

AUSCRIPT AUSTRALASIA PTY LIMITED

ABN 72 110 028 825

T: 1800 AUSCRIPT (1800 287 274)

F: 1300 739 037

E: [clientservices@auscript.com.au](mailto:clientservices@auscript.com.au)

W: [www.auscript.com.au](http://www.auscript.com.au)



## TRANSCRIPT OF PROCEEDINGS

---

Copyright in this transcript is vested in the State of Queensland (Department of Justice & Attorney-General). Copies thereof must not be made or sold without the written authority of the Director of Reporting, Finance & Community Engagement, Queensland Courts.

**THE HONOURABLE MARGARET WHITE AO, Commissioner**

**MR JC BELL QC, Counsel Assisting**

**MR T PINCUS, Counsel Assisting**

**IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950**

**COMMISSIONS OF INQUIRY ORDER (No. 1) 2013**

**QUEENSLAND RACING COMMISSION OF INQUIRY**

**BRISBANE**

**9.59 AM, TUESDAY, 15 OCTOBER 2013**

**Continued from 14.10.13**

**DAY 15**

**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**

**[9.59 am]**

5 COMMISSIONER WHITE: Mr Bell?

MR J.C. BELL: Commissioner, this morning I propose to call Kevin Seymour, and I'll do that now, please.

10 COMMISSIONER WHITE: Thank you. Perhaps those who are representing him might formally announce their appearance?

MR A.W. DUFFY: Commissioner, my name is Duffy, D-u-f-f-y, initials A.W., counsel instructed by Schwiped Harris for Mr Seymour.

15 COMMISSIONER WHITE: Yes. Thanks, Mr Duffy. Thank you, Mr Bell.

**KEVIN WILL SEYMOUR, SWORN**

**[10.00 am]**

20

**EXAMINATION BY MR BELL**

25 COMMISSIONER WHITE: Mr Seymour. I'm not sure how long Mr Bell proposes to be, Mr Seymour, but we normally would take a break at 11.30, but if you want one before then could you just indicate?---Thanks, Commissioner.

Mr Bell.

30 MR BELL: Your full name is Kevin Will Seymour?---That's correct.

And, Mr Seymour, you've provided three statements to the Commission, the first sworn the 16<sup>th</sup> of August, then the 10<sup>th</sup> of October, then the 14<sup>th</sup> of October 2013?---Yes, I believe so.

35

Could Mr Seymour see the document bundle, please, and could you have it open for him at document – behind tab 20, please? Mr Seymour, you were deputy chairman of Queensland Harness Racing Limited: you recall that?---Yes, I do. Yes.

40 And previously you were on the board of Queensland Harness Racing Board?---Correct.

45 Would you look at the document behind divider 20, please, and you see that it's a minute of a meeting at – of Queensland Harness Racing Limited, and it's on the 20<sup>th</sup> of June 2008. Do you see that?---Yes.

Okay. In particular, you see that you were present or at least recorded as present there, and these were the style of minutes that would be supplied to the directors, including you, after the meeting. Is that right?---Some time after the meeting, yes.

5 Okay, and, in particular, if I ask you to look at about halfway down the page, you see Conflicts of Interest there?---Correct.

And under that heading, “The following declarations were made,” and there are two – or three, in fact, that involve you. Would you just look at them, please, and do you  
10 recall that they were declarations that you made at that meeting?---I don’t actually recall, but I assume so, yes.

Okay, and then if I ask you to turn over to document behind divider 22, please, and,  
15 again, really the same question, except these are minutes of the same company. It would seem a – held at the offices of Mullins Lawyers on the 29<sup>th</sup> of July of 2008. It appears that you are present, and under the heading Conflicts of Interest declarations are made, including some by you?---Yes.

20 Okay, and, again, are you able to say whether the record of the declarations made by you is accurate or otherwise?---Well, to the best of my knowledge, yes.

Okay. To the best of your knowledge it’s accurate, you say?---Yes.

25 Okay, and then if I ask you to go to 26 – document behind divider 26, please, Mr Seymour, the way the minute keeper seems to have proceeded after that is to record the conflicts declarations as standing conflicts like in this minute. This is a minute of the meeting of the 26<sup>th</sup> of August 2008, and you see under the heading Conflicts of Interest what’s recorded is standing conflicts as stated at the inaugural  
30 meeting?---Correct, yep.

And then, just to confirm that I’m right, if you just don’t mind going to 35, that is, document behind divider 35, the same style of record is kept of the declaration of conflicts made by, among other people, you. Are you happy with that?---Yes, I was.  
35 Yes.

And the reason I ask you those questions is because it would seem that at the inaugural meeting, as it’s described in the minutes, declarations were recorded by different people, including you, and after that it seems that those declarations were treated as standing throughout the minutes after that time. Are you happy with  
40 that?---Well, that’s the way it appears, yes.

Okay, but is that inconsistent with your recollection?---No. I mean, I don’t have a direct recollection, but it seems that way.

45 Okay. Now, if you don’t mind turning back to 22, in particular in 22 is the conflicts of interest. In the third dot point, it’s recorded that your declaration was that you were a board member of Tatts Group Limited. See that?---Correct.

And that was true, wasn't it?---Yes.

But you were also a shareholder at that time, were you?---Correct.

5 And from the public records from Tatts it looked as if you had a very substantial shareholding in Tatts at that time. Would you accept that?---Yes, I would.

In the order of 93 million dollars' worth of shares?---Well, about 42 million shares, yep.

10

Okay, and did you ever consider it was right to declare that interest?---Well, everybody knew that I was a major shareholder in Tatts, including the board members and the general public.

15 But did you ever consider it was right to declare it in an express way?---No, because when there was a conflict of interest I always declared my conflict and departed the room.

20 And this minute here seems to record your declaration to be as a director but not as a shareholder; that's my point. Do you have explanation for that?---Well, Harness Racing Queensland wasn't a very sophisticated sort of organisation and it wasn't an ASX listed company, but it was quite clear to everyone involved, not only the board members but the public at large that I held a substantial number of shares in Tatts.

25 I hear you, and you don't need to say it again, I get it, but you see my point, don't you, that when you get these minutes after the meeting and you see in it that you have declared your directorship but not your shareholding it raises a question, doesn't it? Why would you declare directorship but not shareholding?---I didn't see any purpose in declaring – or not a purpose, but I didn't see any reason that I had to  
30 declare the shareholding.

Why was that?---It was public knowledge.

35 Were you aware that there are obligations under the Corporations Act to do that?---No, I wasn't.

Okay. Would you go to - - -

40 COMMISSIONER WHITE: Could I just ask Mr Seymour something - - -

MR BELL: Yes.

COMMISSIONER WHITE: - - - there before we sort of move on a bit.

45 MR BELL: Yes.

COMMISSIONER WHITE: I take it that no other board member, particularly a board member who was legally qualified, suggested to you that also might constitute a potential conflict?---No. No-one mentioned – no-one mentioned at all. It was declared to the board that I held the shares, and no-one ever gave me that advice.

5

Thanks, Mr Seymour.

MR BELL: Well, you just said then that it was declared to the board that I had those shares. When was it declared to the board that you had shares?---I can't precisely tell you when, but each of the board members were aware of the fact that I held shares in Tatts.

Well, Mr Seymour, you keep saying that, but I've shown you the minutes, which are supposed to be minutes recording transparently what occurred. You agreed with them, and we haven't been able to find any declaration of your shareholding, you see, and the Commissioner just said to you did anybody legally qualified alert you to the obligation to declare the shareholding, and I think you just said no?---I answered no, that's right.

So that sounds like what's in the minute is likely to be right, and nobody told you otherwise was the right thing to do. That's how it stands, doesn't it?---Well, yes. I mean, that's - - -

Okay?--- - - -that's the way it was, yes.

25

Now, if you don't mind going to 63, please, that is, document behind divider 63. Just help Mr Seymour with that, please. I'm sorry, Mr Seymour, about that?---It's okay. Yes. I've got 63.

Oh, okay. Thank you. You'll see this is a minute of Queensland Harness Racing Limited, 6<sup>th</sup> April 2009, and it appears that you are present or at least recorded there as present. You okay with that?---Yeah. I'll take that as read. Yes.

Okay. Now, you see in Conflicts of Interest, the explanation seems to have been that the recorder of these events at this meeting has recorded nil as to conflicts, but that was meaning no new conflicts from the ones declared at the inaugural meeting. So you'd accept that, I suppose, would you, if that's what somebody said?---It looks to me as though that would be the case and – whereas normally they record that conflicts as previously advised.

40

Okay. And just go to the last page of these minutes, please. You'll see there under the heading at the top of the page, UNiTAB, and it says, "Deputy chair Kevin Seymour AM declared a conflict of interest and vacated the room over the consideration of the UNiTAB application." Now, clearly enough, UNiTAB was required to make an application for a race fields licence under Queensland legislation, and that was something that you considered you could not be involved in for Harness. Is that right?---Yes. Correct.

45

5 Okay. Now, were there other occasions when you left the room when Harness board or the Harness Company were considering UNiTAB matters?---I can't actually recall when I left the meetings, other than the fact I know that on a couple of occasions – on one occasion I walked outside and watched a race meeting whilst they were discussing [indistinct] and another occasion I went and did some emails in the other boardroom.

Okay?---So I can't remember when they were, but that was the case.

10 Okay. Can you define for the commission, please, the occasions or the matters that you considered that you could not be involved in and so would leave the room?---Well, basically, when they – they concerned Tatts and that I would have a conflict of interest in discussing any matter which appertained to Tatts.

15 And that would arise, no doubt, with race fields legislation in Queensland, of course, where UNiTAB had to apply for a licence – I understand that. That's this occasion, and occasions like that. What about other occasions relating to the fact that UNiTAB were commencing to charge what they define as third party charges for licensing fees charged to them in New South Wales and elsewhere back to Harness?---Yes. Yes. I  
20 – I can't recall having been at any meetings in relation to that at all.

Okay. And do you recall being conscious that that was a matter you could not be involved in and therefore would make sure you weren't involved in it?---I think so. I mean it's really hard to go back in memory and – and remember all those things, but  
25 it would seem to be the general principle, unless there was any matter of housekeeping matters.

Okay. And can you confirm for the commission, please, Mr Seymour, that you weren't involved in any decision-making in relation to those matters?---To the best  
30 of my knowledge.

Okay. Would you mind turning to the document at 43, please. This is a legal advice, provided to Queensland Racing Limited by its chief operations manager, by Cooper Grace and Ward dated the 18<sup>th</sup> of November 2008, as you can see. Do you recall, in  
35 preparing to come to give evidence, having reference to this document?---I don't recall having seen it prior to being called to the inquiry.

Okay. But you know what document I'm talking about - - -?---Yes. The - - -  
40 - - - as I show it to you know?---Yeah. On the – yeah.

So before getting ready for the inquiry, this did not come to your notice?---Absolutely not.

45 Okay. And the information in it, just so I show you the information I'm talking about – if you look at the top left-hand corner you'll see the page number, and I'm looking at page 4, please. You see page 4 there, Mr - - -?---Yes. Yes.

5 About 0.4 of the page, you see a paragraph commencing, “You ask as to whether the provision by Racing New South Wales of Australian Racing Product to UNiTAB for a fee pursuant to the New South Wales legislation entitles UNiTAB, pursuant to clause 10.2(c) of PPA, to deduct the amount paid to Racing New South Wales from the amount of the product fee payable under clause 10.1 to Product Co.” You understand, sitting there now, what that question is, don’t you?---In relation to Product Co – yes.

10 Yeah. Okay. And you see the next paragraph – I’ll just let you read it. See, the point of it that is of interest to the commission, Mr Seymour, is that it turns out UNiTAB were continuing to deduct the fees it paid to interstate control bodies from the product fee that was due under the PPA, such that an amount over the period relevant to the commission – about \$91 million was deducted. And you see in the paragraph I’ve just asked you to read, at least Mr Grace’s view was that they were  
15 not entitled to do that. You see the issue?---I can see the issue.

Okay. Do you recall discussing that issue with Mr Lette or any other board member of Harness?---No. I definitely do not.

20 Okay. And by that, do you – can we be assured that you had no involvement with that consideration during the period?---Absolutely not.

Okay. And would you mind going to 53, please, that is, document behind divider 53. On the 19<sup>th</sup> of December 2008, what occurred is a meeting of Harness took place  
25 when you were not present, because you might have been away or some other thing?---I was at a – a – a – a Laziks doctors appointment.

Okay. Now, leading up to that, if you go back to 43, please, that is, document behind  
30 divider 43. I’m sorry. Don’t go to 43. I should have said – yes. Stay at 53 and then you will see, by turning back two documents to 51 – this is a board paper prepared by Mr Godber to the Harness Racing board – and I say “board”; I mean board of directors at this time – for the meeting on the 19<sup>th</sup> which you were not to attend, as it turned out. If you look down about three quarters the way down, you see a  
35 paragraph commencing, “The other matter tabled for information of directors was a legal opinion from Cooper Grace and Ward.” Do you recall receiving this paper at any time, Mr Seymour?---No. I don’t. It may been – may have been for the fact that I wasn’t at that meeting in December.

40 It might have been, but normally wouldn’t directors receive board papers before a meeting whether or not they were going to appear?---Not necessarily so. If they thought I was conflicted they would not have given it to me.

Okay. But that’s a different thing from whether or not you appear. I understand. Was that the practice – not to give you some of the paper – as you understood  
45 it?---Yes. If – if – if they thought there was a conflict with Tatts. Yes.

Okay. On this topic of the deduction that I've talked about, do you recall discussing that topic with Mr Lette at any time during this period in late 2008 or early 2009?---No. Not to my recollection.

5 Thank you, Commissioner.

COMMISSIONER WHITE: Thank you. Mr Duffy?

10 MR DUFFY: I have no questions. Might Mr Seymour be excused on the same basis.

COMMISSIONER WHITE: Yes.

15 Mr Seymour, as you know that our inquiry is continuing – and so being very cautious, I'm not releasing witnesses from their subpoena, but giving you an indication that you're no longer required, so far as I'm aware, to give any further evidence. Your solicitors would be contacted if that were the case, but otherwise you're free to go, and thank you for attending?---Thanks very much. Thank you.

20

**WITNESS STOOD DOWN**

**[10.20 am]**

25 MR BELL: Commissioner, the next witness to be called is Robert James Lette, and I propose to call him now. I think that there's somebody appearing for him. [indistinct] here.

COMMISSIONER WHITE: Yes. Thank you. Thanks, Mr Ashton.

30 MR R.S. ASHTON: Yes. May it please you, Commissioner. I appear for Mr Lette. I understand through the operational practice guideline that he's – the leave for him to be represented has all been granted. I appear instructed by Mrs Mullins.

35 COMMISSIONER WHITE: I realise that you're, if not notorious, at least well-known, Mr Ashton. But the court reporters, not being present, might not know your voice.

MR ASHTON: I'm sorry. Yes. I appreciate - - -

40 COMMISSIONER WHITE: Could you just identify your name.

MR ASHTON: Thank you, Commissioner. My name is Ashton, initials R.S.

COMMISSIONER WHITE: Yes. Thank you.

45

MR ASHTON: Thank you.



MR BELL: Yes. I call Mr Lette, please, Commissioner.

COMMISSIONER WHITE: Yes. Thank you. We'll have him brought in. Is Mr Lette present?

5

**ROBERT JAMES LETTE, SWORN**

**[10.22 am]**

10 **EXAMINATION BY MR BELL**

COMMISSIONER WHITE: Thank you, Mr Bell.

15 MR BELL: Your full name is Robert James Lette?--- Correct.

And you have provided four statements to the commission. Two dated the 30<sup>th</sup> of July and two dated the 26<sup>th</sup> of August 2013?--- That's correct.

20 Mr Lette, would you be good enough to look at a bundle of documents I'm going to have handed up to you, please.

COMMISSIONER WHITE: Could I just indicate, Mr Lette, while those documents are being organised that we used to take a break here at about 11.30. But if, for any reason, you need to have a break at a different time, you'll let me know; won't you?--- Your Honour, I've come back from overseas with the flu and bronchitis so I'm not feeling 100 per cent to be perfectly frank. So I - - -

Well - - -?--- I'll be needing the break, I would think.

30 Yes, thank you. Well, we will be very grateful if you keep your flu and bronchitis - - -?--- Yes, I know.

- - - well away from the rest of us?--- Thank you.

35

All right. Thanks, Mr Bell.

MR BELL: Now, has he got those – that bundle of documents open, please, at 46A. Mr Lette, I'm going to show you some documents to focus your mind, please, on the questions I was going to ask. If you don't mind turning over a few pages there into 46A till you come to a document that's titled Race Fields Legislation. I think it's the last document in that divider, please?--- Right.

45 Thanks, Mr Lette?--- Thank you.

You tell me when you want to read documents fully. I'm going to give you an opportunity to read them, of course, because I know you don't know really where

I'm going. This document is one of the documents that you were good enough to produce in response to the requirement to produce documents as a board paper that was received by you. And I wanted to ask you, please, to look at this race fields legislation board paper for a Product Co meeting and ask you to turn over to page 2 of 8, please. And you see the first dot point is at about point 5 of the page. I'll just let you read that dot point and the next one above the heading Waterhouse, please?--- Yes, I've read that.

And you've read the second dot point too for me, please?--- Yes, I've read that.

This was a board paper that was prepared by Mrs Carter – Murray, Ms Murray, and Mr Tuttle of Queensland Racing for a Product Co meeting that occurred on the 13<sup>th</sup> of October. And if you go to divider 30, please. I'm sorry, not 30. 32, I'm sorry, Mr Lette. This was a minute of a board meeting Product Co which occurred on the 13<sup>th</sup> of October 2008. And in particular, you see that it was one that you are at least recorded as being present?--- Correct.

