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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

10.00 AM, TUESDAY, 24 SEPTEMBER 2013

Continued from 23.9.13

DAY 5

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

THE COMMISSION RESUMED

[10.00 am]

5 COMMISSIONER WHITE: Ready when you are, Mr Bentley. Thanks, Mr Bell?

ROBERT GEOFFREY BENTLEY, ON FORMER OATH

[10.00 am]

10

FURTHER EXAMINATION-IN-CHIEF BY MR BELL

[10.00 am]

15 MR BELL: Just before I recommence asking Mr Bentley questions please,
Commissioner, I wanted to elaborate on a point I made yesterday to you,
Commissioner. The reason I elaborate now on it is because other witnesses coming
forward soon will be questioned about why I style a proxy issue. And insofar as Mr
Bentley was concerned, we appreciate the objection made by our learned friend and
your ruling – in relation to the proxy issue generally I wanted to point out that for
20 reference of anybody interested in the ordering counsel that provides the terms of
reference, at paragraph 3 (b) one of the issues that is necessary for this inquiry is
adherence to policies, processes and guidelines and the workplace culture and
practices of the relevant entities.

25 The relevant entities include Queensland Racing. In particular also, reference ought
be made to paragraph 3 (d) where inquiry is necessary as to whether there was
sufficient and appropriate oversight by the responsible minister, executive
government and chief executive including under the provisions of the Racing Act for
the operations of inter alia Queensland Racing. In that respect you'll recall yesterday
30 in relation to the proxy issue it was suggested by one of the bodies who was asked to
investigate proxy that consideration ought be given by the department, meaning the
chief executive or the minister, to investigation pursuant to the powers of the Racing
Act. Hence that issue raises questions of – for those government officers as to their
response to that suggestion.

35

And therefore, it's necessary to investigate this, not only with Mr Bentley but other
witnesses. I should also say because of the relevance of this to other matters, you
also have a discretion under 3 (h) which you have no intention I know at present of
exercising but it may be in due course because of the tangential relevance of this to
40 many issues, that you might conclude that it's otherwise necessary to make some
findings about it. And therefore for those three reasons I refer back to folder one in
relation to Mr Bentley – nobody needs to go to it now but later they can – to one
policy of Queensland Racing which is styled code of conduct and ethics. And
whether the code of conduct and ethics was complied with in relation to the proxy
45 issue is one of the questions that will need to be addressed.

And in particular, when one reads that you will see that, that code applied to directors. And in particular for the board the code requires – or I should say insists by reference to the word, must – “must lead by example in observing this code. Ensure that the high standards conveyed through this code are evident throughout the organisation contributing to an integrity based culture”. And also, Commissioner, 5 under clause of the code 4.1.2 respect for the law and the QRL system of governance, “complying with all QRL procedure. Compliance means observing the letter and the spirit of the law, policy, procedure or lawful request as well as managing your activities in a manner consistent with QRL as a good corporate 10 citizen”.

For those reasons I just wanted to mention that at this stage in case anybody wanted to make further submissions in due course about that.

15 COMMISSIONER WHITE: Thanks, Mr Bell.

MR BELL: So I’ll just put that aside and then go back - - -

20 COMMISSIONER WHITE: And I’m sure, Mr Wilson, if you want to address on that in due course you’ll do so but probably not now.

MR WILSON: Commissioner, can I – we will in our submissions but I raise three points now in light of what Mr Bell has just said perhaps in reverse order. He indicated, Commissioner that you didn’t intend presently to exercise your powers 25 under subparagraph (h) of the terms of reference.

30 COMMISSIONER WHITE: It’s a power that’s there but I think I would take the view on the whole that some notification to interested parties might need to be given if one was going to

MR WILSON: I’ll just raise this query – I’m not sure which day it was but Mr Bentley was asked about the product and program agreement and a question was responded to, “Well, if it’s so easy, why haven’t the current board done anything for the last 16 months?” Mr Bell indicated that he would be asking those questions of 35 the current board. We didn’t presently see how that was within the terms of reference other than (h) but we took that as a intonation that the matter would be investigated. And I thought I perhaps should clarify that.

40 COMMISSIONER WHITE: Yes. I must say I didn’t quite take it that the current board were going to be called.

MR WILSON: Well, Mr Bell quite clearly said, “I’ll be asking them”.

45 MR BELL: Well, let’s have a look at the transcript. My recollection of saying about that was I would like to ask them too, like you Mr Bentley. But I will be sure and precise. I’m going to look at the transcript over lunch and come back to you about that. But let me make it clear, at present I too, as counsel assisting, would like

5 to know the answer that Mr Bentley raises. Why not? I accept that as a valid question. As to whether or not the commission has an intention of calling present members – there is no present intention to do that. I want to make that clear but the question is out there and the question might be something that might take some paragraph in the report I might be submitting depending upon submissions that come.

10 And I note that the board – the present board are represented here so of course, before anything was said about that we would need to notify them because it might be said that, that would be an adverse finding upon which they would require notification first, which we undertake to all people who are interested in the commission. So if any adverse finding was to be made in the report, we would first notify certainly Mr Bentley and others about it, but also the present board about it. But at present, I have no intention of summoning present board members to give an explanation about that. So I thought I should clarify that now.

15 COMMISSIONER WHITE: Yes. All right, then, thank you - - -

MR BELL: But I will come back on the transcript.

20 COMMISSIONER WHITE: All right. Thank you. I must say that as I'm presently [indistinct] certainly haven't thought the present board needed to fall within the terms of reference in order to make an observation about the fact.

25 MR WILSON: That's why I raised it, Commissioner.

COMMISSIONER WHITE: Yes. The fact is the fact. It hasn't happened.

MR WILSON: Yes.

30 COMMISSIONER WHITE: All right.

MR WILSON: But we'll both look at the transcript.

35 COMMISSIONER WHITE: Thank you.

MR WILSON: The second matter, Commissioner, concerned – I don't want to say anything about term of reference 3 (d) – that's for others to raise but we do maintain the objection, Commissioner, that it's without – without the terms of reference to investigate the factual matters surrounding the country racing committee processes and the appointment of Mr Ludwig as a proxy. 3 (b) of the terms of reference talk about management policies and processes of the relevant entities. The relevant entities are defined in paragraph 3 of the terms of reference.

45 COMMISSIONER WHITE: Yes.

MR WILSON: Certainly, questions can be asked about how people handled the situation but we respectfully submit that the factual basis of what occurred is not within the terms of reference.

5 COMMISSIONER WHITE: All right. Thanks, Mr Wilson.

MR BELL: Mr Bentley, I'm going to turn to another topic now just to ask you to move your focus away from what we have talked about so far. As you know or may know that in the terms of reference there is the topic of employment contracts offered
10 to the four senior executives. Could we go to that now, please?---Yes.

Okay. I'm just having handed up to you a folder. What I was hoping to do first to define the issue is to take you to those new contracts that I believe were entered into on the 5th of August 2011?---Yes.
15

And identify what was new about them from what had been the case and then to ask you some questions about those changes please. So If I can ask you to go to divider 217 please. To make it a little bit quick and you tell me if you'd like to check yourself. I wanted to refer you to the clauses which, on anybody's comparing,
20 changed from the old contract to this contract. You see, what I'm referring to at this divider is an agreement with Mr Tuttle. If you look at the last page, just to be sure that I'm – what I'm saying is right, it's an employment agreement that was entered into with Mr Tuttle. You signed it on behalf of RQL and it was entered into on the 5th of August 2011?---That's correct.

25 Okay. And on this contract, if you go to 5.1, please?---I have it. Yes.

5.1? Previously Mr Tuttle had been on a rate of TRV of 300,000 which went up to 390, which was 30 per cent rise?---Yeah. I'll take it as read.
30

Okay. And then if I ask you to go back, please, to 4.1. This is not so relevant, but I wanted to show you that it – of course, that changed, because it changed only to commence from the 1st of July '11?---Yes.

35 Okay. And 4.2: "Your service with RQL will be calculated from the date you commenced employment with RQL and not from the date of this contract." So that changed too, so that's fine. So in a sense, even though the 5th of August, it backdates to the 1st of July. But I understand that. And then going up a little, please – and I'll make this relevant in a minute – you see in clause 2.3 the last two lines with new
40 words that weren't in the old contract. They say, "Unless they amount to a material adverse change by reason of which you resign under clause 15.2," and that clause had been there rather than the words I just read previously. And then if you'd turn over, please, to that clause 15.2 – I'll let you read 15.2 and then I'll talk about it?---Yes. I've read through that.

45 And then you see after (c), for the purpose of this clause "material adverse change" then is defined to mean "a change in the Queensland State Government, RQL

5 ceasing to be an approved control body, a material change in the make-up of the RQL board of directors or your reporting lines or an organisational restructure that materially impacts on your role at RQL in a manner adverse to you". Okay. Now, that clause 15.2 was a change as well as the 30 per cent uplift in the rate. See that?---That's as I understand it.

Okay. And then go over to 15.10, please. I just wanted to point out that in the - - -?---That's at the bottom of – bottom of the page?

10 Yes, please?---15.10?

15 Yes, please. You just see – you should see the changes occurred there too, but they're consequential in the sense that in the fourth line the date now is for clarity if by 31st December '12 your contract has been extended, but after the 31st December '12. So that was a change too. It had previously been a different date?---I believe so. I'm not sure.

20 Okay. The different date, I can tell you, in both cases was the 1st of July '12. So what happened is that, for example – I'll say "for example" because there were four cases of these changes. For example, using Tuttle's contract, the decision that clearly was made was to offer Tuttle on the 5th of August '11 a 30 per cent uplift in pay and the material adverse change clause?---Correct.

25 Okay. And I wanted to offer now to take you to the other people's contracts – that's Ms Murray and Mr Orchard and Mr Brennan – if you wish, to show you that they too had the same changes?---That won't be necessary.

30 Okay. 30 per cent uplift and then the material adverse change. And I should also just take you back, please, to 199, that is, document at divider 199. And I won't take a long time, I promise, Mr Bentley – on the third page you see clause 5.1, your remuneration. This is Tuttle again?---5.1. Yes.

You see there 300,000 rather than 390, of course?---Correct.

35 And then, relevantly, if I show you Tuttle's earlier contract at 15.1. What 15.1 is about is if Tuttle wants to terminate the employment. I'll just let you look at that?---That's correct.

40 And you see there in about the sixth line, what was necessary for him to terminate was to give six weeks notice?---Yes.

45 Okay. And then if I just show you in passing 15.3: "Should RQL cease to be the approved control body, RQL will provide you the opportunity to take redundancy." See that?---Yes.

So clearly enough, that would make sense, one would think, that this man was the CEO of the control body for the three codes of racing and if the government or

something happened that they no – it no longer be the control body, then he would be redundant as the CEO of the control body. You know what I mean?---They're the circumstances at the time – yes – that that was applicable.

5 Okay. So then – now that we've identified that, could I take you back to 217, please. So 217 is the model we're using; it's Tuttle's example and we're using it for the four people going forward in discussing the topic. Now, could I show you 266, please, Mr Bentley. I think it's right at the front, I'm told, please. You haven't seen these calculations before; what they are is careful attempts by the commission to calculate
10 the entitlement under the old contract, in the second last spread – you see it's titled “Old Contract – Resignation”? See that?---Yes.

And then further down, “New Contract – Resignation”, and you can see for each of those four employees calculations done, and you don't have to accept them. I know
15 that; how could you be possibly expected to? But I'm asking you to look at them, and care has been taken to seek to calculate properly and in accordance with the law and the contracts what they would have been entitled to had they resigned under the old contract. You see the total cost to Racing Queensland for the four of them terminating their employment would have been 317,145? Do you see that?---Yes.

20 Under the new contract, when they did in fact resign, according to their then entitlements the cost to Racing Queensland was \$1.754 – 441 million. Start again – \$1,754,441. You see - - -?---Question - - -

25 Do you see that?---Yes. I see that.

Yeah?---Question.

30 Yes?---Does that coincide with the calculations done by Racing Queensland at the time?

I think it does; the 1,754 does. Yes?---Yeah.

35 But the – nobody did the one seventy – 370 – \$317,000 - - -?---Okay.

- - - calculation, of course, because it wasn't then relevant?---No.

40 Okay. But it's important, you see, isn't it, because it makes the point – well, I'll start again. I'm sorry. The comparison between the two schedules makes the point of the cost to Racing Queensland of this change, doesn't it?---It does, but it's not to say that the pay rates that they were on before were applicable.

45 Okay. But it doesn't take away at all my point; does it? We have four staff. Yes, we're going to come back, don't worry, to their importance and the reasons for this. But nothing takes away from the fact that when a decision is made to offer these new entitlements, it was at a cost. And we first must look at the cost. And this is the cost,

represented in those two schedules?--- I think that was well and truly made available to the board in our decision making.

5 Okay?--- Yes, I'm sure we knew that figure.

Very good?--- I don't recall the old figure.

Don't recall what?--- I don't recall the old figure being made available.

10 No, no. Okay, I understand?--- But I certainly do, if that's the figure and you said it is correct.

Yeah?--- I mean, that was made available in our decision making, yes.

15 I understand?--- Yeah.

The point you're making to me is look, we at the board knew what we were doing. We were increasing the liability for Racing Queensland to these four staff should they leave. That was well known?--- That was a - - -

20 Is that your point?--- That was a result of what we – of what we were contemplating, yes.

25 Yeah. Okay. Now, let's just think about it. On the 5th of August 2011, the offer was made to the four staff. The new offer was made to the four staff?--- Yes.

And they accepted it on that day as we know. I can show you that because - - -?--- No, no, no - - -

30 - - - it was on the 5th of August that the board resolved it, to offer it. The contracts are all signed the 5th of August so it all happened on the same day, which is to be expected. But the question is what was in the mind of the board – and in particular I can only speak to you at the moment. What was in your mind that would justify a
35 decision to increase the liability of Racing Queensland by about \$1.4 million to keep these staff on that day, the 5th of August '11?--- Well, for a start as – I mean, they were underpaid on the old rate. They were – they had been promised a substantial increase at some stage. We needed to retain the staff. We needed to have the infrastructure plan done. After all, they were essential to the \$110 million to make
40 sure that we presented a stable organisation, and we got through all the work that needed to be done. There was the corporate bookmakers. And also that we had already expended two and a half million of our own money working out plans on the infrastructure plan, which was only subject to getting the business cases approved.

45 Okay?--- We thought that was a reasonable investment to keep the – keep the crew intact.

Okay. Now, you see, you have been through investigations about this a few times; haven't you? You've been - - -?--- Yes.

5 And you've been asked questions about it by ASIC and you've been asked questions about it by the auditor. I understand that. And I understand what you've just said, you've said before. In order to have people understand that you had issues at hand that justified the spend here for Racing Queensland on these staff?--- We considered we did.

10 Okay. You see, the contention is by other – another view might be taken. That this was an extraordinary spend on these four people to retain them. Now, that's what I want to investigate with you. In particular, the decision to make this offer to them was made on the 5th of August '11. Your point is that it was valuable to increase their rate and to offer them the material adverse clause to keep them?--- I understood
15 that, yeah.

Okay?--- And the negotiations with – (a) with our lawyers, and that also that it was well known to the lawyers acting for us.

20 Now, what was also in the board's mind at that meeting was that you had been advised two days earlier that the election could be called as early as three weeks' time from the date of this offer; do you recall that?--- I – yeah.

I want to show - - -?--- Do I recall it?

25 Do you recall it?--- I do recall seeing it somewhere. I don't know who said it or what was said.

30 Okay. Let's have a look at it together so we're both at one. 212, please. Just to give you a reminder, what happened was early on in your thinking, Clayton Utz were retained to advise. Then later, Norton Rose were retained to advise as well?--- Yes.

And then eventually you went back to Clayton Utz and they gave this final advice you see there on the 1st of August; you see that?--- Mmhmm.

35 Okay. Now, this was an advice to – addressed to you but to the chairman of Racing Queensland. It was about the topic. If you look in the second paragraph, "We have previously in this context provided advice on the legal obligations that are owed by the board members, particularly under sections 181 and 182 of the Corporations Act.
40 We will not, for the purposes of this advice, repeat those earlier observations." You see that?--- Yes.

Okay. And then if you go over the page to two, please. About the first new sentence, which is in the second line. "The value of the capped amount is for the
45 board to determine. But we would suggest that a range of 12 to 14 months might be considered. Our reason for raising this point is that the timing of the next State general election is really quite flexible and uncertain. In our opinion, the next State

general election could be as early as September 2011.” You see that? “And as late as June”. Do you see that?--- Yes, I see that.

5 Okay. Now, on the 5th of August there was there weeks until Racing Queensland would be put at risk of losing their four staff. That must’ve been in the minds of all the directors at the time they considered this offer being made or not?--- Would you just go back? I’m - - -

10 Yes, sure?--- A little bit overloaded with documents and papers and – just would you mind?

Sorry, not at all. Were you asking me to just refresh where I was at?--- No, I was just asking you to give me that question again. I’m - - -

15 Yes, of course. Yeah, sorry?--- My concentration’s not as good as it was three days ago.

20 No, I’ve got you. I understand. What I was doing was just – let me start again with Dunphy. Dunphy’s advice – this is one that was given to the – you and given to the board on the 1st of August 2011. And Dunphy had earlier given advice. But this was the 1st of August, which we know is four days earlier than the date when the board made the decision to offer the four staff the new terms; you see?--- Is this his final advice?

25 This was final advice, yeah. So four days. So what happened was on the 1st, he dated the advice and presumably gave it over?--- Yes.

30 Between then and the board or at the board meeting, you and others had this material before you to consider what was the right thing to do?--- We did.

Okay. Now, on page 2 Mr Dunphy, who’s an expert in these - - -?--- Just – sorry.

Go on?--- Is there an issue with the – with the cap because we adopted that.

35 Not an issue with the cap. I’m asking you about the next sentence. “Our reason for raising this point is that the timing of the next State general election is really quite flexible and uncertain. In our opinion, the next State general election could be as early as September.”?--- Yes.

40 See? Okay. Now, we’re sitting there in the board room at Deagon, and we have the board thinking, “Should we spend about 1.4 million to retain these staff with these new clauses in the terms of agreement that would entitle them to leave in three weeks?”?--- I didn’t – I must admit, I didn’t see it that way. I mean, we calculated the election would be a long way further than that – I mean September.

45

But you see, looking at it now, clearly the expert in government whose advice you say you took was saying, “The cap that I’m advising you about is about the fact that the State election might happen in three weeks time.” You see that?--- Yes.

5 Okay. Now the board, having that in their head, say “We think” – well, I presume they said – “it’s a good idea to spend \$1.4 million of Racing Queensland’s money to keep them for possibly three weeks.”?--- That was a worst case scenario.

10 Yeah, exactly. Exactly?--- But boards have got to make decisions on what they think is going to happen at that particular time. And all due respects, we were there. No one else was there at that particular time. We had to make – make the call. And I think that Mr Dunphy has said it on numerous occasions. At the end of the day, the board’s got to make the call.

15 They have?--- Commercially.

And my job is to test the call that they made, whether it was outside the limits of the best interests of Racing Queensland. And, you see, the best interests of Racing Queensland respectfully, Mr Bentley, don’t look like they were looked after during this period with these contracts. And so I ask you here, when the decision was made on the 5th, there was a risk of the election happening three weeks later?--- As I said
- - -

25 Why did you, for example, think it was in Racing Queensland’s best interests to keep the staff for three more weeks?--- I think I’ve answered that. I mean - - -

Okay?--- We had to make a commercial call of what we thought would possibly happen. I mean, we’ve got Mr Dunphy’s view of that.

30 Okay?--- It could – it could’ve happened, but as it turned out it didn’t happen. But we had to make a call of what actually we were going to do. We needed to retain the staff, it was at a critical time. And we took – we took the view that this was a good, calculated decision.

35 \$1.4 million for potentially three weeks?--- Oh well, that’s taking it to the extreme. And that - - -

Yes, it is?--- Yes.

40 It is?--- Yeah. But I mean, I – we - - -

45 But the extreme in the sense, Mr Bentley – seriously. In the sense that everybody in this negotiation – everybody was thinking about the change of government; weren’t they?--- No.

Mr Bentley, from the very start of your discussions on the first occasion in July, you were talking about the change of government and its impact; weren't you?--- I was talking – that is correct.

5 Yes?--- I was talking about the MP.

So let's not run away from the fact that the whole point of the change was because you have always said it was to retain the staff in the face on an oncoming explosion should the government change?---No. No.

10

No?---No.

Okay. Well, let's finish - - -?---I don't accept that.

15 Sorry?---I don't accept that.

Okay. The three weeks that remained, potentially, that Mr Dunphy advised you about was worth \$1.4 million in your personal judgment, was it?---You keep coming back to three weeks. I just said before we had to make a commercial decision.

20

Okay. Let's go to the other - - -?---A commercial decision – we didn't consider that the three weeks – I mean, he's taking to extremes there.

25 He did?---We had – we had a job that we had to do and I mean, investing in employees to stay was a – we thought was a good decision.

Okay. What about - - -?---And it's not just Bob Bentley. I mean, there's other people's views here as well.

30 Oh, don't worry. I know. I've got to ask them too?---Yes.

But you see I've first got to ask you because you're chairman and you're a man who is very much involved in this – this particular matter, weren't you?---Yes, I was involved.

35

Okay. So I started with my extreme question of three weeks. What about a month? Is \$1.4 million worth keeping them for a month?---I think that I mean that I've answered that question. I haven't got any more to add to it.

40 Okay. What about six weeks?---I just said that I answered that question. I've got no more to add.

Well, it's not really an answer, frankly. Try again?---I haven't got any more to say.

45 Okay. Let me tell you something then and see if you can answer this. On the 5th of August 2011, before these contracts were signed, these people had to give six weeks notice before they could leave. You see what I mean?---Yes.

Okay. So that would mean that certainly on the 5th of August, anybody thinking about Racing Queensland's best interests might think well, there's a risk this election might not be called for six months. But there's also a risk it might be in three weeks. But in any event they can't go for six weeks. They've got to give notice for six
5 weeks. In those circumstances, why was it in your mind in the best interests of Racing Queensland to pay \$1.4 million to keep them?---\$1.4 million also included their statutory – statutory payments as well.

You see, if I go to that one – I've thought about that too, like you. If I go to that it's
10 a much bigger figure. If we go to that it's 1.75 that it costs Racing Queensland. But I was very careful to just go to the change?---Yeah.

They're already entitled to some. I know that. I've taken them into account. If you really want to talk about what it costs when they left it's about \$1.8 million it cost
15 Racing Queensland. But they were already going to cop that to some extent to \$317,000 should they give notice and leave when they saw the LNP going to win the election – or do win the election. See that?---Yes.

Because as you say the feeling there was that they weren't going to be comfortable if
20 the LNP won. We all knew that, didn't we?---Yes. That is correct.

So you knew at the time you certainly voted in favour that there was a real risk of a change of government to LNP at the election whenever it was called?---Yes.

25 And you knew there was a real risk that if there was a change of government if the – these four people were offered the material adverse change clause they would leave?---Unless they were offered the material adverse change they would look – look for other employment, yes.

30 No. I'm talking about when the election happened, you see, and if the LNP came in that was a real risk that they would and to Racing Queensland it would be a real risk that these four staff would leave if that did happen?---No. The idea of the retention was for the retention to keep them there to get the business – business that we were working on – the infrastructure plan – get the money back from government we
35 already spent and the Race Fields Legislation money. That was the reason to retain them. We didn't want them to walk out. The atmosphere was that bad at that particular time that I doubt if anyone would come and work for Racing Queensland.

