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THE HONOURABLE MARGARET WHITE AO, Commissioner

MR JC BELL QC, Counsel Assisting

MR T PINCUS, Counsel Assisting

IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 1) 2013

QUEENSLAND RACING COMMISSION OF INQUIRY

BRISBANE

9.59 AM, MONDAY, 14 OCTOBER 2013

Continued from 4.10.13

DAY 14

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THE COMMISSION RESUMED

[9.59 am]

5 COMMISSIONER WHITE: Mr Pincus.

MR T. PINCUS: Commissioner, unless there's any preliminary matters, the first [indistinct] is Mr Lawlor, who is already in court.

10 COMMISSIONER WHITE: Perhaps, Mr Plunkett, you might like to announce your appearance, not having - - -

MR M. PLUNKETT: Yes.

15 COMMISSIONER WHITE: - - - got it on the record here, and because we don't actually have a living reporter to note you're here.

MR PLUNKETT: May it please the Commission, my name is Mark Plunkett. I'm instructed by Gor Stanford & Smith, and I appear to represent Mr Lawlor.

20 COMMISSIONER WHITE: Yes. Thanks, Mr Plunkett.

MR PLUNKETT: Thank you, Commissioner.

25 MR PINCUS: Could Mr Lawlor come forward?

COMMISSIONER WHITE: Mr Lawlor, would you come forward, please, and just indicate whether you're going to take the affirmation or the oath to the clerk of the Commission, thank you.

30 **PETER LAWLOR, SWORN**

[10.00 am]

EXAMINATION BY MR PINCUS

35 MR PINCUS: Could Mr Lawlor be shown a copy of his statement to the Commission, please?

COMMISSIONER WHITE: Yes.

40 MR PINCUS: Mr Lawlor, can you just have a look at that document and confirm that's the statement you provided to the Commission, dated 23 August 2013?---Yes, it is.

45 Thank you. I just want to observe a few aspects of it, please, that you informed some of the matters we're going to look at. If you could look at paragraph 5, in the third line, and you'll see the reference to the industry itself having sought independence

from government, and further down a reference – in the same paragraph – a reference to the control body being fully independent from government?---Yes.

5 And over at nine, the next page, a reference to policy change being driven by QRL so that you can see the difference of reform in the best interests of the industry as a whole?---Yes.

10 And, again, you'll see in the next paragraph, paragraph 10, the second-last line, "Bodies that were representative of the industry as a whole, that acted in the best interests of racing in Queensland," these sorts of concepts, the industry as a whole and the best interests of the industry, are important matters for the Commission's inquiry as you'll appreciate, that is, not just whether things were done in the best interest, but also what are those interests and how does one determine them. When you talk about the industry, who do you really mean?---The various participants, whether it's, you know, breeders, owners, trainers, jockeys, everyone, and - - -

15 Yes; stakeholders, as they might be called?---Stakeholders: that's correct.

20 People who are involved in the industry, and would include club members?---Yes.

All right, and so when you say these – the changes are in the best interests of the industry you mean all those people?---That's correct.

25 Yes?---Well, for the overall industry. I mean, changes that are made within the industry sometimes might disadvantage a certain section, but, you know, for the industry as a whole sometimes those difficult decisions had to be made.

30 Yes, I understand that. If you look at – briefly, just to note a couple more things in the statement, please, you'll see paragraph 11 refers to the RICDS, otherwise known as the IIP?---Yes.

35 And it says, "RQL makes decisions about where and what the money would be spent. The government's role was to oversee that everything's spent properly."?---Yes.

40 May I ask in general terms what you saw as the division between the role of RQL and the role of government in that regard?---Well, part of the arrangement for the \$80 million was that there had to be a business plan, which had to be submitted to Treasury before the funds would be, you know, released to Racing Queensland.

Yes, and so the role was to review and approve or otherwise the business case?---That's correct. Treasury would review and approve or otherwise the business case.

45 And there'd be a funding agreement, funding deed entered into in relation to the advance of the money?---Look, there would've been some documentation I'd imagine, but, I mean, the fund was set up the legislation and the agreement was that

half of – roughly half of the tax the government received, which is about 40 million a year, would go to this fund for four years, and then, subsequent to my term as the Minister, then that was extended, I think, by another 12 months, which resulted in another 20 million, so - - -

5

Yes. I'm just really trying to understand, and I know it's hard in general terms, but what is the reference to spent properly? Does that encapsulate a distinction between what are effectively policy decisions about where the money would be spent and on what being a matter for RQL and government just making sure that the boxes are ticked? Is that how your - - -?---Well – I mean it was a capital development fund, so
10 – I mean, it couldn't be spent on prize money or stuff bought, you know, items such as that, so it was ensuring that the amount that was allocated was spent in accordance with what the scheme envisaged, which was infrastructure, basically.

15 Yes, but as long as it was being spent on infrastructure - - -?---Yeah.

- - - you saw that government's role wasn't to see how it was being divided among different projects, for example?---No, that's correct.

20 Okay. Then at 12, finally, on the statement, please, if you could see that you say about four lines down in the middle, "I believe that there was only a minor role for government, and even having a Minister nominally responsible for racing was really just done for perception."?---Sure.

25 So that when you are asked questions about that in parliament you tended to answer in general terms – and we don't need to look at them – but the point is that you would say in parliament, and you said [indistinct] you'll accept government has a minor role. You should talk to QRL or RQL about these matters, and they're governed by ASIC under the Corporations Act?---That's correct.

30

Yes, and that was your belief and approach throughout?---That's correct.

This has been an industry which has, you will know, been heavily divided for a long time?---Forever.

35

Forever, and you have a background in the industry yourself, as you've noted in your statement, at the Gold Coast Turf Club where you were a committee member for 15 years - - -?---That's correct.

40 - - - before you entered parliament?---That's correct.

And you were also on the Racing Appeal - - -?---For a short time after I was in parliament too.

45 Right?---I think I resigned in about 2008 or 7.

But well before you had a portfolio responsibility?---Sure, yes.

And you were also a member of the Racing Appeal Authority - - -?---That's correct.

- - - for some seven years or so?---That's correct.

5

Given all of that [indistinct] in the industry, did you have a view about whether the model that was in place during your time as minister was the appropriate one for dealing with the divisions, taking into account those questions like what – who is in the industry, discussed?---I don't know that I had a view on it. I was receptive to the
10 – to – I thought that the idea of combining the three boards was a good idea for a variety of reasons, cost being one. I don't know. I don't really know how you, you know, dispense with the division in the industry, ever. I mean, even now, I still get phone calls now about the present organisation, but that's the nature of the industry.

15 Yes, but one of the concerns for the Commission is trying to look forward and think about how to stop that cycle of division and - - -?---Yeah, good luck.

- - - inquiries every time the government changes, and – so what I'm trying to do is explore with you whether you have a view, having been the responsible minister for quite a while, and having yourself had background about whether the model which
20 led to, for example, Mr Bentley being on the control body from 2002 without re-election until the government changed in 2012. He himself is a divisive figure. Do you think in hindsight that it worked to have the industry's interests determined by a fairly stable body, which was mainly the control body, for that period?---I felt that
25 Mr Bentley and the board did a good job in difficult circumstances. I didn't always agree with things that they did, but, nevertheless, I think that they – it's a very difficult industry and any decision that's made, even if it is for the benefit of the industry as a whole, is going to upset some people, and some people are, you know, very vocal about the, you know, self interest, I suppose, their interests.

30

Yes, but it's true also, isn't it, that some of those self-interests might be perfectly legitimate interests?---Some of them might be. I mean, the Gold Coast Turf Club wanted a standalone day for the Magic Millions. That was opposed violently by Brisbane clubs, and Mr Bentley and the board said no, Gold Coast has got a
35 standalone meeting and, you know, I mean, that upset certain people, but it was seen to be a benefit for the industry. That was many years before, you know, I was – when I was back on the board of the Gold Coast Turf Club, but that's just an example of a decision which is now seen to be a reasonable one from the point of view of the industry and the sales of the Magic Millions and so on, and yet if it had
40 have been up to people it probably wouldn't have happened.

Yes. But in general terms, the democratic system – that you've been a part of yourself – worked by making Ministers – allowing government to make decisions on things on which many people won't agree, and then the accountability comes when
45 the election arrives?---Sure.

5 And so the question is really does it work to have a [indistinct] where those decisions are being made in the racing industry by someone who then isn't held accountable?---Sure. Well, I can accept that argument. Yeah. That probably would've been, you know, a better idea, to have a – you know, whether it's three or five or whatever years, you know. Yeah. I can accept that argument.

A regular turnover – is that what you're saying?---Sure.

10 Or a regular election process?---Not so much turnover, but a regular - - -
Yes?--- - - - election. Yeah.

15 And if there's to be some sort of election process, it has to involve in some way – we don't need to work out all the details – you think, the stakeholders we've discussed?---Yes.

20 COMMISSIONER WHITE: Mr Lawlor, everyone accepts – that I have read and heard – that this is an intractable situation in the racing industry in its widest description; that's including harness as well as the greyhounds. But one of the – when I thought of the periods in the recent history which seem to be relatively successful in terms of bringing about some harmony for a short time, was leading up to the Racing and Betting Act 1980 where there was a year-long consultation under a white paper. I think the then treasurer – if it wasn't Sir Llew Edwards then – put it out. He didn't, as I read in the parliament, give the impression that he personally was
25 very interested in racing, but he did this as part of the portfolio. And looking at the debates and the discussions about the proposals, there seemed to be a degree of unanimity which looked rather as though it was because everyone was allowed to have a say. And from where I sit now, looking at more recent past history, that does seem to have been a real deficit and perhaps a reason why it's not been possible to
30 persuade others to a particular outcome, because they never really asked or – allowed to talk about it. Do you think that's a possible reason why there is so much unhappiness?---That's, you know, very possible, Commissioner. Yeah. I can accept that view. There was an imperative to do things quickly too. I mean one example would be the – the synthetic track in Toowoomba, which – you know, there was a –
35 there was a drought issue. It looked like it was going to have to close down and of course, now that track's been ripped up and the grass reinstated. So there was a sort of an imperative to do something, you know, reasonably quickly, but – but I mean as much consultation as you can get is desirable. Yes.

40 Thanks, Mr Lawlor. Are you going to ask Mr Lawlor some questions about the synthetic tracks?

MR PINCUS: A few questions. Yes.

45 COMMISSIONER WHITE: Yes. Well, I'll leave that to you, then, because you'll have - - -

MR PINCUS: Thank you.

COMMISSIONER WHITE: - - - your questions organised.

5 MR PINCUS: May Mr Lawlor please be shown a copy of the Racing Act. I don't think it matters for my purposes which version, but the one I've got is that from July 2010. Thank you.

10 I just want to touch on a few sections in the Act, please. If you could turn to section 4. I don't think my page numbers will match yours, so - - -?---That's all right.

- - - I'll have to go by sections. You've got the purposes of the Act?---Yes.

15 And the main purpose, as you'll see in (1)(a) and (b), include maintaining public confidence and ensuring the integrity of all persons involved?---Yes.

If you turn over then to the fees – 33?---Yes.

20 And the control body's function is to manage its code of racing?---Yep.

And it has powers for that purpose. And down at 34(g), one of the things the control body may do for its code of racing is make decisions about, and on conditions the control body considers appropriate, allocated funding for venue development and other infrastructure relevant to the code?---Yes.

25 Could I just pause and ask you whether your understanding was that the [indistinct] of the control body properly included the – and was contemplated to include – the type of infrastructure activities on the scale that were undertaken as part of the RICDS and the IIP?---Whether that scale of improvement was contemplated by this
30 act?

Yes?---Sorry. Well, I – I didn't see that it would be limited.

35 Right. You don't read a limitation and - - -?---So it was, I'd imagine. Yeah. I – I believe it was.

40 And in doing so, you'll know that there were proposals, some of which were realised, for the control body to take an interest – we don't have to be more specific than that – in clubs, where infrastructure development was done in order to maintain a degree of control of those clubs. Did you see that also as being something which was within the power of the control body?---I – I didn't see a problem with that. They – they achieved that quite – as I understand it, quite amicably at the Sunshine Coast. They did put a similar proposal to the Gold Coast, which they didn't achieve, and it didn't
45 go ahead.

And similarly at Toowoomba, I think, was another example – it may have been – you may not have been involved in that?---Yeah. I’m – I’m just not sure about that. Yeah.

5 Can you turn then to 34A, please. You’ll see that in – this applies to – have you got that?---Yes.

This applies to the amalgamated control body, and then 34A(2)?---Yes.

10 “In making a decision under this act, the control body must make a decision that is in the best interests of all the codes of racing for which the control body holds an approval.”?---Yes.

15 So the point is there’s an obligation under the Act for the amalgamated control body to consider the subsidiary codes, if I can call them that, of harness and dogs?---Right.

I just want to – I’m noting it only at this stage. And 37, there’s an obligation to have internal controls?---Yes.

20 39, there’s an obligation to have a program to audit certain things and the chief executive has to be given a copy of that program and so on. You’ll see 41 has annual reporting obligations?---Yes.

25 45 we’ll take a little bit more time on – allows the Minister to give a direction to a control body about its policies or rules if it’s necessary – and you’ll see in (b) – to ensure – or (a) is to ensure public confidence in integrity, (b) to ensure the control body is managing its code of racing in the interests of the code - - -?---Yes.

30 - - - which will be included for the amalgamated body of the codes, I take it you agree. And (d) – to ensure the control body’s actions are accountable and its decision-making processes are transparent - - -?---Yes.

35 - - - etcetera. And the Minister may, by notice – in 45(2) – do things including requiring the control body to make a new policy or review an existing policy?---Yes.

47 – there can be investigations into the suitability of the control body if – and you’ll see in (2)(a) – the chief executive suspects the control body is no longer suitable to manage the code of racing?---Yes.

40 And that concept is broadly expressed. 48 – investigations into the suitability of an associate of the control body, so that includes a director or other people. 52, there are grounds for disciplinary action. You’ve got that?---Yes.

45 Which include contravention of the act in (d), failing to comply with a condition relating to the approval – and you’ll recall that the approvals to [indistinct] the control body included approval of a constitution?---Yes.

5 And then (f), contravening a direction given under section 45, which we've looked at. And I won't go through the rest, but you'll see that then the next succeeding sections refer to the process of giving show cause notices and 56, the prospect of a censuring of the control body. And at 59 and 60, the control body is unit of public administration and there can be an audit by the auditor-general under 61?---Right.

10 So the point of all that really is to show you that it seems to us that under the Act there was quite a significant potential role for government in relation to overseeing the activities of the control body, and I wondered whether that accorded with your observation in your statement that you considered it a minor role and one which meant that even having a Racing Minister was really just for show. It looks like the Act contemplates something more than that, doesn't it?---In the event that issues were raised – you know, integrity issues, then that would be brought to the attention of the Minister by the Racing Office or, indeed, if it came directly to the Minister then he would seek advice from the Racing Office and – and would act accordingly, and I think most of those provisions, you know, cover that situation. I don't think it provides for a Minister to be basically intervening of his own volition or her own volition into the operation of – of the control body. I don't think anything in that sort of provides for that.

20 I wasn't suggesting interfering of your own volition, but you're saying that the – your concept of a minor role doesn't mean there's nothing you could do but that you had a passive role, really, in that it was only if something specifically came to the government's attention - - -?---That's correct.

25 - - - that anything would be done about it?---That's correct.

30 But you see that it's got audit obligations and prospects of investigations and whatnot?---Well, there's provision for – for an audit by the auditor-general. Yes.

And the prospect of investigations into - - -?---Yes.

35 - - - matters or direction that could be given in relation to policies, which could just be to ensure public confidence - - -?---Sure.

- - - in integrity, for example.

40 It doesn't say anywhere that there's some restriction on the ability of the government to undertake that sort of exercise?---No.

45 The concern is really that – getting back to the nature of the body and we're looking for help a bit from you on this. If one doesn't have shareholders to hold the body accountable then you've got ASIC, which we'll come to, and of course you refer to that in your normal response when people raise concerns. But there is also a regime is my point under this Act and it looks like it's intended to plug the gaps that might otherwise exist in a body of this kind in terms of its accountability. Do you agree with that?---Yes. I mean, yeah up to a point I agree with it. You know, there's

provisions in the Act to deal with situations that might be drawn to a minister's attention which would usually be by the Racing Office or through the Racing Office at least.

5 Yep?---Yeah, there's provisions here to deal with those situations.

Okay. Thank you. Could Mr Lawlor please have folder six? I'm afraid the numbering in these folders is a bit awry so you'll just have to bear with me while I take you to the relevant tabs. The first one I would like you to look at please is, I think, called FR6, towards the back of that folder. Mr Matthews might be able to help you.

COMMISSIONER WHITE: What was that number again, Mr - - -

15 MR PINCUS: It should be FR6. It should be in the back of folder 6. Have you not got that, Commissioner?

WITNESS: Okay, yes.

20 COMMISSIONER WHITE: Leave me to wander around amongst my volumes. Yes, I do.

MR PINCUS: Thank you. You'll see that's a funding agreement?---Yes.

25 Relating to synthetic tracks dated the 26th of June 2007?---Yes.

Now, it's quite a long time before your responsibilities commence as Minister but I'd just like to point out to you a few aspects of it including – if you look at 3.1 “The State has an obligation to provide funds subject to the terms and conditions of the agreement.”?---Yes.

30 4.1 “QRL acknowledges the receipt of retainment of the fund is conditional upon matters including that QRL are complying with all clauses of the agreement”?---Right.

35 4.2 “QRL must not distribute any of the funds until the State have notified QRL in writing that the business case had been endorsed”?---Yes.

40 4.10 “There must be business case prepared for endorsement in the minister's absolute discretion”?---Yep.

45 4.17 – you'll see QRL has an obligation to allow access to project sites throughout the state – access to project sites et cetera. Including to – in 4.17 (c) “Assessment forecast with input from the project manager, the value of the working ground.”?---Mm mm.

4.18 – an obligation to undertake a certain type of tender process?---Mm mm.

And then 4.19 and 4.20, “The capacity for the State to essentially require proof that, that’s been done.”?---Right.

5 And over at 7.1, An inspection and audit requirements including at 7.2 that QRL has to produce its accounts and accounting records and otherwise cooperate fully with the State to enable to the State to exercise its rights. And of course, 7.1 which include an entitlement to examine QRL records relating to the program. It’s pretty broad power to watch what’s been done and make sure it’s being done right. I take it you agree?---Yeah.

10 And so when we get back to the question that we discussed at the start about making sure that funds were spent property – I take it you’d accept that part of that must have been making sure that they were spent in accordance with the requirements of the funding deed. In this case, this is the one and there were subsequent funding
15 deeds?---Yes, yes.

Now, did you – do you recall ever seeing this before?---No, I don’t .

20 Would you turn next please to tab FR9 which again you may never have seen before?---Mm mm.

The letter on the front is to your predecessor as the minister and the treasurer?---Yes.

25 And you’ll see that – in the biggest paragraph on that first page of that letter that a reference to there being a need for essentially ongoing provision of documentation and post consultant as the project develops?---Right.

30 And then if you look at the business case itself – if you go to page 19 of it please?---Yes.

You’ll see that there’s a heading, Program Governance Arrangements?---Mm mm.

35 And what it seems to contemplate is a project control group which has Mr Bentley and Mr Tuttle who are the CEO – you might remember?---Yes.

And also a third person who for Corbould Park at the Sunshine Coast will be Mr Moffat who is from the Sunshine Coast?---Mm mm.

40 He’s a Corbould Park member, I think?---Mm mm.

And then further down there’s also a reference to the department ensuring the oversight. Can you see that? Two paragraph under the end of the dot points?---Yes, I can, yes.

45 That’s from the oversight. So certainly QRL itself also thought there was going to be some ongoing oversight in the process of the performance of this work?---Yes.

If you could just look briefly at page 49 please of that same document? There's just again a reference to the committee membership of the project control group?---Mm mm.

5 Which – in amongst the same points and says that there'll be selections for the subsequent phases of tracks after Corbould Park, in advance?---Mm mm.

Now, it looks to me like that contemplates some kind of ongoing consultative role with the local clubs where the work is intended to be done. Is that how you'd read this document?---Yes, I do.

10 We understand at the moment that there either never was a project control group or it never did anything if there was one. Mr Tuttle certainly had never even heard of the idea and he's one of the two founding members?---Mm mm.

15 I take it you never knew anything about that aspect of it?---No, I didn't.

And don't remember if you ever looked at the business case?---Well, I would've had no need to. I mean, I went to the opening of the synthetic track in Toowoomba.