And that – I wanted to take you over to page – to 2 under heading four, Race Fields Legislation. And you recall the prior document I showed you was a document I called a board minute – a board paper. And you see the minutes record that Ms Murray and Mr Carter provided an update to the board, and the headings appear to be the same. And just going down there, you see the resolution of the board was to note the update and advice provided by Murray and Carter. And the board recommended that each control body discuss the matter of race fields legislation with each of their individual boards and provide feedback. And further modelling would be done once information was obtained from wagering operators. Do you recall this meeting when these matters were discussed on the 13<sup>th</sup> of October 2008 or about that time?--- I don't have full recollection. I clearly was there.

Okay. The topic of race fields legislation had come into focus in about October; hadn't it?--- October '08. I think there was a draft floating around before that. I can recall having meetings with the Office of Racing about the draft legislation, but I'm pretty sure it was before October.

Okay?--- I can't recall when.

But certainly by October, the boards were considering the position in relation to race fields legislation throughout Australia and its impact on the control bodies?--- Correct.

Okay. Now, at this meeting that I've mentioned to you and you've got before you, I wanted you to turn back, please, to document 31 in the folder. This is the same – I shouldn't say that. This is apparently a draft minute for the meeting we've just spoken of, with handwriting on the draft on the first page and the second page. Do you recognise the handwriting?--- No, I don't.

And if you turn back one more document, please, you'll see in document 30 – in divider 30 the same minute with different handwriting but a notation of Mr Bob Bentley being present at the Product Co meeting. Do you see that?--- I see that, yeah.

5

Yeah. So what the commission has received is these two draft minutes with different handwriting on them, suggesting that somebody was recording Bob Bentley at the meeting?--- I have no recollection of Mr Bentley being at a Product Co meeting. I honestly don't.

10

But that doesn't mean he couldn't have been there, Mr Lette; does it?--- Well, if he was there it was not during the formal part of the meeting. In my recollection, I can honestly say I – Mr Bentley and I – our relationship probably over the years has been cordial to – is probably putting it mildly. So I would recall if Mr Bentley attended a formal board meeting where he was not supposed to be there, and I don't recall him being there.

15

Okay?--- But he may – as it was held at Deagon, I presume - - -

20

He may have - - -?--- In the premises – he certainly would've been around, yes.

Okay. So Mr Bentley, do you recall from your contact with him that he was proactive during this time in relation to race fields legislation and the impact of it?--- I do – I recall that Queensland Racing as agent for the three codes was proactive. I can't say that Mr Bentley was, no.

25

You don't remember him seeking to discuss it with you and other board members in your – other board members of Product Co - - -?--- Not - - -

30

- - - in your presence?--- Well, certainly not with me.

Okay?--- No. But - - -

And does that mean that you think that it might have been likely with the QRL, that's Queensland Racing board members, who were on Product Co?--- I honestly couldn't say. I mean, I would believe that QRL – it was top of mine because 76 per cent of the income, of course, went to thoroughbreds and they were agents for the three codes.

35

40

I think the point is did you know that Mr Bentley's position was that he claimed because of a conflict he would not engage in Product Co business. Did you understand that?--- Yeah, I certainly understand that. Yeah.

45

And the question I'm asking you is the commission's interested in any knowledge you have of that being breached?--- I honestly don't have any knowledge of it, no.

Okay. I want to ask you about a different topic for a moment, please. Could Mr Lette see folder number 4. Now, am I describing this correctly for the – could you help us here?--- Folder 4.

5 No, wait a sec. I'm going to divider 226?--- 226.

At your folder 3, Mr Ashton?--- 226.

226. This is a schedule you probably will not have seen before, Mr Lette. I want to  
10 tell you what it is. Four employees of Racing Queensland were, on the 5<sup>th</sup> of August 2011, offered new contracts of employment; you recall that?--- I – yes, that was - - -

And you've mentioned that in your statements?--- Yes, and there was discussion  
15 some months – for a couple of months before that about it. But I recall that, yes.

But in particular the commission has undertaken an analysis of the financial impact  
on Racing Queensland of the new contracts which are set out on this page. What I  
wanted to show you, please, is you will see that if you look on the bottom spread,  
you'll see under the heading New Contract – Resignation; do you see that table?--- I  
20 do.

Okay. And if you just look at Mr Tuttle by way of example. The TRV payout under  
clause 15.2A for Mr Tuttle is \$417,417 that's calculated. Now, the - - -?--- I see that.

25 The point of the new contract, do your recall, was that what these staff were to be offered was an uplift in their salary, but also some other benefits should they terminate?--- Correct.

And in particular you can recall, I think, that one of the clauses entitled each of the  
30 four people to terminate their employment on a change of State Government?--- Correct.

And that was one of the matters that you came to consider at the meeting of Racing  
Queensland on the 5<sup>th</sup> of August 2011; wasn't it?--- Correct.  
35

Okay. Now looking at the table, if you look at the figure for Mr Tuttle I've just  
mentioned, that comes about by way of the fact that he became entitled to terminate  
but receive 14 months of pay post-termination. So the figure that he would now be  
entitled to, if he accepted the offer, would be in the order of 14 months of a salary of  
40 12 months which was to be 390,000. So about \$417,000; see what I mean?--- I do.  
I wasn't aware about the 14 months, I thought it was less than that.

Okay?--- I thought it was 12 months.

45 Well, we'll have a look at it?--- Yeah.

But in any event, you appreciated, did you, at the time you were considering it that you had an entitlement to ask Bentley and other people who had a better knowledge of the detail?--- I did.

5 Because was it not one of your duties as a director of Racing Queensland to properly consider the best interests of Racing Queensland?--- Absolutely, and I always have.

And in that regard, were you aware of the likely financial impact of making these offers to these four people on the 5<sup>th</sup> of August 2011?--- I was aware that – in my  
10 view they were underpaid, and I think I said that in my statement.

You did?--- And that this was by way of a retention, if you like, golden handcuffs to keep them there.

15 Okay?--- They had considerable knowledge. I think Tuttle had been there for about 20-odd years and Brennan. The business would've been in quite frankly diabolical trouble if they all walked out the door at the time.

Okay?--- That was my view.  
20

Let me understand that. So coming to the conclusion that you reached on the 5<sup>th</sup> of August 2011 at that board meeting, your objective driving you to vote yes for the new offers to these four was retention?--- Absolutely.

25 Okay. So let's have a look at this retention. Would you mind going to 217, please. Document behind divider 217. I'm taking you to this because this was the offer of employment that was extended to Mr Tuttle, and I'm using him by way of example. Mr Tuttle, on the 5<sup>th</sup> of August 2011, if you look at the last page you'll see that in  
30 fact what happened was that on that day, the day of the board meeting when it was resolved to offer him and the other three this new term of employment, he signed up to it. You see that?--- I see that.

Okay?--- This is a document I haven't seen before.

35 No, okay. Now, if you go back, please, to clause 4?--- Clause 4.

I should first show you clause 5 on the next page just to confirm. I can tell you that in the third line you see that under this offer, you will receive a gross TRV of  
40 390,000 per annum. We know for sure that his salary at the time of the offer was 300,000. So he was getting an uplift of the 90,000; do you see that?--- Yes, I - - -

Okay?--- I do.

45 And that was to accord with your thinking that he was – he and the others were underpaid, as you've said in your statement?--- Correct, I had a knowledge from my position as national – as deputy chairman of Harness Racing Australia of what various CEOs were being paid around Australia in the racing industry.

And did you consider that information when you were making a decision about this?--- I certainly did.

5 And what was the information you had?--- Well, it was just – it was simply knowledge from – I was aware what Peter V’Landys, for instance, in New South Wales was basically paid who did a similar job to Malcolm Tuttle.

10 And what was he paid?--- In my – my recollection was that he was paid in excess of \$500,000.

And what was involved in his task to compare with Tuttle’s task?--- I would think no different.

15 I see. And did you express that to the board?--- I - - -

Because I don’t see it in the minutes?--- It was part of my discussion at the board, yes.

20 But I don’t see that in the minutes. Do you recall – we’ll go to the minutes in a minute?--- Well, no. I - - -

Okay. We’ll just go to clause 4 so we don’t have to come back to this, please.

25 COMMISSIONER WHITE: I’m sorry. Just before you go to - - -

MR BELL: Yes.

30 COMMISSIONER WHITE: - - - clause 4 if you don’t mind, Mr Bell. Other witnesses who were on the board who’ve said they regarded these executives and – well, we’re talking about Mr Tuttle – as underpaid. I was interested that nobody thought to bring it forward as a matter for board discussion at any time. Because I believe that there was – in contemplation that their remuneration would be revisited after the amalgamation of the three codes, but that never seems to have happened?---  
35 Look, my understanding was that once the amalgamation had settled down, it was the role of the remuneration committee to review the – I think there were about nine executives – to review their salaries, your Honour. Yes.

It didn’t happen?--- No.

40 Not in an orderly fashion?--- No, it didn’t. It didn’t, no. Clearly it didn’t, no.

All right. Thank you, Mr Bell.

45 MR BELL: So I wanted to show you the changes that this – Mr Tuttle was offered in this agreement. And I’m conscious of what you told me, that this document you didn’t see before resolving upon making an offer according to the chairman’s discretion. You just – you said in your statement you determined the fundamental

points but not the detail?--- No, it was left to the chairman and the – and Mr Ludwig as the remuneration committee.

5 Okay. Well, I'm just going to talk to you about the matters of substance, but I want to show you the terms - - -?--- Sure.

- - - so you're alert to them now. Clause 4.1, you see that the offer that was made was for a contract which would commence on the 1<sup>st</sup> of July. And in two, "Your service with RQL will be calculated from the date you commenced employment with RQL and not from the date of this contract for the purpose of applicable service related to entitlements and benefits. Now, I'm thinking that you didn't have any role in that?---But – but I would say I don't regard that as unusual.

15 Okay. What about 15.2, please. This is, I believe, something that you were involved in, at least, as a matter of substance, 15.2?---Oh, sorry. I'm reading the wrong one.

That's okay?---Yes. I've read that.

20 Now, the point about 15.2(a) seems to be that if there is a material adverse change which includes a change in the Queensland State Government as you see in the definition underneath, Mr Tuttle would be entitled to 14 months pay from the date of termination?---As I said before, I thought it was 12 months, but I see that.

25 Well, you might've, but it clearly was 14 months?---Yeah. It clearly says 14. Yes.

And he's also entitled to severance pay and any accrued but unpaid entitlements?---Correct.

30 Now, that was – 15.2 was all new for him, you see. It was a benefit that he did not have previously and I think you'd accept that, wouldn't you?---I would. Yes.

Okay?---Well, sorry. I didn't know what was in his previous contract anyway.

35 Well, it wasn't in there I can tell you?---No. Okay.

This point was something you discussed at the meeting – the material adverse change?---Meeting. Yes.

40 And it was resolved upon and then to show you the full picture in 15.10, in the second sentence which is about the fourth line, "For clarity, if by the 31<sup>st</sup> of December '12 your contract has been extended, but after the 31<sup>st</sup> December '12 RQL ceases to be the control body or terminates you without cause, your entitlement to redundancy does not extend beyond the original term." Now, what happened was, I understand, you can recall attending the board meeting on the 5<sup>th</sup> of August?---I do.

45

Okay. And would you mind going to 200 – document of 213 and you may need help like I do to find it. These are the minutes of the board meeting of the 5<sup>th</sup> of August and you see it seems that you are recorded as present?---Correct.

5 Okay. And then if you go over to page 5, please. Now, on page 5 this topic, employment agreements redundancy policy, mentioned – and have you considered these in preparing to give evidence?---I – I did read them.

10 Okay. Well, you tell me how slowly you want to go?---When I – when I did my statements. Yes.

15 Okay. You see first, then, under number 1 under that heading Board Meeting Of The 6<sup>th</sup> Of May 2011 To Be Rescinded and that was a resolution that had been made on the 6<sup>th</sup> of May involving nine staff and that was going to be rescinded?---Correct.

And, in fact, it was rescinded. If you turn over to page 6 you'll see that that motion was carried. Now, I'm particularly interested in number 2. You see Variation To Employment Contracts – you see that heading?---Correct.

20 Okay. And it says the board confirmed that they had received and read the following legal advice and it's got one from Norton Rose dated 20 July, Clayton Utz 1 August and Norton Rose 3<sup>rd</sup> August?---Correct.

25 Do you recall considering those advices?---I do.

And did you consider them in the sense of taking them into account in your decision?---I did.

30 Okay. When did you receive those advices; do you recall?---I don't. I - - -

In board papers previous?---I – I would think in the board papers. Board papers usually arrived a couple of days before the meeting.

35 Okay. But, in any event, there's no suggestion that you didn't have a chance to consider that legal advice, is there?---No. No.

40 Okay. Now, would you mind turning to 212, please. This was one of those legal advices and it was from Clayton Utz and if you see the part that I'm interested in asking you about, please, is, looking at the executive summary on the first page and above it you'll see in the second paragraph, "We have previously, in this context, provided advice on the legal obligations that are owed by the board members"; see that?---Sorry?

45 Yeah. Just above in the second paragraph on the page?---Page 1?

Before we go down to executive summary?---Oh, sorry. Yes.



“We have previously in this context provided advice on the legal obligations that are owed by the board members”; see that?---I see that paragraph. Yes. Were you shown any earlier advice by Clayton Utz?---I don’t think so. I don’t recall. No.

5 Did you ask for it?---No. I – I can’t recall that advice at all.

Okay. There was an earlier written advice, which I’ll show you in a minute, but, in any event, would you mind going down to 1(b), please, under the executive summary?---(b), yeah.

10

Sorry. Are you okay?---Sorry. Yep, yep.

It’s on the first page - - -?---Yeah, yeah. Got it.

15 So I’m looking at 1(b). You see the introduction is, “The advice is the board needs to carefully assess.” You’ve read that part?---Yes.

Okay. And then coming over the page, please, about three – on the fourth line 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 2011 and as late as June 2012. Our concern is that if the election is held very early, eg, October 2011 and this then led to activation of one of the clause 15.3 triggers, that the four executives would then become entitled to a termination payment of 20 months at the increased 30 per cent, which in terms of their current salary would be the equivalent of 26 month payment”; see that?---I see that. Yeah.

20

25

Now, one thing is for sure, that the advice given to the board was, by Clayton Utz, that the election could be as early as three weeks away?---I saw that. Yeah.

30

Did you see that at the time?---I saw that. Yes.

At the time?---At the time. Yes.

35 Okay. And were you conscious - - -?---I didn’t – I didn’t – I didn’t believe it, I might add, but – yes.

Well, what does that mean?---Well, it – it simply was that I wasn’t of a – of a view that that was correct.

40

And did you factor that in, that you had a personal view that the Premier might call it later than the earliest possible time?---I – I – I had a view that – that it would be several months away.

45

Well, I’ve heard that, but did you factor that in when you were considering the best interests of Racing Queensland?---I did.

That you factored in your personal view about when it was likely the election would occur?---Well, in – in – in weighing up all of the – the matters, I – I had a view that the election was not that imminent.

5 Well, when did you think it would occur?---I thought it would occur around early in 2012.

Why?---I have no – other than general knowledge, reading, discussing with other people - - -

10

Well, at least we know this, that sitting before you and the other board members was a legal advice saying as a matter of law it could be as early as three weeks away and we now know that Mr Lette judged, from his general knowledge, that it wasn't likely to be that early. It might be as much as five months away or six months away; is

15

that right?---Correct.

Okay. Did you appreciate the risk that Clayton Utz were asking you to focus upon?---I – I – I did. I, in fact – in discussion I insisted that – that the cap be 12 months, no matter what.

20

And what happened?---Well, I understand – well, my understanding was that was what was supposed to be in the employment contract.

Did you insist upon seeing it at all or did anybody disagree with you?---The employment contract? I don't think – I – I can't recall that anyone disagreed with me. No.

25

So your evidence, Mr Lette, is that you made plain at the board meeting that the period should be 12 months at a maximum and yet it appears that they were – the four of them were given 14 months?---Correct.

30

How did that occur?---I don't know.

You mean to say that Mr Bentley, who was in charge of defining the terms, did not follow directions from the board?---All I can say is that it was not my understanding of what the end result was.

35

Well, that doesn't matter, does it, what your understanding was?---No.

The point is what happened at the board for resolution between the directors? What happened there about it?---Well, I believed that as a result of the meeting that there was a maximum of 12 months. I can recall saying at the meeting that I was then currently involved in a similar negotiation with one of my CEOs on a board that I was chairman of who – we were under threat of takeover. And he – we – we were doing a similar – a similar – a similar change to his employment contracts. And I remember saying at – in discussion at the board that as far as I was concerned, 12 months was the maximum.

45

Okay. Well, the fact is it went to 14 months?---I see – yes. I – I see that. Yes.

5 Yeah. And there's nowhere in the minutes recorded that you were insisting upon it being 12 otherwise you were voting against it. I don't understand that?---No. I – it – I simply was of a view that it was 12 months and - - -

10 Okay. Well, it sounds like - - -?---I maybe was in error in – in – in – subsequently, when the minutes came in, not insisting that it be – that my – that I be shown as saying that it was 12 months.

Okay. Can - - -?---But – but I – but I really did have a view that it was 12 months.

15 Okay. Can you explain to me this, then: how it was that your judgment was that Racing Queensland should pay these four people according to these new terms to retain them, when you were giving them an exit clause that might be open for taking as early as three weeks away, please?---Well, as I said before, I – I weighed up all the possibilities and – and – and made a calculated judgment that – that it – it would not occur for several months.

