

## Brent Hogan

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**From:** Bob Gaussen  
**Sent:** Tuesday, 10 January 2012 4:47 PM  
**To:** Brent Hogan  
**Cc:** dlanda@bigpond.net.au  
**Subject:** RE: Terms of Reference Swabbing Inquiry GRNSW.docx

Hi Brent

David and I have spoken about your email. We are happy to discuss your views.

Regards  
BG

<b>Document tendered by</b> GRNSW
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**From:** Brent Hogan  
**Sent:** Tuesday, 10 January 2012 8:41 AM  
**To:** Bob Gaussen  
**Subject:** RE: Terms of Reference Swabbing Inquiry GRNSW.docx

Hi Bob,

### ***Terms of Reference***

It would be useful to understand the nature of the complaints being received, can they be placed in the following boxes for instance:

- Sample control
- Collection & Transportation
- Kennel security
- Tracking
- Quality control
- Swabbing practice
- Adjudication and inquiry
- Penalties & disciplinary actions
- Reporting
- Selection process

The above would assist in better defining the terms of reference.

### ***Cost Estimate***

On the issue of cost, is this part of the general retainer or additional to that. If it is addition to this a cost estimate is required as the Board is considering the budget position at its 31 January meeting. The reality is that the IA function is already significantly over budget this year. We are removing it from the GRNSW budget and placing it in the industry budget so the cost of the IA function is transparent.

### ***Role & Function***

In the Agreement in Principle speech, the Minister outlined the role of the IA as follows:

"The Integrity Auditor is a new and important role. The Integrity Auditor will be a person with legal qualifications and be responsible for receiving and investigating complaints about the conduct of racing officials in relation to responsibilities and obligations under statute, and also the code of conduct of the relevant controlling body. The Integrity Auditor may decide that a complaint is frivolous, vexatious, trivial or not in good faith. Also, that it does not relate to the exercise of functions by the racing official in a corrupt, improper or unethical manner. The purpose of these limits is to ensure that the right to make a complaint is not abused.

The bills provide for the Integrity Auditor to exercise his or her function independently of the controlling body. Each controlling body may request advice from the Integrity Auditor on specific matters, for example, settling the code of conduct."

S. 27 and 28 of the Act relating to inquiries and investigations are clearly only triggered on receipt of a complaint and apply to the investigation of a particular complaint. It becomes a question of how the s26(1)(a) function is exercised, I would suggest there are three interpretations:

1. The function is exercised by the receipt of complaint and the investigation of same – a view seemingly supported by the construct of the legislation, there are no powers provided in relation to matters outside of the investigation of a complaint
2. The function is exercised by the Board requesting advice on specific matters within the ambit of s.26(1)(a) – a view that would seemingly gain support from the Agreement in Principle Speech
3. The function is exercised akin to an internal auditor with an agreed and costed schedule of reviews based on the needs of the business and the broad nature of the complaints received by the IA – Maybe massaged to reflect the intent of the Agreement in Principle Speech whereby GRNSW would be requesting advice on the specific matters contained in the agreed schedule of reviews.

Regards,  
Brent

**brent hogan**

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twitter: [www.twitter.com/brenthogan](http://www.twitter.com/brenthogan)

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**From:** Bob Gaussen |

**Sent:** Monday, 9 January 2012 2:53 PM

**To:** Brent Hogan

**Subject:** Terms of Reference Swabbing Inquiry GRNSW.docx

Hi Brent

Please see attached and give me a call.

Any suggestions you may have to improve the value of the enquiry to GRNSW would be greatly appreciated.

Regards

-----  
**Bob Gaussen**

for David Landa, Integrity Auditor

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## Brent Hogan

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**From:** Bob Gaussen  
**Sent:** Monday, 13 February 2012 3:45 PM  
**To:** Brent Hogan  
**Cc:** dlanda@bigpond.net.au  
**Subject:** RE: Budget

Dear Brent

I agree with you that there is some confusion as to the role of the retainer in the context of the Service Agreement signed between GRNSW and Mr Landa.

While in hindsight this is a discussion which would have been beneficial before the Service Agreement was resolved, I consider the following represents a sensible outcome.

It is proposed that the annual retainer cover the following events:

- A maximum of 4 conferences per year with you and/or the Board at which the general activities of the Integrity Auditor are discussed.
- Time spent in considering and dealing with complaints that are determined by the Integrity Auditor to be beyond jurisdiction.
- Provision of office and administrative services.