20 Yep?---My recollection is, I think, that the Sunshine Coast one was already built and the third one, I don't think has ever been built.

25 That's true. That's correct. You refer to the opening in your statement I think?---I did, yes. That's correct.

And I think – and you said something to the effect that you got nothing but positive feedback?---That's correct. I suppose they were telling me what – probably what they thought I wanted to hear but – and they did have an election of course – a vote, sorry, the members.

30 Yes?---And even though it was a narrow victory – something like 215 to 200 in favour of the track, you know, I suppose most of the 215 must've changed their mind since then and they've ripped it up.

35 Yes?---It happens.

Could you go next to FR15 please?---Yes.

40 The letter immediately under that tab, you'll see is a letter to Mr Fraser and you'll probably recognise the style. It's a letter from Mr Carter QC?---Yes.

45 He's referring to a recent article in The Australian about synthetic tracks being, again, under fire. Do you see that in the first paragraph?---Mm mm.

And then further down, third last paragraph on the first page, you'll also know of the problems encountered with the Caloundra surface and the concerns of many

respected industry participants. Last paragraph, “multiplicity of concerns expressed by respective industry participants et cetera?---Yep.

5 Over the page there’s references to a division of opinion, you’ll see, in the second – or the first complete paragraph?--- Yes.23

And then if you can just read briefly the dot points there, publicly expressed concerns?--- Yeah. Yes.

10 Do you remember those sorts of issues being around at the time before and upon you obtaining ministerial responsibility for this - - -?--- I do.

- - - portfolio?--- Yes. I do remember those various issues being raised. But I mean – you know, I mean, they raised the Kentucky Derby on a dirt track and they’ve got synthetic tracks, I think, at Cranbourne or Mornington or somewhere down there. And you know, they all seem to be quite successful. I don’t know if people say these synthetic tracks are different, you know. I mean – yeah. I – certainly these types of issues were raised when you talk about synthetic tracks, yes.

20 Yeah. And then you’ll see that Mr Fraser is being asked to intervene at the bottom of page 2 and at the end of it. But I can tell you that the – this is a letter of the 13th of January 2009. And there was a vote of the TTC, all of the members, on the 19th of February when the – as you’ve said, the proposal to install the track on the course proper was passed?--- Yes.

25 But fairly narrowly?--- That’s correct.

Now, I take it you weren’t involved in any aspect of that process. You become a minister and you receive that letter to respond to it?--- Well, I was aware of what was going on in Toowoomba because I was on the board of the Gold Coast Turf Club. And it was proposed that that would be a third one - - -

I see?--- At one stage. So I’ll – I’m – I would – I certainly took an interest in it - - -

35 Right?--- And was aware of some of the criticisms of synthetic tracks, yes.

And what did you make of those criticisms? Did you think it seemed a bit like the project was proceeding with undue haste given that it was fairly new technology at the time?--- Well, I don’t know about the new technology. There’s plenty of synthetic tracks all around the world. And I don’t know – well, they’ve – I suppose they’ve decided since it’s been in there – notwithstanding that there was a narrow vote to put it in there, it seems they’ve decided that it was unsuccessful and they’ve now taken it out. But I mean, you know, there were – they used to race at sand at the – on the sand at Albion Park. And there were trainers and owners around who refused to race their horses at Albion Park, but others loved it. And so look, I don’t know what the answer is. I’m not – I’m not an expert horseperson. You know, I’ve owned horses and that’s about it. And I’ve had a few - - -

5 COMMISSIONER WHITE: I think one of the earlier commissions of inquiry into racing in Queensland in the 1920s suggested that the track at Albion Park was not safe then because I think right underneath the sand was a lot of rock and it needed a lot of remedial work. So Albion Park racetrack's always been a controversial one; hasn't it?--- I think it was controversial. I was unaware of that, your Honour, but it was controversial – you know, with the ownership issues over the years.

10 Yes?--- But I was unaware of that. And certainly they raced what I would say – quite safely on it for many, many years after the 1920s.

15 Was it the case, though, that so many – at the time we're speaking of, there were so many synthetic tracks that were used as the main track as opposed to the training tracks? That's a bit different; isn't it?--- It is, and that's correct. Many synthetic tracks were used for training purposes, that's right. But I – but there was a period on the Gold Coast, for instance, where it was a sand track, the main track. And that was more to do with weather conditions at the time, I think. Look, there's been various types of tracks that they've raced on. And you know, I think you'd get a variety of opinions from any number of trainers and owners as to whether they're effective. I mean – you know, would they accept a dirt track like Kentucky in Australia? Maybe they wouldn't. And yet they race the Kentucky derby on it. I don't think that'd be acceptable in Australia. You know, whether – whether you can say yes, it's good for horses or bad, I'd imagine here they'd say it was bad. But in Kentucky they seem to love it.

25 MR PINCUS: Yes. Well, one of the issues that seems to have arisen, and I don't propose to take you through it all, is that there had been these concerns that you've agreed you knew about the time and others did?--- Sure.

30 And Mr Bentley has confirmed, in essence, that there was a commitment from the staff to use the particular surface Cushion Track by QRL for all three intended tracks?--- Right.

35 And the difficulty with that is that some say that meant there wasn't the sufficient time to put it in and check whether it really worked or consider whether perhaps a different surface should be used for a subsequent track or even reconsideration be given for the prospect of replacing the main track at Toowoomba with it. So it was just sort of a hell bent on achieving the installation of the tracks where QRL thought it appropriate, without giving time for the process to be tested?--- Well, I can understand that. But there was an imperative to get it done because it was – you know, it was looking like – that Toowoomba would be closed down.

40 Because of the drought?--- Yeah.

45 I understand that.

COMMISSIONER WHITE: And that's because the track was unsafe, presumably?--- That's correct.

MR PINCUS: And they just didn't have enough water to - - -?--- Yeah.

5 - - - fix it. Could you look, please, at the next letter under that same tab. This is a response, you'll see, from you after you've become the minister. And you're responding to that letter we've already seen. If you could just read it please?--- Yeah. Yes.

10 Do you remember the process that went before the sending of this letter? Where the information in it comes from?--- Well, I'd imagine – well, the letter would've gone to the Racing Office and there would've been a draft which I would've approved. So that would be the normal process.

15 Right. You don't remember yourself having, given your background and knowledge, sought to inquire into whether these concerns were real concerns or - - -?--- Well, these concerns that were raised by Judge Carter – you know, as you've indicated before, I had heard them before.

20 Yeah?--- You know, it was – you know, common knowledge amongst the industry. Some were in favour, some were against. And, you know, I couldn't really – there was no sort of definitive position. You know, the opinion varied from whoever you spoke to.

25 I understand that. You'll see that in the main – the largest paragraph on the first page you say in the final sentence, “Accordingly, industry issues such as the installation of a synthetic track at Clifford Park are matters for QRL and the control body for thoroughbred racing and the TTC as the owner of the venue to address.”?--- Mmm.

30 And that's consistent with the sort of approach we've already talked about, that you generally talk – it's not a matter for government. But the point in this case is, isn't it, that whatever the position under the Act, there were contractual vows under the funding deed for you to have quite a lot of involvement in how the money was being spent and whether the funding would be advanced. And you could, for example, have – I know that it was probably too late by the time you're sending this letter?--- Sure.

35 But, in theory at least, have refused funding if the concerns of the kind that Mr Carter was raising were proved to be at least potentially right?--- Well, if they were accepted, that might be an argument. But I mean, I'm not saying that I accepted that because Mr Carter's got his opinion, the Judge Carter's got his opinion. But if you asked other people, they've got other opinions. And certainly it was something that at that time the Toowoomba Turf Club wanted. And, you know – yeah, that was it.

Well, the - - -

45 COMMISSIONER WHITE: Mr Lawlor, did you not – you didn't think then at that stage when you were called upon to respond, having assumed the ministerial responsibility for racing, that you perhaps asked for a memorandum about the issues

that were raised? Did you think that your response here really was sufficient in all those circumstances?--- Your Honour, I thought that the issues about synthetic tracks had been well canvassed. And I didn't – no, I didn't.

5 You didn't think that - - -?--- No, I didn't.

- - - you needed anything further? All right, thank you.

MR PINCUS: You accept though, don't you, that it's not strictly correct to say that.
10 When you say they're matters for Queensland Racing and impliedly they're not matters for government, it's not strictly correct in light of the funding agreement. That is, the government could have played a role if it had sought to?--- Well, so far as the – you know, the monitoring of the funding. Is that what you're talking about?

15 Yeah?--- I mean, so far as the decision to construct a synthetic track at Toowoomba, that was an issue I felt was for the racing – Queensland Racing and the Toowoomba Turf Club. And they came to that agreement and it was done. Now, I don't know – I never heard any suggestion that there was money that was misspent or anything.

20 Well, I'll give you an example of something that happened is that there was no open tender process. You remember we looked at that clause that - - -?--- Sure.

- - - required open tender processes - - -?--- Yeah.

25 - - - for at least some of the contractors appointed, so the main construction contractor. And that's something which, unless the government is going to check and see if it's enforced, really just goes into the agreement for no purpose at all?--- Mmm.

30 So I'm just trying to work out who should've been looking back and seeing whether QRL was complying with things like the requirements of the funding agreement, do you think?--- Well, I mean at the end of the day, I suppose the government is responsible.

35 COMMISSIONER WHITE: Would you say the Office of Racing?--- Yes, pursuant to that agreement which I hadn't seen before.

MR PINCUS: Yes?--- But it seems that under that agreement, they would have those powers, yes.

40 I – we completely understand that you're coming in late and I'm just - - -?--- Sure, sure.

45 - - - asking you to understand whether you saw it as part of your role to be, when responding to a letter of that kind, looking into what was the legal framework in which this work was being undertaken?--- I mean, the issues of tenders, though – I understand that it says it's got a – what the – you know, that it's got to be an open

tender. But I mean, there are situations where, you know, there are preferred tenderers because there's very few people that have expertise in a certain area. So I don't know what process they went through. But, you know, I don't know. Maybe this particular company, whoever it was that built it – I understand it was Contour Engineering, I don't know. Maybe they were the only ones with that type of expertise.

Mr Fraser has told us in a recent statement that, looking at this process, he can see that more substantive consideration should at least have been given to the sorts of concerns that were being raised by Mr Carter. And that that is an example of why he considers there were shortcomings in the model for oversight by the government of QRL. Would you accept that?--- Yeah, I'd accept that. Yeah. I mean, with hindsight – you know, probably lots of things could be done better, yeah.

Yeah, I understand that. Thank you. That's the end of that folder. If we could just start it, please. Thanks. Could Mr Lawlor please have the folder that has tabs 42 and 43 etcetera in it?

COMMISSIONER WHITE: I think that's number 3.

MR PINCUS: Volume 3, thank you. Just a bit of background, no need to look at the documents yet. But do you remember this issue of the proxy purportedly exercised by Mr Ludwig?--- Yes, I do.

And it was mostly before your time as minister. But basically what happened is that in August 2008, QRL held a general meeting and resolved to amend its constitution to extend the initial directors' terms from three to six years, and to remove the role of the independent recruitment consultant in short listing candidates. And complaints were made about Mr Ludwig's purported exercise of a proxy for the Queensland Country Racing Committee, which were referred to the CMC, then ASIC and then the police. You remember this issue?--- Yes, I do.

And ultimately, Mr Fraser rejected the proposed changes to constitution for what were called substantive reasons, I think relating to the removal of the independent process. Not by reference to the – he didn't reject it on the basis of the flawed process?--- Right.

Now, could you look at tab 42, please. You'll see this is a letter from the Under Treasurer to the CMC, and it attaches complaints. The first, you'll see, is the second page of that bundle at point 1. This is a letter from Mr Carter. Again, he talks about the proxy?--- Mmm.

And the purported exercise by Mr Ludwig. And over past the end of that letter, you'll see there's a sort of attachment to it. And then there's a letter from ClarkeKann lawyers?--- Yes.

And over the page, you'll see an email from Mr Ferrier of that firm to David Grace?--- Yes.

5 "ClarkeKann's been instructed by members of the QCRC" - - -?--- Yeah.
- - - "in relation to the matter"?--- Yes.

10 And then there's a letter from Queensland Racing. If you just turn past that, you'll see another letter of complaint which is the last document in this little bundle. It's from Mr Peoples - - -?--- Yes.

- - - who's a member of the Country Racing Committee on the 11th of August, saying that he never got any notice. You'll see the second paragraph?--- Mmm.

15 And he understands Mr Ludwig voted on his behalf without any consultation with any member of the committee?--- Mmm.

Then if you turn to tab 43, please. These are just matters of background?--- Yeah.

20 I'll ask you some questions at the end?--- That's fine.

This is the CMC response. And you'll see they say in the second paragraph it's not in the jurisdiction of the CMC?--- Mmm.

25 And in the third last paragraph, "The allegations do not concern QRL's operations for the purpose of performing its function as the control body, but rather issues relating to the voting process to amend the company's constitution."?--- Mmm.

30 And he suggests that it's within the jurisdiction of ASIC?--- Mmm.

And also notes there are provisions under the Racing Act for the chief executive to investigate the suitability of a control body, which is a matter we've looked at already?--- Yes.

35 And you remember that the act - - -?--- Yes.

- - - also has suitability of an associate of a control body as another concept?--- Mmm.

40 So then he's suggesting ASIC or the chief executive may be best placed to deal with the concerns. This is Mr Needham of the CMC?--- Mmm.

Then at 51, please, you'll see a letter that comes back from ASIC after it goes to ASIC?--- Yes.

45 And you'll see on the second page of that letter, under the heading ASIC's Decision, two paragraphs down. "As noted during our meeting, there are several aspects of the

conduct identified that do not fall within ASIC's jurisdiction. These include the outcome of the meeting of A class members, the amendment that's been proposed to the constitution and proxy issues?--- Yes.

5 So it's not in ASIC's jurisdiction?--- Uh-huh.

And then the next paragraph, "ASIC's decision not to commence a formal investigation should not be interpreted as a conclusion that no misconduct can be made out."?--- Yes.

10

Over the page, under the heading Queensland Country Racing Committee Proxy, it said that appears to be the most significant concern for those – the complainants?--- Yeah.

15 And in the second paragraph, it says that they're not matters that fall within ASIC's jurisdiction. And further down, an allied point under the heading Directors Remuneration, you'll see in the third line onwards, "ASIC does not have a role in adjudicating the internal management of companies that are governed by constitutions." And in a sense, the constitution is a statutory contract so it's a matter
20 between the members and the company?--- Mmm.

Then if you turn, please, to tab 75?--- Sorry, 75; was it?

25 75, it's a few – oh, is that not in your volume?--- Yes, it's in – that's right, yep. I've got it.

I'm sorry about the jumping around?--- That's all right.

30 You'll see this is the Queensland Police media release saying they found insufficient evidence to pursue charges. Which, of course, means criminal charges for some offence - - -?--- Yes.

35 - - - with the standard of proof being beyond reasonable doubt. And 77 is a couple of tabs further on in your bundle, I hope?--- Mmm. Yes, I have it.

40 Mr Bentley is here writing to industry stakeholders. And if you just – you'll see if you turn over, it's all about the complaints. If you turn over to the second page, if you can just scan from about halfway down over to the top of the next page, please?--- Mmm.

45 So Mr Bentley's saying at the top of the third page of this letter that Mr Carter's displaying only a selfish crusade of self-righteousness, hell bent on destruction and bitterness. And that Mr Ludwig's allegations are unfounded and frivolous – sorry, the allegations against Mr Ludwig?--- Yeah.

Now, the point that might be asked is if that's incorrect, as we know now that it is, who's going to do anything about that if the government has the minor role that you

viewed it as having?--- Look, I have read some of the transcript. Unfortunately I haven't been able to read it all. And I've read, you know, the – both the evidence of Mr Bentley and I think also Mike Kelly. And, you know, I'd have to agree that the fact that the CMC and ASIC decided that that was outside their jurisdiction and that the Queensland Police, on the advice of senior counsel, found there was insufficient evidence certainly doesn't amount to a clearance as has been referred to in some of the correspondence from Queensland Racing. But nevertheless, I think it's a huge leap then to suggest that there is sufficient evidence in those – you know, lack of jurisdiction and not sufficient evidence to then say well, the minister should intervene, if that's what you're suggesting. And, you know, we issue show causes or, you know, take action to dismiss someone from the board. I think that's - - -

Well, we looked at the - - -?--- Quite a – quite a leap.

We looked at the act and the powers expressly in it to investigate matters, for example, including the suitability of control bodies and the suitability of their associates?--- Mmm.

Isn't this – this is the sort of thing that the CMC and ASIC were saying – CMC in particular were saying could be considered by the government?--- I think that's a legitimate point, that it – you know, and if I was aware of that then I think it should be investigated by the Office of Racing, yes.

Because it's very much an integrity and a public confidence issue, which is - - -?--- That's correct.

- - - the heart of the government's powers - - -?--- Yes.

- - - isn't it?--- Yes, that's correct.

So you think something should have been done?--- It would've warranted an investigation, yes.

If you turn to 86, please. Now, again the substantive question of the constitutional change was dealt with before your time. But this is you writing back to the complainants. And you'll see that you write a similar letter to Mr Carter, Mr Ferrier at ClarkeKann and Mr Peoples saying ASIC decided not to pursue a formal investigation of this matter. That's at the end of the second paragraph in the letter to Mr Carter?--- Yes.

And you believe the matter's now being resolved?--- Yeah. Yes.

So I mean, we've already really established you agree something more should have been done?--- Sure.

And it shouldn't have been treated as having been resolved?--- I agree with that.

5 And what do you think the solution is in the future in terms of these sorts of issues not falling through the cracks where there's this nether region of ASIC sort of not having jurisdiction and no one else being prepared to look at it?--- Well, I'm not sure what the answer is. I mean, one answer, I suppose, would be for the government to take over the running of racing. But certainly I don't think there's any appetite for that anywhere. So I don't know what the answer is.

10 COMMISSIONER WHITE: There was a proposal, as no doubt you're well aware, in the report that's described as the Shanahan report which was dealing with integrity functions solely, of course, that recommended that the commercial side of racing should be separate – completely separate from the integrity side of racing?--- Mmm.

15 That doesn't seem to have been taken up in the way in which it was recommended to government in 2004?--- So the issues that are presently being dealt with all previously were dealt with by Product Co to be completely separated from Queensland Racing.

20 Well, the difficulty with Product Co, of course, is that it was an agreement that was entered into in a different time, 1999?--- That's correct.

25 And of course, we know that it's going to be re-negotiated, if that's what's going to happen next, yeah. The inquiry did deal with Product Co, and it recognised there was a bit of a problem. It was really more about the stewards and the whole organisation of racing integrity, I think that we would call, that if you separated the commercial functions, which are everything else about putting on a race meeting, that it would be possible to have representatives from the racing industry on the commercial side board without having the constant cry of conflict, because you might have a horse or a dog and training. That was a possibility?---Yeah.

30 Was that ever discussed during your – that, in other words, the recommendations of the – that inquiry, were they ever discussed during your time as Minister?---No, your Honour.

35 MR PINCUS: What do you think about them now as a proposal?---You know, I mean, I'm not really familiar with the findings. I know it was the Shanahan Inquiry of course, but - - -

40 But just a broad proposal of separating regulatory and commercial?---Yeah, the broad proposal I'd say would be worth looking at, yes.

45 COMMISSIONER WHITE: Am I right in thinking that that's what's happened in England with racing? The jockey club does the races and there is a quite separate body that deals with the integrity side?---I believe that's the case. I'm not absolutely sure, but, I mean, I don't think anyone in – with respect, your Honour, I don't think anyone in Australia would want the English situation replicated where they race for two and three thousand pound, which is, you know, very low prize money. I don't

think that racing people in Australia would want that system replicated here if it was going to result in much lower prize money.

5 Yeah. That seems to be a problem for a long time, doesn't it? It leads to
- - -?---That's correct.

- - - poorer breed of horses racing, those sorts of things, doesn't it?---Yes, that's correct.

10 All right. Sorry, Mr Pincus, I've intervened too much.

MR PINCUS: Thanks, Commissioner. Now, that's a topical matter that's – I think we'll return to a bit later – at least touch on again. Could we just turn to a different topic now, please? If you'd go to tab 94 – I'll take you to it in a minute, but just so
15 we're ready – the background while you're finding that to this topic is that after the rejection of the amendments to the constitution that we've already touched on there had to be a further direction – director selection process in accordance with the company's constitution, and that involved the independent recruitment consultant, and Director Andrews sued after that process, and was successful in showing there'd
20 been interference with the independence of the independent consultant. Do you remember that?---I do.