20 Okay. So tell me this - - -?---And – and to be quite frank, I had a view of the people involved that they – they would stay on anyway once they got their retention.

25 Well, you were wrong about that, weren't you?---I was certainly wrong about that, and I expressed that subsequent after the – the resignations.

30 But Mr Lette, I don't understand how you as a director of Racing Queensland could think it to be in accordance with the company's best interests to offer these employees an exit clause that could come about as early as three weeks away. That's the point I've got to make to you, you see?---I – I hear what you're saying and I don't agree.

35 And why don't you agree? Give me your calculation that makes me understand that it was in the best interests, please?---Because in the – in the interests of the company and – and – and – and the industry in general, the knowledge that would walk out the door with these people, particularly Malcolm Tuttle and – and Brennan, was irreplaceable in the short term.

40 But you see, it just doesn't add up, Mr Lette. I'll tell you why. Under the contracts that were already in place that you were considering on the 5<sup>th</sup> of August as replacing, they had to give six weeks notice anyway, and then none of these redundancy benefits would go their way. So they were going to be there for six weeks?---And – and – and I think you'll find that I actually was of that view after the event: that they had to work out their six weeks termination.

45 No, no. What you offered them under the new contract was one week's notice?---Well, I don't recall that, to be perfectly frank.

Plus the chairman was entitled to waive that, which he did. So they left the next day, as you know?---Yeah. I – I – I do understand that.

5 Yeah. But come back to my point. My point really is that in assessing the best interests of Racing Queensland, how was it that you thought you were retaining these employees by offering them an out if the state election changed the government, and that election could occur, even against your judgment, as early as three weeks away, please?---As I said before, I – I didn't have that same view. I – I had a view that we had to retain them and retain them as – as – as – for as long as possible until such  
10 time as an election was called. It would've cost several hundred thousand dollars in fees – in – in executive search fees, for instance – to replace them.

I see. Mr Lette, what you just said to me was that you were seeking to retain them until the election. Is that your position?---No. I was – I was seeking to retain them  
15 until the longest possible term. If they left after the election well, I was – I was of the understanding that that – they had that right.

Well, why did you consider it in Racing Queensland's best interests to offer them this trigger that they didn't have otherwise, which certainly would have held them if  
20 they'd wanted to stay?---Because my understanding was, as reported by the remuneration committee, that if they didn't get a trigger such as that they were going to walk out.

Well, we've heard no evidence of any threat of leaving if they didn't get it?---Well, I  
25 - - -

Did you inquire yourself as to whether there was any risk of them actually walking out if they didn't get this trigger?---In discussion at the board meeting, I did.

30 Well, you see, Mr Lette, we can't escape, I suggest to you, the fact that they were being given a trigger for their discretion to leave with huge benefits if they did take it – huge benefits in the sense of, in your judgment, 12 months benefits. It's likely, isn't it, in those circumstances that they're going to be tempted to leave?---It is, but – but - - -

35 Particularly if that they're pushing for this trigger, as you thought they were?---But – but this is not an unusual practice in commercial reality.

40 Well, I'm not sure you're right, Mr Lette?---Well, certainly on the boards that I'm – I've been involved in over the years, all – all employment contracts have a change of control clause where they can walk and get paid up to 12 months for walking if – if they're – if they're – when there's a change of control. So - - -

45 Control in a company – I understand that. What about a change of government? Can they walk out of those corporations when there's a change of government, Mr Lette?---Well, I – I – I considered that – that the change of government would be a change of control.

Really?---I did.

I thought you said you thought they'd stay?---Well, I certainly did think – my personal judgment of the people involved was that they – they would stay, but - - -

5

Why would it affect their work for there to be a change of government, Mr Lette?---Well, as again – as I said before, I – I – I was led to believe at the meeting that they would walk out if they did not have a trigger.

10 And whatever it was that motivated you to vote yes to this, it must have been that you thought the price that they were insisting upon was worth paying, even though there was a risk that you'd retain them only for three weeks. Is that your evidence?---I – I was of a view that – that it was a retention and we just had to retain them at – under all circumstances, because it was – they were – their knowledge was  
15 irreplaceable in the short term and it would cost several hundred dollars to replace them in executive searches.

COMMISSIONER WHITE: Did you inquire as to succession planning for these employees? After all, originally there were nine within contemplation of having an uplift in their salaries. Any well-run business has succession plans for its senior  
20 employees?---Yes, your Honour, and I had a view that the – if you like, the middle-rank staff, in my view, were not of sufficient knowledge certainly to replace Malcolm Tuttle or – or Paul Brennan. I would think that Jamie Orchard and Shara Murray, I think her name now is, could be replaced in the long term but from outside  
25 the business. I – there was – there was basically succession planning, but the succession planning for CEO went down the line. So if they all walked together, there was no succession planning. That was my view.

It was terrible, wasn't it, because in fact that's exactly what happened. They all  
30 walked together?--- And they did, and I was extremely disappointed.

Well, the point is that not only did they walk together, they took with them \$1.7 million which they were otherwise not entitled to take, had this offer not been made to them?--- I don't agree with that figure. I would think that there were a lot of - - -

35

Let's have a look at that?--- There were a lot of entitlements that they would've been entitled - - -

No, no, no. Let's have a look at it. It's in the first document in your bundle. And  
40 the calculation – the calculation, you'll see in the second-last table, is old contract resignations. They would have taken \$317,000; do you see that?--- I see that.

In the new contract that the board offered on the 5<sup>th</sup> of August 2011, they took 1.75 million?--- I see that.

45

Yeah?--- Mmm.

Do you disagree with those figures?--- I don't -- I don't disagree with them, they're obviously fact.

5 Well, they're the right -- they're the right figures?--- They're obviously fact.

And I'm inviting you, if you don't -- when you go away from here, please, if you think that they're wrong, please calculate them so we get them right and just submit a further statement, Mr Lette; you see what I mean? Because we're -- we've spent some real time calculating these with the people who are good at calculating this sort of stuff?--- Yeah, I'm not disputing the calculations at this point, no.

10 Anyway, looking at those figures now as you may not have done at the meeting, you can see the temptation for them, should the government change, to leave together; can't you?--- I don't disagree with that proposition, no.

15 And that was the offer that was resolved upon making to them, you see?--- Sorry?

That was the offer that was resolved upon to make to them to keep them, you say?--- Absolutely.

20 To make them stay?--- Correct.

Well, it didn't achieve it?--- No.

25 It certainly didn't achieve it?--- I agree with that, it didn't. It didn't achieve it.

And looking at the figures here, I suggest to you it's clear as crystal that it was never going to retain them if there be a change of government?--- I don't agree with that. I

30 ---  
Just look at the figures?--- I see the figures, yes.

35 Yeah. Look at Mr Tuttle. Do you think he's likely to stay when he's agitating -- you tell us he's agitating for this trigger. Do you think he's likely to stay when he's going to receive \$750,000 if he goes? Is that seriously your evidence, Mr Lette? He's going to get 750 and he's insisting upon the trigger because he doesn't want to be there if the LNP win. That's what he's saying. I'm leaving -- unless you give me this change of government, I'm leaving now?--- Mmm.

40 So you offer -- you, as a board, offer this man \$755,000 to stay until the election happens. And if it's lost, he can go with that figure?--- Correct.

See what I mean?--- Yeah.

45 It just doesn't make sense, Mr Lette, I suggest to you?--- Well, I'm sorry. That was -- that was my view at the time. I had no other -- there's no ulterior motive for it, it was purely and simply to ensure that the continuity of staff was there.

Well - - -?--- I mean, I had no personal relationship with any of these people whatsoever.

5 I'm not suggesting you did. I'm not suggesting you did. I'm just asking you how you explain the best interests of Racing Queensland being taken into account in judging that these people should be offered these contracts, you see. And it certainly doesn't look like a good retention policy, Mr Lette?--- Well, I'm sorry. I don't agree with that.

10 Well as life turned out, you were wrong about it; weren't you? Because in fact, the election happened on the Saturday. And as you know, they left on Monday morning at 9 o'clock. You weren't happy about that; were you?--- I was very upset about it.

15 And what did you think was the wrong thing that had occurred there?--- I thought -- well, I sent an email to Brad Ryan, the chairman of - - -

I know you did?--- Yes.

20 But what did you think was wrong about the chairman exercising his lawful discretion to let them go on the day they elect to go?--- I was of the view that they should've worked out their six weeks.

25 One week they were given?--- Well, I was unfortunately of a view that it was six weeks. I -- I've always had that view that it was six weeks. And that they -- that in that time, it would allow the board to make the necessary arrangements to replace them.

30 Let me ask you this, then. The fact that it was, in fact, one week and not six weeks. Do you consider that too long -- I'm sorry. Do you consider that reduction to generous to them?--- I do.

Okay. And having in the contracts, all four, a discretion for the chairman to waive that one week period. Do you consider that's too generous to them too?--- I do.

35 And to waive it, in fact, too generous?--- I do.

And - - -?--- I was very disappointed that the chairman did that.

40 And when they in fact left, you weren't surprised that they left? Or were you?--- I was surprised that -- I was. I was honestly surprised that they left. I -- my judge of character was that they were better than that.

45 Would you go to 202, please, in bundle -- it's hard to find, so somebody might help you. Mr Lette, this is an email from Mr Dunphy to Shara Murray and others on the 2<sup>nd</sup> of June 2011. And you'll see in the first line, "Shara, here is our advice in draft for you to review." You see that? Have you got them there?--- Yeah, it says, "Refer to your meeting with Barry Dunphy and Brett Cook, provide legal advice."

Oh, you're over the page on the advice; are you? Okay?--- No, I'm on the front page.

5 Are you on the email just before it, or don't you have that?---Oh, sorry.

That's okay. Okay. Don't worry. Turn over then to the advice, because Mr Ashton doesn't have it. Just go to the advice you were on, dated 2<sup>nd</sup> June 2011. Did you receive a copy of this advice at any time? Would you prefer to read it first?---Mmm.

10 Okay. You read it?---I honestly – I can't recall ever seeing that letter before.

No. You recall I showed you earlier that the advice that was given to the board from Clayton Utz referred in itself – the Clayton Utz advice later referred to having given earlier advice. This seems to be the earlier advice; that's why I'm showing it to you?---Sure. Sure.

But your recollection is you didn't see this advice?---I – I – I can't recall that I saw it. No.

20 Okay. Just a few things I wanted to show you, please, because I want to ask you about it. If you look under the heading Background - - -?---Yes.

- - - second paragraph?---Yes.

25 “The objective is to reinforce the stability of the executive workforce during the period between now and 2014.” Does that properly record your recollection of the objective of the board?---Yes. There was – there was a lot of discussion about - - -

30 Well, forget about discussion. Does that - - -?---Again, this is their – this is their knowledge that I was talking about before.

Does this record the objective of the board accurately?---In – in my view that was one of the objectives and – and – and about retention.

35 Well, Mr Lette, I'll read it to you?---Yeah.

40 “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, eg, the renegotiation of the product fee.” See that?---I do. Yes.

45 Now, it seems that what Clayton Utz are saying is that the – “You have told us” – “You, RQL, have told us that the board's objective is that.” Now, I'm asking you from your recollection as a member of the board, was that the objective?---That was certainly one of the objectives that was discussed.



Well, what's another objective?---Well, the objective was retention of the people.

Well, I thought that's what it said, Mr Lette?---Well, that's -- yeah. That's -- yeah.  
It's about - - -

5

Okay. Was there another objective that might confuse it?---Not -- not -- no. Not - - -

Okay. So the objective was to reinforce the stability during the period between now  
and 2014, was it?---Correct.

10

Okay. And then could I ask you to go over the page, the first two lines. You see  
they say, "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." Now, just looking - - -?---I see that.

15

I know you didn't have this document. That seems sensible, no doubt, don't you  
consider?---I do. Yeah.

20

Yeah. Okay. And then if I ask you to go over to page 3 -- bottom right-hand corner  
you'll see the pages. In the third paragraph under the executive arrangements: "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 sections 181 and 184 of the Corporations Act." Now, what  
they're -- what's being spoken of in respect of redundancy clauses are the ones that  
25 he records on the prior page -- that Dunphy records on the prior page. You see them  
indented there -- 15.3, 15.4. Now, take the time as you see fit?---I -- I -- I see those  
clauses.

30

Okay. Now, they're different, but the point of the redundancy idea is similar to the  
redundancy that was offered on the change of government in the 5<sup>th</sup> of August '11  
meeting -- not the same, but similar. Now, I wanted you to go back to the executive  
arrangements part where I had you look at Dunphy's or Clayton Utz record of "In  
our opinion". Do you see that part?---I do.

35

Yeah. And go to (c), please: "The obligation to immediately provide staff with the  
opportunity to take redundancy when the listed triggering events occur appears to us  
to be inconsistent with the concept of redundancy where the employer determines  
when and how redundancy arises." You'd agree with that, I think, no doubt.

40

Redundancy's normally about when the company can't use you any more. It's not  
about when you want to go if you're an employee, is it?---No. That's the normal  
- - -

Okay?---Yeah.

45

That's the normal redundancy, when the company has no - - -?---Just standard  
redundancy -- not change of control.

Yeah. Okay. And then (d): “In any event, it may be doubtful as to whether the primary objective of securing the retention of key staff is best served by immediately providing an opportunity to take redundancy at a time when, under the proposed clauses, one would expect that the company would require all hands to respond to any formal disciplinary processes under the provisions of the Racing Act.” And that was concerned, you see, with the position in relation to a change of control, that is, change of the control body. But the thrust of it, you see, is one of the things I’ve been suggesting to you. See what I mean?---I see what you mean - - -

10 Okay?--- - - - but I haven’t seen this before as – my recollection.

No. I know you haven’t. I know you haven’t. And then in the last line under – you see Complaints and Investigation – the last two lines on the page: “The directors would be well aware of the requirements of the Corporations Act with respect to their civil and criminal obligations of good faith,” and then over the page you see that they refer to section 181 and 184 and talk – in the last paragraph, the last three lines, talk about an ASIC investigation. In any event, somebody, it seems, judged that this should not be given to the directors, including you. But if it had – I shouldn’t ask that. You certainly don’t remember receiving this advice at any time?---I don’t. No.

Okay. Would you go to 207, please. 207 has an advice from Norton Rose dated the 15<sup>th</sup> of July 2011. Do you have that one there?---15<sup>th</sup> of July – yes.

25 And this too was an advice that was written by that firm of solicitors in relation to this topic. And I’d ask you just to consider it for me, please, and I’m going to ask you whether you can recall ever seeing it or receiving it or receiving the substance of it by discussion, even?---I – I can’t recall this letter at all, but - - -

30 Okay. That means you didn’t receive it, I don’t think, did you?---I – I don’t think so. No.

Okay. If you don’t mind turning over to page 2 of it, please, and look at 2.3. What they – what the solicitors assume in 2.2 is set out there. “In circumstances where (1) the proposed new benefits are necessary for the retention of the executive; (2) the retention of the executives is in the best interests of RQL; and (3) the benefits are not disproportionate, it is unlikely that a resulting agreement would be deemed to be unfair or unconscionable. 2.3: “Our suggestion of appropriate benefits that are not disproportionate, and that would be in the interests of RQL, is as follows: (1) an increase of the TRB of 10 to 20 per cent.” The reason this is interesting, Mr Lette, you’ll appreciate, is the fact they were given 30 per cent. See that?---I do.

Okay, and then, “(2) the inclusion of a new five year term commencing from, say, August ’11.” That would be a good idea if one was going to retain them, no doubt?---I agree.

Okay, and “(3) a notice period for termination,” you see that they say of no more than 12 months. That would be a sensible idea, and “(5) the inclusion of two incentive bonuses,” and you see in (a) and (b) they’re talking about bonuses for retention, in effect, and for performance on outcomes?---I see that.

5

Yep, and would you go to 2.4, please, Mr Lette? This seems to accord with your judgement. They were suggesting that the TRB might be up to 12 months, depending upon the board’s discretion?---I see that.

10 So one might think anywhere up to 12 months, but, as you know, here, what happened was they were given 14 months?---Yes, I do.

Okay. Now, 3.1 to complete our discussion, I hope, about this: I’ll just ask you to read it?---I read that, yeah.

15

That seems completely sensible, would you agree?---I agree.

20 Whereas having a trigger clause in of the nature that was offered to these people puts at risk, as suggested here, a smooth transition on change of government, doesn’t it?---I – yeah, that proposition is reasonable.

But my point is that the offer that was in fact made was completely contrary to that piece of advice?---Well, I’ve never – I don’t recall ever seeing this advice.

25 No, I know that. I know that, but it does. It is inconsistent, isn’t it?---It’s inconsistent, yes.

Yeah, and the logic of what they say in 3.1 is clearly sensible, isn’t it?---I don’t disagree with that proposition, no.

30

Okay. Now, could I ask you to go to 4.12, please? In 4.11, the solicitors introduced part 2D.2 of the Corporations Act, and I’ll just let you read 4.12 to 4.14?---I’ve read that.

35 Are you aware of that provision in the legislation providing for a cap?---I believe that’s in relation to listed public companies, but - - -

Did you factor that in in your thinking on the 5<sup>th</sup> of August?---No.

40 Okay. Did you have no regard to that provision when you were thinking about 12 months?---No. No, I didn’t. No. I mean, in my view that would – that – we’re not – it wasn’t a publicly listed company, so some of the provisions of the Act wouldn’t apply.

45 But you’re saying that now, but you didn’t consider it at the time?---No.

Okay?---It was never raised, no.

