QUEENSLAND RACING COMMISSION OF INQUIRY

Commissions of Inquiry Act 1950

SUBMISSIONS

Part 2

Procurement - Term of reference 3(a)

Policies - Term of reference 3(b)

Procurement, contract management, financial accountability, policies and value for money - Term of reference 3(a)

(i) The adequacy and integrity of, and adherence to, the procurement, contract management and financial accountability policies, processes and guidelines for the relevant entities including measures to ensure contracts awarded delivered value for money;

(ii) The events surrounding the contractual arrangements between the relevant entity or entities and Contour Consulting Engineers Pty Ltd to manage contracts on behalf of those entities; and

(iii) Whether the resulting contracts were underpinned by sound procurement practices and whether appropriate payment policies and processes were implemented and were adhered to.

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1. On 15 July 2013, Counsel Assisting the Inquiry sought to clarify this term of reference by asking the following questions[1]:

    a. During the *Relevant Period*, what were the *Relevant Entities'* procurement, contract management and financial accountability:

        i. Policies;

        ii. Processes;

        iii. Guidelines; and

        iv. Measures?

    b. Were such policies, processes, guidelines and measures

        i. Adequate;

        ii. Of integrity (to focus attention on issues surrounding moral or ethical soundness and robustness in relation to their development and content); and

        iii. Adhered to?

    c. In relation to contractual arrangements in existence during the *Relevant Period* between the *Relevant Entities* and Contour Consulting Engineers Pty Ltd ("*Contour")*, by which *Contour* was engaged to manage contracts on behalf of the *Relevant Entities,*

        i. what were the events surrounding those contractual arrangements

        ii. were the resulting contracts underpinned by sound procurement practices; and

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1 "TERMS OF REFERENCE: DRAFT BREAK-DOWN OF ISSUES FOR INQUIRY" at http://www.racinginquiry.qld.gov.au/__data/assets/pdf_file/0004/205087/TOR-Breakdown.pdf

iii. were appropriate payment policies and processes (a) implemented and (b) adhered to?

2. Counsel Assisting explained that the Inquiry under this term of reference:

a. involves a broad investigation to determine how each and every contractual arrangement existing during the *Relevant Period*, between any of the *Relevant Entities* and *Contour*, arose and was implemented;

b. where the term "resulting contracts" is taken to refer not only to contracts between any *Relevant Entity* and *Contour* but also to contracts entered into between any *Relevant Entity* or *Contour* and third parties for the purposes of any work done (or to be done) for or on behalf of a *Relevant Entity*. That is, the term includes principal and sub-contracts; and

c. necessitates consideration of whether at relevant times, in relation to work in which *Contour* was involved, appropriate payment policies and processes were in place and complied with. It may involve consideration of policies and processes of both the *Relevant Entities* and of *Contour.*

Terms of reference 3(a)(i) - The adequacy and integrity of, and adherence to, the procurement, contract management and financial accountability policies, processes and guidelines for the relevant entities including measures to ensure contracts awarded delivered value for money:

3. Despite the very broad interpretation of the term of reference, it appeared through the course of the public sittings that, whatever may have been its original intention, the Commission ultimately directed its investigations at one 'policy' and in relation to the engagement of one supplier.

4. The only 'policy' of QRL or RQL that was examined in any detail by the Commission, in its public sittings at least, was the 'purchasing policy'. Further, the only examination of whether there was adherence to the purchasing policy, in the public sittings at least, was in relation to the engagement of Contour Consulting Engineers Pty Ltd ("CCE").

5. Although this term of reference relates to the policies, processes and outlines of each of the relevant entities, there was no examination, in the public sittings at least, of any policies, processes or guidelines of either Greyhounds Queensland Limited, or Queensland Harness Racing Limited. The attack was focused on QRL and RQL.

6. Mr Adam Carter, the former chief financial officer of RQL[2], has attached to his statements a plethora of policies, some draft, and other documents. As Clayton Utz state in their letter dated 29 July 2013, under cover of which certain documents were provided to the Commission:

> "For a large number of policies our client has been unable to identify whether the copy of the policy provided is an authorized version or a draft of the policy."

7. The first task for the Commission is to identify, precisely, what were the procurement, contract management and financial accountability policies during the relevant period, and at various points of time during that period. Notices of potential adverse findings have been given to several of the persons on whose behalf these submissions are made, that they knew, or should have known of the "Purchasing Policy", and failed to ensure adherence to or compliance with that policy. The particular policy or policies of which knowledge is asserted have not been better identified. The notices are very vaguely worded in relation to that topic.