If that's right then, what was going to happen by offering them the material adverse
40 change clause because you were going to leave the company that you were responsible for with the four senior staff leaving on the date of the change of the election. Which they couldn't do if you didn't change the contract. That wasn't a good thing for Racing Queensland, was it?---Oh, put it this way – the LNP policy was that they weren't going to continue on with the infrastructure plan. They were going to change things. The material adverse change clause was to keep them there
45 to finish the work. I mean we keep going back to the election and the LNP – sure,

that's – that's probably what was going to – that was going to happen if they got in. We wanted to get this money back from the government.

5 We wanted to finish the infrastructure plan and we wanted to get our \$110 million done and for the industry. That was the motivation to do it and where were we going to replace them if they suddenly walked out the door. We couldn't do it in that particular time. After – if you weren't going ahead with the infrastructure plan and the framework had been put in for the corporate bookmakers and the other work had been done. There was no real issue that the people behind them couldn't step up to
10 the mark.

Okay. So why were you going to pay \$1.4 million not to lose them if there were people behind them who'd step up to the mark?---No. I – I said to them we needed them, right, to do those particular works. If those works were finished - - -

15 Can't have it both ways, Mr Bentley?---I'm not asking for it both ways - - -

Yes, you are?---I'm not asking for it both ways.

20 Yes, you are?---No.

You answered questions that were raised of you when these four people left after the election about why it was that you exercised your discretion to let them go on the Monday after the Saturday election rather than keep them there just for seven days
25 and you answered, "There's a succession plan in place. This is not going to disrupt Queensland Racing at all."?---Yeah, I think that you also had the day-to-day - - -

But you did say that, didn't you?---The day-to-day business of Racing Queensland.

30 But you did say that, didn't you?---I did say the day-to-day business - - -

The succession - - -?---Yeah, the day-to-day business. Yes.

35 Succession plan?---Well, for want of a better word, yes, there was sufficient people there to handle the situation.

Let's just talk about what you said, first. You did say, "This won't disrupt because there's a succession plan."?---I said that in those particular words, I think. I mean, I haven't got it in front of me and that's – and I would have said something to that in a
40 recent interview, yes.

Okay. Let me show you so we're not at odd with each other. I'll hand this up please?---Where do you want me to?

45 At the bottom – the third line up. He said, "The resignations would not cause any turmoil because there was a succession plan in place."?---Yes.

That's what you said?---Yes. I – I didn't disagree with you, counsellor, that I – that I said that but the – the succession – I – means – I guess what I've said that there was sufficient people there to take over the day-to-day running of Racing Queensland if those important projects weren't going ahead.

5

You see, Mr Bentley, you can't have it both ways in life. Either these people were essential and couldn't be replaced and were worth \$1.4 million, even if it was a risk they'd only stay for three weeks when they had to stay six or there was a succession plan in place and they could be replaced. But you can't have it both ways?---No, I'm not trying to – I'm not trying to have it both ways - - -

10

Okay. Why aren't you - - -?---I'm saying that they – they are essential to get – get the infrastructure plan through, corporate bookmakers money and the structure being put in place, getting the money back from the government. Once that – once that work had been completed and their task had been completed, the day-to-day running of Racing Queensland is not a huge – huge job.

15

Okay. On the 5th of August was it complete?---Yeah, as far as – yeah, almost complete. Yeah. I can't think of anything that wasn't done.

20

Okay. So why did you offer them \$1.4 million to stay?---Beg your pardon? The 5th of August?

5th of August?---Oh, I'm sorry. I mean, I meant when it was finished – about the – about March, I think.

25

Okay. Let's start again. My question was to you, was it complete on the 5th of August 2011?---No, it wasn't.

30 How much work was yet to go?---A lot.

Okay. So that means that there needed to be a lot of work yet to happen regardless of change of government?---Yes.

35 Okay. So why did you give them the material adverse change advantage which they otherwise wouldn't have had which meant that their heads would be gone out of the business if the LNP called it – when the LNP called an election and probably won it?---That was a condition of the employees wanted to stay.

40 Were they going to leave if you didn't offer them that?---I would think that, that's a very good chance.

They never said that, did they?---Yes, they did.

45 You've said that before?---They have – they have said that.

I see. So had you not provided in the contract that you can leave if the government changes the four of them would have left, would they?---I think you've got to look at it in totality and the increase – increase in salary and the material - - -

5 Now, let's not get messy?---Beg your pardon?

Let's just talk one by one. If you'd offer them the 30 per cent uplift but not the material adverse change, are you saying those four people would've left?---I'm sure.

10 Okay, Well, we'll hear from them. Because you see, I recall very distinctly you saying when you were asked questions about this topic that nobody ever suggested they were going to leave. It wasn't like that?---I – I can't remember the ASIC.

Okay. I'll get you the paragraph over the luncheon adjournment. My point to you is
15 you see, Mr Bentley, if on the 5th of August there was a great deal of work you had to do and these four people were essential for it to be done, why would you offer them an exit that they didn't have when there might be an election as early as three weeks time, but certainly earlier than when the job that you said was essential had yet to be done?---Counsellor, I think I've answered that question.

20

No. You haven't at all. I've got absolutely nothing from you today that suggests that you had a real interest in Racing Queensland's price they were going to pay for these people?---I – I dispute that. I mean I've put a lot of time into Racing Queensland. I wouldn't – wouldn't want to see anything happen to it.

25

I do understand, Mr Bentley, that if these four people said, "We are going to leave, Bob, unless you let us leave, should the LNP come in." I can understand you would pay them some money for that if there was some time to go until the election. But if there was potentially only three weeks to go, it just doesn't make sense?---Yeah. I –
30 we considered all the factors as a board of directors, looked at the risks of the business and the risks of what we were doing to get it completed, and we took it – we – as far as we're concerned, we took it to calculated, valuable decision. And we think that was good value for money for Racing Queensland - - -

35 Okay?--- - - - to get that – to get those projects completed, and they were all completed within 98 per cent.

You see, what I really don't understand when I think about it, Mr Bentley, is this: you knew that it was likely the LNP were going to win the election, didn't you?---I
40 think that – I mean anybody looking around would say that. Yes.

Well, don't talk about anybody; I'm asking you?---Yeah.

Yeah?---Yeah. I would think so.

45

And so what we know is that you also thought that if the LNP got in there were going to be changes?---I'm sure – I mean they advertised there was going to be changes.

5 Okay?---I mean that the staff were going to get the chop as well as the board.

Okay?---And that's exactly what happened.

10 Now, if that's the case, then why give these employees, who were going to get the chop anyway, \$1.4 million uplift at cost to Racing Queensland?---Because they weren't going to hang around to get the chop.

Okay. So for the three weeks or more - - -?---Oh, you keep going back to the three weeks.

15

I do. I do?---I keep saying to you that three weeks is a – is a – is a figure that you're picking. I mean - - -

20 I am?--- - - - we looked at – we looked at whether it was three weeks. We – and we – in our assessment there was no way in the world it was going to be three weeks, but I mean you're just taking the worst possible scenario.

I am. Yeah?---Yeah.

25 Okay. Let's do this – let's - - -?---We – we looked at – we looked at the whole risk to the business.

30 Okay. Let me see the board minutes where the – you and your co-directors assess that the election was going to be longer than when Mr Dunphy had advised you he said was the period. Let's have a look for that?---I don't – I don't know whether that's in the minutes or not.

Well, it's not in the minutes; I can tell you?---No.

35 Now, why wouldn't it be in the minutes? Because, you see, he's asking you to focus up on that. You've asked for legal advice; he says, "Focus on this risk." You say you took into account his legal advice; did you?---Yes. We did.

40 Okay?---And – and board minutes don't record every – every particular conversation.

No. But they do record important ones, don't they?---They record a lot of them. Yes.

45 Yeah. And the important considerations that are necessary?---The consideration was retaining the staff to do those jobs.

Okay. Now, from what you've said, let's see if we can agree on these things. You've said that you thought the LNP would win the election. That's true, isn't it?---Well, that's -- you've got to -- you've got to say in the back of your mind -- I mean anyone would say that and I'm saying that -- yes.

5

Okay. Firstly - - -?---But as a hypothetical, I mean we didn't know for sure.

No, no. I know. But you thought they would win the election, didn't you?---I think that it -- it's a reasonable assessment that they would.

10

Yes. And secondly, you thought that these four staff would get the chop if the election was won by the LNP?---I think that goes without saying.

Okay. And you accept that you had legal advice from the expert in government, Mr Dunphy, that you took into account?---Yes.

15

And in that advice, you accept that he says the election could be as early as three weeks away, don't you?---Yes. That's his assessment.

20 Yeah. And - - -

MR WILSON: Commissioner, I rise because it's been put a number of times to Mr Bentley about the three weeks. The advice should be put in full, which is that bearing in mind that the election could be between September 2011 and June 2012, the legal advice is that the value of the capped amount should be between 12 and 14 months. The two go together, and to simply pick out one particular part of it is quite unfair to the witness.

25

COMMISSIONER WHITE: Yes. Thanks, Mr Wilson. I do think that Mr Bentley is well -- he's got it in front of him. He's well aware, and the capped bit, I think, isn't an issue. So Mr Bell, I'm sure, will deal with it fairly.

30

MR BELL: You say, Mr - - -?---I'm not quite following the - - -

Well, what Mr Wilson said was this: it was unfair in not putting the whole of the advice to you, because what Mr Dunphy said was it could be as early as three weeks, in fact, but it could be in June -- as late as June as well. But at my advice -- Mr Dunphy's advice is you should cap the period which you're going to pay them redundancy, which Norton Rose was advising did not require a cap?---Yes.

40

Okay?---And we did introduce a cap.

And what he's saying is I was unfair, so I'd like you to comment on that, you see?---So we did introduce a cap.

45

And isn't it funny -- think about the cap that you did introduce. Look at his advice again. See he says 12 to 14 months?---Yes.

Why did you pick 14 months? We talk about extremes – Mr Wilson’s rolling his head. Why did you pick 14 months?---I’ve got – I’ve got no idea. I mean I – I couldn’t – couldn’t answer that question right now. I mean I don’t know. I mean this is a - - -

5

I’ll tell you why. I’ll tell you why?---I’d like to get – you want to – in all due respects to you, you weren’t there in the time and you weren’t - - -

10 No?---You didn’t understand exactly what was going on. We had two lots of advices, and if you look at all the records, Norton Rose gave advice; Clayton Utz gave advice. The full intention of the board was to have the two sets of solicitors sit down and sort it out and come to a conclusion to assist the board. That didn’t happen because Clayton Utz pulled out. Now, the board has to make a commercial decision. The decision we made, we think, was in the best interests of Racing Queensland.

15 Sure, it was a lot of money. We don’t – I don’t renege from that situation, but we think it – under the circumstances with \$110 million swinging at the government, two and a half million in reimbursement, we thought it was a – was a decision that was reasonable.

20 Okay.

COMMISSIONER WHITE: The 110 million, Mr Bentley, had actually been set aside by government?---Yes, your Honour, but we had to go through – do the business - - -

25

You had to do business cases?---Business cases – yeah. Jump through a few hoops – hoops to get it.

30 That’s true, but nonetheless it’s not as if it was yet to be obtained. It had actually been earmarked and put aside?---We took the view, your Honour, that I mean had – had we had a disruption of any of the staff walking out at that particular time, it may have very well have put the 110 million in jeopardy. Governments have a habit of whopping it back into treasury whenever they get a chance.

35 MR BELL: Have you got 217 still there, please, Mr Bentley?---Offer of employment?

Yes, please. Would you mind going back to 15.2, please?---Yes.

40 Under the definition in this of “material adverse change”, one change that comes within that definition, giving them a right to full redundancy in terms set out above, is a change of government?---Yes.

45 How would that be adverse to them?---I mean that’s a lawyer’s words - - -

Okay. Well, how would that be - - -?--- - - - material adverse change.

How would that be bad for them?---Well, they were going to get – the LNP had already said they were going to get rid of them.

5 Okay. So why give it – why give them this option to get this huge benefit?---Because I wanted to retain them - - -

Okay?--- - - - for that period.

10 So that's it, is it? All we need to talk about is you gave them an out so that you could retain them?---We wanted to retain them, and that was one of the conditions of the – of the employment that they wanted. They were sick – sick to death of being maligned by everybody in – in the racing industry. It was a toxic environment. I wanted to keep them and [indistinct] I'm saying – I mean the board wanted to keep them – lot of work to be done.

15 It's just odd, you see, Mr Bentley, that somebody gives its staff an out clause when you want to keep them?---I keep coming back to that point. We wanted to keep them to finish the work at hand.

20 Yeah. To the election?---The day-to-day – the day – the day-to-day running of the industry – well, the election brought about the end of the infrastructure plan.

25 Let's just focus on this now together, because I've been messy about it too. Clearly, this contract really envisaged keeping them, you say, until the election?---Till the work was finished.

No, no. No, no?---It just happened – the election happened to coincide with the finish of the work

30 Whenever it was called?---Well, you – if you have a look through – look when the - - -

35 Wait. Wait. Now, this contract, this new contract you offered, would keep them no longer than what you thought would be the outcome of the election. That's right, isn't it?---No. It's not.

40 Okay. So you thought that they might stay on after the election despite this new offer?---Well, they certainly had – had an option, but I don't think they would have been kept.

No. So let's go back. This contract would only keep them till the election?---This contract would keep them working on the infrastructure plan and fulfilling the objectives of the board.

45 Only till the election?---No.

Come on, Mr Bentley?---No.

You told me before, you said - - -?--- The election - - -

Wait a sec. You said they were going to get the chop anyway?--- Yes.

- 5 Okay. Did you think they were going to get the chop anyway?--- I was pretty sure they were going to get the chop.

Okay, there you go. So only till the election would these staff be available to Racing Queensland, one way or the other?--- Oh, they had an option. But you keep picking
10 the election date. I'm saying that there was work that needed to be finished to get the - to get the thing. Whether the election was in June or anything like that. Had it come in January, we would've made a bad call because it wasn't finished.

You see, Mr Bentley, that's the whole problem with the offer you gave them and the
15 explanation you've now given. All you were doing was retaining them to the election by this offer. You had no chance of keeping them after the election because they were going to get the chop or they were going to take redundancy?--- Well, they were going to go if they didn't get it.

20 That's exactly right. But we've got another \$1.4 million to pay for the trouble?--- And I've said to you, we considered that was a good commercial.

Yeah, well I'm suggesting to you that the explanation you give is absolutely without
25 foundation. At the day you made the decision, on the 5th of August, you knew that by offering them this clause, they were going to go at the election. And you had no reason to believe the work would be done by the election?--- We didn't know when the election was going to be.

Exactly. Exactly?--- So the - - -
30

So how could you think - - -?--- What we're saying - we wanted - we wanted to - - -
- - - the work was going to be done by the election?--- We wanted to complete the
work that we needed to do to get the money in the infrastructure plan.
35

We're right at the head of this argument now. Let's address it. You accept, don't
you, that one way or the other, these staff were going to be gone at the election;
don't you?--- I'd say there was a fairly good chance - - -

40 Okay?--- That they were going to go, and the infrastructure plan was going to be stopped.

Okay?--- So there was - - -

45 Okay?--- There was no real need for them.

Now, what work needed to be done that was going to be finished by the election?---
We keep going back to the election. The amount of work that - - -

5 We do. We do?--- We – the amount of work that needed to be finished was on the
infrastructure plan, the completion of the business cases and getting the money back
from government. Now, had that – that was nearly completed by March, I think. I
think there might've been only one left to be approved. If the election wouldn't have
been until June, they would've stayed on, I would've thought. They wouldn't have –
they wouldn't have gone, they had no reason to go.

10 The problem with the offer, you see, that doesn't make any sense, I suggest to you, is
this: that these people were certainly going to be going at the election by this offer
you made to them. And the work, on any view, was not complete by whenever the
election was going to be called?--- But I – we didn't know when the election was
15 going to be called.

Exactly. How could judge the work would be done by then?--- I mean, the election
might've been – it might've been June.

20 Okay. We've done it enough?--- I keep saying, the directors have made a call on
what they considered was a reasonable risk and a reasonable investment.

Now, on the 24th of March, which was a Saturday, the State election occurred; didn't
it?--- I'll take your word for it, yes.

25 Okay. And on the 26th of March, the Monday, smokes. You got four letters of
resignation?--- Yes, that's right.

30 Before 9 am in the morning?--- That's what happened.

Indeed, they – you paid for those letters to be drafted by lawyers; didn't you?---
Back in June or - - -

35 Doesn't matter back when. But the letters of resignation were paid for by Racing
Queensland. Unbelievable, Mr Bentley. How could that be in the best interests of
Racing Queensland? Help me with that one?--- I mean, that was part of the – part of
the deal we did at the time. That they were there if they decided they wanted to go.

40 Do you want to have a go at answering the question? How was that in the best
interests of Racing Queensland? To draft the employees' resignations back way
before the time of the election. Tell me that?--- That was done as part – as part of the
negotiation.

45 That's just dribble. How was it in the best interests?--- I'm sorry.

Answer that?--- I'm sorry if you consider it's dribble.

It is dribble. I'll give your answers respect, I promise you. And if I don't the Commissioner will pull me up. Now, here's the question. How was it in the best interests of Queensland Racing to spend its money on drafting employees' resignations? Tell me that?--- Well, that was what was decided at the time.

5

So you haven't got an answer; have you?--- No, I haven't got an answer.

Okay, good. So let's have a look at them so we know exactly what we're talking about. 218, please. This is a letter you received from Paul Brennan before 9 am on the first business day after the election?--- Yes, I - - -

10

That's right; isn't it?--- And that's the drafted letter you're taking about.

Yeah?--- Yes.

15

And Paul, who was an integral part to the business because he was very much involved in infrastructure, had this letter drafted by Racing Queensland's paid lawyers back when the contract was negotiated - - -?--- That's correct.

20

- - - in August?--- That's correct.

And then here's the one, if we go to the next page, 219. Here's one for the lawyer. The person so important to keep, we drafted her resignation for her. You got this one before 9 o'clock too on the Monday; didn't you?--- Yes, we did.

25

And go over to the next one, 220. And here's the director of integrity services, the barrister. His was too drafted at cost of the stakeholders in Queensland Racing, the resignation was drafted back in August?--- That's correct.

30

And you got it before 9 o'clock on the day?--- Yeah, all of them.

Yeah. And 221, the CEO?--- You've got 9 o'clock. That doesn't - - -

Before 9 o'clock. You had a meeting at 9 o'clock?--- I don't know whether I got the letters of resignation before that. I had a meeting.

35

That's right. I'm suggesting to you you got the letters before 9 o'clock. It doesn't matter, but you got them on the Monday and I'm going to - - -?--- Yeah, I got them on the Monday. I don't know about 9 o'clock. I think there's a lot - there's a bit of water under the bridge before this.

40

Okay. So - and this is the one from Mr Tuttle, the CEO. And his too was drafted at the cost of Racing Queensland?--- They're all the same.

Okay. Now, let me ask you please to go to 222. This is your letter back. Funnily enough, on the same day?--- That's correct.

45

5 You had a meeting but somehow the letter was able to be put together. And what it did was it acknowledged the right to resign. It confirmed that the new LNP government was sworn in today. And your recorded that it – he had requested that you accept his resignation effectively close of business today, and waived any requirement for any additional notice, being the seven days that Racing Queensland was entitled to?--- Yes.

10 And you confirm that his entitlements would be paid immediately and directly into his bank account?--- Yep, correct.

Okay. And we can go over the pages and see 223, 224, the same. You see that?--- Yeah, that's housekeeping. Yes.

15 Yeah. Now, you have said many times, you've said it even to the – in giving evidence here, that where you had this discretion to waive the seven days, you did it. Because you thought, did you, that it was in the interests of the four staff to go home?--- No, it was the – I mean, they had a contract and I waived the notice period, definitely.

20 No, we know that part, Mr Bentley. Let's get to the point. That's silly saying that. The question, you know, is that you exercised your personal discretion that you gave under the contract, that you agreed to, to get them to go home on the Monday rather than stay for seven days?--- That's correct.

25 Okay?--- I had a discussion with them about seven days but I – I can assure you, people who – their minds have left the building and they don't want to be working there. They're far better off out of the place and get on with – and let the business get on with restructuring the situation.

30 And the succession plan?--- Oh, well you want to call it – I call it a succession plan.

That's right?--- But what it really meant was there was sufficient staff, qualified staff, to take up the day to day running of Racing Queensland.

35 So sufficient that the five days – working days working with the people who are outgoing, the CEO, the legal officer who was so fundamentally important, the head of integrity for the last eight years. They couldn't even stay five days to hand over, Mr Bentley. That was in the interests of Queensland – Racing Queensland. They had to go Monday?--- They were going. They made up their mind to go.

40 But they had to stay under the contract?--- They – they were far – they were far better off going and being out of the place.

45 I see. Well, you keep saying that to me but it doesn't make sense?--- Well, it does – it does to me.

How could it not be in the interests of Racing Queensland to have them stay over and close their files and talk to people about who should take over, as is the reason for giving notice; you see?--- That was – their files were right up to date. I checked all on that situation.

5

You see, do you understand the duty you had to Racing Queensland as a director?--- I do.

Yeah?--- To act in the best interests.

10

Best interests of whom?--- Racing Queensland.

And who's that?--- That's – that's the corporation and the stakeholders.

15

The corporation which is what? Whose interests are you thinking about?--- Racing Queensland, for stakeholders.

Who are they?--- The racing industry.

20

Okay. Like who?--- All those people who rely on the racing industry for their livelihood.

You see, this is fundamental. It sounds like a bit of a joke now, asking you this. But this is fundamental to your role; isn't it?--- Yes.

25

Thinking about the interests of somebody who is standing behind the words Racing Queensland. I'm asking you, who were you thinking about when you said, "Go home, Shara Reid. Don't worry about coming in on Tuesday." Whose interest - - -?---I didn't say that.

30

- - - were you thinking about?---Hang on, I didn't order them to go home.

No, but you let you them get home?---They – I let them go home.

35

Yeah?---That's correct.

Why did you do that? Who were you thinking about?---Because they were gone, they're not - - -

40

Who were you thinking about?---I'm thinking Racing Queensland.

Yeah. Who, but who?---Hey?

Who?---The business. The business can continue to run.

45

Okay. There it is, hey? The business would continue to run is the answer you give me when I ask you in whose interest were you thinking it was best to let them go

today, and not give them seven days to finish off?---I did have that discussion with them.

5 Forget about them. You can't pass it to them. It's your responsibility?---No. I did have that discussion with them, but I made the decision.

Yeah, so I'll give you one more go: how was it in the best interest of Racing Queensland to let Shara Reid go on the Monday, rather than get her to come in all that week, please?---Shara Murray made up her mind she was living.

10 I think she was Reid by this time, was she?---Reid, yeah, whatever.

Yes. Go on, you were saying?---She'd made up her mind to leave like the others had made up their mind to leave, and I said to you before, I firmly believe that, I mean, people are going to leave; they're far better off out of the organisation. There was nothing; their files were up to date. As far the infrastructure plan, it was on hold and stopped, and, virtually, we're just down to day-to-day business of running Racing Queensland. Their expertise and skills at that particular stage weren't needed.

20 COMMISSIONER WHITE: Mr Bentley, did you have a second legal officer to do the corporate [indistinct] - - -?---No, we were using Clayton Utz at the time, your Honour.

25 So who was going to do that work then?---It was -- someone from Clayton Utz, I think.

You had that in place, did you?---No. Clayton -- we rang Clayton Utz I think. That came almost immediately. I just don't know exactly. I was looking at Clayton Utz for inspiration, but I can't remember.

