

# **Racing Integrity Bill 2015**

**Report No. 15, 55<sup>th</sup> Parliament**  
**Agriculture and Environment Committee**  
March 2016

## **Agriculture and Environment Committee:**

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### **Note\***

On 17 February 2016 Mr Glenn Butcher MP was appointed Chair and Mr Jim Madden MP was appointed a member of the committee, replacing Ms Jennifer Howard MP and Mr Linus Power MP.

### **Acknowledgements**

The committee thanks Mr Linus Power MP who served as Acting Chair and Mrs Joan Pease MP who served as a member of the committee during the inquiry from 14 January to 17 February 2016.

The committee also thanks the officers from the Department of National Parks, Sport and Racing for their assistance during the inquiry.

## Contents

<b>Abbreviations</b>	<b>ii</b>
<b>Chair’s foreword</b>	<b>iii</b>
<b>Recommendations</b>	<b>v</b>
<b>Points for clarification</b>	<b>vi</b>
<b>1. Introduction</b>	<b>1</b>
Role of the committee	1
The referral	1
The committee’s processes	1
The administration of racing in Queensland	1
Queensland Greyhound Racing Industry Commission of Inquiry	2
Commission of Inquiry findings	3
Policy objectives of the Racing Integrity Bill 2015	3
The Tracking Towards Sustainability plan	6
Consultation for the Bill	6
Estimated cost to government of implementing the Bill	8
Should the Bill be passed?	10
<b>2. Examination of the Racing Integrity Bill 2015</b>	<b>11</b>
Structure of the Bill	11
The Queensland Racing Integrity Commission	11
Functions of the Queensland Racing Integrity Commission	11
Ministerial directions to the Queensland Racing Integrity Commission	12
Persons eligible to be commissioner or deputy commissioner	13
Clause 30 – Assessment if 2 or more approval applications	13
Clause 56 Funding	14
The making of standards for a code of racing	18
Standards about licensing schemes	19
Reviews and appeals of original decisions	20
Amendment of Animal Care and Protection Act 2001	22
The Racing Queensland Board	25
Reviews of decisions about racing information authorities	29
Other matters	31
<b>3. Fundamental legislative principles</b>	<b>32</b>
Administrative power	35
Onus of proof	37
Power to enter premises	38
Institution of Parliament - Scrutiny of the Legislative Assembly	40
<b>Appendix A: List of submitters</b>	<b>43</b>
<b>Appendix B: Briefing officers</b>	<b>48</b>
<b>Appendix C: Public hearing witnesses</b>	<b>49</b>
<b>Appendix D: Extracts from the Final Report from the Queensland Greyhound Racing Industry Commission of Inquiry</b>	<b>50</b>
<b>Statements of Reservation</b>	<b>53</b>

## Abbreviations

ABC	Australian Broadcasting Corporation
ACPA	<i>Animal Care and Protection Act 2002</i>
ALQ	Animal Liberation Queensland
AQHRD	Australian Quarter Horse Racing Development Pty Ltd
AVA	Australian Veterinary Association
BRC	Brisbane Racing Club Limited
COI	Queensland Greyhound Racing Industry Commission of Inquiry
DNPSR	Department of National Parks, Sport and Racing
FLP	Fundamental legislative principle
LSA	<i>Legislative Standards Act 1992</i>
OoR	Office of Racing, Department of National Parks, Sport and Racing
QGBOTA	Queensland Greyhound Breeders, Owners & Trainers Association
QPS	Queensland Police Service
QRIC	Queensland Racing Integrity Commission
QROA	Queensland Racehorse Owners Association
QRUG	Queensland Racing Unity Group
Racing Queensland	The trading name for the Queensland All Codes Racing Industry Board
RSPCA	Royal Society for the Prevention of Cruelty to Animals
RQ	Racing Queensland
RQB	Racing Queensland Board
TBQA	Thoroughbred Breeders Queensland Association

## Chair's foreword

This Report presents a summary of the Agriculture and Environment Committee's examination of the Racing Integrity Bill 2015.

Racing is a huge industry in Queensland. It provides thousands of jobs and sustains many hundreds of small and large businesses across the State. It is particularly important to communities in country areas. Protecting the industry's future and ensuring it is recognised as having the highest standards of integrity is critically important to its future and to maintaining the confidence of the betting industry on which the racing industry largely depends.

The Bill had its genesis in the recommendations from the Commission of Inquiry into Greyhound Racing which investigated allegations of live baiting and other acts of animal cruelty in the greyhound industry. Commissioner MacSporran QC, who led the Commission of Inquiry, identified systemic weaknesses in the industry's integrity systems. These weaknesses extended into all other racing codes. In addition to measures to improve integrity and governance and address these weaknesses, the Bill proposes a number of measures to improve how animal welfare is handled in the racing industry. This is something that submitters and others who contributed to the inquiry have supported unanimously.

The Racing Integrity Bill contains more than three hundred pages of legislation, and is one of a number of reforms aimed at enhancing the State's racing industry in 2016. These reforms also include the release of the *Tracking to Sustainability Plan* by Racing Queensland – a plan that gives transitional support to country racing and seeks to restore the sustainability of the State racing industry.

As a consequence of having significant multiple reforms happening simultaneously, there appears to have been some misunderstanding and confusion around what the Racing Integrity Bill actually seeks to achieve. A significant number of submissions to our inquiry, though well intentioned, commented on matters which are not actually part of the Bill. In particular, the Bill does not include any clauses related to cutting or reducing the allocation of prize money or the number of race days. Nor does the Bill seek to encourage or direct Racing Queensland to reduce prize money or race days.

The committee has noted the strong opposition and criticisms of the Bill from the racing industry, and has considered the provisions of the Bill carefully. The committee has made a number of sensible recommendations to improve the Bill arising from this work. I commend these recommendations to the House. The committee has also invited the Minister to clarify other matters for the benefit of the House. I look forward to the Minister's advice on these matters.

I thank committee members for their work on this Bill. I would also like to acknowledge the breeders, trainers and owners from the racing industry, as well as their representatives, and the many other stakeholders who took time out from their work to share their views with the committee.

I commend this Report to the House.



Glenn Butcher MP  
**Chair**



## Recommendations

### Recommendation 1 8

The committee recommends that departmental officers consult with racing industry stakeholders in relation to the implementation of provisions contained in the Bill that are agreed by the House, and during the development of regulations and any further significant legislation affecting the industry.

***Minister responsible: Minister for Racing***

### Recommendation 2 10

The committee recommends that the Minister provides the House with an assessment of the likely costs for government of implementing the Racing Integrity Bill 2015, including staffing and program costs.

***Minister responsible: Minister for Racing***

### Recommendation 3 10

The committee could not agree whether the Bill should be passed.

### Recommendation 4 12

The committee recommends that clause 10(1)(l) of the Bill be amended to broaden the Commission's functions to include the promotion of animal welfare and the prevention of animal cruelty, and that the function must include the provision of training to racing industry participants in these areas.

***Minister responsible: Minister for Racing***

### Recommendation 5 13

The committee recommends that clause 13(2) of the Bill be amended to provide that the Minister is not able to give the Commission a direction in relation to a decision made by the Commission under the rules of racing.

***Minister responsible: Minister for Racing***

### Recommendation 6 20

The committee recommends that Clause 68 (3)(b) be amended to stipulate that a licence application cannot be granted for an entity whose executive officer has a prior conviction for an animal cruelty offence in Queensland or another state.

***Minister responsible: Minister for Racing***

### Recommendation 7 25

The committee recommends that, after the agreed provisions in the proposed Racing Integrity Act have been in operation for twelve months, the Minister considers the need for further amendments to the Animal Care and Protection Act to ensure the welfare of racing animals and other animals in connection with the racing industry is being properly addressed.

***Minister responsible: Minister for Racing***

### Recommendation 8 30

The committee recommends that the Minister consider amending the Bill to limit the proposed process for reviews of decisions about racing information authorities to: a decision to refuse to grant a race information authority; and a decision to cancel a race information authority under s.113AJ.

***Minister responsible: Minister for Racing***

## Points for clarification

### Point for clarification

13

The committee invites the Minister to clarify for the information of the House the intent of the different eligibility criteria for Racing Queensland and Office of Racing and Racing Science Centre staff for appointment to commissioner and deputy commissioner positions.

***Minister responsible: Minister for Racing***

### Point for clarification

18

The committee invites the Minister to clarify how the amount of funding that racing control bodies provide for the Queensland Racing Integrity Commission will be determined, and the controls that will be established to ensure the commission's costs are kept to a minimum.

***Minister responsible: Minister for Racing***

### Point for clarification

22

The committee invites the Minister to assure the House that it will be feasible for QRIC to deal with the anticipated volume of internal review applications within the 14 day timeframe specified in the Bill for considering these review applications, and given the broad scope for internal review that is proposed in the Bill.

The committee further invites the Minister to clarify whether an application fee will be charged that is consistent with the fees currently charged for appeals to the Racing Disciplinary Board to discourage vexatious applications for internal review and to reflect the commission's costs of hearing review applications.

***Minister responsible: Minister for Racing***



## 1. Introduction

### Role of the committee

The Agriculture and Environment Committee is a portfolio committee appointed by a resolution of the Legislative Assembly on 27 March 2015. The committee's primary areas of responsibility are: Agriculture, Fisheries, Environment, Heritage Protection, National Parks and the Great Barrier Reef.<sup>1</sup>

In its work on Bills referred to it by the Legislative Assembly, the committee is responsible for considering the policy to be given effect and the application of fundamental legislative principles (FLPs).<sup>2</sup> In its examination of Bills, the committee considers the effectiveness of consultation with stakeholders, and may also examine how departments propose to implement provisions that are enacted.

FLPs are defined in Section 4 of the [Legislative Standards Act 1992](#) as the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

### The referral

On 3 December 2015, Hon. William Byrne MP, (former) Minister for Agriculture and Fisheries and Minister for Sport and Racing, introduced the Racing Integrity Bill 2015 (the Bill).

The Bill was referred to the committee by the Legislative Assembly for examination and report by 1 March 2016 in accordance with Standing Orders 131. On 25 February 2016, the Legislative Assembly agreed to extend the committee's reporting date to 15 March 2016.

### The committee's processes

For its examination of the Bill, the committee:

- notified stakeholders of the committee's examination of the Bill and invited written submissions. The committee accepted 148 written submissions. A list of submissions is at **Appendix A**
- held a public briefing on the Bill by the Department of National Parks, Sport and racing (DNPSR) on Friday 11 December 2015. A list of departmental officers who appeared at the briefing is at **Appendix B**
- sought further written briefings from the department
- convened a public hearing and further departmental briefing on 17 February 2016. A list of witnesses who appeared at the hearing is at **Appendix C**.

### The administration of racing in Queensland

The *Racing Act 2002* currently establishes the Queensland All Codes Racing Industry Board as the control body responsible for managing and administering the thoroughbred, harness and greyhound codes of racing in Queensland and provides the legislative framework for the regulation of racing bookmakers in Queensland. This encompasses both the commercial, animal welfare and integrity function undertaken for the three codes at any given time. The Queensland All Codes Racing Industry Board which trades as Racing Queensland was established in 2013 to govern Racing Queensland functions.

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<sup>1</sup> Schedule 6 of the [Standing Rules and Orders of the Legislative Assembly of Queensland](#).

<sup>2</sup> Section 93 of the [Parliament of Queensland Act 2001](#).

Racing Queensland is the Queensland industry's principal authority, and is responsible for the commercial and operational management of the State's racing industry and serves the racing community by:

- administering the rules of racing
- implementing sound policies
- enforcing safety and integrity standards
- licensing industry participants
- licensing race clubs and monitoring their activities and performance
- monitoring the condition of racecourses and working with racing clubs to ensure courses are developed to a suitable standard
- commissioning and undertaking research and promotional activities
- administering industry funding and commercial agreements
- representing the Queensland racing industry on industry peak national bodies and their subcommittees.

The Office of Racing within the Department of National Parks, Sport and Racing regulates Racing Queensland under the Racing Act.

### **Queensland Greyhound Racing Industry Commission of Inquiry**

On 16 February 2015, an episode of the ABC television program, *Four Corners*, titled 'Making a Killing' exposed the practice of live baiting in the greyhound industry in three eastern states: Victoria, New South Wales and Queensland.

Racing Queensland subsequently announced a Queensland Police Service (QPS) and Royal Society for the Prevention of Cruelty to Animals (RSPCA) taskforce to combat live baiting and other allegations of animal cruelty.<sup>3</sup> Racing Queensland announced further measures to be implemented as part of its investigations, including the introduction of a welfare levy effective from 1 March 2015.<sup>4</sup>

On 2 March 2015, the (former) Minister for Agriculture and Fisheries and Minister for Sport and Racing announced an independent review of the State's greyhound racing industry to determine how live baiting was allowed to go undetected.<sup>5</sup> The review was headed by Alan MacSporran QC.

On 10 April 2015 as the seriousness of the issue became more apparent, the industry review was replaced by a Commission of Inquiry. Mr Alan MacSporran QC was appointed Commissioner by the Governor in Council. The Commission of Inquiry had wider powers of investigation including the power to summon witnesses to give evidence or produce documents.<sup>6</sup>

The terms of reference for the Commission of Inquiry were to:

- assess the effectiveness of the current regulatory framework of the Queensland Greyhound Racing Industry in detecting, assessing, mitigating and prosecuting all breaches of the *Racing Act 2002*, or any other relevant act;
- have a particular focus on the regulatory arrangements for the protection of animal welfare of racing dogs and other animals, including the extent of live-baiting practices in Queensland;
- assess the suitability of the current regime of monitoring, regulation and integrity, including of statutory (including licensed clubs) and departmental bodies, in the management and oversight of the industry meeting all racing and legal obligations;

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<sup>3</sup> Four Corners, *Greyhound Racing: Piglets, possums and rabbits used as live bait in secret training sessions*, 2015, [ABC News](#) 17 February.

<sup>4</sup> Racing Queensland, 2015, [Important industry communique](#), 27 February.

<sup>5</sup> Byrne, Hon W., 2015, [Media Statement](#), 2 March.

<sup>6</sup> Byrne, Hon W., 2015, [Media Statement](#), 10 April.

- make recommendations to the Queensland Government concerning any changes that need to be made to existing laws or regulations to ensure that the Queensland Greyhound Racing Industry is compliant with all racing, animal welfare and legal obligations;
- be mindful of the Queensland Greyhound Racing Industry's need to maintain a social licence with the community and make recommendations necessary to promote integrity and public confidence into the Queensland Greyhound Racing Industry; and
- provide recommendations on any other aspects of the Queensland Greyhound Racing Industry (including registered trainers operating from unlicensed premises) or its regulations as it sees fit.<sup>7</sup>

The Commission of Inquiry received 342 submissions and met with 78 people in Brisbane, Bundaberg, Mackay, Townsville, Cairns and Melbourne.<sup>8</sup>

### Commission of Inquiry findings

Commissioner MacSporran presented his report from the Commission of Inquiry on 1 June 2015. The report contains fifteen recommendations.

Commissioner MacSporran identified a significant loss of public confidence in the greyhound racing industry following the exposure of the practice of live baiting. The Commission of Inquiry also uncovered evidence of significant animal welfare issues affecting greyhounds and other animals used for live baiting. The Commission of Inquiry also highlighted the failure of industry self-regulation to safeguard animal welfare, and the failure of Racing Queensland to adequately assess and manage risks across all racing codes, linked to inherent conflicts of interest in the industry's governance. Mr MacSporran noted in his report summary:

*The practice of live baiting could not be engaged in without the acquiescence of many, who although not directly involved, chose to ignore the cruelty and turned a blind eye. This must have encouraged those directly involved that they could continue with impunity. This culture must change if public confidence is to be restored.*

*Industry participants must be seen to have proper regard for integrity and animal welfare issues. They must be seen to be proactively encouraging compliance and exposing those within the industry who engage in unlawful activity.*

*The Commission is satisfied that the system of self-regulation under the current model has failed to ensure integrity in the industry and failed to safeguard animal welfare.*

*RQ failed in these important obligations because it did not operate a system which adequately assessed risk and it failed to plan an overall strategy to deal with the risk to integrity and animal welfare across all three codes of racing.*

*RQs ability to meet its obligations was compromised by the conflict of interest inherent in having oversight and control of the commercial and integrity aspects of the business.*

The executive summary from Commission of Inquiry Final Report and recommendations one to three that the Racing Integrity Bill seeks to implement are copied at **Appendix D**.