8. At paragraph 13 of his first statement, Mr Carter identified five types of policy or guideline used by QRL "to ensure contracts which were awarded delivered value for money". At paragraph 27 of that statement, Mr Carter identified 12 such policies for RQL.

9. None of those policies, other than the purchasing policy, and to a lesser extent, the Code of Conduct, were examined during the public sittings of the Commission.

10. Mr Carter was not examined during the public sittings of the Commission, despite a request for that to occur. At paragraph 15 of his first statement, Mr Carter said that he was responsible for the development and review of the

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[2] And currently the General Manager for Corporate Services

purchasing policy. He was the obvious person to be asked questions about the meaning of various parts of the policy. Mr Carter's assistant regarding the purchasing policy was Mr Mathofer. His statement was put to Mr Bentley. Mr Mathofer was not called as a witness during the public sittings, despite a request being made for that to occur. No explanation has been offered of the failure to call those witnesses[3].

11. Rather than asking questions directly of persons who might be expected to have a working knowledge of the purchasing policy, and its implementation, instead counsel assisting the Commission chose to interrogate Mr Bentley, the Chairman of the Board of Directors of QRL and RQL about the minutiae of the policy. Eventually, Mr Bentley said[4]:

> "You're putting these questions to me but this is part of Adam Carter's area. He is the one that should've been doing this or was involved in doing it."

12. Senior Counsel Assisting was, on a number of occasions, critical of the language of the purchasing policy and considered that they were difficult to follow[5]. This makes the failure to call Mr Carter more difficult to fathom[6].

13. It is proposed to address the purchasing policy, its status, and compliance with it, particularly involving CCE, when considering subparagraphs (a)(ii) and (a)(iii) of the Terms of Reference.

14. During the public sittings of the Commission no attention at all was paid to any policies of either QRL or RQL other than its so-called purchasing policies, and the Code of Conduct. It is evident from documents produced to the Commission of Inquiry that there were many such policies that fall within this term of reference. Mr Tuttle said that in the main compliance with policies was high, and that included the purchasing policy[7].

15. Presumably, the Commission is satisfied of the adequacy and integrity of, and adherence to, such policies.

[redacted]

4 T6-45
5 see, for example, T2-6.45
6 As well as a the failure to call Mr Mathofer
7 T10-60.15

16. The persons on whose behalf these submissions are made have dealt with the issue of policies in their statements, and it is not proposed to reiterate those matters in these submissions.

Terms of reference 3(a)(ii) and (iii) – the events surrounding the contractual arrangements between the relevant entity or entities and Contour Consulting Engineers Pty Ltd to manage contracts on behalf of those entities; and whether the resulting contracts were underpinned by sound procurement practices and whether appropriate payment policies and processes were implemented and were adhered to:

17. These two subparagraphs of the term of reference plainly have to be considered together, given the requirement in term of reference 3(a)(iii) to examine whether the "resulting contracts" were underpinned by sound procurement practices and so forth.

18. The way in which the Commission approached the term of reference was largely to examine whether the purchasing policies of QRL and RQL were complied with concerning the engagement of Contour, and the engagement of contractors recommended by Contour for particular infrastructure projects.

19. There has been no examination, in the public sittings at least, of any contracts between Contour and relevant entities other than QRL and RQL.

20. There has been no examination, in the public sittings at least, of any payment policies and processes, of each of the relevant entities that dealt with Contour, and of QRL and RQL in particular. Those payment processes have been dealt with in the statements of Adam Carter, the former CFO of RQL; and in the statements of Paul Brennan, Malcolm Tuttle and Mark Snowden. It is assumed, because nothing has been said or suggested to the contrary by the Commission, that the Commission is satisfied that payment policies and processes were implemented and were adhered to.

21. These terms of reference stem from the wildly inaccurate media reporting that Contour Consulting Engineers Pty Ltd ("Contour") were given work to the value of $150 million - $200 million; and that $20 million was paid to Contour

in the period leading up to the 2012 State election. The Commission should, as has already been submitted, make it absolutely clear that there was no truth whatsoever in such media claims. There was no corrupt or collusive relationship between Contour and QRL or RQL.