Can I show you before you look at document 94, and in detail, please, a document which is separate that's called Estimates Committee F? It should be in folder 6, and
25 I'm not sure of the tab number, I'm afraid, so – it's called Est F, which is convenient?---Yes.

This'd be you and your favourite opposition member, Mr Stevens?---We're good friends.
30

And down towards the bottom of the page you'll see Mr Stevens referring you to a service delivery statement?---Yes.

35 He says, "Can the Minister confirm that the process to identify and supply four candidates for election to the Queensland Racing board was flawed? What steps will he be taking to remedy the situation?" And your initial response is, "Once again, here we go with you making requests for the Minister to intervene." Now, that's consistent with your view that we've already discussed?---Yes.

40 That there's really nothing that you could do, but I put it to you that this is another example where, in hindsight, I hope you'd accept you could, and perhaps should, have done something?---Yes.

45 You then give an explanation of the process, and you'll see that you say at the bottom of that same page, "There were some surprises; I think you would agree surprises to you and surprises to me," and over the page you say, "I understand the

selection process, which is in accordance with the company's constitution." You hadn't separately investigated that I take it, that - - -?---No, I hadn't.

- - - you'd been told that in a briefing note, I guess?---Yes, that's correct.

5

And, "Decisions on the process to be followed for the selection and appointment of directors to Queensland Racing are not matters which the Minister has any involvement in." Again, it's the same point, and down a bit further there's a little exchange between you and Mr Stevens, and you say, "Whilst I might be concerned about it I do not have any control over it, and I will not interfere in the process." Mr Stevens says, "As long as it is lawful," and you go on to anticipate what you think he's talking about - - -?---Yeah.

10

- - - which is one of the issues in this whole area, but is it fair to say that the answer is you would have agreed with him that you wouldn't interfere and you have no control as long as it's lawful, that if it's unlawful, if they're completely abandoning the constitution - - -?---Sure.

15

- - - there would be something you could do?---That's correct.

20

Yes. Now, tab 94, which you've got open, I hope – sorry – is you'll see a briefing note relating to another complaint from Mr Carter?---Yes.

25

And he makes, you'll see, under the heading Background on the first page – I'm afraid it's a bit smudgy – but specific reference to those answers during the Estimates Committee hearing?---Yep.

30

And there's a reference down the bottom to having received a letter from Mr Bentley in response to Mr Carter and a recommended course of action - - -?---Yes.

- - - which is Mr Carter be advised the issues he has raised are not the responsibility of the minister responsible, and that he should go to ASIC?---Yes.

35

Now – then there's a reference under Issues to Mr Carter having a history of raising concerns and Mr Bentley having pointed out how costly it has been?---Sure.

40

So Mr Carter's letter – we don't have to look at the full detail – but you'll see he refers to the difficulty in the second-last paragraph on the first page the process involving the so-called independent recruitment consultant, and - - -?---Yes.

45

- - - over the page he says, "While the approval and power of the company to exercise the control body's statutory functions set out in the Act and to manage the Code on a day-to-day basis, the thrust of the Act ensures that like the recipient of any other licence, approval, or authority, the recipient of a control body approval also remains accountable, in this case, to the racing industry, but also to the government through the responsible minister."?---Sorry, what paragraph - - -

Sorry. I started reading the very last sentence on page 1 - - -?---Yeah. I beg your pardon, yeah.

- - - and then over the page on to page 2?---Okay. Okay, yes.

5

And that's the proposition with which, in general terms I'd take it, you fully agreed?---Yeah.

Then if you look over at page 6 of his letter he raises in a bit more detail the question of the independence of the IRC and the perceived lack of independence, and over the page of page 8, summary?---Yes.

10

You'll see there's a series of dot points. About halfway down, "Prima facie the IRC determined the short list on subjective criteria" et cetera?---Yes.

15

Now – then there's a heading on the next page, The Need for Ministerial Intervention, and, again, since you approved the constitution how can you be denied any right to supervise, whether it's being complied with?---Yes.

20

Can you see that? Mr Bentley sent a letter which is the response to that. It's under the next tab, I think, at 94A. Have you got that?---Yes, I have.

And he talks in not entirely favourable terms about Mr Carter, and if you look at the third page of that letter under the heading Capacity - - -?---Yes.

25

- - - "The IRC made an assessment as per the constitution and developed a short list," this is at the end of the first paragraph, under the heading Capacity, "In view of the independence of the IRC we have not asked for an explanation," and then at the bottom of the next paragraph he says that the process was independent without influence or interference?---Yes.

30

And over the page – a couple of pages further on you'll see – and it doesn't have a heading, I'm afraid; it's just a block of text – the last heading on the previous page is Independence of the IRC?---Yes.

35

Then down the bottom, the last two paragraphs on the next page, it says, "The current complaint lacks any credibility," et cetera?---Yes. I see that, yeah.

"Carter's motives are well-documented" – again, pouring scorn on Mr Carter's motives as being other than honourable. And the final page he says, under the heading Consequences of Delay, "The Minister does not have sufficient grounds to and should not intervene"?---Sorry. What – where was – where was that?

40

The last page of Mr Bentley's letter?---I beg your pardon.

45

Under the heading Consequences of Delay?---Oh, I see. Yes.

Yes. And he says it's a – “In this latest fishing expedition, the authority is ASIC”?---Yes.

5 Now, if you go back to the previous tab, please, just the final page, you'll see this is your response to Mr Carter and - - -?---[indistinct] final – yes. I see that.

Have you got that?---Yes.

10 17 August 2009, and in the middle paragraph: “The issues that you have raised are all matters that fall within the authority of ASIC and are not the responsibility of the Minister”?---Yeah.

15 Now, do you remember anything about the process by which it was determined that that was the appropriate response? It seems a bit like it's Mr Bentley's line without too much consideration given to what might lie behind it?---Well, I would've got the letter from Mr – from Judge Carter and that would've been referred to the Office of Racing for some advice. And I presume that they sent it to Queensland Racing, particularly to Mr Bentley, to – for a response, and that is his response.

20 Yes. And so you would've been briefed with those materials - - -?---Yes.

- - - and a recommended response?---Yes.

25 And you can see now that apart from anything else, the response is inconsistent with what's previously been said by ASIC: that they have no jurisdiction?---That's correct but, you know - - -

In a similar matter?---Yeah.

30 And you don't remember whether you sought to inquire behind the brush-off response and determine whether there was something that should be more thoroughly investigated?---No. I didn't.

35 And do you think, in hindsight, that you should have?---Well, yeah. I'd agree with that. Yes.

40 COMMISSIONER WHITE: Do you, as a Minister, rely very much on the advice that you're given about what might be the appropriate response to letters of this kind even though, of course, you would've been known by the offices to have some understanding of racing and its personalities? Would you get a draft letter from the - - -?---I believe.

45 - - - Office of Racing and you'd – with a recommendation that you sign it – something like that?---That's correct, your Honour. I mean if there was something that I felt was – you know, needed more explanation or, you know, some amendment, then I'd make it in writing and it then would come back in due course for signature.

And would you rely upon – presumably it came from the Office of Racing. Would you rely upon their assertion that this is a matter that falls within the authority of ASIC without questioning them any further about that?---Yes. I believe I would. Yes.

5

MR PINCUS: Could you have folder 4 now, please, and I think we're finished with that previous one for now. Just moving to a different topic, if you turn to tab 105, please?---Yes.

10 This is a letter, you'll see, from Mr Bentley to Mr Ken Smith, the Department of Premier and Cabinet, attaching A Case for Change. And this is one of the documents that you exhibited to your statement as having seen part of your responsibilities?---Yes.

15 If you go to page 6 of the Case for Change document itself, please, about halfway down the page you'll see the reference to the current election process?---Yes.

20 'The current election process compromises director behaviour, and this is unacceptable and poor governance and creates a serious integrity issue for the government.' And - - -?---Yes.

25 - - - it's open, you'll see a couple of paragraphs further down, to manipulation and director candidates are not necessarily elected on merit: "A candidate will be supported as a nominee of a sectional interest" etcetera. And then the next paragraph: "The 2009 election process has seen the start of the prostitution of the current constitutional voting process." Now, that's a reference to the Andrews case which, of course, was not a prostitution from any perspective other than QRLs errors in interfering with the independence of the consultant?---Yes.

30 But the proposition seems to be that there's an integrity issue in having stakeholders voting on directors, because they will seek to manipulate the outcome not by reference to merit but to their own interests. Do you remember that concept – and this is a topic I know we've already touched on, and this might just help to get your mind back into this time. Do you remember that concept of whether having the stakeholders, in effect, having a role in selecting directors would lead to there being some sort of corruption of the process?---Yeah. I do – just can't remember too much detail about it. I mean there was always those issues, even on the previous control bodies. With Queensland Principal Club, for instance, there were representatives from various other clubs and so there was always the concern that, you know, they would be pushing the interests of their particular club rather than their – rather than the interests of racing generally. So that was a sort of – it's – it's been a concern probably forever.

45 One of the questions is how you design the process in order to deal with that concern - - -?---Yeah.

5 - - - but still allow them to have a say?---Sure, and that's very difficult, because I mean we've come this far from the original concept of the QDC being the principal club. Well, obviously there were a lot of concerns about, you know, whose interests they were promoting at that time, and that's why it's - it's moved away from the concept but - yeah. I mean it's a continual battle to try and get directors that are - that have the interests of the industry at heart and not their particular club or their particular section. Like breeders, for instance, you know - you know, even though they might be quite objective there's always, you know, a perception there and - and people will be critical of that.

10

Yes. Well, one view of what had actually happened in the 2009 process, as we now know, of course, is that there had been interference with the selection process by Mr Bentley in directing aspects of the outcome of the so-called independent process.

15 MR ROGERS: Commissioner, I object to that question. That matter, as I understand it and as I read the judgment of her Honour Justice Wilson, is quite clear. There was only one basis upon which the election was overturned and that was the direction had been given as to the shortlist.

20 COMMISSIONER WHITE: The numbers in the shortlist.

MR ROGERS: That's correct.

COMMISSIONER WHITE: Yes.

25

MR ROGERS: There wasn't a finding in relation to any adverse conduct by Mr Bentley and it's quite clear in the judgment, so the question is unfair to the witness.

COMMISSIONER WHITE: Yes. Thank you, Mr Rogers.

30

MR PINCUS: I apologise.

COMMISSIONER WHITE: Perhaps you could express it slightly differently, Mr Pincus.

35

MR PINCUS: There was a finding, as we now know, that there had been a lack of independence by the so-called independent consultant in the process of selecting the shortlist, and we know that. You know that?---I understand that.

40 Yes. And so there was, at least to that extent, some degree of manipulation, it could be seen, involved in that process, despite the - leaving aside the question the interests of stakeholders of the - leaving aside the interference of stakeholders, there's still a process which has, it seems, the potential to be interfered with?---Well, I suppose.

45 COMMISSIONER WHITE: Wouldn't that be true, though, for almost - - -

WITNESS: Any election.

COMMISSIONER WHITE: - - - any process?

WITNESS: Any election process.

5 MR PINCUS: It would be.

COMMISSIONER WHITE: Yeah. So - - -

MR PINCUS: It would be.

10

COMMISSIONER WHITE: - - - you have to – you can't – you can draw what you hope is a reasonably independent scheme, but - - -

MR PINCUS: Yes.

15

COMMISSIONER WHITE: - - - if people are going to engage in conduct which is not envisaged by the nature of the scheme that's drawn up, there's not much you can do about it unless you catch them.

20 MR PINCUS: No. That's true.

The point is that Mr Bentley, in advancing in this document the proposition that there's a serious integrity issue on the current process because of the involvement in stakeholders – and one point that's not acknowledged by that is that if there's a process to produce a shortlist by an independent consultant, then one would think you end up with a shortlist where it doesn't really matter who – what the member – who the stakeholders select, because they're all appropriate. They've all been independently selected as appropriate?---Yeah. Well, then you get to the situation which it did get to as to, you know, who missed out on the shortlist and – yeah.
25
30 Yeah. I don't know what the answer to that is.

If you turn over, please, to page 10 of that document, about three paragraphs down you'll see reference to the inquiries. This is under the heading Andrews Versus QRL: "Having emanated from disgruntled persons who lack a preparedness to accept the necessary change" etcetera?---Sorry. Paragraph 3?
35

On page 10, the - - -?---Yeah.

40 Well, it's the third complete paragraph?---Oh, okay.

It commences "The inquiries"?---Yes.

45 And two paragraphs down from that: "The current circumstances and events" - - -?---Yes.

- - - "surrounding the 2009 election are a mirror of the disruption and relentless pursuit of control." Now, that's an unfair characterisation of the Andrew litigation, I

take it you'd agree, in circumstances where he sued and won. Over the page to page 12, "Why not change the current constitution?" The proposal is to get rid of the stakeholder members and have only the directors as members. Do you remember that?---Yeah.

5

And then go to page 22 please, under the heading recommendations which starts on page 21? You'll see that concept under the heading members on page 22. The directors will be the only members and then there's a justification for it under the heading initial term?---Yeah.

10

There'll be an initial term where the directors will remain in place and that'll provide stability. Now, can you go next to page 136 please – sorry, tab 136. At least I hope it's in the same volume?---Yeah, it is, yes.

15 This is a CDRC, a cabinet decision?---Yes.

And you'll see if you go a couple of pages in that there's your policy submission/authority to prepare?---Yes.

20 Signed by you on the 16th of February 2010?---Yep.

And the recommendations you'll see on page two of your document is, "Cabinet point 2 approve the proposed constitution framework" and outlined in paragraph 10 to 15 in attachment 3 of the submission proper. And that's the next document?---Yeah.

25

You'll see that, without having to go to all the details, on page four and five of that document?---Yes.

30 You'll see under the heading, "Issues – constitution of the amalgamated control body" and those proposals which are essentially the same proposals as had been made by Mr Bentley are advanced?---Mm mm.

35 And under 13 on page 5 you'll see in the second sentence, "Many of these members – the class A members are licensed and regulated by the control body and I actively seek to ensure that any director of the control body is a person who take decisions to benefit."?---Mm mm.

40 Now, the first point about that is that the class A members are not just licensees, are they? Some of them are licensees and some of them are not?---Yeah.

The second point about it is that I think you've already agreed that they – their ability to actively subvert the process, or manipulate the processes, would be reduced by the role of the independent recruitment consultant producing the shortlist?---Mm.

45

Did you give consideration to those things at the time of preparing this submission? Do you remember? When I say preparing – advancing the submissions?---Yeah,

yeah. I can't recall that. I mean, I accept the point you make that the ability to influence the outcome would be reduced by the independent, you know, assessment but I can't recall in relation to this.

5 Because the class A members included representatives of the TAB clubs, the Queensland Country Racing Committee, the Australian Trainers Association and the Thoroughbred Breeders Association and other similar bodies?---Yeah.

That's the industry, isn't it that - - -?---It is.

10

- - - that's supposed to be being represented?---That's correct.

So the proposition is really that it seems like a fairly flimsy basis to exclude them completely. That's there's the prospect of there being some vague integrity problem where someone is a licensee also having the vote?---Mm.

15

It seems to me like something that possibly should have been investigated further before it was advanced as the main justification for a change of this kind?---Mm.

20 Do you agree with that?---Well, with hindsight I – I would agree, yes.

COMMISSIONER WHITE: It seems to be a too ready acceptance, Mr Lawlor, of the assertion that these people in effect can't be trusted. Would that be an observation I can make?---By me, your Honour?

25

Well, that's the – it's been put forward as a basis for doing so and yet some reflection it's a pretty odd thing to say about an entire industry, in effect?---Mm.

I mean we're very conscious, of course, with the Queensland Principal Club how that, in the end, was the – hinted at after 10 years of being totally in disarray, did it not?---Mm. That's correct.

30

So I – it's understandable that nobody wanted to return to those days. It's just a very curious model to me to have only a handful of directors and no other members of a corporation?---Mm.

35

So you really tended to want to look to the government and its role under the Racing Act to protect the industry because there perhaps wasn't anyone else who was going to hold the company to account?---That's correct but, I mean, on the one hand you – you know, you've always had – oh well, almost always had the industry demanding independence from the government until there's a decision that one sector doesn't like and then they demand that the government do something about it.

40

Absolutely. You see that all the time?---Mm.

45

Yes. So a very difficult position?---Yes.

MR PINCUS: Could you have now please folder 5, which I think Mr Matthews has got there. It's really to finish the sequence of events. This is the cabinet decision you'll see, which in accordance with your recommendation on the third page of that - - -?---What number are you at, Mr Pincus?

5

Sorry, 148?---Thank you.

Your Honour, I made a mistake on that. Thank you. You'll see that this – it includes your recommendation for the decision which is made which is to note that you as the minister intend to approve the proposed constitution on the 7th of April. And if you go over to page 5 of that document you'll see under the heading constitution of Racing Queensland?---Yes.

10

There's reference to aspects of it, including at 19 on the top of page 6?---Yes.

15

“The proposed constitution ought to provide the founding directors hold office for an initial term which expires in June 2014.”?---Mm mm.

Now, was any consideration given to the fact that Mr Bentley for example had been there since – one way or another – since 2002, and this was extending his term for another substantial period where he didn't face any scrutiny?---Not specifically but I think that the – the extension of the term to 2014 was my recollection – part of the consideration was the fact that the exclusive agreement with Tattersalls comes up for renegotiation or expires on the 1st of July 2014. So there'd be ongoing negotiations. And I think that was a consideration that you needed somewhere who had, you know, not only – not only - - -

20

25

COMMISSIONER WHITE: Mr Bentley couldn't be involved in that because he was a director of Tatts?---Well, that is correct. But there were others as well.

30

There were but that doesn't seem to have featured anywhere when the reason – one of the major reasons for the need to work towards this is being advanced. And all the correspondence is coming under Mr Bentley's hand. No one seems to have said, “Well, he can't be a part of these negotiations because he's a director of Tatts.”?---No. Well, he couldn't be. That's correct.

35

And he's at pains at all board meetings to identify that conflict so it wasn't as if it wasn't right out there in the arena?---Sure. I think it - - -

Is there any explanation why no one thought that a little odd that he was the linchpin and yet he actually couldn't have been involved?---Well, I don't know about the linchpin. He wasn't on the Product Co Board.

40

He was not?---Who I would imagine would be the, you know, negotiating with Tattersalls for the extension or otherwise of the exclusivity agreement. So I mean, I wasn't thinking particularly of him but others there – that there was some continuity. That was a factor anyway.

45

Righto. Yes. So Mr Hanmer and Mr Ludwig?---That's correct.

5 MR PINCUS: Another question which arises in that context is whether that continuity was a real concern, even leaving aside Mr Bentley, where this is happening in the start of 2010 and the negotiations [indistinct] 2014. Anything could have happened in the next four years?---Well, it was a consideration but yeah, I – I, you know, I mean I don't think it was the, you know, overwhelming consideration but it was a consideration, I'm sure.

10 Okay?---Because even then, I mean, the issue about 2014 30th June is, you know, looming large in the minds of most people in the industry, I believe – even now.

Especially now perhaps?---Especially now.

15 COMMISSIONER WHITE: Especially now, yes.

MR PINCUS: I'm – I won't take you to the remaining documents on this topic. But you agree, don't you, that that happened. The constitution was approved and the amalgamated control body was approved to be the control body, subject to the adoption of that constitution?--- That's correct.

Yeah. I've only got one more topic, Commissioner, and hopefully it will be quite brief. So might we continue?

25 COMMISSIONER WHITE: Certainly.

MR PINCUS: And then hopefully we'll be able to let Mr Lawlor go.

30 COMMISSIONER WHITE: Yes.

MR PINCUS: Could you turn next to folder 4 which, I'm sorry, is going back to the one you'd had previously?--- That's all right.

35 And at tab 115?--- Yes.

Now, this is in your period as minister, of course. And it relates to the negotiations to all of the amalgamation?--- Yes.

40 There's a three code meeting at which Mr Kelly of the Office of Racing and Ms Perrett - - -?--- Yes.

- - - are there?--- Yes.

45 And Mr Bentley's talking about the issues paper, you'll see, in the third paragraph?--- Sorry, yeah. Yes, yes.

And if you turn over then to page 4 of that document, under the heading – what was the heading? Agreed. Anyway, under the word agreed there's reference to Albion Park Harness. And then the next heading is Logan Greyhound?--- Yes.

