

Racing Queensland Limited: Audit by arrangement

Report to Parliament 1 : 2012-13



Auditor-General of Queensland

July 2012

The Honourable F Simpson MP
Speaker of the Legislative Assembly
Parliament House
BRISBANE QLD 4000

Dear Madam Speaker

This report is prepared under Part 3 Division 3 of the *Auditor-General Act 2009*, and is titled *Racing Queensland Limited: Audit by arrangement*.

In accordance with s.67 of the Act, would you please arrange for the report to be tabled in the Legislative Assembly.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Greaves', written over a light grey rectangular background.

Andrew Greaves
Auditor-General

Contact details for the Queensland Audit Office:

Location: **Level 14, 53 Albert Street, Brisbane Qld 4000**
PO Box: **PO 15396, City East Qld 4002**
Telephone **(07) 3149 6000**
Email: **qao@qao.qld.gov.au**
Website: **www.qao.qld.gov.au**

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Summary

Racing Queensland Limited (RQL) was formed on 1 July 2010 through the amalgamation of the previously existing racing control bodies: Queensland Racing Limited, Harness Racing Queensland and Greyhounds Queensland Limited. Its principal activities are to encourage, control, supervise and regulate the administration of thoroughbred, harness and greyhound racing in Queensland.

On 26 March 2012, the Chief Executive Officer, Mr Malcolm Tuttle, the Director of Integrity Operations, Mr Jamie Orchard, the Director of Product Development, Mr Paul Brennan and the Senior Corporate Counsel/Company Secretary, Ms Shara Reid (formerly Murray) resigned as employees of RQL and were paid separation payments on 28 March 2012. These payments comprised 14 months' salary, 'redundancy' payments based on their respective length of service, and their statutory leave entitlements. The total cost to RQL of these separation payments was \$1.858 million.

A timeline of key events leading up to this date is included in Appendix B.

On 27 March 2012, the Deputy Premier and then Minister for Racing wrote to me expressing concerns about media reports describing the resignation of four senior staff of RQL, and requested an audit of RQL under the provisions of section 60 of the *Racing Act 2002*.

After considering the public interest in this matter, I confirmed to the Minister on 29 March 2012 that I would undertake this audit in accordance with section 36(1) of the *Auditor-General Act 2009*.

Conclusions

In August 2011, the employment contracts of four executives were varied, with the agreement of the Board, by the addition of a 'material adverse change' clause. This variation entitled the executives to resign from RQL following the state election and to receive the same termination payments as if they had been made redundant by RQL.

The Board's stated rationale for these contract variations was that they were required as a retention strategy for the four executives. This strategy proved to be ineffective in all but the short term, and cost RQL \$1.458 million. A significant proportion of this cost is directly attributable to the 30 per cent increase in remuneration of each of these four executives that was also approved by the Board in August 2011.

The inclusion of the 'material adverse change' clause changed the stated retention strategy into an exit strategy for the four executives. Taken together with the substantial increase in remuneration of the four executives, it is not evident that this approach was entirely consistent with the fiduciary duty of board members and company officers to act in the best interests of the company. The Board did not seek to obtain surety in this regard, despite the fact that it was raised as an issue for the Board to consider. It also failed to document key considerations that led to its decisions. At best this reflects poor governance practice.

Key findings

The audit findings are primarily based on information included in minutes of board meetings, minutes of the remuneration and nomination committee and other relevant information examined during the audit. Interviews were conducted with board members and other officers of RQL where oral evidence was provided in relation to the effect the external environment was having on key executives at that time and why the directors believed their actions were in the best interests of RQL, although much of this was unable to be substantiated in board records.

Retention strategy

The inclusion of the 'material adverse change' clause in the employment contracts is inconsistent in principle, both with the stated board objective of long term retention of key management personnel, and with the stated concerns of the executive management of RQL about their security of tenure after the election.

Defining 'the result of the state election' as a material adverse event impacting on employment, without also tying it to some other unfavourable condition, is inconsistent both with the commercial intent of similar clauses used in takeovers of private companies, and with reality. It is not evident that this event alone had material adverse consequences for the four executives at the time they resigned.

