

19 AUG 2014

MIN. BIGNELL

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14 August 2014

Hon Leon Bignell MP
Minister for Tourism
Level 12, Terrace Towers
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Dear Minister,

Thank you for your letter dated 7 August 2014 regarding the sweeping reform of South Australian boards and committees.

In response to your request to complete an assessment against the criteria to assist you in making a recommendation for exemption from abolition for the South Australian Motor Sport Board, the following information is provided for your consideration.

Background

Motor racing by its very nature is dangerous, even with the improvement in safety over the years.

The South Australian Motor Sport Board was established as a statutory corporation under the *South Australian Motor Sport Act 1984* (the Act) for the purpose of conducting motorsport events at arms-length to government. The SAMSB has successfully delivered 11 Formula One Grand Prix, 16 V8 Supercars events, 5 Rally SA events and several World Solar Challenges.

The current Formula 1 Australian Grand Prix continues to operate under a similar statutory corporation structure as was established in South Australia.

The Act is primarily required to provide the powers necessary to conduct a motor sport event on a temporary street circuit, including regulations for conduct of the event, and to clearly define the functions and powers of the statutory corporate entity. The following is a text extract from the Act:

The Board —

- a) *is a body corporate with perpetual succession and a common seal; and*
- b) *is capable in its corporate name of acquiring, holding and disposing of real and personal property; and*
- c) *is capable of acquiring or incurring any other rights or liabilities, and of suing and being sued; and*
- d) *holds its property on behalf of the Crown; and*
- e) *has the powers, authorities, duties and obligations prescribed by or under this Act.*

The functions of the Board are —

- a) *to negotiate and enter into agreements on behalf of the State under which motor sport events, whether promoted by the Board or by some other person approved by the Minister, are held in the State; and*
- b) *to undertake on behalf of the State the promotion of motor sport events; and*
- c) *to do all things necessary for or in connection with the conduct and financial and commercial management of each event promoted by the Board; and*
- d) *to provide advisory, consultancy, management or other services to promoters or other persons associated with the conduct of sporting, entertainment or other special events or projects, whether within or outside the State; and*
- e) *such other functions as the Minister may from time to time approve.*

Assessment Criteria

The following responses are for each of the provided assessment criteria.

1) *Is the operation of the entity truly commercial in nature?*

The SAMSB as a statutory corporation provides a high level of transparency with defined powers and functions in legislation, requirements for consultation and independent accountability.

The SAMSB is fully accountable for strategy and commercial policy with independence from government policy to support entrepreneurial endeavours. This does not diminish the SAMSB's accountability for compliance with public policy requirements that do not adversely affect commercial outcomes, however provides greater flexibility for Ministerial directives that have commercial aim.

As outlined above, the SAMSB has full powers to enter into commercial agreements, acquire and dispose of assets, and negotiate commercial agreements on behalf of the State.

The SAMSB are responsible for setting of pricing, and actively competing for the discretionary entertainment dollar against commercial competitors.

The SAMSB does meet the standard definition of a public non-financial corporation. The *2014/15 State Budget, Budget Paper 3, Chapter 5: Government businesses*, broadly defines a government business as "government controlled entities that are engaged mainly in the production of marketable goods and/or services". Noting, "A defining feature of government business is that a significant proportion of their operational costs are recovered through user charges."

As the promoter of motorsport events, the SAMSB is operating in competitive markets for sponsorship, corporate hospitality and general entertainment, with development of over 80 different ticket types and corporate products, generating in excess of \$20 million.

More than two-thirds of Clipsal 500 Adelaide income is sourced from commercial operations controlled through separate accounts to government requiring independent governance.

2) *Is there is a case for direct community or sectoral representation through a board?*

The board structure specified by the Act provides for direct representation from Adelaide City Council and Confederation of Australian Motor Sport (CAMS).

Independent accountability is critical from these key stakeholders. Rather than engaging with them on a consultative basis, they are held accountable as members of the SAMSB which is only possible with a board, making it superior to other engagement models.

Adelaide City Council represents matters involving the Park Lands and the SAMSB operations in these areas.

The CAMS representative is the Race Director of the V8 Supercars series, who also has vast international motor sport experience with the FIA, which is of significant advantage in representing the SAMSB in motor sport forums.

3) *Will the abolition of a board have a negative impact on business or community confidence?*

The abolition of the SAMSB removes the arm-length transparency from government, directly placing the Minister accountable for commercial operations and negotiations for entertainment product, and any Park Land issues.