30 MR BELL: The fact that the four of them did give you resignations that had been drafted in August tells the story of what was going to happen, because it did happen: they were all going to leave?---That was a condition at the time - - -

35 No, but that's not - - -?--- - - - to keep them.

- - - the question I asked you. The question I asked you was if you offer these four staff 14 months pay if they want to take it if there's a change of government, they're likely to take it, aren't they?---Counsellor, we took legal advice from Clayton Utz.
40 We took legal advice from Norton Rose.

We're going to go right - - -?---We've made - - -

- - - don't worry, we're going to it?--- - - - We made - - -

45 - - - we're going to it, Mr Bentley, I'll promise you?---Okay, but we made - - -

But just answer my question first; my question wasn't that. My question was a different thing?---Yep.

5 Yep. My question was the fact that they left, all four, the fact that they put ink on the page that you had paid to have drafted in August, the resignations, and the fact that you put ink on the page saying don't worry, you don't have to come in on Tuesday, the fact that all that happened shows it was going to happen back in August when you offered it to them?---I think that's a reasonable assumption, but that was – it was highly likely.

10 Okay, so we judge – we are to judge your conduct back in August on the basis that it was always going to happen; they were going to leave when the LNP got in, which was the likely outcome. That's right, isn't it?---I'd like you to rephrase the question, please.

15 Yes. The likely outcome of the LNP winning the election wasn't certain, but the likely outcome was they'd win, and the consequence would be that if you offered these people 14 months redundancy pay they would leave on the change of government?---They'd stay.

20 They would leave on the change of government?---But the money was offered to stay.

25 Mr Bentley, nobody's going to argue with you about if somebody came in the next day after the election and said here's a million each, please stay, but we're examining your conduct back in August offering these people an extra \$1.4 million, you see?---Yes.

30 And I'm testing it by saying to you that clearly enough when the LNP won and when you received the resignations and when you gave the acceptance of the waiver of seven days it proves that that was always going to happen?---I think it was well and truly publicised in the media - - -

35 Yeah?--- - - - websites, that – I mean, that they were going to get the chop, and that was the purpose of giving them a reasonable retainer to stay.

40 And so on the 8th of – on the 5th of August you knew that the likely consequence would be that if the election was won by LNP, which was likely, these people would leave with an extra \$1.4 million?---Yes.

45 Okay. Now, I wanted to ask you this question: you mentioned a few times going to lawyers. You remember that?---Yes.

45 Okay. Frankly, I don't understand why you did that. Why, if some employee comes to you, Mr Bentley, in all your years of running the mills through your family business and your other businesses, when you've held cattle properties and stuff, you've dealt with staff saying I want to go, the pay's not good enough?---Yes.

Why do you go to lawyers? What do lawyers know?---Because it was – we thought that was the best way to handle this at this particular time so weren't in conflict. We wanted an amicable agreement with the staff. There was four staff - - -

5 Weren't in conflict? Let's take it piece by piece: weren't in conflict?---Yep.

That's a good one. What's that mean?---Well, we didn't want to have – be in conflict with the employees over trying to get a reasonable retainer for them to stay. We thought that it'd mean – going to the lawyers. In the first place we went to
10 Clayton Utz, and then when we couldn't get an arrangement with the employees, then we organised for the employees to go to Norton Rose, and the purpose was – it was going to be to put them both together. Now that – that's what the intent was.

You've been working with, for example, Tuttle, for many years at Queensland
15 Racing and Racing Queensland, haven't you?---Yep, I have.

You have a good relationship with him: there's no doubt about that?---Yes.

When he comes to you and says I'm getting hurt by the press and all the talk about
20 me getting the chop later did you have a sufficiently good relationship with him to talk about that?---I did.

Okay. He did never say to you I'm going to leave, did he? You've said that many
25 times, even on oath?---No.

Okay. So did you not say to him at some point look Mal – or words to this effect –
look Mal, I can try and offer you an increase in your pay to stay. We both appreciate
the election's going to come about and we're probably all going to get the chop, but
30 please stay on and continue the job you're doing because you're doing a good job. Is that right?---Yes.

Did you have that conversation or words to that effect?---Yeah, words to that effect.

Okay. Now, normally, I would expect, Mr Bentley, wouldn't you, that it would get
35 to a point of him saying, well, this is the absolute bedrock of what I demand, otherwise I'm going tomorrow?---That's why we turned it over to the solicitors.

Okay. Did you get to that point?---No.

40 I'm leaving unless I get this?---No. He never put it in that form. I – what I said to him at that – different times: why don't you put it together and tell me what you think is a reasonable thing.

Okay, and did he come back to you with reasonable things?---They came back with a
45 – in the early stages, came back with a convoluted sort of a plan that I didn't much like anyway, but I said okay, put it together, send it to Clayton Utz, let's see if we can sort it out.

Yeah, I don't understand that?---Because it was all over the place.

I don't understand that, you see, because as your lawyers' advice said on a number of occasions this is a commercial decision in respect of the value of these people for the board?---Yep.

Okay. Let's just talk about that first. There is no doubt that your responsibility was to judge how much you would pay to Tuttle and co to stay. I accept that. That's right, isn't it?---Yes.

Okay. So - - -?---Well, it was the board's decision, yes.

Board's decision. Now, in the end, it's the board that has to make the decision of how much they're worth, rather than getting a new Mr Tuttle in or a new Ms Reid in, don't you think?---Yes.

Okay?---If you could.

If you could, and so, therefore, the discussion with Tuttle, as an example, must have got to a point between you or the board and him, as to what it would take to keep him. Did that ever happen?---No, it didn't. The early stages - I'm not trying to be evasive here - - -

Okay?--- - - - or think what I'm going to say: I'm trying to recall - - -

Okay?--- - - - what was happening - the discussion went over a month, maybe six weeks. It was going nowhere. I told Tuttle to put - I said there's no good - they had been to Clayton Utz because of the clauses and everything like that and what they thought they wanted. It was still very much up in the air, but nothing was really committed to paper to the best of my knowledge. I said to Tuttle put it down in paper, and we'll - on paper, and we'll send it to Clayton Utz, and if you've got a problem, you'd better tell us what the problem is. Put that in writing too, and send it all off to Clayton Utz, and then we'll have a talk, and that was the start of the process.

You see - - -?---Now, whether it was right to go to Clayton Utz, it was a call that was made. I thought that was the right way to do it. Sure, I've had experience, but it was only in small areas with a lot of people; not something of this magnitude.

Were you saying Clayton Utz, could you make the decision for us, please?---No, I don't think it went that far. I was asking Clayton Utz to advise.

How far did it go?---What? No, I was asking Clayton Utz, I think, to advise.

No, you weren't. You weren't asking for advice. You didn't go to Clayton Utz and say I want advice. You sent the opposition in the negotiation to Clayton Utz; that's a different thing altogether. You know that?---Yes.

Okay, so let's talk about not getting advice, but sending the employees to the lawyers?---Yep.

5 That's a very different thing, isn't it?---Yes.

Okay. That's like Tatts going to Grace and negotiating something, isn't it?---I don't quite - - -

10 You know, in a sense, it is, isn't it?---Yeah, I don't get quite that analogy, but I'll accept what you're saying.

Well, you know [indistinct]?---Yep.

15 You see – let me do it another way: if you're selling Crossmore, that's like getting the buyer to go to your lawyer to get advice?---Yeah, I can't quite follow that.

And, you see, you say to your lawyer look, I'll sell it for any price he wants, so long as you tick that it's lawful. Is that what was going on?---No.

20 No. Okay, I'll - - -?---No. I was hoping that Clayton Utz would come back with some – the reasonable clauses that would get the employees across the line.

25 Okay. I know that you appreciate that lawyers aren't experts on commercial decisions. You don't think they are: I know that. They're not – that's not their role, is it?---No, it's not that role.

Okay. In fact, you use lawyers well: you know exactly what they're for. All their expertise is, don't you accept, is what's lawful and what's not lawful?---Yes.

30 And how to best make something appropriate in an agreement so that it's lawful and it'll be easy to deal with any unforeseen outcomes, for example?---Yes.

Okay?---Yes.

35 Now, when you send the person you're in a negotiation with to a lawyer, you're normally asking for the answer to a question about law, because otherwise you're sending it to somebody who is not qualified. Do you see what I mean?---That's right.

40 So I don't get why you send, for example, Shara, who's wanting to deal with Racing Queensland, to Racing Queensland's lawyer?---Well, one of the biggest issues was at that stage, and always has been, the material adverse change clause. That's something that I'm not qualified to do, and I thought that Clayton Utz would handle it quite effectively for me. The fact of – the quantum was never 50 per cent; there
45 was always a substantial impress, and I don't think at any stage I've ever agreed to 50 per cent, or agreed to any particular amount, until the end.

You're splaying off over here into detail. All I was taught - - -?---No, I'm not. I'm just trying to explain to you - - -

5 Okay, you go on - - -?---No, I'm finished.

Okay. What I was asking you about was the concept: in a commercial negotiation of sending off the person you're negotiating with to your lawyer. I don't get that at all?---This thing of old: I mean, I think it was quite appropriate to send them off to talk about the material adverse change clause to Clayton Utz, but that is my view.
10 As far as the quantum of money, no, but they obviously mentioned that sort of money.

Why did they mention – why would they need mentioning? They're silly lawyers: they have no idea what the commercial objectives are and how valuable in the
15 business people are. That's for the board?---Yeah, the board makes that decision at a later date.

Okay. So why are you asking two lots of solicitors what do you think about increasing pay? What are you asking them for?---Well, I thought that it was
20 appropriate at the time.

Why? Tell me that. I really want to know?---Well, I was looking for third-party thoughts on it.

25 Well, why didn't you ask the Dutchman down the street?---Well, I don't think they were as qualified as - - -

Well, ask your friend in Victoria. Say hey, how much are you paying?---I did.

30 Okay. Well, why did you go to Clayton Utz to ask them?---I – well, I said the employees went to Clayton Utz, right, on my instructions, to try and see if they could sort out some sort of a way forward.

You see, Mr Bentley, as of all the people I've ever known, and you know best,
35 lawyers act on their instructions, meaning it depends on what their clients, and they try and effect what they want to the best of their ability to make it lawful. You see what I mean?---Yes.

Okay. What instructions were these people at Clayton Utz given?---I can't
40 remember at the time. I did have a – I had a conversation with Barry Dunphy. I can't tell you exactly.

Okay. We better go to it. 202, please. What this email is, Mr Bentley, is an email
45 from Mr Dunphy to Shara Murray. You see in the first line, "Here is our advice in draft for you to review. We wanted to make sure that we have covered off on all the issues for you." See that?---Yes.

- 5 So what we can do now is turn over the page and you'll see a stamped draft on the document and in it we might be able to see what instructions he had been given. In the first line, "We refer to your meeting with Barry Dunphy and Brett Cook and your email dated 26 May 2011 in relation to the matter. We have been asked to provide legal advice to Racing Queensland about the proposal to offer varied employment arrangements to certain executive and administrative personnel". Okay. Now, what I haven't quite got straight is, how come the person you're negotiating with, the staff, are telling Dunphy what his instructions are. I don't get that?---Yeah.
- 10 Do you?---No.
- It's a bit odd, honest, isn't it?---Yes.
- 15 So anyway – then if you go down under background, "The board has resolved that Racing Queensland executive and managerial staff need to be retained and provided with additional security of tenure to safeguard business continuity." Was that the board's resolution?---Yes. I don't know whether it was a resolution but that was the board's feeling.
- 20 Okay. And the next paragraph, "The objective is to reinforce the stability of the executive workforce during the period between now and", hold on, "2014"?---Mm mm.
- 25 That's not the election because the election was going to be in 2011 or 12, wasn't it?---Yes.
- 30 Okay. "2014 by which time Racing Queensland must negotiate and achieve some fundamentally important milestones that are critical to the continuation of the racing industry in Queensland eg re-negotiate in product and program." That's going to come up in 14, isn't it?---Pardon?
- That's going to come up in 2014?---Yes.
- 35 Okay. Now, let's think about that. Did she get that right in telling Dunphy those were the instructions?---I think that, that's fair to say that was right at that time, yes.
- Okay. So I'm really mystified now. How is it that you were going to hold these people til 14?---I think I said to you, at that particular time.
- 40 Yeah. With a material adverse change that said it was a change of government, you can go and have 14 months pay. How're you going to keep them?---Well – well, you're not.
- 45 Well, that's my point?---Yeah.
- So here's his instructions from Shara and somehow we've ended up with a weirdo agreement that can't possibly achieve that objective?---Correct. That – excuse me?

- Yes?---That was – that was a different issue. That was a more – more employees that just the – the final situation. This was nine employees.
- 5 Okay?---But this never went ahead.
- Okay. That’s great?---This never went ahead – and this never went ahead.
- Tell me the difference?---This never went ahead.
- 10 Did the four people need to stay til 14 to renegotiate or was it only the nine?---I can’t answer that but this - - -
- Well try, try?---This never went ahead.
- 15 You made the distinction?---Hang – excuse me. This never – this never went ahead.
- For – what never went ahead?---This never went ahead.
- Sorry, we’re talking about the instructions. Forget about what they’re talking about?---This was – this was a separate issue. This didn’t go ahead. It – it changed.
- 20 Was the objective of the board to keep these important people until 2014 or not? Tell me?---No.
- 25 Okay. I’ve got it. So you didn’t mind if these people left before 14?---We wanted them – we wanted the work completed.
- Okay. Why would the board think in June that it was important objective to keep them til 14, to renegotiate the important milestone such as the product fee if it was about to change in July, one month later, as the objective?---Yeah. I think that the 2014 is certainly a milestone when the industry would change. The product and program agreement would be negotiated and it – not – I don’t think it would – it wasn’t going to be negotiated and it will not be negotiated with Racing Queensland. It’ll be a – a negotiation between Tattersalls, Tabcorp and the government.
- 30
- 35 What is all that stuff you’re just talking about? I’m talking about the instructions?---I’m just saying, the preparation to get to - - -
- You’re telling me what might happen. I’m talking about – let’s talk about June 2011.
- 40 What’s happening when Shara talks to the board and the board say to her, “You go and talk to Dunphy and you tell Dunphy this is what we want to achieve.” And she tells them that and Dunphy writes it in an email and puts it in a draft advice back?---Mm mm.
- 45 And says, “I was told that the board wanted – this is its objective”. Now, how could the board’s objective change between June and the 5th of August?---Well, it did change.

Okay. So you didn't care to keep them on until 14 because something happened, did it?---No. We wanted to make sure we got that infrastructure plan through.

5 Oh, I know, I know, I know. But it was never going to be through by the election, was it?---I - - -

It wasn't finished by the election?---When is the election, I don't know.

10 Yeah, I don't know either. I don't know either. That's why - - -?---I keep going back that at the time we made the decision. We think we took a commercial decision.

15 But you see, one thing is for sure. In this place – in this draft advice, Dunphy's recorded that the board's objective as he has been told is to keep them til 2014. We know when 2014 is. I totally agree with you, we don't know when the election is. Did that objective change?---The objective certainly did change.

20 Why did it change?---Because mainly we wanted to get the infrastructure plan finished. We prepared all the work that we did for any chance of negotiations with Product Co – with getting the industry issues – not issues – I'm trying to think what it was – impact study done. That was all put in place.

25 Okay. Turn over the page. See how we go with this one?---The first two lines on the next page, "What is important, however, is that the board pursues its objective in a sustainable manner and in a manner that will not inadvertently damage the company." Have I got that?---Yes.

Okay. Was that an objective?---Yes.

30 Okay. Now, sustainability - - -?---Just – can you just direct me to the clause?

Yeah, that's – sorry – it's the first two lines on the page. Have you got page 2?---Yes.

35 Okay. I'll let you read it?---That's correct.

Okay. So what do you think he's saying there?---Be careful that you don't contravene the Corporations Act.

40 Okay. Then – was that important?---Yes.

45 Okay. And then if I ask you to go down under the heading, the contract variations and you see it says in the second paragraph, "It is appropriate to set out the relevant clauses of the conditions of employment as they are proposed to be varied in order to meet these objectives – these requirements". See that part?---Yes.

Okay. Now, what's - - -?---This – this is – this is the meeting that – that nothing happened with this.

5 Well, I hope it did because I know that you said to ASIC that this advice went to the board, but maybe it didn't?---No, no, no, no. What I'm saying is this – the four employees or the nine employees?

This was the nine employees?---Right. Okay. That – that's – that was my question.

10 But my question is, if that's made a big change – is that a big changer – a game changer?---I think it was, yeah.

15 Okay. Did this advice become irrelevant because it changed from nine to four?---I haven't read the advice – it would've changed the – the dynamics of it, yes. But I haven't - - -?---

Okay. Well, if you want to read the advice - - -?---No, I wouldn't - - -

20 I'm not going to rush you?---I need to sit down and concentrate on it yeah.

Okay. Well, we better do that because this is important. It's half past eleven. Perfect. We'll take as long as you want to read it and have - - -?---What – what question is – you're going to ask me for this?

25 You were saying this was a game changer when the number of employees were seeking to keep on change from nine to four. So this whole thing became irrelevant, I think you were going to say?---That's correct.

30 And then you said, I need to read the advice, and I was going to offer you that opportunity. So why don't we do that and you just tell us when you're ready. We'll have the morning break, have a break. Read it – and then when you're ready, we'll come back?---Okay.

35 COMMISSIONER WHITE: Sir, do you want to extract that out of the volume or take the whole volume with you, Mr Bentley? It's a bit of an awkward thing to cart round.

WITNESS: Do you want me to read this now, do you?

40 COMMISSIONER WHITE: Well, we'll stand down.

MR BELL: No, when – when we stand down. You go have a break.

45 COMMISSIONER WHITE: We might even get a cup of coffee. Mr Wilson, will you have Mr Rogers contact us when you're – when Mr Bentley's ready after. Perhaps you could be kind enough to give your number. Okay. Right. Adjourned then, thank you.

THE COMMISSION ADJOURNED

[11.33 am]

THE COMMISSION RESUMED

5

ROBERT GEOFFREY BENTLEY, CONTINUING

10 **EXAMINATION BY MR BELL**

MR BELL: We were talking about the advice from Clayton Utz of the 2nd of June 2011, and I hope you've had a bit of a chance, at least, to consume it?---I have.

15

The email before it – that covered it, I mean, you recall I showed you earlier – if you want to look at it again, you do so. You recall it says, “Here is our advice in draft for you to review,” and “you” – it seems to be addressed to Shara?---Yes.

20

“We wanted to make sure that we have covered off on all of the issues for you,” and “you” – I'm presuming he means Racing Queensland?---I'm not – I'm not sure.

25

Okay. But anyway, then if we turn over to the draft advice or the advice that's got stamped on it “Draft” there – you've had a chance to have a look at it now?---I have.

Okay. Now, what's the significance of “Draft” on it for you, Mr Bentley? Do you recall at the time what you saw that meant?---This draft here?

30

Yeah. What I mean, just to be sure, is that when you received a – did you receive a copy of this?---I'm sure I would've.

Okay. When you received a copy of it, the fact that it had “Draft” stamped on it, what significance did that have for you?---Well, it's not final advice.

35

And what does that mean?---Mean – I mean there's probably more to come or a review of it later on.

40

Okay. And just looking back at Shara's – the email Shara received from Clayton Utz: “We want to make sure that we have covered off on all the issues for you,” and that seems to be why he thinks he's got “Draft” on it?---Yes.

But that doesn't mean the advice is provisional or we haven't made our mind up yet, does it?---No.

45

No. Okay. Did you take it like that? That is, that it was good advice – you know, just because it had “Draft” didn't mean anything for you?---No. Correct.

Okay. And indeed, I see that you have previously said that this document went to the board?---Could you show me the board minute, if it did. I'm not – I'm not sure.

5 Yeah. It doesn't say it in the board minute. Where I'm referring to is – in the ASIC interview, you were adamant that you had shown this document to the board?---This one?

Yeah. This one?---Yeah.

10 You can't remember?---I – I didn't have any documents or anything like that with ASIC. I just couldn't – couldn't remember.

No, no. You didn't say that. You said, "No. I gave that to the board, for sure" – this one?---Well, I – I don't know what I said, but I mean I take it that you – obviously, 15 you've – you've checked.

Yeah?---And that's what I've said.

20 Okay. So my question then is I should ask you did you give this to the board?---I can't recall.

Okay. In any event, there'd be no reason why you wouldn't give it to the board, would there, because it was an advice that Queensland – Racing Queensland had paid – was going to pay for and had asked for?---None – none whatsoever. 25

Okay. So we were just looking before the break how what happened was – under the heading "Background" on the first page, Shara had at least told Dunphy and Clayton Utz people that the board had resolved that RQLs executive and managerial staff need to be retained and provided with additional security of tenure to safeguard 30 business continuity. See that?---Yes.

Now, you had raised with me earlier that, in fact, the situation changed from nine to four people?---Yes.

35 And I think the point was that the managerial staff, rather than the four important executives, were no longer taken into account after this advice?---That is correct.

Okay. But in relation to the nine, insofar as the four in question were referred to in this advice, the instructions didn't change, did they, between the 2nd of June and the 40 5th of August?---I don't know about the instructions. I – I haven't seen those, but
- - -

Well, I'll be - - -?---It changed from nine to four. That's correct. There was more intensity of – of disruptions and disturbances and bad press release. The – reading 45 this, Mr Dunphy's advice, it's good advice. It – but – it is in – the final advice that went to the board in August is somewhat watered down from this.

Yes?---And that – and that to me was the fundamental differences, but we didn't go ahead with this and this was shelved.

5 Okay. Now - - -?---But not the – but not – not the substance of what he was talking about.

I understand, and we'll go to the further advice and how it came about, and I do understand your point; don't worry. What I wanted to ask you was, you see, Shara has told Dunphy what are the board's instructions to him. You see what I mean?
10 And we talked about how odd that was when - - -?---Yep.

- - - it concerns her. But anyway, putting that aside, she's told him under the heading "Background: The board has resolved that RQLs executive and management staff" – so I'll just delete "and management staff" at the moment. "The board has resolved that RQLs executive staff need to be retained and provided with additional security of tenure to safeguard business continuity." Now, that was the same up to the 5th of August and afterwards, wasn't it, in relation to these four people?---Yes, except I think that – I mean that the need to retain them was to get through the work that would – needed to be done.
15

20 And what's different about that? It says here - - -?---Nothing that I can see.

- - - "need to be retained and provided with additional security of tenure to safeguard business continuity"?---Nothing.

25 Okay. So it's the same, right?---Yes.

Okay. Good. And the next paragraph: "The objective is to reinforce the stability of the executive workforce during the period between now and 2014, by which time RQL must negotiate and achieve some fundamentally important milestones that are critical to the continuation of the racing industry in Queensland." Now, one example, I think, he puts in here – that Shara's told him is the renegotiation of the product?---Just one – one moment.
30

35 Sorry. Sorry?---I'm just not following you.

Yeah. Okay. Sorry. This is the – just put it back in the folder, please, and click it in so we're - - -?---Where is it?

40 - - - we're not – I get messed up too about that. Yes. We're on page 1 of the advice dated the 2nd of June 2011?---Yes.

Sorry, Mr Bentley?---That's all right.

45 We're looking under the heading "Background" about halfway down the page?---Yes.

And we're talking about accepting that we're looking at Shara conveying the instructions to Dunphy for the board, meaning she's saying, "This is what the board want, Mr Dunphy." You know what I mean?---Yeah. I'm - - -

5 Do you know what I mean?---Yeah.

I'm just asking you – that's what I'm trying to get at?---Yes.

10 Okay. And what she says there in the first – sorry. What he records as what he has been told by her is, "The board has resolved that RQL executive and management staff need to be retained and provided with additional security of tenure to safeguard business continuity." And we're at one on that?---That's correct.

15 And even if we delete the managerial staff and just talk about - - -?---Yep.

- - - the executive staff, it's right, isn't it?---That's correct.