The 'material adverse change' amendment to their employment agreements allowed the four executives to exit the company at the earliest opportunity with financial benefits significantly in excess of the separation payments they would have been entitled to had they either resigned or had their employment contracts terminated:

- In the absence of the new clauses and based on previous levels of remuneration, if the executives had resigned of their own volition they would have been entitled to \$0.308 million. Had RQL dismissed them without cause, however, they would have been entitled to \$1.276 million.
- The increase in Total Remuneration Value (TRV) of 30 per cent also meant that the termination payments were paid at a higher rate than would have been the case under their previous contracts. This increase cost RQL \$0.429 million.

The separation payments made to Messrs Tuttle, Orchard and Brennan and Ms Reid were nonetheless properly approved and accurately calculated in accordance with their respective contracts of employment and leave records, and the terms of the RQL redundancy policy introduced also by the Board in August 2011.

Roles, responsibilities and duties of board members and officers

Board minutes did not adequately reflect the level of discussions and deliberations undertaken by the members in reaching their conclusions and decisions. Information provided by the directors and officers of the company during audit interviews confirmed that much of the information considered during the meetings was based on verbal rather than written submissions.

Two executives who stood to benefit financially from the change in their employment conditions were actively involved in the process. This clear conflict between their personal interest and the interests of the company was not satisfactorily addressed by the Board.

Legal advice provided to the four executives, paid for by RQL, formed the basis of the contract variations. The written instructions to the executives' legal advisers from RQL were that any amendments were to be 'in favour' of the RQL employee.

Legal advice obtained by RQL for the Board highlighted areas of concern that were not evidently addressed:

- There is no documented evidence available to substantiate that the Board or the Chairman undertook any benchmarking of the amended employment conditions with external organisations to assess the reasonableness of these arrangements.
- The relevant board minutes have little evidence of the responsibilities of directors under the *Corporations Act 2001* being actively considered by board members, particularly the requirement to act in good faith and in the best interests of the members of the company.
- No specific legal advice was sought by board members in relation to their fiduciary responsibilities under the *Corporations Act*, despite concerns being raised.

Obtaining legal advice without acquitting or otherwise acting on it reflects poor governance practice, as does the lack of written documentation in support of key board decisions.

Comments received

In accordance with section 64 of the *Auditor-General Act 2009* a copy of this report was provided to the Minister for National Parks, Recreation, Sport and Racing, the Director-General, National Parks, Recreation, Sport and Racing and the Chairman, Racing Queensland Limited with a request for comments.

Their views have been considered in reaching our audit conclusions and are represented to the extent relevant and warranted in preparing this report.

The full comments received are included in Appendix A of this report.

1 | Context

1.1 Background

Racing Queensland Limited (RQL) was incorporated on 25 March 2010. With effect from 1 July 2010, the former control bodies of Queensland Racing Limited, Queensland Harness Racing Limited and Greyhounds Queensland Limited were amalgamated, and RQL became the sole control body for all codes of racing in Queensland, under the provisions of the *Racing and Other Legislation Amendment Act 2010*. Its principal activities are to encourage, control, supervise and regulate the administration of thoroughbred, harness and greyhound racing in Queensland.

The amalgamating companies were formed under the provisions of the *Racing Act 2002*, to take over the responsibilities for the respective racing codes previously exercised by three statutory bodies: the Queensland Thoroughbred Racing Board, the Queensland Harness Racing Board and the Greyhound Racing Authority.

Governance of Racing Queensland Limited is exercised through the Board of directors, which has:

- representation from all three racing codes and other industry stakeholders
- an Audit Committee with oversight of audit and other financial risks
- a Remuneration and Nomination Committee, which provides assistance to the Board in matters relating to organisational structure, remuneration, recruitment and retention of the Chief Executive Officer and senior executives and selection, induction and training of board members.

At the time of the audit, the Board of RQL comprised Mr Bob Bentley (Chairman), Mr Tony Hanmer (Deputy Chairman), Mr Bill Ludwig, Mr Wayne Milner and Mr Bradley Ryan. Messrs Bentley, Hanmer and Ludwig subsequently resigned effective 30 April 2012. Mr Bob Lette resigned from the Board on 27 March 2012.

Mr Bentley and Mr Ludwig were the members of the Remuneration and Nomination Committee.

The following persons were part of the executive management team of RQL:

- Mr Malcolm Tuttle (Chief Executive Officer)
- Mr Jamie Orchard (Director of Integrity Operations)
- Mr Paul Brennan (Director of Product Development).

The Chief Financial Officer was the fourth member of the executive management team. While not part of the executive management team, Ms Shara Murray (Senior Corporate Counsel/Company Secretary) was part of the wider management group of RQL.