Activities which are covered by the hourly rate include the following events:

- Complaints: Considering and dealing with any complaint which the Integrity Auditor considers within jurisdiction.
- Audits: An annual audit per the proposed 3 yearly cycle; special audits on the basis of either referral by the Board of GRNSW or as determined by the Integrity Auditor after advice to GRNSW.

The hourly rate will include time taken for inspections, meetings, associated research, report writing and travel. In addition, reasonable disbursements as provided by the Service Agreement.

You will be aware that both Mr Landa and I have spent considerable time developing policies and procedures for the operation of the Office. This has been compounded by the fact that there was nothing in place prior to appointment. As a sign of goodwill, it is proposed that this time be absorbed within the retainer.

In relation to assisting GRNSW prepare a budget for the activities of the Integrity Auditor, there is very little on which to base calculations. I have previously provided my thoughts which I concede may prove quite inaccurate. Speaking to Mr Landa, we consider that the matter of budget is a matter for the Board and your management team. If performance of the statutory duties results in either an underpayment or overpayment to the Integrity Auditor, the best we can observe is that such will be of assistance in developing the 2013 budget.

At our meeting on 19 January, we discussed the benefits of Mr Landa attending a GRNSW Board meeting for a better mutual understanding of both the operation of the Board and the statutory duties of the Integrity Auditor. Should an invitation be extended, both Mr Landa and I would be available.

Regards

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**Bob Gaussen**  
for David Landa, Integrity Auditor

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**From:** Brent Hogan [  
**Sent:** Thursday, 9 February 2012 3:15 PM  
**To:** Bob Gaussen  
**Subject:** RE: Budget

No problems,

**brent hogan**

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**From:** Bob Gaussen  
**Sent:** Thursday, 9 February 2012 10:52 AM  
**To:** Brent Hogan  
**Subject:** RE: Budget

Hi Brent

Sorry about the delay in responding.

I have prepared a reply but want David to give it his OK first.

David is taking a week's leave but will return over the weekend when I will reply.

Regards

**Bob Gaussen**

for David Landa, Integrity Auditor

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**From:** Brent Hogan  
**Sent:** Monday, 6 February 2012 8:27 AM  
**To:** Bob Gaussen  
**Subject:** RE: Budget

Bob,

Could you provide me with your understanding of what the retainer covers as opposed to a new hourly charge for handling complaints?

Thanks,  
Brent

**brent hogan**  
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**From:** Bob Gaussen |  
**Sent:** Monday, 23 January 2012 4:18 PM  
**To:** Brent Hogan  
**Subject:** RE: Budget

Hi Brent  
I thought this might be your reply  
Happy to discuss.  
Please give me a call at your convenience.  
I don't want to do anything that would extend Percy's convalescence.

Regards  
BG

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**From:** Brent Hogan  
**Sent:** Monday, 23 January 2012 3:21 PM  
**To:** Bob Gaussen  
**Subject:** RE: Budget

Hi Bob,

We will need to discuss this later in the week as the budget is well outside the realms of what would be acceptable to GRNSW or for that matter Government.

Regards,  
Brent

**brent hogan**  
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**From:** Bob Gaussen  
**Sent:** Monday, 23 January 2012 3:09 PM  
**To:** Brent Hogan  
**Cc:**  
**Subject:** Budget

Dear Brent

Following our budget discussion last Thursday, I confirm that David and I estimate the following time commitments to Integrity Auditor duties under Greyhound Racing Act.

- Conducting one audit per year of a primary oversight responsibility under section 26 (1) (a) and (b)
  - 10 days at 7 hours
- Dealing with complaints, including telephone enquiries, considering and responding to written complaints, investigations of complaints, preparation of reports, conferences with interested parties under section 26 (1) (c)
  - 1 day at 7 hours per week

Total hours per year:

- |   |           |
|---|-----------|
| • Audit function                          | 70 hours  |
| • Complaints function (assuming 48 weeks) | 336 hours |
| ○ Total                                   | 406 hours |

At hourly rate of \$390

GST

Total, including GST

This budget figure comes to more than we estimated. I am happy to discuss to find further economies.