20 Okay. And then in the next paragraph: "The objective is to reinforce the stability of the executive workforce during the period between now and 2014, by which time RQL must negotiate and achieve some fundamentally important milestones that are critical to the continuation of the racing industry in Queensland"?---Correct.

25 Okay. Forget the example for the moment. It's true, is it, that in June one objective of the board was to give stability to the executive workforce to 2014?---Yeah. I – I'm not sure about the 2014.

Okay. What's that mean?---I mean that – that – that appears many times, I think, in correspondence.

30 Okay. Okay?---But that's not necessarily, I think, the board's intention.

Okay. What was the board's intention - - -?---Well, the board's - - -

35 - - - in that regard?---The board's intention was to get that work done and finished, and 2014 was a period in time. 2014 is significant from the point of the view – that's the – the date of the termination of the - - -

40 Product and - - -?--- - - - Product and Program Agreement, but – but a lot of the work and the negotiation will occur long before that.

Okay. So I'm just trying to work out – are you saying that Shara told him the wrong thing? Or are you saying that the board, now that you sit there thinking about it - - -?--- Yeah.

45 - - - didn't care about 2014. They were just trying to work out what - - -?--- Yeah, I think so. I think 2014 was a date in time rather than specific it has to be 2014.

Okay. So whatever Shara told him, Dunphy got it wrong as to what the board's motivation was?--- Oh, I don't think that Dunphy got it wrong, no.

5 But you see, it was - - -?--- No, but 2014, as I said, was a period in time. I don't necessarily agree and I don't think that the board would agree that 2014 was meant to be 2014. Sahar may have said that. And Dunphy's advice, as far as I'm concerned – I mean, it's applicable whether it's 2014, '12 or anywhere.

10 Yeah, that's funny. The reason I say it's funny is because when a lawyer like Mr Dunphy has been even so careful as to send a draft advice to make sure he's got things right for you, he puts in 2014 and I can tell you there's no correspondence back saying, "Don't worry about the '14."?--- No, there's not. No, there wouldn't be.

15 And that's because, you see - - -?--- But I thought you asked me the intent of the board.

No, I was asking you the intent, you're right?--- Yeah.

20 But I'm testing it by saying that if he's got the drivers for his advice wrong, that it wasn't '14. It might be '12 or '11 or some other date and it didn't need to be '14. The considerations for the advice might be different – would be different?--- 2014 is not one of the drivers. The driver is – I mean, security of the staff.

25 Okay. Well, you say that now in 2013?--- Yes.

My point is that you didn't say it back to the silly Dunphy in 2011 when it was - - -?--- No.

30 - - - all contemporaneous?--- No.

You see?--- I didn't.

35 No. And that's because it's not true, you see. What you're saying now is not true?--- I don't think it's not true, no.

Okay. You see, what Dunphy was told by Shara came back to your attention for checking. You read this advice - - -?--- Yes.

40 - - - and you didn't ring up Dunphy and say, "Look, don't worry about the '14."?--- No, no.

45 "I just want to get the infrastructure plan, she's got it all wrong about the product fee."?--- Yeah, I – as I keep saying to you, 2014 is a period of time. I didn't correct Dunphy, which is absolutely correct. But the intent and the 2014, I don't think is significant.

No?--- And I don't think it affects the advice that Dunphy's given us.

I see. See, I'll show you how it does in a minute. I promise you I'll take you to it.
But here's the cutting edge of it. That objective could never have been met by the
5 contract that you eventually offered them on the 5th of August 2011; could it?--- No.

No. Absolute – absolutely cut right across it?--- Yes. Yes.

Okay. So then turn over the page, please, to the top of the page. He says, “What is
10 important, however, is that the board pursues its objective in a sustainable manner
and in a manner that will not inadvertently damage the company.” And we were
talking about what he meant by that. And I think you were saying, were you,
inadvertently damage the company means that – not go too far for the employees so
that you weren't getting value. Is that what it means?--- Yeah, taking an action that
15 inadvertently may damage the company. I don't – you – would you repeat that, what
you just said?

Yeah, I was – I was thinking to ask you does he mean don't go too far with it
because it might inadvertently damage the company. Because, for example, if you
20 gave them too much and they could walk out tomorrow, that would inadvertently
damage?--- No, I read that - - -

So we've got to be careful?--- I've always read that as going too far down the
employee line.

25 Yeah, that's where it went?--- Not - - -

I understand. So therefore, he's alerting the reader of the advice that there's a limit
which must be judged by somebody. Let's not worry about who at the moment?--- I
30 accept that, yes.

Okay. Then under the contract variations, you see in the second paragraph, “It is
appropriate to set out the relevant clauses of the conditions of employment that they
are proposed to be varied in order to meet these requirements.” As they are
35 proposed, I should've said. Meaning somebody had proposed these changes that
he's recording there; you see that?--- Yes.

And in the bottom of that, just underneath that, “For the reasons that we will explain,
we're of the view that the proposed variations are not the optimal means for the
40 board to achieve its objectives.” Now, you know what he thinks the objective is
because we turn back and we see the objective is the matter of 2014 that I was testing
about before; you see?--- Yeah, I think I've - - -

So - - -?--- Given you an answer what I think, yes. And that – that's what – 2014's a
45 period in time. But - - -

Okay?--- I mean, I accept what you've just said a minute ago, yeah.

Yeah. All I'm saying to you, you see, is Dunphy might have it all wrong. But what he's saying is, "Hey, what these guys are proposing doesn't get the objective that the board wants, 2014."?--- Yes.

5 That's what he's saying, you say?--- That's correct, yes.

And so he's saying, "Don't do that, that doesn't make sense." You see what I mean?--- Yes.

10 Okay. Just looking at what they had proposed, you see in 15.5 "RQL offers you
redundancy for any reason including accordance with clause 15.3 and 4. Then you
will be given six weeks written notice and will be paid a payment equivalent of the
TRV you would have been entitled to receive had you remained employed for the
15 period of a contract." So they wanted that beautiful thing; you see?--- Are we on
page 2?

I'm sorry, we're on page 2, yeah. Hence - - -

20 COMMISSIONER WHITE: It's the draft. It's just above the sentence?--- 15.3?

MR BELL: 15 point - - -

COMMISSIONER WHITE: 15.5, actually.

25 MR BELL: We were looking at five?--- Right. Yes, I've read that.

See, what the proposal was that he was assessing was a proposal in 15.5 if RQL
offers you redundancy for any reason, including in accordance with 15.3 and 4,
which we'll come to, then you will be given six weeks written notice and will be paid
30 a payment equivalent to the TRV you would've been entitled to receive had you
remained employed for the period of the contract. Meaning you get all your money
as if you'd stayed?--- Yeah.

35 So that's what they were proposing. And then in – if we look at 15.3, how – what
circumstances would they be able to go? 15.3?--- Yes.

"Should RQL, as the control body of the three codes of racing, receive a show cause
notice?" You see that? That'd be from the new government - - -?--- Yeah.

40 - - - I anticipate. 15.4, "Should any director of RQL as the control body of the three
codes receive a show cause notice"?--- Yeah.

45 Or about halfway down that paragraph, "Or if a director of RQL ceases to be a
director"; see that?--- Yes.

Sort of odd stuff that the employees must have been asking for. That if, for example,
Mr Bentley gets the flick from the board by the new government, they don't have to

stay on. They get paid out their beautiful pay all the way through to the end of their term without actually going to work. You see the point?--- Yes.

5 Silly; don't you think? Silly?--- This is his preliminary - - -

Yeah?--- Advice.

10 He's not advising, this is – he's addressing what they were asking for, you see?---
Yes, correct. Correct, yes.

And he says, as we've addressed underneath it, that's not a good way to go?---
Correct.

15 Okay?--- And the board didn't go that way. They took his advice.

No. In fact, you see, the board went a long way down this track but; didn't it?
Because, you see, if you look at the trigger clauses in 15.3, they're not even as good
as what the employees eventually got from you. See 15.3 says, "Should RQL receive
a show cause notice", that is not going to be the control body; you see?--- Yeah.

20 That was pretty significant?--- Yes.

Much more than just the government changing. And then 15.4, "Should any director,
as a control body for the three codes, receive a show cause notice."?--- Yeah. What
25 I'm – what I'm saying - - -

Yeah?--- We took it – took this on board and we didn't go ahead with it.

30 No, you didn't?--- No.

You gave them a better trigger clause?--- No, that was a part of a negotiation with
Clayton Utz as well. Barry changed his views and Norton Rose change their views.

35 Well, go to - - -?--- I don't know whether they changed their views but the - - -

Well, I've got - - -?--- The eventual clause - - -

We've got to go through it so let's go through it?--- Yeah, okay.

40 But I have this step here; you see? And look, this step, it looks like he's saying,
"Don't go with the triggers that are suggested by the employees there."?--- That's
correct.

45 Okay. Because you might, in effect, he says underneath it. You might be doing the
wrong thing by your duties as a board?--- That's correct.

Okay. Well, my point is if your thinking cap was on when you got this advice from Dunphy when he first gave it to you, you're thinking, "Holy smokes. If these people are asking to be able to leave if I, Bentley, get the flick as a director, which is a likely event. Or if RQL is going to get a notice that it's not going to be the control body. Then they're factors that might lead to the people being paid a lot of money, yet it mightn't be in the interests of the company to give them that." You see what I mean?--- That's – that's correct.

That sort of thing?--- But we couldn't get a deal with them. So that's when it kept – kept moving.

Okay. Let's look over on the next page, on 3, please. And you see under – have you got page 3 in the - - -?--- Yes, I have.

Thank you. You see the heading "The Executive Arrangements"?--- Yes.

And then on in the third paragraph, "In our opinion, the extended redundancy clauses raise the following issues of concern for both the directors and officers of RQL in terms of the duty of good faith and proper purpose under 181 and 184 of the act." You see that?--- Yes.

Okay, let's look at C. "The obligation to immediately provide staff with the opportunity to take redundancy when the listed triggering events occurs appears to us to be inconsistent with the concept of redundancy where the employer determines when and how the redundancy arises." You get the point of who determines it?--- Yes.

Okay. And I know that in this – you had a discussion about this and you said to Dunphy, I'm suggesting to you, "Yeah, I see. How would a CEO ever get to be redundant? Because – unless the company is no longer the control body, he can't be redundant because there's always going to be a position."?--- I was obviously – yes. I think – I think I remember that, yes.

Okay. And then in (d), "In any event it may be doubtful as to whether the primary objective of securing the retention of the key staff is best served by immediately providing an opportunity to take redundancy"?---Yes.

Now, the advice is given don't you think, is by giving them an out-clause on an event where they get a big chunk of pay doesn't really serve the interests of Racing Queensland?---That's correct. Because the – that's the advice he gave on – on what Shara was putting to him.

Yeah. But you see that the advice I suspect was meant to be taken into account by the board in moving forward in the negotiation?---It was - - -

So much as it was a negotiation?---Yes. And what it was – and the board did take this and said what, what you're asking for you can't – it's – Barry Dunphy has said

no on what you're asking for. And then they went back to try and do – I said you better go back and try and sort it out a bit better than that.

5 Yeah. But they didn't go back to Clayton Utz?---Yes, they did.

No, no. Not at that time. What happened was they didn't – I don't think anybody liked this advice so what they did was they went to another firm?---No, I don't think so. I think there was – geez, I wish I had a timeline.

10 No, no. We'll come – I promise you, I'll take you through it?---It would be easier for a timeline for me.

Okay. I'll take you through it. I will. So then the – let me take you down to complaint and investigation. You'll see that heading at the bottom of the
15 page?---Yes.

And the second paragraph, “The directors would be well aware of the requirements of the Corporations Act with respect to their civil and criminal obligations of good faith?---Yes.

20 Did you know about them at the time?---Yes.

And then over the page, section 181, “must exercise their powers, discharge their duties in good faith in the best interests of the corporation and for proper purpose”.
25 So whatever it be, Dunphy thought that this proposal raised significant questions about director's duties, didn't he?---He did.

184, in the next paragraph creates a criminal offence, “recklessly or intentionally dishonest and fails to exercise powers and discharge their duties in good faith in the
30 best interests of the corporation”?---Yes.

Serious stuff, wouldn't you say?---Yes.

Okay. And then if the next paragraph – the last couple of lines please. He's talking
35 about ASIC would formally – “would probably formally investigate such a complaint and effective defence to such an investigation as to have a full and compelling record of the resolution taken by the board and the reasons for the board's decision.”?---Yes.

40 Okay. Now, funnily enough as it's turned out there was an ASIC investigation that's ongoing?---Correct.

So we didn't win on that so far – the fact - - -?---No.

45 - - - the fact that there is one is nothing significant, I accept, that there's one going on. And then under parameters for retention and termination permanent framework – the third line, “ultimately we would recommend that the levels of incentive and

entitlement be set out for each employee taking into account their individual positions, entitlements and history with the company.” See that part?---Yes.

5 Now, incentives – that’s not a bad idea would you think in a commercial negotiation with staff, if you stay til 2012 you’ll get an extra hit. If you stay til 2013, an extra hit. That’s not a bad idea, is it?---Yeah.

Did you ever entertain that?---Yes, we did. We did discuss that.

10 Okay. But you didn’t give it?---No, we didn’t do it.

Okay. Let’s have a look over the page. You’ll see here, attaches these things. In the third box, termination without cause – “termination payment for notice and payment of all accrued entitlements of the equivalent of between six months pay to a maximum of nine months.” That’s a bit shorter than you gave them, isn’t it?---Yes.

15 Okay. And then, “the figure is to be determined having regard to the seniority and length of employment. Our recommendation figure is six months.”?---Yes.

20 Was that factored into your mind?---Yes. All this was factored – factored into our mind.

Okay?---Well, we were fully aware of this advice. There’s no – there’s no denying
- - -

25 No. No going away from it?---No.

You gave them 14 months, didn’t you?---I – yes.

30 And then the next one, redundancy payments, “severance in accordance with the Fair Work Act and then retention bonus.” – a new clause in the contract under which the officer is paid a retention payment payable in instalments annually to retain their services for a set period. Now, that’s Dunphy’s recommendation. That’s not a bad idea if you really did want to keep people on, don’t you think?---Yeah. I’m just
35 saying that the circumstances have changed from – from this advice but the advice is very, very good advice and it was taken into consideration further down the track.

40 Okay. So let’s just talk without thinking about the advice. The tip off and the idea might be one thing that you could consider going forward with these people – a retention bonus?---Yeah, we did consider it.

Okay. But it was never given?---No.

45 Okay. And then the next one, short term incentive payments?---Yes.

Do you see that?---I can’t say that we – we considered that one but we certainly considered the retention bonus.

5 Okay. And then the next part at the bottom of the page, executive support – amount of incentive. And then if you go to the last page of the advice you see, retention bonus. While this would be less common for administrative and support staff, if the board determined that retention of the relevant employees is critical of the business continuity, an appropriate retention payment plan could also be extended to these employees. The structure of the plan could be similar to that outline for the executives?---Yes.

10 Not a bad idea, would you say?---That – yeah it – as I say, we considered it. It certainly is a good idea in certain situations.

Okay. And what was your consideration on that? Can you recall?---I – I can't recall, no.

15 Just thinking now – why would that not be a good thing to offer Tuttle. “If you stay past the election, Tuttle, and continue with the infrastructure plan and help us – help the new people renegotiate the product and program arrangements, you’ll get an extra kick along.”?---Yeah, but – I can't make decisions in retrospect. Because you've got to make the decisions at the time – the time that you're actually doing it.

20 I understand. But anyway, it's not a bad idea is it?---As I said, we did consider it.

25 I didn't see - - -?---I think one of the directors was quite keen on it but we tried to work out how we may do – maybe – how we may do it – a retention incentive bonus, yes.

30 I just can't see any reason why that mightn't be the answer rather than saying to them, “You get paid 14 months if you leave.” Why not, “You get paid 14 months if you stay.” That's a better way?---Yeah, well – as I say in hindsight I mean it's wonderful, yeah. But I mean, the decisions have got to be made on – on the – on the position of the day at the time.

35 Okay. Funny. Anyway, 201 – this is Shara's instructions she gave to Dunphy before that advice popped out See there, she says - - -?---This is before – you're showing me what she said before the advice, right?

Yeah. Yeah. So she copies you in on this. Do you see at the top?---Yes.

40 Okay. So on the 26th of May, she copies Mr Tuttle and you in and she says, “As discussed yesterday, the board of Racing Queensland resolved on 6 May that its key executive staff needs security [indistinct] as well as their assistance so as not to be distracted by innuendo and rumour about the period between now and 2014?---Yes.

45 So that's - - -?---I – I – I've made my point, I think, about 2014.

Okay. So when you saw this letter she was right to say that but that changed?---I didn't put a lot of significance on it – of 2014. It's not – it's, yeah, sorry.

I know. I know. Maybe it didn't have a lot of significance but it seems the number one instruction she's got right at the top, "Dear Barry and Brett, as discussed yesterday the board ...", see what I mean? The whole driver is to keep them til 2014, see that?---Yes, I do see that.

5

Okay. Now, it's really got me at the moment how that could possibly change – how the aims of Racing Queensland could possibly change between the date of this which is 26 May and the 5th of August?---Yeah.

10 Okay. And then if you go down a little, please, to the second last paragraph. It says, "Accordingly, please find attached an amended executive employment agreement for your consideration and review." And that's the one that Tuttle, I think had drafted that he Dunphy considered and we looked at. You know when – in the advice?---Yeah, I - - -

15

Okay. "It is the board's intention that this agreement be in favour of the RQL employees."?---Yes.

20 That's amazing. Do you think that's amazing?---Well, I think I've explained it – in favours we – they were underpaid at that particular time. We didn't want – we didn't want – we didn't want a – any disputes with them. We wanted to come to a mutually acceptable agreement. That's what that meant.

25 Well, let's think about that?---And I think I've said that on – on a few occasions.

25

You have?---Yes.

30 It's just – I want to test it, you see, because to me it doesn't make sense and it may not to somebody else but the point is it is the board's intention that this agreement be in favour of the RQL employees – in favour. I thought your objective, bearing in mind your duty of care to Racing Queensland was to cut a balance?---It was.

35 So that it was certainly in the best interests of the company?---Best interests of both parties.

35

No, no. That's not your duty, you see?---Well - - -

40 That's wrong. You had that wrong?---If that's wrong – that's what – I must admit that was what – our intention.

40

Okay. So your point then, that's to test it, is to get a balance which was fair to both parties even if you were sacrificing some ground for Racing Queensland? If you could have got a cheaper deal for Racing Queensland, you weren't looking for it?---No. We were looking for a deal that was fair to all parties.

45

I thought so. So when you say, “In favour of” – I’m sorry, you didn’t say it. She records you, as one of the board members, saying your intention is to give this agreement in favour of RQL employee?---As you say – I don’t know - - -

5 Now, that’s odd, isn’t it?--- - - - whether I said that. She’s interpreted whatever has been said and what I’ve said, I think, is what was meant by the “in favour”.

But you’re stuck with it, you see, because she sends it to you at the time the instructions are going to the solicitor and you don’t ring him up and say, “Hey, Dunphy”?---No, I didn’t.

“I didn’t say in favour”?---No, I didn’t.

15 Okay. So for all intents of transparency, you gave that instruction to Dunphy. He’s confident that’s your instruction because you’re cut in on this email, you see?---Yeah.

Okay. So what could possibly be the board’s intention to favour the employees?---Well, I think I just explained that to you.

20 Yeah. Fair is different to favour?---Well I – I think - - -

You don’t say a favour – you don’t say fair, I should say?---No I don’t say fair but I explained to you what the board was thinking at the time. In favour – I don’t consider was my words or anybody on the board’s words and I haven’t corrected it. Yes.

30 Okay. In support then – that where it says, “in favour”, it did not reflect you now say, the board’s intention?---The in favour was a statement of the board – it wasn’t – in favour wasn’t the statement. The statement of the board and the feeling of the board was a fair and balanced agreement with the employees.

So I’m right, aren’t I?---To both sides – to both side. Fair to both sides.

35 So I’m right, aren’t I, that the board’s intention was not to favour the employees?---That’s correct.

So she got it wrong and you didn’t correct her?---Correct.

40 If we’re to accept your evidence now that, that wasn’t their intention to favour the employees?---Yes.

45 Okay. And look at the last paragraph: “I look forward to your urgent advice concerning the amended executive employment agreement. The board requires that the agreements be finalised and executed as soon as possible.” Was that the board’s position?---Yes.

Okay. It was urgent, was it?---Wanted to get it finished. Yes.

Sorry?---Yes. We wanted to get it finished. I mean – well, as urgent as – wanted to get it done.

5

But it didn't get done for - - -?---I didn't write this.

No, no. I know, but you got her to write it for you?---Yeah. But I didn't dictate or anything like that.

10

No. No. I know. You see, it's hard to see why it is that one of the staff who we're talking about negotiated with is giving the direction to the solicitors who you're asking for advice from?---In hindsight, it would have better if I would've done it. Agree – agree with it.

15

Okay. So there we go. Now, I just wanted to be sure I got it right. You can't recall whether you gave Mr Dunphy's advice to the board now?---No.

20

Okay. It's likely that you would have, you say, is it?---I – yeah. It was likely I would have. Yes.

25

Okay. There's no evidence of it in any of the board meeting minutes that you did, whereas there is evidence of you giving other advices to the board about this topic and from these solicitors, but not this one?---I would have thought that I gave all advices to the board.

I'm hearing you, but isn't it – from my point of view, when I'm looking at the documents later - - -?---Yeah.

30

If the record says, "The board got A, B and C" when there's D as well, it's unlikely that D was also given?---Yeah. I wouldn't withhold advice from the board. It was – it was necessary.

35

Well, you're saying that now, but I'm just trying to look at the contemporaneous documents. There's no evidence of this going to the board, you see. Why wouldn't it go to the board?---There's no - - -

40

Was there something in - - -?---There's no reason. There's no reason it wouldn't go - - -

45

Was there something in it you didn't like?---There's certainly no reason it wouldn't go to the board, because - - -

45

Is there something in it you didn't like, do you think?---No. No. I think it's good advice.

Do you?---There's no reason it wouldn't go.

- Okay. Anyway, finally to deal with that advice, we know that he had “Draft” on it and we know he, Dunphy, had said, “We wanted to make sure that we have covered off on all of the issues for you.” Had he covered off on all of the issues for you, Mr Bentley?---No. I’m thinking that he’s speaking to Shara, isn’t he?
- 5 Have a look at the – who it’s addressed to: Shara, senior corporate counsel
- - -?---Whereabouts were you - - -
- I’m sorry. The top of the advice – you see the address?---We’re back - - -
- 10 It’s 202?---All right.
- See, it’s addressed to her as senior corporate counsel?---Yes.
- 15 And then in the first paragraph, second sentence: “We have been asked to provide legal advice to Racing Queensland Limited,” and then in – under “Background: The board has resolved” etcetera. So the advice Dunphy was meaning to give to the board?---Yes.
- 20 Okay. Shara was the corporate counsel; she might be the instrument to actually get it?---Yes.
- Now, my question is if you look at Dunphy’s email: “We wanted to make sure that we covered off on all of the issues for you.” My question was did he cover off on all of the issues for you in that advice?---As far as I know, he did. Yes.
- 25 Okay. So why therefore was he not notified, “Yes, please. Put it in final form”? Do you know?---Because we took – took a look at his advice and we – I mean this would have been the advice and that’s why I think if this did go to the board – because the board, subsequent to getting this advice chronologically – if you could correct me if I’m wrong – then withdrew this situation.
- 30 Anyway - - -?---Is that correct?
- 35 No. I don’t think this ever went to the board myself, looking at the documents, but you’re telling me - - -?---Well - - -
- - - you’ve told people it did?---Yeah.
- 40 But I don’t know when or why - - -?---Because the – because the board withdrew. I think there’s a minute there where the board resolved to – not to go ahead with this.
- With the proposal?---Yeah. And I think that was it.
- 45 But I’m talking – I’ve got to focus down on the advice and I’m thinking that when Dunphy says, “Have I covered everything for you?”, your answer sitting there in the

box is, “Yes. Thank you, Mr Dunphy. He had covered all the points we wanted covered, namely, that this wasn’t a good idea”?---Yes. That’s - - -

5 Okay. So - - -?---It was very plain.

So why didn’t you direct Shara to write back and say, “Yes. Put it in final form so I can give it to the board, please”? Do you know why that didn’t happen?---No. I don’t.