5 If you could just read those, please?--- Yes.

So the point is that there's assurances or commitments being given to dogs and harness in relation to what will happen under the IIP post-merger; do you agree?--- I do.

10

And whatever the legal status of those assurances, they're recorded here and they're obviously important matters for harness and dogs?--- Mmhmm.

15

And in relation to Ms Watson in particular, she's looking for assurance on the proposed Logan complex and she's given a commitment?--- Yes.

Now, were you aware of that aspect of the process, do you remember, at the time?--- No, I wasn't.

20

Were you aware that there were these consultation meetings between the three – there was a consultation process between the heads of the three codes?--- Well, I assumed that that would be the case in the negotiations, you know, leading up to the amalgamation. And in fact, I think that I actually wrote a letter which reflected Mr Bentley's assurance that the sale of Albion Park had not been considered.

25

Right?--- I think I wrote a letter, I can't remember, probably to the Harness Racing Board or someone, anyway, reflecting exactly that. But of course, things change, and apparently they did.

30

Yes, I understand that. The Commissioner's already asked you about consultation generally. And without taking you to all the documents on it, do you remember that there was an issue about the extent of consultation over the proposed amalgamation? And - - -?--- I think there was too. I think that might've been raised by Premier and Cabinet or some - - -

35

Yeah, exactly?--- Yeah.

And the general approach was we can't consult too widely because we're going to get - - -?--- Well, you never reach - - -

40

- - - you know, a million views. It won't ever get anywhere?--- Never reach any agreement.

45

Yeah. But one thing that was relied on as some consultation was the fact that there had been agreement by the chairpersons of the other two codes?--- Yeah, I think that's correct. That's correct.

5 If you look at - - -?--- Could I just add too that – I mean, this is just another example of the problems with trying to get the industry together. Because even though to Mrs Watson the Logan option was an answer to all her prayers for the greyhounds, I had deputations, for instance, from the Gold Coast Greyhound Club saying that it was completely unsuitable, a waste of money. And that – obviously that – probably what went unsaid is that they wanted a new track down the Gold Coast. But they raised the issue about the fact that it was on an old tip site and so on. So they were absolutely, implacably opposed to the Logan issue. But that’s just another example of what I’m talking about, trying to get people together. But anyway.

10

Even within the dogs, the view that Ms Watson - - -?--- Yeah.

- - - favoured was not the view of everyone?--- That’s right.

15

Yeah.

COMMISSIONER WHITE: And also, of course, there was the \$10 million compensation – I say that in inverted commas – package for the parklands site?--- That’s correct.

20

Which I think was – the greyhounds down at the Gold Coast thought should go to them?--- They certainly did.

Not to the industry as a whole?--- And they still do, your Honour.

25

Right.

MR PINCUS: Could you just go briefly then to 119, please. It should be just in that one folder?--- Yes.

30

And you’ll see Ms Watson is advising Mr Kelly of support in principal for the amalgamation?--- Yes.

She says, “Provided there are adequate safeguards in place for the minor codes.”?--- Yes.

35

“And the present business plans for greyhound can still be implemented.”?--- Yes.

She’s agreeing to the amalgamation, but expressly - - -?--- Those caveats, yes.

40

Referring to the proviso that she wants there – what she really means is what’s recorded in that meeting; isn’t it? We need to make sure that Logan is done. Then the IIP, of course, did not include the Logan development initially?--- Is that correct? That’s probably correct.

45

And if you go to tab 188 which is in, I'm afraid, volume 5. We're juggling again. You'll see – I think you'll remember this letter. Ms Watson writes to Mr Bentley and copies you, complaining about the promises not being kept?---Yes. Yes. Yes.

5 The point, for present purposes, is if you can just remind yourself of the contents of the letter? She says, "I wish to address with you some issues that are causing me concern about the strategic asset plan. It was prepared with no input from myself with regard to the greyhounds."?---Mm mm.

10 And further down she refers to Mr Hanmer having reiterated promises about Logan in the third paragraph?---Yes.

And then the second last paragraph on that page. Her belief that there was an ironclad promise in writing that the Logan facility would guarantee to proceed. And then – we don't need to read the rest but over the page you'll see that you're copies and - - -?---Yes.

15

Do you remember receiving that letter?---Yes, I do.

20 So it seems Ms Watson was aware before the amalgamation that there was going to be one director for her code on the board and that she may not be able to do anything after the amalgamation if what she thought was not agreed by the others. And so she sought assurances before the amalgamation to protect her code?---Mm mm.

25 And what she's complaining about is that those assurances weren't met?---Yes, that's correct.

Now, do you think that this issue – well, can I just ask – what did you do in relation to this issue, if anything?---Well, for the issue being that, you know, the proposed scrapping of the Logan proposal.

30

That issue?---I don't believe I did anything about it and similarly with the – what appeared to be a change in the proposal regarding the sale of Albion Park.

35 Right?---Obviously circumstances had changed. The problem – one of the problems with Albion Park for instance is that it's co-owned by the dogs and the trots. The dogs – my understanding of the dogs insofar as you can get an understanding in some of these industries, they didn't want to be there. They wanted their own facility whether it was at Logan or wherever it was. But they – so they actually wanted their equity out of Albion Park.

40

And they couldn't get it out because harness wouldn't agree?---Harness wouldn't agree to any sale; wouldn't – didn't have the ability to borrow money to let them out. So – so what, you know, when it came around to the situation where they said that, you know the situation had changed and the proposal then was to sell Albion Park which is – didn't seem to be such a radical proposal. I mean, the trots had moved out of the showgrounds in Melbourne out to Milton, to a purpose-built facility

45

at Milton that seems to be going well there. The trots have moved out of Harold Park in Sydney out to Menangle it seems – to a purpose-built facility. It seems to be going quite okay and the idea that to sell Albion Park and then, you know, the dogs can do what they want to do. The trots were going to go to – to Deagon, I think.
5 You know, it – it wasn't all, sort of, negatives as far as I was concerned.

Yeah, I understand. And leaving aside the question of the substance of the assurances being met or otherwise – do you know that Ms Watson was - - -?---Well, I can see that that's an issue for the parties involved there, yeah of course.

10 Do you know that Ms Watson was sacked from the board - - -?---Yes. I've read the transcript.

- - - on the justification of this letter?---Yes, I do – did, yeah.

15 And did you [indistinct] that issue?---No.

Is there anything wrong with Ms Watson copying you on a letter telling you that she had some complaints?---Well, according to the board, there was.

20 COMMISSIONER WHITE: Except you, of course, were in on earlier discussions about these plans. So it was hardly a revelation to you, Mr Lawlor, when you'd already had discussions with Mr Bentley and I think also the treasurer and the premier?---That's correct. Mm mm.

25 It's hardly breaching board confidentiality?---Yeah. Well, I agree with that but.

And the fact is that at least so far things look at the moment it seems that only Mr Bentley and Mr Ludwig of the board were parties to those meetings. The rest of the board didn't know about it?---That's correct.

30 It seems a tough standard to apply to one member of the board and not to others.

MR PINCUS: They seem like issues which bear on the public confidence and the running of the industry and questions of integrity, don't they?---Mm.

If someone can be sacked for writing to the minister responsible and - - -?---Sure.

- - - complaining about the way a code's been treated?---Yeah. Yeah, it seems a bit tough to me too, yeah.

45 And do you think, in hindsight, that the government should have paid more attention to this question and whether nor not anything different could have happened in relation to Logan complex or Albion or anything else sought to determine whether there had been an appropriate process followed in relation to her sacking?---I'm not sure about that. I mean, I think it was a bit harsh for her to be sacked, you know, for, you know, writing to the minister about something that – which, you know, as – as

your Honour says, I already knew about anyway. But I don't know if I can make any other suggestions about it. I mean – I mean she had her remedies I suppose too as, you know, she could've done something about it if she felt strongly enough about it.

5 COMMISSIONER WHITE: She did?---She did, did she? I'm sorry I - - -

Yes, she did?---I was unaware of that.

10 MR PINCUS: Well, including with starting with writing a letter copying you. But we don't have to go into the rest of the history of that. I don't have any further questions for Mr Lawlor unless, Commissioner, you have anything.

15 COMMISSIONER WHITE: No. I think I've intervened enough in the course of things, thank you.

MR PINCUS: It's been welcome.

20 COMMISSIONER WHITE: Now, Mr Plunkett, do you wish to clarify anything with Mr Lawlor? You know - - -

MR PLUNKETT: Not by way of any questions. If there's something else that may arise we will do it in accordance with the practise that's evolved by putting in a supplementary statement.

25 COMMISSIONER WHITE: Then thank you, Mr Plunkett. Now, Mr Lawlor, while you can go now because – and it's unlikely that we'd ask you to come back again but I won't release you completely?---I understand, your Honour.

30 Just in case something crops up. But thank you for coming today?---Thank you.

MR PINCUS: Thanks, Mr Lawlor?---Thank you.

35 **WITNESS EXCUSED** [11.43 am]

COMMISSIONER WHITE: We'll take a brief break for 10 minutes before the next witness comes. Thank you.

40 **THE COMMISSION ADJOURNED** [11.44 am]

45 **THE COMMISSION RESUMED** [11.54 am]

MR PINCUS: Commissioner, the next witness is Mr Mulherin and Mr Glynn is here for Mr Mulherin.

5 MR GLYNN: Good morning, Commissioner. Do you want appearances on the record?

COMMISSIONER WHITE: It might be helpful for the court reporters. I certainly know who you are, Mr Glynn. But perhaps if you would do that just for voice identification for the recording, thank you.

10 MR A. J. GLYNN: Commissioner, my name is Glynn, spelt G-l-y-n-n, initials A.J. I appear for Mr Mulherin. I'm instructed by Taylor Solicitors of Mackay.

15 COMMISSIONER WHITE: Thank you.

TIMOTHY MULHERIN, SWORN

[11.55 am]

20 **EXAMINATION BY MR PINCUS**

WITNESS: Do you want a voice – Commissioner, would you like a voice level, a name for - - -

25 COMMISSIONER WHITE: Yes, it's – you don't need to bend forward to use the microphones, we can hear perfectly well. They're just really for the purposes of the court reporters, who are remote and might even be in far North Queensland somewhere for all I know?--- My wife was a court reporter many years ago.

30 MR PINCUS: She probably told you to speak up. These seem to be – these seem to work pretty well, so I wouldn't worry about that. It'll pick you up.

35 COMMISSIONER WHITE: So you can sit back in your chair?--- Yeah.

MR PINCUS: Mr Mulherin, you've given two statements to this commission?--- Yes, that's correct.

40 Thank you. Just to confirm the dates, the first was dated the 26th of July 2013. And then the supplementary statement dated the 9th, I think it is, of September?--- That's correct.

Could Mr Mulherin be shown those two statements, please?--- Yes, certainly.

45 Could you look at the first one, please, at paragraph 7 under the heading Management. You generally describe what you understood to be your function as minister, not to be involved in the management of RQL?--- Racing Queensland was a

company set up under corporations law. And my role as minister was restricted to elements, I think, of section 45, 46 of the Racing Act where I had certain powers. But only government over the years had sort of got out of the day to day operation of racing. And the integrity functions were with Racing Queensland. The role that I had was to ensure that the punter had – could be assured that what he or she was wagering on was – wasn't what you'd call a joke.

That there was public confidence in the integrity of racing?--- Public confidence in the industry, the integrity of people that were involved in the industry. And also the welfare of the animals, be it greyhounds, thoroughbred races or harness races.

Yes. And so in terms of understanding the extent of your involvement, you saw it as being limited to what, addressing matters of public confidence and integrity if they were raised for your attention?--- If they were raised. You know, I relied heavily on the advice given to me by Racing Queensland – by the Office of Racing, I should say.

Yes. And that's the case for all ministers, I take it?--- Yes. Well, racing – I – the racing part of my portfolio was – wasn't a major part of the portfolio. Back in the time that I was racing minister, we were dealing with the ravages of, you know, cyclone Yasi, the floods in – south of the Tropic of Capricorn. And so it was really about assisting those regional economies to get started and working with the ag sector around their issues, as well as dealing with the delivery of the racing infrastructure plan. It was a priority for government to get – get there – get that out. There was criticism that nothing was sort of happening in that space.

It had been moving too slowly?--- That was the view of the industry. But, you know, these things – you know, it's a significant investment by government. You had to get it right.

COMMISSIONER WHITE: Still, the money had been earmarked quite a long time before they – Racing Queensland seems to have got its act together, Mr Mulherin?--- Well, 2009 I think, Commissioner, was when Cabinet decided that they would allocate initially 85 million. There was an additional 10 million or thereabouts given to the former greyhound control body.

That's right, yes?--- Which then morphed into Racing Queensland. During my time, there was a court action between the former harness racing board people and Racing Queensland, Bob – Mr Bentley. Mr Bob Bentley in relation to Racing Queensland's desire in the original infrastructure plan to sell off Albion Park. When I became minister, I had a meeting with Racing Queensland, Mr Bentley and the Office of Racing around the racing infrastructure plan. And I advised, because of the court action, for Racing Queensland to go back and re-think the racing infrastructure plan, to modify it. Because the original plan was a co-contribution by industry, of course.

And to rub out contribution from the sale of the – well, the development of the Albion Park - - ?--- Well, that's right.

- - - raceway land?--- That's right, commissioner. The sites that – racing infrastructure sites that were identified in the original plan were also the same sites in the amended plan which I took to the Cabinet Budget Review Committee, CBRC submissions.

5

MR PINCUS: I should say, we're going to go to this stuff?--- Oh, right. Yeah.

And so you don't need to try and - - -?--- Yeah. No, that's fine.

10 - - - tell us the story. We can look at the documents in a minute. Just sticking with your statement for a second, Mr Mulherin, could you look at paragraphs 23 to 25, please. These refer to events before your time as minister, really. But what I'm interested in is – sorry, have you read those?--- 23, 24 and 25.

15 Yes, please. I'll give you a minute?--- Yeah.

The point is – can you see there's a reference to class A members being clubs and licensee associations, which means they – if they were going to vote on who would regulate the industry, that would be an integrity risk. And so that led to the change that's referred to in 25?--- Yeah.

20

That you'll just have directors as the members?--- Yes, that's right.

25 Now, that's a concept that the Commission's interested in because the class A members were broader than just licensees. It included all sorts of owners and trainers and members of clubs and TAB clubs and alike. And what that seems to be saying is that the representatives of the industry – sorry, the members of the industry itself, as opposed to of the company, should be excluded from the decision making process because there was an integrity threat by their involvement?--- Well, I think
30 the issue for government was that under the original model, the old principal club was often – coming from a regional area, what was seen in the interests of, you know, Queensland Turf Club was seen to be the interests of the industry. If you were in a regional centre, that wasn't – that wasn't necessarily the case. And even within those regional governing bodies where you had a number of clubs, clubs that were
35 linked together. The principal club in that region would become – you know, often there was conflict between the smaller clubs over race day allocations and all that sort of thing. So I think – you know, I don't know if I was in cabinet at – when the – I wasn't in cabinet in the first tranche of reform, it was undertaken by government. But I think it was to try and move away from vested interests, and it's very difficult
40 in racing.

Yeah?--- Moving away from vested interests but have an industry body that would be there for the whole of the industry. And that was the basis of the reforms going forward.

45

But when you say the whole of the industry - - -?--- Well, that's the different sectors. Both greyhounds, harness and thoroughbred; you know?

Yes, but it includes all the - - -?--- You wanted people there that, you know, wouldn't sort of come with a – just the interest of the sector that they originally come from. And I know that when the amendments that were ushered in, I think, in 2010, there were people represented from both thoroughbred, harness and greyhounds. But they
5 were sort of selected to – from my understanding, by an independent body to represent the greater interests of racing in Queensland, rather than clubs.

The point is really just that it's not a perfect model; is it? I'd take it you'd agree because you're excluding the industry itself and putting power in the hands of people
10 who - - -?--- The few, yeah.

- - - themselves will have, no doubt, their own biases and interests?--- Yeah, that's right.

15 Including the code that they come from, as you mentioned?--- That's right.

So what we're interested in is whether you now agree with the proposition that it's necessary, to avoid an integrity risk, and desirable to exclude all of the people that were then called class A members, but we might just call stakeholders in the
20 industry, from the process?--- You know, hindsight's a wonderful thing, of course.

I understand that?--- Yeah, I would agree. Going forward, I – I think into the future that [indistinct] as a control body should – their appointments should be limited. Shouldn't be any more than – like, you know, serve a maximum of eight years. And
25 that, you know, half the board should be up for re-election every four years or whatever. But, you know, I can see where you're coming from and hindsight's a wonderful thing.

Yeah. And when the election happens, do you think that there should be a process which takes into the account the interests of stakeholders?--- It's always going to be difficult in the racing industry to avoid the sectional interests of the industry. I think that there's a discussion that I'd had with others about, you know, how would you go about into the future of appointing board members; you know?
30

Yeah?---I think – I think the – the treasurer in his evidence came up with a suggestion of - - -
35

I think he's going to give us some more on that?--- - - - of – of a model. But I also think that there should be a number of independent directors other than just people
40 from – from a – from the different sectors of the industry.

You mean non-racing people?--- - - - Non-racing people.

- - - should be included?---Yes.
45

And - - -?---That sort of gives it that – that independence to – to put the overall interests of the industry rather than sectorial interests.

And as to the - - -?---It's going to be always difficult to move away from sectorial interest if you look at the division of the codes, you know, where racing – thoroughbred racing's about – you know, is the biggest folder, I think, by greyhound wagering revenue and by harness.

5

COMMISSIONER WHITE: Of course, if you speak to them they're likely to say well, they've been suppressed for so long by the gallopers, Mr Mulherin. They haven't been able to - - -?---Yes. That's - - -

10 - - - flower to their full potential?---That's – that's right. I've seen both – before my time as Minister, both the greyhound racing and harness racing in Mackay disappear and – and in other – in other centres, but that's the sort of nature of the industry.

15 MR PINCUS: The concern seems to be that – I don't know if you heard my discussion with Mr Lawlor about this, but the analogy might be drawn with government and electorates and the process by which members of government become – are accountable ultimately when the election comes up, and if the electorate's not happy then – if it works – they exercise their will at the ballot box and the member is gone. Now, who is the electorate in this case? I assume you'd
20 agree that it's the industry, so my question is do you agree with the fundamental proposition that if it's going to be the body that represents the interests of the industry there should be some process by which – whether there are sectional interests or not – that interest is able to be expressed? They get a voice?---Yeah. I still find it hard to – you know, what – who is the industry, because - - -

25

Yeah?--- - - - you know, it's not just people that own racehorses or train racehorses or – you know, there's a number of people involved from, you know, farriers to – to, you know, bookmakers, who are also in decline. I don't think bookmakers are - - -

30 Track maintenance people?---Track maintenance people - - -

COMMISSIONER WHITE: The most important people these days seem to be the punters, Mr Mulherin - - -?---And that - - -

35 - - - because without them there would be - - -?---No industry.

- - - no wagering revenue, which is the source of the industry staying on its feet?---And that's the other thing, is it – you know, the punter – punter drives the industry through wagering, and the industry's moved on. There's so many different
40 types of gambling that's available these days to people and there's various devices that you can use. I think with racing these days it seems to be event-driven. If you look at – look at the income of turf clubs, a lot of it's just – more than 50 per cent of their income could be generated from one or two events. I imagine, you know, the Gold Coast with the Magic Millions, the Brisbane Turf Club with the Winter
45 Carnival – in my home of Mackay it's – it's always been the sort of the Mackay Cup, Melbourne Cup have generated most of the income, and that's when you get the big crowds. A lot of people just sort of gamble from – from the comfort of their lounge

5 room or clubs or pubs or – or, you know – so it’s a bit hard to work out who would
be – you know, who in the industry would be the people that would put forward
nominations for selection to be considered by any independent body to – to be the
control body going forward. I think the only way for – only way around that is to,
10 you know, call for nominations in a public manner and, you know, market the – the
[indistinct] the qualifications that you’re looking for, you know, because you’re –
you’re dealing with a – an industry, I think from memory, reading – rereading the
CBRC submission it represents about 0.8 per cent of gross state product. There’s
15 about 18,000 people that derive a – some form of income. Some of them don’t
derive much income but, you know, it’s 18,000 people who depend on the industry
for some form of income or entertainment.

15 Yes. Okay. Thank you. Paragraph 51 to paragraph 53 of your statement – and then
we can leave the statement behind. If you’d just read those, please?---You said 51,
52 and 53. Is that right?

Yes, please?---Yes.