22. The Commission has apparently notified Contour that there is no evidence of any wrongdoing on its part[8]. From that, one can reasonably conclude that the Commission is satisfied that:

a. Contour properly carried out the work that it was engaged to perform;

b. It did so at a reasonable cost; and

c. There was no collusion between any person at Contour and any person at QRL or RQL to unfairly favour Contour or confer on it benefits to which it was not entitled.

23. Mr Adam Carter has stated[9]:

> "From the review I conducted and from my perusal of the Deloitte report, there has been no indication that any fraudulent activity was undertaken by either employees of RQL or Contour."

24. The Commission should not rely upon the Deloitte report referred to. It was fundamentally flawed, in that the author of the report did not speak to Mr Tuttle or Mr Brennan, and many other relevant witnesses; and, it appears from emails referred to in Mr Tuttle's evidence[10] that the current Chairman of the control body[11], may have exerted undue influence for the report to be compiled in a particular manner. The Commissioner described the process during Mr Tuttle's evidence during the public sittings as unfair[12].

25. Mr Tuttle, both in his statements to the Commission, and in his oral evidence[13] refuted the so-called findings made in the Deloitte report. Mr

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8 B Thomson statement (21 October 2013) ex BT1

9 at paragraph 75 of his first statement

10 Annexure 'MNT 4' to Tuttle Statement (10 September 2013)

11 Mr Dixon, who has not responded to what Mr Tuttle said in his evidence

12 T9-105.19

13 T10-63.27

Brennan, in his statements to the Commission also refuted the findings of Deloitte, by reference to specific documents that supported his position[14].

26. Indeed, as Senior Counsel Assisting himself remarked more than once during the public sittings, the question with which the Commission concerned itself is not so much about the quality or value of the work that Contour carried out, or even that Contour was engaged, but was more about the way things were done internally at QRL and then RQL.

27. It is apparent from the evidence given to the Commission that Contour came to the attention of QRL in 2007 when it was engaged, as a subcontractor, by Arben Management, for the civil design and documentation role for the installation of the synthetic race track at Corbould Park at Caloundra[15]. Contour was selected after winning a competitive tender process. After it proved itself on that project Contour was recommended, by Arben, to work on the proposed stable complex at Corbould Park.

28. As they explain in their statements submitted to the Commission, Mr Tuttle, Mr Brennan and Mr Bentley in particular, but also other staff at QRL, were impressed with the level of service offered by Contour, the availability of its staff at short notice, and, later, its ability to work closely with key staff and maintain a level of confidentiality. There was also the fact that it was a local, Queensland, business[16].

29. As Mr Bentley, Mr Tuttle, Mr Brennan and others explain in their statements, the Industry Infrastructure Plan was developed, at the request of the government, and in particular at the request of senior Ministers in the government, in confidential circumstances. That was not questioned in the evidence of any of the relevant witnesses. Those requirements for confidentiality occurred because previous contemplated infrastructure projects found their way into the media, and were scuttled by self-interested parties before there was a proper opportunity to explain them to the racing industry at large[17]. It was intended that the Industry Infrastructure Plan be fully developed, that funding arrangements be finalized and that there be

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14 Brennan statement (11 September 2013)

15 Letter from Arben Management to Commission dated 29 July 2013.

16 Bentley statements (21 October 2013) at para 94 and (26 July 2013) at para 25

17 Bentley T4-58.20, Bentley statement (26 July 2013) paras 29 and 30, Tuttle statement (26 July 2013) paras 14-18].

proper public consultation once the government and RQL was in a position to present the plan in its entirety[18].

30. Contour was engaged to perform a considerable amount of work in the preparation of the Industry Infrastructure Plan, particularly in 2010 and in 2011, as is evident from documents produced to the Commission of Inquiry. Once that plan was finished and work started on the infrastructure projects themselves, Contour was involved in assisting with the preparation of business cases, and then the project management of various infrastructure projects. To prepare a plan of the complexity and magnitude of the Industry Infrastructure Plan required a close working relationship between key participants in the process, including RQL, Contour, and government. Even within RQL the preparation of the infrastructure plan was kept confidential, in the sense that although it was known that a plan was being prepared, the detail of that plan was not progressively disclosed. That is a matter on which Mr Bentley, and to a lesser extent Mr Ludwig, was criticized, and is dealt with elsewhere in these submissions.

31. The necessity to keep the infrastructure plan confidential meant that in, practical terms, it was simply not possible to seek public tenders for most of the work that Contour performed. The advertising for public tenders would or could have destroyed the very confidentiality that was sought to be maintained.