10 Okay. Let me suggest something to you?---But I don’t think it would have changed.

Beg your pardon?---I don’t think his advice would have changed on that particular issue.

15 No. No. No. Particularly if you said, “Yes. You covered everything. Thank you”?---Yeah.

He just signed it off and take the draft sticker off it and off it’d come?---Yeah. Well, that didn’t – obviously, that didn’t happen.

20

No. That didn’t happen?---But there’s no reason behind it not happening.

Well, I don’t know. Is that right?---Yes.

25 Is there something in it you didn’t like?---No. I mean that – that’s advice. It – it’s good.

You didn’t go back to him until going to Norton Rose, did you?---Yes. I think we did. Following this – I just need the dates. That’s what’s got - - -

30

Okay. Why don’t we go to 205. This’ll help us?---Yes.

35 We were talking, you and I, about advice from Dunphy in draft that was sought in the end of May and delivered in early June. What happened was, to seek to refresh your memory, the matter went to the board on the 8th of – sorry. A number of matters went to the board on the 8th of July 2011, when you were chairman and present, and Tuttle and Shara Murray were there. And one of the matters discussed, if you don’t mind turning over to page 2 – at 2.4, “HR Issues”?---Yes.

40 “Chairman updated the board of significant issues that have arisen from the recent publication in newspapers. The board expressed their concern that this type of editorial had to be – had a destabilising effect on the executive staff. The board to instruct to Mr Tuttle and Ms Reid to engage independent advice on their contractual rights. The cost of this advice was to be paid by RQL”?---Correct.

45

And then up the next page: “As chairman, I have engaged the services of Norton Rose lawyers to act on behalf of RQL in respect of providing advice to RQLs four key executives.” See that?---Yes.

5 “I’ve approved \$15,000 budget.” Now, insofar as these four people, you say, were uncomfortable about staying – to make it a non-controversial word?---Yeah.

What you thought was right, did you, was that RQL pay for them to seek legal advice?---No. I think there’s something that come – now I’ve got the timelines.

10

Okay. Okay?---There was a meeting - - -

Of the – oh, you’re talking about the board when they resolved, “Nine’s too many to say” - - -?---Yes.

15

- - - “we should just go with four”?---Yes.

Yeah?---But also in – this is a Friday the 8th, is it, of July? Earlier in that week, Tuttle - - -

20

Oh, the publication of an article came out that really was – rattled the staff?---That’s correct.

Yeah. And they wrote - - -?---And I - - -

25

- - - they – you asked them to put together a letter to be written to the board, didn’t you?---I – I asked them to put their concerns in writing and I would take it to the board.

30 Yeah?---And also take it – they had a convoluted sort of a proposal. I said well, put that together too - - -

Yeah?--- - - - and take it to Clayton Utz, and we – I had a – a phone hook-up with somebody called Walker, and he went through the thing with me and I canned it before it – before it went.

35

Yeah. Okay?---And that’s when I said to them this is going nowhere. You better get some – better get some advice. We will pay for it.

40 I see?---Always – always with the idea that Clayton Utz and Norton Rose sit down with us and sort this out.

Okay. See, again I ask you the question why is the requirement from lawyers for them?---That’s – that’s the path we chose.

45

Yeah. I know you chose that - - -?---We don’t think – I don’t think that’s unreasonable. I mean I know lawyers give – give advice for law, but they – but

because there's clauses in the contract, it's not just the quantum of money. It's the clauses that are important as well - - -

5 Well - - -?--- - - - and that's why we asked them to get advice from Norton Rose and we would continue on with Clayton Utz.

10 My point is that, yeah, there's clauses in the agreement and one's fearful of them being unlawful. That's when you go to a lawyer. I understand that but why, when you haven't even got any commercial arrangement in place – you haven't negotiated with them commercially?---As I said to you, I mean the – the advice from Clayton Utz, I think, there was – 50 per cent was too high. I mean I've never mentioned 50 per cent myself; I've always said a substantial increase.

15 Okay?---That hadn't been settled.

Okay?---That hadn't been settled but the clauses were important - - -

20 No. I understand. I understand?---The clause was almost a deal breaker with the employees.

25 Okay. Your point is that events occurred, they were in a bit of a mess. They wrote, you told them to get together and write a letter to the board, which they did. And you took that to the board, which resulted eventually in you recommending that the services of Norton Rose be engaged for them?--- Yeah, it wasn't that I said you better do this for the board. I said put your concerns in writing so I can take something to the board. Up to then, it had all been verbal and a bit mish mashy. What about this, what about that. I said look, don't want to know about that any more. Let's put all this in writing and let's get it off to the lawyers and try and get this sorted out.

30 Okay?--- You get your own lawyers, we'll have ours. We'll sit down together and sort it out.

35 Okay. Let's have a look. So - - -?--- That's my view of the situation.

Yeah. So the board heard that you had engaged the services of Norton Rose for them, meaning for the employees?--- Yes, I had.

40 Okay. So then what happened was – do you recall that the board – that Norton Rose did provide advice?--- Yes, they did.

Okay. Would you please look at 207. You see again, we end up with the draft advice?--- Yes.

45 Okay. And you see it's addressed to you?--- Yes.

And this came to your attention? This advice, I mean - - -?--- Yes.

- - - came to your attention. And you read it?--- Yes.

Okay. Now, let me just show you one thing, please, before we go on. 206, just the one before – the document before, please, Mr Bentley. This is an email from the solicitor Murray Procter to Shara on the 15th of July?--- Mmhmm.

You got me?--- Yes.

“Please see attached we provide our advice, at this stage in draft, as requested to gauge your views on the approach of the board” Had the board asked for a draft advice?--- No.

Why would Shara ask for a draft advice?--- I don’t know.

Okay. Once the advice is finalised, we can assist you further by drafting the new executive employment contracts if you wish. Okay, that’s how it came; you see?--- Yeah. At – particularly at this stage, I don’t say that I requested it to be in draft advice. I wanted – because the two lawyers were apart in their advice, I didn’t want two lawyers to become bogged down, can’t move. I wanted them – a situation where they – at least they had some room to move to get an amalgamate of an agreement.

Sounds like a negotiation to me?--- Yes, it is.

Okay?--- And that’s what I was intending.

I’m sorry, I thought we were asking for legal advice. I’m all messed up?--- That’s what – that – okay. Legal advice was part of it. That was what I was intending to do.

I really am a bit confused, you see, because I thought that we first went to Dunphy to get legal advice about a proposal by the employees. And when he said no, it’s a bad thing. Don’t do it. You might be breaching your duties. I thought it was red rover and over. Finished, no more of that proposal. I thought that’s what we were doing?--- That particular proposal was out, yes.

Okay. But in fact, I should understand how it was really being done. And that is we were looking to engage solicitors on each side to do a negotiation?--- Yeah, I think I said that earlier in our conversation.

Yeah, you did. You did. So that’s really what was happening, a negotiation?--- That’s correct.

Okay?--- No, no, no. No, no. I was looking for them to look at the situation; employees, board. Put them together in the room with the board and try and work out an agreement between us. That’s what the intention was.

I see. Well, let's have a look what he wrote, because he seems to have got it pretty wrong. What he says is – I'm looking at his instructions. Do you have the same as me at 207?--- 207.

5 He is – this is his draft advice of 15 July?--- Yes, I've got it.

Okay. He starts off in 1.1 recording his instructions. "We have been instructed to advise the board in relation to a retention strategy." Now, that's odd. I thought he was retained by the - - -?--- It all - - -

10

- - - for RQL for the employees?--- At all stages in my mind, my intention was he was advising the employees.

15 See, the funny thing is, he says in his statement to the commission that he sat these four people down at the first conference and cleared the deck that he was acting for the board, not them?--- Well, I don't have that advice.

Sorry?--- I don't have that advice.

20 No, no. He sat them down and said, "No, no. I'm not acting for you, I'm acting for the board." And he thinks he's advising the board?--- Yeah, and I think he was working for the employees. That's correct.

Yeah. That's a mess; isn't it?--- Yes, it is.

25

Okay.

COMMISSIONER WHITE: But that's in his statement, Mr Bentley, that he's given to the commission?--- Yes.

30

Mr Procter – so you could read that if you want to?--- No, I don't want to read it. I – what I'm saying, your Honour, is that I was always under the impression he was working for the employees and that was the intention. And that's what the money was paid for by the board for him to work - - -

35

Okay?--- For the employees.

Well, the funny thing is, you see, this is another messy one. And – because if we look at the instructions here, it says, "We have been instructed to advise the board."

40

So he, the silly man, is thinking he's advising what Dunphy was advising, namely the board. You see what I mean?--- Well, I don't - - -

It's like – and I'll tell you what - - -?--- I don't think he's – I don't think he's silly.

45

No. But it's like when you're sitting here later down the track, this is what it feels like?--- Yeah.

Somebody at the board didn't like the advice which came from Dunphy so they went and got different advice?--- No, that's not correct.

5 Because, you see, when Dunphy received his instructions; guess what? He got it from exactly the same person, Shara. And this bloke, he gets it from Shara too?--- I – okay. He may think he's working for the board of directors but in my mind and the board's mind he was working for the employees.

10 Anyway, when you as chairman of the board read the draft advice, you see he's got it wrong. "We have been instructed to advise the board." And then 1.2, "The board has instructed us to advise on options available to it to address."?--- Well, that wasn't the instructions from the board.

15 No. No, I know. But I've been looking at - - -?--- Yeah.

- - - what you read; you see?--- I mean, it is – yeah.

20 What you read?--- Things are at cross purposes. But what I'd like you to consider is what I said is absolutely correct. I wanted two sets of people, sit down with the board, sort it out. And that – that was always the point. The fact that – I mean – that his advice was different from Clayton Utz's doesn't matter.

25 Okay. Let's keep - - -?--- The point is that if you get them together, we should've been able to get a decent arrangement. And had we been able to sit down with the two sets of lawyers and the board, I'm sure we would've got a better arrangement than we did.

30 Sorry, you're sure we would've got a better arrangement than we did. Who's we?--- We – well, I'm sure there would've been a better arrangement negotiated if the lawyers and the board had been able to sit down in the one room and sort it out. A better agreement could've been reached.

I see.

35 COMMISSIONER WHITE: Is that better for Racing Queensland, Mr Bentley? Or better for the employees?--- Better for – better for Racing Queensland and better for the employees. I think it would've been a fair – we wouldn't be sitting here today discussing it.

40 Well, I must say from my perspective, the employees did pretty well. I'm not sure they'd have got an even better deal. What did you have in mind they might've achieved?--- Well, that's the deal they got without the sitting down with the two lawyers. We might've got a – we might've been able to pare back it a little bit and still get the same result, everybody happy.

45 MR BELL: Anyway, when you read this document when it arrived about the 15th of July and you saw, "We have been instructed by – to advise" – sorry, start again.

“We have been instructed to advise the board”, in 1.1, “in relation to a retention strategy.” Which means, I think; doesn’t it?--- Yeah.

Retaining staff or employees; okay?--- Yes.

5

And then in 1.2, “The board has instructed us to advise on options available to it”, meaning to the board, “to address the ongoing need to retain and reward high-performance executives in an environment of uncertainty, taking into account the legal obligations imposed on the board in determining an appropriate level of remuneration and benefits.” You didn’t think, “Holy smokes, this guy’s got it all wrong” at the time you read that?--- I didn’t take any – I - - -

10

Okay?--- I didn’t take any notice of – the board has instructed.

15

“In this letter, we have – we have (1) considered the general obligations imposed on the board.” What’s he considering that for? Seriously, what is he worrying about that for? They’re advising the beautiful staff?--- Yeah, okay. I think I’ve explained that to you that – I mean, I considered that he was working for the staff.

20

I’m trying to show you how - - -?--- Sorry. I mean, there was – yeah, there was no – I can absolutely categorically tell you there was no instructions from me or anyone on the board; right?

I understand?--- That this - - -

25

I accept that. Look, I’m not testing you?--- Okay, well that’s good. Well, that’s good.

I’m just saying, when you read - - -?--- I’m glad we agree on that.

30

We agree on that. We agree on a lot, it’s just we’ve got talk about the stuff we don’t agree on, I’m sorry?--- Right, okay.

35

But this here, you see, is – comes into your vision. And you’re looking at it and it’s saying all the wrong things at the moment. He’s addressing what your obligations are, not what the staff want?--- Yes.

40

He’s not advising them, that’s a funny business about it. And then in two, 3.1(2), “Considered the specific requirements, if any, to avoid breaching the act in relation to any benefits to be provided.” And (3), “Provided an overview of the types of benefits that we consider would be appropriate in the circumstances that the board may wish to consider.” It’s all about the board; you know?--- Yes, it is.

45

Okay. And then we turn over the page, executive summary. And if you don’t mind going to 2.2. “In circumstances where (1), the proposed new benefits are necessary for retention of the executive.” Now, what were the benefits that at that time were

necessary? Was the – were the employees telling him what they were; do you know? Or did you know what they were?--- No.

5 Okay. “(2), the retention of the executives is in the best interests of RQL.” That’s a judgment call, I suppose; isn’t it?--- Yes.

10 Because if it’s a bad person, it’s not in the best interests. “The benefits are not disproportionate.” Now, is that a balance thing; is it? A balance between the price you’ve got to pay and whether they’re worth it?--- I – I can’t interpret the letter, but that’s what I think he’s probably saying.

15 Yes. And so, you see, what he’s sort of pushing back is – he’s saying, in 2.2, “In circumstances where”. That means, I’m taking it that you, the board, have decided that the new benefits are necessary for retention of these executives. That’s what he’s saying; you see?--- Mmm.

20 And then he’s saying, “I’m taking it that the circumstances here are that the retention of the executives is in the best interests of RQL and that’s already been determined by the board.”?--- Yes.

25 Okay. And (3), “That the board – I’m taking it the board have determined the benefits are not disproportionate.” So he’s saying back to you, you’ve made a call on that already. I’m assuming that. That’s what he’s saying; see?--- Yeah, he – it’s clearly – I mean, he is think he’s advising the board.

30 Well, not only that. He was advising the board in circumstances that he was setting out as were his instructions. “The board has told me the circumstances are where it’s necessary” - - -?--- I don’t know how – I don’t know how – how he can say – say that the board was giving him instructions because he was clearly – I mean, retention – the thing was there for the employees, Norton Rose.

Let’s accept that. But what he’s doing is the guy has been asked to give advice. And even if he’s got it all wrong, this is what he’s telling you?--- Yeah.

35 You see? And you know he’s telling you this because you’re reading it. We can’t go anywhere else?--- Yeah, I’m reading it. Yeah, sure.

40 Okay. And what he’s saying is, effectively in 2.2, “I’m assuming, Mr – all board members, you’re telling me that you’ve concluded one, two and three.” See?--- Yes.

45 Okay. And he’s saying, “It is – in those circumstances, it is unlikely that a resulting agreement would be deemed to be unfair or unconscionable.” Now, what he’s doing then is going to advise you about the legal way to effect that on those assumptions; you see? Nothing particularly important about that?--- No.

Okay. And then in 2.3 - - -?--- I’ve never – I’ve never actually read this advice like you’re going through it now.

No, I understand?--- Yeah, I didn't – I didn't - - -

Yeah, I understand?--- Wasn't sitting there reading it the way you're reading it to mean. And I mean, it's certainly different than - - -

5

Yeah?--- I wouldn't have had a real deep run with this. Yeah, go on.

Okay. 2.3, "Our suggestion of appropriate benefits that are not disproportionate and that would be in the interests of RQL is as follows." Now, just before we go on, he's talking about – isn't he advising the board about the way to do this; isn't he?--- I'll take it that it was read, yes.

10

Okay. And he says, "(1), an increase of the total remuneration value of each executive of between 10 and 20 per cent."?--- Mmhmm.

15

We didn't do that, we did 30?--- Yes.

So that's wrong. You can't go there, he says; doesn't he? You see that? Pretty clear?--- Our suggestion of appropriate benefits, yes.

20

Yeah?--- He didn't say it's wrong but he – that's what he's suggesting, 10 to 20, yes.

I thought you were saying, "I'm going to lawyers to get advice about this stuff. And when I get it, I'll listen to it."?--- This was advice for the employees. But I don't - - -

25

Exactly. Exactly. And they end up getting 30. They're told up to 20 but they get 30. Bingo?--- Right.

This was like going to Christmas. And "(2), the inclusion" – I'll read this one closely – "of a new five year term." Five year term. Did they do a five year term? No, they didn't?--- No.

30

So the employees were told, you say – and you knew that this bloke was telling the board that they should do a five year term on the contracts with 10 to 20 per cent increase; got me?--- Yes.

35

Okay. "(3), a notice period for termination of the executive employment agreement by either party without cause which should be an amount, to be decided by the board and agreed with the executive, of no more than 12 months." See that?--- Mmhmm.

40

Okay. That's notice of termination, meaning they keep working and being paid while their notice period expires; see what I mean?--- Yes.

Different to them getting 14 months when they're sitting at home like you gave them; you see what I mean? It's like it doesn't exist. I'm with you?--- Yeah.

45

When I looked at this advice, I thought, “Holy smokes, all the advice is against what Mr Bentley gave these people.”?--- But is there – is there another advice?

5 Yeah, there’s another one. We’re going to go to it, don’t worry?--- Because I’m - - -
But it’s a shock, isn’t it, when you read this one?--- Yes.

10 Yeah. And let’s go to number 4. “The implementation of an RQL wide redundancy policy, with payments based on length of service in a particular position.” Now, that – that did happen. There was a redundancy policy that they drafted later which I’ll show you?--- Yep.

15 And then (5), “The inclusion of two incentive bonuses as follows. (a), a performance bonus linked to the achievement of certain outcomes. And (b), a retention bonus of say 12 months of the executive’s TRV.” That means if you stay on, then you get?--- Yeah.

Not you can go and sit at home and you get; doesn’t it?--- Yes.

20 Okay. And then (6), “The inclusion of a material adverse change clause, with a trigger that includes RQL ceasing to be a control body, a change to either the makeup of the board, reporting lines for the executives or an organisational restructure. Or a reasonable expectation by the executive of any of these triggers occurring, entitling the executive to payment of (a), a fixed amount equivalent to 12 months, (b) any
25 accrued entitlements and (c) all other legal entitlements.” That’s not bad?--- Mhmm.

That was where the idea came from I think; wasn’t it?--- Not sure.

30 Okay. And then (7), “The inclusion of a clause limiting the payment of benefits as defined in the act, paid in connection with the termination of the executive’s average annual base salary as defined in the act.” See that?--- Yes.

35 And then 2.4, “In summary, the general effect of these benefits is that in circumstances of a termination or cessation other than for misconduct, an executive would become entitled to a payment of up to 12 months TRV”?--- Mhmm.

40 Well, we didn’t give them that. So looking back at that advice, that is all against – that advice given to the board, even though meant for the employees, was all against giving you what they gave them. Giving you – sorry, start again. Giving them what was given to them; isn’t it?--- Yeah.

Is this a convenient time? We’ll have a break for lunch.

45 COMMISSIONER WHITE: Yes.

MR BELL: All right.

COMMISSIONER WHITE: Quarter past 12 – quarter past two, Mr Bentley?---
Thank you, your Honour.

5 [indistinct] ladies and gentlemen.

THE COMMISSION ADJOURNED [1.02 pm]

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

MR WILSON: Commissioner, can I raise two discreet matters?

15 COMMISSIONER WHITE: Yes, certainly, Mr Wilson.

MR WILSON: The first is the matter that was touched on this morning. We've had an opportunity to look at the transcript over lunch. Transcript 3-73 - - -

20 MR BELL: Yes. I was going to say something. I've got it too, your Honour, and tell my learned friend something about it. Let me just clarify and cut to the chase. What I said was exactly as our learned friend had said. I said, "Well, I'm going to be asking that question after this. I can tell you. I agree with you." to Mr Bentley. "But I'm asking you why it wasn't collected because you were there for five." And what I
25 wanted to tell our learned friend, Mr Wilson, in public forum is that I'm told there's no need at the present time, at least – I refer him to something I hadn't read – and there's a statement coming from a witness, Mr Dickson, apparently, on behalf of the board answering the question. So I'll look at that too to see what it says.

30 COMMISSIONER WHITE: I know that the Commission has just received that as well and it may well be that it just goes up on the website, Mr Wilson, as soon as I've had an opportunity to have a look at it.

35 MR WILSON: Yes. I might need to raise it again depending on what Mr Dickson says.

COMMISSIONER WHITE: Precisely. So perhaps it would be better if we were all better informed before we pursue it any further.

40 MR WILSON: Yes. I certainly didn't know that.

COMMISSIONER WHITE: No. Neither – I don't think any of us did when we were here this morning.

45 MR WILSON: No. Commissioner, the second matter is; goes to the fairness of some questions that were put in the session immediately before lunch. We had the opportunity to review briefly Mr Proctor's statement over lunch and three questions,

5 we respectfully submit, were put on an unfair basis. The first is it was suggested to Mr Bentley a few times that it was the board seeking the advice – and I think it even went to the stage of saying that Mr Proctor said in his statement that he acted for the board which ultimately ended up with the suggestion that RQL effectively changed its lawyers because it didn't like the advice it was receiving from Mr Dunphy.

10 We respectfully submit that, that's unfair when one has regard to Mr Proctor's statement and in particular the file notes which were attached to that statement at pages 1 and 74 which quite clearly show that during the initial telephone call with Mr Orchard and during the first meeting with Mr Tuttle and Ms Reid and Mr Brennan, that those individuals told Mr Proctor that they wished him to act for them.

COMMISSIONER WHITE: Yes.

15 MR WILSON: And then there was some discussion by Mr Proctor as to how he thought the retainer should follow. So to suggest that the board went to Norton Rose with a view to getting its own advice is, in my respectful submission, a misleading way to put it. And the second is; when Mr Bentley was being taken to the letter of – or the draft letter of the 15th of July, I think the unspoken assumption was that the
20 letter, whilst addressed to him, was sent to him and the Norton Rose letter makes it quite clear that it was sent by email to Ms Murray. And I think to be fair to Mr Bentley, it needs to be established that he in fact then was given the letter by Ms Murray.

25 COMMISSIONER WHITE: I must say, of that second question, I – that was the impression that, that's how it came to Mr Bentley but as you can understand I have prior knowledge of all of these documents and so it may be that my perception is coloured by what I know things to be. So – well, I'll leave it to Mr – they're the two are they, Mr Wilson?

30 MR WILSON: And the third one is; in going through the letter of the 15th of July, Mr Bentley was taken to some suggestions of Morton Rose including – I'm just trying to turn it up. The 10 to 15 per cent TRV increase.

35 COMMISSIONER WHITE: 10 to 20?

MR WILSON: 10 to 20. I just can't see that on - - -

40 COMMISSIONER WHITE: Its 2.3 – it's on the second page of the letter.

45 MR WILSON: Yes, yes. As if that had all – all that had been discussed at that time and then suddenly at some future date it became 30 per cent. Whereas, again to be fair, if one looks at the Norton Rose file at pages 72, 74 and 75 of the annexures to Mr Proctor's statement, the figure of 30 per cent was mentioned at the outset by the employees and is recorded in the file notes as 20 – 30 per cent.