### Policy objectives of the Racing Integrity Bill 2015

The Racing Integrity Bill 2015 seeks to improve standards and further safeguard the welfare of licensed animals (Recommendation one). This will be achieved by the establishment of the Queensland Racing Integrity Commission (QRIC) to separate the integrity and animal welfare functions from the

<sup>7</sup> Queensland Greyhound Racing Industry Commission of Inquiry, 2015, [Terms of Reference](#) 13 April 2015.

<sup>8</sup> Queensland Greyhound Racing Industry Commission of Inquiry, 2015, [Final Report](#), Alan MacSporran QC, 1 June, pp.13-14.

commercial functions – ultimately providing independence and removing the potential for a conflict of interest when the two functions overlap.

The Bill provides for the appointment of the Commissioner and a minimum of two Deputy Commissioners, and prescribes the functions and powers of QRIC, its Commissioner and Deputy Commissioners.

The Bill also amends the *Racing Act 2002* to remove the functions and powers that will be transferred to the new Racing Integrity Act, and to establish new arrangements for a seven member Racing Queensland Board (Recommendation two) that will focus on the commercial operations of the industry.

The Bill extends the powers of authorised officers by mirroring those powers given to authorised officers and inspectors under the *Animal Care and Protection Act 2001*(ACPA) in relation to powers of entry, seizure and the issuing of an animal welfare direction. The Bill also inserts new information-sharing powers within the ACPA which are mirrored in the proposed Racing Integrity Act. These information-sharing powers are intended to support collaboration between agencies to improve the investigation and prosecution of animal welfare offences. (Recommendation three).

The Bill also proposes to amend the functions and responsibilities of racing control bodies and establish comprehensive corporate governance measures for the Queensland Racing Integrity Commission:<sup>9</sup>

*It will dissolve the specific code control boards, the Racing Animal Welfare and Integrity Board and the Racing Disciplinary Board. It will standardise and consolidate the powers of authorised officers under the Racing Integrity Act and it will bring them into line with those of inspectors under the Animal Care and Protection Act.*

*It will establish a new internal review process for administrative decisions made under the Racing Act and the proposed or future Racing Integrity Act. It will remove redundant provisions in the Racing Act relating to accredited facilities and processes for dealing with samples following race meets. Other consequential amendments to the Bail Act, Criminal Organisation Act, Interactive Gambling (Player Protection) Act and a number of other acts will also be made.<sup>10</sup>*

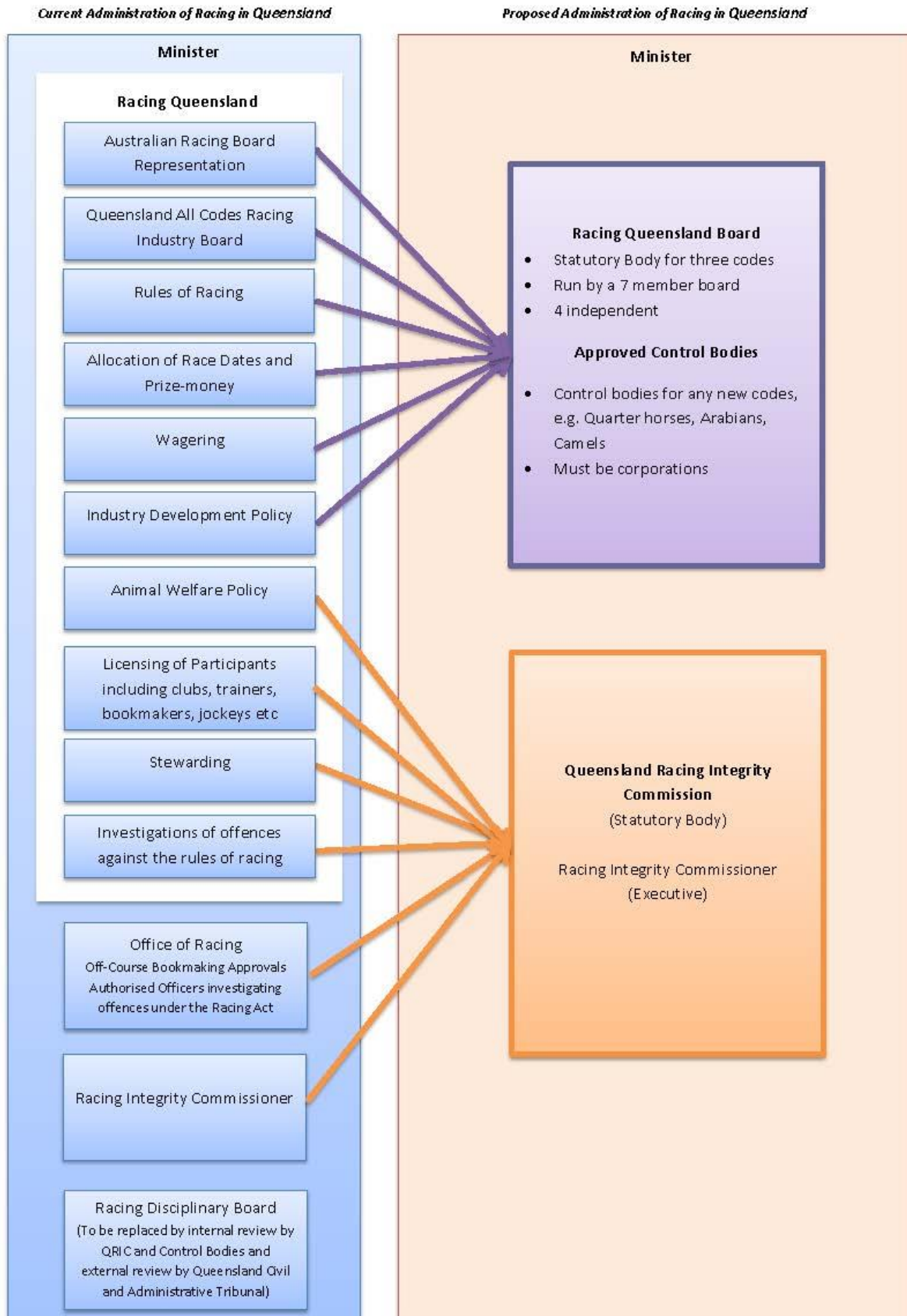
Figure 1 below shows the current responsibilities for racing administration and the arrangements the Bill seeks to achieve.

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<sup>9</sup> Oestreich, W., 2015, *Departmental briefing transcript*, 11 December, p.2.

<sup>10</sup> Oestreich, W., 2015, *Departmental briefing transcript*, 11 December, p.2.

Figure 1: Current and proposed administration of Racing in Queensland



Source: Department of National Parks, Sport and Racing, 2016, Correspondence, 23 February.

## The Tracking Towards Sustainability plan

The reforms contained in the Bill are separate to the reforms contained in *Tracking Towards Sustainability*,<sup>11</sup> a plan released by the former Minister for Sport and Racing and Racing Queensland in November 2015. The plan provides transitional support to country racing and aims to restore Racing Queensland's commercial sustainability.

Changes to insurance, prize money, payments and trust account matters that are proposed under Racing Queensland's plan are unaffected by the clauses of the Bill or the current Racing Act.<sup>12</sup>

## Consultation for the Bill

During the Bill's development, consultation was undertaken by the Department of National Parks, Sport and Racing with the following government agencies:

- Department of Agriculture and Fisheries
- Department of the Premier and Cabinet
- Queensland Treasury
- Department of Justice and Attorney-General
- Public Service Commission.<sup>13</sup>

Following the development of a draft Bill, the department consulted further with Racing Queensland and other government agencies to ensure that the Bill satisfied the relevant recommendations of the Commission of Inquiry.<sup>14</sup>

In regard to consultation, the explanatory notes to the Bill refer to consultation that occurred as part of the Commission of Inquiry<sup>15</sup> which was tasked with examining a range of issues affecting greyhound racing in Queensland. The Commission's processes included calling for public submissions, conducting structured interviews with agreed stakeholders and identifying and testing options with key stakeholders.<sup>16</sup> As noted above, the Commission received 342 submissions and met with some 78 individuals.<sup>17</sup> The submissions to the Commission of Inquiry reflect greyhound racing and animal welfare interests – not horse racing interests. The Commission of Inquiry made recommendations in its findings that were the genesis of the Bill, but did not draft the Bill.

The committee asked the department to clarify if the consultation process through the Commission of Inquiry was taken into account when drafting the Bill. The department explained that the Act (Bill) very closely follows the outcomes of the Commission of Inquiry. The department stated:

*The act (Bill) deals with very much the things that the commission of inquiry said needed to be dealt with. The commission of inquiry had an extensive consultation process around it. The matters contained in the bill have been very well consulted on to this point.*<sup>18</sup>

The committee requested the department to explain the consultation with owners, jockeys, clubs, bookmakers and other associated stakeholders and entities it planned to undertake as part of the implementation of provisions in the Bill that are agreed. The department advised:

*There will be a need obviously so that industry participants understand how these changes are flowing through. I think one of the important things to understand is that in terms of the requirements or the rules under which industry participants will operate*

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<sup>11</sup> Racing Queensland, 2015, *Tracking Towards Sustainability*.

<sup>12</sup> DNPSR, 2016, *Correspondence*, 16 February.

<sup>13</sup> Racing Integrity Bill 2015, Explanatory Notes p.7.

<sup>14</sup> DNPSR, 2016, *Correspondence*, 16 February.

<sup>15</sup> Racing Integrity Bill 2015, Explanatory Notes p.7.

<sup>16</sup> Racing Integrity Bill 2015, Explanatory Notes p.7.

<sup>17</sup> Racing Integrity Bill 2015, Explanatory Notes p.7.

<sup>18</sup> Oestreich, W., 2015, *Departmental briefing transcript*, 11 December, p.3.

*there are not changes as a result of this. The rules that the industry participants operate under will remain broadly the same. The major changes are about the ability for the compliance organisation to ensure that those rules are upheld - in other words, it is improving the compliance and investigation capacity of the compliance body rather than changing the rules for the industry participants. The industry participants will see very little change on a day-to-day basis.*<sup>19</sup>

### **Issued raised by submitters**

Submitters and witnesses at the committee's public hearings for the inquiry were critical of the lack of consultation by the department in relation to the Bill.

The Breeders, Owners Trainers and Reinspersons Association (Qld) Inc. told the committee:

*...harness racing is extremely disappointed that there has been no collaboration with regard to the legislation to date apart from our opportunity to speak here today.*<sup>20</sup>

The Toowoomba Turf Club told the committee:

*The Toowoomba Turf Club has received no opportunity for consultation from the current state government and had limited opportunity for meaningful conversation with Racing Queensland in the last six months.*<sup>21</sup>

Submitters also expressed the desire for the Government and the proposed commission to adopt a more consultative approach in the future.

### **Advice from the department**

In its advice to the committee on the lack of consultation in relation to the Bill, the department referred again to the consultation opportunities provided during the Commission of Inquiry:

*During the Commission of Inquiry, the racing industry and the public at large were asked to provide submissions – including recommendations – on how to improve the industry. During this process, 342 submissions were received and the Commission of Inquiry also met with 78 people across Australia from regulatory agencies, racing industry stakeholders and animal welfare groups. Following this consultation process, the Commission of Inquiry assessed the industry and formed its recommendations relating to the relevant governance models and structures.*

*Following the release of the MacSporran Report, the Department of National Parks, Sport and Racing has developed the relevant amendments directly in line with the recommendations made by Mr MacSporran. Following the development of a draft Bill, the department conducted further consultation with RQ and other government agencies to ensure that the Bill satisfied the relevant recommendations.*<sup>22</sup>

### **Committee comment**

Genuine and timely consultation in relation to changes to policy and legislation is an important process for disseminating information, and is likely to lead to better outcomes and greater acceptance in the community, particularly among stakeholders who may be affected. Consultation with the racing industry, community organisations and individuals should have been an intrinsic and routine part of the policy and legislative development process for the Racing Integrity Bill.

Regrettably the Department of National Parks, Sport and Racing did not consult with community or industry stakeholders or the public in relation to the provisions in the Bill. As a result, racing industry

<sup>19</sup> Oestreich, W., 2015, *Departmental briefing transcript*, 11 December, p.3.

<sup>20</sup> Dossetto, W. 2016, *Public hearing transcript*, 24 February, p.34.

<sup>21</sup> Odgers, 2016, *Public hearing transcript*, p.19.

<sup>22</sup> DNPSR, 2016, *Correspondence*, 16 February.

participants such as turf clubs, animal owners, jockeys, breeders and trainers, and the bodies representing them, were excluded from the Bill's development.

The department chose instead to rely on consultation processes conducted as part of the Commission of Inquiry. That inquiry focused on greyhound racing, not the entire Queensland racing industry, and did not consider the form or substance of the legislation proposed in the Bill. This omission by the department is particularly regrettable for the State's horse racing interests. The consultation processes for the Commission of Inquiry and, similarly for the committee's own inquiry into the Bill, do not replace the need for departments to consult with stakeholders while developing policy and legislation.

### **Recommendation 1**

The committee recommends that departmental officers consult with racing industry stakeholders in relation to the implementation of provisions contained in the Bill that are agreed by the House, and during the development of regulations and any further significant legislation affecting the industry.

**Minister responsible: Minister for Racing**

### **Estimated cost to government of implementing the Bill**

According to section 23 of the *Legislative Standards Act 1992*, the explanatory note for a Bill must include, in clear and precise language:

*(e) a brief assessment of the administrative cost to government of implementing the Bill, including staffing and program costs but not the cost of developing the Bill.*

The explanatory notes for the Racing Integrity Bill 2015 do not appear to provide an assessment of the costs to government of implementing the Bill. Instead, the notes describe activities that will result in costs to government, without assessing what those costs will be:

- *The costs associated with the establishment of the Queensland Racing Integrity Commission (the commission). These costs include the accommodation, resourcing and systems for the Commissioner, Deputy Commissioners and the staff of the commission. These costs are essential to assist the Commission in carrying out its functions in relation to information tracking and the data capture relating to licenced animals, participants and incidents.*
- *The costs incurred through the transferral of staff from Racing Queensland and the Department of National Parks, Sport and Racing to the Commission. The employment and appointment of additional staff will also be required to undertake specific roles within the commission i.e. the Commissioner and Deputy Commissioner roles. All other staff will be employed under the Public Service Act 2008.<sup>23</sup>*

### **Issues raised by submitters**

The absence of costings for the Bill's implementation and the likely impacts of increased costs on the industry's viability, were raised at the committee's public hearing.

The Queensland Racing Unity Group told the committee:

*The bill is uncosted. It provides for the cost to be funded mainly by the racing industry control bodies. There are no limits or oversight of the costs that can be incurred and passed on by the commission.<sup>24</sup>*

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<sup>23</sup> Racing Integrity Bill 2015, Explanatory Notes p.3.

<sup>24</sup> McCauley, I., 2016, *Public hearing transcript*, p.9.