○ Regards

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**Bob Gaussen**

for David Landa, Integrity Auditor

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## Brent Hogan

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**From:** Brent Hogan  
**Sent:** Friday, 23 March 2012 4:10 PM  
**To:** 'Bob Gaussen'  
**Cc:** dlanda@bigpond.net.au; Eve McGregor  
**Subject:** IA Budget

Hi Bob,

The Board discussed the arrangements between GRNSW and the Integrity Auditor at its meeting on Wednesday with the following outcomes:

- Consistent with your 13 February 2012 email to me, the Board accepts that the annual retainer provides for the following:
  - A maximum of 4 conferences per year with the CEO and/or Board at which the general activities of the IA are discussed;
  - Time spent in considering and dealing with complaints that are determined by the IA to be beyond jurisdiction; and
  - Provision of office and administrative services.
- With respect to the levying of an hourly rate to consider and deal with any complaint that the IA considers to be within jurisdiction, GRNSW supports this on the basis that the Services Agreement is amended to provide for appropriate accounting of time spent on individual files. The Board noted that your 23 January estimate of 336 hours across 48 weeks essentially represented one day per week. The Board does not believe the number of complaints received within jurisdiction in any given year will be significant given the experience to date since the appointment of Mr. Landa to the office of IA.

The Chairman will shortly contact David to invite him to attend the April meeting of the Board, at that meeting the Board wishes to discuss with the IA how he will fulfil his function of oversight of those aspects of the functions of GRNSW that relate to stewards, drug testing and control and registration. We view this as 1 of the 4 yearly conferences to be staged between GRNSW and the IA. As such with respect to the cost proposal for the conduct of audits, the Board will give further consideration to this once it has met with Mr. Landa.

Bob, we would suggest proceeding immediately with amendments to the Services Agreement and deal with the oversight matter by way of a side letter so as not to delay things.

Regards,

**brent hogan**

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## Brent Hogan

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**From:** David Landa  
**Sent:** Thursday, 29 March 2012 12:34 PM  
**To:** Brent Hogan  
**Subject:** Re: Discussions

Bob

Without attempting to comprehend Brent,s memo I see the situation as terminal from my point of view. What Brent has achieved is delay and obstruction to the extent that the function of the IA has no credibility it having been blocked from any meaningful function for more than 2 years-a delay in which some may consider he permitted if not encouraged.. I am not interested in playing any more and will consider how I will terminate my engagement. The board should recognise that while the IA is without significant powers,it did hold comfort for a board receiving independent advice and possible warnings of problems in the organisation. They will have to grapple with that. I will now only consider my report to the minister.

- As for the retainer I believe that I it has been totally absorbed in the work we did putting into place a process that was the duty of GRNSW to have concluded long ago.

I am happy to continue with HRNSW.

I hope this does not cause you angst but life holds better things for me than this rubbish.  
David

**From:** Brent Hogan  
**Sent:** Thursday, March 29, 2012 12:13 PM  
**To:** 'Bob Gaussen'  
**Cc:** dlanda ; Eve McGregor  
**Subject:** RE: DISCUSSIONS

Bob

- So as to limit the scope for misunderstandings, I have responded to each of the matters raised in your email within your email itself in red text.

Regards,  
Brent

### **brent hogan**

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**From:** Bob Gaussen [mailto:[gaussen@adjudicate.com.au](mailto:gaussen@adjudicate.com.au)]  
**Sent:** Wednesday, 28 March 2012 1:17 PM  
**To:** Brent Hogan  
**Cc:** Eve McGregor; [dlanda@bigpond.net.au](mailto:dlanda@bigpond.net.au)  
**Subject:** Discussions

Hi Brent



David requests that you respond to the attached email sent 26/3 ASAP which is consistent with the observation in your email of 23/3: My responses below address the nucleus of your 26/3 11:04AM email. As is clear from my responses the characterisation of the IA function contained in that email is not agreed from my perspective. In the course of the next week I will forward to you a marked up version of the Services Agreement for your consideration, when agreeable this would replace the present agreement. As conveyed in my 23/3 4:10PM email and confirmed in our telephone conversation of 26/3, these changes will address administrative / accounting matters that have largely been agreed between the parties (see your 13 /2 email).

As also confirmed in our 26/3 telephone conversation, the side letter reference in my 23/3 email was with respect to the ultimate agreed approach between the Board and David with respect to the unresolved oversight / audit role in absence of a qualifying complaint or a referral from GRNSW. This will obviously not occur therefore until after the Board has met with David (which is planned for 26 April).

"Bob, we would suggest proceeding immediately with amendments to the Services Agreement and deal with the oversight matter by way of a side letter so as not to delay things."