20 I just wanted that to be background to some other developments which I’d like to
explore with you a little bit. So the point is really you’re describing a process where
there would be a business case assessed by treasury, who would make a
recommendation to the treasurer, and the treasurer would consider the
recommendation and advise you, as the Minister, of the outcome. And you’d
communicate that to RQL, the essence of it?---Yes. That’s right.

25 Yes. Now, you’ve referred already to amendments to the IIP following the decision
to shelve the sale of Albion. [indistinct] - - -?---Yes.

- - - on that. Yeah?---Yes.

30 Can you go to tab 203, please, which is in folder 5?---This refers to the decision of
the CBRC. Is that correct?

Yes, exactly?---Yeah.

35 And it’s the decision of CBRC, 7th of July 2011, to approve the extension of the
scheme, you’ll see in paragraph 2, and then if you could just note paragraph 6:
Access to loan drawdowns would only be available once a business case for each
project had been submitted and accepted by the treasury department?---Yes.

40 And if you go over the page to your submission under the heading Summary, it just
makes the point that Albion was in the draft plan. And over the page, you’ve
preferred option 2, which was the option selected. You can see that on the previous
page. And the recommendations are made that the proposed capital works program
45 be approved by the committee. That’s number 1?---Yep.

And other matters – and then at 6, again, note that access to loan drawdowns will only be available once a business case for each project was submitted and accepted?---Yes.

5 So we'll also, just finally – if you look at page 6, a reference under the heading Urgency to the – there being some urgency at Mackay - - -?---Yes.

- - - but not elsewhere.

10 COMMISSIONER WHITE: Can you remember now, Mr Mulherin, what the workplace health and safety issues at Ooralea Park were?---Oh, it was the condition of the track. It was the condition of - - -

15 It was principally that, was it? That was the - - -?---It was that plus the grandstand, the betting ring – there was a lot of infrastructure that was identified in a workplace health and safety – or that didn't comply with the standards that Racing Queensland had applied – that had applied for – to race clubs that were TAB clubs.

Thank you.

20

MR PINCUS: And that went back to a 2010 review or something that had been done. I think you referred to that in your statement?---Yeah. I think so. Yeah.

25 Now, if you look then at the following page 28 and 29, you'll just see again the - - -?---Could I just make the point that - - -

Yes, please?--- - - - Ooralea Park's not in the electorate of Mackay. There have been some media that suggested that it was in my electorate when it's in – actually the electorate of Mirani held by – at the time by a non-government member.

30

Got it?---Yeah.

35 Thank you. If you just look over the page under the heading Revised Infrastructure Plan you'll see what you've already told us: that the ongoing problems with Albion have led to difficulties?---That's right.

40 Yes, and could you turn to the next, please – sorry, I'll just tell you that on the 20th of July – I'm sure you know this – 2012 Premier Bligh announced – sorry – 25 January 2012 Premier Bligh announced the election date for the 24th of March, which meant that the caretaker mode commenced on the 19th of February?---That's right.

And if you turn to what is tab 12F, which is in volume 6, please, this is an email - - -?---This is an email from - - -

45 Yeah, Peter McKay to various people, including Michael Kelly and Beau Poppy?---Yep.

And the point is, if you read the email, it says, "Following recent discussions with RQL, Tim proposes to take this matter to note to Cabinet next Monday." So this is the same day as the election announcement, and you're proposing to get this matter, which we'll see over the page, before Cabinet soon."?---Yes.

5

Now, I take it there have been some discussions between you and your – you're the Tim referred to?---Yes, that's me.

Yeah, and had been some discussions about this matter. Do you remember those discussions?---Yeah. It was, once again, a revision of the infrastructure plan that had previously been to CBRC, which I think the July infrastructure plan included a greyhound track and a dog track at Deagon, but at the time, following the announcement of the revised infrastructure plan back in July, Brisbane City Council said that they, you know, wouldn't – I think from memory wouldn't give planning approval for that to proceed, and there was opposition from trainers that were located out there at Deagon, and - - -

15

Sorry, I'm just wondering - - -?--- - - - once again with Brisbane City Council's objection, because they objected to the sale of Albion Park as well, that it was decided to revise the infrastructure plan to get the work going - - -

20

Yes. I'm just asking about the discussions. When you were talking about things being decided do you mean decided in discussions with you and RQL?---Well, there would have been – it would have went back to the Office of Racing and Racing Queensland with the opposition to Deagon that they'd need to revise the plan again, because, you know, it would have been held up in the Planning and Environment Court and then we wouldn't have been able to get, you know, the racing plan underway, and we had announced back in 2009 – I think the opposition at the time and the industry in general were critical about the – how slow the rollout was, so - - -

25

30

And is that the imperative: for you to have become personally involved as opposed to just relying on your staff and the Office of Racing?---The – looking at the – I would have sought advice from either the Premier's office or the Treasurer's office asking them for which way they'd like a revised infrastructure plan to go to Cabinet, either through Cabinet's submission and we would have been given advice to make it a matter to note, so - - -

35

Right?--- - - - I wouldn't have determined the - - -

40

The process?--- - - - the process. It would have been determined by the Office of Premier and Cabinet and the Department of Premier and Cabinet.

Okay?---And no doubt consultation with the Treasurer.

45

Well, some of the treasury people tell us – Mr Bradley, for example – that he thought formal approval by the CBRC should be sought for the changes, because, as we've seen, Cabinet's original approval required CBRC approval of the capital works

program, that is, it had originally been approved by the CBRC that the program – and now it was changing and changing quite dramatically, and so Mr Bradley, and there’s another from Treasury, say that they had thought formal approval should be sought, because, for example, they may be consideration of competing needs across
5 government. Like, the money could just go elsewhere and further be allocated within the racing industry?---Well, Treasury always – they have a view, but at the end of the day it’s the Cabinet office that – no doubt in consultation with the Premier and the Deputy Premier – that determines what way that the government wants the issue brought forward to Cabinet, either in a Cabinet submission or in a matters to note. In
10 this case it was a matters to note, so if Treasury can have their opinion, Cabinet’s about, you know, contestability of ideas.

Yes, and so you think we would find somewhere, would we, a formal advice about using this procedure of matters to note as opposed to the formal
15 submission?---There’s, you know, the Cabinet handbook, of course, which, sort of, outlines what – the process of bringing stuff forward, but it would have been – we would have got advice from, you know, the – either the Premier’s office or the Office of Cabinet – Premier and Cabinet back through the department’s Cabinet liaison officer back to our office on which way to go.

20

Okay?---Yeah.

I personally haven’t seen it. I’m not saying it doesn’t exist, but you say if we look there could be something?---I can assure you that I wouldn’t, sort of, you know, rock
25 up to Cabinet with a matter to note without getting prior approval from - - -

From the DPC mostly?---Yeah, from the Premier’s office or - - -

30
Okay.

COMMISSIONER WHITE: And would that be settled with the Cabinet office?---Yes, and that would have been back through – each department had its own Cabinet liaison officer, and they would liaise with the – with my office in the preparation, so – but this particular case, of course, is that, you know, we agreed
35 back in July to extend the wagering tax redirection from four years to five years, so the quantum of the money hadn’t changed, but what had changed was the opposition by Brisbane City Council to what was proposed at Deagon, and that could have ended up in, you know, in the courts. It was a very politically charged time from, you know, about 2000 to – in the time that I was Minister, from 2011 through to
40 March 2012.

MR PINCUS: You mean, just because the government was under a lot of pressure on other fronts?---The government was under pressure. We were dealing with, you know, the floods and – so with the racing plan there was criticism from industry that,
45 yeah, nothing was happening, so - - -

5 Yes?--- - - - you know, we wanted to get the work done. Of course, you know, I think the genesis of this goes right back to, you know, the threat of the Magic Millions being transferred to Sydney, I think, from memory, and government agreeing to put some money into upgrading racing infrastructure throughout Queensland, and I think, from memory, you know, it was imperative to get this work done.

10 COMMISSIONER WHITE: Well, that had to happen, didn't it, if the racing venues could sustain their TAB status if they weren't safe tracks?---That's correct, Commissioner. You know, with any infrastructure work being undertaken at the race tracks some of it was minor that didn't – that wouldn't interfere in the operational side, but in other areas the work was of major work, which would result in the closure, as it did in Mackay for nearly 12 months to bring the track up to the standard required for a TAB club.

15 Could Mr Mulherin have a look at the extract from the cabinet handbook, which - - -?---Yeah.

20 I think this is the current version, but I understand it was relevantly the same. If you look at page 3, 1.5: Matters for Consideration by Cabinet – and the default position seems to be that?---Unless otherwise determined by the premier as the chair of cabinet, the [indistinct] should be brought by Ministers to the – for the consideration of cabinet or significant and sensitive policy issues, whether originating within government or from discussion with other governments, including new policy development variations to existing policies. Is that what you're referring to?

25 Exactly, and then if you skip down a bit – if you skip down four dot points on the next page – matters of a significant impact on either the public or private sectors?---Yes.

30 And then the fifth last dot point on that list – it's another example: proposed significant commercial activities or expansion of existing commercial activities. So that's what would normally happen - - -?---Yeah.

35 - - - by a – by a proper - - -?---That's – that's right, or - - -

40 - - - submission, and then 1.6: Matters to Note. “The purpose of the matters to note agenda item is for Ministers to inform cabinet of all upcoming significant decisions and public announcements that would not otherwise go before cabinet. Matters to note are for noting. If a matter needs to be discussed in greater detail, cabinet may decide that a formal submission be developed and brought to cabinet at a later date.” So it looks a bit like it's saying it's not for any decision to be made?---Sorry. What was that?

45 It looks a bit like it's saying that matters to note aren't where there's actually a decision to be made; it's only where something's going to happen in the future and

cabinet should know about it?---There's normally a discussion within cabinet without [indistinct] what's discussed in cabinet.

5 The discussion happens after they've got the – either submission or the matter to note, doesn't it?---Well, the matter to note goes out with all the material – all cabinet material to the cabinet Ministers, including the premier, and I go back to, you know, matters for consideration by cabinet unless otherwise determined by the premier as the chair of the cabinet. Following matters should be brought by Ministers for the consideration of cabinet. Well, in this case I was advised to, you know, bring it
10 forward as a matter to note, because as I said, the quantum had been agreed to. There'd been some variation and a lot of that was in the public arena where, you know, Brisbane City Council said that they objected to what was proposed at – at Deagon. So I think the final infrastructure plan was to address some workplace health and safety issues at Albion Park.

15 Yes. Could you go to tab 12, please. You'll see the – probably helpful to do this now – the actual matters to note document. Have you got that? Sorry. It's 12 in the back of that same [indistinct]. Now, you'll see references to the sort of things you've been talking about. But in the bullet point that's about in the middle, it talks about
20 the ongoing court action in relation to Albion Park and the indication by the BCC that it wouldn't support the Deagon development?---Yeah.

Then further down, the second and third last bullets: “RQL has sought amendments with a revised budget which remained within the original approval amount, as you
25 say - - ?---Yeah.

- - - or the 2011 approval amount. The key change is the cancellation of the 40 million-odd dollar redevelopment of Deagon and replacing that with a new greyhound facility at Logan, relocation of the Townsville greyhounds and stuff at
30 Ipswich and less at the BTC. Now, it's pretty significant, isn't it, in that there's a lot of money going to Logan and Ipswich. And we saw that the original process that was approved was that there would be approval of the works program by cabinet and this is merely a matter to note, which just seems – I'm asking for your comment on this – to be a relatively informal way of doing something that seems quite
35 significant?---Well, each – well, each project still had to go from Racing Queensland to the Office of Racing and then on to treasury for – for their assessment of the business case.

40 So is this – was this a usual way to do this sort of thing, in your experience?---In my role as Minister for Agriculture, Food and Regional Economies, the racing portfolio is about the – had a number of elements to – or a number of projects to the racing infrastructure plan, where the other capital works that we'd done in the department related to only science facilities which had been approved as part of the capital works program for the department. So this was – this was new to me, having a number of
45 sort of projects under – under one allocation. But there had been a - - -

COMMISSIONER WHITE: I think Mr – sorry to interrupt you?---Sorry.

I think Mr Pincus' question to you was in your experience as a Minister generally, was it unusual, that is, out of the ordinary, for the allocation of this amount of funding for this many projects to be done by way of a matter to note even though, in a sense, it's a variation on the original cabinet submission.

5

MR PINCUS: Thanks, Commissioner. That's exactly the question. Yes.

COMMISSIONER WHITE: Yes.

10 WITNESS: Yeah. Look, I can't really comment, because I – I wasn't a – you know, most of the capital works in government occurs in, you know, departments like Public Works and Health and – you know, I don't know whether previously they'd put in matters to note, but all I know is that we had agreed on a quantum that the – that the – probably the biggest variation in this was to go back to the original –
15 go back to a proposal to – to establish a greyhound facility at – in the City of Logan. But as you can see down the bottom here, the payments for projects remained consistent with the previous CBRC decision. So whilst the project might've – the scope of projects might've changed, but each project still had to come through the treasury process for – for a recommendation to the treasurer.

20

COMMISSIONER WHITE: I take it that the answer is your experience - - -?---Is limited.

- - - was limited - - -?---Yes. That's right.

25

- - - and so you hadn't really had one like this before?---No.

Thank you.

30 MR PINCUS: Thanks. Could we just – that was the 25th of January 2012. If you can just put that aside, please, and go to tab 227D, which is in folder 6 still. I think that's where we are, isn't it? Have you got that? No. Sorry?---So - - -

35 227D, I hope, is – just bear with me for a moment. You've got it? Thank you. So this is some five days after we've seen the matter to note going to cabinet?---Yeah.

40 And this is Racing Queensland proposing an amended plan – slightly unusual that it's coming after the matter's already been to the cabinet – seems to me slightly unusual. Could you comment on that?---Oh, the only thing I can comment on is that the – the amended racing infrastructure plan would've been developed by Racing Queensland and they would've advised the Office of Racing. And the only thing I can say was that, you know, the letter – letter came after the event.

45 But you knew about it already?---Yeah.

Yeah?---Yeah.

Got it. And there's a useful table showing – on the first page of the plan itself – the changes - - -?---Yeah.

5 - - - from the previous version. You'll see Ipswich going from 35,000 to six million and Logan from 480,000 to 24 million?---Yeah. That was the result of, you know, Brisbane City Council indicating they would oppose any redevelopment at Deagon, of course.

10 Yes. I understand. Thank you. Could we go back to those funny numbers with the 12 and the capital letters 12G, which I think is still in your same folder - - -?---Which one?

- - - towards the back. Again, I apologise for the jumping around?---Yep.

15 Have you got a media release there?---Yes.

And you're announcing the significant change?---Revised infrastructure plan.

20 Yes. Can you look down about five paragraphs from the bottom, please. You'll see you say, "I can also announce today that construction will start on the \$8.2 million upgrade to Beaudesert before the end of the month, following the submission of a business case by RQL to government"?---Yes.

25 Now, we haven't gone through all this in detail, but I don't – I hope it won't be necessary – that the business case had not yet been approved at this time, and you're announcing that construction will start. And the question is, as a matter of process, doesn't that pre-empt the decision of treasury when their approval of the business case is still being sought?---In the development of this media release, it would've been input from the Office of Racing through their consultant – I think they had a media consultant. And the final approval for the release of the – the media release –
30 the process was that we would've received approval from both the Premier's Office and the Treasurer's Office. And I think from memory that the issue here was that, you know, there was public criticism once again about the slowness of the plan. And I think Racing Queensland were getting criticised from the Beaudesert Race Club
35 and the community at Beaudesert about what was happening with the plan. So my understanding is that following discussions with both the – with the Treasurer's Office through my staff that a set of words was agreed to say that Beaudesert would proceed, subject to getting Treasury to approve the business case. And we qualify that. But - - -

40 Is that what – is that what it's meant to mean, following the submission of a business case?--- Yes, that's right. So Racing Queensland I think told us that they had contractors ready to go once the business case was approved. And so that's why that
45 clause, that particular paragraph, was put in the media release, to allay the concerns of the Beaudesert club. And I also think, from memory, the Gold Coast racing community too. Because Beaudesert was – it had to – it had to be completed before the Gold Coast work could start because - - -

You had to move the Gold Coast off to Beaudesert?--- We had to move the Gold Coast towards the population of Beaudesert, stable it there. And you know, the track would be closed.

5 Yes?--- And so that was the purpose of – purpose of that.

Beaudesert hadn't been referred to, we saw earlier, in the – as one of the urgent projects, it was only Mackay. And it seems to have become urgent at this stage?--- Well, the urgency was because of the Gold Coast. You had to get - - -

10

Yes?--- Beaudesert done - - -

It wasn't inherently urgent?--- To get Gold Coast - - -

15 I understand?--- Work underway.

The look of all of this stuff, which I would just like you to comment on, please, is that there's a rush to get all these things through before the caretaker period. And that some of these things, which may or may not be unusual, are reflective of that. That is, there's an IIP coming in from Racing Queensland after it's already gone to Cabinet. It's going – as a matter to note, there's an announcement before there has actually been approval – whatever agreement was at the upper levels of government – of the business case in accordance with the process contemplated by the funding – by the funding conditions. And the question is really; is that right? Was that impending caretaker period a significant factor in the way in which things were being done? And is there anything wrong with that?--- I don't think it had anything to do with the caretaker period, because we'd previously agreed way back in 2009 to undertake work. The criticism was that nothing was – nothing was happening. But there were a series of things which did occur that slowed the process of rolling out the racing infrastructure plan. That is, the court challenge, Brisbane City Council's opposition to the sale of Albion Park, Brisbane City Council's opposition to Deagon. So we had to go back and revise – revise the plans. Now, once – once, you know, Treasury had approved – approved these projects, I understand there would've been an agreement through the Office of Racing with Racing Queensland around the expenditure of that money. Also, I think at the time the then opposition, now current government, had also committed to the racing plan. And, you know, current government went ahead with Beaudesert, went ahead with Gold Coast. Because overall there was general agreement - - -

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25
30
35
40 Yes?--- Around what was needed. Because I think from memory, from what I was reading in papers that were given to me during the lead up to my examination today, that Racing Queensland did go out and consult around the racing infrastructure plan. And overall, there was general agreement to the plan. But the - - -

45 So if the – if the feared new government came in, then the expectation was there wouldn't be much change. Why was there any particular urgency to quickly get these things done before the election?--- Well, I think – I think from memory we –

you know, it was about having those facilities at the Gold Coast. I think we gave an undertaking that they'd been completed by the end of 2013 or something. So, you know, time – time was the essence. So it was about getting – getting the projects underway. And – because all these projects, of course, creates jobs. And that was
5 part of the government's objective with the infrastructure plan, was to provide upgrades to the various racing clubs. And hence there'd also be an economic benefit during the construction phase and hopefully during the operational phase afterwards.

10 Okay. So the answer is, in short, there was no particular - - -?--- No.

- - - impact by the upcoming caretaker period or the election?--- Yeah. Well, you know, if you look at – look at the electorates, you know, you can't – if you want to look at the politics of it, you know, Beaudesert was a seat that wasn't held by the then-government and never likely to be held by the government. So there was no
15 real electoral advantage. The seat of – where the Gold Coast Turf Club is in the seat of Surfer's Paradise. Once again, wasn't a seat held by the government. The purpose was to try this work underway and get the infrastructure plan up and – up and running.

20 Okay, thank you.

COMMISSIONER WHITE: Can I just ask, there were a couple of memos from Treasury analysts who were charged with examining the business cases saying we have just been given two days to do these business cases. We cannot do a complete
25 analysis of the business cases. We'll do the best we can with the broad parameters that we can investigate. Now, if caretaker mode had no influence at all; why did that prevail?--- Well, you can see that there was the case with Ipswich where it was – it was knocked back. But - - -

30 COMMISSIONER WHITE: It was?--- Yeah.

Because it wasn't relating to the Racing Industry, of course?--- Yes.

35 It was about a development?--- Like I said, Commissioner, where this – where these racing clubs were, they weren't what you'd call Labour electorates. And so there was - - -

I'm not suggesting if – by my observation that it's a particular criticism?--- Yeah.