Mr Wayne Dossetto, Secretary of the Breeders Owners Trainers & Reinspersons Association (Qld) told the committee:

*...we have grave concerns around the process and the delivery of the proposed system and its cost. We respectfully request that the voices here today are heard and a review be undertaken to ensure an appropriate integrity management structure is in place with the associated legislation that does not overburden the racing industry and takes a collaborative and educative approach to its role.<sup>25</sup>*

And:

*It is probably the new structure that is proposed and its costs and the unknown costs associated with the structure we are possibly moving to that are of grave concern. There have been reports that it could double from where we are now—from somewhere around \$13 million to up to \$20 million. As the previous speakers have said, the ability for the industry to be able to recoup costs through turnover and the like, which is where most of our income comes from, is extremely dangerous. Some of the problems we have had with the greyhound industry could have come about by trying to get more turnover.<sup>26</sup>*

The Member for Currumbin who participated in the committee's hearing stated:

*I think it really is important that the costs are revealed. The government cannot on one hand say that there is a massive deficit and that it has been badly handled, and on the other hand not provide costs for an integrity commission.<sup>27</sup>*

On the impact of increased costs for the industry, the Brisbane Turf Club told the committee:

*As a matter of quantum, what I can tell you is that for every \$1.5 million in cost increases in this new bill—some people have said \$5 million and some people have said \$15 million; we do not have any visibility over the cost—thoroughbreds need to increase its wagering turnover by one per cent. If this cost is \$5 million, we will need to grow our industry at approximately three per cent.<sup>28</sup>*

The Member for Mount Isa told the committee of his particular concerns that increased costs may be prohibitive for country racing:

*Compliance can mean costs and more burden that they can ill afford. What might be a very legitimate and practical solution in Brisbane racing may be very impractical and probably prohibitive in many country areas...<sup>29</sup>*

The committee also queried where the funding for the establishment of the QRIC will come from as this is not outlined in the explanatory notes.

### **Advice from the department**

At the public briefing following the public hearing on 17 February 2016, the department clarified that integrity costs for the racing industry are already borne largely by the industry, and that the costs of the new system are operational matters not prescribed by the Bill:

*Certainly, as I mentioned, the work of the control body, being Racing Queensland, is by far and away the bulk of the integrity activity in the sector. The Racing Act—and when I say the Racing Act I mean the current Racing Act—provides for the control body to fund the part-time integrity commissioner and the costs associated with the work*

<sup>25</sup> Dossetto, W., *Public hearing transcript*, p.34.

<sup>26</sup> Dossetto, W., 2016, *Public hearing transcript*.34.

<sup>27</sup> Stuckey, J., 2016, *Public hearing transcript* p.39.

<sup>28</sup> Whimpey, D., 2016, *Public hearing transcript*.p.23.

<sup>29</sup> Katter, R., 2016, *Public hearing transcript* p.37.

*undertaken by the part-time integrity commissioner. There is wording in the existing Racing Act that very much mirrors the proposed legislation—it says that the principal costs of the racing integrity commissioner will be met by the industry.*

*The size of the overall QRIC and in terms of its overall costs are fundamentally not dictated by this legislation; they are operational decisions of the executive government. As such any questions that the committee members may have around the size and quantum of the QRIC are best directed to the minister.<sup>30</sup>*

In relation to the costs of the Queensland Racing Integrity Commission, the department also explained that a draft budget has not been finalised but existing resources that are part of the Office of Racing and the Racing Queensland will form the core of the new QRIC:<sup>31</sup>

*The budget for QRIC will be comprised principally of existing integrity-related resources from the Office of Racing, Department of National Parks, Sport and Racing and from Racing Queensland.*

*For the period from QRIC's commencement to the end of the financial year, additional funding required to deliver on the Queensland Greyhound Racing Industry Commission of Inquiry will be covered by the Queensland Government. These are not expected to be significant and not of the quantum reported in the media.*

*For the 2016/17 financial year, QRIC's budget and RQ's contribution to that budget will be established through the normal government budget processes.<sup>32</sup>*

#### **Committee comment**

Based on the submissions to the committee, the costs for government to implement the Bill are a key issue for the racing industry. The information provided in the explanatory notes to the Bill on costs to government to meet the requirements in section 23 of the *Legislative Standards Act 1992* do not allay the concerns of the industry. In the absence of clear information about the assessment of implementation costs for government, it is difficult to gauge whether the anticipated benefits of the Bill are worthwhile.

#### **Recommendation 2**

The committee recommends that the Minister provides the House with an assessment of the likely costs for government of implementing the Racing Integrity Bill 2015, including staffing and program costs.

**Minister responsible: Minister for Racing**

#### **Should the Bill be passed?**

Standing Order 132(1) requires the committee to determine whether or not to recommend the Bill be passed. After examination of the Bill and its policy objectives, and consideration of the information provided by the department, the committee could not agree whether the Bill should be passed.

#### **Recommendation 3**

The committee could not agree whether the Bill should be passed.

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<sup>30</sup> Oestreich, W., 2016, *Public hearing transcript*, 24 February, p.38.

<sup>31</sup> Oestreich, W., 2015, *Department briefing transcript*, 11 December, p.5.

<sup>32</sup> DNPSR, 2015, *Correspondence*, 18 December.

## 2. Examination of the Racing Integrity Bill 2015

### Structure of the Bill

The Racing Integrity Bill 2015 has 390 clauses and two schedules:

- Clauses 1 to 306 deal with the establishment of the Racing Integrity Act and transitional provisions
- Clauses 307 to 311 amend the *Animal Care and Protection Act 2001*.
- Clauses 312 to 389 amend the *Racing Act 2002*.
- Clause 390 deals with consequential and minor amendments to Acts listed in Schedule 2
- Schedule 1 inserts the words and terms for the dictionary, and
- Schedule 2 lists renumbered cross references to provisions of the Act, to align the listed legislation with amendments made through the Bill.

The committee brings the following provisions in the Bill and issues and to the attention of the House.

### The Queensland Racing Integrity Commission

**Clauses 7 to 9** establish the Queensland Racing Integrity Commission (QRIC), consisting of the commissioner, deputy commissioners and staff of the commission. The commission (QRIC) represents the State, and is a unit of public administration under the *Crime and Corruption Act 2001*, and a statutory body as governed by the *Statutory Bodies Financial Arrangements Act 1982* and the *Financial Accountability Act 2009*.<sup>33</sup>

**Clauses 10 to 15** of the Bill states the functions of the QRIC which are to be different to the responsibilities of control bodies currently under the *Racing Act 2002*.<sup>34</sup>

The committee sought clarification from DNPSR as to how the transition will occur from one structure to QRIC.

### Advice from the department

The department advised that the new QRIC will be made up of staff drawn principally from Racing Queensland:

*There will be the integrity staff that are currently within Racing Queensland - so the stewards and all of those in charge of race day operations as well as investigating offences under the rules of racing. They will be taken from Racing Queensland, as well as a number of staff from the existing Office of Racing. Staff from the Racing Science Centre, which is a component of the Office of Racing - they are the Queensland government laboratory that is responsible for the testing of samples following races - as well as some policy staff from the Office of Racing will also transition to form the new Queensland Racing Integrity Commission.*<sup>35</sup>

### Functions of the Queensland Racing Integrity Commission

Clause 10, the Bill specifies the commission's functions which are different to the responsibilities of control bodies. At section 10(1)(l) , the commission's functions include:

*(l) to promote compliance and integrity by educating, providing information for, and working with, participants;*

<sup>33</sup> Racing Integrity Bill 2015, Explanatory Notes p.8.

<sup>34</sup> Racing Integrity Bill 2015, Explanatory Notes pp.8-9.

<sup>35</sup> Oestreich, W., 2015, *Department briefing transcript*, 11 December, p.2.

The committee considered whether this function of the commission should be specifically broadened to include the promotion of animal welfare and the prevention of cruelty, and to include providing relevant training.

#### **Advice from the department**

In written advice to the committee, the Department of National Parks Sport and Racing told the committee:

*The department is not aware of any impediments to widening the scope of the functions under 10(1)(l) to include the education of participants on animal welfare and the prevention of cruelty.*

*The department also notes the function provided for under s.10(1)(l) is not restrictive in how that function is performed, and could be performed by conducting training or education programs along with other activities.<sup>36</sup>*

#### **Recommendation 4**

The committee recommends that clause 10(1)(l) of the Bill be amended to broaden the Commission's functions to include the promotion of animal welfare and the prevention of animal cruelty, and that the function must include the provision of training to racing industry participants in these areas.

**Minister responsible: Minister for Racing**

#### **Ministerial directions to the Queensland Racing Integrity Commission**

**Clause 13** of the Bill allows the Minister to provide written directions to the Queensland Racing Integrity Commission, with which the commission must comply.<sup>37</sup> The committee queried whether there will be a requirement for those written directions to be tabled in Parliament or made publicly available by other means such as publication in the *Government Gazette*. The department advised that it is not proposed that ministerial directions will be tabled.<sup>38</sup>

At the public briefing, the department advised:

*...the current way that ministerial directions are dealt with is that it is to be included in the annual report of both the commission and the control bodies - well, in this particular instance, it is the Racing Queensland Board - and it is under their requirements to have an annual report for the Financial Accountability Act 2009. So those ministerial directions are not tabled as such, but they are included in the annual report for the financial year, which I believe is tabled.<sup>39</sup>*

Clause 13(2) specifies matters about which the Minister may not give the commission a direction. They include a decision of the commission that is an original decision,<sup>40</sup> a decision mentioned in clause 262(2), and a matter for which the commission is conducting an audit or investigation.

#### **Comments raised by submitters**

Racing Queensland submitted that, in addition to the matters already set out in proposed section 13(2), the Minister should not be able to give the Commission a direction in relation to any decision made by the Commission under the rules of racing.

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<sup>36</sup> DNPSR, 2016, *Correspondence*, 10 March.

<sup>37</sup> Racing Integrity Bill 2015, Explanatory Notes p.9.

<sup>38</sup> Coccetti, M., 2015, *Departmental briefing transcript*, 11 December, p.5.

<sup>39</sup> Coccetti, M., 2015, *Departmental briefing transcript*, 11 December, p.5.

<sup>40</sup> Clause 262 provides the definition for what is an original decision.

**Committee comment**

The committee agrees with Racing Queensland and recommends that clause 13(2) be amended to make it clear that the Minister is not able to give the Commission a direction in relation to a decision made by the Commission under the rules of racing.

**Recommendation 5**

The committee recommends that clause 13(2) of the Bill be amended to provide that the Minister is not able to give the Commission a direction in relation to a decision made by the Commission under the rules of racing.

***Minister responsible: Minister for Racing***

**Persons eligible to be commissioner or deputy commissioner**

**Clause 18** provides the eligibility requirements for appointment as commissioner or deputy commissioner. This clause specifies that the positions are only open to a person:

- who is an 'eligible individual' under the Racing Act
- is not, at the time of appointment or was not during the previous two years, a member or employee of a control body or an executive officer of a corporation (defined in Schedule 1).

Racing Queensland noted in their submission the effects of this clause on staff eligibility for the positions. Current Racing Queensland staff and former staff within two years of having held the position will be ineligible for appointment to the positions. There is no such prohibition on staff of the Office of Racing or the Racing Science Centre. The explanatory notes are silent on the reasons for restricting the eligibility for current and former Racing Queensland staff.

Racing Queensland have noted that this discrepancy may impose unnecessary and/or unworkable restrictions in the context of the transition of staff.

**Committee comment**

The committee notes the comments by Racing Queensland and invites the Minister to clarify the grounds for making Racing Queensland staff ineligible to be appointed to the commissioner and deputy commissioner positions.

**Point for clarification**

The committee invites the Minister to clarify for the information of the House the intent of the different eligibility criteria for Racing Queensland and Office of Racing and Racing Science Centre staff for appointment to commissioner and deputy commissioner positions.

***Minister responsible: Minister for Racing***

**Clause 30 – Assessment if 2 or more approval applications**

**Clause 30** specifies the process of assessment when two or more approval applications are provided for approval as the control body for a code of racing, and where a meeting held with the applicants to attempt to reach agreement has not been successful. This process requires the Queensland Racing Integrity Commission to provide a report to the Minister regarding the approval applications, stating the matters as provided for in clause 29 (the approval application assessment provision), an assessment of the merits (compared against other approval applications) and a recommendation by the commission as to which applicant is the most suitable and qualified. This must take into account

the assessment process for applicants as described in clause 31. The decision provisions resulting from this assessment process would be retained in the *Racing Act 2002*.<sup>41</sup>

**Clause 31** details the assessment process for determining the suitability of an applicant, which contributes to whether an approval application should be approved. This provision lists the considerations the Queensland Racing Integrity Commission must have regard to and investigate if necessary. These decision provisions are also retained in the *Racing Act 2002*.<sup>42</sup>

### Comments by submitters

A number of submitters alluded to the possibility that clauses 30 and 31, together with other provisions in the Bill, will allow all code control boards to be replaced with corporations and further limit the influence of racing industry participants over the industry's operations.

As noted by Eidsvold Race Club Inc in their submission:

*...if this is the case it will potentially remove industry participants from influencing the decision making for their particular code of racing. There is no reference to payments, if any, that are to be enjoyed by an appointed corporation.*

*The potential exclusion of participants from code control boards together with the above exclusions from the proposed Queensland Racing Board will totally isolate racing participants from any influence, let alone control, of the very industry that is sustained by their endeavours. It means that the control boards will be devoid of any current industry expertise or experience. This is unacceptable.*<sup>43</sup>

### Departmental advice

In its advice to the committee, the department clarified that the Bill does not propose to appoint corporations as control bodies for thoroughbred, greyhound or harness racing:

*The existing Racing Act and amendments under this Bill establish RQ as the control body for the thoroughbred, greyhound and harness codes of racing. Sections 10 to 32L of the Racing Act relate to approved control bodies. These approved control bodies are approved by the Minister for Racing for future control bodies for new codes of racing. These sections require those new bodies to be corporations.*

*Section 10 to 32L have no impact on the Racing Queensland Board or the operations of the thoroughbred, greyhound and harness codes of racing, because those codes are specifically listed in the Bill as being controlled by RQ. The legal structure of RQ as a statutory body is also specified in the Bill. As a result, there is nothing in this Bill that requires, or compels a move to a corporation structure.*<sup>44</sup>

### Committee comment

The committee notes and is satisfied by the department's advice.

### Clause 56 Funding

**Clause 56:** provides that the cost of the performance of the Queensland Racing Integrity Commission's functions is to be funded mainly by the control bodies. It also requires that the chief executive must decide the amount a control body must pay towards these costs and invoice the control body for the amount, and that the amount of the invoice is payable 28 days after the invoice is received.

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<sup>41</sup> Racing Integrity Bill 2015, Explanatory Notes p.11.

<sup>42</sup> Racing Integrity Bill 2015, Explanatory Notes p.11.

<sup>43</sup> Eidsvold Race Club Inc., 2015, Submission No. 121, p.2.

<sup>44</sup> DNPSR, 2016, *Correspondence* 16 February.

### Issues raised by submitters

Racing industry submissions opposed the requirement that the performance of the commission's functions is to be mainly funded by the control bodies – effectively by industry participants.

Racing Queensland submitted that:

*... as currently drafted, clause 56 of the Bill has the potential to:*

*(a) result in the funding of QRIC in a manner that is contrary to the stated policy intention of the Government; and*

*(b) result in a lack of transparency in the funding process and expose the control body and the racing industry to unnecessary financial uncertainty.<sup>45</sup>*

Racing Queensland raised the following matters for consideration by the committee:

*(a) There is no mechanism, process or set of objective criteria through which the Funding is to be determined. Rather, as currently drafted the chief executive is provided with a bare discretion as to the amount and timing of any funding contributions that may be required from the RQB.*

*(b) The provision as currently drafted does not provide for any consultation between the RQB and QRIC or the Department in respect of the proposed funding.*

*Racing Queensland notes that, in respect of the Integrity and Stewarding functions of QRIC, it will not be possible for QRIC to determine its resource requirements in any defined period without consulting with RQB in relation to the proposed racing calendar. This is because the timing, location and scheduling of race meetings will directly impact upon the resources that QRIC will be required to provide from an integrity and stewarding perspective.*

*(c) There could be significant budgeting and/or cash flow implications for the RQB and the industry if it was to be invoiced for significant amounts of funding without sufficient notice.<sup>46</sup>*

The Queensland Racing Unity Group submitted that every industry in the State is supervised for compliance with the Acts and regulations under which they operate:

*The various pieces of legislation have no capacity to pass on any costs of compliance to industry. QRUG considers that the racing industry should not be treated differently to every other industry in the state and submits that this section be deleted.<sup>47</sup>*

The Kilcoy Race Club told the committee:

*Every industry in this state is supervised for compliance with the Acts and Regulations under which they operate.*

*The various pieces of legislation have no capacity to pass on any costs of compliance to industry. Kilcoy Race Club considers that the racing industry should not be treated differently to every other industry in the state and submits that this section be deleted.<sup>48</sup>*

The Member for Mount Isa told the committee:

*I also believe that it is unacceptable for the racing industry to suffer as a result of the touted \$28 million cost of the Integrity Commission. This is a commission that nobody*

<sup>45</sup> Racing Queensland, 2015, Submission No. 139, p.5.