David has asked me to convey the following points:

1. While these discussions continue, any meaningful implementation of external oversight is being delayed. It is most important we resolve matters quickly. As conveyed in my email of 23/3 @4:10PM, reconfirmed in my email of 26/3 @ 7.40am, and discussed with you in a telephone conversation on 26/3, the Board of GRNSW wish to discuss this matter with David Landa in its planned meeting with him (as you would be aware, the genesis of this meeting was conversations that David had with directors at the informal dinner in January). The Chairman was now formally invited David to attend the next ordinary meeting of the Board scheduled for 26 April (it is noted that this is only the second ordinary Board meeting of the new Board and highlights the importance placed on the IA function by the Board). The suggestion that "any meaningful implementation of external oversight is being delayed" is completely rejected. Clearly, the primary purpose of the IA function is to receive complaints and where within jurisdiction investigate and act on those complaints, secondly, it is also clear that GRNSW itself can refer matters to the IA for investigation and advice where it elects to do so. Your suggestions draw on a much broader interpretation of "oversight" which is on my view, not sustainable given the legislative provisions, guidance from the 2nd reading speech, the practical example of the Integrity Assurance Committee established under similar provisions in the Thoroughbred Racing Act, and the legislative reality that the oversight intended was that which the previous GHRRA was covered for by ICAC. Nevertheless, as I continue to put to you the Board of GRNSW wish to discuss this with David when it meets with him, pending his availability, on 26 April @ 4pm.
2. He is most disheartened by the total absence of any response to the Blackwood memo and enquires when this will be acknowledged. I take this as a reference to the correspondence sent to our new Chairman shortly after her appointment to that role in February, if I am wrong in this assumption please let me know. My understanding was that in a meeting with yourself and David, the Chairman conveyed to you that the matter would be raised at the next ordinary Board meeting. The first Board meeting following your meeting with the Chairman was indeed the meeting of 21 March. I further understand that the Chairman corresponded with David on this matter yesterday. This is also consistent with what was conveyed to you in our telephone conversation on 26/3. For those reasons your characterisation that there had been "a total absence of any response" clearly doesn't accord with the factual matrix as I understand it.

Given the aforementioned communications I am somewhat concerned that we are at cross-purposes here and you are referring to something other than the correspondence to the Chairman so please do clarify if that is the case. To that end on the basis of discussions around this same issue with David and yourself, inclusive of the site visit to Wentworth Park, my understanding was that David was satisfied that the policies and procedures currently in place with respect to kennelling arrangements at race meetings were appropriate and adequate and as such do not believe there is anything outstanding on this matter from my office.

In your email of 26/3 you advise of the following Board resolution:

To discuss with the Integrity Auditor the ongoing role of the current GRNSW internal auditor the Internal Audit Bureau (IAB) and the ongoing usage of IAB as part of the Integrity Auditor role.

David advises that he is happy to have such a discussion but knows insufficient about the operations of the IAB and its relationship with GRNSW. Given that the functions of the IAB are an internal function to GRNSW and the Integrity Auditor provides a quite different external and independent oversight, what role does the Board wish to discuss? Perhaps the first question is whether any role is appropriate? In this context David again expresses his view that the primary oversight functions of the Integrity Auditor which relate to stewards, drug testing and control and registration cannot be properly fulfilled unless industry participants are given the opportunity to present their experiences.

At the outset I must say we would not accept the proposition, nor I dare say would the audit community, that the internal audit role performed by IAB is an internal function that doesn't provide appropriate external / independent oversight and assurance. IAB Services is a NSW government trading enterprise specialising in providing a wide range of assurance and consulting services to the public sector and service delivery partners operating in NSW.

With respect to your view of David, it is not my intent to engage in a lengthy email debate on the matter, you are aware that in my view that is not a position that can be sustained with reference to the Act, the 2nd reading speech, or precedent of the IAC in the thoroughbreds. Suffice to say that participants clearly have the opportunity to make complaints to the Integrity Auditor on such matters and in circumstances where David determines the complaint to be genuine and within jurisdiction, he has the power to investigate that complaint – this is plainly the primary purpose of the Integrity Auditor role and is consistent with the 2nd reading speech that provides guidance in this area. Further, it is open to GRNSW to refer matters within the areas that relate to stewarding, drug testing and control and registration for review by the IA, these are ultimately matters for which the Board has primary responsibility. It was never the intent that the IA, in the absence of a qualifying complaint or reference from GRNSW, would set about their own pathway of inquiry and audit.

That said, clearly it is an issue that the Board wishes to explore with David as to how the organisation's current approach can be enhanced by his involvement.

Regards

**Bob Gaussen**  
for David Landa, Integrity Auditor

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