6.25, finally, please.

5 COMMISSIONER WHITE: Could I just perhaps tidy that up a little, so that you didn't even, in an informal sense, obviously, as a consequence of your answer to Mr Bell, think that, well, let's do a rough calculation, because this could be a defensible figure if ASIC ever had a look at it, do the calculation?---I did some sums in my head, yes.

10 And what did you come up with, Mr Lette?---Well, I came up with a number that we would have, which offset, say, several hundred thousand dollars of payment to employment agencies in my mind, which would be around about half, what – or a bit less than half that the termination payments would be. So the net result is – of the retention – was not in fact the amount that I considered they would get paid on a 12 months cap, but a much lesser sum if they weren't retained, if they walked out. So  
15 that – it was weighing up the benefits of keeping their knowledge and their expertise within the company - - -

Now- - -?---- - - for the benefit of the industry.

20 Now, why do you say that you were disappointed when they all left? I imagine that as a very experienced board member that when you were agreeing on the 5<sup>th</sup> of August to this so-called retention strategy that you also took into account the fact that they very well might go on a change of government?---I – your Honour, I don't agree with that proposition, but I had a view of the people themselves, and, to be quite  
25 frank, I thought they were better than that.

You might have done, but you've also got to be hard-nosed when you're in the commercial world- - -?---Sure, yep.

30 - - - and therefore you would still be looking at getting a recruitment agency at work if you had this devastating event occur?---I agree.

All right, thank you.

35 MR BELL: Mr Lette, did anybody at the board meeting of the 5<sup>th</sup> of August discuss offering this – these four members of staff terms of employment that involved two or three years up to 2014?---Yeah. I – there was discussion about 2014 from recollection.

40 Well, there might have been, but was there anybody pushing for a different proposition to go to them, namely that they would [indistinct] until 2014, and then they'd be offered good benefits- - -?---No.

45 - - - new benefits, better benefits?---No. Not to my recollection, no.

And was any offer or – start again – was any discussion directed towards offering them incentives to stay after the election, like, for example, they might get a bonus if they stayed on?---I think there was discussion about that, but I - - -

5 Why was that rejected?---I – the – my recollection was that the remuneration committee, and particularly the chairman, said that that wouldn't carry with the staff.

You see, in the end- - -?---Because the staff weren't at the meeting, of course.

10 No. When you say that of course, that's very interesting and important. Did you appreciate that the staff, in fact Shara Murray, had been giving the instructions to the lawyers?---No.

15 Would you think that that was the right thing to do?---I thought they were coming from the chairman to be perfectly frank.

Did you – do you think, if that's true, what I just said to you, was the right thing to do?---No.

20 Clearly, not for a lawyer: a lawyer's appreciation would be to have somebody who you negotiated with give the instructions to your own lawyer from advice is very odd, isn't it?---Yes.

25 And, particularly, if in the case, for example, of that Norton Rose advice that I've got out in front of you there that you'll see it was directed to Shara Murray. Do you see that at the front page?---I see that.

She was one of the people who were involved?---She was one, yeah.

30 And what seems to have occurred is that she went to back to the solicitors, Norton Rose, after she got this and asked them to delete a great deal of the advice before it was given to the board?---I can't comment on that.

35 No, but it'd be the wrong thing to happen, wouldn't it?---I - - -

That sort of conflict that one is trying to avoid by- - -?---I would think so, but I would also comment that I thought she would, again, would be – have better integrity than that.

40 But, more to the point, the board, don't you accept, should not put her in a position of conflict like that where she is giving instructions in respect of the negotiation involving her when the advice is for the board's position?---I would agree with that.

45 Yeah?---But the chairman obviously put her in that situation.

Mr Lette, one other thing I didn't really understand about this; could you help us, please? That is, why was it necessary to go to lawyers at all in relation to a

negotiation of staff on remuneration and contracts? Did you have any thought about that?---It's normal practice in my view.

5 To go to lawyers about- - -?---To negotiate the – to do the contracts and in relation to negotiation, yeah.

10 What about to two lawyers? Two sets of lawyers, like here?---I think the board – I have sort of a recollection that at an earlier meeting there was discussion about getting a second opinion.

Right, and is that normal in your experience, getting two lawyers to advise?---Yeah. It has happened in my experience many times, several times.

15 And why would you do it? Is it because you don't like the advice from the first set?---No.

20 Well, why could it be then?---Just really for confirmation. If there are any doubts and – in this instance, I don't – I honestly don't know why management – or why the chairman, sorry, not management – elected to get two opinions, but they did.

In fact, he didn't; he got five, but- - -?---Five?

Five, but the point is- - -?---I'm sorry, I'm not aware of that.

25 - - - that you were given three at the board meeting, two by Norton Rose and one by Clayton Utz, and they weren't in agreement. Do you recall that, that they weren't in agreement?---They were basically in agreement.

30 Let's have a final look at it, please; I've got to take you back to 212. If you go to page 2, please, of the advice; have you got that?---I have.

35 In (c), above the heading Background, you see it says in the second sentence, the third line, "However, we recommend that all of the additional triggers ought to have a significant impact on the role or duties of each of the four senior executives. We would not recommend that one of the triggering events that activate payment be a mere change of state government alone, as that event of itself may or may not have implications for the employment of the four senior executives." Now, that's precisely what they were offered, you see, isn't it?---Yes, correct.

40 Do you recall what you thought in rejecting this advice?---No, I don't. I don't recall, no.

Is that a convenient time, Commissioner?

45 COMMISSIONER WHITE: Yes, it is. We'll take a break for 15 minutes, Mr Lette.

**THE COMMISSION ADJOURNED**

**[11.30 am]**

**THE COMMISSION RESUMED**

**[11.45 am]**

5

MR BELL: Commissioner, could Mr Lette see his statement sworn the 30<sup>th</sup> of July 2013 in relation to QRL and RQL, please.

10 COMMISSIONER WHITE: Yes, certainly.

MR BELL: Mr Lette, would you mind going to paragraph 4, please. Does yours start "I am experienced"?--- Yes.

15 Okay?--- Yes.

And in this paragraph, you're talking about your experience as a chair and other things about your experience; aren't you?--- Yes.

20 And in particular, the last two sentences, the fourth last line, you talk about your recollection is that Shara Murray would in these meetings often ask me my opinion about a legal issue. "It was my firm practice to preface my answer by saying that my opinion was my personal opinion as a director, and not a legal opinion."?--- Correct.

25 "I mention this by way of example." Am I right in taking that to mean that you saw your role not as a lawyer as a member of the board but as a director, like the other directors?--- As a director with legal training, yeah. I – I've made a policy – I've been on boards for about 20 years and I've made it absolute policy never to give legal – advice that I said was legal advice.

30

Okay. So just so I understand exactly what you mean. If, of course, you're at the firm of Mullins and you're working in your legal capacity, you're retained, you'll give legal advice?--- I certainly will.

35 But if you're called to one of your other boards, forget about this one, the appropriate conduct is not to give legal advice, even though trained as a lawyer, in the board capacity?--- Correct.

40 And why is that? What's the point of that ethic?--- It's simply been my ethic ever since I became a director of not to mix the two.

I'm not questioning the sense. In fact, it doesn't matter what I think about whether it's sensible or not. It sounds very sensible. But what is the point of doing that? Is the point that one doesn't want to confuse one's roles because if a public company on which you're a board member requires legal advice, it should retain it properly?--- Correct.

45

Because then it would be covered by the insurance and so on?--- Correct.

Is that the thinking?--- Correct.

5 And I think the other thing is, is it – you help me here. When I’m reading these four lines here, I’m thinking you’re saying that it’s sensible for a legally trained director to remember his role or her role. Because otherwise what happens is you’ll get confusion of who’s giving the legal advice?--- Correct.

10 Okay, I’ve got it. And I suppose, Mr Lette, on a board there might be people who are in some other – have experience in another capacity like engineering. But they’ve got to also contain their expertise to being a board member and not start giving engineering advice?--- I would expect that would be the case.

15 Okay, I’ve got it. And anyway, that’s been your practice ever since you’ve become a board member; has it?--- Absolutely.

And that’s been 20 years or so?--- At least – oh, probably more.

20 Okay. But you’re firm in that position?--- Correct.

Okay. In paragraph 27 of that – 27 of that statement, you say, “I am aware that there were arrangements between Queensland Race Product Co Limited and Tatts Group, formerly UNiTAB, concerning fees paid by the Tatts Group for Queensland  
25 wagering on interstate races through TattsBet. However, I do not have detailed – recall now the precise operation etcetera of the arrangements.”?--- At that time.

Sorry?--- At that time, when I - - -

30 At the time of swearing your affidavit?--- Yes.

Are you clear now?--- I have since been able to read some board minutes, and other documents.

35 Okay. Well, the document I - - -?--- Which I could not actually find amongst my papers.

The document I was - - -?--- At the time.

40 - - - thinking about, you tell me if you’re thinking about the same document, is the Product and Program agreement dated 1999. Is that the arrangement you’re thinking about?--- The Product and Program Agreement?

Yeah?--- Yes, I had read it on occasions. But it was – I did not have a copy of it. It  
45 was a confidential - - -

No, that’s fine. I’m not quizzing that, it doesn’t matter?--- Yeah.



My question is you said, “I’ve now looked at arrangements, I’ve now looked at documents and so on. And unlike in the affidavit, I’m now conscious of the arrangements.” I think the arrangement is the Product and Program Agreement; do you?--- Yes, I do. Yeah.

5

Okay. Let’s just have a quick look at it so we’re together on it. Could Mr Lette please see document 2. It’s in my folder number 2, and I hope it is in Mr Ashton’s too so he can follow. Do you have document number 2 open? You see it’s styled Product and Program Agreement?--- Product and Program Agreement, yeah.

10

9<sup>th</sup> of June 1999?--- Yes.

And you can see in the – page 1 at the bottom right-hand corner, in fact it’s the second page 1 that’s got the date at the top, the parties to it were the TABQ and so on?--- Yes.

15

The three control bodies - - -?--- Yes.

- - - at that time?--- At that time.

20

And Race Product Co - - -?--- Yes.

- - - as we call it. Now, this in – from what I now, it seems to have regulated the relationship between Tatts and the control bodies and Product Co. Do you agree with that proposition?--- I agree.

25

Are there other arrangements between them that you know of that regulated those dealings? Or is this the only one, as I can - - -?--- Not that I’m aware of.

30

Okay, good. So the other thing I wanted to confirm with you was in paragraph 29 of your statement. You don’t mind looking at that, please. In paragraph 29, you say “I am aware that there was a legal opinion on this issue but I cannot recall now its contents without reference to the board papers to which I have referred.” Do you recall now that there was an advice from Mr Grace?--- I do.

35

Okay. Could I ask you to go to document 43 in my bundle, please. Somebody will help you get that and the advice before you is at document 43 in the bundle and it’s an advice from Cooper Grace and Ward to Mr Tuttle of Queensland Racing Limited, 18 November 2008 and that’s the legal advice, is it, that you’re thinking about?---Yes. I read that document yesterday.

40

Okay. Good. Now, I’ll just have you close that up and I wanted to ask you some other things now. Just go to 3, please. That is, divider 3. Now, what this is, Mr Lette, is a schedule of the charges that have been made by Tatts by way of third party charge deducted from the revenue coming to Product Co from Tatts over the relevant period of the Commission. Do you know what I’m talking about?---Yeah. I – I do. I – I can’t - - -

45

Okay. Looking - - -?---Can't - - -

You don't know the figures. I understand that?---Can't comment on the figures. No.

5 But looking at the top of the page of the schedule – says September 2008 and the reason for that, which I'll show you in a minute, is that that's when the charges commenced to accrue and then it's got March 2012 because that's when the Commission of Inquiries relevant period terminates. That's why I've got that, you see?---But I presume this is still that case.

10

It's still the case?---Yes.

Exactly as you say, as I understand it, but the point is, if I go down to Harness and I look at the charges over the relevant period I see that in 2008/09 financial year, the first charge appears to be September and that is September in the financial year ended 30 June 2009, but over the total period the third party charges have been \$8.398 million, a substantial figure, you'd agree?---I see that. Yes.

15

But if I look at the very top and I think about Product Co and the directors of Product Co, what they had seen was that \$90 million or in excess of \$90 million during the relevant period was charged and, as you pointed out to me, was continuing to be charged up to today, presumably?---I presume so. Yes.

20

Okay. So it was, was it not, a significant issue that required some attention by the board of directors of Product Co and Harness control body and the other control bodies too, would you agree?---Correct.

25

And did you give it attention in late 2008 and 2009, etcetera?---Yes. We did. It – well, wearing which hat? Harness or - - -

30

You tell me?---Well, I recall – and it's – as I say, I couldn't find anything in my papers, but I do recall meetings with government, Mike Kelly from the Office of Racing, when they were – when they were looking at bringing in the – the – the race fields legislation.

35

Yes?---And – and it – I don't know whether it was that meeting or a meeting after the legislation came in where the Office of Racing confirmed to – to us that it – it was the view of the Crown that – that The Product And Program Agreement was exempted from the race fields legislation.

40

Really?---Yeah.

Did they disclose any legal advice in accordance with that?---No. No.

45 So what would that – what value would that be to you?---Well, the – well, certainly, wearing my Harness hat, we took – we took a lot of guidance from the Office of Racing.

I understand that, but what influence would that be to you as a lawyer, that somebody said, “My legal advice is blah, blah, blah?---Well, I’m sorry. As a lawyer, I’d – I had – I had formed the view that – that The Product and Program Agreement - - -

5 Don’t worry about that. We’ve got to go to that. I accept that?---Okay. Well - - -

My point is this, when Mr Kelly or somebody else at the government said, “Our position on this is we think this” what value does one put on that as a board member, please?---Well, it’s just a guidance from the Crown.

10

Is it?---In my view, yeah.

Okay?---From the Office of Racing.

15 So that’s a guide - - -?---Who administers the Racing Act, so - - -

Yes. But does that have anything to do with a written agreement?---Well, the – the - - -

20 What about your grandmother? What was her view, to make my point, Mr Lette?---Sorry?

What does it matter what one person thinks is the view?---Well, I – I was aware that the Crown also had an agreement with UNiTAB or Tatts Group as it’s now known in relation to race fields – The Product and Program Agreement.

25

WHITE JA: By the Crown, I take it - - -

WITNESS: I have never seen that – I have never seen that document.

30

WHITE JA: Sorry, Mr Lette. I just don’t understand that. I need to clarify it. By the “Crown”, he means the State of Queensland, I assume?---The State of Queensland. Sorry. Yes. Yeah. Sorry. I was never privy to that document, but I know it existed.

35

MR BELL: So, I’m sorry. I wasn’t listening. I was distracted. Could you tell me that again now? You understood that there was an agreement with the Crown, did you?---Yeah. With the State of Queensland.

40 And who else were the parties to it?---And – and the licensee, Tatts Group or UNiTAB as it was in those days.

Oh, you mean – was that in relation to what?---In – in relation to the privatisation of the – of the – of the TAB and - - -

45

So what’s that got to do with anything? I’m just trying to understand why you said that?---Well, all I’m – all I’m saying is that – that – that I always had a view that –

that anything to do with, certainly, the Harness industry and racing was – we – we would be needing to seek guidance from the government, no matter who was in power. It didn't matter.

5 I see. And I just don't understand the logic of that. Could you help me understand it, please?---Well, I'm – I'm sorry. That's just how it was.

Okay?---I – I had – when I was chairman of Harness I had regular meetings with – with the Office of Racing and, as I say, one of those meetings – and I can't recall  
10 when it was, but it was – it was either just – just before or after the race fields legislation came in that they made it clear to us it was their view and they – I understood they'd obtained legal opinion for this – that that - - -

WHITE JA: I'm sorry. Are you talking about – when you say race fields legislation  
15 are you talking about the introduction in Queensland or race fields legislation?---In Queensland. Sorry, your Honour. Yes, yes. In Queensland.

Yes.

20 WITNESS: That – that it was – it – it – The Product and Program Agreement was not applicable to the race fields – in other words, race fields legislation. In other words, you couldn't – we couldn't charge them twice for the same product.

MR BELL: Yes. I understand. So that means that – just so we're both clear on it, I  
25 think what you're saying to me is that when the Queensland Government brought in race fields legislation here, if Tatts were going to carry on a wagering business in Queensland using Queensland race fields information, they would not charge another fee on top of the one already in The Product and Program agreement?---Sorry? The racing industry wouldn't charge another fee – wouldn't be charged a fee?

30 Well, let me try again and see if I've got it?---The racing industry wouldn't charge Tatts Group twice for - - -

35 Yeah. Okay. A second fee because it was paying money under The Product and Program Agreement?---Yeah. Exactly. Exactly.

I've got it. And, in fact, you may or may not know, in the legislation in section 113 that's precisely what is provided for?---What it's – yes.

40 Okay?---Correct.

So I've got that. They don't need an advice on that because it's provided in the legislation?---Mmm.

45 What I'm talking about is a different thing. You were saying that – when I asked you did you consider this important question that had financial impact on Harness

and Product Co – indeed, quite the impact on Product Co – did you give it attention and I think you were saying, “Yes. I did and I went to government”?---Yes. I did.

5 And I was asking you what’s the - - -?---Well, I also formed a view myself after – after reading the relevant part of The Product and Program Agreement, which I think – which I’m pretty sure I didn’t have a copy of, but which is held in the records of the Harness board.

10 Okay. Should we look at that together now, if you don’t mind going back to it, please.

WHITE JA: You would expect it to be held by Harness because it was a party to the agreement?---Yes, your Honour.