<sup>46</sup> Racing Queensland, 2015, p.6.

<sup>47</sup> Queensland Racing Unity Group, 2015, Submission No.1, p.2.

<sup>48</sup> Kilcoy Race Club Inc, 2015, Submission No. 29, p.2.

*in the industry believes is necessary, yet industry participants will be forced to pay the price for it with cuts to prize money and race meetings to compensate for it. In any other industry, there is supervision for compliance with the Acts and Regulations under which they operate - the racing industry should not be treated differently and I believe the costs for compliance should not be passed on to the industry.<sup>49</sup>*

Eureka Cambooya Thoroughbreds submitted:

*The commission is a government initiative, one that was reactive to the greyhound live baiting scandal, and although intentions are perhaps sound, the reality is the high cost associated with this commission and Queensland Racing's attempts to cover these costs will cripple our industry. Although the greyhound scandal affected other states too, Queensland is the only state that has reacted in this way and in doing so has exposed the industry to a level of downturn that will leave it unsustainable.<sup>50</sup>*

The Brisbane Racing Club told the committee:

*The Bill does not provide enough clarity to determine the cost of establishing the QRIC. For instance, the onerous reporting requirements to the Minister add extra cost to the operation of the QRIC. This cost is of importance to the industry, which is already under serious funding pressure due to a series of factors in recent times.<sup>51</sup>*

Animal Liberation Queensland (ALQ) questioned how the funding arrangement will impact the independence of the Commission:

*ALQ has grave concerns about the independence of a body under this funding arrangement. A central argument for reform of the industry is to create an independent statutory body in the form of the proposed Commission, which has core responsibility for oversight and regulating the Industry.<sup>52</sup>*

ALQ recommended the control bodies pay general dues to the Government at an amount set by an independent party, such as Queensland Treasury, and that the Commission is funded from that funding. The ALQ also warned that the Commission should not be in a position where the control bodies can leverage control by using their payment or non-payment of fees as a bargaining tool.<sup>53</sup>

Mr Dale Anderson told the committee that the clause should be amended to reflect the operational plans that are approved by the Minister otherwise the cost of integrity could spiral out of control and be to the detriment of all participants.<sup>54</sup>

The AQHRD requested that it be granted a reduction in any fees it would be charged:

*We are still in the beginning stages of developing the quarter horse racing industry and any large fees would negatively affect our efforts.<sup>55</sup>*

The Queensland Racehorse Owners' Association told the committee that, in principle, it does not oppose Recommendation 1 (of the COI report) save that:-

*1. Every attention be given to minimise the financial impact of such recommendation, upon funding generated by the control body by its commercial activities.*

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<sup>49</sup> Katter, R. 2015, Submission No. 76, p.2.

<sup>50</sup> Eureka Cambooya Thoroughbreds Pty Ltd, 2015, Submission No. 101, p.2.

<sup>51</sup> Brisbane Racing Club, 2015, Submission No. 24, p.12.

<sup>52</sup> Animal Liberation Queensland, 2015, Submission No. 136, p.3.

<sup>53</sup> Animal Liberation Queensland, 2015, pp.2-3.

<sup>54</sup> Anderson, D., 2015, Submission No. 135, p.2.

<sup>55</sup> AQHRD, 2015, Submission No. 111, p.4.



2. *The Queensland Government permanently financially support and bear the cost of administration of the new authority.*

3. *If and when appropriate, further clarification is required, particularly with respect to machinery and administrative issues, QROA and other stakeholders be given the opportunity to make further submissions.*<sup>56</sup>

Further in relation to funding, Racing Queensland considers that the legislation should include a transparent process for the determination of the amount of funding and set out relevant criteria which are to be taken into account when a determination is made about the amount of funding that the control bodies will be required to contribute to the cost of the QRIC's functions.<sup>57</sup>

#### **Advice from the department**

At the public briefing on 11 December 2015, the department explained:

*In terms of the funding of the QRIC, the QRIC will principally be funded by the control bodies. The exact process for how that happens is still being discussed with particularly Queensland Treasury, and that will be dealt with as part of the budget process for 2016-17. There is, however, in the legislation an ability for the chief executive of the department administering the Integrity Act to require a control body to contribute to the reasonable costs of the Racing Integrity Commission. It is envisaged that those provisions would be used in situations where an emergent situation has occurred that has not been considered as part of the annual budget for the QRIC. It is not envisaged that that particular methodology would be used to fund the QRIC on an ongoing basis.*

And:

*...So certainly the structures are in place in this legislation to allow QRIC to be funded and to be funded appropriately to do its job. The matter of the actual quantum of funding that goes to QRIC is outside the scope of what I can discuss of course. They are matters for CBRC and for government more broadly.*

In subsequent written briefs, the department further advised the committee:

*The Bill only states that the control bodies will be responsible for the majority of funding provided to the Commission (i.e. more than half) and allows for an invoice to be issued to the control bodies, by the Chief Executive responsible for the Act, to recover costs. This is reflective of the current situation where the control body funds the majority of integrity activities. The processes and consultation associated with the issuing of that invoice are operational matters and are not specified in the Bill.*

*Government regulation that impacts on specific industries such as mining, or venues selling alcohol etc. is commonly funded by that industry through a range of full or partial cost recovery mechanisms – particularly via annual license fees.*

*The suggestion that funding of the Integrity Commission is a wholly new cost to the industry imposed by the Bill is not accurate. The industry already funds significant activities associated with race day stewarding, licensing, testing, and enforcement (including disciplinary matters). All these existing functions will be transferred to the new Integrity Commission.*

*To the extent that the Commission is not funded by the control bodies, funding would be provided by government, most likely either by the government (effectively from the general public) or from industry participants in the form of annual license fees.*

<sup>56</sup> Queensland Racehorse Owners' Association, 2015, Submission No. 110, p.1.

<sup>57</sup> Racing Queensland, 2015, Submission No. 139, p.6.

*It should be noted that the Bill does not contain clauses that direct the size or cost of the Commission. These are operational decisions of government and not relevant to the Bill.*

**Committee comment**

The committee notes the concerns expressed by racing industry stakeholders about the likely costs of the proposed Queensland Racing Integrity Commission, given that the majority of those costs will be borne by the racing control bodies. The committee also notes concerns raised about the absence of information to explain how the funding that control bodies must provide would be determined, and whether there will be sufficient controls in place to ensure the commission's cost are kept to a minimum.

**Point for clarification**

The committee invites the Minister to clarify how the amount of funding that racing control bodies provide for the Queensland Racing Integrity Commission will be determined, and the controls that will be established to ensure the commission's costs are kept to a minimum.

**Minister responsible: Minister for Racing**

**The making of standards for a code of racing**

**Clause 59** provides that the Queensland Racing Integrity Commission may make standards for a code of racing. A standard may apply to an animal, club participant or venue, and a standard is a statutory instrument. A regulation can also prescribe that a standard must be made about a particular matter, and any provisions to be included in that standard.

**Clause 60** specifies that a standard must be provided in the necessary form, and state the listed information. These standards are required to be approved by the Queensland Racing Integrity Commission, and cannot come into effect retrospectively. Any amendments to existing standards need to be progressed as a new standard.

**Clause 61** provides that the Queensland Racing Integrity Commission must make each standard publicly available and do the other things stated in the clause.

**Comments from submitters**

A number of submitters raised concerns about the provisions in the Bill dealing with standards. Essentially, submitters raised concerns that the Bill would provide for inappropriate common standards to be developed and enforced across all clubs and tracks, as noted in the QRUG submission:

*These clauses do not recognise that there are a range of circumstances under which racing is successfully conducted. For example, harness racing is not only conducted on city tracks, it is also conducted on country tracks and at a number of agricultural shows. Thoroughbred racing is not only conducted at metropolitan tracks by TAB race clubs but also on a range of country tracks as well as at one day a year non TAB meetings in remote centres around the state. Standards established at Eagle Farm may be inappropriate for regional centres and even more so for country centres.*

*The concept of "one standard fits all" can only be applied if the intention is to eliminate a significant section of country racing.<sup>58</sup>*

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<sup>58</sup> QRUG, 2015, Submission No.1, p.3.

### Advice from the department

The department advised the committee:

*The Bill provides for the Commission to set standards relating to animal welfare and integrity.*

*In the case of welfare and race track infrastructure, the standards are designed to operate in a way similar to a building standard. They would not make all race tracks use the same equipment, or outlay the same expense, but rather would address certain welfare risks associated with racing, and ensure an acceptable level of safety is provided for animals racing throughout Queensland.*

*These are not designed to specifically exclude individual clubs, and will not require that all clubs will be the same.*

*Standards under the law may be used to lift minimum standards in relation to venue infrastructure or race day practices to address genuine welfare issues.*

*However, the Commission is accountable directly to the Minister, and will need to work cooperatively with the control bodies, individual clubs, vets and other participants to develop standards and licences that are both workable and represent best practice.<sup>59</sup>*

#### Committee comment

The committee notes the department's advice that the commission will work with stakeholders to develop standards for animal welfare and integrity that are workable and represent best practice, and will not require all race tracks to use the same equipment or outlay the same expenses.

The committee also notes that the Bill does not prevent the commission from adopting different standards for metropolitan and country race clubs and tracks.

### Standards about licensing schemes

**Clauses 64 to 69** deal with standards for licensing schemes.

**Clause 64** states the purposes of a licensing scheme for a code of racing. These focus on upholding the integrity of activities, safety of persons and welfare of animals.

**Clause 65** requires the Queensland Racing Integrity Commission, in developing standards for licensing schemes, to consider the privileges and duties which will attach to a licence.

**Clause 66** provides the matters which must be provided for in a standard for a licensing scheme.

**Clause 67** provides discretion to the Queensland Racing Integrity Commission when creating a standard for a licensing scheme to determine whether the listed matters are applicable for that standard.

**Clause 68** details the licence application process for obtaining a licence for an animal, club, participant or venue. It specifies requirements that must be incorporated into the standard for a licensing scheme including how a licence must be applied for. It also allows the application for a national police certificate to be a part of the process and defines national police certificate for the purpose of this requirement. Clause 68(3)(b) specifies that prior convictions by executive officers of the entity making the application that would prevent the application being granted. They include offences against the Racing Act, or the repealed *Racing and Betting Act 1980*, an indictable offence or a summary offence that involves dishonesty, fraud, stealing or unlawful betting, under any other Act or repealed Act and any offence against a law of another State that is prescribed by regulation as a law about racing or betting.

<sup>59</sup> DNPSR, 2016, *Correspondence*, 16 February.

**Clause 69** states that a licence may not be transferred, and that this limitation should be incorporated into the standard for the licensing scheme.

**Comments by submitters**

Animal Liberation Queensland propose in their submission that clause 68(3)(b) be amended by the insertion of additional words to require that an application cannot be granted if an animal cruelty offence is found on the national police check for an executive officer of the applicant. This would effectively prevent entities from gaining a licence if an executive officer of the entity has a past animal cruelty conviction. The Bill as it is written provides at 68(3)(c) that a standard for a licensing scheme must state the extent to which the commission must have regard to another conviction stated on the national police certificate other than a conviction mentioned in paragraph (b).

**Committee comment**

The committee supports the proposal from Animal Liberation Queensland to amend clause 68(3)(b) to stipulate that a licence application cannot be granted for an entity whose executive officer has a prior conviction for an animal cruelty offence in Queensland or another state.

**Recommendation 6**

The committee recommends that Clause 68 (3)(b) be amended to stipulate that a licence application cannot be granted for an entity whose executive officer has a prior conviction for an animal cruelty offence in Queensland or another state.

**Minister responsible: Minister for Racing**

**Reviews and appeals of original decisions**

**Chapter 6 Part 2 Division 4** of the Bill provide for reviews and appeals of decisions. The Bill proposes at clause 480 to abolish the Racing Disciplinary Board and implement a new process consisting of an internal review of an original decision followed by a right of external review by the Queensland Civil and Administrative Tribunal (QCAT).

**Clause 262** specifies what is an original decision to be a decision which includes refusal to grant or renew a licence, taking disciplinary action or an exclusion action against a person, imposing a monetary penalty or other penalty, seizure under the proposed Racing Integrity Act or a warrant of an animal or other thing, forfeiture of that animal or thing, giving of an animal welfare direction or another decision prescribed by regulation.

**Clause 265** provides that an application for internal review must be lodged within 14 days after the information notice of the decision is given or the person otherwise becomes aware of the decision. Clause 265 also provides that the commission may at any time extend the time for making an internal review application.

**Clause 267** provides that the commission must, on application, review the original decision within 20 days. Clause 267 also stipulates that the application for internal review may be dealt with only by a person who did not make the original decision and who holds a more senior office than the person who made the original decision. The Bill does not stipulate whether fees will be charged for applications for internal review. The committee notes that applications to appeal to the Racing Disciplinary Board currently attract a non-refundable fee of \$267.70.

According to the department:

*The introduction of an internal review process will bring the racing industry's rights of appeal into line with the broader arrangements across government.*

*Matters which would previously proceed to the Racing Disciplinary Board will now be internally reviewed by either the Commission, or the control body, depending on the*

*type of decision. The avenue for external review via the Queensland Civil and Administrative Tribunal (QCAT) or the court is still available, after the initial internal review is finalised.*

*This review process is expected to lead to savings in this area by resolving issues internally before an expensive tribunal or court process is needed. Internal review processes also typically assist agencies to improve their decision making standards over time.<sup>60</sup>*

### **Issues raised by submitters**

Racing Queensland considers that the proposed review and appeals process is not appropriate for the racing industry, particularly having regard to the expectations of the industry, the timeframes proposed and the potential for this process to be used to undermine the integrity aspects of the industry.<sup>61</sup> In particular the Racing Queensland submission notes:

- the scope of decisions amenable to internal review will be far broader than provided under the current system
- there may be some difficulties with the application of the proposed internal review process, particularly as regards decisions made by stewards and steward panels
- given the likely volume of appeals, the demands on senior QRIC staff with the requisite expertise and knowledge of precedents may divert senior staff from other duties, and
- the current drafting of clause 267(3) appears to enable a person junior to the Commissioner to deal with an internal review if the Commissioner has previously personally made the original decision.<sup>62</sup>

Racing Queensland proposed that the scope of decisions that may be subject to internal review should be limited, and that a fee should be payable to QRIC for any internal review applications.

The committee questioned the department about its consultation with the Department of Justice in relation to the proposed appeal and review process. The department advised:

*We did consult with the Department of Justice and Attorney-General on QCAT and a range of other measures in terms of the way that the legislation operates more broadly. The department had indicated that they were supportive of the move to abolish the racing disciplinary board and have QCAT as the key appeal mechanism. I think it is important to understand that a way of conceiving of this is that at the moment there are no internal review mechanisms available to applicants or people who are subject to decisions of the control body. There is no mechanism for them to have those decisions reviewed internally before appeal. Internal review mechanisms are standard across government. It is common practice; it is standard practice in fact for all modern compliance agencies.*

*The way that the Racing Act works is that, instead of an internal review process, the avenue of appeal is to the Racing Disciplinary Board before going to QCAT. The proposed legislation effectively removes the Racing Disciplinary Board and replaces it with an internal review mechanism where the application or the decision is reviewed by another party within the organisation. If they are still unsatisfied with that decision, then they have other avenues of appeal—the principal one being QCAT. At the moment, if people are unsatisfied with the decision of the Racing Disciplinary Board, QCAT is the next port of call. So, effectively, QCAT's role in the hierarchy of appeals is remaining*

<sup>60</sup> DNRSP, 2016, *Correspondence*, 16 February.

<sup>61</sup> Racing Queensland, 2015, Submission No.139, pp.6-7.

<sup>62</sup> Racing Queensland, 2015, pp.6-7.