40 Because I accept that the money was earmarked long ago and the projects were very slow at coming on tap. But it does seem, if I may, with respect, say a little disingenuous to suggest it's not governed in any way by the care – the impending caretaker mode date just around the corner when the treasury officials have to say, "We can't do our job properly because we've just got two days."?--- We had made
45 announcements around the racing infrastructure plan, dating back to 2009. It was widely expected that – you know, that work would – work would commence. My understanding from Treasury was that their – and I think Mr Beavis in his statement

said that, you know, business cases were hard to assess because they're not – you know, not - - -

5 They weren't terribly well done - - -?--- Well - - -

- - - from the Office of Racing, apparently?--- Yeah. And on the one hand, they were not purely commercial. On the other hand, they're not a sort of community infrastructure. So it'd hard to make assessment. And in the end when the Treasurer approved it, he just approved the release of money, subject to getting commitments from Racing Queensland in relation to Treasury's concerns. And that's what - - -

COMMISSIONER WHITE: That they wouldn't come back - - -?--- Yeah.

15 - - - and ask for anything more?--- Yeah, and that's what – I sought that assurance from Racing Queensland.

Yes. Could you turn next to 12H, please, which again should be in that same volume toward the back, I think?--- Excuse me, this one – I know when the – you know, I know when they made the announcement – when we made the announcement in Mackay, I copped criticism, in fact, about – you know, putting the money into – into racing rather than putting it into other things. So I don't think it was a political plus, put it that way. In fact, people – people in the electorate said it should've gone into road infrastructure and also, you know, disability services. So there – you know, there's a percentage out there in the population who probably thought that we had our priorities wrong.

20 If you look at 12H, please, you'll see there at the bottom is an exchange of emails between Mr Tuttle, who you'll know as the CEO of – was the CEO of RQL, and Mr Kelly of the Office of Racing. And he says, "Please see attached a response to Treasury regarding further information for the Beaudesert business case." And so that business case is still under consideration at this point. And the next email above that, Mr Kelly writes to Treasury. And if you could just read what he says, please?--- Yeah, I just don't recall the – whether I spoke directly to the Treasurer or was it office to office.

35 Right?--- Yeah.

40 But you've said already it must've been approved. You wouldn't have just taken it to the media?--- Yeah, well the process for approval of media releases all through my time in government was that it also had to get the imprimatur of at least the Premier's Office.

45 Yeah?--- And in this case, it was both the Premier's Office and the Treasurer's Office.

The point is more really that this is part of what the Commissioner was asking you about. It looks very much like what's being said is, "Treasury, look it's already been

announced. You better hurry up.” And in fact, Mr Foley has told us that he took this as a message to hurry up and approve business case.”?---Well, I can’t – I can’t comment on – on his thoughts but.

5 But that wasn’t the message you were seeking to deliver by announcing it before the business case had been approved?---No, no. That’s why there was that – that – that proviso in the thing that – in the media statement that around Beaudesert was subject to approval by – by Treasury. Now, if the Treasurer hadn’t released the – the funds well – and they wanted more information well it’d have to go back through the
10 Office of Racing back to Racing Queensland. But at the end of the day the Treasurer agreed to release – release the funds subject to getting certain assurances from Racing Queensland.

15 Yes. We’ll look at that now. If you go to 12(i). It’s the briefing note of the 10th of February?---Yeah.

I know this is not to you but the purpose is to inform you of the results of Treasury’s review and seek your signature on a letter to Mr Mulherin and over the page you’ll see at paragraphs 8 to 10 reference to the concepts that you’ve already mentioned
20 that there’s substantial public funds and there’s a difficulty with the viability of clubs in the industry generally and at 11 Treasury considers there’s a consistent trend towards an increasing gap. And down at 17 there’s a risk of an increasing subsidisation requirement from RQL which is a financial risk to the government. So then over on the next page, “Following an analysis of the business cases for
25 Beaudesert, Cairns and Rockhampton, Treasury has concluded that as the clubs are not viable in the medium to long term funds should not be advanced from the RICDS towards the capital projects identified for those clubs.” and then, “However, should RQL be able to demonstrate that it has in place an overall rationalisation strategy which supports an increase in subsidies for some clubs with at least an offsetting
30 decrease in other less profitable clubs, Treasury considers that may be an acceptable position. To this end Treasury recommends a letter of comfort be sought.” And you’ll see that it should provide an outline of RQL program strategy and risk management approach across the whole of the IIP?---Mm mm.

35 And there’s a suggestion in the final paragraph of, “As a risk mitigation strategy setting aside a portion of wagering revenue was a buffer.” And the recommendation over the page includes at the second dot point that the Treasurer asked you to seek a letter of comfort. The letter to you – there seems to be something that comes in between this because if you turn to the end of that briefing note you’ll see there’s a
40 letter dated 15 February 2012. It may not be there – is it not there?

COMMISSIONER WHITE: No, it’s not there, Mr Pincus.

45 MR PINCUS: Okay. Well, we might be able to find it somewhere else. Somehow it made it into my bundle but not into yours. I think it may be an exhibit to your statement. I’ll see if I can find it there. I have a letter in the same terms – it’s not actually precisely the same version. But if you go to your statement please – the first

tab at TSM (3). Have you got that? I can tell you this seems to have actually been sent to you on the 15th of February – is the date stamped on it – in the version I’ve got but the contents are the same?---Yes.

5 Do you remember this?---Yes.

So its referring to the financial assurance provided on 14 February by RQL and over the page, “The assurance should have a clear basis of justification you may care to consider whether” and there’s that concept about the buffer that we’ve seen
10 already?---Mm.

Now, this is of course only four days before the caretaker period commences. RQL’s letter is worth a brief look. It’s in – at the tab 231 (a) which I hope is still in the same volume. This is the letter of the 14th of February that we’ve just seen. Have you got
15 that?---Yep.

So there’s assurances that RQL has demonstrated it has the necessary financial resources and then in the third last paragraph, “have the capacity to underwrite the operations. No additional government funding is required.” Now, did you consider
20 that against the letter from Mr Fraser asking for assurances with a clear basis for justification in suggesting a buffer?---From memory I wrote to Racing Queensland with – saying that the Treasurer had approved the release of the funds with, you know, conditions of giving us an assurance. I think there’s another letter somewhere
25 where I recall flicking through the six volumes of – I was able to look at before giving evidence where I’ve indicated to the Treasurer in a subsequent letter that I would go back to Racing Queensland in relation to that – I think there’s the issue about setting it aside but I just haven’t got the letter in front of me to comment clearly on.

30 No, that’s okay. We’ll find the – so there was some subsequent correspondence but did you seek to undertake any assessment or have undertaken an assessment of whether what RQL was saying was right? You think - - -?---No, no. I just, you know, through the Office of Racing, asked them to, you know, as well as writing directly to Mr Bentley and Racing Queensland – Mr Bentley as chair of Racing
35 Queensland – notifying him that the Treasurer had approved the release of the funds and what the issues were. He then came back to – came back to us saying that Racing Queensland would meet the operational costs and I would assume that the Office of Racing would have given us advice that, that was probably the case. But I’m not - - -

40 Or told you if it wasn’t?--- - - - I can’t – I can’t be sure of that.

Yes?---And then – because we then went into the election campaign.

45 Yes. Just before the caretaker period there’s one final document and then I promise you that’s the end of it from my perspective. If you look at 12 (e)?---12 (e). It’s in another folder.

Thank you. That's volume 6 I think. Just really the end of the story we've been looking at – which is a briefing note from Treasury to the Deputy Premier/Treasurer. I'm afraid the numbering seems to have gone awry.

5 COMMISSIONER WHITE: We just call that a little bit of slippage, Mr Pincus.

MR PINCUS: It's a little bit of a slippage, yes.

COMMISSIONER WHITE: Yes.

10

MR PINCUS: Can I just tell you what this is and you can just tell me your comment on it?---Yeah, yep, yep.

15 Treasury is providing a briefing note on the 17th of February to the Deputy Premier and Treasurer and the purpose is to inform him of the results of Treasury's review of the business cases for infrastructure expenditure at Gold Coast and Ipswich under the RICDS and seek his signature on a letter to you informing you of Treasury's conclusions?---Yeah.

20 Now, there's a background set out and at paragraph 5, "On 14 February 2012 RQL provided a written financial assurance to government that RQL has the capacity to underwrite the operation of the new and upgraded facilities and their maintenance into the future. Following receipt of this assurance you approve the release of funds for the capital works proposed at Beaudesert, Cairns, Rockhampton and Logan. The
25 funds total \$36.2 million which represents 33 per cent of the \$110 million IIP." And there's a heading financial implications at paragraph 14, "Treasury notes that RQL have provided a letter to the Minister for Racing undertaking to support the racing club as necessary and advising that it has financial capacity to fulfil these obligations. Nevertheless, Treasury considers that the risk of an increasing
30 subsidisation requirement for RQL and falling wagering tax revenues is a financial risk to the government as it is not unreasonable to expect that RQL may have difficulty meeting these deficits in the longer term and could call upon the government for financial assistance despite the written financial assurance provided by RQL. Furthermore, Treasury reiterates its previous recommendation that it would
35 be prudent as a risk mitigation strategy to have a buffer." Now, the point is really that again it looks a bit like Treasury's not really entirely happy. They would like more to be done and the process is being somewhat rushed through and that's what I'm putting to you. You know that. I just want to seek a comment from you in relation to that again. It looks like Treasury's not getting what it wants but
40 nevertheless the process is being forced through?---Well, as I said earlier, I think there's another letter there where I wrote back to the Treasurer after he wrote to me with those concerns of Treasury where I think, from memory, I said I'd take that up again with Racing Queensland about setting aside a certain amount of money to meet the operational costs so.

45

Yeah. Do you remember what happened about that?---Well, we went into – you know.

Yeah, I see?---I don't know what, you know, it was right at the end - - -

What would've happened?--- - - - I wasn't there to action it of course afterwards, you know, so it would've been something I would've followed up with Racing
5 Queensland if we'd been given the opportunity to continue governing.

Thank you?---But I think you'll find somewhere - - -

I'll find it?--- - - - within all the hundreds of thousands of documents that the
10 commission has that there is a letter. I saw it earlier on today.

Yeah. Okay. I'll find that. I'm sorry I don't have it here now. I don't have any further questions, Commissioner, for Mr Mulherin, but.

15 COMMISSIONER WHITE: Thank you. Mr Glynn, do you have any questions you want to ask of - - -

MR GLYNN: No, thank you, your Honour – Commissioner.

20 COMMISSIONER WHITE: Thank you. Mr Mulherin, if there's anything that you wish to add by way of a supplementary statement after you reflect upon things a bit more – if you wish to do then the Commission is happy to receive any further response. Your solicitors will know the deadline for receiving further material. While there is a very remote possibility, and I emphasise it is remote, that the
25 Commission might want to ask you some further questions – so I won't release you totally from the subpoena but of course you're free to go today and if anything further is to happen then we'll be in touch with your solicitors?---Thank you, Commissioner.

30 Thank you for coming down and talking with us?---Yeah, no. Thank you.

MR PINCUS: Thank you, Mr Mulherin?---Thank you, Mr Pincus.

35 **WITNESS EXCUSED** [1.06 pm]

COMMISSIONER WHITE: We'll adjourn to this afternoon.

40 **THE COMMISSION ADJOURNED** [1.06 pm]

45 **THE COMMISSION RESUMED** [2.16 pm]

COMMISSIONER WHITE: Mr Duffy.

MR DUFFY: Commissioner, may I announce my appearance for Mr Mike Godber, who's the next witness, and also for Mr Kevin Seymour, who'll be the first witness tomorrow morning. I'm instructed by Schweikert Harris.

5 COMMISSIONER WHITE: Thanks, Mr Duffy.

MR BELL: Yes. I'll call Michael Ross Godber, please, Commissioner.

10 **MICHAEL ROSS GODBER, SWORN** **[2.16 pm]**

EXAMINATION BY MR BELL

15 COMMISSIONER WHITE: Thanks, Mr – Thank you, Mr Bell.

MR BELL: Your full name is Michael Ross Godber?---Yes. It is.

20 And Mr Godber, you swore a statement for the commission on the 11th of October this year?---Yes. That's correct.

And would you have a look at that statement for me, please?---Sure.

25 I wanted to ask you something about it. If you go to paragraph 11, please?---Yes.

In paragraph 11, you say that Mr Seymour always excused himself and was not involved in discussions about substantive Product Co matters?---Yes.

30 You're quite sure of that?---Yes. That's my recollection.

Okay. And would you mind going to paragraph 12(b), please?---Yes.

35 And the same there, I think – your recollection is that Mr Seymour was not involved in any of the discussions in relation to matters of Product Co?---Yes.

And then again you make the point, I think, in 40 – paragraph 40. You say, "The only comment I would add to what I've said above is that at most, the opinion was discussed by senior management of QHRL – myself, Ms Harris and Mr Lette.

40 Cannot recall the detail of any discussions of the QHRL board meetings or other times, but believe that any discussions would have excluded Mr Seymour." And then over the page to the last page on page 8 of your statement, please, Mr Godber, in subparagraph (v) in number 1. Your recollection is that Mr Seymour did not receive board papers involving those topics either?---That's my recollection, but I
45 can't be – I think as I explained in that note – 100 per cent sure. But that was the – certainly that was the intent.

Yes. And that's because it was somebody else's role to prepare them and distribute them, was it?---Yes.

5 COMMISSIONER WHITE: Mr Godber – just a moment, Mr Bell.

You don't need to lean forward for the microphone?---Oh, okay. Sorry.

It's for the court reporter - - -?---Thank you.

10 - - - to hear, so you can relax a bit more?---Yep. Thank you.

MR BELL: And could Mr Godber see the bundle of documents, please. Mr Godber, do you mind going to document with divider 63 in front of it, please?---Yes.

15 You see that this is a board meeting of QHRL on the 6th of April 2009. Have you got it?---Yes. I've got that.

20 Okay. And I see in the third entry, "Conflicts of interest: nil." Maybe that was something unusual, because I see in most of the other board minutes the conflicts that were first declared in June and July 2008 were maintained throughout all the meetings?---I – I think perhaps the nil meant that there were no added - - -

Okay. Good. And then if you go to the last page of those minutes, please, you'll see UNiTAB as a heading right at the top?---Yes.

25 I'll just let you read that, please, for me – to yourself?---Sure. Yes.

30 That seems to record what you have said in your statement occurred in relation to, may I call it broadly, UNiTAB or Product Co matters, that is, that Mr Seymour would hear it coming and then leave the room. Is that your recollection?---That's my recollection. These were substantive matters, not necessarily operational ones - - -

Okay?--- - - - but substantive ones. Yep.

35 The point I wanted to ask you is that in the minutes I've seen from the time when you were CEO from about November 2008 through 2009, this is the only recording of him leaving the room – that is, of Mr Seymour leaving the room. But your recollection is that he, in fact, did leave the room when those topics arose, whether or not it's recorded in the minutes?---Yes. I would say there wouldn't have been a – a
40 large number of times that he was required to leave the room, because, as I said, it was – we were – when we were dealing with substantive matters such as – this was obviously an application, I suspect, for South Australia or something - - -

45 Yes. Yes?--- - - - or race fields. But if it was an operational matter which maybe – yeah. Operational matters he may – he wasn't necessary to – to leave the room for those.

Would you mind going to the document behind tab 37, please, Mr Godber?---Sorry.
37 – yes.

5 I'll just let you have a look at that document for a moment?---Sure. Sorry. It's just
taking a while. The clips aren't working that well. Okay.

Okay?---Number 37?

10 37, please. Would those invoices come to your notice in your position as CEO, or
copies of them?---Not directly, no.

And what does that mean? What's indirectly mean?---Well – well, indirectly – it
looks like it's a payment to Product Co or a - - -

15 Yeah?---For the month of - - -

October?---October, and - - -

20 Yes. It, in fact, is - - -?---Yeah. Yeah.

- - - exactly that, but in due course would these documents, or copies of them, come
to Harness with – giving notice of the share?---Yes. They would've. Yes.

25 Okay?---And they would've gone through the accounts department.

So what happens is, at least it would seem, that here for the – I can tell you this was
the first time on these invoices. You see the section in the invoice – “Less race fields
legislation deductions to New South Wales”?---Yes.

30 You see that?---Yes.

And this was soon after you – I'm sorry. This invoice was for the month before you
were CEO, but it would've been received soon after or at about the time - - -?---Yep.

35 - - - that you started. And then if I ask you to turn to show you similar ones, please,
for Harness, it seems as if that share of the race fields legislation deduction was to be
paid quarterly by Harness and therefore there's nothing on this particular invoice.
But if I ask you to go over to 50, please?---Yes.

40 You see the same again, and then if you turn to 54 you see the impact of these new
deductions on Harness?---Yes.

And that was a significant impact on the revenue of Harness coming from Product
Co, wasn't it?---Yes. It was off – it was to be offset - - -

45 Yes, but - - -?--- - - - under the race fields legislation.

The point being that offsetting – the sense that when Queensland legislation was brought in to cover the same thing, if Harness Queensland were a net exporter, or at least even - - -?---Yes.

5 - - - it would have no impact. I understand that. But the fact of the deduction was significant if one just focuses on it for a moment?---It was but it was as I understood it when I took over the role – that was the expected one side with the other side coming in once the paperwork was in place.

10 Yes?---But what changed – at least what might have changed that view was the advice that came in from Mr Grace that came to your notice?---Oh yes, that letter that was attached to the information sent by the Commission?

Yes?---Yes.

15

But that – if it was right – that was, if Mr Grace’s view was right, this deduction that I’m referring to now would be a deduction that was invalid or not able to be made, wouldn’t it?---If his opinion was correct, yes.

20 Well, my point is that it raised a significant question for harness didn’t it, in the sense of it being the case that Tatts were going to impose these charges on harness and the other codes?---Well, it wasn’t an unexpected charge that was being imposed. I think that’s the important part.

25 What about this for important then? When the legal advice came to your notice that they may not be entitled to make the charge – that made it significant – a significant question?---Yes. I believe that was discussed at – as my statement said – at a number of Product Co meetings.

30 We’ll go to that?---Yeah.

But clearly in your mind as CEO of harness, when for example this invoice comes in and there’s \$111,000 being deducted from the entitlement otherwise it was significant in financial terms, wasn’t it, for harness?---It was but as I can only state, it was expected.

35

Yes. It might be expected but it was significant in money terms, wasn’t it, hence - - -?---Oh, it was a significant amount, yes.

40 Hence as a CEO if you could avoid it, it might be a good thing to avoid for the industry, don’t you agree?---It – it could be if it was – if that was the case as to how the operation should – should occur, yes.

45 Well, I mean there’s no need to put the provisos on it. My point was prefaced on the basis that if you could avoid it, it would be good for the industry in Queensland, wouldn’t it?---Well, it would be if you could avoid it. I suppose it would be, yes.

5 Okay. Now, let's have a look at that part you played because I do note in your statement what you say about it. Let me see if I can help you remember what happened. Would you mind going to 49 please? And when I say 49 I mean the document behind 49?---Yes. Yeah, that's a Race – Queensland Race, Product Co minutes of the 4th of December?

Yes, please?---Yeah.

10 You see that you attended that as proxy for Mr Lette?---That's right.

And then down under apologies in the last two paragraphs, "It was noted that Mr Lette had provided Mr Godber with his proxy for this meeting and the original proxy was tabled". I take it you must've taken that document to the meeting?---Yes.

15 And then next paragraph, "It is also noted that Mr Godber will become an alternate director of Queensland Race, Product Co as of the next meeting. So that's where your participation in meetings, at least two meetings, occurred at Product Co?---Yes.

20 Starting with this meeting. And then could I ask you please to turn over the page in those minutes. And you see under the heading 2.2?---Yes.

And I think you've said in your statement, Mr Godber, you do recall that there was discussion about Grace's letter of advice at this meeting?---Yes.

25 And in particular, did you receive a copy of the letter at the meeting or before the meeting? And as CEO, I should say?---Yeah, yes. I can't recall receiving a copy before the meeting but I certainly would've at the meeting.

30 Okay?---So one way or another I – I would've had a copy.

35 COMMISSIONER WHITE: I notice, Mr Godber, that the minutes actually say this letter already previously circulated to all members. Would Mr Lette have been likely to give you his board papers since you were coming to the meeting in his stead?---Yes. That was usually the process – that he would receive the board papers for Product Co and anything – if I was going as his alternate he would pass them onto me. What I'm not sure is I know he was away overseas so I – I'm not sure whether I got this letter prior to or whether I simply had to go to the meeting, yes.

40 I see. [indistinct] thank you.

MR BELL: But in any event by the time of the meeting you had a copy and you were looking at it?---I had a copy, yeah.

45 I'll show it to you in a second. In fact why don't I do that now. If you don't mind turning to 43, please?---Yes.

That's the letter I think, isn't it?---Yep. That's – that appears to be the letter. That – mm mm.