15 Yes?---I – I didn’t have a copy though, myself, personally.

No. But it was available to you to have a look at?---Yes, yes.

20 Yes.

MR BELL: This is – this is in at divider 2. Are you able to reflect back now and tell me what you were looking at or what you were thinking, please?---There’s a section - - -

25 Is it on page 6? You see the definition of “third party charge”?---Yes. Yeah. That’s – and - - -

Is that what you were looking up?---Yes. And there’s a section somewhere – it deals with it in relation to deductions.

30 Yeah. Clause 10, is it?---I don't know. Somewhere.

Clause 10.2(c)?---This is a – this is a document I haven’t read for about five years.

35 No. That’s okay. You see, my question – let’s be careful. My question is – you don’t have to explain it to me. All I was asking you is can you recall what your view was by reference to this that you said you reached yourself?---Yes. I can.

40 Okay. Do you – are you able to refer me to the sections that you were having reference to in reaching that view?---Well, not – other than – other than – you pointed out section 10 and that’s probably the relevant section.

Okay. Well, let me just show you what it says?---But it was in relation to deductions.

45 Sorry. Okay. 10.2(c) says, “TABQ is irrevocably authorised to deduct and set off from the fee payable, pursuant to clause 10.1, the third party charge” and then if we

5 go back to the definition of “third party charge”, “third party charge means the amount of any fee payable or other consideration given by TABQ to obtain the equivalent of the Australian racing product and the costs and expenses incurred by TABQ in procuring the equivalent of the Australian racing product from a source other than Product Co.” That’s the one, is it?---That’s the one. Yeah.

10 Okay. So your consideration was that that was the relevant term of the agreement and that insofar as race fields legislation was introduced in other states, not Queensland, the charges that TABQ would incur could come under that?---Yes.

I see. And how did you think that would occur? Did you look at the legislation?---I probably did at the time. I honestly can’t say, but I think I did.

15 Okay. Well, let me try and refresh your memory by telling you the New South Wales legislation, when it came in in June 2008, first provided that if, in a wagering operation, one published race fields information then they would need to pay a fee for a licence?---Yes. That’s my understanding. Yeah.

20 And how would that be caught by this? That was for a charge for publishing in a wagering operation; this here seems to be paying to obtain the information. See what I mean?---Well, no. I don’t. My understanding was that any fees payable – I mean there was a gentlemen’s agreement, if you – they used to call it this gentlemen’s agreement.

25 Well, don’t go off this. We’re looking at the right clause here. Let’s look at the clause together. It says third party charge means to obtain the equivalent of Australian Racing Product - - -?---That’s right.

30 - - - and the costs and expenses incurred by TABQ in procuring the equivalent. That means, does it not, a fee to get it?---Yes.

Okay?---Yeah.

35 Well, my point was to you that when one looks at the New South Wales legislation that came in in June 2008, it had nothing to do with cost for procuring. The information was readily available to anybody who wanted to ring up and get it from RISA?---I haven’t - - -

40 Did you know that?---I haven’t looked at the New South Wales legislation.

Well, what legislation did you look at when you reached a view?---When – when the - - -

45 When it arose – when the question arose?---When – when the question arose?

Yeah?---Yeah.

What - - -?---At the Queensland legislation.

What legislation did you look at? Sorry?---The Queensland legislation.

5 Okay?---The race fields legislation.

In Queensland?---Yes.

10 Okay?---Before that I took a view – I took a view that whatever – and I think this was a view shared by my board members – that whatever fee had to be paid where the gentlemen’s agreement ceased, where nobody paid fees for provision of the product, then it was a legitimate deduction that could be made. And in fact, my understanding was that in Queensland we were a net exporter of product and hence we were actually receiving a benefit from – in terms of dollars from the – from the  
15 payments.

20 But the point is what’s it matter what the board members think? Doesn’t it just matter what is – what the court’s going to determine as right in respect of whether or not this charge can be made as a third party charge? Doesn’t it matter what the legal rights are? See, my point is - - -?---Yeah.

25 - - - otherwise if you change the board and you have my grandmother on it, she’ll have a different view. You get that; I know you do?---I do. I certainly get that. Yeah.

Okay. My point is what’s it matter what the board members’ view is?---Well - - -

30 I don’t understand that, Mr Lette. That’s really important to the commission?---Well, I - - -

35 Can you explain it, because you’re a lawyer; you’ll help us understand?---Well, as a director – and I understand the – the other board members, certainly on Harness, had the same view that – that – that after considering – considering the Product and Program Agreement, that it was a legitimate deduction which could’ve been made right from the start, from 1999.

Yeah. But look, you’ve said that. Look, I accept that?---So - - -

40 My question to you is what’s it matter what a particular board member thinks? My grandmother could be on the board, for example?---Yeah. Well - - -

That’s – I’m trying to make it simple?---Yeah, sure. I accept that proposition.

45 You accept that proposition?---What does it matter that – what a board member thinks? Well - - -

Yeah. What's it matter?---Well – well, if board members didn't have a view, board members shouldn't exist.

5 But you were telling me before – I thought it was very clear to me. You made very clear to me before, in relation to Shara Murray's request for legal advice from you, that you didn't give it as a board member?---I – no. That's – that's true.

10 Okay. Well, with that ethic in mind that you have practised all the way through, I'm struggling to find out how you, sitting on the board of Product Co or on the board of Harness as chairman – how it could matter what Mr Hanmer thinks, for example, or what Mr Lette thinks or what Mr Somebody Else thinks. Who cares? These – you're representing all these people, aren't you?---On a collective - - -

15 So what's it matter what you think?---On a collective view.

Yeah. On a collective view, then – what's it matter what the collective view is? I'm asking you. Please help me?---Well, sorry. I'm – I'm at a loss to understand, because the – the board – the board formed a view that it was a legitimate deduction under the Product and Program Agreement that we - - -

20 I've got it. Now, how do you line that up with what you told me earlier: that as a board member, whether you're trained in engineering or law, it doesn't matter what your view is? You make sure you retain a lawyer to give legal advice; you make sure you get engineering advice. Do you see what I mean?---Yeah.

25 I'm sure you do?---I hear what you're saying.

Okay. Tell me the answer to it, then?---Well, under – yeah. Under – under certain circumstances you would.

30 Well, what other circumstances are there that aren't certain?---Well – well, it was a collective view that that – it was a legitimate deduction.

35 Okay?---I – I can't go any further than that - - -

Okay. Okay?--- - - - to say that this was the collective view that right from 1999, if the TAB had had to pay charges they would've been deducted.

40 And it doesn't matter what the legal rights are determined by the court as?---Well, it – there was – it was never taken to that stage.

No. I know. I know. That's what's interesting?---And still hasn't been, I might add, to – and still hasn't been, as far as I'm aware.

45 No. That's what very interesting. I accept immediately – I take the point. But my question is – particularly to you, because you're sitting there now – why, as a lawyer, knowing the importance of making sure you keep your role clear in your head –



5 when you're a lawyer you don't give legal advice as a board member. When you're a board member you make judgments based upon professional expert advice that the board receives, don't you? Isn't that your point?---Well, I – but I also make my own personal view based upon my legal experience. I mean if I didn't use my legal training to form my own view then I wouldn't be worth being paid as a director.

Mr Lette, I'm going to take you back to your statement that you swore?---Yeah.

10 And before, under oath, you were telling me all about this and I was certain I got it clear?---Yeah. No, no.

15 Did I not get it clear?---But what I'm saying is that I used my – I used my legal training to help me form a view as a director. I don't give legal advice to boards about matters. I simply form – with my legal training, I form a view.

Did you give your view of the Product and Program Agreement in its proper construction to any other board members of Harness or Product Co in 2008/2009?---I probably gave my view as a director. Yeah.

20 Why?---I presume I was asked for it; I don't know.

25 Well, when Shara asked you the same question in relation to other things, you told her, "I'm putting the caveat on this. This is not legal advice; this is my personal opinion." Did you do that?---No.

Why not?---Well, I didn't give legal advice. I didn't give it as legal advice.

30 Okay. So what did you say to make that clear to the lovely non-lawyers who were listening, please?---It was a standard right from the start where I – I – I didn't specifically each time say. It was just simply my policy.

35 Okay, Mr Lette. But you're not answering my question there, with respect to you. Have another go at it. My point is what did you say to the non-lawyers on either of those boards when you said, "My view about the proper construction of the Product and Program Agreement is this"? Did you say something extra to caution them that you weren't giving legal advice?---I can't recall. I honestly can't recall.

Well, I suggest you didn't?---Well, I can't recall.

40 Okay. Well, I'll show you?---I honestly can't recall.

45 I'll show you now. We'll go through the documents. Would you go to 22 – number 22 first, please. You see these are minutes of Harness Racing – Queensland Harness Racing Limited of the 29<sup>th</sup> of July 2008?---I do.

Okay. And then over on the fifth page looking at the bottom right-hand corner, you see at the top of the page, "Race Fields Legislation: The board requested that the

CFO forward to them the information sent to the Office of Racing in relation to indicative financial impact of New South Wales race fields legislation.” See that?---I do.

5 Okay. And then if you go back to – I hope it’s 22A, the document just before the one you’re looking at, please. Have you got that one? It’s a board paper - - -?---Yeah. I have.

10 - - - dated 23 July for the meeting 29 July provided by Andrew Kelly for your board?---I do.

You okay with that? And then over to page 4, please, Mr Lette. Heading is Race Fields Legislation. You’ve got - - -?---Yes. I see that. Yes.

15 Okay. I’ll just let you read that part of the paper, please?---I see that.

Okay. Firstly, it was a serious financial issue that had arisen, wasn’t it?---It was.

20 Okay. And in the third paragraph in this paper, you see that what Mr Kelly says is: “At this stage, UNiTAB have explained to Product Co that they will respond saying that they will not pay the fee. However, should the fee have to be paid, this will be passed on to the racing codes by way of deduction” – probably “by way of deduction” - - -?---Way.

25 - - - “prior to UNiTAB paying the distribution percentages to each code.” So we know UNiTABs position on it, it would seem, if Mr Kelly’s right?---Yes.

30 Okay. Now, when this serious question arose, was it important to make a call on whether they were entitled to do that? That is, UNiTAB, to deduct?--- Well, it probably was. But again, we had a view that the Product and Program Agreement, it – they were entitled to do so.

Okay.

35 COMMISSIONER WHITE: I must say that I find this a bit surprising, Mr Lette. This is just an exercise in statutory interpretation. You just look at the provision in the New South Wales act, you get a lawyer who’s adept at doing this sort of thing to look at it as against the third party deduction in the Product and Program Agreement. It’s not what you think or feel, with respect. It’s actually what the New South Wales  
40 legislation can charge for. And I, like Mr Bell, am somewhat at a loss to know why you would have feelings about these things?--- Well, your Honour, I think we were again relying upon the Office of Racing for guidance as the overriding – at that point in time, under the Racing Act they were in control of - - -

45 You were a corporation?--- Yes, but we were subject to – my understanding under – then at that time was we were always subject to ministerial – we had to report to the minister and we had to do annual reports to parliament.

But as a lawyer, Mr Lette, you know that it doesn't add up – well, you tell me. Does it add up that one might go to the government and say, “You're our regulator, regulate us on this.”? Is that what you were thinking?--- Yes, absolutely.

5 Okay. Well, we know – do you remember that they came back and said, “We're not going to give you legal advice, go and get your own.”? Do you - - -?--- I don't remember that.

I'll show it to you in a minute?--- I don't recall that.

10

Let's do it in chronological order and we'll come back to that question. But 46A I took you to earlier. But I'd like you to go back to the race fields legislation document in 46A, please?--- 46A.

15 And again, you remember I showed you this document earlier. And the second - - -?--- Yep.

The dot – the two dot points from about point 5 of page 2 of 8, you remember reading them before?--- This – this is on page – oh, sorry. Page 2 of 8.

20

2 of 8, please?--- Yes.

I'll just give you a sec - - -?--- Yes, that's – yes.

25 - - - to refresh your memory. The point there was that the – Ms Murray and Mr Tuttle were at least saying in this paper for the board that it looked right that they could charge that?--- Yes.

You see that?--- Yes.

30

Okay. And then go to number 32, please. And you recall I showed you this? This was a board minute of Product Co. And I think you were present at it or at least that's recorded there. And that board paper appears to have been considered over the page in number 4, race fields legislation; you see that?--- I don't know whether it was that paper that was considered.

35

All the headings are exactly the same and it's dated for this day, you see. But here's the point. If you go to the – “The board noted the update and advice provided by Murray and Carter.” You see that in the second-last paragraph?--- Yeah.

40

“The board recommended that each control body discuss the matter of race fields legislation with each of their individual boards and provide feedback to the Product Co board at the next meeting.”?--- Correct.

45 “Further modelling” etcetera?--- Yeah.

So clearly enough you were all resolving to look into this question - - -?--- Yes.

- - - in relation to the new developments in the industry?--- Yes.

And it was all about New South Wales at the time, you see, because they were the first who were bringing it in so as to affect Queensland?--- Yes.

5

Okay. So then would you go to 37, please. 37; have you got that now?--- Yes, I have.

37 was an invoice that came in dated 6 November, which was the first invoice to Product Co that had a deduction for the New South Wales race fields legislation; see that?--- Yes.

10

You can see that it's charge on - - -?--- Yeah, I've never seen it - - -

15 I'm conscious - - -?--- I've never seen it before.

No, I've got it. I've got it. But I'm telling you that - - -?--- Yeah.

- - - this is the first one in time and it accords with what was happening. But the point of it is you can see it was a significant charge right upfront?--- Yes, I do.

20

For Product Co. Okay?--- Yeah.

And then if you go to 43, let me show you this again. 43, please?--- Yeah.

25

This is Mr Grace's advice we talked about earlier that I think you've refreshed your memory about now; haven't you?--- Yes, I have. Yeah.

Okay. Just – let's have a quick look. I just wanted to be sure. On page 4 of this advice, about point 4 of the page, you see at – you're okay with page 4?--- Yeah.

30

Point 4, you ask as to whether the provision of Racing New South Wales etcetera. And that's the question, that's one of the questions?--- Yes.

And then the next paragraph, "On the basis that the New South Wales legislation imposes a charge for the publication of information and not the supply of information, in our view the amount payable is not for the obtaining of the Australian racing product or the procuring of it as provided in the definition." Now, in fact, if you – so, look, the position was this eventually came to you, this advice; didn't it?--- It did, yes.

40

Yeah?--- I couldn't recall when I did my statement. I knew there was something - - -

45 That's okay?--- That I'd seen. But I couldn't - - -

I've got it. Because - - -?--- And I couldn't find it in my papers.

This came to you, this advice, and you considered it clearly enough; didn't you?--- I did.

5 Okay. And just going over to the next page, number 3. "In our opinion, the amount of the product fee" – are you okay? I'm looking at page 5?--- Yeah, I'm all right.

10 "In our opinion, the amount of the product fee payable under 10.1 will not be the subject of any offset or deduction under 10.2C as and by way of the third party charge. In respect to money payable to anyone else for the provision of Australian racing information as defined in the PPA, where the fee is not paid for obtaining or procuring the amount but rather for the use or the publication of it under legislation, empowering that body to charge a fee in respect of the publication or use." That was his view. And clearly enough on your reading of it, that was his view?--- That was – yeah. [indistinct] his view.

15 Okay. And in the next part, under observation discussion, what's interesting is he's recording, it seems – not with you. But he's recording a discussion he has had with people from Queensland Racing. If you look back at the start of the advice, he says – see there, it's addressed to Tuttle and "Refer to our meetings of 31<sup>st</sup> October, 4  
20 November." And then he says on that page 5, "In discussion, the question as to whether an argument that a charge for the right to use or publish information obtained at a cost – obtained or procured or supplied may be seen as somewhat of a semantics." That concern would arise because no party would commercially obtain, procure or have supply of information which did not carry with it the right to use it."  
25 Was that your argument? That is that if you were buying it, buying the provision of it, you surely must be able to use it?--- Able to use it, absolutely.

Was that your view?--- Under the Product and Program Agreement, yes.

30 But that was your view; was it?--- That most certainly was.

So you and Mr Grace, at least we know, disagreed with each other?--- Yes, I didn't agree with this advice.

35 No. Okay. Did you put your advice in writing?--- No.

Did anybody ask you to?--- No, not – no.

40 MR ASHTON: Your Honour, with respect, he hasn't – in fact, he's expressly eschewed the notion that he gave advice, let alone that he put it in writing. So it's not fair to put that to the witness.

45 MR BELL: Well, I'd love to accept that. Did you give no advice to any other board members at any time in relation to this legal question, Mr Lette?--- I gave no – I gave advice of what my view of it was.

5 Yeah. Could you help us by giving us the expression or the substance of the expression you gave to make that point?--- Look, I honestly can't remember. All I can remember is that I had a view that if you were paying for something, and unless it had conditions on it, you were able to use it without paying another fee. In other words, we couldn't double dip.

So you mean like – did you consider the example that he gave, that is Grace gave, of a car. You can buy one but you've got to pay for a licence to use it?--- Yeah, I - - -

10 Was that silly; was it?--- I thought it was. I thought in this instance it wasn't applicable at all.

Tell me why?--- Well, I just simply don't agree with it.

15 I know, but tell me why. What's the logic?--- The logic was that in relation to race fields information, they were paying for it and therefore they were able to use it, unless it was conditioned as to what they were able to do with it. It was as simple as that. I - - -

20 You see, Mr Lette, it wasn't that at all; you see? Anybody can use it, there's no problem with using it. It's just if you use it in a wagering operation?--- Yeah. Well, that's what I meant, yeah. In a wagering operation, yes.