I appreciate, Commissioner, that there's a lot of – a lot of documents but if Mr Bentley's being challenged about things, he should be challenged fairly.

5 COMMISSIONER WHITE: Yes. Thanks, Mr Wilson.

MR ROBERT GEOFFREY BENTLEY, ON FORMER OATH [2.21 pm]

10 FURTHER EXAMINATION-IN-CHIEF BY MR BELL [2.21 pm]

15 MR BELL: On the last matter, Mr Bentley, so that I am being fair to you, the point that our learned friend Mr Wilson makes is that when the staff – the executives first went to Norton Rose, they mentioned 30 per cent. See, that's what he was just saying then. What then happened was this advice came to Shara Murray as a consequence of the lawyer receiving instructions and then providing an advice in draft as requested?---Counsellor, could I interrupt?

20 Yes, please?---Prior to lunch I was looking at this document and I was starting to scratch my head as we went through it. I am almost sure that I haven't seen this one. When I had the ASIC investigation I did get confused with the documents – which one was this, which one was that. I've seen two from Norton Rose about 20th of July and early August. They are the two that I've seen and I haven't – I'm sure – as sure
25 as I can be that I haven't seen this one. I was quite surprised to read it.

Well, that raises very serious concerns for – about the conduct of the person who did receive it, doesn't it, because - - -?---I – I can't make comment on that, Counsellor
30 - - -

Well, let me show you what I mean - - -?---because I – I understand what you mean but I'm saying, from my point of view.

35 Well, let me talk to you about that for a little bit, you see, because it is serious. Previously, we were asked questions about this advice. I thought you had said to ASIC people that you had seen it?---I think I clarified that. I said to ASIC, I mean, on a couple of occasions – I was confused with the documents that were coming across the table. There was other ones as well and I'm sure that I haven't seen this one.

40 Okay, well - - -

COMMISSIONER WHITE: Can I just remind you, Mr Bentley, you don't have to lean forward.

45 WITNESS: Oh, thanks, your Honour. I tend to.

COMMISSIONER WHITE: Tend to go to the microphone. That's true but you don't need to.

5 MR BELL: So the point I'm making to you is this: the way I've been asking you questions, you see, I was reading your ASIC transcript and assuming you had seen this?---No.

10 And now that I hear you say, "I don't think I've seen this". I understand. You don't think you did see this?---Correct.

Okay. The reason I said to you is serious concerns is because of this: when – just go back one document please. You'll see there's an email of 206 – at 206 divider?---Yes, I've read that.

15 Okay. At 206 what the lawyer says in covering the advice you and I have been looking at is he says, "Please see attached. We provide our advice at this stage in draft as requested to gauge your views on the approach of the board." See that?---Yes.

20 And then if you turn over when he sends it – turn over to the advice it's addressed to the chairman?---Yes.

25 Okay. My expectation was that it would've been likely that it'd had come to your notice if it came to the legal officer at Queensland Racing addressed to you. Do you see what I mean?---I see what you mean and I – I wouldn't have taken any notice of anything coming from Norton Rose at that stage because I considered that they were working for the employees.

30 But anyway, what is the case is, if you didn't see it, it was a terrible thing. Don't you agree?---Yeah, I - - -

Do you think it was a terrible thing?---I don't think – well, I didn't see it.

35 No, I know - - -

COMMISSIONER WHITE: I don't think Mr Bell means the advice is a terrible thing but that a document addressed to you as the chairman was never drawn to your attention?---Your Honour, I'm – I think I've said - - -

40 At least I hope I've interpreted, Mr - - -

45 MR BELL: No, that's exactly right?---I didn't take any notice of it because – because we were paying for the advice, I would've expected to get the advice, because we're paying for it.

Look, I know. Here's the point: you now tell us you didn't see the advice?---Yes.

Okay. Now, that must mean that when Shara received the advice by email, which she clearly did, she didn't show it to you?---Yes.

5 Okay. And that means that the legal officer of the company who'd been there for a long time received an advice addressed to you, chairman, giving you as the board advice in relation to their wishes, her wishes and Tuttle's wishes. She didn't give it to you?---No.

10 That's why I said - - -?---I haven't - - -

That's why I said serious?---Yeah, what I'm - I haven't seen it, yes.

I beg your pardon?---That's why I've said I haven't seen it.

15 Okay. Now, the - because this has got a serious outcome to it, could you please address this question: are you sure you didn't see it?---Yes. I'm - - -

20 Have - - -?---It's a while ago. I'm sure as I can, but I haven't seen it. I don't think it's a straight yes or no, I mean, I'm not trying to be - - -

Well, you see - - -?---I'm not trying to be evasive.

25 Okay. Let me tell you this - - -?---I just don't want to say yes or no and I - it's wrong.

No. Well, you see, if you say yes, I didn't see it, it puts somebody else in a lot of trouble. I would respectfully suggest possibly?---Yes.

30 Okay. So, because you haven't said I definitely didn't see it I'm going to keep addressing it with you, because it might refresh your memory that you have, you see?---Yes.

So I don't want to assume the worst against the legal officer of a company?---No.

35 Because, in fact, your experience with that legal officer was generally that she was reliable with you?---I accept that.

40 Okay. So going back to where we were, and I was on page 3 of this advice that may have come to you, in 3.1, under the heading Background: General, do you see that part?---Yes.

45 Okay. "We are instructed that without implementing a reasonable executive retention strategy, RQL considers it faces a real risk of the resignations of one or two of the executives" - one of more of the executives, I'm sorry - "Not only would a resignation of the executives have serious implications for the ongoing operations of RQL, but it also places at risk a smooth transition to an alternative - alternate

structure if one was implemented as a result of a change in the state government?---I haven't seen that statement, no.

5 Okay. You see, that statement tends to indicate that one consideration this lawyer should take into account is an objective of the company is to keep the situation smooth, even though – for business of Queensland Racing, even though the structure may change?---Yes.

10 Well, that would be in the best interests of - - -?---Yes.

- - - the stakeholders in Queensland, wouldn't you think?---Yes.

15 Okay. So, anyway, even though that's consistent with what you would have thought was in the best interest of the stakeholders you were representing, you can't remember seeing that?---No.

Okay. Would you have said that to Shara?---I haven't seen it.

20 No. Would you have said - - -?---No.

- - - a statement in substance like that to Shara so that she told the lawyer what was in the board's mind, you see?---No, I wouldn't have said that. That's not my – way I construct things.

25 You see, it's - - -

COMMISSIONER WHITE: But is it – I'm sorry, Mr [indistinct], what I want to ask is that even if it's not how you would construct the sentence because this is somebody else - - -?---Yes.

30 - - - writing it, does that reflect your sentiments at the time?---It reflects my sentiments up until the third line, RQL, but also place it with the smooth transition.

35 So that doesn't – you didn't think that was a necessary or a good idea? You didn't think that it was something that had to be achieved by this agreed restructuring of the - - -?---The purpose as far as I was concerned was to retain the executives to get those plans through.

40 MR BELL: But wouldn't that be consistent with a smooth transition after election?---Yes.

45 Okay. So, you see, whatever be the case, this lawyer from Norton Rose is proceeding on the basis that one of the objectives of the client he thinks he's got, meaning the board, is a smooth transition through a change of government?---Yes.

Well that's wrong, is it?---Well, it's wrong from the point of view that, I mean, that he's – was supposed to be giving advice to the employees, not to the – not to Racing Queensland.

5 It seems that that's what you're saying, I understand. Would you mind going over the page to 4, please, page 4. At the foot of the page, you see a – it has a heading Common Law Duty to Act in the Best Interests of RQL?---Yes.

10 Would you mind reading 4.2 and 3 please, and tell me whether you'd knew those things in the middle of 2011?---I knew those things.

Okay, and did you take them into account in your decision making about these new contracts?---Yes, I did.

15 And 4.4, please?---And every director was aware of those situations.

4.4?---Correct.

20 And that's, again, something you've factored into your thinking?---Yes.

And 5 and 6: 4.5 and 4.6, please?---Read and understand, yes.

25 Same again, okay, meaning you understand and you remember that they were your duties at the time too?---Yes.

Okay?---Clearly enunciated by Mr Dunphy too.

30 Okay. Now, I was going to ask you to go down to 4.12, please. You see, 12, 13, and 14 refers to a part in legislation, part 2D.2?---You asking me to read that?

Yes, please?---Yes, I've read that.

35 And if he's right, it's tending to indicate in 4.13 that the benefits should not exceed the cap set out in the legislation?---That's what he's saying.

Okay, and then in 4.14 he's referring to that in more detail?---I'm sure I haven't seen this, yes.

40 Okay, and in 6.3 over the page, Change to Remuneration. What the advice is in 6.3 is in respect of remuneration and change, this information, that is, in relation to an increase, can be obtained by the engagement of a remuneration consultant. Do you recall that advice ever coming to your attention?---No.

45 But that would be a good idea, wouldn't you think, as to how much it should go up?---We discussed at a later date, I think, the – I don't know exactly when it was, but at a board meeting about whether we would engage a remuneration consultant or

not. We decided because of the uniqueness of the industry that we would try and get industry standards, of which I obtained as best I could.

5 Okay. We'll come back to that in just a sec, but the idea of going to a remuneration consultant generally is one way of doing it. Now, that's a way that you had done it - - -?---Yeah.

- - - at Racing Queensland before?---Yes. We had, yes.

10 In Queensland Racing too, wasn't it?---Yes, but for what positions?

Well, for positions that were of the same nature as the ones in New South Wales and Victoria, but were confidential as to levels of pay?---I can't comment – I can't recall that.

15 [indistinct]. Well, the - - -?---But I'm not saying it's not true.

20 Okay, that's fine. The consultant you went to previously has given a statement, and they said they have that information, and Queensland Racing came to them and they used their sources, and were able to identify what levels they were?---Yes. I don't - - -

Can you recall some of that?---I don't recall it.

25 Okay. Anyway, in 6.4 - - -?---Excuse me. What year was that?

I'll have to check that for you too, Mr Bentley. It was about - - -?---Approximately?

30 I'm thinking 2008?---Yeah, I can't remember.

Let me have a look at it, but it's in a - - -?---It's not important, I just wanted to know to help me think.

35 No, I understand, and I will get back to you. 6.4, "In our view, in taking into account the need to retain the executives we would consider a moderate increase to the executive's remuneration of between 10 and 20 per cent would be reasonable in the circumstances." I suppose somebody wanting to get 50 per cent and receiving this advice for you might be motivated not to give it to you?---Yeah. Well, 50 per cent was never - - -

40 No, but you see my point?---Yes.

45 Because, you see, if you were thinking and they knew you were thinking more than 20 per cent, it would be good for them not to give you this advice?---I was thinking a substantial increase. I wasn't thinking of a percentage at any time.

Well, I'll show you what you were thinking of in your board memo in a moment.
6.5, "We consider that it is in the interests of RQL to maintain a moderate increase to
each of the executive's TRV, whilst placing greater protection and longevity by
implementing the retention options discussed below. There was their advice, at least,
5 we know at the time, even though you may not have seen it?---Yes.

And then if you go to the next heading on the next – if you go over to the heading on
the next page, Notice of Termination Without Cause, you see that?---Yes.

10 This is important: if you don't mind reading 6.11, 6.12, and 6.13, please, Mr
Bentley?---Yes.

Well, that piece of advice you can't recall receiving?---No.

15 But if you had received it, it would be a concern about giving 14 months, would you
think, for all four?---I think we would certainly have to take that into consideration as
advice, yes.

20 Okay, and you see - - -?---Bearing in mind as well that we would have to get a
commercial arrangement to get a deal.

Then you've got a heading, Redundancy Payments, which I – you read, by all means,
but I wanted to ask you next: under the next heading, Relevant to Changes, material
adverse changes clause, please, and 6.20?---I've read 6.20.

25 Okay, and that advice too would be advice that was different from the position you
eventually took of giving 14 months?---Correct.

30 Okay. 6.21, "As an additional protection for RQL, we recommend making the
payment conditional upon the execution of a deed of release, and a commitment for
the executive to serve a short transition period unless otherwise agreed."?---Yes.

35 Why would they recommend that would you think?---Well, that's the
recommendation. It's a smooth - - -

I know it is their recommendation. I asked you why - - -?---transition. Smooth
transition.

40 Yeah. Keep the same employees on until you can get the new ones in place, for
example?---Correct.

45 Yeah, and then over the page, Extension of Term, "Any variation to the terms will
provide RQL with an opportunity to extend the term of each executive's
engagement." You understand what he means by that?---Yes.

And then 6.24, "However, it is more likely that the offer of permanent employment
would attract a higher level of public scrutiny and criticism. Whilst we consider that

5 your protection would be defensible from a legal perspective, you may like to consider a more conservative approach in order to minimise the possible negative publicity.” And then in 6.25, “As an alternative, you could offer an extension to the current term of the executive’s engagement of a new three year term from ’11 to August ’14. In our view, however, it would be reasonable in the circumstances, especially if the other benefits set out above are adopted, to adopt a five year term subject to notice as discussed above in 6.13.” So whatever it is, if this advice had been received by the board, do you consider that they would have acted differently to the way they acted?---I think the end result would have been different, yes.

10

Okay. Okay. Excuse me. Would you mind going to 209, please, Mr Bentley. About – I shouldn’t say about – actually five days later, a board meeting was to occur. You see at the foot of the page on this board paper?---Yes.

15 20 July ’11. This paper was being prepared for that board meeting. See what I mean?---Yes.

Okay. So presumably, unless it was typed up on the morning, you did some thinking about it beforehand?---Yes.

20

Okay. And then if you go to the end of it – it’s on page 17 – you’ll see that this is your board paper. What I mean by that is you prepared it, or at least took responsibility for it?---Yeah – responsibility. Yes.

25 Okay. Have you got that – your name there?---Yes.

Okay. So Norton Rose advice comes to Shara, at least, on the 15th of July. What happens is a board meeting occurs on the 20th of July. I’ll show you the meeting minutes in a moment, but this board paper certainly is prepared for that meeting, and it’s prepared under your hand. You see what I mean. And you take your time to look at it, but the part I was going to ask you to look at commences on page 11. So when you’re ready, you tell me. You don’t have to go straight away there, Mr Bentley, if you want to refresh your memory on it?---No. That’s all right. I’m - - -

30
35 Okay. 11 under the box, you’re saying, “There is no doubt in my mind that an LNP government will seek so-called retribution not only against the board but against senior executive staff.” Was that true, that you thought that?---That’s true. Yes. True.

40 And then in the next paragraph, the next two lines: “More than ever, our senior executives need to be protected to be able to proceed without fear or favour”?---Yes. I wrote that.

45 Okay. Next paragraph: “Clearly, the landscape has changed since the board resolution of 6 May, and it is my firm view that we need to reconsider our position as a board in relation to our key executives. The executives that are most at risk are also those that will play a vital role over the next six months.” See that?---Yes.

Just let's have a reflection on the date, 20 July. So certainly it must have been inescapable that you had to try and keep them till December?---Yes.

5 Is that fair?---Yeah. Could you just rephrase the question again.

Yeah. Certainly by what you said there, it looks like you saw their vital role being run over the next six months, meaning to continue for six months from when you're talking, in a sense?---Yeah. That – that was the position at the time.

10 Okay. And then your paper you prepare, a few lines down, commences, "My recommendation in relation to these four executives are as follows: 30 per cent increase" – see that?---Yes.

15 Where did that come from?---I don't know.

Okay. And then "(2) The inclusion of a material adverse change clause with a trigger that includes a change" - - -?---Can I just have a minute, please.

20 Yes, of course. Of course you can?---I just want to read this, because board papers are not necessarily prepared by me.

No. I understand?---Whilst I might be the originator - - -

25 No. I understand totally?---All right.

I really mean it. You take your time.

30 COMMISSIONER WHITE: If you want to sit down while Mr Bentley's doing that
- - -

MR BELL: Yes.

WITNESS: I would have - - -

35 COMMISSIONER WHITE: [indistinct]

WITNESS: I would have authorised it to be prepared.

40 MR BELL: Yeah. I understand?---Yes. But I didn't actually prepare it myself.

No. But what am I to do with that? Does that mean I – you're not saying, "Don't ask me questions; I don't know what's in it"?---No, no. I'm not saying that. No, no.

45 Okay. So I'm just asking you – you take time. If you want to have time out, I understand; we've been going a long time. Would you prepare to have a time to read it?---No. I'll take questions.

Okay. Well, I'll take - - -?---I'll just – wait a minute. Could I just read a little bit more.

5 Yes, of course?---Yes. This, I'm sure, was prepared by the CEO.

Okay. Did you read it before you presented it to the board, do you think?---I – not sure.

10 Okay?---I – I may – may not have. I – I asked is – is this the – the – what I asked him to prepare to go to Clayton Utz?

No. This is a board paper for the members of the board, you see, to discuss the topic of senior executive staff getting a new offer under their contracts?---I would have told him to prepare this and send it to the board. Yes. It's - - -

15 Yeah?---It's not my content.

And then discussion happens, you see, normally when there's a board paper, at the board meeting, about the paper. That's how it works, doesn't it?---Yes.

20 Okay. Well, let's have a look at it. You see attachment 1 is a letter to you from the four executives?---Page?

25 Sorry?---Page?

Just wait one sec, Mr Bentley. I'll just get you the attachment. I'm told you don't have the attachments to the unit. What I'll do is I'll come back to the attachments, Mr Bentley. As soon as they can be found I'll give them to you. You stop me if you can't answer the questions without seeing them. Would you mind going to page 11, please?---Yes.

30 I was asking you questions before, and you haven't had much of a chance to increase your knowledge of this document; I appreciate that. What it seems to record is that it is the chairman – meaning your – recommendation in relation to these four, on the 35 20th of July – a 30 per cent increase. That's number 1?---Yes.

The inclusion of a material adverse change clause with a trigger that includes a change in state government – and other things, but in particular I'm interested in the change in state government trigger. See that?---Yes.

40 You were recommending that, were you? Do you recall that at any time?---What I – what I remember of this – this is only just – I'd like to think about it a little bit more – is this is very close to what I would have told Malcolm: put your concerns to paper and put it to the board.

45 Okay?---That's my recollection of it.

Well, then it amounts to the same thing, doesn't it, because whoever types it up doesn't matter. It's who says, "Type this up. This is what I want in it. These are my recommendations"?---No. I don't – that's not what I said. I said this is very much what I would have said to Malcolm: prepare something for the board.

5

I see. I see. What your - - -?---You've got a – you've got a problem. Okay. Let's put it in writing and – and put it to the board. I'm happy to recommend it. You put it to the board.

10 I see. So - - -?---That – that often – often worked. If anyone wanted to put up a project or something like that, I'd say [indistinct] to paper. Tell us what you want, how you want it, and I'm – I'm quite – if I like it I'll put it up to the board.

I see.

15

COMMISSIONER WHITE: Does that suggest, Mr Bentley, that Mr Tuttle would have brought a draft of this paper to you so that you insert – you said, "Yes. I like that, so we'll put my recommendation in there"?---No. It wouldn't be - - -

20 Would he have presumed that he could write "my recommendation"?---It certainly says my recommendations; I take that as his recommendations, even though it's my paper. I'm not trying to be cute with this, but - - -

25 It seems a bit cute to me because it otherwise a bit high-handed of a CEO to speak so fulsomely from his chairman, surely?---But your Honour, I would have – I would have asked him to write it – if this is what you intend to do with – this is what you want, please put it in writing.

30 And sight unseen I'll recommend it?---I can't – can't say, I mean, I really can't say.

Seems very – very trusting.

35 MR BELL: So, Mr Bentley, I'll just read you this introduction on the foot of page 11, written by you. "My recommendations in relation to these four executive", and that means, my recommendation in relation to Mr Tuttle and others, "are as follows". What you're having the commission appreciate is that, that really ought to have been stated this way: Mr Tuttle's recommendation for himself and the others is?---No. I – I would've said, I'm prepared to recommend – recommend this to the board. You tell me what you want and I'm prepared to go along and recommend that to the
40 board.

I've got it. Put up and recommend is different?---Yeah, okay. Put up and recommend?

45 Because recommend means I'm the chairman, I've looked at this and I'm recommending it and normally you'd think when the chairman does that, particularly

when he's been a chairman of the board for 10 years, that people will take note of the recommendation. Wouldn't you agree?---Yes, I do.

5 Okay. So by letting him write those words and you signing the document, Mr Bentley, it's hard to wiggle away from the responsibility for it?---I'm not trying to wiggle away from anything. I'm just trying to - - -

10 Well, what are we going in this pantomime for? What's this pantomime?---Well, I'm just try – trying to remember all these particular documents that you keep giving me. I don't – I'm not trying to get away from it. I honestly assure you that I'm not trying to do that.

15 Okay, good?---I'm just trying to get in my mind exactly how it happened and I – when her Honour asked me that question I – I don't know.

Well, maybe the answer is, do you want to take a break because I understand if you do. Why don't we have the rest of the afternoon off?---Well, I'd prefer to keep going if that's possible.

20 Okay. Fair enough. Well, let's – let me just take you back to the first page of this board paper just to tell you it's heading purpose and it says, “to recommend the course of action to the board in relation to the four executives.” Do you see that?---Yes.

25 And then it goes through a history of what's happened and how we got to this point, including recording some of the bad press that was out there. And then it comes to page 11 at the bottom and it says, “My recommendation in relation to the four executives are as follows”, and that's a representation to Hanmer and Ludwig. But
30 Mr Bentley thinks the right thing to do is to offer them a 30 per cent increase for each of them from the 1st of July 11 and to – to include a material adverse change clause with a trigger that includes a change in state government, among other things. And then (a) over the page, a payment equivalent to the amount of each executive's TRV that they would have received, had the executive remained employed by Racing Queensland, to the completion of the term plus an amount of severance pay
35 equivalent to RQL's wide redundancy pay payment as a material adverse change severance pay. And (b) all other legal entitlements such as approved leave plus 3, the recommendation is retention of the current 3-year term, which we know was from the 1st of July 2010, with an obligation on RQL to renegotiate before that term ends, namely on the 31st of December 12. So what you're recommending to the
40 board, at least by this document is that if the government changes the four executives could terminate and receive full pay right through until July 2012 – I'm sorry, July 2013?---Yes.

45 Okay. Now, that's - - -?---I'd have to say – I'd love to – that part of it – that part of the board paper – yes, I would've known about it. Yes, I was prepared to put that to the board, right. But the rest of it.

Okay. Well, I'm suggesting to you, that's an astonishing offer that you're recommending to your board – that these people can leave as early as September 11 and get paid through to July 13?---Well, isn't there some provisos on there as well?

5 Let's have a look at them? You show me?---I thought it would always be a proviso of Clayton Utz.

Clayton Utz and Norton Rose coming back together is down the track?---Yes.

10 Okay. But what we're doing is looking at what you were recommending to the meeting on the 20th of July, you see?---And this didn't go ahead, did it?

This didn't go ahead into the deal, no?---No.

15 But I'm looking at what you were recommended?---Yes.

Yeah. Anyway, I suppose – if you go under number 3 – that is the recommendation 3. You'll see the paragraph, "In summary, the general effect of these benefits is that in circumstance of a termination or cessation due to a material adverse change, an
20 executive would become entitled to resign and treated to a payment equivalent to the amount each executive would have received to the end of the term and a redundancy pay – payment. This will provide the executives with the protection they are seeking and satisfy RQL's desire to maintain the executive's employment?---Yes.

25 High price – would you not agree?---It was a high price.

But a generous position to take for the chairman?---As I said I was recommending it, yes.

30 But just – I know you were recommending it. We've been through that. A generous - - -?---Yes, it's generous. Yes, it's generous.