On 26 March 2012, Messrs Tuttle, Orchard and Brennan and Ms Reid (formerly Murray) resigned as employees of Queensland Racing Limited and were paid separation payments on 28 March 2012. These payments comprised 14 months' salary, 'redundancy' payments based on their respective length of service, and their statutory leave entitlements. The total cost to RQL of these separation payments was \$1.858 million.

The Deputy Premier and then Minister for Racing wrote to me on 27 March 2012 expressing concerns about media reports describing the resignation of four senior staff of RQL, and requesting me to undertake an audit of RQL under the provisions of section 60 of the *Racing Act 2002*.

After considering the public interest in this matter, I confirmed to the Minister on 29 March 2012 that I agreed to this request and I would undertake the audit in accordance with section 36(1) of the *Auditor-General Act 2009*. I also wrote to the Chairman of RQL on 29 March 2012 advising him of the audit.

1.2 Scope

The scope of the audit initially focused on an examination of the entitlements of senior executives of RQL but also included an examination of expenditure by directors on corporate card, travel and entertainment, as well as procurement practices and payments to directors other than salaries.

1.3 Audit approach

This audit was carried out in accordance with Auditor-General of Queensland Auditing Standards, which incorporate Australian auditing and assurance standards. The total cost of the audit was approximately \$90,000.

1.4 Structure of the report

The report is structured as follows:

- Section 2 discusses the retention strategy implemented by RQL for four key executives and the implications of this strategy
- Appendix A contains responses received
- Appendix B contains a timeline of key events.

2 | Retention strategy

Summary

Background

The development and introduction by the Board of a retention strategy for four key executives of RQL ultimately provided those executives with an opportunity to exit RQL immediately following the 2012 state election with substantial financial benefits.

Key findings

- Introduction of a material adverse event clause in four executive contracts was inconsistent with the Board's intention to retain the services of those executives.
- Four executives' TRV was increased by 30 per cent with no documented evidence of independent benchmarking undertaken of the reasonableness of this increase.
- Retention payments for the four executives were not linked to the achievement of specific performance targets.
- Contract variations for the four executives were based predominantly on legal advice obtained on their behalf by RQL.
- Board minutes do not adequately demonstrate that alternative strategies identified by RQL's legal advisers were considered by the Board.
- The Board did not engage a remuneration consultant to help assess the reasonableness of contract variation.
- Not all matters raised by RQL's legal advisers had evidence of board consideration or action.

2.1 Introduction

Following a period of continued speculation within the racing industry regarding the future of Racing Queensland Limited (RQL) and its Board and executives leading up to the 2012 state election, the Directors held the belief that there was a strong risk that a number of executives were considering resigning from RQL. In their view, this course of action would have adversely impacted a number of ongoing key projects and initiatives these executives were significantly involved in.

Initial action taken by the Board to address this risk was to extend contracts of employment for nine executives for a further 12 month period to 30 June 2014. Advice obtained from RQL's legal advisers identified a number of concerns with this action as a genuine retention strategy and this decision was subsequently rescinded by the Board.

Following the issue of a jointly signed letter to the Chairman expressing their concerns about their lack of job security leading up to and after the state election, four executives, identified by the Board as the key executives of RQL, were authorised to seek independent legal advice regarding their employment conditions.

Based on the results of this legal advice and subsequent review by RQL's legal advisers, the Board agreed to introduce amendments to the contracts of these executives which provided a 30 per cent increase in their TRV and provided an opportunity for the executives to resign following a change of government at the next state election and receive generous separation payments.

2.2 Conclusions

What began ostensibly as a retention strategy transformed into an exit strategy which cost RQL \$1.458 million.

Limited documentary evidence is available and referenced in board minutes supporting its deliberations and decisions. Consequently it is difficult for the Board to demonstrate the basis upon which its decisions were made, and that it acted at all times in the best interests of RQL.

2.3 Amendment of contracts of employment

All executives and senior managers of RQL had contracts of employment for three year terms from 1 July 2010 to 30 June 2013.

For some time, but particularly during early 2011, speculation was increasing about the future of RQL, the Board and senior management should there be a change of government at the next state election. While this speculation was common knowledge at RQL, there is no evidence that these matters were considered by the Board until its meeting of 8 July 2011.

Directors advised during interviews that they felt the increasing speculation around the future of RQL and its executives, combined with 'scuttlebutt' appearing on industry related websites which was directed towards individual executives, made the day to day working environment extremely difficult and was likely to lead to resignations of key staff.