*quite similar. The key difference is around replacing the Racing Disciplinary Board with an internal review mechanism.*<sup>63</sup>

Further in relation to Clause 267, Racing Queensland proposed an amendment to provide that if the original decision is made by the commissioner there will be no internal review and the matter will proceed directly to QCAT.

**Committee comment**

The committee notes the concerns raised by Racing Queensland about the proposed internal review system and the wide scope for matters to be raised with the Commission for internal review.

**Point for clarification**

The committee invites the Minister to assure the House that it will be feasible for QRIC to deal with the anticipated volume of internal review applications within the 14 day timeframe specified in the Bill for considering these review applications, and given the broad scope for internal review that is proposed in the Bill.

The committee further invites the Minister to clarify whether an application fee will be charged that is consistent with the fees currently charged for appeals to the Racing Disciplinary Board to discourage vexatious applications for internal review and to reflect the commission's costs of hearing review applications.

**Minister responsible: Minister for Racing**

**Amendment of Animal Care and Protection Act 2001**

Amendments to the *Animal Care and Protection Act 2001* are designed to provide wider authorised officer powers to investigate and respond to animal welfare matters and breaches of the Act that relate to the racing industry, and to assist with the sharing of information by officers across agencies involved in the investigation and enforcement of animal welfare matters.

**Clause 308** replaces existing section 7(1) (relationship with certain other Acts) to include the proposed Racing Integrity Act in the list of Acts whose application is not affected by the Animal Care and Protection Act. The Bill does not otherwise amend section 7 of the Act.

Section 7 of the Act states:

**7 Relationship with certain other Acts**

(1) This Act does not affect the application of—

(a) the *Fisheries Act 1994*; or

(b) the *Racing Act 2002*.

(2) A person who lawfully does an act, or makes an omission, authorised under an Act mentioned in subsection (1) that would, apart from this subsection, constitute an offence under this Act, is taken not to commit the offence by reason only of doing the act or making the omission.

(3) However, subsection (2) does not apply if the act is the use of an animal for a scientific purpose.

**Clause 309** expands the functions of an inspector appointed under the ACPA to include investigation and enforcement of compliance with an animal welfare direction given by an authorised officer under the proposed Racing Integrity Act, clause 216.

**Clause 310** inserts new sections 215A and 215B to expand the protection from liability to include the giving and sharing of information in certain situations. The protection provided under new section 215A is for a person who gives information to an authorised officer, honestly and in good faith, to help with an investigation of an animal welfare offence.

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<sup>63</sup> Oestreich, W., 2015, Departmental briefing transcript, 17 February, pp.7-8.

The intent of this provision is to support people to come forward with information which may help to identify and or prove an animal welfare offence. This clause mirrors the provision providing protection for giving information under the proposed Racing Integrity Act, in clause 282 of this Bill.

The protection afforded in new section 215B would allow the sharing of information by an authorised officer with a police officer or an authorised officer of the Queensland Racing Integrity Commission. This is intended to improve compliance and enforcement.

New section 215C states that new sections 215A and 215B do not limit powers or obligations under another Act or law in relation to providing information about an animal or animal welfare offence. This provision explicitly states that the information sharing as provided for in this amendment is intended to apply despite other law that would otherwise prohibit or restrict the giving of the information (eg the *Police Service Administration Act 1990*, section 10.1). Or in general, that if an inconsistency arises as to the providing of information relating to animals or animal welfare offences as covered by the Animal Care and Protection Act, the Animal Care and Protection Act is to prevail to the extent of the inconsistency (providing the information is gathered under an authorised officer's powers given by the proposed amendment).

**Clause 311** amends the dictionary to modify the definition of animal welfare offence. This will now reference relevant section of the proposed Racing Integrity Act.

#### **Comments by submitters**

The Australian Veterinary Association (AVA) submitted that the proposed changes to the ACPA go some way to improve linkages with the Racing Integrity Act. The AVA argue, however, that it is still unnecessarily complex with offences across three acts and no transparent pathway for an offence to be investigated.

The AVA recommended reviewing these acts to ensure animal welfare offences are appropriately investigated and enforced, and proposed that officers of the Racing Integrity Commission could be appointed as inspectors under the ACPA to ensure consistent processes and penalties.<sup>64</sup>

Mr Anthony Thomas, a veterinarian with experience in the greyhound industry, questioned why the Bill at Clause 308 does not amend section 7 of the Animal Care and Protection Act to close the exemption of Acts done in connection with the Racing Act from being cruelty offences under the ACPA.

*Every racing animal must have the protection from cruelty and the benefit of welfare afforded by the Animal Care and Protection Act (ACPA). To implement such a policy the amendment to Clause 7 of the ACPA should be examined.*<sup>65</sup>

And in his supplementary submission:

*In my opinion, in the past, Clause 7 of the Animal Care and Protection Act has been used to circumvent the effective application of this Act to racing animals. For example in 2010, Racing Queensland adopted a policy on animal welfare, which contained the following definition:*

*'Cruelty' has the same meaning as section 18 of the Animal care and Protection Act 2001 (Qld), however, activities that are permitted under the (Racing) Act and/or the Rules of racing will not be considered acts of animal cruelty.*

*This 'exemption' should be removed and Clause 7 of the Animal Care and Protection Act amended.*<sup>66</sup>

<sup>64</sup> Australian Veterinary Association, 2015, Submission no. 120, pp.2-3.

<sup>65</sup> Thomas, A., 2015, Submission No. 61, p.1.

<sup>66</sup> Thomas, A., 2016, Submission No.61 – Supplementary submission, p.1.

### Advice from the department

The department advised the committee:

*Animal welfare and protection in Queensland is legislated through the ACPA. The Bill provides powers to the Commission's authorised officers which are similar to those that exist in ACPA. This approach was taken to provide QRIC authorised officers with similar powers to regulate the care and protection of licensed animals in the racing industry rather than the care and protection of all animals in Queensland through appointing them as officers under both Acts.*

*The Commission's authorised officers will be empowered under the proposed Racing Integrity Act to collect and share information where they suspect that a person has committed an animal welfare offence. Inspectors and authorised officers under the ACPA would then be responsible for conducting any further investigations and taking appropriate disciplinary action in relation to the suspected ACPA offence.<sup>67</sup>*

At the briefing on 17 February 2016, the department advised:

*The welfare is a central element of the bill, and a key change in the bill is to standardise the powers of authorised officers under the Racing Act under those of inspectors under the Animal Care and Protection Act. At the moment licensed animals under the Racing Act are not covered by the Animal Care and Protection Act. The Animal Care and Protection Act exempts licensed animals from its coverage, and this is of course the legislation that the RSPCA administers. The changes proposed to the Act will standardise those powers in authorised officers, so what it effectively does is close the regulatory gap that currently exists. It will mean that a licensed animal will be given generally the same treatment as a horse which is owned by an ordinary landholder in terms of if the animal is being mistreated or if the animal is not being treated in a way that is consistent with animal welfare requirements.*

*It was necessary to maintain the separation in terms of not purely repeal the exemption of the Racing Act from the Animal Welfare Act because it allows certainly animal welfare issues to be dealt with in much greater specificity and to be more targeted than if they are dealt with under the broader animal welfare regime.<sup>68</sup>*

#### Committee comment

The committee notes the concerns raised by the Australian Veterinary Association and Mr Anthony Thomas about the amendments contained to the *Animal Care and Protection Act 2002* and the linkages with offence provisions in other legislation. The committee also notes the advice provided by the department in relation to the proposed amendments.

The committee recommends that, after the agreed provisions in the proposed Racing Integrity Act have been in operation for twelve months, the Minister considers the need for further amendments to the Animal Care and Protection Act to ensure the welfare of racing animals and other animals in connection with the racing industry is being properly addressed.

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<sup>67</sup> DNPSR, 2016, *Correspondence*, 16 February.

<sup>68</sup> Oestreich, 2016, Departmental briefing transcript, 17 February, p.40.



**Recommendation 7**

The committee recommends that, after the agreed provisions in the proposed Racing Integrity Act have been in operation for twelve months, the Minister considers the need for further amendments to the Animal Care and Protection Act to ensure the welfare of racing animals and other animals in connection with the racing industry is being properly addressed.

**Minister responsible: Minister for Racing**

**The Racing Queensland Board**

**Clauses 317 – 331** relate to the establishment and operations of the Racing Queensland Board which effectively continues the existence of the Queensland All Codes Racing Industry Board under the new name.

The Racing Act currently provides for the establishment of a five member All Codes Racing Board, trading as Racing Queensland. Its members are the chairperson of each of the three control boards, and two other members appointed by the Governor in Council.<sup>69</sup> The Act at subsection 9AJ provides that a person is eligible for appointment if they have skills and experience in one or more of the following -

- Business or financial management
- Law
- Leadership
- Marketing
- A board code of racing.

The Board's role is to provide strategic leadership of Racing Queensland and to provide oversight of the organisation as a whole, and the activities of the executives. The Board's role is not to provide day to day leadership of Racing Queensland, or to develop and deliver specific initiatives for the improvement of racing.

**Clause 319** proposes to replace subsections 9AI and 9AJ of the Racing Act to vary the number of members which will constitute the board, and their skills and experience. The new subsection 9AI(1) proposed in the Bill would increase the board to seven members appointed by the Governor in Council, and require that three are 'racing industry members' and the remaining four members are 'non-industry members'.

**Racing industry members**

The Bill proposes that the Governor in Council may only appoint a person as a racing industry member if the person has skills and experience in at least one of the board codes of racing (ie greyhound racing, thoroughbred racing or harness racing).

Subsection 9AJ(3) provides that for making a decision about a person's suitability to be appointed to the board, the Governor in Council must have regard to each of the following matters-

- a) the person's character or business reputation
- b) the person's current financial position and financial background
- c) the person's background.

<sup>69</sup> *Racing Act 2002* section 9AI.

### **Non-industry members**

New sub subsection 9AJ proposed in the Bill establishes criteria for the suitability of a person for appointment as a non-industry member which, in effect, excludes a person who had racing industry experience during the preceding two years. A non-industry member must also have skills and experience in one of more of the following areas in a way that will complement the skills and experience of the other non-industry members so that, as a group, the non-industry members have skills and experience in all the areas -

- Accounting
- Animal welfare
- Business
- Commercial and marketing development
- Law.

This criteria does not exclude a person with racing experience, but they must have not had an interest in, or trained, a greyhound or horse in the previous two years.

A member is to be appointed for a term of not more than three years (ss.9AI(2)), and a person appointed as a member may be reappointed (ss.9AI(3)).

### **Non-industry chairperson and deputy**

**Clause 321** amends subsection 9AL of the Racing Act to stipulate that the Governor in Council must appoint non-industry members of the board as chairperson and deputy chairperson.

The Commission of Inquiry recommended that the chair and deputy chair are independent members:

*Further, the Commission recommends that the chair and deputy chair of the All-Codes board should be one of the non-industry board members and that person should have demonstrated experience in leadership and chairing a Board.*

### **Issues raised by submitters**

The Australian Veterinary Association (AVA) support the proposed changes to the board and the requirement that a person with animal welfare expertise is one of the criteria for membership. However, the association believes that a registered veterinarian should be part of the composition of the Board for a broader overview of animal health and welfare to ensure the interests of racing animals are appropriately protected.<sup>70</sup>

The Queensland Greyhound Breeders, Owners & Trainers Association supported the proposed changes to the structure of the board, but argued that the board should be appointed by the racing industry:

*The QGBOTA is supportive of reform to the structure of the Queensland All Codes Racing Industry Board, but we believe these people should be appointed by the industry themselves. These people should be there to execute the needs of the separate industries, not dictate what they believe the industry needs.*

Other racing industry stakeholders opposed the proposed structure of the board. Typical of the concerns raised, the Thoroughbred Breeders Queensland Association submitted that:

*Any organisation, let alone one dealing with millions of dollars, needs a board of experienced leaders. To suggest that only three of the seven members should have racing experience is ludicrous, and could potentially lead to serious mismanagement issues. The racing industry is very unique, and unless you have experience in the industry, there is no way you can understand the costs and problems associated with*

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<sup>70</sup> Australian Veterinary Association, 2015, Submission no. 120, p.2.

*the industry, not could you develop sensible and effective plans to move the industry forward, strengthen and grow it.<sup>71</sup>*

The Queensland Racehorse Owners Association (QROA) acknowledged Mr MacSporran's recommendation and intention to ensure the new racing board acts independently and without conflict of interest, however, submitted that the same purpose can be achieved by the implementation and use of other criteria.

*It must be acknowledged that the three racing codes namely thoroughbred, harness and greyhound are simply and inherently different from each other and each provide its own separate uniqueness, history and practice.*

*Accordingly, QROA believe that each of the three codes should be controlled separately of each other. It may be that some mandatory requirements remain the same for all codes. There is no reason why one code should suffer from inappropriate conduct of another.*

*Provided appropriate attention and scrutiny is given to appointments and there be proper accountability there is no reason why the substantial composition of the racing board be those persons with knowledge and experience in the industry.*

QROA further suggested that the ratio of independent members to racing industry members be reversed.

The Member for Mount Isa strongly opposes the proposed board structure:

*...it is ludicrous to suggest that only three of the seven members need experience in the racing industry.*

*The racing industry is complex and unique, and as such, requires the leadership of those with intricate knowledge. It is most crucial for the board to have racing industry knowledge, as well as a strong business and marketing mind.*

Australian Quarter Horse Racing Development proposed that board consist of eight members, including one drawn from the quarter horse racing code.

The QRUG told the committee that appointing non-racing people to the board removes from the participants any effective influence on the business of racing.

Other reasons cited by submitters for opposing the proposed structure include:

- there potentially could be people running the industry with no first-hand knowledge of the industry (Vince Aspinall)
- the Board should be made up of selected racing participants duly elected by the racing communities (Conway Searle)
- a successful racing board requires persons with an intimate and long involvement in the industry (Basil Nolan), and
- concern whether the board will be impartial and support all codes equally (Kerry Meyers)

### **The department's advice**

The department advised the committee that the clauses relating to the independence of the board are directly in line with recommendation 2 of the Commission of Inquiry Final Report:

*The Commission considers the All-Codes board should also be enhanced and be constituted by no less than seven (7) members with three (3) members being representatives of the individual codes of racing and the remaining four (4) members*

<sup>71</sup> TBQA, 2015, Submission No. 60, p.4.

*being able to provide broad representation and experience across the areas of business, accounting, law, commercial and marketing development.*

*The Commission considers four (4) members need to be independent of the racing industry while sitting on the board and should not have had ownership interests in race horses or racing greyhounds for a minimum of two years.*

Under the Racing Act, control bodies are able to establish committees to provide the Board with advice, such as the country racing committee or jockey's committee. The Bill will not impact on the control body's ability to establish such committees.

The department advised the committee that the expansion of the Board to a majority of independent members is consistent with board composition recommended by the Australian Stock Exchange Corporate Governance Council in its publication, *Corporate Governance Principles and Recommendations*.<sup>72</sup>

The department further advised:

*In terms of the make-up of the board, the Queensland greyhound racing industry commission of inquiry recommended that the board of Racing Queensland be expanded from five to seven members. This is very much in line with best practice for commercial organisations. For example, the Australian Stock Exchange Corporate Governance Council states in its corporate governance guidelines—*

*Having a majority of independent directors makes it harder for any individual or small group of individuals to dominate the board's decision-making and maximises the likelihood that the decisions of the board will reflect the best interests of the entity ... generally and not be biased towards the interests of management or any other person or group with whom a non-independent director may be associated.*

*The intention then of course is that the technical and representational input into the broader decision-making process is contributed by the non-independent members, or the sectoral members who are on the board who can feed into those discussions and deliberations, and of course from the organisation itself or directly from industry participants should the board wish to take up that advice. These principles, as outlined in the guidelines, are relevant to all industries, not just those that are listed on the Stock Exchange.*<sup>73</sup>

At the public briefing on 24 February the committee further questioned the department about having one board responsible for multiple racing codes:<sup>74</sup>

*Mr SORENSEN: The question came up about putting the three football codes like Australian Rules, Rugby League and Rugby Union all under one umbrella. What sense is there in putting these three racing fraternities under one umbrella?*

*ACTING CHAIR: I did think about that. It was interesting to note that of course in the Essendon case they have been put under wider and even international bodies that govern both athletics and AFL. It is indeed exactly the case that there are integrity messages that go above all those codes, so I thought the analogy was not quite correct. Do you have any comment on that?*

*Mr Oestreich: Only to say that the proposed arrangements in terms of the three codes being managed together in many respects is a continuation of the existing*

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<sup>72</sup> ASX Corporate Governance Council, 2014, *Corporate Governance Principles and Recommendations, 3<sup>rd</sup> Edition* ([www.asx.com.au](http://www.asx.com.au) accessed 29 February 2016).