Yeah, because you see, if you're trying to retain somebody, all the advice whether or not you saw it so far is, I suggest to you, concerned about giving these people an
35 outclause if you're really trying to retain them and then they get paid to the end of their term for going home and sitting on the seat?---I take your point.

Yeah. Okay. Anyway, you say in the next paragraph, "These recommendations are not made lightly to the board." That means, doesn't it, Tuttle's written for you or
40 you've taken responsibility for same?---I take responsibility.

You've thought about it?---I take responsibility.

Yeah. I know you do. And in that sentence it means, don't you think, to convey to
45 the board, "I've thought about this and this is a serious contention"?---Yes.

5 And then the next paragraph down, “In the attached correspondence, the current executives set out both their current and future concerns in terms of security for themselves and their families.” Now, funnily enough, I thought when an employee is concerned about their security for their family they’re wanting security in the sense of keeping their job, not losing it?---Yeah. I think it goes without saying that they were going to – they would have lost their jobs on a change of government.

10 Okay. So your thinking, in saying that was security means we’ll give them a whopping payment so they don’t have to come to work?---No, I was thinking of security through til we finished it – finished the program.

15 No, no. You’re not, you see, because you just said it. You said they were going to get the chop anyway so - - -?---They were going to get the chop at a change of government. We were looking for – for security to get – to get all our plans through.

Yeah?---Whether it be December or March of whenever it was.

20 But the point is, you see, if you look back at your recommendations, you’re saying you can go home if the state government changes and you’re going to get paid right to the end of your term, July 2013?---That’s what I’m saying, yes. That’s what it says there.

25 Okay. Now what, in that recommendation, is in the best interests of RQL?---I considered – well, we always considered – well, we wanted to retain them to get – to get this work program through.

30 Okay. You must have changed your mind when he came in, Mr Dunphy, and said, “Hey, the election could be as early as September”, surely?---Yeah. Yeah, we got Mr Dunphy’s advice.

No, no, no. That wasn’t the question. And changed your mind about the generosity – holy smokes, we’re going to keep these people only til September at – at the earliest?---Yes.

35 And I’m going to be paying them til July 13?---Yes. We changed our mind, yes.

So you did change your mind?---Yes.

40 Okay. Who changed your mind? How did it come about to change your mind?---I think – by taking – taking on board the advice of Mr Dunphy.

Okay. We’ll have a look at that. Now, going down to the next paragraph – it’s a two-line - - -?---Page?

45 Page 12, please.

COMMISSIONER WHITE: The same page, Mr Bentley, that you’ve just been on.

MR BELL: Same page. It says, “By way of substance these four executives collectively bring to this organisation over 40 years experience in the racing industry”. So the promotion is that they’re valuable to the company, aren’t they?---Yep.

5

And valuable to the industry. Did you consider that it might be an idea to incentivise them to stay?--- As I said before – I mean, we looked at the situation. The clause for the materially adverse change was virtually, in our view, non-negotiable. We wanted to retain them for that period of time. And I can’t move away from that position.

10

That is the position that we took, right or wrong.

And over to the next page at the foot of the page, you record over the next six months there are a number of activities to be undertaken by these executives. These include ensure compliance with governance requirements under the Corporations Act and Racing Act through an audit process. I think that goes on endlessly regardless; doesn’t it? For the six months?--- Yes. Yeah.

15

Okay. Well, that’s a bit funny that one would say over the next six months; wouldn’t you think?--- Yeah.

20

Because that’s been their task all the way through, and will be the task forevermore?--- Yeah, as I say, this was put together – I mean, to demonstrate what they were going to do and what they had done.

25

Okay. And then the second one is finalise the strategic plan for the industry?--- Yes.

You see that? Now, looking at this day, this is the 20th of July two thousand and - - -?--- That one is dot point. I’ve got you, yeah.

30

Okay. This document’s 20 July 2011. The plan was finalised by then; wasn’t it?--- No.

The plan was - - -?--- The plan wasn’t finalised until – the plan might’ve been finalised but getting the money back was as important from the money we’d spent.

35

I understand?--- For the business cases.

Yeah?--- The plan – even at the time of the election, the business plans had been finished.

40

Yeah?--- But we hadn’t received all the money back. There was one or two, I think.

Yeah, yeah?--- Maybe one, I don’t know. I can’t remember.

45

Anyway, I think I’m right then, what you’ve just said. Finalise the strategic plan for the industry. It had been finalised. I understand the business cases - - -?--- The – sorry. The strategic plan is different to the infrastructure plan.

Yeah. Yeah. So I'm suggesting to you the strategic plan for the industry had been finalised by the 20th of July 2011?--- I'm – I'm not sure.

5 Okay. Review the agreement with the Racing Science Centre, with a view to providing a report to the board that ensures RQL's analytical needs are met in a cost effective manner. That's normal business; right?--- Yes.

If you wish, please go through the other items set out there. But somebody's taken a lot of time to promote the position of these valuable executives?--- That's right.

10 Were you involved in that?--- No.

Okay?--- I was involved - - -

15 So that - - -?--- I was – from what I can recall, I was involved in originating the thing and telling Malcolm to get himself organised and stop mucking around and doing everything verbally. Put in writing, justify why this should happen.

20 Okay?--- And I'm happy to recommend that.

Okay, I've got it?--- Virtually those – not in those – that's probably the words they used.

25 Yeah. And then if you go to page 15 please, resolutions. The board to rescind the board resolution of 6 May '11. You see that?--- Yes.

30 Okay. And then number 2 is on page 17. The recommendations for Tuttle, Orchard, Brennan and Murray in accordance with what appears earlier in the paper. See what I mean?--- Yes.

35 Okay. And 3, employment agreements for Adam Carter and those other people mentioned. 4, Wade Birch. And 5, Clayton Utz to review the Norton Rose advice. And on the basis there are no material concerns, the board to authorise the chairman to effect all agreements in accordance with the above resolutions?--- That's correct.

See that?--- That's' what I was referring to before.

40 Okay. And if Clayton Utz had not agreed with a particular recommendation of Norton Rose, you would not have gone ahead with it?--- I would certainly – it's a hypothetical. But I would think that – I mean, if Clayton Utz would've raised an objection with a red light saying no, don't do it, we wouldn't have done it.

45 So I think now I've got it right, at least on your evidence, the Norton Rose advice received in draft that I've shown you so far a bit earlier, you don't think you saw before?--- I don't think so, no.

Okay. And secondly, the board paper signed by you with your recommendations was really you putting up Tuttle's wish list?--- Yes.

5 I see?--- Tuttle justifying what he was trying to put to the board.

Yes. So I'm think what you're saying is that you're standing away from that advice from Norton Rose on the basis that you didn't see it so you didn't take it into account?--- I'm saying that I didn't see that draft advice, yes.

10 So obviously didn't take it into account?--- No.

Somebody's obviously not given it to you and it must've been conscious?--- Well, I haven't seen it. That's all I can say.

15 But you'd have to agree, it's not likely that the legal officer's not going to give something addressed to you as important as legal advice concerning her pay?--- Well, I can't speak for her. But it would be unusual, yes.

20 Okay. And – okay. Now, the documents for some reason that you haven't got annexed but I have annexed are - - -?--- Could I just add one thing, counsel?

Yes, of course. Please?--- For the court. The way that is presented is fairly normal if someone's looking to do something or wanting something.

25 Yeah?--- The way the board paper with the resolutions at the back [indistinct] . So there's no ambiguity.

30 Yeah?--- If you want to go ahead with this, that's easy to change and fix if it's not right.

Yeah, okay?--- So there's nothing – it's not a board paper that's set in cement, it's there for discussion. But if you agree, that's the story.

35 Absolutely.

COMMISSIONER WHITE: That's a fairly usual format for a board paper in my experience, Mr Bentley. You put the clear resolutions at the end and if they happen, they happen. But if not, then they can be fixed. No? Not in your experience?--- No, I don't – I'd have to check. But that's how we used to do it, anyway.

40 MR BELL: Just have a look at this, please, Mr Bentley. I'm sorry it wasn't attached. I'm able to confirm to you – and one for the COMmsisioner, please. I'm able to confirm to you that one of the documents attached to this board paper is attachment 3, which is the Norton Rose advice which is there before you now of the
45 20th of July 2011?--- 20th of July 2011.

Yeah?--- Yes.

Okay. And this advice was attached to your board paper?--- Yes.

You see that?--- Okay.

5 So you remember this one?--- Can I read it?

I beg your pardon?--- This is not the draft advice, this is the - - -

No, this is the real deal?--- Yes.

10

You remember this one?--- Yes, I do.

How do you make the distinction so quickly? That was good?--- Well, because I know that there was only two advices that I saw that went to Norton Rose. And I had

15

Coming from Norton Rose?--- Norton Rose. I had the experience - - -

20

I think there were three?--- I had the experience of ASIC that was backwards and forwards and I wasn't sure and I didn't know which was which. But I sort of made a note of it.

Okay?--- And I might've even written to ask Mr Grace to write to ASIC to tell them that.

25

Okay. So this advice from Norton Rose dated 20 July is amended from the draft one. Did you know that?--- No, I didn't.

30

Okay. Well, you see, what happens is Shara Murray receives the one I showed you that was stamped draft. And then what we know is on the 20th of July, this final one is signed off by Norton Rose and it's got lots of amendments to the first one?--- Yes.

Okay?--- This is the one – I've seen this one.

35

Okay. And this one, which you gave to – you attached to the back of the board paper, was one that you considered, no doubt, at the time?--- Yes.

Did you consider it?--- Yes.

40

Okay. And then have a look at 1.1. "We have been instructed to advise the board."?--- Well, that's incorrect.

Okay. And then 1.2, "The board has instructed us to advise on options."?--- That is not correct.

45

Okay. "In this" – and it's 1.3(1). "In this" - - -?--- I – I – I don't know where they got the idea that they were instructing the board.

Okay. I suppose the part where you come in is you're giving this one with all the errors in it to the board?--- The errors?

5 The errors?--- I'll put it this way. I didn't see that they were errors. I didn't take any notice of it at all.

No?--- Of the – of the errors of the board, the board, the board. No.

10 Okay. Anyway - - -?--- And I think if you asked the other board members what was their impression, who was working for who, I think you'll probably find – I'm not going to – I suppose – you'd better ask the question.

Okay, I understand?--- I won't ask the questions.

15 You know, there's no difference between us – that when the executive went to Norton Rose, whatever they said, they said. You know, we're briefing you to advise us because we're going to take it back to the board?---Yes.

20 But the man comes out with this – you see it and nobody corrects it, you see?---Look, I can't say that I took – took notice of the board – the board.

The really confusing thing for some objective observer coming on later is that you and the board acted on this advice in this form?---But didn't – didn't this also go to Clayton Utz.

25 No, hold on. Just the board. The person who was getting the advice received it in this form and acted on it in this form?---Yeah, I think - - -

30 It's clear, isn't it?---I think I said to you before that I mean, that the – the employees wanted a clause such as – such as was in here and that was a deal breaker if they didn't get it. And I – and I attached this with the board paper to give the board an idea of what – what do they want to do.

35 Yeah. Okay. So I don't really understand that. I think what you're saying to me is, if Norton Rose wrote something in here, they were writing what the employees wanted?---Norton Rose – yeah, this is the advice that Norton Rose gave to the employees. I saw the advice.

40 What – I don't get this at all, Mr Bentley. We've got to address this. What interest is it of yours what the employees advice was that they received rather than what their demands were?---We were paying for the advice and I expected to see the advice.

45 But let me try and make the model easy so you can discuss it with me. What interest is it to you, when you're selling Crossmore, what the purchaser has been told by his lawyer. What do you care?---I don't.

Well, that's what I'm saying. Well, why do you guys care on this board what these silly employees have been told?---Because we were keen to get a deal done with the employees so we could get on with work, get the – and keep things rolling. It was pretty tense at the time, I can assure you.

5

I have no doubt?---I mean, we didn't want to lose those employees.

All the more reason to talk sense with me about why you're looking at the advice you say they got that's addressed to you – but let's forget that part. Why are we looking at this silly advice if it's got nothing to do with advice to you?---Well, this advice to the employees is what, I guess, the employees wanted, right?

10

Yeah. Okay. Got it. I got it. So why didn't you just ask them?---And we put it – but this wasn't the end of the situation. I mean, there's – had a few more hurdles to jump after this.

15

Okay. But what advices are they giving the employees that you care about?---Well, we wanted to know what the – what the advice was to try and get – get a deal done.

Yeah. But do you see what I mean? When you go and get advice, you're saying to a lawyer, is this legal? And he says, yes, it is. And then you go back to the person you're negotiating with and say this is the way I want to do it?---If you want to do it in a – strictly in those terms. What I'm saying in – in the cold hard light of day we needed to get a deal with the employees. This is what would get a deal with the employees. It's – it's in there. Okay. And it's always a caveat it has to go to Clayton Utz. Caveat – I think that's the right word, isn't it?

20

25

Yeah?---Thank you.

It's really odd, you know, honestly, Mr Bentley. Don't you think it's odd that when we come later in this transparent corporation running stakeholders business, you're telling me that this advice given to the board that says, board we're advising you, isn't to be read that way and not only that, that the recommendations in the board paper signed by you, aren't your recommendations. I just don't get that stuff. I've never seen that in my life before in all the time I've been practising in this job. That's crazy stuff?---Well, I think I've explained to you earlier in the piece what we were trying to achieve. We were trying to get a deal. At the end of the day we were hoping to get the two sets of lawyers together. Nothing – there's no deal done at this particular stage.

30

35

40

Okay?---Do you wish me to give you this back?

Oh, yes please. Thank you very much. Would you mind going to 210, please. This is – I hope this is the board minute of the 20th July 11. Is that what you've got?---I have that.

45

Okay. And what I see at the head is: in attendance, Malcolm and Shara – Malcolm Tuttle and Shara Reid?---Yes.

5 And then if you look at 2.1, senior executive staff, “The board discussed in camera” – and I think that means the two staff go out?---Correct.

Okay. “At length. The papers that were distributed for consideration.”?---Yes.

10 “The board requested Ms Murray to obtain salary ranges of comparable positions in both Racing New South Wales and RBL. The board recognised that only ranges would be available as confidentiality clauses would apply?---I remember that.

15 Okay. Why were you going to check that out or recommending that she check it out?---I don’t know who – I don’t know which board member recommended it. I thought that was a reasonable way – way to look at things. I think the board thought that was a good way to do it.

In the end you did it, didn’t you?---I did.

20 Okay. You say you did but funnily enough when you came to resolve at the board upon the uplift in their salary it was 30 per cent. Wasn’t it?---Yes.

25 And you’d already recommended 30 per cent before this board meeting?---Yes, I – I had. In that – Malcolm’s paper, yes.

So that’s a funny thing, isn’t it?---Oh, I think 30 per cent in some of those instances was less.

30 Yeah, I’m not arguing with you?---It was still less than what the comparable salaries are.

35 I’m sorry. That’s not my point. I’m sorry. I didn’t ask it properly. My point is that before you arrive at this meeting you signed off on a paper that says board I recommend 30 per cent?---I did.

Okay. After this meeting – after somebody raises please check out the market we end up back at 30 per cent. Do you see the point?---Yes, I see the point.

40 Okay. That looks like your recommendation before the meeting and what happened after the meeting is identical?---I – I’ve got no explanation for that.

Okay. Let me ask you another question then. You know how the code of conduct for RQL dictated that there be transparency?---Yes.

45 You remember that. Would you show me the documents or something – a record or anything showing me the results of your inquiries down south?---There is no – it was verbal.

Beg your pardon?---It was verbal.

Yeah, I know it was verbal but where's your notes to it or some recommendation you gave to the board?---I don't keep – I don't make notes.

5

Is that transparent?---It's probably not transparent on your – on your definition.

Well, what about on yours? What about on your standard?---Well, I thought, that I mean that, making the inquiries that I did from Mr Andrew Harding and others that I could speak to - - -

10

But how do we know that? I mean, what's confidential about you keeping a record. Afterwards, you say to the board, look I asked Harding and the range was 10 to 12 and I asked so-and-so in New South Wales, it was 12 to 14. Here's a contemporaneous note now so that nobody can ever say later that I didn't do?---In hindsight I should've done it. I didn't do it.

15

I know. I know. But anyway, okay I see. So anyway there's the board discussing it and the third paragraph, "The board noted the advice from Norton Rose and unanimously supported the intent of the advice received. Board members considered it appropriate that Clayton Utz review Norton Rose's advice." Okay. Are you thinking that where that was signed off by you as accurate it should've said, "The board noted the advice given to the four executives by Norton Rose about their position", rather than what it appears to be, "The board noted the advice from Norton Rose which was addressed to the board as advice to it"?---If I was a lawyer I would've written it that way but.

20

25

Okay. Okay.

COMMISSIONER WHITE: I just have a quick – I know that, Mr Bell, when you focused on the board in the Norton Rose advice and that you didn't pick that up – but 1.3 is a curious piece of - - -?---1.3?

30

Indicate – 1.3 and you've given it to Ms Cunningham. And that – that's the Norton Rose advice that Mr Bentley just handed back to you?---Yes, your Honour.

35

Yes, if you have a look on page 1, 1.3 the – Mr Proctor says, "In this letter we have considered the general obligations imposed on the board."?---Yes.

"Considered the specific requirements to avoid breaching the act in respect of any benefits." And then 3 – this is what it says. That is so plainly directed to the board. Why would they be writing to the executives about breaching the Corporations Act, for example?---Well, the way I read that is they're advising the employees that they've taken into consideration the board's situation.

40

I see?---That's how I've read it.

You've read that as letting the employees know that there are limits to their demands and these are the boundaries?---Yes.

5 Something along those lines?---We – we also have obligations. That's how I read that.

It's curious that they don't add something more about executives - - -?---Your Honour, I can assure you that at all times we thought that Norton Rose was acting for the executives, irrespective of the letters and - - -

10 Right?---And I – okay, it's probably a – probably sloppy.

Perhaps you read what you want to – expect to find there, Mr Bentley?---Pardon?

15 Perhaps you read it the way you expect it to be?---No I - - -

Sometimes the mind does these tricks?---Well, that's how I think it was, your Honour.

20 All right. Thank you. Yes.

MR BELL: Look, one thing you said to the commissioner just now is a matter of importance, Mr Bentley. Was this the case, really: were you going to lawyers to seek legal advice to find the outer limits of what the board could offer to these four executives and go to there?---No. At all – at all times we were attempting to get a deal. We weren't going for outer limits.

25 Well, if that's the - - -?---We just wanted – we just wanted to get a deal that we considered was reasonable and fair and would retain them and put to bed their – their – their problem and their worry about them being chopped.

30 Okay. So what I don't see, Mr Bentley – please help me – where somebody has recorded what the demands are of the board in specific terms: “We will leave unless we get”, or something like that?---I don't think there's – that's written anywhere.

35 Okay. Or the board making an assessment like this: “These staff are incredibly valuable. We need them, but it looks like we're only going to be able to keep them till the election. How much will we pay for that?” – that sort of thing?---I don't – I - - -

40 You know what I mean?---Those sorts of things were in – were certainly in discussions, but not recorded.

45 Okay. That's not very transparent, you see, when you're looking back on it. I think you see that?---Yes.

Okay. So we're at the board minute of the 20th of July. If you don't mind turning to page 2, please. I'm sorry. I've misled you. At page 1, at the foot – D&O insurance?---Yes.

5 We talked about this earlier, and I won't go back over it much. "Murray informed the board that she had been working with AON on the policy review for D&O Insurance" – that's insurance that would cover them and you?---Correct.

Okay. And she advised certain things, and then it says, "Ms Murray be authorised to
10 accept the offer from ACE Insurance and for Clayton Utz to draft new deeds of indemnity for each director." So in that sense, the team were working together. What I mean is you were all working to get a policy, that RQL would pay for, for them?---Yeah. That's the normal course of business.

15 Yeah. I understand?---I mean – I mean this was fairly contentious. We understood it was fairly contentious and we wanted to make sure it was right.

Well, I think the point is here, "We wanted to make sure if we mucked it up we
20 wouldn't have to pay any money out of our own pocket and RQL would pay for insurance to cover it"?---Well, we never set out to – we never set out to muck it up. We – why – why would we want to muck it up?

I'm sorry. I thought that's what you were saying to me. When I said to you, "You
25 were working together with D&O Insurance," I thought you were meaning, "Yes. We were, because this was fairly contentious" - - -?---As – as a normal - - -

- - - "and we might be wrong, so we needed insurance to cover us"?---And as the
normal course of business, we would review the D&O insurance at this particular
30 time. I think that because of – this is reasonably contentious. We understood it was contentious. We read the advice from Clayton Utz - - -

Yep?--- - - - and – and Norton Rose, and I think it would be wrong if we – we didn't
look at that situation.

35 Okay. Wrong - - -?---But we didn't intentionally set out to say this is wrong, but we'll get ourselves covered.

Okay. When you say it'd be wrong not to consider it, you're right – wrong because
40 you might end up being liable personally and pay out of your own pocket, rather than RQL paying insurance to cover you. That's the point?---Well, that's the point of D&O Insurance.

And frankly – yes. Exactly. We're at one. So what you're considering is, "This was
45 pretty contentious. I personally – Bob Bentley – want to make sure that I'm not going to be digging into my pocket" - - -?---Not - - -

- - - "under any condition"?---Not Bob Bentley per se.

Well, Bob Bentley and the others. I'm sorry?---Yeah.

And Shara Reid?---We're making decisions all the time - - -

5 Yeah?--- - - - and this is one decision, and we – we knew, right, that it was fairly contentious. We got the legal advice.

Yeah. Yeah. It's right underneath it, you see. 2.1 Executive Staff, 2.2 D&O Insurance, and on 1 and 2 the truth is, "We were working as a team, weren't we?" –
10 staff and directors?---Everybody – everybody gets normally – normally covered with the D&O Insurance policy.

Yeah. Yeah. And so my point is, to finish it, "If we're wrong about it, if we've gone too far – because we know this is contentious – we're" - - -?---Well Counsellor,
15 that's why - - -

Well, wait a sec. "We're covered personally"?---Yeah. Counsellor, that's why we're taking legal advice to try and get this done properly.

20 Look, I know. I know?---All right. But there's always - - -

"But we were going" - - -?---There's always a case as a slip-up and you can see here now there is a slip-up. I mean it was – certainly wasn't intention – intentional. The – I mean your Honour's asking about the board and it looks like whether the board
25 was getting advice or the – or the employees were getting advice. I mean that was – this is a slip-up.

Okay?---And I guess that's what D&Os about.

30 Okay. It is. Yeah. Okay. Let's turn over then, please, if you don't mind, to 211. Just to refresh your memory on this one – and I point out that this was from Mr Dunphy to you. Do you see that?---Yes.

Okay. 1st of August, which is three days before – sorry. On the 5th of August we
35 offer these four executives new contracts. So before that, Dunphy says, "We've carefully reviewed the terms of the Norton Rose advice." You got that much?---Yes.

"As you will see, we think that most of the suggestions that have been made would not be unreasonable to adopt. There are only three areas where we think some form of variation is needed." Now, let me ask you this: if Clayton Utz advised against accepting something that you thought – in Norton Rose's advice – that represented the wish list, would you accept it anyway despite his advice?---No. No.

Hey?---No. If they said don't do it - - -

45 Okay. Well, if they - - -?---And at no – at no stage did anyone say don't do it.

Okay. That's what I thought, you see, because you're looking for the point at which it's tipping over into illegality, aren't you? "Don't do it" is into illegality. That's what you're looking at?---Well – well, yeah, absolutely. If – we wouldn't do something if – if the - - -

5

No?--- - - - if you've taken advice and they say don't do it.