On 14 April 2011, the Remuneration and Nomination committee (comprising Mr Bentley and Mr Ludwig) agreed to recommend to the Board of RQL that existing employment agreements for nine senior employees, including Mr Malcolm Tuttle, Mr Jamie Orchard, Mr Paul Brennan and Ms Shara Murray, be extended by 12 months, up to and including 30 June 2014.

This recommendation was based on:

‘...the amount of work that the executive staff will have to do between now and 2014 with the changing wagering landscape and the approach to the end of the exclusivity of the TattsBet licence.

RQL will be required to commence negotiations of a Product fee with TattsBet post 2014 and the Board needs to understand that key staff will be integral to a successful outcome.

The key executive staff need security of tenure as well as their assistants so as not to be distracted by innuendo and rumour about the period between now and 2014.’

At the meeting of the RQL Board on 6 May 2011, the above recommendation was unanimously accepted by the Board and it was resolved that the Chairman approve the terms relevant to the agreements and the extension of the agreements.

On 26 May 2011, an example of an amended executive employment agreement, drafted by Mr Tuttle, was forwarded by Ms Murray to RQL’s legal advisers for advice. In the covering email from Ms Murray it was stated ‘It is the Board’s intention that this Agreement be “in favour” of the RQL employee’. This draft agreement included the following clauses:

‘15.3 Should RQL as the Control Body for the 3 codes of racing, receive a show cause notice that could cause it to cease as the Control Body for the 3 codes of racing, a notice suspending its licence as a Control Body for the 3 Codes of racing or any other direction or notice that could cause it not to remain as the Control Body for the 3 codes of racing, RQL will immediately provide you the opportunity to take redundancy. The redundancy payment will be at least equivalent to the TRV you would have been entitled to receive had you remained employed for the period of the term of the contract.

15.4 Should any Director of RQL, as the Control Body for the 3 codes of racing, receive a show cause notice that could cause him or her to cease being a Control Body Director for the 3 codes of racing, or any other direction or notice that could cause him or her not to remain as a Control Body Director for the 3 codes of racing, other than for Official Misconduct, or if a Director of RQL ceases to be a Director for the 3 codes of racing as a result of legislative amendment, RQL will immediately provide you with the opportunity to take redundancy. The redundancy payment will be at least equivalent to the TRV you would have been entitled to receive had you remained employed for the period of the term of the contract.

15.5 If RQL offers you a redundancy for any reason, including in accordance with clauses 15.3 and 15.4, then you will be given six weeks written notice and will be paid a payment equivalent to the TRV you would have been entitled to receive had you remained employed for the period of the contract. Provided that you accept a redundancy, including in accordance with clauses 15.3 and 15.4, RQL may accept a shorter period of notice than six weeks and may waive the notice period in its entirety. If the notice period is shortened or waived in its entirety by RQL, RQL will still be required to pay the notice period out in full.’

The more significant considerations for the Board that arose from the proposed clauses in the draft agreements were:

- the draft proposals significantly extend the triggers for redundancy
- the obligation to immediately provide staff with the opportunity to take redundancy is inconsistent with the concept of redundancy
- it is unclear that the primary objective of securing the retention of key staff is best served by immediately providing an opportunity to take redundancy
- extension of the contract period for nine executives consequently increases the TRV of the contract that must be paid in the event of redundancy and the revised arrangements could have a significant impact upon the financial interests of RQL
- the quantum of the extended redundancy measures, if the contracts were also to be extended by 12 months, appeared to be overly generous when compared to prevailing commercial practice.

A retention and termination payment framework that was more consistent with the Board's stated intention could include the following:

- retention payments to be made over a set period of time, in instalments, with the final payment being made when the retention date has been achieved
- retention payments to be paid or accrued to become payable on the earlier of the relevant retention date being achieved or termination
- the value of the retention payment to be determined on the criticality of the executive to business continuity
- payment of an additional benefit on termination based on each key performance measure achieved up to the expiry of the contract.

At the board meeting on 1 July 2011, Mr Tuttle advised the Board that he and Ms Murray had met with RQL's legal advisers to discuss the proposed extensions to the employment agreements and were working through several matters raised by RQL's legal advisers.