<sup>73</sup> Oestreich, W., 2016, Departmental briefing transcript, 17 February, p.39.

<sup>74</sup> Public Hearing transcript, 17 February, p.41.

*arrangement that currently exists under Racing Queensland. The three codes are managed, both commercially and for integrity, by one entity.*

*Mr SORENSEN: Just under the board structure, not the integrity structure. The board is controlling the three identities.*

*Mr Oestreich: I can only say that this is a continuation of the policies of previous governments. The All Codes Board was established in 2013. There were no issues raised by Mr MacSporran in the report. Given that this bill is fundamentally about implementing the recommendations of the MacSporran report, Mr MacSporran did not raise issues around those matters so they have not been dealt with in this bill.*

#### **Committee comment**

The committee acknowledges the concerns raised by submitters to the inquiry about the membership of the Racing Queensland Board and the exclusion of racing industry members from holding the positions of chairperson or deputy chairperson.

The committee also acknowledges the findings of the Commission of Inquiry and the ASX Corporate Governance Council guidelines that support the predominance of non-industry members on the board as proposed in the Bill.

The committee is satisfied that the number of racing industry members on the board will be sufficient to ensure that the board is well informed of the industry perspective on issues, while the remaining board members will provide critical expertise to ensure that the board operates effectively to discharge its responsibilities and provides strong strategic leadership to the racing industry.

#### **Reviews of decisions about racing information authorities**

Section 113AD of the *Racing Act 2002* provides that it is an offence for a licensed wagering operator to use race information without an authority. Race information is used to accept or facilitate wagering. A licensed wagering operator may apply for an authority to use race information under s.113AE.

Queensland race information is defined in the Racing Act at section 113AB:

**Queensland race information** means information that identifies, or is capable of identifying any of the following—

- (a) the name, number or time of an intended race to be held at a race meeting at a licensed venue in Queensland;
- (b) the name or number of a licensed animal that has been nominated for, or that will otherwise take part in, an intended race to be held at a race meeting at a licensed venue in Queensland;
- (c) the name or number of a licensed animal that has been scratched or withdrawn from an intended race to be held at a race meeting at a licensed venue in Queensland;
- (d) the name or number of a rider, or trainer, of a licensed animal that has been nominated for, or that will otherwise take part in, an intended race to be held at a race meeting at a licensed venue in Queensland;
- (e) the outcome of a race held at a race meeting at a licensed venue in Queensland.

The Racing Act at s.113AG specifies standard conditions of racing information authorities. The holder of the authority must, unless the holder has a reasonable excuse: take part in the wagering monitoring system established or nominated by the control body; and (b) comply with all reasonable requests by the control body to give the control body, within the reasonable time stated in the request, information or documents about bets placed with the holder (a document or information request).

**Clause 369** removes chapters 3A to 7 from the Racing Act. These chapters included provisions for the Racing Integrity Commissioner, integrity control, the Racing Disciplinary Board and review of decisions by tribunal; Racing bookmakers and authorised officers. These provisions, or amendments or alternatives to these processes, are provided for in the Bill either in the proposed Racing Integrity Act or amendments to the Racing Act.

**Clause 369** also inserts new chapter 4 to provide for reviewable decisions and appeals in relation to race information authorities. New sections 114-120 relate to the proposed review process. The process is similar to the process proposed at Chapter 6 Part 2 Division 4 for the review and appeal of other decisions. It comprises an internal review of an original decision followed by a right of external review by the Queensland Civil and Administrative Tribunal (QCAT) after that internal review.

#### **Issues raised by submitters**

Racing Queensland has questioned whether the proposed review process for decisions about racing information authorities is appropriate. Racing Queensland submitted that:

*The Control Body's decisions in relation to race information authorities are already subject to judicial review under the Judicial Review Act 1991 (Qld). Racing Queensland considers that, because of the nature of the relevant decisions, that judicial review to the Supreme Court should be the only mode of appeal.*

If the review process is to be retained, Racing Queensland proposed that the process be limited to:

- a decision to refuse to grant a race information authority, and
- a decision to cancel a race information authority under s.113AJ.

Racing Queensland considers that, having regard to the procedural nature of conditions mentioned in s.113AF(3)(b), which are conditions of a type prescribed under a regulation, it would not be appropriate for the content of these conditions to be subject to internal or external review.

The committee notes that Regulation 6 of the Racing Act Regulation 2003 provides that for section 113AF(3)(b) of the Act, the types of conditions are—

- (a) conditions about the duration of the authority;
- (b) conditions about the holder of the authority giving the control body information the control body requires to calculate any fees payable by the holder of the authority under section 113AF(3)(a) of the Act;
- (c) conditions about when the holder of the authority must pay any fees payable by the holder of the authority under section 113AF(3)(a) of the Act.

#### **Committee comment**

The committee notes the concerns raised by Racing Queensland and recommends that the Minister consider amending the Bill to limit the proposed process for reviews of decisions about racing information authorities.

#### **Recommendation 8**

The committee recommends that the Minister consider amending the Bill to limit the proposed process for reviews of decisions about racing information authorities to: a decision to refuse to grant a race information authority; and a decision to cancel a race information authority under s.113AJ.

**Minister responsible: Minister for Racing**

**Other matters**

The committee brings to the attention of the Minister the following errors and omissions in the Bill identified by Racing Queensland in their submission:

- |                   |  |
|-------------------|--|
| <b>Clause 314</b> | Section 4(2)a. The words “as the control board” appear to be missing after Board   |
| <b>Clause 318</b> | Section 9AG references to ‘control body’ should be ‘the board’.<br>Reference to “product fee” should be “Variable Fee under the Queensland Product and Program Deed” |
| <b>Clause 369</b> | ‘QACT’ should be written as ‘QCAT’   |
| <b>Clause 371</b> | Section 310 – Definitions for div 1 “racing information authority” in (B) should be “race information authority”   |

### 3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

#### **Rights and liberties of individuals (clauses 37, 96, 282 and 283)**

##### **Section 4(2)(a) *Legislative Standards Act 1992***

#### **Does the Bill have sufficient regard to the rights and liberties of individuals?**

#### **Criminal history checks**

Section 213(1) of the *Racing Act 2002* provides that if the gaming executive, in investigating a person under section 212, asks the police Commissioner for a written report on a person’s criminal history, the Commissioner must give the report to the gaming executive.

Pursuant to section 213(2) the report is to contain:

- (a) the person’s criminal history; and
- (b) a brief description of the circumstances of a conviction mentioned in the person’s criminal history.

**Clause 37** is similar to current section 212 of the Act however provides that the new Queensland Racing Integrity Commission (QRIC or Commission), instead of the gaming executive, is to investigate a control body. At present, Racing Queensland is the control body for the thoroughbred, harness and greyhound codes in Queensland.

Pursuant to clause 33 the Commission may investigate a control body to find out whether it is suitable to continue to manage its code of racing. Clause 34 provides that the Commission may investigate a control body associate to decide whether the associate is a suitable person to be, or continue to be, associated with the control body’s operations.

Schedule 1 provides that a control body associate is:

- (a) for an approved control body - a business associate or executive associate of the control body; or
- (b) for the board under the Racing Act - a person whom the chief executive (racing) believes is associated with the operations of the board.

Clause 37(1) provides that if the Commission, in investigating a person under section 33 or 34, asks the police Commissioner for a written report on the person’s criminal history, the police Commissioner must give the report to the Commission. Pursuant to clause 37(2) the report is to contain:

- (a) the person’s criminal history; and
- (b) a brief description of the circumstances of a conviction mentioned in the person’s criminal history.

#### **Potential FLP issues**

Clause 37 will allow for the QRIC to request a person’s criminal history in circumstances where it is investigating a control body or the associate of a control body pursuant to clauses 33 and 34. This potentially breaches the privacy and the rights and liberties of individuals pursuant to section 4(2)(a) of the *Legislative Standards Act 1992*.



The former Scrutiny of Legislation Committee considered the reasonableness and fairness of the treatment of individuals as relevant in deciding whether legislation had sufficient regard to rights and liberties of individuals. The Explanatory Notes acknowledge the potential FLP breach and provide the following justification for the clause:

*This step in the investigation is justified as it is important to the integrity of the racing industry that persons with a criminal background are not associated with the management or ownership of a control body. Again, the normal safeguards of penalties apply for inappropriate disclosure and destruction of information when it is no longer required.<sup>75</sup>*

Pursuant to clause 233(2) it is an offence to disclose confidential information or copy a background document. A person must not, without reasonable excuse:

- (a) disclose confidential information to anyone else; or
- (b) copy a background document about someone else acquired by the person; or
- (c) give access to a background document about someone else.

The maximum penalty for contravening clause 233 is 100 penalty units.

**Committee comment**

The committee notes that the clause is quite similar to current section 213 of the Act with the only real change being the replacement of the ‘gaming executive’ with the ‘QRIC’.

The committee considers the clause appropriate in the circumstances in order to ensure the integrity of the racing industry.

The committee also note that a safeguard is provided for applicants by way of clause 233 in relation to the release of confidential information.

**Current Provisions – taking of fingerprints**

Chapter 3, Part 6 of the *Racing Act 2002* sets out the requirements for eligibility certificates. An eligibility certificate is granted to a person by the gaming executive stating that, until a date stated in the certificate, the person is eligible to apply to a control body for a racing bookmaker’s licence.

Section 207(2)(i) of the *Racing Act 2002* currently provides that an application must be accompanied by an individual’s fingerprints to be taken for the gaming executive.

Pursuant to section 209, on receipt of an application for an eligibility certificate, and compliance by the applicant with this part in relation to the application, the gaming executive must:

- (a) for an application by an individual - cause the fingerprints of the applicant to be taken; and
- (b) for an application by a corporation - cause the fingerprints to be taken of each of the business associates and executive associates of the applicant, who is an individual.

Clause 94(2) provides that an application made to a gaming executive must be accompanied by an individual’s fingerprints. Pursuant to section 94(2)(b) an individual must consent to having their fingerprints taken.

Pursuant to clause 96(1)(a)&(b), on receipt of an application, and compliance by the applicant, the gaming executive must:

- (a) for an application by an individual—cause the fingerprints to be taken of the applicant; and
- (b) for an application by a corporation—cause the fingerprints to be taken of each of the business associates and executive associates of the applicant, who is an individual.

<sup>75</sup> Racing Integrity Bill 2015, Explanatory Notes, p.4.

### Potential FLP issues

The requirement of an individual and the business associates of a corporation to provide fingerprints may be considered to be an infringement on their rights and liberties pursuant to section 4(2)(a) *Legislative Standards Act 1992*.

The Explanatory Notes acknowledge the issue and provide the following justification:

*This provision may be perceived as breaching the principle that legislation has sufficient regard to rights and liberties of individuals.*

*While the taking of fingerprints may be considered an infringement of a person's privacy, it is an essential part of enabling appropriate criminal history checks to be undertaken. The gaming executive is required to destroy the fingerprints obtained when they are no longer required. The process for applying for and granting racing bookmaker's licences is essentially the same as the current regime under the Racing Act 2002. It is not considered unreasonable to allow for the taking of fingerprints in the circumstances.<sup>76</sup>*

### Committee comment

The committee notes that the provisions of clause 96 mirror those contained in the current Racing Act 2002 at section 209.

The committee considers the clause and its provisions appropriate in the circumstances in order to maintain the integrity of the racing industry.

### Clauses 282 and 283

Clause 233 provides that it is an offence for a person who, in the course of administering the proposed Racing Integrity Act, obtains confidential information or gains access to a background document about someone else, to disclose that information without reasonable excuse. This includes disclosing the confidential information to anyone else; copying a background document or giving anyone else access to a background document. The maximum penalty is 100 penalty units.

However, clauses 282 and 283 provide exceptions to clause 233 in relation to animal welfare offences.

Clause 282(1) provides that a person, acting honestly and in good faith, may give to an authorised officer information the person reasonably believes may help with an investigation of an animal welfare offence. Pursuant to section 282(2) the person is not liable, civilly, criminally or under an administrative process, for giving the information. Clause 282(3) provides that merely because the person gives the information, the person cannot be held to have:

- breached any code of professional etiquette or ethics; or
- departed from accepted standards of professional conduct.

Clause 283 inserts a new provision to allow the sharing of information by an authorised officer, despite clause 233. Pursuant to sections 283(1) & (2) an authorised officer is allowed to provide information they reasonably believe will be helpful in relation to an animal or animal welfare offence, gathered as part of their authorised officer functions, to a police officer or authorised person under the *Animal Care and Protection Act 2001*.

### Potential FLP Issue

The disclosure of potentially sensitive information by an authorised officer to certain persons about the actions of an individual may see an individual's rights and liberties affected pursuant to section 4(2)(a) *Legislative Standards Act 1992*.

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<sup>76</sup> Racing Integrity Bill 2015, Explanatory Notes, p.5.

In relation to both clauses, the Explanatory Notes provide the following justification:

*These provisions have been inserted to allow for further information sharing between members of the public and authorised officers and between agencies to allow for improved detection and investigation of animal welfare matters. The normal safeguards of penalties for inappropriate disclosure will continue to apply.<sup>77</sup>*

**Committee comment**

As one of the main purposes of the Bill, as provided for at clause 3(c), is to safeguard the welfare of all animals involved in the racing industry, the committee considers that the provisions are justified. Clause 233 also provides a safeguard in that it is an offence in certain circumstances to disclose confidential information which mirrors the current provisions of the Act at section 311.

**Administrative power**

**Section 4(3)(a) Legislative Standards Act 1992**

**Are rights, obligations and liberties of individuals dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?**

**Clauses 137 & 146**

Clause 137(1) provides that the Minister must consider an application and decide to:

- (a) grant the offcourse approval; or
- (b) refuse to grant the offcourse approval.

Pursuant to clause 137(2), the grant of an off course approval is subject to mandatory conditions at clause 138 and may be subject to other conditions imposed by the Minister.

Clause 142 provides for a show cause process if the Minister believes:

- a ground exists to cancel the offcourse approval;
- the act, omission or other thing forming the ground is of a serious and fundamental nature; and
- the public interest may be affected by the act, omission or other thing in an adverse and material way.

Pursuant to clause 142(2), a show cause notice must state the following:

- the Minister proposes to cancel the offcourse approval;
- the grounds for the proposed cancellation;
- an outline of the facts and circumstances forming the basis for the grounds;
- that the racing bookmaker may, within a stated period (the show cause period), make submissions to the Minister to show why the offcourse approval should not be cancelled.

Clause 146(1)(a) allows the Minister to cancel an off course approval if the Minister still believes:

- a ground exists to cancel the offcourse approval;
- the act, omission or other thing constituting the ground is of a serious and fundamental nature; and
- the public interest may be affected in an adverse and material way; and
- (pursuant to clause 146(1)(b)) believes cancellation of the offcourse approval is warranted.

<sup>77</sup> Racing Integrity Bill 2015, Explanatory Notes, p.6.

Clause 146(4) provides that the Minister must immediately give the racing bookmaker an information notice about the decision to cancel the offcourse approval. By way of clause 146(5) the notice must include:

- a direction to the racing bookmaker to return the offcourse approval to the Minister within 14 days after the cancellation; and
- a warning to the racing bookmaker that, without a reasonable excuse, it is an offence to fail to comply with the direction.

### **Potential FLP issues**

Clauses 137 and 146 give the Minister the power to cancel an off course approval.

This is a potential breach of section 4(3)(a) *Legislative Standards Act 1992* which provides that an administrative power affecting the rights and liberties, or obligations, of individuals should be sufficiently defined and subject to appropriate review.