25 Well, that's important; isn't it?--- It is, yes. Sorry.

Yeah. So - - -?--- I wasn't talking the general public, I was meaning UNiTAB.

30 Okay. So anyway, certainly if you now go to 48 – I'm sorry. Just before you do, maybe I should take you to 38, please, so we do the chronology in proper order. I wanted to take you to 38 to see if you could recall that Mr Seymour sent you an email on the 6<sup>th</sup> of November?--- Yes, I don't recall this. Yeah. Yeah.

35 Okay. Anyway, in the last two lines, what Seymour is concerned about is the market share that the corporate bookmakers are taking?--- Correct.

Yeah. But the point of the race fields legislation was, do you recall, to make them contribute?--- Tribute.

40 Yeah, okay?--- Yeah, absolutely.

That was in your mind; wasn't it?--- Absolutely.

45 Okay. And then if I take you to 39, please, you'll see an email from you to Mr Kelly of harness and to other people. Can you recall that?--- I don't, but - - -

Okay. Here's my point I wanted to ask you if you can recall. HRA, does that refer to Harness Racing Australia?--- It does.

Okay. And for a UNiTAB presence at the wagering forum on 21 November, it was that people were – I'm sorry. That Harness Racing Australia were going to have a forum about, among other things, wagering on their code?--- Correct.

5 And they were inviting along, among other people, UNiTAB to give their position on how the wagering was going with Harness?--- I gather so, yes.

Okay. But do you recall going to that forum?--- Not specifically.

10 Okay?--- But I probably did, as I think I was vice-chairman of HRA at that stage. I'm not sure.

Okay?--- I can't – but I was a delegate to HRA from Queensland.

15 Okay. Was there any consideration, if you can recall, of the question of the deduction that I'm talking about at that forum?--- Look, I can't recall.

Okay?--- I'm sorry, sir. I can't recall.

20 That's okay. So I was going to take you back to 48, please. And this may be a document that you haven't seen either, but I want you to look at it, please. I'll tell you what it is. This is a handwritten note of a conversation, it's said, between yourself and Mr Hanmer on the 2<sup>nd</sup> of December 2008. That's what it is; you see? You have a read of it and see whether it properly reflects what you can recall is a  
25 conversation between the two of you?--- I don't recall the conversation. I don't recall the conversation but - - -

I know?--- But it probably expresses my view.

30 Have you had a think about this before me asking you to look at it just now? That's fine if you did, I'm just - - -?--- Yea, yeah. No, I have, yeah. Yeah, as I say, I don't recall this conversation at all.

No, okay. But preparing to give evidence, you've had looks. I don't have to - - -?---  
35 Yeah, I did. Yeah.

Okay, good. But that's pretty much your view, you think, as recorded in there; is it?--- Yes.

40 Okay. I just wanted to show you one other thing about that. If you go to 75, that is document behind 75, I'll ask you to come back to that handwritten matter in a minute. This probably – at 75, this is an email that doesn't concern you but it concerns this conversation. And it's written by Mr Hanmer on the 9<sup>th</sup> of August 2009 to Shara Murray. I'll just let you read it. I'm particularly interested in the  
45 second part, see if that helps you refresh your memory?--- I – yeah. I'm not – I'm not - - -

It could be the case; could it?--- Yeah, I'm not suggesting I didn't have the conversation. I just don't recall it.

5 Yeah. But the point of the conversation seems to be, if I – if we go back to the handwritten one – seems to be that at least Hanmer's thinking that you're giving advice as a lawyer; doesn't he?--- Oh, no. I don't agree with that.

10 Well, where do you pick up that he wasn't in that note, please?--- Well, I don't. But I – it wasn't - - -

Well, how do you – how do you gather it?--- It – I just gather it was – it was on the basis if I wasn't attending a meeting and I was asked to – what was my view as a director, and I gave my view. Now - - -

15 But why did you?--- I see where he says – I see where he says about – that I'd check – run it past one of my partners. Well - - -

Correct, yeah?--- Yeah, well there is - - -

20 What's that about?---Well, there is no way in the world I would have actually given the letter, any confidential document, to any one of my – and I wasn't a partner then, I might add, I was retired and a consultant – but, nevertheless – but I was in the habit of occasionally discussing in principle matters with various people on my floor.

25 Okay. Well, let's address the first part: we can be certain here at the Commission, can we, that you would never have given Grace's advice to a partner because it's privileged. Is that right?---Yeah. I absolutely - - -

30 No, but – just listen to what I say?---Yes.

It's unwaveringly true, is it, that you would not have given Grace's advice to a partner at Mullins because it's privileged. Is that right?---That was my normal modus operandi, and I don't - - -

35 I'm just trying to work out what you're saying to me?--- - - -and – no, and I don't recall giving this to anyone either.

Well, that doesn't matter- - -?---And - - -

40 Don't worry about not recalling- - -?---I've since checked with anyone, and no-one recalls me actually giving them a copy of that advice.

45 Okay, but, more to the point, your ethic or your position in being a director is not to hand out legal advice to other partners in Mullins to look at. Is that it?---Absolutely, yeah.

Okay?---Not related to a matter - - -



Right, like this situation: that's - - ?---Yes.

5 Okay, so I've got it now. So what seems to be the discussion that at least was related to Mr Hanmer by your message was I've run all that just past one of my partners, who is very much into constitutional law, interpretation of stuff, and he totally agrees with me. That's what seems to be said?---Yeah.

Now - - ?---Yeah. I - - -

10 You can't remember whether you said it or not, or - - ?---I don't remember that I said it.

Okay, but that's the sort of thing that you might run past a partner like we lawyers do?---Just in principle, yeah.

15 Okay, and what would you, looking back on it now, have given him for reference? Would he have gone into it and sat down and thought about it like lawyers do, or would he have just had a talk with you?---It would have been a standing at the door having a discussion in principle.

20 Okay, I've got it?---Hypothetical discussion.

Okay?---I never ever had discussions of board matters – I never, you know - - -

25 I've got it. So I'm clear in proceeding, but, certainly, Mr Unknown Partner at Mullins did not put pen to paper about what the right approach was on this legally?---Absolutely.

30 Okay, and, certainly, you didn't do that either. You didn't consider - - ?---No.

Okay, I've got it. Now, if you go to tab 49, please?---Sorry, 39?

49, please, Mr Lette?---49, sorry.

35 Thank you?---Yes.

Now, on the 4<sup>th</sup> of December there was a meeting where Mr Godber went as your proxy?---Yes.

40 Okay, and you will note under apologies that it seems that you had provided him with a document in the form of an original proxy, that was tabled?---Yes.

And I'm thinking that after the event in due course you would have received a copy of these minutes?---I can't recall, but I probably did.

45 Yeah, probably did?---I couldn't – when I was doing my original – going through my documents, I couldn't find copies of - - -

No, that's okay, but I'm just thinking?--- - - -the race Product Co stuff at all. I don't know where it went; I maybe left it there. I have no idea.

5 I understand how it's hard to remember when you're on lots of boards; I've got it, but my point is that the procedure would dictate that it's likely that you got the minutes later?---It's likely that I got the minutes, yeah.

10 Yeah, and just turn to page 2. You see down at the foot of the page under heading 2.2 Letter from David Grace, of Cooper Grace Ward?---I see that, yes.

Okay. Just read what is said under there, please?---Yes, I've read that.

15 Okay, and, in particular, what he says is that the advice is noted, but also that there was – that it had been previously circulated to members of the board, and one thinks that you would have got it first before this meeting too, Grace's advice?---Yeah. I  
- - -

20 Okay?---As I said before, I recall – I do now recall having read it, but I couldn't find a copy in my records.

No, but, without it one would not know to – what to talk about with the partner, for example?---Yes, that's true.

25 Okay, and then if you go to 51, please, and then Mr Godber after that meeting does a board paper for the Harness meeting – are you with me? Have you got the- - -?---I'm reading that. I - - -

Okay?--- - - -I don't know if I've ever seen this before, so that's why I'm reading it.

30 No, that's good, thank you?---Yes, I've read that. I – that – to be quite frank, I can't recall ever reading that before.

35 Okay, but in the normal course of events you would receive board papers as chairman of Harness, wouldn't you?---Yes.

Okay, and- - -?---I actually usually vetted them before they went out.

40 Okay, very good. Just looking at the second-last paragraph above the heading Impact of Race Fields Levies, do you see that part?---Yes, I do.

45 In particular, it seems that what's recorded in the last sentence is, "While this is was only for information only, it was clear that the opinion was not supported by any of the other directors present." Do you recall coming to know that those other directors had a view that Grace wasn't right?---Yeah, I do. I – my – I don't recall this memo, but I'm sure Mike Godber did tell me the result of the meeting - - -

Okay?--- - - -that – we used to meet once or twice a week, you know, in his position as – mine as chairman and he as CEO.

5 Okay?---And we have had discussions about this at the board, so he was – went off to the meeting with instructions of what to do.

Yes, so you've discussed it at Harness- - -?---Yes.

10 - - - that the advice of Grace?---Yes.

Godber had gone off as your proxy to the Product Co meeting, and he had come back no doubt and relayed with you and to the other board members what had happened at that meeting?---Yes.

15 One factor of which was that the other – the directors didn't seem to agree with Grace's view?---Yes, that's what it says here.

20 Okay, I see, and then would you go to 52, please? This is a letter from Mr Hanmer to three people, one of whom is you, in closing the draft Product Co minutes of the meeting that you weren't in attendance at. You see what I mean?---Yes.

Okay, and they're the minutes I showed you; if you go over the next page, you'll see them attached, and then in 2.2 the David Grace letter?---Yes.

25 Okay, and then 53, please. This is minutes of the meeting of Harness. You're present, with Janice Dawson. Mr Seymour's not present on the 19<sup>th</sup> of December, and, turning to page 2, it seems that race fields legislation was discussed, and just noting there in the last paragraph, "The board received correspondence of 18 December from Tabcorp. This is to be referred to Product Co, requesting an opinion be sought from David Jackson QC prior to consideration of a response."?---I see that.

30 Now, that was about Tabcorp – I can tell you it's not relevant to us here – but it was about Tabcorp saying we're not going to pay, but don't worry about that. My point is that when senior legal advice was required there was no difficulty for Harness in recommending or proposing it be taken by Product Co, was there?---No.

40 Okay. So then, please, go to 54. You see there an invoice, and my point of showing it to you is it started to impact on Harness by 7 January 2009, the date of the invoice?---Yes.

But, certainly, Product Co was, as you can see, got a deduction for New South Wales race fields legislation of about a million dollars for that month?---Yes, I see that.

45 Okay. That's significant: you'd agree?---Yes.

Okay, particularly in the light of the fact that the legal advice that has been provided is that they can't do that, isn't it significant?---If you agreed with the advice, yes.

Well, forget about agreeing with the advice. If there's doubt one way or the other a million dollars a month is significant, Mr Lette, is it not?---Correct.

5 Even for you in your directorships it's a lot of money?---Correct.

And then if you go over, please, to 60. Now, this was a meeting of Product Co where Mr Godber went in your place again?---Yes.

10 And I show it to you because in a moment I'm confident that these minutes would have come to you, and Mr Godber would at least have talked to you about what happened. Is that right?---He would normally do so, yes.

Okay, and you see Mr Grace seems to have been one of the people who was invited to the Product Co meeting there?---I see that.

15 Okay, and then if you turn over to the third page, looking in the bottom right-hand corner, you see 2.1.3 Product and Program Agreement, "The board noted Mr Grace's letter to Malcolm Tuttle of Queensland Racing Limited dated 18 November 2008. You got that?---Yes. I do.

20 Okay. Just have a look at the next paragraph, "Mr Lambert and Mr Andrews noted advice from Mr Grace, if correct, raised fundamental issues that needed to be formally resolved by either senior counsel's advice or by obtaining advice from government of the original intent of The Product and Program Agreement." Do you recall that they were agitating for that, or one or other of them was - - -?---No. I - I don't.

Okay?---I don't recall.

30 Do you recall at any time that Lambert was agitating that "we needed to do" - "we, the board of Product Co, need to do something about this. We can't just sit on our hands"?---Not to me. Not - or not when I was present. No.

Okay. Did you ever hear that that was happening?---No.

35 Did you ever receive these - - -?---I've never even met Mr Lambert, so - - -

Did you ever receive these minutes or have from Mr Godber a report that's - - -?---I - I would think so. Yes.

40 Okay?---I - I would presume so.

Okay. The point is, as you can see there, that it seems as if two directors are saying, "We've got to do something. We can't just sit on our hands because if we sit on our hands, clearly enough, the consequence is UNiTAB wins an argument that isn't tested"?---I note that's there. Yeah.

5 Okay. And see the third paragraph, “The chairman expressed his concern and noted that the company should meet with UNiTAB to seek a variation of the agreement in order to reflect the legal position at hand and the commercial intention of supply and use when the agreement was first drafted.” Do you recall discussing with members of the board or Mr Hanmer that proposition ever?---No. I don’t.

10 Okay. And 61, please, Mr Lette. What happened, Mr Lette, was that at that meeting where you were not in attendance Mr Grace was in attendance. Mr Grace seems to have done this diary note on the day of the meeting about what occurred and I show you this to see if it helps you remember what Mr Godber reported back to you, for example. I’ll just get you to read page 2, that’s the important part, please?---Yeah. I – I’m not - - -

15 So do you remember Mr Godber saying to you, “Grace, the lawyer, was there and he was saying that directors’ duties are relevant as to taking” - - -?---I don’t. I don’t. No. I don’t.

20 Okay. Were directors’ duties relevant in working out what to do in relation to Grace’s advice?---Directors’ duties always are relevant.

Okay?---Yeah.

25 And thinking about those duties, what did you consider at the time was the right thing to do for Queensland – for Product Co, I should say, in relation to Grace’s advice that had been received?---Well, I – as I said before, my view was that it was a matter for the State Government to regulate.

30 Okay. Okay?---Because I had a few that if we – if we – if we went to court, we would lose.

Okay. Very well?---That was my personal view.

35 Okay. Was that your area of expertise, Mr Lette – interpretation of such documents?---I – I’d been involved in contract law all my life. Yes.

So that means yes?---Yes.

40 Did you tell - - -?---Well, not my area of expertise, as such, but I’d been involved in contract law all my life.

Okay. Did you tell the board that you had expertise in the area?---No. Not at all.

45 Okay. Turn over to page 62, please. What happens is as a consequence of the resolution Mr Hanmer writes to the Office of Racing executive director, Mr Kelly. Just let you read it?---Yes. I haven't seen this letter either before.

Okay?---Yes.

And is that the question that you thought should be asked too?---Yes. And I – I – I thought they were – I can't recall specifically, but I – my understanding was they were going to ask the government to – to regulate in some way or other.

5 Okay. Well, I've never seen that?---No.

There's no documents, but if you - - -?---No. I know. I know.

10 But if you find some after here or find out from somebody that that happened, please give us a supplementary statement?---Yeah. Yeah.

15 But the point of this letter is that it's completely skew-whiff and doesn't ask the right question, as you will know. In the third paragraph, "In the light of this longstanding agreement and the recent legislation passed by the Queensland Government" – well, it's got nothing to do with the Queensland legislation, as we know. It's only to do with the New South Wales legislation. See what I mean?---Yeah. I – I see what's said. Yeah.

20 Okay. So it's a silly - - -?---Well - - -

It's a silly question, but, in any event, if you don't mind going to the answer that came, which is at 66, please. This was the answer from Kelly. I'll let you read it?---I've read it.

25 It's a - - -?---I've never seen it before, I might add.

It seems - - -?---As far as I'm aware.

30 It seems surprisingly, Mr Lette, doesn't it, that the chairman would receive a letter back after the board had resolved to ask for it – that you wouldn't get a copy of it?---Well, I don't recall ever getting a copy of it.

35 Okay. Did you ever say, "Now that we've gone to the government, what result did come about out of that?"?---Oh, look, I honestly can't recall.

Okay. But it'd be one way or the other, wouldn't it? You'd either get it or you'd ask for what's going on here?---Yes, yes, yeah.

40 Okay. So the interesting thing here is in this letter from the director – I'm sorry – from the executive director of the Office of Racing is that he recommends that Queensland – Product Co gets its own legal advice, doesn't it?---I saw that. Yeah.

45 Yeah. Did you ever know that the government said – the Office of Racing said, "Get your own legal advice"?---Not – not that I can recall. No.

But it's sensible, isn't it?---I agree.

And turning over the page you see in the last paragraph or, I should say, the second last one he's butting out in the sense of saying, "It's inappropriate for me to comment on the commercial practice", isn't he?---I see that. Yes.

5 Yeah. Did you ever hear that that was his position on it?---No. Not that I – I honestly can't recall that I had heard that.

Okay. Then if you go to 67 – that's document 67, please – this is a meeting where you and Mr Godber appear to be present on the 4<sup>th</sup> of June at Product Co?---Yes.

10

Mr Grace is present; you see that?---Yes.

Okay. And then I'm interested in 1.3, Confirmation of Minutes of 5<sup>th</sup> March. You read it and I'll ask you a question about it. See that?---Yeah. I see that.

15

Now, that situation of having somebody raising that they wanted the earlier minutes changed tends to indicate that they were concerned to be recorded correctly by somebody, don't you think?---It would. Yes.

20 Yeah. And, clearly enough, it's likely that it was Lambert or Andrews or both?---I don't recall.

Okay. But having it being raised at a meeting that you were present, were you then conscious that they saw it as a fundamental issue that needed to be dealt with?---Oh, I obviously would have. Yes.

25

Okay. And just go down on that second page to 2.1, Formal Response by Mr Mike Kelly?---Yes.