Retention of services

On 5 July 2011, at the request of the Chairman, Messrs Tuttle, Orchard and Brennan and Ms Murray co-signed a letter to the Chairman outlining a number of concerns they had in relation to their future at RQL following the upcoming state election, with a request that urgent consideration be given to retaining their services and putting in place a framework that provided them with the necessary security both leading up to and subsequent to the state election.

At the board meeting on 8 July 2011, the Chairman updated the Board of the recent reports in newspapers and websites foreshadowing significant changes to RQL board and management structures after the next state election. The Board expressed their concern about the destabilising effect this was having on executive staff and RQL would ensure that the employees of RQL were aware of their rights. The Board instructed Mr Tuttle and Ms Murray to engage independent legal advice on their contractual rights with the cost of this advice to be paid by RQL.

Based on information provided by board members during audit interviews, at some time up to and including 8 July 2011, the Board identified that Messrs Tuttle, Orchard and Brennan and Ms Murray were the key executives of the company and, due to their involvement in a number of significant projects, including the Industry Infrastructure Plan and future funding agreements, it was imperative that their services be retained.

Ms Murray subsequently provided a briefing paper to the executives' legal advisers for consideration. This paper identified Messrs Tuttle, Orchard and Brennan and Ms Murray as RQL's key executives. The paper also included extracts from media and internet sources regarding proposed changes at RQL following the election, a list of recent initiatives promoted by these executives to demonstrate their value to RQL, copies of current contracts for the key executives and a copy of their letter to the Chairman of 5 July 2011.

There was no request for any consideration to be given to conducting a review of the contractual terms for any other employee of RQL.

On 12 July 2011, the executives' legal advisers issued an engagement letter to Ms Murray, which was signed by her on that date accepting the terms and conditions of their appointment. An addendum to this letter entitled 'Revised instruction confirmation sheet' and signed by the Chairman on 29 July 2011 set out the terms of the engagement to be:

'Advice on a strategy for the remuneration of Racing Queensland Limited's executives, as required by you
Advice and drafting of a redundancy policy; and
Advice and drafting of resignation letter and separation agreement, as advised by you.
We confirm that you do not expect us to act for our clients in respects beyond the stated scope of these instructions.'

Material adverse change clause

At the board meeting on 5 August 2011, the Board rescinded its earlier decision of 6 May 2011 to extend contract periods for nine senior staff to 2014 and, based on legal advice provided by the executives' legal advisers and RQL's legal advisers, the Board approved variations to the employment agreements of Messrs Tuttle, Orchard and Brennan and Ms Murray to include the following:

- a 30 per cent increase to each executive's TRV effective from 1 July 2011
- the addition of a 'material adverse change' clause which allowed the executive to resign with seven days' written notice, although this period could be waived at the Chairman's discretion. A material adverse change was defined as 'a change in the Queensland State Government, RQL ceasing to be the approved control body under the Racing Act 2002, a material adverse change in the makeup of the RQL board of directors, or executives' reporting lines, or an organisational restructure that materially impacts on the executives role at RQL in a manner adverse to the executive'. Triggering this clause would then result in the executive being paid:
 - a payment of a sum equivalent to the TRV the executive would have been entitled to receive had they remained employed until the end of the term of their contract, however, not exceeding a sum equivalent to 14 months of their TRV
 - a severance payment calculated in accordance with the relevant scale contained in any redundancy policy of RQL
 - any accrued but unpaid entitlements.

The current three year term of the employment contracts for the four key executives was retained but with an obligation on RQL to renegotiate the contracts before 31 December 2012.

Contracts of employment were not similarly varied for any other executive or senior manager of RQL.

At the same meeting, the Board approved the introduction of a redundancy policy for all employees of the company.

The Chairman advised that at the time of the resignation of the four key executives, considerable progress had been made in the significant activities for which their services were retained. An analysis subsequently provided by the Acting Chief Executive Officer of RQL of the status of major projects or activities undertaken by the four executives confirms substantial progress in a number of areas.

2.4 Duties of directors and officers

The board of directors of a company, supported by the various board committees set up by them, are responsible for the development of a governance framework that establishes the processes where decisions regarding the future of the company are taken, communicated, monitored and assessed. An important aspect of this framework is that board decisions are adequately supported and documented.

The *Corporations Act 2001* also requires directors and other officers of a company to exercise their powers and discharge their duties in good faith, in the best interests of the company and without using their position to gain an advantage for themselves or someone else, or cause detriment to the company.