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined. The OQPC Notebook states, *“Depending on the seriousness of a decision made in the exercise of administrative power and the consequences that follow, it is generally inappropriate to provide for administrative decision-making in legislation without providing criteria for making the decision”*.<sup>78</sup>

The former Scrutiny of Legislation Committee took issue with provisions that did not sufficiently express the matters to which a decision-maker must have regard in exercising a statutory administrative power.<sup>79</sup>

Legislation should make rights and liberties, or obligations, dependent on administrative power only if subject to appropriate review. The OQPC Notebook states, *“Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review”*.<sup>80</sup>

The Explanatory Notes acknowledge the potential FLP issue and provide the following justification for the clause:

*This provision may be perceived as a breach of the principle that legislation can only make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.*

*It is however considered appropriate for the Supreme Court to review an approval decision under the Judicial Review Act 1991 by assessing, for example, whether the Minister has taken all relevant considerations into account and excluded irrelevant considerations when making the decision and that the decision making process was free of bias.*

*Off-Course approvals under the Bill (currently under the Racing Act) allow licensed bookmakers, once approved, to conduct off-course bookmaking activities through approved telecommunications systems. Similar to the above for approved control body applications, it is considered inappropriate for a de novo review of the Minister’s decision as it is at the Minister’s discretion to approve the person applying for the off-course approval based on the undertaking provided and any other relevant information*

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<sup>78</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p.15.

<sup>79</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p.15; citing Scrutiny Committee Annual Report 1998-1999, para. 3.10.

<sup>80</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p.18.

*provided to the Minister. However, it would be appropriate for the Supreme Court to review an off-course approval decision under the Judicial Review Act 1991.<sup>81</sup>*

**Committee comment**

It is considered that, on balance, clauses 137 and 146 have sufficient regard to the rights and liberties of applicants in relation to off course approvals.

In reaching this view, the committee notes that clauses 142(1)&(2) require the Minister to provide substantial information to the applicant as to why the application for an off course approval has been rejected.

The committee also note that judicial review is a course of action open to the applicant should they require a review of the Minister's decision.

**Onus of proof**

**Section 4(3)(d) *Legislative Standards Act 1992***

**Does the Bill reverse the onus of proof in criminal proceedings without adequate justification?**

**Clause 285**

Clause 285(1) provides that if a corporation commits an offence against section 216, each executive officer of the corporation is taken to have also committed the offence if:

- (a) the officer authorised or permitted the corporation's conduct constituting the offence; or
- (b) the officer was, directly or indirectly, knowingly concerned in the corporation's conduct.

Pursuant to clause 285(2), an executive officer may be proceeded against for, and convicted of, the offence against section 216 whether or not the corporation has been proceeded against for, or convicted of, the offence.

Clause 285(3)(a) provides that the corporation is still liable for the offence against section 216.

**Potential FLP Issue**

A provision making a person guilty of an offence committed by another person to whom the first person is linked (such as an agent or a corporation) must be justified. Provisions of this type create a presumption of guilt or responsibility, and effectively relieve the prosecution of the obligation to prove the elements of the offence for the person taken to have committed it. In this instance, clause 285 potentially breaches section 4(3)(d) of the *Legislative Standards Act 1992* in that liability can be attached to an individual (an executive) for an act carried out by the corporation.

In relation to this type of vicarious liability, the OQPC Notebook states:

Legislation should not make executive officers of a corporation vicariously liable for alleged offences of a corporation unless it is a practical necessity and unless appropriate safeguards are provided.

The preferred approach is to make the individuals behind the corporation liable only if:

- (a) they had actual knowledge of the offence; or*
- (b) they had imputed knowledge of it; or*
- (c) they were in a position to influence the corporate conduct and failed to influence it.*

The Explanatory Notes provide the following justification for the clause:

*The insertion of clause 285 is to conform to the type 2 liability provisions that were introduced through the Directors' Liability Reform Amendment Act 2012. Type 2 liability provisions are reserved for offences, which would cause a significant public*

<sup>81</sup> Racing Integrity Bill 2015, Explanatory Notes, p.5.

*harm. These offences include animal welfare offences and under the new Act relate to a failure by a corporation to comply with an animal welfare direction. To allow for consistency between the Animal Care and Protection Act 2001 and the new Act, the insertion of the provision is considered appropriate.*

As commented on in the Explanatory Notes, the provisions of clause 285 replicate current section 209A of the *Animal Care and Protection Act 2001* in relation to executive liability.

**Committee comment**

The committee considered whether adequate justification has been provided for clause 285.

The committee note that for liability to be vicariously attached to an executive the executive must have been actively involved in carrying out the act in question pursuant to clause 285(1)(a) or directly or indirectly involved in the corporation's conduct by way of clause 285(1)(b). This is the preferred approach, as provided for in the OQPC Notebook.

Given this approach and the justification provided in the Explanatory Notes in relation to consistency with animal welfare legislation, the committee considers the clause has sufficient regard to FLPs in this instance.

**Power to enter premises**

**Section 4(3)(e) *Legislative Standards Act 1992***

**Does the Bill confer power to enter premises and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?**

The current provisions in relation to the power to enter places are contained in Part 2, Division 1 of the Act.

There are several clauses in the Bill which provide entry powers for authorised officers. Pursuant to clause 166(1), the Racing Integrity Commissioner may appoint either a public service employee or other person prescribed by regulation as an authorised person. Clause 166(2) provides that the Commissioner may appoint a person as an authorised officer only if the Commissioner is satisfied the person is appropriately qualified.

Power of Entry Clauses

Section 175(1) provides that an authorised officer may enter a place if:

- (a) an occupier of the place consents under division 2 to the entry and section 182 has been complied with for the occupier; or
- (b) it is a public place and the entry is made when the place is open to the public; or
- (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 190 has been complied with for the occupier; or
- (d) it is a place of business and the entry is made when the place is:
  - (i) open for carrying on activities for which the place is a place of business; or
  - (ii) otherwise open for entry; or
- (e) the entry is authorised under section 176, 177, 178 or 179.

Clauses 176, 177, & 178 allow for an authorised officer to enter a place for animal injury and/or welfare reasons.

Clause 179(1)(a) applies if an authorised officer reasonably suspects:

- (i) an animal at a place, other than a vehicle, is suffering from lack of food or water or is entangled; and

- (ii) the person in charge of the animal is not, or is apparently not, present at the place; and
- (b) the animal is not at a part of the place at which a person resides, or apparently resides.
- (2) The authorised officer may enter and stay at the place while it is reasonably necessary to provide the food or water or to disentangle the animal.
- (3) An authorised officer may enter a vehicle if the authorised officer reasonably suspects there is a need to enter the vehicle to relieve an animal in pain in the vehicle or prevent an animal in the vehicle from suffering pain.

The provisions contained at section 179(3) providing authorised officers the power to enter a vehicle are similar to those afforded to police officers and inspectors under the *Police Powers and Responsibilities Act 2000* (PPRA) and the *Animal Care and Protection Act 2001* (ACPA) .

### Potential FLP issues

The extension of entry powers to allow authorised officers power of entry to vehicles pursuant to clause 179(3) may be seen to potentially breach section 4(3)(e) of the *Legislative Standards Act 1992* which provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the power of entry was authorised only with a warrant issued by a judge or other judicial officer.

Legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer. The OQPC handbook provides that this principle supports a long established rule of common law that protects the property of citizens. Power to enter premises should generally be permitted only with the occupier’s consent or under a warrant issued by a judge or magistrate. Strict adherence to the principle may not be required if the premises are business premises operating under a licence or premises of a public authority. The former SLC’s chief concern in this context was the range of additional powers that became exercisable after entry without a warrant or consent.

THE OQPC Notebook states, “FLPs are particularly important when powers of inspectors and similar officials are prescribed in legislation because these powers are very likely to interfere directly with the rights and liberties of individuals”.

The Explanatory Notes provide the following justification for the increased powers:

*The expansion of these powers has also been identified as necessary to remove any potential for evidence to be concealed in a vehicle held at a place where an authorised officer may not have the power to search it. Under the Racing Act 2002, the search powers for places other than vehicles are broad, but for vehicles it is very restrictive. The Bill is not proposing entry to residential premises other than under a warrant.*

*The insertion of these provisions is considered essential to allow authorised officers to investigate and respond to animal welfare matters and other offences under the new Act and the Racing Act 2002 to ensure integrity and safeguard the welfare of animals.*

### Committee comment

Given the justification provided in the Explanatory Notes in relation to animal welfare issues, and that the power is restricted to searching a vehicle without a warrant (and not premises) the committee may consider the provision extending power of entry to vehicles are appropriate in the circumstances.

## **Institution of Parliament - Scrutiny of the Legislative Assembly**

### **Section 4(4)(b) *Legislative Standards Act 1992***

**Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Assembly?**

#### **Clause 59**

At present, section 79 of the *Racing Act 2002* provides that the policies and rules of racing made by a control body for its code of racing are statutory instruments within the meaning of the *Statutory Instruments Act 1992*. These policies and rules are not tabled or subject to disallowance motions like subordinate legislation.

Clause 59(1) provides that the Commission may make a standard for a code of racing if:

- (a) the standard is required under this Act or a Ministerial direction; or
- (b) the Commission reasonably believes it is good management to have the standard.

Pursuant to clause 59(2) a regulation may prescribe that the Commission must make a standard for a particular matter and the provisions to be included in the standard for the matter.

Clause 61 sets out how the Commission must ensure each standard is publicly available, including making the standard available for inspection, free of charge, at its business address during its ordinary office hours and on its website; and if a person asks for a copy of the standard, give the person a copy on payment of a fee that is no more than the reasonable cost of providing the copy. Clause 63 provides that a standard is a statutory instrument.

Pursuant to clause 60(1), a standard must state the following:

- (a) its name;
- (b) the day the Commission made the standard;
- (c) the day it takes effect;
- (d) its purpose;
- (e) who will be affected by it;
- (f) how the Commission will make decisions about matters provided for by the standard;
- (g) whether the standard will provide for matters about rules of racing.

In relation to the requirements regarding the rules of racing which may appear in a standard, clause 360, new section 93 provides that, in making the rules of racing, a control body must have regard to whether the rules have sufficient regard to the rights and liberties of individuals as mentioned in the *Legislative Standards Act 1992*, section 4(3). However, pursuant to section 93(2) a failure to comply with subsection (1) does not affect the validity of the rules.

#### **Potential FLP issues**

##### *Appropriate delegation of legislation*

The standards the Commission may make under clause 59 are not in the primary legislation. Given the importance of these standards to the racing industry, this potentially breaches section 4(b)(b) of the *Legislative Standards Act 1992* which provides that a proposed delegated power legislative power should be subject to the scrutiny of the Legislative Assembly. Further, section 4(5)(c) of the *Legislative Standards Act 1992* provides that subordinate legislation should contain only matters appropriate to that level of legislation.

The OQPC Notebook states “*For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the*



power, raises obvious issues about the safe and satisfactory nature of the delegation".<sup>82</sup> The matter involves consideration of whether the delegate may only make rules that are subordinate legislation, and thus subject to disallowance.

The Explanatory Notes address the issue and provide the following justification for the standards not appearing in the primary legislation:

*Due to the changing nature of the industry and the need to respond to various challenges and issues, it has been deemed prohibitive to the operation of the licensing framework to codify the scheme in primary legislation. This is mainly as the Queensland Racing Integrity Commission may need to provide for additional licence categories, additional criteria for a licence or other matter to allow it to respond to matters that may arise in the future. Appropriate oversight of Queensland Racing Integrity Commission's operations will continue to be provided by the Minister.*

*Decisions made under the standards, including those under the licensing scheme, are subject to appropriate review processes under the new Act and allow a person who is aggrieved by a decision of the Queensland Racing Integrity Commission, such as a decision to cancel a licence, to seek an internal review, followed by an external review by the Queensland Civil and Administrative Tribunal if necessary. Therefore, although the standard for a licensing scheme is not codified within the legislation, the decisions under the standard will continue to be subject to appropriate scrutiny and review.*<sup>83</sup>

#### **Committee comment**

Clause 59 provides that the Commission *may* make a standard which can include the rules for a code of racing. These standards, while statutory instruments, are not included in the primary act or subordinate legislation. This reflects the current provisions of the *Racing Act 2002* at section 79 with respect to policies and rules.

The committee notes, however, that pursuant to clause 360, a control body *must* have regard to whether the rules made have sufficient regard to the rights and liberties of individuals as provided in section 4(3) of the *Legislative Standards Act 1992*, although a failure to comply does not affect their validity pursuant to subsection 2.

It is arguable that given their importance the standards should be included in either the primary Act or subordinate legislation, however, given the transparency required by the provisions pursuant to clause 61, and the ability to appeal a decision made under the standards both internally and externally (QCAT), the committee considers that clause 59 has sufficient regard to fundamental legislative principles.

#### **Clause 261**

Clause 261 provides that compensation or costs may be claimed and ordered in a proceeding:

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
- (b) for an alleged animal welfare offence, or another alleged offence against this Act or the Racing Act, the investigation of which gave rise to the claim for compensation.

Pursuant to clause 261(2) a court may order a payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case. Clause 261(4) provides that a regulation may prescribe other matters that may, or *must*, be taken into account by the court when considering whether it is just to order compensation.

<sup>82</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p.154.

<sup>83</sup> Racing Integrity Bill 2015, Explanatory Notes, p.4.

### **Potential FLP Issue**

Clause 261(4) provides that a regulation may prescribe other matters that may or must be considered by a court in relation to a claim for compensation. It is arguable that matters which must be considered by a court in relation to compensation should be in primary legislation instead of subordinate legislation. This potentially breaches section 4(5)(c) of the *Legislative Standards Act 1992* which provides that subordinate legislation should contain only matters appropriate to that level of legislation.

### **Request for advice**

The committee invited the department to advice of the rationale for providing for matters a court must consider in a regulation rather than in a primary Act.

### **Advice from the department<sup>84</sup>**

The department advised that clause 261 has been drafted to mirror provisions in other Queensland legislation, as follows:

- *Animal Care and Protection Act 2001* section 192
- *Exhibited Animals Act 2015* section 218
- *Environmental Offsets Act 2014* section 73, and
- *Biosecurity Act 2014* section 334.

The clause allows the regulation to prescribe other matters that may, or must, be taken into account by a court when considering whether it is just to order compensation. This may be used to prescribe technical matters, such as how compensation appropriate to the racing industry could be calculated.

### **Committee comment**

The committee notes the department's advice.

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<sup>84</sup> DNPSR, 2016, *Correspondence*, 26 February.