30 You'll see there that the two letters are referred to that I showed to you?---Mmm.

Okay. So it's likely, isn't it, that you had access to those letters?--- Yes, it is. I just – I don't recall the letters.

35 That's okay that you don't recall. But let me tell you, the likelihood is that you did have them and that you did have one from the government saying Product Co should get its own legal advice. You see my point?--- Yes. No, I do, yeah.

Okay. All right. You see the resolutions there that - - -?--- Yes, I do.

40

- - - you all resolved?--- Yeah.

First one is that the chairman meets with Mike Kelly. And the second one is that a further letter go to Mike Kelly. Well, why did you resolve that?--- Look, I honestly can't recall.

45

- Okay. Well, looking back on it now, what's the sense in doing that? Can you see – I should say, can you see any sense in doing that?--- Well, I can only – I can only recall that my position was that we needed to get the government to regulate it, either by way of amending the act or whatever. And to solve the problem.
- 5 Well, you see - - -?--- I can only think that that was why they were going back – I don't know. Look, honestly I don't recall.
- You know, the funny thing is, Mr Lette, that you sit there now saying to the  
10 Commission that you had a view that what should happen is the government should regulate?--- Yes.
- I understand that?--- Yeah.
- 15 Did it regulate it?--- Not as far as I'm aware.
- Did you do anything about it when it didn't regulate it?--- No.
- Should you have?--- I don't – I don't know, to be perfectly frank. I don't think so.
- 20 Why?--- Well, I just – I still have a – I still to this day have a view that the Product and Program Agreement, the deductions were legitimate by UNiTAB. And the only way to solve it was by way of amendment to the act.
- 25 What about going to court?--- Well - - -
- What about getting a senior practitioner's advice like David Jackson QC in Sydney, the great constitutional lawyer as you described?--- Well, he was the one that I wanted them to get advice off, yes.
- 30 All right. But about this question? You never promoted - - -?--- No, no.
- You never promoted the idea of him - - -?--- No.
- 35 - - - resolving the difference between you and Grace?--- No, I agree with that. I didn't.
- Why not?--- I don't know.
- 40 Okay. Have a look at 79, please. So what happens is that eventually this letter is written too. When I say too, it's on the same topic about the same question, the Product and Program Agreement. And it's about Grace's advice as you see in the first two lines; you see that?--- I do.
- 45 Okay. I'll let you read it?--- It's again a letter I haven't seen before or at the time. Yes, I've read that.



Okay. It's a pretty thorough request, and it's attaching Grace's advice?---Yes.

They're looking for some answers, and then if you go to 80 you'll see the answer that came seven months later or six months later?---I do.

5

Yeah. So with that history - - -?---I haven't seen either of those, but – before.

Well, that's in a sense worse, Mr Lette, because it seems like you weren't keeping on top of what you thought was a good way to resolve this. Well, I – I probably was –  
10 was given advice that – that they'd written to the government and some months later – well, I don't know. I – I honestly don't recall that at all. No.

Okay. Well, let's look at it, then?---January 2010.

15 Where you – let's look at it where you leave us. What happens is we know that in November 2008 a company of which you are a director is charged with fees that amount to, at least on one month, \$1 million, and that continues throughout the time when you're a director of Product Co. What happens is you reach a view that the legal advice that's been provided in writing to the board says that they can't do that.  
20 Tatts can't do that, but they're doing it and they're continuing to do it - \$91 million of continuing. And what we gather from your evidence is you don't know what happened about it, but the reason that you were happy to do nothing was you'd reached a view yourself that he was wrong. Is that it?---Yeah. Yeah. That – that's my view, is that unless government could – could fix it – and government then didn't  
25 fix it. So look, I can't recall after what happened.

Well, it's no good saying "recall". Let's - - -?---I just don't - - -

- - - that you don't recall. Let's talk about sense now, because here the commission's  
30 concerned about whether or not you carried out your duty to the company, Product Co, and to the stakeholders for which you were representing. What happens is you have that advice that says, "They can't do this, but they keep charging it," and it seems as if the board of Product Co don't do anything about it. And all I've got, really, from you is, "I didn't agree with the legal advice." And you're saying that  
35 that was your reason, is it? Is that what you're saying?---All – what I'm saying is that – that – that the board clearly had a view and it was a – it was a – a – not a unanimous view, but a – but a – a consensus view.

I don't think it was, because – let's just get that straight – Andrews and Lambert  
40 weren't of that view and never were of that view?---I – look, I – I don't – initially they were. Maybe subsequently they – they then raised some concerns about it.

Okay?---But I – I wasn't party to them saying specifically to me anything about their concerns - - -

45

Okay?--- - - - as I said before.

5 Let's go back to your point, then. You were saying about this – it's just quite a serious question, you see, because in the end the commission has to write a report about whether or not the directors complied with their duty. And do you consider, Mr Lette, with your great experience, that you complied with your duty in relation to this uncertainty that arose, to put it at its best?---I do.

And how did you do that?---Well - - -

10 What did you do that you consider fulfilled your duty to act in the best interests of Product Co?---I've always acted in the best interests of any - - -

No. You say that - - -?--- - - - any board that I'm on and - - -

15 - - - but what did you do about this issue that we – that the commission can look at to judge that you acted in the best interests of Product Co, please?---Well, I – I – as far as I'm concerned, I did.

Yeah. I know you say that, but why?---Well - - -

20 We have to have a reason you - - -?---Simply – simply because I did. As – as far as I'm aware I took all the steps that I thought were necessary, particularly in – in ensuring that – that we tried to get government to – to do something about – by way of legislation.

25 “We tried to get government” – what did we try to do? Just tell me what we did?---Sorry. Well, the – well – sorry. The board – Product Co - - -

30 What did the board do to get government to regulate, please?---Well, I understood that approaches were made and in due course nothing happened.

Yeah. There we go. So what is it that was a step that somebody should take into account in judging whether you fulfilled your duty, please?---I can't answer that. I – I honestly - - -

35 Does that mean there isn't an answer - - -?---Well - - -

40 - - - and you accept that you didn't comply with your duty to act in the best interests of Product Co?---I have always acted in the best interests of any company that I'm a director of, including Product Co, in my view. Now, I can't – I have no other ulterior motive. I mean there's no reason why I would not act in – in what I considered the best interests of any company.

Okay. So let's - - -?---None at all.

45 Let's go back to the proposition, to finalise this. Your proposition is that because you disagreed with the Grace advice, it was sufficient for you to vote in favour of

taking no action. Is that correct?---Well, I didn't vote to favour no action. I took – my view was to take – was to take it by way of government - - -

5 Okay?--- - - - approaches to government - - -

And when that came to a dead end - - -?--- - - - because they're the regulator

10 And when that came to a dead end, what was the next point?---I – I – I didn't – I will – I have to agree I didn't take any further action. No.

Okay. Now, in taking no action, the impact on Product Co we know over the relevant period: \$91 million?---So you tell me. Yes.

15 Yeah. So I tell you. So do you have anything further to say about what you consider was right about what you did after the response came back from government?---No. No. No. I don't. No.

Okay?---I don't.

20 COMMISSIONER WHITE: Mr Wilson.

MR WILSON: I notice the time, Commissioner. I will probably renew my application to ask Mr Lette some questions. Could I have the luncheon adjournment to look through the documents. We don't have the bundles.

25 COMMISSIONER WHITE: I was hoping, given Mr Lette's - - -

WITNESS: I'm not feeling too flash.

30 COMMISSIONER WHITE: No. I bet you're not feeling too good – that we might have been allowed to let him – you might have to come back this afternoon. Can you perhaps give some indication of the nature of the questions, because you've seen all of these documents one – pretty well one way or another.

35 MR WILSON: Quite. I just want to find out what number they are in the bundles so I can take Mr Lette to them. It'll be about the employment contracts issue.

MR BELL: Maybe we can help – if we stand it down for five minutes I can help Mr - - -

40 COMMISSIONER WHITE: Yes.

45 Well, even though it's going to sort of stretch on a little bit, would you prefer to do that than go away for an hour and a half and then come back?---I – I would prefer to get it over and done with, your Honour, so I can - - -

I'm sure.

MR BELL: Okay. So - - -

WITNESS: I need some drugs, actually.

5 COMMISSIONER WHITE: Would you deal with it that way, Mr Wilson, then?

MR WILSON: I'll do my best, Commissioner.

COMMISSIONER WHITE: Thank you [indistinct]. I just need to ask – just so that  
10 we've got a sensible program, Mr Ashton, are you going to seek to deal with  
anything orally with Mr Lette or just make submissions?

MR ASHTON: Yes. I am, Commissioner. No. I do propose to ask him some  
15 questions.

COMMISSIONER WHITE: How long do you think you'll be?

MR ASHTON: Could be up to half an hour.

20 COMMISSIONER WHITE: Well then, I'm sorry. I just don't think that it's  
sensible for Mr Lette to have to sit there for another hour and that's what's going to  
happen, I think. We add your half hour plus the standing down and perhaps Mr  
Wilson's 10 or 15 minutes - - -

25 MR BELL: Mr Ashton may not appreciate, but if he wishes to put any further  
evidence in a supplementary statement from Mr Lette we would encourage that, if  
you want.

COMMISSIONER WHITE: Yes. I'd understood that Mr Ashton would be aware,  
30 having prepared himself for the commission, that - - -

MR ASHTON: Yes. I'm quite aware of that, Commissioner.

COMMISSIONER WHITE: - - - he would be quite aware of that.  
35

I just don't think it's sensible, Mr Lette, to - - -?---Your Honour, I'm happy to stay as  
long as I have to stay.

Well, if that - - -?---It's not – it's not – it's not as if - - -  
40

I'm going to let you call this, because you're our last witness?---Yes. I understand  
that and I – I'm, you know – I – I - - -

45 You'd prefer to do that? Perhaps someone can go out and get you a cup of tea or  
something and bring it back?---I'm – I'm happy to stay as long as I have to stay, your  
Honour. It's just - - -

All right. All right.

MR BELL: You mean now, Mr Lette, or would you - - -

5 COMMISSIONER WHITE: Yes. I – yes. I - - -

WITNESS: Yeah. Yeah. I’m happy to stay now. Yeah.

MR BELL: Okay. So we’ll do that. So if we stand down, we’ll help Mr Wilson get  
10 the numbering - - -

COMMISSIONER WHITE: Yes.

MR BELL: - - - and then he could do it and then Mr Ashton can complete Mr Lette,  
15 I hope - - -

COMMISSIONER WHITE: As soon as - - -

MR BELL: - - - and then if we’ve got some questions we’ll complete them too.  
20

COMMISSIONER WHITE: All right, then. Maybe the lesser persons here might  
be able to get you a cup of tea or something like that. There’s a place downstairs.  
All right. Thank you. We’ll – will you let us know when you’re ready.

25 MR BELL: Yes.

COMMISSIONER WHITE: Thanks.

30 **THE COMMISSION ADJOURNED** **[1.09 pm]**

**THE COMMISSION RESUMED** **[1.28 pm]**

35 WHITE JA: Thanks, Mr Wilson.

MR WILSON: Thank you, Commissioner. Commissioner, we renew our  
application to ask Mr Lette some questions. The topics are about the retainer of  
40 Norton Rose, the letter received from the employees of the 5<sup>th</sup> of July 2011, the  
Norton Rose advice of the 3<sup>rd</sup> of August 2011 and the matters that were discussed at  
the board minutes on the 5<sup>th</sup> August 2011.

45 WHITE JA: Yes. Thank you. I give you leave, Mr Wilson, to go to those subject  
matters.

MR WILSON: Thank you, Commissioner.

**EXAMINATION-IN-CHIEF BY MR WILSON**

**[1.29 pm]**

5 MR WILSON: Mr Lette, you have that bundle of documents there. Could I ask you, please, to go to tab 205?---They're all over the – they're all over the place.

WHITE JA: Now, these are a challenge – the numbering, so you can quite rightly ask for assistance - - -?---They're all over the place.

10 They are. It's not even a trick. It's just the way they are?---No. Yes, your Honour.

MR WILSON: Now, Mr Lette, you were asked some questions by Mr Bell about advice being sought on the one hand – or first from Clayton Utz and, secondly, from Norton Rose; do you recall those series of questions?---I do. Yes.

15 And it was, I think, either suggested to you or implicit in a question that Mr Bell asked you that, in effect, a second opinion was sought by the board from Norton Rose; do you remember that being suggested?---Yes. I do.

20 Could I ask you to turn – just satisfy yourself that you were at this meeting of Racing Queensland on the 8<sup>th</sup> of July or, at least, you're recorded as being there in the minutes?---Yeah. Via telephone. I see.

25 Yes. And could you turn to clause 2.4 at the bottom of page 2. If you could read that clause to yourself?---Yes. I – I've read that.

It was the case, wasn't it, that the board agreed to permit the executive staff to instruct Norton Rose and to take advice from them?---Yeah. That – that – that's what the minutes show.

30 And does that accord with your recollection of how Norton Rose came to be involved?---Yeah. Norton – yeah. It's a second opinion, but my understanding was that the chairman was going to deal with Norton Rose, but other than that, yes, it was – it was a second opinion to be obtained to – to advise us and the staff in relation to their rights.

35

Just as to a point you made, you look at the top of the third page - - -?---Yes. I see that.

40 Perhaps Mr Bentley had already spoken to someone at Norton Rose?---I would suggest he had. Yes.

But otherwise they were to advise the four employees?---Yes.

45 Now, you were also asked some questions about whether you considered it unusual that the staff were instructing the lawyers and I think your response was that it was unusual?---I thought it unusual. Yes.

You've been a solicitor for many years?---Too long.

5 If you were a solicitor advising the board as opposed to the employees, would you expect to take instructions from either a director or someone other than the employees with whom negotiations were being undertaken?---I – I would expect to take instructions from management, but if it was in relation to management's – management themselves, I would expect to take instructions from either the chairman or a board member delegated by the board.

10 Thank you. Now, could I take you then to tab 209. Now, just so that you're aware, this is a board paper for a meeting on the 20<sup>th</sup> of July of Racing Queensland. The minutes of that meeting appear at 210 and you're recorded as being present?---Yep.

15 Do you recall receiving this board paper before that meeting?---I – I honestly don't recall receiving it before the meeting. I certainly – there was a board paper available at the meeting.

20 And do you recall whether you would've read it at the meeting?---I presume I read it at the meeting. Yes.

Just skim through it. A lot of it seems to recount criticism of various staff members in the media?---Yes.

25 So there's no need to read it in any detail?---No.

But can I ask you whether you recall that at or about that time there was such criticism in the media or senior staff at Racing Queensland?---Yes. I certainly do recall.

30 Do you recall that - - -?---And – and – and not so much the media, but in a lot of the racing blogs that were in existence.

Yes?---A lot of - - -

35 And some of them are referred to in that board paper?---Yes. Yes.

Do you recall that it got to a point where the four staff who were offered the new employment contracts, in fact, wrote to the chairman on the 5<sup>th</sup> of July?---I do.

40 And do you recall having read that letter? It's referred to as attachment 1 to the board paper that I'm showing you, but it's not actually in the bundle of material?---I – I – I don't recall, but I know there was – there was – there was a letter from the staff. Yes.

45 Could I show you this document?---Yes.

Identified for the transcript as a letter from the four staff members to Mr Bentley dated the 5<sup>th</sup> of July 2011.

5 WHITE JA: Yes. Thanks, Mr Wilson. That's elsewhere in the material, as we know.

MR WILSON: Oh, yes.

10 WHITE JA: So I won't make it an exhibit.

MR WILSON: And it's got one of those RQL ciphers on the bottom.

WHITE JA: Yes. Thank you.

15 MR WILSON: I think the same person devised those who devised the numbering systems in the folders. Mr Bentley – I'm sorry – Mr Lette, do you recall seeing that letter addressed to Mr Bentley?---I – I – I do recall seeing it. I think it – I think it was at the board meeting. I have seen it. I – I don't think I ever had a copy of it, but I have seen it. Yes.

20 You refer to having had discussions with Mr Bentley about the four particular staffs' attitude and their threat to leave?---At the board meeting, not separate to the board meeting.

25 And that was with Mr Bentley at the board meeting?---Yes.

In front of the other board members, obviously?---Yes, yes.

30 Did you, yourself, have any discussions with those four staff members?---No.

Thank you. Could I ask you then to turn to tab 213?---There isn't - - -

35 You were asked a number of questions about this meeting of Racing Queensland on the 5<sup>th</sup> of August 2011 and again you're recorded as being there?---Yes.

It was your recollection that you had raised a matter concerning a 12 month cap for these staff?---Yes. Yes.

40 I invite you to read the minutes if you wish to, but can I suggest to you that there's no reference to that in the minutes?---And – and – and I – I agree with that. Yes.

Could I ask you, however, to go to page 6 of the minutes?---Yes.

45 And to about a little over halfway down, there's a heading 2, Variation to Employment Contracts?---Yes.



And you accept that you read each of those three pieces of legal advice?---Yes. I did.

5 I'll take you to the one of Norton Rose shortly because Mr Bell didn't take you to that, but do you see also that there's reference in 2.1 to some variations to the four employment contracts?---Yes.

10 Including in (iii) a reference to not exceeding a sum equivalent to 14 months of their TRB?---I do.

And, in fact, you're then referred to after the Roman numerals as requesting Mr Tuttle to develop some performance measures?---Yes. I recall that.

15 And you'll see a few lines further down that this was unanimously approved by the board?---I do.

You agreed to that?---I did, but my recollection was 12 months. I certainly – I certainly had a discussion at the board about that.