- Section 181 requires a director or other officer of a corporation to exercise their powers and discharge their duties in good faith in the best interests of the corporation, and for a proper purpose.
- Section 182 states a director, secretary, other officer or employee of a corporation must not improperly use their position to gain an advantage for themselves or someone else, or cause detriment to the corporation.
- Section 184 states a director or other officer of a corporation commits an offence if they are reckless, are intentionally dishonest or fail to exercise their powers and discharge their duties in good faith and in the best interests of the corporation or for a proper purpose.

Record keeping

Board minutes did not adequately reflect the level of discussions and deliberations undertaken by the members in reaching their conclusions and decisions. Information provided by the directors and officers of the company during audit interviews confirmed that much of the information considered during the meetings was based on verbal rather than written submissions. Interviews were conducted with board members and other officers of RQL where oral evidence was provided in relation to the effect the external environment was having on key executives at that time and why the directors believed their actions were in the best interests of RQL, although much of this was unable to be substantiated in board records.

- There is no documented evidence available to substantiate that the Board or the Chairman undertook any benchmarking of the amended employment conditions with external organisations to assess the reasonableness of these arrangements.
- The relevant board minutes have little evidence of the responsibilities of directors under the Corporations Act 2001 being actively considered by board members, particularly the requirement to act in good faith and in the best interests of the members of the company.

Legal advice

On 2 June 2011, the Board obtained draft legal advice which alerted it to a number of issues relating to its fiduciary duty to act in the best interests of the company, and questioned whether the original proposed variations to the contracts of all RQL executives were optimal.

As part of this advice, the Board was provided with alternatives that would better fit with its stated intention of long term retention of executives.

RQL's legal advisers confirmed that the draft letter was not reissued, but was overtaken by subsequent advice provided to RQL on 1 August 2011.

Legal advice obtained by RQL for the Board highlighted areas of concern directly relevant to the discharge of their duties as board members. It is not evident how these matters were addressed or resolved. No specific legal advice was sought by board members in relation to their responsibilities under the Corporations Act despite concerns being raised.

The Board did not engage a remuneration consultant to provide it with assurances over the reasonableness of the improved terms and conditions of the executive contracts such as the proposed 30 per cent increase in their TRV.

The Board did not act to tighten up the trigger associated with the 'material adverse change' clause in the amended executive contracts to ensure that executives were unable to terminate their contracts until their positions within RQL were actually adversely impacted.

Legal advice provided to the four executives, paid for by RQL, formed the basis of the contract variations. The written instructions to the executives' legal advisers from RQL were that any amendments were to be 'in favour' of the RQL employee.

Two executives who stood to benefit financially from the change in their employment conditions were actively involved in the process. This clear conflict between their personal interest and the interests of RQL was not satisfactorily addressed by the Board.

Appendices

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Appendix A

Auditor-General Act 2009 (Section 64) – Comments received

In accordance with section 64 of the *Auditor-General Act 2009*, a copy of this report was provided to the Minister for National Parks, Recreation, Sport and Racing, the Director-General, National Parks, Recreation, Sport and Racing and the Chairman, Racing Queensland Limited with a request for comments.

Responsibility for the accuracy, fairness and balance of the comments rests with the head of each agency.

In accordance with principles of procedural fairness and natural justice, current and former Board members (the directors) and officers of RQL interviewed during the audit were also afforded the opportunity to read the draft report and provide comments thereon.


In a combined response following their reading of the report the directors claim that the report does not give sufficient regard to the oral evidence provided during their interviews particularly in relation to the background to the actions of the Board. Oral evidence was provided in relation to the effect the external environment was having on key executives at that time and why the directors believed their actions to vary executive contracts were in the best interests of RQL, although much of this was unable to be substantiated in board records.

Australian Auditing Standard ASA 500 *Audit Evidence*, provides commentary on the reliability of audit evidence and states “Audit evidence in documentary form, whether paper, electronic or other medium, is more reliable than evidence obtained orally (for example, a contemporaneously written record of a meeting is more reliable than a subsequent oral representation of the matters discussed)”.

Examination of the oral evidence presented during the interviews identified some inconsistencies and contradictions which demonstrate that this form of evidence is less reliable for audit purposes.

Comments received

Response provided by the Director-General, Department of National Parks, Recreation, Sport and Racing on 25 June 2012.

