Policy/APT submission would have been provided by the David Ford or Mike Sarquis verbally, probably by phone.
47. I have seen an email trail between Nick Lindsay and Carol Perrett dated 26 - 27 November 2009. An email from Nick Lindsay identifies that Ken Smith is "expecting a Cabinet Submission early next year on structural reform issues in the racing industry" however, further guidance was required from the Department of Premier and Cabinet (MK23).
48. Further email correspondence dated 7 December 2009, between Nick Lindsay and Carol Perrett identifies that the Office of Racing had commenced work on a draft Policy/APT submission but it was not very advanced and the department was still awaiting guidance from the Department of Premier and Cabinet on specific content to be included (MK24).
49. It is my recollection that while planning and/or work on drafting the Policy/APT submission was underway on 27 November 2009, this would not have been very advanced because the draft Policy/APT submission that existed on 22 December 2009 is still a very early draft that contains little detail (MK25).
50. Direction, guidance and involvement on the development and content of the Policy/APT submission was provided by a range of persons outside the Office of Racing including, Ministers Lawlor and Fraser, Peter Henneken, David Ford, Claire Maconachie, Ashley Anderssen, David Hourigan, Alex Beavers, Justin Murphy, Nick Lindsay and ministerial advisors within Minister Lawlor and Fraser's offices. This was normal practice as is evident from the content of the attachments.

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

DECLARED AND SIGNED at Brisbane

this 16th day of September, 2013

Signature



Before me:-

Witness Signature