20 And - - -?---And, as I said, I think I said I probably erred in not having the minutes amended.

25 Again, it's not in the bundle, but the Norton Rose advice of the 3<sup>rd</sup> of August 2011 – you recall reading that?---I do.

And that was one of the three pieces of legal advice that were available to the meeting and which you read - - -?---Legal advice. Yes.

30 - - - before coming to the decision that's recorded in the minutes?--- Yes.

You accept that that advice – sorry, I'll start again. You were shown an advice from Clayton Utz for the 1<sup>st</sup> of August which raised a couple of issues?--- Yes.

35 You've been taken to those?--- Yes.

Do you accept that that advice addresses those issues?--- Yes, I do.

And do you recall the advices being discussed at the meeting?--- I do, at length.

40 At length. Thank you, Commissioner.

COMMISSIONER WHITE: Thanks, Mr Wilson.

45 MR ASHTON: Thanks, Commissioner.

COMMISSIONER WHITE: Thanks, Mr Ashton.

**EXAMINATION BY MR ASHTON**

**[1.40 pm]**

5 MR ASHTON: Mr Lette, the issue in relation to the - - -?--- Excuse me, your Honour. I'm sorry, your Honour, I just - - -

COMMISSIONER WHITE: That's all right. Have you got some water?--- Yeah, I'm fine.

10 MR ASHTON: I think one of the documents my learned friend Mr Wilson took you to referred to this issue being raised by – the issue of the staff being raised by the remuneration committee at least in July. Is that your recollection, or do you think it was earlier than that?--- I think it was earlier, I think it was May – May or June.

15 All right?--- But certainly in July.

What was the risk in this – to Racing Queensland [indistinct] ?--- The risk was the loss of the combined – particularly Tuttle and Brennan, their combined industry knowledge. They'd been there for a long time, they were very valuable employees.

20 What was the risk to them that they were concerned about?--- The risk to – that they were concerned about is that on a change of control, they would be instantly sacked. There had been – there had been a lot of publicity, as I say, in the racing blogs as to what was going to happen. So - - -

25 Yes. Well, that would've been a matter for any new board, I suppose; would it?--- It would've been a matter for any new board, yeah

30 Okay. Did you expect – you knew Bill would go?--- I didn't - - -

On the change of government, I mean?--- No, because in fact the way the company was structured, it was my view that it was a matter for the company – the members of the company itself in relation to the board. Subsequently, board members resigned. I mean, I resigned for a reason when I became president of Tattersall's club.

35 So the executives didn't know whether there would be a change of government. They didn't know when it would occur, if it did occur?--- No.

40 How did this – these two competing interests gel with your experience in your other board's commercial life?--- I – it was a fairly common phenomena. As I said, I – as chairman of BUSSQ Building Super, we were in – right at that very same time, we were under threat from the national fund of Cbus to take us over. And I was involved in exactly the same situation with my CEO there and his 2IC in relation to their employment contracts because they needed protection. And I thought these people needed protection as well.

This change of control notion, what's your experience about that generally in your commercial life?--- It is a – it's a very common phenomena. The public companies I've been on the boards of, certainly the CEO, CFO and usually other staff have had change of control clauses in their employment agreements.

5

All right. The other issues that were discussed then at the board meetings for which – to which counsel assisting took you, we've seen the minutes, there was the salary increase - - -?--- Yes.

10 - - - was one issue?--- Yes.

And you agreed with that - - -?--- Yes, I - - -

- - - as proposed?--- I did.

15

There was a cap - - -?--- Yes.

- - - discussed?--- Yes.

20 And your recollection is what you've just told my - - -?--- Yes.

- - - learned friend Mr Wilson. Was the notice issue discussed?--- The notice issue was discussed, yeah. I – as I say, I had a – I had a view that it was six months and – six weeks, but it obviously wasn't.

25

Well, where did you get that from? Was that – I mean, we subsequently know, don't we, that the earlier contracts were six weeks?--- Earlier contracts were six.

Had you seen them, though?--- No, I'd never seen them.

30

Did you know what their notice period was?--- Yes, I did. Yeah. And I presumed – I clearly wrongly presumed that the new employment contracts would contain the same notice period.

35 All right. Was there any discussion at the meeting about a chairman's right of waiver?--- No, I can't recall that.

Did you see the contracts themselves?--- No.

40 Would you have expected to?--- No.

Why is that?--- It was delegated to the retention committee. The – sorry, remuneration committee.

45 Yes. Can I ask you to go to paragraph 15 of your statement of 30<sup>th</sup> of July?--- Yes.

You see the first paragraph there?--- Yes.

Now, this is an email to Mr Ryan; is it?--- Brad Ryan, the chairman of the – Brad was a co-director and chairman of the risk and audit committee.

5 Yes. Well, did that make him – why was he the appropriate person to write to on this matter?--- It was in reply to an email from him that he had – he advised me, and I presume other directors, that – of the resignations. And that was my reply.

All right. Now, are you saying here, “I was certainly aware that a change of government was a trigger to give notice, but not to walk out.”?--- Yes.

10 Well, what does that tell you about whether or not you knew about any chairman’s --?--- Yeah, I --

-- discretion?--- I didn’t. I honestly didn’t recall any right for the chairman to waive the period, notwithstanding what’s in the minutes.

Well, as at that time when you sent that memo, you appear to – or that email, you appear to have been under the impression that they gave notice and walked out, not – there’s no mention there of a chairman’s discretion; is there?--- No.

20 So is that – is that your recollection?--- Yeah, that’s my recollection.

Consistent with 13?--- And I wasn’t prepared to sign off on them being paid out.

25 Yes, all right. Now, it was put to you by counsel assisting that your view about the Grace letter was irrelevant?--- Yes.

Nobody cares about your view, I think you said?--- No, that’s right.

30 If your view had been that it was right, that Grace was right, and everyone else was wrong, albeit – setting aside the irrelevance of - - -

COMMISSIONER WHITE: Sorry, could you just be a bit more clear about what you mean by “and everyone else was wrong”.

35 MR ASHTON: The other board members.

COMMISSIONER WHITE: Thank you.

40 MR ASHTON: Let’s say your view was Grace was right, the other board members thought he was wrong. Now, it’s been put to you your view’s irrelevant. But would you have expressed it?--- Absolutely, I would’ve. Just the way I had expressed my view at the time. I would’ve expressed – if I agreed with the advice, I would’ve expressed it.

45 And why do you express a view at a board meeting?--- As a director, you’re asked to make views.

So you do the business of the company; isn't it?--- Just do the business of the company, absolutely.

5 What was Product Co?--- Product Co was actually a pass through vehicle set up by the three codes to receive and distribute the payments from UNiTAB, Tatts Group.

Yeah?--- It had no staff. And in fact, it was – the agent of Product Co right from the start was the thoroughbred board. Queensland – oh, I can't remember what it was originally called, but subsequently Queensland Racing.

10 But in the other sense, Product Co was the agent for the three stakeholders; wasn't it?--- Yes, it was. Yeah.

15 And what did it do exactly?--- It basically met three to four times a year, and it just – it considered the financial implications of what was happening in the industry in terms of – in terms of racing turnover.

20 Did it report to it's stakeholders?--- I certainly reported to the harness board, as did my CEO when he took my place. I can't say for the other codes.

You didn't have a formal - - -?--- No, there was no - - -

- - - reporting - - -?--- No, there was no formal reporting.

25 - - - arrangement? Of course, there were representatives of each of the stakeholders on the board of Product Co; weren't there?--- Yes, there were four – four thoroughbred directors, one harness and one greyhound.

30 Now, the actual payments of those fees – we saw some invoices before. Were they actually received by Product Co, banked and passed on or did they go straight through to the stakeholders?--- As far as I'm aware, they go straight through to the stakeholders.

35 All right. Now, did Product Co have any other assets?---No.

Did it have any other funds?---No.

40 It met three times a year – three or four times a year?---Three – three to four times a year. Yeah.

It – did it have the funds to launch a Supreme Court action - - -?---No.

- - - against UNiTAB?---No.

45 Or Tatts?---No.

Its governing document – the Product Co VW document – was the Product and Program Agreement, wasn't it?---Yes.

5 That's not a statute?---No.

It's an agreement?---It's an agreement between parties.

10 Yeah. And who are the parties?---The three codes and – on the one hand and UNiTAB on the other.

I see. What do you say about the appropriateness or otherwise of seeking guidance or instruction from your stakeholders about what they meant in their agreement?---That would be a normal course.

15 And if they had said – well, maybe they did say - - -?---Sorry.

If they had said, "This was our intention" – because you were stakeholders and the three parties to the agreement with Tatts. If they had said, "This was our intention: our intention under this agreement was never to double dip" - - -?---Yes.

20 - - - "If, by reason of the operation of the statute upon our agreement there's now a different outcome, that certainly wasn't intended." If they said that to you, did you see yourself as free, as Product Co, this passthrough vehicle, to say, "Well, we've got advice from Mr Grace. We're issuing proceedings no matter what you say"?---No.

25 And the advice from Mr Grace was actually, wasn't it, to your chief stakeholder?---Racing Queensland.

30 It wasn't to your company at all?---No. It was to Queensland Racing.

Was that a matter of any surprise to you?---Yes. It was at the time.

Surprise in the sense that you hadn't been told about it?---Until we saw it – yes.

35 Is it a surprise, though, that the chief stakeholder would be interested in the topic and get some advice?---No. Not at all.

40 And it came to your attention, as we've seen in the string of emails – string of the board minutes that learned counsel assisting took you to – it came to your attention in – it appears to be the board meeting of the 4<sup>th</sup> of December 2008. That sound about right? You weren't actually – you're in apology for that meeting. That appears to be the earliest reference in Product Co - - -?---Yes.

45 - - - minutes?---But – but I – I – I recall getting something a couple of days before, but I – and I presume it was David Grace's advice.

All right. Yes. Well, the minute – and this might help you – says: “This letter, already previously circulated to all members” - - -?---Yes. Yes.

5 - - - “addressed to Queensland” – so you got it - - -?---Yes.

- - - before that meeting but you didn’t actually attend the meeting. Is that right?---No. That’s correct.

10 Now, at the meeting of the 5<sup>th</sup> of March 2009 – this is a minutes at tab 60 – there was discussion there. Again, you were absent from the meeting but perhaps you saw the – did you see the minutes later?---I presume I did. Yes. I’ve since – I’ve seen them now.

15 Yes. And concern was raised about what this might mean?---Yes.

You should perhaps go to this document. It’s tab 60?---Yeah. I’ve got it open.

20 You’ve got it open? Good. And the issue is raised about going to the stakeholder – at least going to the Office of Racing?---Yes.

What do you say about that as a reasonable course or – reasonable or unreasonable course of action in the circumstances?---I thought it was a very reasonable course of action.

25 Why was that?---They’re the regulator.

Yeah. It was a course of action too, wasn’t it? It wasn’t doing nothing?---It wasn’t doing nothing. No. I agree.

30 No. All right. Now, the matter, in fact – Mr Grace, it seems, was at that meeting?---Yeah. I - - -

35 Yes. And you were taken to a memorandum which you hadn’t seen, but you were asked some questions about it anyhow – tab 61.

COMMISSIONER WHITE: Yes. But in fairness, Mr Ashton, it was because it might have refreshed Mr Lette’s memory about conversations which he said he invariably had with Mr Godber, who was present.

40 MR ASHTON: Yes. As you mean – as you please, Commissioner, but I was laying the ground for my asking some questions about it now.

45 Would you go to that memo, please. It’s tab 61?---Yep. No. It’s not. Oh, sorry. David Grace’s memo?

Yes. That’s right?---Yes. Yeah.

COMMISSIONER WHITE: It's his diary note?---His diary note.

MR ASHTON: Diary note – I'm sorry.

5 And you were asked questions about whether – on page 2 – the entries there prompted recollection in you about what Mr Godber told you about what took place at the meeting?---Yes.

Is that right?---Yeah.

10

Now, what, in fact, was done was that you – that the board sent material to the government for guidance?---Yes.

15 That appears to be what the first dot point records as being the desired course of action, doesn't it?---Yes.

Mr Lambert raised this issue. The board – there was a board discussion. Mr Lambert and Mr – was it Andrews? – were present. Mr Grace was present. That was thought to be the appropriate course of action?---Yes.

20

That action was taken, wasn't it?---I understand so. Yes.

Well, you've been taken - - -?---Yeah.

25 You were taken to - - -?---That's right.

- - - tab 62?---It's been – yep.

And that's the letter that - - -?---Yes.

30

- - - was written to Mr Kelly?---Yes.

And then there was a response to that?---Yes.

35 Unhelpful, but a response nonetheless?---Yes.

And then at a further meeting those letters were tabled – that's the next meeting?---Yes.

40 Tab 67 – do you have it?---Yes. Yes.

And it was thought necessary to go further in the communication with Mr Kelly?---Yes.

45 And that happened?---Yes. It did.

Yes. You've seen – you were taken - - -?---Yes.



- - - to the letters about it?---Yes.

5 COMMISSIONER WHITE: Yes. I'm sorry to interrupt you, Mr Ashton, but all of this has been put to Mr Lette and you're getting the same answers as Mr Bell got.

MR ASHTON: They are in part, Commissioner, but it was more than once put to him that he did nothing. I'd like him to have the opportunity to say he did more than nothing. He did precisely what was right.

10 COMMISSIONER WHITE: Well, you could ask him that, I suppose.

MR ASHTON: And at any rate – let's cut to the chase. The further communication from Mr Kelly by way of response went not to Product Co at all, but to the chief stakeholder, didn't it?---Yes. It did.

15 You have a look at tab 80?---Tab 80?

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

20 So is this right: the matter started with Queensland Racing, in that it commissioned the advice?---Yes.

It came to Product Co's attention?---Yes.

25 Product Co resolved that it was appropriate to communicate with Queensland Racing?---Yes.

30 One step we missed in the process was that after the first response from the government, it was agreed or resolved, was it not, that the matter should go to Queensland Racing to carry forward?---Yes.

And in fact, I think the minute refers to the fact that the original advice was addressed to - - -?---Yes. Yes. It does.

35 So it went to the stakeholder?---Queensland – yes. It did.

Started with the stakeholder, came through you, back – the chief stakeholder?---Yeah.

40 Back to chief stakeholder – further communication with Racing Queensland – with Queensland Racing – sorry – with the Office of Racing and then a response back to the chief stakeholder?---Yes.

45 What were your options at that point, as Product Co?---Sorry. I - - -

Given that history that I've just quickly gone through - - -?---Yes.

- - - and it's come back to the – started with the - - -?---Yes. Yes. Yes.

- - - chief stakeholder, comes back to the chief stakeholder. The chief stakeholder has been running with it?---Yes.

5

What was the opinion of your other two stakeholders? What opinion was – what was theirs about this issue?---I can't speak for the greyhounds, but I understand they had the same view as us - - -

10 Yeah?--- - - - as the Harness board, and that – and that was - - -

All right. Well, it's come back now – so those are the views of your two smaller stakeholders?---Yes.

15 Your larger stakeholder has been running with it. It's come back to your larger stakeholder with the letter of the 6<sup>th</sup> of January 2010. I'm asking you what do you think your options – Product Co's options – were then? What sort of things – what further action might it have taken?---I – I – I honestly don't know, Mr Ashton. I - - -

20 Can you think of anything it might have done?---No. I can't. It'd take - - -

Could it have launched Supreme Court action notwithstanding - - -?---Product Co?

25 Yes. Notwithstanding what its stakeholders were saying?---Product Co would've had no funds to issue Supreme Court proceedings. It would've had to go to its stakeholders to – to be funded if it did take any proceeding.

Well, they weren't going to fund you to do something they didn't think should be done?---Exactly.

30

Yes. Nothing further. Thanks, Commissioner.

COMMISSIONER WHITE: Yes. Thank you. Anything arising from that, Mr Bell?

35

MR BELL: No. Thank you very much, Commissioner.

COMMISSIONER WHITE: I just want to raise one thing with you, Mr Lette?---Yes, your Honour.

40

In your evidence about the employment, you said that in your experience it's a quite common phenomena to have a change of control clause in - - -?---Yes. Yes, your Honour.

45 - - - an employee's contract. I know that you say that you were not aware of the contents of the employment contracts but, in fact, there was a change of control clause in the original contracts for these employers in clause 15.3: "Should RQL" –

Racing Queensland Limited – “be the approved control body, then RQL will provide you the opportunity to take a redundancy,” and then that’s on the balance on the term of the contract, for example?---Yes, your Honour.

5 That’s a pretty standard clause, isn’t it, if it’s the control body?---Yes.

And was the – they had that capacity in their existing contracts?---I’m not aware of that, your Honour. I wasn’t aware they were in the existing contracts.

10 I take it you didn’t ask about those sorts of things?---No, your Honour. I didn’t. No.

All right. Thanks, Mr Lette. I’m sorry that you’ve had to stay on feeling so unwell - - -?---That’s not a – not a problem.

15 - - - but I’m sure that you’ll be pleased when you’re tucked between the sheets this afternoon?---Thank you.

Mr Bell.

20 MR BELL: Mr Lette won’t be required further as far as we can foresee, Commissioner, but - - -

COMMISSIONER WHITE: All right. Thank you.

25 I’ll release you on my usual terms, that is, we don’t expect to have to call on you again, but I won’t release you fully from the subpoena just in case?---Thank you, your Honour.

30 **WITNESS STOOD DOWN** **[2.01 pm]**

COMMISSIONER WHITE: Thank you. Adjourn, thanks.

35 **MATTER ADJOURNED at 2.01 pm UNTIL  
WEDNESDAY, 16 OCTOBER 2013**