5 And if I ask you to go to page 4 please. It's at the top – you'll see the page numbers?---Yes.

10 And the third new paragraph commences, “You asked as to whether the provision of Racing New South Wales with Australian Racing product to UNiTAB for a few pursuant to New South Wales legislation entitles UNiTAB pursuant to clause 10.2 (c) of the PPA to deduct the amount paid to Racing New South Wales from the amount of the product fee payable under clause 10.1 Product Co.” And then the answer's in the next paragraph – his answer is in the next paragraph, I should say. Now, certainly that was as you understood it after the meeting that Grace's view was that it was not deductible?---Yes. That was – that was – his view was that it wasn't
15 deductible.

20 Okay. And I see in your statement – you tell me if you'd like to go to it? At paragraph 28, you say, “Whilst I cannot now recall doing so, I must've discussed the Cooper Grace Ward letter with Mr Lette because I can recall that he indicated he disagreed with the opinion.” Do you recall you said that?---Yes.

Yeah. And do you recall that now, that that's what happened?---Yes.

25 You can't recall the detail but you do recall that Mr Lette had a view that was different from Mr Grace?---Yeah. And that I – I believe that was post the 4 December meeting.

30 Okay. And that sounds like you may have been in discussion with Mr Lette about the events of the 4th of December - - -?---Yes.

- - - meeting when he got back from overseas. And one of those events was to discuss the Grace advice?---Yes.

35 And thinking now sitting there – you've said in your statement you can't recall the detail of the discussion but at least it went something like this, did it: “Grace's opinion”, Mr Lette says, “I don't agree with. But certainly there's an opinion out there that says that Tatts can't deduct this money from us; harness”, or to that effect?---Yes. I mean that's a reasonable summation.

40 Okay. And did you at any time after coming to know of that advice promote any particular action one way or the other, Mr Godber?---No. I – I – well, I can recall being involved in discussions at Product Co later. In terms of the papers that I was sent before the Commission, there was also the board paper that I wrote for Queensland – for the Queensland Harness Racing Board and looking at what I wrote
45 – what I wrote there and then looking at the minutes here of the Product Co of the 4th of December, I clearly must've had the view that the matter was a tabled view, there were opposing views. Subsequent to the Product Co meeting I discussed it with Mr

5 Letter who also had an opposing view and I think in my note to the Harness Racing Board I actually stated that I thought the matter was – it was just given to Product Co for noting because the letter had been to Queensland Racing. I guess at that point I may well have felt that the matter was almost dealt with because there were so – there were opposing views and other issues, then it came back on the agenda at another meeting.

10 Yeah. I don't really understand that, with respect to you. Let me tell you why I say that: for harness there is a significant financial impact if they were – Tatts were entitled to make this charge – \$111,000, we saw, for three months. There were views both ways, as far you understood it, from good people acting fairly and honestly. That's right so far, isn't it?---I think there was a view from Cooper Grace Ward that there was – that the UNiTAB were not entitled to deduct money.

15 Yes?---There were other views, and there were – and more than one, clearly, from the minutes and from then my discussions with Mr Lette, that Cooper Grace Ward's opinion was not correct.

20 Yeah. So there you go; so there's views both ways, just as I see it?---Yep.

25 One view was from a lawyer who clearly enough was retained to do a detailed complicated advice in writing to Queensland Racing, not to Harness. He gave it, obviously charged for it, and it came to the notice of Product Co, and there are other people who give their view, which is in disagreement, and some of them are lawyers. Mr Hanmer: he gave his view at the Product Co meeting that he didn't agree with it, didn't he?---Yes, he did.

30 But was he – would you consider his view of any value for Harness, where you sat? Meaning he's not a lawyer?---No, but he – his view as I recall was based on discussions with lawyers. I accept he wasn't a lawyer. I'm not a lawyer either, but – yeah.

35 No. I'm not suggesting you need to be a lawyer to get everything right. I'm just saying with law – with a question of law - - -?---Yes.

- - - a hard one like this, it's a good idea to go to a lawyer to predict what happens if you go to the court, you know. Do you agree with that?---Yeah.

40 Okay. So putting it at its highest, this lawyer's view's both ways. I just wondered why no action was taken or you didn't push for any action to be taken to resolve that issue, because it was a financially significant one for your code, for your company?---It was. I think in the – perhaps in the context at that time the – it was draft legislation in the middle of the – obviously the New South Wales legislation was up and running. The Queensland legislation was coming into being.

45

But that's a different question, and I respect what you're saying. What you're saying to me is, look, as soon as we get up here we don't lose anything. If we're a net exporter we don't lose anything by it?---Yes.

5 That's your point. My point is: but the legal advice is about them being able to charge at all the deduction. You see what I mean?---Yes. I see what you mean, but when you - - -

10 That's important?--- - - - when you have opposing views, I guess the board was in a position then; did it take action or did it really receive the correspondence at that time?

15 Yeah, that's right - - -?---My indication going to – and I'm not trying to excuse myself here – but it was the first board meeting of Product Co I went to.

No, I understand?---And, clearly, there was a view that, well, we have this opinion. There are different opinions, and in view of that, let's just receive it. We have other matters that we have to deal with at this time.

20 Yep. Anyway, here we go, just to finalise that: on the one hand, yes, you had a written opinion which you saw, which was complicated - - -?---Yes.

- - - would you agree it's complicated in detail?---It turned on a very fine legal – I'm not a lawyer, but it turned on a very fine legal point, clearly.

25 Okay, and then on the other hand you had people saying I think?---Yes.

30 Okay. That's how it works?---Well, no, I don't – I'm not sure that I would wholly agree with you about people saying just I think. I believe I – the time period and I think the letter from David Grace was the 18th of November - - -

Yes?--- - - - the meeting of Product Co was the 4th of - - -

35 December?--- - - - December, so there was a reasonable period of two weeks which clearly Racing Queensland would have had that letter, and I assume from – that Mr Hanmer would have got more than just a I think. Perhaps not – clearly didn't have anything in writing because nothing was to the put to the board, I agree with you.

40 Okay, I've got you, and you say I – you just said to me then I would have assumed that, because to just listen on the telephone to somebody who was your friend, for example, who might be a lawyer or who might not be, wouldn't be a responsible approach. Is that what you were saying, I assume, for?---Yeah. I would have assumed that somebody would have been given a copy of the David Grace letter and asked for them to review it and then come back and discuss it with Mr Hanmer, and
45 that's what he was reporting to the board.

5 You see – let me see if I can make this further distinction in – from the way you were setting it – I’m thinking you’re saying that if Grace’s advice comes in in writing and somebody on the board thinks it’s not correct the right approach would be to go to another lawyer and retain that lawyer to review it and give his advice. Is that what you were thinking?---Well, that’s what I thought had basically had happened.

No. I hear you loud and clear, but what I was meaning in my cryptic approach of saying you ring up on the phone and say what do you think - - -?---Yeah.

10 - - - to your sister, you know, that’s not very responsible and formal when you’re talking about \$111,000 for the first three months. You know what I mean?---Well, probably not correct if – no matter what you’re doing in terms of running a business, I would think.

15 I’ve got it. So let me keep going through the history of it, please, and we went to the 4th of December meeting, and I think you’ve confirmed that you certainly discussed it after the meeting with Mr Lette, and I hear you about that. Would you go to 51 of the documents in the bundle, please?---Yes, I’ve got that.

20 Okay. I’ll just let you have a quick look at that document so that you - - -?---Sure. I’m aware of it because it was sent over by the Commission, so I got it last week.

25 Very good. Well, this is one you prepared, and what you were doing was preparing this note for your board as a consequence of you attending the Product Co meeting?---Yes.

30 And, in particular, I think you see about halfway down the page your paragraph commencing, “The other matter tabled for the information of directors was a legal opinion.” See that?---Yes.

And did you table the legal opinion with this note?---I can’t be sure, but I would think – going by what I’ve written I would say almost certainly not.

35 Okay?---Yep.

40 But it was available to the board of Harness if required, was it? Well, obviously it was, because you’re not going to talk about something and then say you can’t see it?---I took the wording of the way I’ve written that as that it was – this whole report was simply a – an advice to the board of Harness as to what happened at the previous meeting of Product Co for their information.

Yeah, but that could only be on the basis that you saw it as relevant to Harness’ interests of course. We’re not silly, are we?---No.

45 So what you’re saying to Harness is, hey, there’s a legal advice out there. It’s not ours, but it says something important to Harness, namely, that they can’t – they’re

not entitled to charge this, but other people disagree. That's what really was being reported?---Yes.

5 Okay. So that's your paper, and then would you please go to 53?---Yes.

Now, I think you've said in your statement that this meeting for which you prepared the paper we've just looked at you can't remember whether there was discussion about it, about the advice of Grace at it, even though you might look on the second page and see race field legislation was a topic, anyway?---Yes.

10 But you can't remember what was discussed?---No. Usually when you – when there was a matter of – like, the board received correspondence, would tend to indicate that there was very little, if any, discussion, whereas a matter if something was resolved there was probably some debate and discussion around it before it was received.

15 Yeah?---That's the only observation I could make.

One thing you're not saying – and I think, Mr Godber, please tell me if you are – is that when you do a board paper for the board and you refer to a legal advice about a matter as you did at that – board paper, you're not suggesting that people didn't get the advice or it wouldn't be available to them if they wanted it, are you?---No. Obviously, they were in the case of Mr Seymour, because it was to do with UNiTAB. He wouldn't have been - - -

25 Well – sorry. I'm sorry, I should – Mr Seymour wasn't at the meeting, but you're right. I - - -?---No, but even if he had of been - - -

Yeah, I've got it?--- - - - and he had said, look, can I have the legal advice - - -

30 Yeah. Look, I'm not aiming at Seymour - - -?---No, that's okay.

I'm just saying that if - - -?---I just wanted to clarify that.

35 - - - Janice Dawson wanted a copy of the advice, she certainly had notice that there was an advice out there?---Yes.

Yeah?---Yeah.

40 Okay. Okay. Yes. And could you go to 60, please, Mr Godber?---Yes. I'm at 60.

You see the name Godber there?---Yes.

45 So you were present at this next Product Co meeting that you have said also you were at in your statement, and you have a vague recollection of this meeting, I think, don't you?---Yeah. I do.

Okay?---I think I covered it in there - - -

You did. You did?--- - - - to say there was some – yeah.

5 Just turn over the page in the minutes. If you don't mind looking at the bottom-right hand corner, you'll see page 3 and then above it, about 2.5 of the page topic, the heading is 2.1.3 Product and Program Agreement?---Yes.

10 "The board noted Mr Grace's letter to Malcolm Tuttle of Queensland Racing dated 18 November." And we know that that's the advice that we've been talking about a bit so far, you and I, don't we?---Yes.

15 Okay. Lambert and – "Mr Lambert and Mr Andrews noted advice from Mr Grace, if correct, raised fundamental issues that needed to be formally resolved either by senior counsel advice or by obtaining advice from government of the original intent of the Product and Program Agreement." Does that help you refresh your memory about what was discussed at all?---Yes. I think in my statement I did recall there was discussion of government and whether because of government's involvement back in 1999 etcetera, that they shouldn't be – they should be perhaps consulted on the matter.

20 Let me tell you more about that in a minute, to see if I can help you refresh better - - -?---Sure.

25 - - - but the point is that two of the directors of Product Co, when you were present, were agitating for action, weren't they?---Yes. They – they – it's very hard to remember one meeting to the next.

Okay?---Yeah.

30 Yeah. I understand that?---But clearly I – I – I'd agree with you that there were – there were matters raised at this meeting, which was interesting because in the previous – the November meeting everybody was more – I don't recall any agitation or anything being raised at the previous one.

35 Okay?---So it obviously came up between - - -

Now, Mr Grace was at this meeting too, which I'll take you to in a minute?---Yes.

40 You'll see, looking at the front page if you wish – I'll take you to a record he kept of the meeting to see if it helps you, but my point is that – can you recall that what had occurred was at the 4th of December meeting there was views – legal views, if I can call it that, or views about the legal opinion expressed: "I don't agree with it," "I do," and all that business. But at this meeting, Lambert and Andrews were saying, "We can't leave it at that," meaning just disagree. "What we need to do is do something"?---Yes.

45 Okay. And then if you don't mind turning over to 61, please. Now, this is a document you may not have – probably haven't seen before, Mr Godber. I'll just tell

5 you what it is. It's a diary note, or a note that the solicitor Grace took at some time after the meeting, but presumably on the same day, because he's dated it 5 March. Now, that doesn't mean anything and you don't have to agree with it, but I wanted to show you over on page 2, number 4, and just let you read it for a moment to see if it helps refresh your memory at all about what was discussed?---Sure. Thank you.
10 Yes. I've read the – I mean and going that with that and the minute, that probably covers a – doesn't refresh my memory totally, but there obviously were some – they were probably – the points that were – that are covered in Mr Grace's note reflect in many ways what's in that minute.

15 Yeah. I think the – just to raise with you the point of something in his note, you see in the first dot point in 4 on page 2 of this note, in the fourth line he says, "The point of getting that advice" – meaning from the director-general – "was to see whether there was, so far as the Queensland Government was concerned, an intent that the payments for race day legislation be able to be deducted by UNiTAB from the payment as a third party charge." So that's one action option?---Yes.

20 And what's important, at least for the commission, is the second dot point, Mr Godber: that he, the lawyer, not for Product Co but at least for Queensland Racing at the time was saying that action should be taken by directors, because they have duties to make sure that - - -?---Yeah.

25 - - - the picture's made clear one way or the other. It doesn't matter which way, but it's got to be clear?---Clear. Yep.

You can remember the thrust of him saying something like that, or is it too hard?---I can't – I can't, honestly.

30 Okay?---But I'm – I've no reason to – I don't have any reason to doubt what he's written - - -

No. I see?--- - - - but I can't – I can't recall it.

35 I've got you. And then would you go to 62, please, Mr Godber. What happens after that meeting – it seems that Mr Hanmer, in accordance with the resolution, writes a letter to the director-general – but Mike Kelly, the executive director of Office of Racing. Did you – the question I'm going to ask you, as you read it, is do you recall this ever coming to your notice, this – that this letter had been written?---I – it was resolved at the meeting that this – a letter like this would – I – I can't remember
40 having seen this letter - - -

Okay?--- - - - I guess I can say - - -

45 Okay?--- - - - but I would have expected from the decision coming out of that March meeting, which I see – of which I moved, was to – well, Mr Lambert and Mr Andrews raised two issues: one is go to senior counsel, or go to the government. The decision was to go to the government, which – [indistinct] can recall that. I was

obviously happy with that; I moved it. And then this is the letter that went to – to the government, but I don't recall seeing this letter.

5 Okay. So the thinking that you moved was to go to government and see what
- - -?---Yes – what their view was.

- - - they think the intention was at that time, because I suppose your thinking in pushing for that – not pushing, but in moving for that – that if they said, “Yeah. That’s right. We had in mind that they could deduct this charge,” then it might be a position where one could take no action on Grace’s advice – that sort of
10 thinking?---Yes. I mean as you’re aware, it was a very litigious area, the race legislation, so while it may have appeared to be a very cautious approach, I mean a cautious approach was, in my view, a reasonable approach.

15 But going to the government first if – one would think that if they said, “We can’t remember,” or don’t have a view, you’d think that you’d have to do something again then?---Well, yeah – dependant on what the government response was.

20 Okay. Well, let’s have a look what it was at 66, please, and again my question really is, Mr Godber, without knowing, do you recall seeing this letter? So you read it – take your time, but that’s what I’m thinking about. Don’t worry?---Yes.

I’m not going to ask you about the legal stuff. I just wanted to ask you - - -?---I’m pleased about that.

25 - - - have you seen the letter, that you can recall?---Not that I can recall.

Okay?---Yeah.

30 Let me just ask you two things then: in the first paragraph – you see in the second last line of the first paragraph Mr Kelly says, “I would recommend that Queensland Race Product Co obtains its own legal advice on the issues you have raised.” You see that - - -?---Yes.

35 - - - sentence? Did that come to your attention, that the response had included that recommendation at any time?---Not that I can recall.

40 Okay. And then turn over the page. In the second-last paragraph that commences “It would be inappropriate for me to comment” – see that paragraph?---Yes.

“...to comment on the issue of whether it is sound commercial practice or a long-term business strategy for an organisation to disregard the significant revenue provided under the Product and Program by charging an additional fee that may impact on this long-term relationship with UNiTAB.” So he’s sort of butting out, in
45 a way, isn’t he – of the whole thing?---Yeah. Yeah – bit of a Yes, Minister reply.

5 Yeah, exactly. So that's one view of it. That's not a bad view, Mr Godber. The point, I think, is that the option of going to government to get their view about intent seems to – if this letter's the reply they got, it seems to be a dead end. And I'm wondering whether that came to your attention in speaking with Mr Lette, that that option that you'd moved for - - -?---Yeah.

- - - did come to a dead end?---Well - - -

10 Or can't you remember?---Yeah, I – I can't recall seeing this – this letter and all I can recall about the information that was requested from government did seem to take an inordinate long – long time to get any response. And in the end it seemed to almost just – yeah, I'm not sure – I'm not sure what the end result was.

15 Okay. Did you – does that mean that you didn't know what they said or that there was nothing good that came out of it to give direction?---I think I wasn't actually clear as to – that we got a firm answer from government in the end rather than it was a – a non-direction from them as this letter seems to be.

20 Okay. Would you mind going to 67 please? You see that this is a 4th June Product Co meeting?---Mm mm.

And the part I'm interested in – of course you can see that you were there with Mr Lette?---Yes.

25 Okay. And David Grace seems to be there again?---Mm mm.

30 Okay. The part I'm interested in is if you go down to 1.3 confirmation of minutes of 5th of March – that was at the last meeting you had and somebody has promoted deleting what had been recorded in the draft minutes and inserting that Lambert and Andrews noted advice from Mr Grace – if correct, raised fundamental issues that needed to be formally resolved either by senior counsel's advice or by obtaining advice from government. You see that?---Yes.

35 So they're just talking about – or somebody's talking about what should be recorded as last time's note?---Yes.

Okay. But in any event, it seems as if people at the meeting – at this meeting were interested to be recorded correctly. Do you see what I mean by that?---Yes.

40 This doesn't happen a lot in boards where people are correcting minutes, does it?---No, it doesn't. But I would have to say it seemed to happen a bit in Product Co.

45 Over this issue or?---No. I just – there's something – I'd have to look at other board minutes from Product Co but it did seem - - -

Anyway, let's speak with this one. Somebody's touchy about what they're being recorded as having said?---Yes.

And do you recall from being there what was said about that or that Lambert and Andrews were still pushing for this action program?---I took it that it was just a -- a tidy up. Mr Andrews was there and he clearly moved those changes.

5 Okay?---It would've been a concern, I suppose, if there'd been changes to what he and Mr Lambert had said if neither of them had been there. But he was there and moved it so I -- I -- I --

10 But you can't remember that?---I mean it wouldn't have been a big issue. I don't think it was a big issue as far as I was aware.

Okay. But was the issue still there of disagreement about taking action or not?---I'm -- I'm unsure. I go back to the minutes of March where Messer's Andrew and Lambert, if I recall what number it was, said, "You've got to do one thing or the other." You get another opinion or you go to government. So the decision was to go to government. I took that -- well, that's what this change is actually. So if it was 15 one or the other -- that's what had been asked for. So as long as there was progress being made on that I assumed parties were happy. I can't remember the detail of further discussion.

20 COMMISSIONER WHITE: It doesn't look as though Mr Kelly's letter was tabled at that meeting even though it would've in the ordinary course of post, have been received in time for it?---No. That -- that's -- that is -- that's correct. I see -- is it 2.1 there. There's mention of the two letters but I don't ever remember having seen 25 them so I don't know whether they were actually tabled or were just reported on. I'm sorry I can't help you.

Well, if they'd been tabled you would presumably have seen the recommendation from Mr Kelly's -- --?---Yes. 30

-- that legal advice be taken by Product Co. That's why I'm really asking you because there doesn't seem to be any discussion about that in the minutes.

35 MR BELL: So, Commissioner, just to be sure we're on the same page -- are you looking at page 2?

COMMISSIONER WHITE: Yes.

40 MR BELL: And 2.1?

COMMISSIONER WHITE: Yes.

MR BELL: And you'll see underneath the box recording the two letters.

45 COMMISSIONER WHITE: It says, "Noted. The correspondence sent and received", but I just wasn't clear from that whether it was actually tabled.