Yeah. Not commercial, just illegality is the limit?---No. I - - -

10 Dot point 1: "In relation to the expanded trigger points for the right of the four executives to terminate their contracts under clause 15.3, we would suggest that these all be limited to matters that significantly affect the role and duties of the relevant executives. We therefore do not think that a change in the state government alone should be included as one of the triggers"?---Yes.

15

Did you accept that advice?---No. We didn't.

Okay. Why not?---Well, we looked at the Norton Rose advice as well.

20 Yes?---All right. And subsequent to this I had a conversation with Barry Dunphy about it.

I see. And did he change it?---I just forget the – the terms of – what he actually said - - -

25

Okay?--- - - - but he certainly didn't say do not do it.

But it sounds like if you're ringing him up about it you must have been pushing it, because he's giving you the advice there. Why would you need to ring him?---No. I rang – I rang up Barry - - -

30

It's pretty clear?---I rang up Barry and said Barry - - -

Yeah?--- - - - we've got your advice. We've got Clayton Utz's. They're reasonably close apart from a couple of issues, and I think at some stage he said we're pretty close - - -

35

Okay?--- - - - in everything. I said well, we're thinking of adopting the Norton Rose trigger clause.

40

Right?---I read – read it to him and he said well – he said – he didn't say no. Don't do it.

I don't get this?---Well, no. He didn't say – I mean it was - - -

45

I don't get it?---It was up to him to say - - -

He's got the – he's giving you the advice. Look at it?---Yeah. Okay.

It's – why are you ringing him and - - -?---I – I rang him up - - -

5 Why are you ringing him? I don't get this?--- - - - to say - - -

You're running a corporation that other people's money is run by, and the advice comes in for the second time he's given advice. But this time he's looking at Norton Rose and he says, "Do not do that." Why is there any need to ring him? I thought
10 you were on the side of Racing Queensland?---Well, we wanted to get a deal with – get a deal done to get – get – put this to bed. I rang Barry and we had a discussion about it. I said I'm thinking of going to the board with – with an amalgam of what – of your advice. He did not say do not do it.

15 Okay. Would you go down to the last - - -?---That was later in the week, counsellor.

Okay. We'll come to that, but it's just – I don't understand at all at the moment why, in point 1, when you asked the great Clayton Utz for advice on the Norton Rose proposal and he says, "Don't do it," you need to make a telephone call. I don't get
20 that?---Because I told him what we were thinking of doing.

I know. Which was - - -?---I – we were going to - - -

25 Which was to go against the advice?---We were going to go to the board.

And go against the advice?---We were going to go the board. This is what we're doing – amalgam of his advice - - -

30 Okay?--- - - - and – and Norton Rose and – and as I said before, if the two lawyers would have been prepared to sit down the result would have been different.

Okay. And then dot point 2: "There is a potential complication if an early state election were to be called, say, in the two next months." So it must have been clear then in your mind that what we have is on the 1st of August the lawyer, Clayton Utz,
35 saying to you it's the 1st of August today, Bob. Within – I'm sorry – in the next two months there could be a state election. You should take that into account. You see?---Yes.

40 Now, commercially – forget about the legal side – commercially, that must be a relevant consideration for the best interests of Racing Queensland, surely, in how much it will pay these people?---I think we took everything into consideration before we made the recommendation.

45 Okay, and then in the last three lines of the - - -?---I'm sure – this is the final advice? There's no other advice than this?

No, there's no advice. You did call – we'll show you, we'll go to it. In the last three lines, "However, an early election would, I think, create a difficulty for the board, as under the Norton Rose formulation with the impact of the 30 per cent uplift, would see the four executives get a very large windfall." See that?---Yes.

5

Now, that's the area where, after your telephone call, you are able to get them to offer another solution, which was a cap - - -?---Yes.

- - - of 12 to 14 months, and you selected 14 months?---Well, I - - -

10

Okay?--- - - - that's what I was taking to the board, yes.

Okay, let's go to it: 212, please?---Yes, we adopted the cap. Where are we reading, Counsellor? Are we – how far are we going?

15

I'm just going to start at the second paragraph on the first page of the advice of the 1st of August. "We have previously in this context provided advice on the legal obligations that are owed by the board members, particularly under sections 181 and 182 of the Corporations Act. We will not, for the purpose of this advice, repeat those earlier observations." That means, doesn't it, take this page with what we've given you already in relation to those obligations?---He – 181 and 182, yes, he did tell us. We were aware of it.

20

Yep, and then if you go down to the Executive Summary, "A. The proposed 30 per cent increase in salary does not appear to be unreasonable in all the circumstances." See that? And then, "B. However, the board needs to carefully assess whether the flow-on effect of the 30 per cent increase into the TRV for each of the four senior executives for the purpose of their relevant termination payments under clause 15.3 of their respective employment contracts. It is in all of the circumstances reasonable, and in the best interests of Racing Queensland." And you know why you were saying that; because a lawyer can't make that call?---That's correct.

25

30

Yeah?---But he was telling us you need to assess it.

35

Yeah, and then over the page, you see four lines down, "Our reason for raising this point is that the timing of the next state general election is really quite flexible and uncertain. In our opinion, the next state general election could be as early as September, or as late as June." Now, my proposition to you is, on the 1st of August, that to me would mean that I've got to take into account a risk that in four weeks' time or more these people would get all of this pay, don't I?---Yes.

40

Okay, and what he's saying - - -?---Well, that's a call we had to make at the time ourselves.

45

Yeah, that's right. That's a call you had to make at the time in the best interests of Racing Queensland?---Yes.

5 Okay, and then the next sentence, “Our concern is that if the election is held very early, e.g. October ’11, and this then led to an activation of one of the clauses 15.3 triggers, that the four executives would then become entitled to a termination payment of 20 months at the increased 30 per cent level, which, in the terms of their current salary, would be an equivalent of a 26 month payment?---Yes.

10 Okay, and then in c, in the third line, “However, we recommend that all of the additional triggers ought to have a significant impact in the role or duties of each of the four executives. We would not recommend that one of the trigger events that activate payment be a mere change in state government alone, as that event of itself may or may not have implications for the employment of the four senior executives.” That advice was rejected, that part?---Yes.

15 Okay, and then, as you said, what he recommended – going over the page, please, under the heading 2 on the fourth page, looking at the right-hand corner – what he was recommending in relation to the 30 per cent relevantly here, as in the second paragraph, “Therefore, we believe that 30 per cent uplift in salary as a concept is not an unreasonable approach. However, as we have previously advised, making these retention payments after certain timelines or milestones have been met by the employees would give rise to an overall sense to a lower risk profile from the board’s perspective.” Do you remember that?---Yes.

25 And then down in what is – looks like E, “That the board in the current circumstance need to be satisfied that the overall increase in salary for each of the four executives, together with the associated increase in the entitlements regarding relevant total termination payments under clause 15.3 of their employment contracts, and under general – any general redundancy scheme, is, when one weighs up all the relevant factors, both reasonable and in the best interests of Racing Queensland?---Yes, we did that.

30 Now, that’s not a lawyer’s call, is it? That’s the call of the board?---No, that’s a commercial call.

35 So what he’s pushing back to you, I respectfully suggest, Mr Bentley, is that insofar as there’s a risk about the election coming early and you’re giving them the uplift of 30 per cent, it’s going to translate into the amount they take away if they elect to go?---Yes.

40 And yet we also know that he advised against giving the government change as a trigger?---He did.

It had to be something adverse to their work?---He did.

45 Then over the page on page 5, please, the second-last paragraph commences, “One other area of difficulty”, and then the second sentence, “Under the constitutional electoral framework in Queensland, the next state election can be held as late mid-

June '12. On the other hand, it is generally accepted that the Governor will grant an early state election if the request is made by the Premier within the next six months.”

COMMISSIONER WHITE: Within the [indistinct]?

5

MR BELL: “With the last six months of the three year parliamentary term. On this basis, the Premier could ask for a state election to be held as early as September/October '11.” So he’s raising that as a concern for you to consider, isn’t it?---Yes, and we considered it.

10

And then on the next page, without completely boring you to death, under heading 3, “As we have already advised, we have serious reservations where an employer triggered termination under 15.3 of the current employment contract would give rise to a genuine redundancy situation. This is because the focus of the clause is on the termination of individual employment arrangements, rather than the redundancy of the relevant positions i.e. on the basis that they will then not be required as part of an ongoing structured Racing Queensland.” And I think in the last sentence he makes a point that you had earlier agreed on, and then he says in the next paragraph in the second sentence, “One observation would be that the trigger ought to have a significant impact in the role of duties of each of the four senior executives. We would not make a – recommend a trigger that is activated by a change in the state government alone as that event may or may not have implications for the development of the four senior executives.” So what was thought by you about giving these people that trigger as being in the interests of Racing Queensland?---Well, I go back to what I originally said: that we are to – by a commercial decision. There was certain things that I don’t want to go – go through them again that we needed to get done and get finished. We needed those executives. The change of government trigger was necessary to get a contract.

15

20

25

30

So - - -?---And that is the view of the board.

That means, necessary to get the contract, necessarily means they would not stay unless they were given that?---That was the belief that we were under, yes.

35

Okay. So you’re saying, are you, that somebody – sorry – are you saying that somebody, or all four of them, expressed that to you?---What they expressed to me – I mean, that they weren’t going to continue on here and wait around to be sacked, that if they couldn’t get that sort of agreement that they would immediately commence looking for a job elsewhere. That’s what was said.

40

Okay?---That provocation.

Now, let me suggest to you something: That means that the chairman hears from four staff – senior staff – that - - -?---Not only the chairman, Counsellor.

45

No, you’re right. I’m just referring to you?---Other board members have come to me too and said we’ve got to do something about this.

Absolutely right. Let me just talk about you first because I can only talk to you at this time. That means that when the chairman receives that position, he appreciates that without giving these people 12 to 14 months pay after termination which will occur on the change of government, he can't keep them; doesn't it?--- Yes.

5

Okay. So that means that that price of 14 months was going to be paid for whatever time was left before the election?--- That was the call that we had to make, yes.

Okay, I've got it. I suggest to you that that is outside any possible reasonably position in the best interests of Queensland Racing?--- Well, we didn't adopt that.

10

And not only that, I suggest to you that you did not have good faith in reaching that view that it was in the best interests of Racing Queensland. It couldn't have been?--- I disagree with you.

15

Okay?--- I'm -- we were there at the cold face. We knew what was going on.

You know, Mr Bentley, there was a conference on the 14th of June 2011 with Mr Dunphy. And Shara Murray and Mr Tuttle went along to the offices of Clayton Utz and they had a discussion. And in the discussion, they informed Mr Dunphy that the board has concerns in relation to this question of employment. And one of the things that Dunphy was told was that the board wants a poison pill if there's a change of government?--- That's just preposterous and not correct.

20

But that's what he was told; you see? He's got a contemporaneous diary notes of that?--- That is not - - -

25

Why in god's name - - -?--- That is not --

Why in god's name would Shara and Mal tell him that if it wasn't true?--- Well, I don't -- you'd have to ask them because that is not true. That has not been said by myself or any board member at any time.

30

It tends to indicate you see, if one accepts that they said it, that you had said it to them or that board members as a group had said it to them. And, in fact - - -?--- Denied emphatically, counsellor.

35

Pardon?--- I deny it emphatically.

Okay. And in fact, you see, what in fact happened was that. The all left as soon as the government changed, and paid a big price for them to leave too?--- Well that -- I mean, I just deny that comment. That's the comment you're asking.

40

What's a poison pill anyway?

45

MR WILSON: I'd invite counsel assisting, commissioner, to identify where in Mr Dunphy's statement he says he was told that.

COMMISSIONER WHITE: No, it's not. It's in his contemporaneous diary notes.

MR WILSON: Yes. But it was put to Mr Bentley that these two people told Mr Dunphy that. The notes in his diary notes, that might be his own words.

5

COMMISSIONER WHITE: Point taken, Mr Wilson.

MR BELL: Mister – what is a poison pill, Mr Bentley?

10 MR WILSON: I repeat my request.

COMMISSIONER WHITE: Yes. I am assuming Mr Bell will take it on board and deal with it when he's got his answer.

15 MR BELL: Yes?--- It's not a term that I've actually heard before.

MR BELL: I see?--- But I know what – I know what the connotations are. That you put some – put a roadblock in for somebody who wants to take over a company.

20 Yeah. Yeah?--- And it's – it's a blocking – like a blocking stake or something. Or if they've got a gold mine, they've filled it up with arsenic or something like that. That's - - -

COMMISSIONER WHITE: Or leave an empty shell?--- Yes.

25

Nobody left?--- Yes.

Place is empty.

30 MR BELL: Now, Mr Bentley, I said to you that the contemporaneous note of Mr Dunphy's records "Board wants." I'm not – I'm corrected. But what Mr Dunphy's statement says, Mr Wilson reminds - - -?--- Can I stop you there, counsellor?

35 Yes, of course?--- The board never wanted anything. The board wanted a deal done to get on with the job. That's what the board wanted.

All right. So you haven't heard of the concept, before the 14th of June, of poison pill in a takeover - - -?--- I'd never heard – I'd never heard that term used before.

40 Okay. Had you heard it before I raised it just then?--- I think it might've been in ASIC.

Okay?--- I'm not sure. I think they did ask me that.

45 Okay. And - - -?--- Or it might've been the Auditor General, I don't know. One of them, anyway.

Okay. So in any event - - -

COMMISSIONER WHITE: Could you just address Mr Wilson's concerns that Mr Dunphy's note might suggest that a particular person expressed that view?

5

MR BELL: Yes.

COMMISSIONER WHITE: In other words, let Mr Bentley know how it's in the note. He may not have been shown it by his solicitor.

10

MR BELL: Okay. Would you mind having – I'll give you a copy, Mr Bentley, just so you're both clear of the diary note and the part I referred to.

MR WILSON: Commissioner, my point is we've got the note.

15

COMMISSIONER WHITE: Yes, I have it to.

MR WILSON: But it was put to Mr Bentley that either Ms Reid or Mr Tuttle - - -

20

COMMISSIONER WHITE: I understand that. And - - -

MR WILSON: Going to the note's not going to reveal that.

MR BELL: I think the point is – if you have a look at the note, Mr Bentley, I'll tell you the position. You see the note has got a number 2 on the left hand column?--- Yes.

25

And then the second – sorry, the first dash says what looks like B something D?--- The board has concerns about the something.

30

Yeah, underneath that. The next line, please. Board wants - - -?--- Wants a poison pill.

- - - a poison pill if there is a change of government; you see that?--- Yep.

35

Now the point Mr Wilson makes, as I said to you, that it was either Tuttle or Murray who said that. When, in fact, Mr Dunphy records that it was his language. You see what I mean?--- Yes.

40

Okay?--- So actually - - -

COMMISSIONER WHITE: Or that it might have been; isn't that – isn't that - - -

MR BELL: Might've been his language.

45

COMMISSIONER WHITE: Yes.

MR BELL: So now - - -?--- Yeah, he - - -

5 - - - that we're all clear on that, my point is that whatever was said to Mr Dunphy, he had a clean slate before they walked in the door. But the time he finished this diary note, his appreciation of what the board's position was is that they wanted a poison pill if the government changed?--- Yeah, well that's not correct. I don't know how – how that is construed. That is not correct.

10 Yeah?--- I mean, that'd just be ridiculous to try and do something like that.

Yeah, it's incredible; isn't it? Because if you had appointed Tuttle and Murray to go and speak to the lawyers acting for Racing Queensland in a negotiation about their pay, they might be tempted - - -?--- One - - -

15 - - - to skew the instructions, you see, their way?--- This was going – this, I think, was going to talk to them – sorry, I've jumped ahead here. That is correct. They were in there to try and sort something out with Dunphy for their own pay, yes.

20 Well, I think - - -?--- I can't speculate about that. But all I know is that that is just not correct for the board.

25 Just – let's get it straight what they were doing. You knew that they were going and seeing Racing Queensland's solicitor to give him instructions to provide a legal advice; didn't you?--- I went there – sent them in to talk to Dunphy about seeing what the position was to try and get some sort of deal done that was happy with Dunphy and everybody else.

30 But they weren't in there negotiating with Dunphy?--- Not that I'm – not to my - - - They were getting - - -?--- I'm sorry.

They were giving him instructions to provide the board with legal advice?--- No, I don't think so.

35 Okay, that's good. I thought so. So what you think is you said to Tuttle and Murray or you heard some board member say, "You guys go in, please, and talk to Dunphy and see what employment arrangements you can nut out with him."?--- Yes.

40 I see. I've got it. And so Dunphy, who gave him instructions as to where he was to go with all this? Who on behalf of Racing - - -?--- I would've – I would've – I would've spoken to him at some stage.

45 Okay, I see. So what you're doing is giving Dunphy the authority of Racing Queensland to negotiate with the two staff?--- Yes.

And that's what they were doing in there?--- Yes.

I see. And did he come back to you and say, "I've had a negotiation, this is what I'm up to." Or anything like that?--- I think -- is that the week that - - -

5 I think it's the 14th of June, [indistinct]?--- Yeah, the -- is that the -- the week that I had a conversation with Walker?

I'll have to check that for you. Honestly, I can't remember?--- Because I -- that -- was that with the nine employees?

10 Keep asking me hard questions?--- Oh, no, it's not a hard question. It's just if I had a chronological list - - -

15 Yeah, I understand?--- Of the -- actually what happened, it would make it a lot easier to answer your questions.

Yeah, I understand. Why don't we do this? It's 10 to 4, you know you have an invitation to give a further statement or write anything further?--- Yes.

20 You haven't. I'm going to ask the Commissioner can we stop now for the day. And if you want to say something further about the chronology in the morning, please do it?--- Could I ask, Commissioner, is -- how much more do you have to go? I mean, you can't finish - - -

25 I've got to?--- You can't finish today?

No, I'd like to finish today.

30 COMMISSIONER WHITE: Have you got some other commitments, Mr Bentley. I mean, I assume that you - - -?--- No, I didn't want to come back tomorrow, that's all.

MR BELL: Okay.

COMMISSIONER WHITE: I'm not surprised.

35 MR BELL: I've got to deal, Mr Bentley -- and I honestly would try and finish too with you if I could. I've got procurement to do and I've got to talk about the procurement policy and the development of it with you so that'll take a little bit of time, a lot more than half an hour or an hour. So I'm sorry?--- The development of the procurement policy.

40 Yeah. Where it went to board meetings over time and so on. So I'm sorry it's going to take a little bit more than an hour. So -- otherwise, I'd be happy to stay here till five but I don't think I can finish it in that time?--- That's okay.

45 Okay?--- I accept what the Commissioner wants to do.

5 COMMISSIONER WHITE: Just so that it's clear, is there anything that – any papers that you want to have a look at, Mr Bentley, in the time before we resume tomorrow, then? I just had the impression that you just wanted to have a bit of tidy-up with chronology?---No. If we finish that subject I don't need to – need to go back again.

MR BELL: Okay?---But procurement – I just wonder what was my involvement in the procurement.

10 Well, what happened was, just generally, Mr Bentley, was that there was a procurement policy and the commission is directed to investigated what policy and how or whether it was complied with. And it came to the board on, I think, seven occasions and it was approved by the board – different policy was approved as it developed, and I need to address that with you?---Okay. I don't know what I can do
15 to help you with that, but - - -

Okay. Well, let's have a go tomorrow and if we're not getting anywhere we'll stop?---Yeah.

20 MR WILSON: As for that, Commissioner, as I said on the second morning, if we're going to get a folder at 6 in the morning why can't we have it now so at least we're familiar with the documents?

25 COMMISSIONER WHITE: I'm not sure that Mr Bell wants to allow familiarity with some documents, anyway.

MR WILSON: I'm sorry. I didn't catch that.

30 COMMISSIONER WHITE: I think Mr Bell doesn't particularly want the opportunity in advance - - -

MR WILSON: Well, it'd be fair to the witness, with respect. He's been taken to - - -

35 COMMISSIONER WHITE: He can – Mr Bentley, should he need it, as you've seen, can have time to have a look at the documents at his leisure. I'm happy to stand down at any time, but in an investigation it is probably not such a good idea to allow witnesses an opportunity to reflect upon it and take advice – their lawyers about it or to perhaps rearrange a story. The invitation is to do a supplementary
40 statement addressing the issues of concern or where something additional comes to any witness's mind or attention through his legal advisers, for that matter. It's true that at least for the other directors of Racing Queensland Limited following Mr Bentley, pretty well everything's out there now, so they'll be aware of these documents. But I am right in that position, am I not, Mr Bell?

45 MR BELL: Yes, your Honour. Yes, Commissioner.

COMMISSIONER WHITE: If there's any need to pause for as long as you think that it's necessary for Mr Bentley – and he does seem to pretty good on his own feet, I must say – then I'll stand it down for as long as he needs.

5 MR WILSON: Well, I've made my submission about that, Commissioner.

COMMISSIONER WHITE: You have. Thanks, Mr Wilson.

10 WITNESS: Commissioner, could I just ask Mr Bell – I'm not sure what involvement I've had in procurement. I mean is there – could you give me some - - -

MR BELL: Yes?--- - - - some guidelines to know that it – so I can answer your questions, because I find it - - -

15 Yes, of course.

COMMISSIONER WHITE: That you can think about?---Yeah. I find it embarrassing that I can't remember everything.

20 MR BELL: No, no. That's – I understand. We've been through a lot. The procurement policy, Mr Bentley, was a policy that – you know under the legislation certain policies had to be put in place - - -?---Yes.

25 - - - which would give direction for people working within Queensland Racing and Racing Queensland and also for clubs and so on. They had to follow the policies as well. What seems to have happened is in about 2006, there was a piece of paper called the Procurement Policy or Purchasing Policy, and that changed over time as came up the infrastructure plan and so on. And the board took information about it and approved or disapproved the policy, and why they approved and disapproved the
30 policy is important?---Might struggle - - -

No. I understand?--- - - - but anyway, I'm happy to try.

I understand.

35 COMMISSIONER WHITE: You know there was a requirement to have policies under the Racing Act?---Yes. Oh, yes. Yeah. I understand we had other policies - - -

40 And in fact, the board dealt with them - - -?---Yes. Yeah.

45 - - - as Mr Bell has said, on many occasions?---Yes, your Honour. I mean I know that. [indistinct] was 31 policies that we had to have and there's a lot of others that we put in as well. I just was wondering what – which – which problem it was so I can try and address it.

MR BELL: Well, what you can do – the easy way to do it is what I did, and that is you go through the board meetings from 2006, see where it says “Purchasing policy dealt with by the board”?---Counsellor, I mean all – all our papers were taken away from us. My papers were taken away probably a month or six weeks after we left
5 Racing Queensland. I don’t have any papers. I don’t have any access to any papers. I – I really didn’t need them until we came here.

No?---But I haven’t got any – anything at all.

10 No. Well, for me, I wasn’t there either. So I got the papers and then I tried my best and I did achieve you getting the papers through your lawyers too. And we’ve all struggled with how many there are - - -?---Yeah.

- - - and getting through them. So that’s why I’m bringing them to your attention as I
15 see as necessary?---Well, there’s – there’s no chance of getting those papers off you?

You’ve got them; it’s just I’ve organised them?---Have we?

COMMISSIONER WHITE: Your lawyers have them, Mr Bell?---Okay. Thank
20 you. Thank you.

MR BELL: Okay.

COMMISSIONER WHITE: You’ve got all the board minutes and in fact, you can
25 look at them, I think, online through the data room. So you don’t even have to have hardcopies of them. They can put them up on the screen for you?---Okay. Thank you.

30 Could you adjourn till 10 o’clock tomorrow.

**MATTER ADJOURNED at 4.00 pm UNTIL
WEDNESDAY, 25 SEPTEMBER 2013**