## Appendix A: List of submitters

<b>Sub No.</b>	<b>Submitter</b>
1	Queensland Racing Unity Group (QRUG)
2	Clear Mountain Fairview Pty Ltd
3	Daryl Kays
4	Allan Gee
5	Camooweal Jockey Club
6	Robert Heathcote
7	Vince Aspinall
8	Cameron Bond
9	Michael Bliss
10	Animals Australia
11	Laurel Glen Equine Centre
12	Friends of the Hound Inc
13	Dulacca Farms
14	Lisa Frappell
15	Rob Luck
16	Yvonne Krummel
17	Bevan Turner
18	Nick and Mary Nolan
19	Lynne Morton
20	Ladies in SPORT Publications Pty Ltd
21	Brian Russell
22	Lawrence Facer
23	Clifton Jockey Club
24	Trevor Glasby
25	Judith Glasby
26	Paul Kearns
27	Tony Wilson
28	Annmarie Stower
29	Kilcoy Race Club Inc.
30	Conway Searle
31	Greg Mitchell
32	David Clark
33	Adrienne McCosker
34	Vince Flynn

35	Jo-Anne Morley
36	Matthew Whitehead
37	Gordon and Cathy Smith
38	Graham Quirk
39	Tony Carlton
40	Sharyn Ebsworth
41	Richard Foster
42	Meredith Carroll
43	Lisa Gould
44	Breeders Owners Trainers Reinspersons Association (Qld) Inc
45	John Taylor
46	Brett Kenny
47	Tony Green
48	Leo Chan
49	Sunshine Coast Turf Club Inc.
50	Angela and Ian Gurney
51	Oak Park Race Club Inc
52	Brenda Breen
53	Peter Breen
54	Mark Lambert
55	Leanne Lambert
56	Graeme Thomas
57	Showtime Breeding Pty Ltd
58	Charles Wootten
59	Robert Giltinan
60	Thoroughbred Breeders Queensland Association Inc
61	Anthony Thomas
62	Phil and Brigitte Davis
63	Mike O'Brien
64	Robert and June Carter
65	Ross Boucher
66	Wendy Bannerot
67	Jeffrey Caught
68	Stamford Race Club Inc
69	Nicolle Gee
70	Pentland Race Club

71	Gary and Kelly Doughty
72	Erica Bates
73	Cathryn Meredith
74	Peter Turnbull
75	Mary Jago
76	Robbie Katter MP, Member for Mount Isa
77	The Richmond Turf Club
78	Jon Haseler
79	Steve Morley
80	Tallulah Downs Broomare Farm
81	Geoff and Jenny Arthur
82	Peter Hogan
83	Jim Searston
84	Peter Carrington
85	Queensland Jockeys Association
86	Robert Fradd
87	Basil Nolan
88	Justin Stanley
89	Larry Cassidy
90	Jane McNamara
91	Prairie Jockey Club
92	Eve Gibson
93	Elly Fitzgerald
94	Scott Fitzgerald
95	Travis Schultz
96	Lisa Schultz
97	Queensland Trainers Association Inc
98	Albert Kennewell
99	John Quarman
100	Steve Martin
101	Eureka Cambooya Thoroughbreds Pty Ltd
102	Bahram Stud Toowoomba
103	Eugene and Marion and Gary Nolan
104	Steve Tregea
105	Karin Schuett
106	Deborah Simon

107	Stephanie Houghton
108	Trevor Davis
109	Allen Hansen
110	Queensland Racehorse Owners' Assoc. Inc
111	Australian Quarter Horse Racing Development Pty Ltd
112	Jason Cornell
113	Kerry Myers
114	Kerri Toy
115	Sandra Giles
116	Craig Cutts
117	Greg Mellen
118	John Browne
119	Anne Tregoe
120	Australian Veterinary Association
121	Eidsvold Race Club Inc
122	David Schmidt
123	Toowoomba Turf Club
124	Brisbane Racing Club Limited
125	Di Hannel
126	Steve Coates
127	Andrew Taylor
128	Michael Laffey
129	Denise Wilson
130	Queensland Greyhound Breeders, Owners & Trainers Association
131	Mike Crooks
132	Oakley amateur Picnic Race Club
133	Karen McDonald
134	Claude Dacey
135	Dale Anderson
136	Animal Liberation Queensland
137	Tanawha Hay Shed
138	Paul Nolan Accounting Pty Ltd
139	Queensland All Codes Racing Industry Board (Racing Queensland)
140	Donald Woodhouse
141	Susan Absalom
142	Faith Wilde

143	Ryan Wiggins
144	Maree Frappell
145	Nicholas Grimley
146	Michael Maloney
147	Confidential
148	Cr Bob Whaley

## **Appendix B: Briefing officers**

### **Department of National Parks, Sport and Racing**

#### **Public briefing 11 December 2015**

Mr Wade Oestreich, Senior Executive Director, Office of Racing

Mr Michael Coccetti, Principal Policy Officer, Office of Racing

Ms Erin Jameson, Senior Policy Officer, Office of Racing

#### **Public briefing 17 February 2016**

Mr Wade Oestreich, Senior Executive Director, Office of Racing

Mr Andrew Mullens, Director, Policy and Legislation, Office of Racing

Mr Michael Coccetti, Principal Policy Officer, Office of Racing



## **Appendix C: Public hearing witnesses**

### **Public hearing 17 February 2016**

Mr Dale Anderson

Mr Jason Cornell

Mr John Cotter, Executive Director, Australian Quarter Horse Racing Development Pty Ltd

Mr Wayne Dossetto, Secretary, Breeders Owners Trainers & Reinspersons Association (Qld) Inc

Mr Bob Frappell, Chairman, Toowoomba Turf Club

Mr Robbie Katter MP, Member for Mount Isa

Mr Ian McCauley OAM, Chairman, Queensland Racing Unity Group

Mr Steve Morley

Mr Chay Neal, President, Animal Liberation Queensland

Mr Basil Nolan, President, Thoroughbred Breeders Queensland Association

Mr Blair Odgers, CEO, Toowoomba Turf Club

Mr Vincent Pennisi, President, Queensland Racehorse Owners' Assoc. Inc

Mr Anthony Thomas

Mr David Whimpey, CEO, Brisbane Racing Club Ltd

Mr Brenton Wilson, President, Queensland Greyhound Breeders, Owners & Trainers Association

## **Appendix D: Extracts from the Final Report from the Queensland Greyhound Racing Industry Commission of Inquiry<sup>85</sup>**

### **Executive Summary:**

- Public confidence may have been dealt an almost terminal blow by the exposure of what is likely to have been a widespread practice of live baiting in the greyhound racing industry.
- To put it simply, if those in the industry have participated in the archaic and barbaric practice of live baiting they have let the entire industry down and have treated the public with disdain.
- Although the general tenor of the information provided to me contains little by way of evidence that the practice of live baiting is widespread in the industry, it would be naïve in the extreme, to conclude that the practice is not widespread.
- That it was allowed to happen at all in this day and age is a sad reflection on the state of the greyhound racing industry and those who participate in it whether for pleasure or profit.
- The practice of live baiting could not be engaged in without the acquiescence of many, who although not directly involved, chose to ignore the cruelty and turned a blind eye. This must have encouraged those directly involved that they could continue with impunity.
- This culture must change if public confidence is to be restored.
- Industry participants must be seen to have proper regard for integrity and animal welfare issues. They must be seen to be proactively encouraging compliance and exposing those within the industry who engage in unlawful activity.
- The Commission is satisfied that the system of self-regulation under the current model has failed to ensure integrity in the industry and failed to safeguard animal welfare.
- RQ failed in these important obligations because it did not operate a system which adequately assessed risk and it failed to plan an overall strategy to deal with the risk to integrity and animal welfare across all three codes of racing.
- RQs ability to meet its obligations was compromised by the conflict of interest inherent in having oversight and control of the commercial and integrity aspects of the business.
- In the Commission's view the current operational model is flawed and the Commission recommends an alternative model where the commercial and integrity aspects of the industry are completely separated. This model is designed to allow the control body to concentrate on the business of racing and maximise its prospects of commercial success whilst the new Queensland Racing Integrity Commission (QRIC) is entirely focussed on ensuring integrity within the industry with the aim of restoring public confidence.
- The new model also provides for the prioritisation of animal welfare issues with input from experts in relation to policy matters.
- The model seeks to capitalise on the good work of the current QPS taskforce by continuing to make available to the QRIC its valuable investigative, intelligence and surveillance capabilities.
- The Commission is generally satisfied that the powers available in the animal welfare legislation and the Greyhounds Australasia Rules (GAR) and Local Rules of Racing (Greyhound Racing), (LR) are adequate to allow for the appropriate investigation and prosecution of offences. Education as to the extent of the powers and the appropriate methods for their exercise together with training in investigative techniques is likely to remedy any perceived confusion as to the role to be played and or capacity in that role.
- The success of the proposed model will depend very largely on the calibre of the personnel recruited to staff it and upon the adequacy of the funding to properly resource its important

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<sup>85</sup> Queensland Greyhound Racing Industry Commission of Inquiry, 2015, *Final Report*, Alan MacSporran QC, 1 June 2015. The full report is available at [www.greyhoundreview.qld.gov.au](http://www.greyhoundreview.qld.gov.au).

work. With this in mind, the model is designed to draw upon existing resources where possible and where practicable.

- A number of other animal welfare issues have been exposed during the course of the Inquiry. These include, overbreeding which has in turn focused attention on the related issue of wastage within the industry.
- Although it is apparent that recent public attention has been directed towards the issue of live baiting, the demonstrated lack of public confidence in the greyhound racing industry is reinforced by these additional animal welfare considerations.
- These issues are addressed later in this report.
- Because the Four Corners program was broadcast nationally and exposed issues relating to the greyhound racing industries in Queensland, New South Wales and Victoria, there has also been a government response in New South Wales and Victoria.
- In New South Wales, a Special Commission of Inquiry has been established and in Victoria, the Racing Integrity Commissioner has conducted an Inquiry into live baiting practices and an interim report was delivered on 11 March 2015. The final report, which it is proposed will be made public, is now due for release.
- The New South Wales Special Commission of Inquiry will formally open on 10 June 2015 and is expected to report on 30 September 2015.
- It would be advantageous to monitor the progress of these Inquiries because greyhound racing is a national industry and regulation in particular needs to take account of trends and activity interstate to remain effective.

**Recommendations that are the primary focus of the Racing Integrity Bill 2015:**

**INSTITUTIONAL AND FUNCTIONAL MODEL FOR INTEGRITY MANAGEMENT OF THE QUEENSLAND RACING INDUSTRY**

**Recommendation One**

The Commission recommends a new statutory authority be created which is dedicated to ensuring the integrity of the Queensland racing industry.

The Commission recommends the new authority be created as soon as possible and be created in parallel with a review of the *Racing Act 2002* (Qld) (Racing Act).

The Commission recommends consideration be given to the head of power for the new entity to be established in a new Act which will provide for the naming of the entity; commencement; application of other Acts; purpose and objectives; functions of the entity; appointment of a full-time Racing Integrity Commissioner (RIC) and other staff; accountabilities of the RIC; reporting requirements; financial arrangements; operational issues; delegations and forms; miscellaneous administrative matters and consequential amendments to other Acts.

The Commission recommends the new statutory authority be the QRIC and be headed by the statutory position of RIC.

The RIC must be a full-time position.

The QRIC should represent the State and the RIC is to report directly to the Minister responsible for administering the Racing Act.

The QRIC should be distinct from the control body and not form part of the Department.

The control body should focus on the commercial operations of the industry.

The QRIC is recommended to comprise the resources of the following existing entities:

- (a) The OoR from the Department;

- (b) The Stewarding & Integrity Operations Division from RQ;
- (c) The functions of Grading and Handicapping in the Racing Operations Division from RQ;
- (d) Rotating officers (a total of four) on secondment from the QPS on staggered 1 – 2 year terms;
- (e) A reasonable proportion of corporate support function personnel and funding from RQ.

## **OPERATIONAL MODEL FOR THE COMMERCIAL BUSINESS OF THE RACING INDUSTRY**

### **Recommendation Two**

The Commission recommends that an all codes board be established as the control body for all three codes of racing (Thoroughbred, Harness and Greyhound).

The board should consist of seven (7) members, all of whom are to be appointed by the Governor in Council.

Four (4) of the members are to be entirely independent of the racing industry during the period of board membership and to have had no relevant connection to the racing industry (ownership of horses or greyhounds or membership of a race club or organisation) for a period of at least two (2) years prior to appointment.

The four members should collectively possess qualifications and experience in the field of accounting, law, business, commercial and marketing development. The Chair and Deputy Chair should be appointed from these four members.

The remaining three (3) members should have relevant experience in the industry and be drawn, one each, from each of the codes of racing.

The individual code boards established under section 9BO of the Racing Act should be abolished.

## **THE DETECTING, ASSESSING, MITIGATING AND PROSECUTION OF ALL BREACHES OF THE RACING ACT OR ANY OTHER RELEVANT ACT.**

### **Recommendation Three**

The Commission recommends that when the review of the Racing Act is carried out, there be a similar review of the Animal Care and Protection Act 2002 (Qld) (ACPA) and Criminal Code (Qld) with a view to:-

- (i) Eliminating duplication of the offence creating provisions in each piece of legislation;
- (ii) Coordinating and rationalising the powers and designated roles of inspectors (under the ACPA), police officers, integrity officers and stewards (under the Racing Act and the proposed new QRIC structure) to enter premises, search for, seize and deal with evidence of the commission of offences and breaches of the rules of racing and commence prosecutions; and
- (iii) Making provision for the reporting of instances of breaches of the ACPA, Criminal Code, the Racing Act and the rules of racing, between agencies pursuant to a protocol established by Memoranda of Understanding entered into by the RSPCA, Biosecurity Queensland, the QPS and the QRIC.

## Statements of Reservation



# Stephen Bennett MP

MEMBER FOR BURNETT

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15 March 2016

Mr Glenn Butcher MP  
Chair, Agriculture and Environment Committee  
Parliament House  
George Street, Brisbane QLD 4000.

Dear Mr Butcher,

**Re: Report No. 15, Racing Integrity Bill 2015.**

I wish to notify the committee in accordance with SO214 of our reservations about aspects of Report No.14 of the Agriculture and Environment Committee.

The Bill extends the powers of authorised officers by mirroring those powers given to authorised officers and inspectors under the *Animal Care and Protection Act 2001* (ACPA) in relation to powers of entry, seizure and the issuing of an animal welfare direction. The Bill also inserts new information-sharing powers within the ACPA which are mirrored in the proposed Racing Integrity Act. These provisions raised significant serious concerns within the racing industry. We continue to have significant reservations that an enquiry that started as a result of animal cruelty has created a need to seek amendments to broaden the Commission's function to include the promotion of animal welfare and the prevention of animal cruelty including the provision of training being provided to the racing industry.

There is considerable industry opposition to the changes in the Bill from all three codes (thoroughbred, harness and greyhounds). The committee heard many submissions and serious concerns about the proposed seven-person board's capacity to govern the three codes.

The issues of cost of the implementation of the proposed Bill remain unanswered by the Department even after several attempts by the committee to seek clarification of this important issue. The Department deflected this issue back to the Minister.

The Department also failed to answer important questions relating to section 23 of the Legislative Standards Act 1992 in relation to the expected administrative costs to Government in implementing the Bill, again referring the committee back to the Minister to deal with operational issues. This left no doubt that the Bill is flawed.

Many concerns were raised in relation to the Bill's intent in establishing a new Racing Integrity Commission, which dissolves the existing arrangements and separates the integrity functions of Racing Queensland into a new separate body. Of significant concern was the cost that is estimated to be between \$16M to \$20M per year, whereas the current integrity arrangements are estimated to cost Racing Queensland approximately \$8M per year.

The fact that the committee raised concerns and flagged many possible amendments on every recommendation casts enough doubt that the proposed Bill should not be passed.

Yours faithfully,

**Stephen Bennett MP**

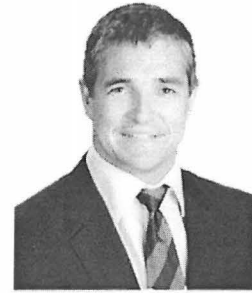
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**Rob Katter MP**  
Member for Mount Isa



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Tuesday 15 March 2016

**RE Statement of Reservation on Report No 15. Racing Integrity Bill 2015**

I write this statement of reservation to the Agriculture and environment committee on report number 14 on the Racing Integrity Bill 2015. There is a number of issues which are of particular concern to me, but overall there has been a failure to provide sufficient consultation to the very many affected racing enthusiasts.

My particular concerns are to do with the makeup of the board which many, perhaps most in the industry insist must be compiled of board members who have at least some experience of the industry. They see a board disconnected from the industry will struggle to provide the necessary leadership, to drive an effective and commercial industry.

I also hold reservations about the process of the Government's restructure, as the opportunity to respond has not been afforded to the industry, as such there has been a significant failure to consult with industry participants. It's worth mentioning at this juncture that the many industry people who have made representations to me have offered the opinion, that they would very much appreciate the opportunity to consider models of the racing industry in other states which are operating perfectly to consider their effectiveness as a model for adoption in Queensland.

I do think it is important for the minister to provide clarification on a number of points set out in the report in particular recommendations one and two. To those who have worked hard through the process and failed to provide sufficient evidence of a consultative process that my constituents can adhere to, I recommend you speak with the government and recall the process of consultation so important to good governance.

In conclusion, I would not want to dilute issues of integrity which are consistent in all clubs and businesses across our nation, but find the importance of finding agreeable solutions fundamental to moving forward for the various codes of racing.

Yours sincerely



**Rob Katter**

Member for Mount Isa