MR BELL: No. But the resolution under it – the board agreed that Mr Kelly’s letter of 28 May did not provide the view of government. So maybe one might infer that they did – that’s what Mr Godber’s inferring. Are you, Mr Godber?

5 COMMISSIONER WHITE: Well, yes. Yes, I suppose so. Perhaps I’m just picking up the point that it’s surprising that the board didn’t make anything of the advice to get separate legal advice?---Yes. And – and I – I don’t know. It is odd – the little box with mentioning the two letters and then saying they were noted. I never – can’t recall that in any other Product Co minutes so it may just have been a
10 verbal response that the letter was inadequate and I see there that they decided to carry on further discussions.

MR BELL: But anyway, you don’t have a recollection - - -?---No, I don’t. I’m
15 sorry.

Okay. Turn over to the next document which is 68, please? I wonder again whether you saw this document. It’s a document 4th of June. It looks like Mr Hanmer wrote it although you can see I don’t have an original?---Yes.

20 And the same question’s asked again and he’s looking for an urgent view about the same thing. But you can’t recall - - -?---No, I can’t recall that. But there’s a logical follow-on from the decision at that meeting.

Okay. And if you go to 70 please? This is a paper you prepared on the review of the
25 Product and Program Agreement 2014?---Yes.

And I think that the point was that for some period harness had been reviewing their position in relation to their share and a bit of an attack on it by others?---Yes.

30 And so you are – harness was looking to justify its share that was being paid. That’s what this was about? Do you - - -?---Yeah, it was agreed to develop a strategy where, as you said, harness was receiving 14 and a half per cent of the funding from Product Co. Under the – if you looked at market share, harness was about 10 and a half per cent and in the lead in to the renegotiation of the inter-code agreement and
35 it’s really more the inter-code agreement than the product and yeah – Product Co agreement. The feeling in harness was we needed to lift our market share percentage and how we would go about that was a matter of strategic importance. It wasn’t going to happen overnight. It was going to take a number of years to achieve.

40 Yeah, that’s right. Okay. So I’ll move a bit more quickly?---Sure.

In 71 – these are minutes of the Commercial Advisory Committee of Queensland Harness Racing?---Yes.

45 And it was on the 19th of June and then over the page to the second page of the minutes you see under the heading wagering?---Yes.

And that's that topic I think, isn't it?---Yes. That would've been – probably that report.

5 Okay. And then 73 please? Document behind 73?---Mm mm.

And I just wanted to clarify that this was a paper you prepared. It looks to me like it's on that topic again and the idea is to promote this paper to Product Co now on behalf of harness – if you look at the introduction, “The following paper was considered by the Commercial Advisory Committee on the 19th with a minor
10 amendment. It is endorsed to be referred to the board. It was recommended that the basis of the paper should be used to put a proposal to Product Co for discussion.” et cetera?---Yes.

15 That's what that was about. So that's not so much about the topic I've been asked you questions about even though - - -?---Sure.

- - - it's about the Product and Program Agreement, isn't it? Are we good so far?---Sorry.

20 You're up with me - - -?---Yes, I'm with you, yep.

And then if you go to 74 please? And on the 30th of June there's a meeting. Mr Seymour is not present. And then if you turn over to the second page, again I see Product Co Agreement Review 2014?---Yes.

25 And that's that strategy not to do with the question of the deduction that I had raised with you?---No.

30 Is it?---No.

And finally, if you go to 79 please? What happens is you recall that the option of going to government was addressed at the Product Co meeting?---Mm.

35 Okay. What seems to have happened is by mid-year 23 July 2009 it had been resolved to write another letter to Mr Kelly, this time by Mr Tuttle defining the same issue or seeking the same information about the intent of government. I was wondering whether you had seen this letter?---No. This is – no, never seen this letter before.

40 Okay. And then if you go to 80, you'll see that it's an answer back from Mr Kelly. And I'll let you read it because I wanted to ask you a question?---Sure. Yes. I've read Mr Kelly's reply.

45 So it looks like the government option at least by the 6th January 2010 must've come to a dead end even though I know that you didn't see this – or I think you didn't see this?---Yes. No, I didn't see it and yes, it does look as though the government.

Yeah?---Yeah.

5 And what I wanted to ask you more generally then, you see, is that at least from the Commission's viewpoint with these documents that seem contemporaneous – at some point certainly by March 2009 Product Co had in your presence resolved to do one of two things?---Yes.

10 In the hope of getting resolution. The one that they elected for seems to have come from a dead end?---Yes.

15 Do you recall any discussion at any time with Mr Lette or other board members of harness about that? That it'd come to a dead end and something should be done?---I – well, I can't say because I never – well, I guess I never received any of this correspondence that it'd come to a dead end.

20 That's why I'm asking you about discussion?---Yeah. So they're – they're – by the end of 2009 I guess we were still either awaiting a response from government to Product Co. I'm a little surprised that the letter on the 29th of July clearly that – again, as you say revisiting that Product Co matters on a Queensland Racing letterhead signed by Mal Tuttle who actually wasn't involved in Product Co either. I guess all I can comment on as a – and Mr Lette can obviously talk as a director – I was the alternate but I was obviously involved but there's clearly some information here that we weren't provided with.

25 Well, here's my question again. Let's not speculate. My question was: you were the CEO of harness. Mr Lette was the other director on the harness board, in fact the chairman who was on Product Co. Was there discussion at the harness board meetings or at any other time with Mr Lette about taking action on Grace's advice or in relation to Grace's advice so that it was resolved one way or the other?---I can only answer that – that the action that was taken going to government was seeking to resolve that issue. In terms of action that harness may take on its own on such a matter which I think in my statement I said was concluded that it would invariably in a – a – a court action. It was really – had to be a three-code or nothing action if you were going to act on David Grace's opinion.

35 Well, all that tells me, Mr Godber, is that if you write about what you just said, the harness representative on Product Co would go to the meeting of Product Co and agitate for action. Don't you agree?---Well, I think the – the – the harness members on Product Co took action taking into account in – in – in – those – at that time as required, they pushed for clearly a response from government. You have to bear in mind that Mr Lette's view and he had taken some legal advice was that he didn't agree with David Grace's position.

45 I don't accept that at all, Mr Godber. Let's test it one by one. What advice did Mr Lette take, please?---Well, in my discussions with him – and this is, as I say I can't recall - - -

Did you see any written advice that Mr Lette had obtained?---No, I didn't.

5 Okay. Who did he obtain advice from?---I can't recall exactly but – no, yeah, I can't recall. But I do know he had – did say he had – he had a view and he had taken some advice and I must admit I don't know that – I never saw anything in writing. But he was chairman of Harness Racing Queensland and I had no – no reason to doubt that he had taken advice. And his view was to disagree with the David Grace position. So that put harness in a certain position, if you like.

10 Yeah. Notwithstanding that, quite happy to pursue the issue with government which clearly then the information was government wasn't acceptable whenever that was in September. Another request was made and as I say, I don't recall getting anything in January.

15 Well, anyway, my point is to you – because you are an alternate director on Product Co and it is serious – I suggest to you that it was clear to you that action needed to be taken to do something about this and Mr Grace made that clear. You remember he looked at that?---Yes.

20 Okay. That means something had to be done because if nothing was done Tatts wins. They just keep charging all this money without amounted to, during the relevant period for the Commission here, \$91 million against the three codes. It's a lot of money, you know. And it's not much money to get a legal advice to see whether Grace is right or Lette's right. See what I mean?---I understand but the
25 board and you can take Mr Lambert and Mr Andrew's view was that you take either legal advice or you go to government.

No, it wasn't. No, it wasn't?---Well, it was according to those minutes.

30 I wanted to try one avenue which was a failure or the other avenue but they were saying you couldn't just do nothing, which is in fact what happened. Nothing happened because we went to government and got a dead end and then nobody did anything?---But not until January 2010.

35 Okay. Well, even if today we find out we can still get \$91 million back. You see my point, Mr Godber?---I – I – I – and I agree and I think I made that point in my statement that - - -

40 I'm not sure you did because it is serious isn't it because you knew it had – it was explained to you as a director that something should be done if people disagreed. That's all?---Yes.

45 And as a responsible person looking after other people's money don't you think it was necessary for you too to agitate for action to make sure things were done to check it out. Do you accept that?---Yes. If I could just go find in my statement?

5 Yes. So are you going to answer my question? Because it was a long one. There was a lot of effort put into it. Do you mind answering it please? Do you accept that you as one of the directors of Product Co, an alternate director, ought to have taken some action that got somewhere about this issue because it was an issue. There were views each way, you see?--- Yeah. Well, my responses, as it was before, though, that I believed action was taken to - - -

10 To a dead end. You know, nothing happened. They didn't say this is what we thought. This is what the intention was?--- No, but the point - - -

They didn't say that?--- But the point I'm making is I'd like to see if there were some Product Co minutes that you had issued or following the government's letter of 6 January.

15 Well, I can tell you – I can assure you nothing happened?--- But there was a - - -

20 No further – no further follow up with government. Government said – you have a look at the letter. It says we don't have anything. That's a pretty dead end?--- I'm aware of that. But I mean, what I'm saying is I'm not sure. Did the board of Product Co see that letter?

Yes?--- They did, okay. I can't recall that letter.

25 No. Well, you can't recall a bit of the correspondence either, I don't think?--- No.

Because maybe it wasn't given to you?--- Yes.

30 But the point for you, you see, sitting on the board or at least as an alternate director or certainly as CEO. Did you not have an obligation to say where's the response from government? I want to know what's happening. Or if we're not going to get a response from government that's got fruit to it one way or the other, should we not address the legal advice issue? Doesn't matter who's right. You see what I mean?--- Yes, I see what – I see what you mean.

35 And that's where you had a responsibility, I'm suggesting to you. You can't just say I didn't see the letter. Because what about all the people out there whose money it is? They're relying on you; you know?--- Yes, but I mean - - -

40 That's my point?--- Yeah.

So do you accept it?--- Only from the point of view that there was still a possibility to back to a – I think – I don't know if I – perhaps – just have to – if you can give me – just give me a second to find my - - -

45 Yeah, of course. Are you looking at your statement?--- Yes.

Okay. I think you've got 33 in your statement talks about the primary reason for no action?--- Yes.

5 You said, "The primary reason for Product Co not taking action in accordance with the Cooper Grace and Ward opinion was that the chairman and several other directors disagreed." You see – is that what you're looking for?--- Yes. Yes, but I was actually more looking for 35.

10 Okay?--- Where – it's where I would've expected that if it was appropriate to do anything in relation to the Cooper Grace Ward opinion, the time for the control bodies for racing in Queensland was after the dust settled on the New South Wales cases.

15 Well, I mean, that's all very interesting – your view about when it was right to take action?--- Yes.

20 Bstut the lawyer who came along to the meeting at Product Co and said hey, we've got to do something about this, it's fundamental. Directors duties are on the line; you know? Meaning your duty is on the line. My point is to say to you it's all very well to say well, I think you just leave it for a while. But during that leave it for a while, we've had 91 million clocked up – and more than that, 125 million now. To the three codes, not to your code?--- No.

25 So that's why I must ask you this question. And I'm poking you to try and get a response about why you didn't keep a tab, for example, on how it was progressing?--- Well, I guess the only answer I can give is that I cannot recall Product Co meetings in 2010 that I was attending that it came up at.

30 Okay?--- And - - -

Well, that's no answer?--- Yeah. Well, I – that's all I can give. And obviously other matters took precedence.

35 Yeah?--- And the view was still in harness racing that the David Grace – David Grace opinion, if you like, did not have legs and so was not credible. And - - -

And - - -?--- And in those circumstances, it's pretty hard to keep saying well, we should keep pushing and pushing and pushing.

40 I understand. So I think what I take you to say is the chairman, who was a lawyer, provided the legal advice for harness that was accepted?--- Yes, I - - -

45 How can that not be the case? That's what you're saying?--- I think – yeah. Well, he provided the legal advice. It wasn't – he did talk to somebody, though. It wasn't just a matter of him saying – from my recollection, he had spoken and obviously gone over it with somebody who he considered to be – have some knowledge in the

field. And both he and they agreed that the view of David Grace was – yeah, was not correct.

5 Okay. And did he say that to you?--- Yes. Perhaps not in exactly those words, but the view that I had from him clearly was that he disagreed with the David Grace opinion. And he had advice from somebody he had spoken to that disagreed with the David Grace opinion, who – and on the basis of that, he could see – obviously could see no point in going forward if that was the view, that notwithstanding that, happy to chase up with government to see their view. But when the government view
10 finally petered out at the end of 2009, I think it's not an unreasonable situation to be in there for harness racing to say that our legal view was that it wasn't correct. Government's no help to us. Neither of the other codes want to go anywhere, it had to be a three code issue. So that the matter did effectively at that point die.

15 So, Mr Godber, I understand you clearly now because your position for your – at least for your part as the alternate director, and certainly as CEO for harness racing, was that Mr Lette had reached a view that Mr Grace was wrong?--- Yes.

20 Okay. Yes, Commissioner, I have no further questions. There might be an application from somebody else to ask questions.

COMMISSIONER WHITE: Mr Wilson.

25 MR WILSON: Commissioner, we applied and were rejected before we received Mr Godber's statement. Since receiving that statement, we've written to the commission because the statement is responsive to a number of points, that's obvious from its face. If we could see the document that it's responsive to. We haven't had an answer to that.

30 COMMISSIONER WHITE: I'm not quite sure what – you mean the letter from the commission?

MR WILSON: Mr Godber says, in answer to point 1 in the schedule etcetera at point 2. We don't have the schedule.

35

MR BELL: There's no problem.

COMMISSIONER WHITE: No, it's - - -

40 MR BELL: Apparently there's a letter in the mail or something.

COMMISSIONER WHITE: It's quite difficult, I understand that, to follow if you've not got the request for a statement - - -

45 MR WILSON: Yeah.

COMMISSIONER WHITE: - - - to consider those points. And that will be provided, Mr Wilson.

5 MR WILSON: And I was wondering if I could look at that, Commissioner, before I make my application. Because it may be that I don't press it.

COMMISSIONER WHITE: You've got a copy there, Mr Bell?

10 MR BELL: I haven't but I'll check straight away, Commissioner. And we'll give it to - maybe we could stand down for a minute.

COMMISSIONER WHITE: that's what I thought. And if there isn't one here, we can quickly get one.

15 WITNESS: Commissioner, I've - - -

COMMISSIONER WHITE: You've got your own?--- I've got my copy.

20 All right, well that'll do for starters.

MR BELL: Well done, Mr Godber. Saved the day.

25 MR WILSON: Commissioner, I can say in case you have a concern, if I press my application - if I'm successful, I won't be more than 15 or 20 minutes.

30 COMMISSIONER WHITE: I'm not - I'm not concerned about it anyway, Mr Wilson. I'm sure that if I give you a bit of time, you'll be much more sensible about your application than otherwise. I'm not it would be sensible but perhaps more confined. So why don't I get - stand it down. Will you let us know when you're ready?

MR WILSON: Thank you, Commissioner.

35 COMMISSIONER WHITE: Thank you. In the meantime, Mr Duffy, you probably will be holding your fire until you hear whether Mr Wilson's going to make a successful application.

40 MR DUFFY: I wasn't aware that there would be an application made so that's point 1. But if there is and if it's successful - - -

COMMISSIONER WHITE: And if it goes in - - -

MR DUFFY: - - - I might have some questions after that, I'm not sure.

45 COMMISSIONER WHITE: All right, we'll leave it like that then.

MR DUFFY: Commissioner, you may or may not be aware, Mr Godber's here from New Zealand.

5 COMMISSIONER WHITE: I am aware.

MR DUFFY: Due to fly out in the morning, 9 o'clock in the morning.

COMMISSIONER WHITE: We'll sit to accommodate his return to the long white cloud.

10 WITNESS: Thank you.

COMMISSIONER WHITE: All right. Now, it might well be, Mr Bell, that Mr Wilson wants to ask Mr Godber some questions informally. And I assume you'd have no concern about that.

MR BELL: No.

COMMISSIONER WHITE: No. So if you wanted to clarify some things with Mr Godber, I'm sure he'd be happy to talk to you as well.

MR BELL: I'm indebted to you, Commissioner.

COMMISSIONER WHITE: Can we just adjourn.

THE COMMISSION ADJOURNED [3.25 pm]

30 **THE COMMISSION RESUMED [3.48 pm]**

MICHAEL ROSS GODBER, CONTINUING

35 **EXAMINATION-IN-CHIEF BY MR WILSON**

WHITE JA: Mr Wilson.

MR WILSON: Commissioner, I renew an application for leave to ask Mr Godber some questions. Commissioner, it's about two matters only. One is as to paragraph 23 of his statement and something that is attributed to Mr Hanmer and the other is as to paragraph 28 of his statement of his statement to narrow the timeframe in which the conversation between Mr Godber and Mr Lette occurred.

WHITE JA: I give you that leave, Mr Wilson.

MR WILSON: Thank you. Mr Godber, you have your statement in front of you?---Yes. I do.

5 Could you turn to paragraph 28, please?---Yes.

You heard what I just said to the Commissioner?---Yes.

10 Are you able to be more specific as to when the conversation occurred between you and Mr Lette that you refer to there?---Only from the point of view that it would've been after the Product Co meeting on the 4th of December and, clearly, Mr Lette was at the Harness Queensland meeting on the 19th. It would've been in that period. I suspect, in probably the first week or so after the 4th, but I can't be – I can't be sure.

15 You wrote a memorandum on the 11th that you've referred?---Yes. I would've thought it would've been before then, but it may – may not have been.

Thank you?---I can't be any more certain than that, I'm afraid.

20 Can I take you back then to paragraph 23 of your statement?---Yes.

And you there refer to something that you say Mr Hanmer said, I take it, at the meeting on the 4th of December?---Yes.

25 And you say a couple of things there. First, he refers to the opinion – that Mr Grace's opinion?---Yes. Mr Grace's opinion.

And he relayed that that didn't agree with UNiTAB deducting the interstate charges?---Yes. I agree.

30 And then you refer to – there's some discussion about a draft bill?---Yes.

Do I take it you're there referring to the proposed Queensland legislation?---Yes.

35 And then you attribute to Hanmer a statement that the draft bill would not allow that to happen. Are you saying there that Mr Hanmer told the meeting that the Queensland legislation wouldn't allow Tatts to deduct what they were paying in New South Wales or are you trying to say something different?---Yes. Commissioner, I may've got the reference wrong there to whether it's the draft Queensland bill or the New South Wales bill. I was – what I was meaning was that there – I guess the
40 intent I was really trying to get through there was that the opinion – that Mr Hanmer was explaining that the opinion would not allow UNiTAB to deduct the interstate charges and the reason for that – I'm sure he would've got the right reasons and I think – I've written the draft bill, but that's probably not the right reasons. The right
45 reasons is probably actually the product and program committee and the – and – combination of The Product And Program Agreement and the New South Wales legislation. I think that's probably more correct.

What I'm trying to understand it, you're not attributing to Mr Hanmer a statement that he told the meeting that the Queensland legislation would fix up Tatts being entitled to deduct money it was paying under the New South Wales legislation?---No. Yes.

5

Thank you?---So I probably wasn't very clear on – on – I apologise – in that – in that note.

WHITE JA: All right. All right.

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MR WILSON: Thank you, Commissioner. Those are the two matters.

WHITE JA: Thanks, Mr Wilson.

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MR DUFFY: I've no questions. Might Mr Godber be excused?

WHITE JA: No. I'll just ask – we have had – got a bit of way of this, but I note that Mr Godber's - - -

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MR DUFFY: Yes. I noticed - - -

WHITE JA: - - - well out of the jurisdiction normally. Perhaps I just wait for - - -

MR BELL: I'm confident we won't need Mr Godber again. Thank you.

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WHITE JA: Yes. I think so too. I'm sure you're pleased to hear that we are confident. I won't entirely release you from your subpoena, Mr Godber, just in the off chance that something comes up. It can be done by telephone, of course, if necessary. I hope we wouldn't have to ask you to come back to this - - -?---Thank you. There's always Skype.

30

That's true. There's always Skype. All right. Well, thank you so much for taking the trouble to answer the summons so pleasantly and coming here to assist us at the Commission?---Thank you. Thank you, Commissioner.

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WITNESS EXCUSED

[3.53 pm]

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WHITE JA: All right. Nothing else today, Mr Bell?

MR BELL: Nothing else today. Thank you, Commissioner. We'll start at 10 in the morning with Mr Seymour.

45

WHITE JA: Thank you.

MATTER ADJOURNED at 3.53 pm UNTIL TUESDAY, 15 OCTOBER 2013