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

Our Ref CTS 07301/12
Your Ref 12-8702-A

111 George Street Brisbane Qld 4000
PO Box 15187 City East
Queensland 4002 Australia
Telephone +61 7 3224 8113
Facsimile +61 7 3033 0904

Mr Andrew Greaves
Auditor-General
PO Box 15396
CITY EAST QLD 4002

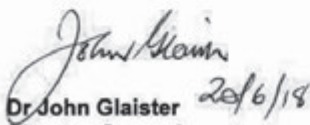
Dear Mr Greaves

I refer to your letter of 4 June 2012 concerning the report to Parliament on the results of the audit of Racing Queensland Limited (RQL).

Thank you for providing the opportunity to comment on the proposed report. RQL is a statutory authority that reports directly to the Minister for National Parks, Recreation, Sport and Racing. On that basis, the department has no comments to provide to your report to Parliament.

Should you have further enquiries, please do not hesitate to contact me or Mr Simon Griffiths, Head of Internal Audit on telephone (07) 3405 6920.

Yours sincerely


Dr John Glaister 25/6/12
Director-General

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25 JUN 2012
QUEENSLAND
AUDIT
OFFICE

Comments received

Response provided by the Chairman, Racing Queensland Limited on 26 June 2012.

* The reference in this letter to page 12 of the draft report, relates to page 18 of the final report.

RECEIVED

26 JUN 2012

QUEENSLAND
AUDIT
OFFICE


**RACING
QUEENSLAND**

25 June 2012

Mr Andrew Greaves
Auditor-General
Queensland Audit Office

Dear Mr Greaves

RE: Draft report by Auditor-General – Submission by Racing Queensland Limited

Thank you for the opportunity to provide a submission in respect of your draft audit report dated 4 June 2012 into Racing Queensland Limited (**Racing Queensland**).

Your draft report raises a number of significant issues regarding the decision making processes adopted by Racing Queensland's board in August 2011. The composition of the Racing Queensland board has undergone significant transformation since August 2011. To the extent that your draft report raises factual findings about the decision making process of the Board as it was constituted in August 2011, it is the individuals who constituted the Board at that time that are best placed to respond to those findings.

However, there is one factual finding on p.12 of the draft report in relation to which I would like to provide some further detail.

On p.12 of your draft report, it is noted that "[a]n analysis subsequently provided by the Acting Chief Executive Officer of RQL of the status of major projects or activities of the four executives confirms substantial progress in a number of areas".

For the purpose of preparing this submission, I sought clarification from the Acting Chief Executive Officer of the nature of the analysis that was undertaken. The Acting Chief Executive Officer confirmed that the analysis was simply an objective overview of the current status or progress of a number of identified projects based on a desk top audit. The analysis did not seek to consider subjective matters such as the relative contributions of the executives to the projects or the importance or significance of the respective projects to the operations of Racing Queensland. Accordingly, the analysis should not be interpreted as doing anything more than factually recording the status of a number of projects as at March 2012.

The current Board of Racing Queensland is working hard to continually improve the governance and decision making processes within Racing Queensland.

Racing Queensland Limited
A.B.N 62 142 786 874
Racecourse Rd Deagon QLD 4017
PO Box 63 Sandgate QLD 4017
T 07 3869 9777
F 07 3269 6404
E info@racingqueensland.com.au
W www.racingqueensland.com.au

Comments received

Response provided by the Chairman, Racing Queensland Limited on 26 June 2012.

** The reference in this letter to page 12 of the draft report, relates to page 18 of the final report.*

In this regard, the Acting Chief Executive Officer and I arranged for Mr Barry Dunphy to provide a briefing to the Board at its meeting on 1 May 2012, in relation to our obligations as directors of Racing Queensland. Amongst the topics covered by this briefing were:

- Directors Duties under the Corporations Act and at Common Law;
- Confidentiality; and
- Understanding and Managing Conflicts of Interest.

The purpose of organising the above briefing was to ensure that all Board Members had a clear understanding of their obligations as directors of Racing Queensland.

As Chairman of Racing Queensland, I am committed to ensuring that the Board of Racing Queensland upholds the highest standards of integrity and accountability in its decision making processes. If your final report demonstrates that further action should be undertaken by the Board or improvements made to our processes, I am committed to implementing the changes required.

I look forward to receiving your final report in the near future.