Irrespective of the reality, there is a risk of a negative community view of the transparency, impartiality and accountability for selection of Clipsal 500 entertainment options.

The Minister will take on direct accountability for any impacts on the local Adelaide community associated with the Clipsal 500 event.

There may also be the potential for corporate sponsors to have concern about the event moving away from being a commercial entity with an independent board to a government entity. However any affect from this is unknown.

4) *Is there a significant legal or financial advantage in retaining the board?*

Risk Separation

The SAMSB as a statutory corporation was established for risk separation/quarantining particularly for high-risk activities, and to conduct independent commercial operations at arms-length from government, with an independent governance board that creates a layer of separation from government for accountability. This remains as relevant as ever.

The commercial risk is limited to the corporation as an entity that can sue and be sued, thus protecting the commercial interests of the State, and limiting the commercial liabilities to the assets of the corporation.

Efficiency of Governance

With the specialised nature of operations for construction and motorsport activities, and the need for speed and agility for commercial dealings in competitive markets, it is highly beneficial to have in-house access to the necessary specialist industry skills and experience to conduct best-practice governance.

Selection of board members with the right skills and broad experience base provides the most cost effective governance solution. By having the multiple skills of the SAMSB around the table monthly to rapidly advise and workshop issues is highly efficient, particularly with SAMSB sub-committees established for marketing & commercial, engineering, motorsport and finance and audit.

The SAMSB members are very hands-on. The sub-committee meetings particularly create a workshop environment between the SAMSB and the management team for rapid problem solving, good governance and decision making, leveraging a broad base of relevant commercial skills and industry experience.

It is estimated that the board members contribute in the order of 1,700 hours to specialist tasks per annum.

The alternative would be for the statutory entity to access similar skills through consultants and contractors, but that would not come with the same level of independent accountability and economy provided by maintaining a board structure with sub-committees.

The board structure has the added benefit of members providing independent advocacy for the South Australian government policy objectives and the role of major events in achieving these. Similarly it is an avenue for continuous community engagement, often on contentious issues related to operating in sensitive Park Land areas, providing a layer of governance and separation from government.

Staffing Flexibility

Great progress has been made in public sector workplace arrangements to provide staffing flexibility, however competitive commercial operations may not be well served in traditional public service departmental structures.

To actively promote events in the highly competitive entertainment market there is a requirement for highly motivated sales teams on commission-based remuneration. This is particularly so in the cut-throat corporate hospitality and sponsorship markets that often involves contra arrangements as part of the deals, and confidentiality is paramount.

Equally this level of commercial activity requires close governance for rapid decision making and adherence to commercial policy.

5) *Is there some other compelling risk identified by the minister associated with the abolition of a board?*

Motor Sport

While the safety standards in motor racing have dramatically improved over the past two decades it remains a high-risk sport as evidenced by the tragic death of driver, Ashley Cooper, in the 2008 Clipsal 500 Adelaide, the death of a marshal struck by a wheel at the Australian Grand Prix in 2001, and multiple fatalities in rally driving in recent years.

A separate board of governance provides independent accountability for high-risk motorsport activities, allowing the Minister and government to be represented at arms-length in legal matters that may lead to Coroner's Court proceedings as has been the case previously.

High-Risk Construction Activities

The build and dismantle of the Clipsal 500 is a complex construction project with a varying scope from year-to-year, making it very different to a typical capital based construction project that may be undertaken by DPTI. A typical government construction project would be tendered with the government as the client engaging a turn-key contractor who is accountable for project outcomes and all legislative requirements including work, health and safety (WHS).

By necessity of the highly variable scope of the Clipsal 500 build the SAMSB is the principal contractor for all construction works and is directly accountable for governance and reporting requirements under the WHS legislation. This is a critical risk management function that has been well served by the checks and balances of independent governance with separation from the Minister/government.

In conclusion, the critical assessment of the South Australian Motor Sport Board is that a statutory corporation with an independent board is the most appropriate and efficient structure for the government to maintain arms-length independence from commercial dealings and high-risk exposure in conducting motorsport events such as the Clipsal 500 Adelaide.

As presiding member for the current board I would be pleased to discuss further the options for maximising the skills mix and representation on the SAMSB.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Ford', written in a cursive style.

Andrew Ford
Presiding Member
South Australian Motor Sport Board