Yours faithfully



Kevin Dixon
Chairman
Racing Queensland Limited

Appendix B

Timeline of key events

Date	Details	Audit observations
Early 2011	Increased industry, media and opposition speculation about the future of RQL. Board identified an increase in 'scuttlebutt' directed towards executives of RQL, in particular Messrs Tuttle, Orchard and Brennan, and Ms Murray.	While common knowledge, there is no record of the impact of this speculation on the executives of RQL being considered by the Board until the meeting of 8 July 2011.
14 April 2011	Remuneration and Nomination Committee agreed to recommend to the Board of RQL that existing employment agreements be extended by 12 months, up to and including 30 June 2014, for nine executive and senior management employees.	Remuneration and Nomination Committee comprised Mr Bentley and Mr Ludwig.
6 May 2011	Board of RQL unanimously accepted the Remuneration and Nomination Committee's recommendation.	Resolved that the Chairman approve the terms relevant to the agreements and the extension of the agreements.
26 May 2011	Amended executive employment agreement drafted and forwarded to RQL's legal advisers.	Amended agreement was drafted by Mr Tuttle and forwarded to RQL's legal advisers by Ms Murray with advice that <i>'It is the Board's intention that this Agreement be "in favour" of the RQL employee'</i> . No concerns documented in board minutes of any conflict of interest in the involvement of these executives in the development of amended contracts which would benefit them. The amended agreement introduced the 'material adverse event' clause.

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Date	Details	Audit observations
2 June 2011	Draft advice received from RQL's legal advisers raising a number of concerns but also outlining broad parameters for developing a retention and termination payment framework.	<p>A number of concerns were raised in relation to the proposed changes in executive remuneration including the duties and obligations of directors and officers under the Corporations Act. There is no indication that these concerns were addressed by the Board.</p> <p>The Board did not seek specific legal advice on their duties and obligations.</p> <p>There is no evidence that the parameters for retention and termination payment framework were considered further by the Board.</p>
5 July 2011	Messrs Tuttle, Orchard and Brennan and Ms Murray co-signed a letter to the Chairman outlining concerns about their future following the 2012 state election.	<p>Chairman instructed the executives to put their concerns in writing.</p> <p>The other five executives and senior managers were not included in this letter and their employment situation was not considered further by the Board on the basis that they were not considered to be 'key' executives.</p>
8 July 2011	Board instructed Mr Tuttle and Ms Murray to engage independent legal advice on their contractual rights with costs to be paid by RQL.	Legal advice sought was in respect of the executives' rather than RQL's contractual rights.
July 2011	Ms Murray provided a briefing paper for the executives' legal advisers identifying Messrs Tuttle, Orchard and Brennan and Ms Murray as key executives of RQL.	There is no record in the board minutes that the directors identified these four executives as key executives of RQL.
20 July 2011	Executives' legal advisers provided advice recommending a 30 per cent increase in TRV for four key executives and inclusion of a material adverse event clause in their employment agreements.	No documentary evidence is available to support the reasonableness of the 30 per cent increase in TRV.

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Date	Details	Audit observations
20 July 2011	Board noted the advice from the executives' legal advisers and unanimously supported the intent of the advice. Moved that this advice be reviewed by RQL's legal advisers.	In supporting the intent of this advice, which included the 30 per cent increase in value of executive's TRV and the introduction of a material adverse event clause, the Board does not appear to have considered the impact of this advice on RQL.
1 August 2011	Advice from RQL's legal advisers received and some recommendations were made.	Advice recommended capping the TRV to a range of between 12 and 14 months. Board approved cap of 14 months. Recommended that a change in state government alone should not trigger resignation of the executives. Board chose not to accept this recommendation.
3 August 2011	Executives' legal advisers, following their review of RQL's legal advice of 1 August, recommended retaining change of government at the next state election as a material adverse change trigger.	This recommendation was accepted by RQL.
5 August 2011	Board approved amended contracts be issued to four key executives with 30 per cent increase in TRV and material adverse change clause that would allow executives to resign and receive same entitlements as if they were made redundant. Board decision of 6 May 2011 in relation to extension of contract periods for nine executive and senior managers was rescinded. A redundancy policy was introduced for all RQL employees.	Amended contract provided the four key executives with an opportunity to exit RQL at the next state election should there be a change in government.
24 March 2012	State election held.	Change of government.
26 March 2012	Four key executives of RQL resigned and received separation payments totalling \$1.858 million.	Payments were in accordance with contractual and legal entitlements.

Auditor-General Reports to Parliament

Tabled in 2012-13

Report Number	Title of report	Date tabled in Legislative Assembly
1	Racing Queensland Limited: Audit by arrangement	July 2012

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