32. As Mr Milner said[19]

> "I doubt whether any tender process was adopted in order to select the engineer to assist in developing the infrastructure plan. I say that because, for the reasons expressed above, it would have been absurd for the control body to go to the market to publicise the fact that the government wanted an infrastructure plan to be developed in respect of various racecourses."

33. Also, as is explained in more detail by Mr Brennan, Mr Tuttle, Mr Bentley and others in their statements, Contour built up a level of expertise with the

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18 Bentley T4-78.31, 37.

19 Milner statement 26 July 2013, paragraph 17; other statements were to similar effect.

design and costing of racecourse infrastructure that was hard to replicate[20]. It is submitted that continuity of a consultant like Contour was not only efficient, but also made financial sense. If the design, and project management, of each and every project went to public tender, there would inevitably have been a duplication of costs. Added to that must also be the administrative burden of preparing requests for and assessing tenders, which QRL and RQL did not, until Mr Snowden was engaged, have the capacity to do[21].

34. It also needs to be borne in mind that for those projects that proceeded to fruition, and which were project managed by Contour, tenders or expressions of interest were sought for the actual physical work to be carried out. Mr Tuttle has calculated[22] that of $48 million of projects that Contour managed, including Contour fees, 93% went to tender.[23]

35. Steps were also taken by QRL and RQL to ensure that Contour's fees were appropriate[24]. A quantity surveyor was initially engaged to check the fees. Later, when Mr Snowden was employed, he was able to check the fees. Mr Snowden had extensive experience in construction management[25].

36. Much of what has been raised by the Commission has been answered in the supplementary statements of Mr Tuttle, Mr Brennan and Mr Bentley. It is not proposed to extract sections of those statements into these submissions. Rather, the entirety of the statements is relied upon.

37. Putting the purchasing policy to one side, the response to the terms of reference is quite straightforward:

    a. Contour was engaged at the outset under a competitive tender process to carry out work on the Corbould Park synthetic track project;

    b. Contour subsequently developed expertise in the design and project management of racecourse infrastructure;

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20 See for example, Bentley statements (21 October 2013) para 83, (26 July 2013) para 25.

21 Statement of Bentley 21 October 2013 at [91] and Statement of Brennan 11 October 2011 at pp 3.

22 Tuttle at T10-60.40

23 This is to be contrasted with the wild allegations published before the Inquiry commenced suggesting that $158 million of projects were awarded without any tender process – see Part 1 of these submissions.

24 Tuttle at T10-15-20

25 Brennan statement (11.10.2013) at pp 12 and Tuttle statement (23.10.2013) pp. 18 at para 38(k) .

c. Contour provided a high level of prompt service to QRL and RQL;

d. Contour provided that service at fees which are accepted not to be excessive;

e. Contour was asked to and was able to undertake a great deal of work as part of the Industry Infrastructure Project, in circumstances where it was required to maintain a high level of confidentiality;

f. There is no evidence that payment practices of QRL and RQL were not implemented and adhered to, not only for the work that Contour carried out, but also for those contracts entered into as a result of being selected or recommended by Contour.

38. Where the Commission focused its attention, as adverted to earlier, was on whether the purchasing policy was followed in the case of the work Contour was engaged to perform, and also in the case of those contractors who performed work as part of the implementation of the infrastructure project.

39. That is, the Commission focused not on the carrying out of the work, the quality of the work carried out, whether it was carried out on time and within budget, nor whether it was carried out economically; but rather on the process that was followed. That is, it is submitted, well and truly putting form before substance.

40. The first question that needs to be addressed in the status of the purchasing policy. Mr Tuttle has explained that the purchasing policy was an "internal policy", and was so described in the minutes of the RQL board meeting held on 1 July 2010[26].

41. [redacted]

42. Mr Tuttle explained that the purchasing policy was not one made under s. 80(1)(b) or s. 81 *Racing Act*. The Minutes of 1 July 2010 clearly show how

26 Bentley 135, page 22

27 [redacted]

the different policies were regarded. Mr Tuttle explained[28] that as an internal policy the purchasing policy was not posted on the control body's public website. There is no evidence to contradict that statement.

43. Mr Tuttle also said that the control bodies did not provide their internal policies to government[29]. Again, that evidence has not been contradicted. . In fact, Ms Perrett in her supplementary statement confirms that the Office of Racing had no interest in internal policies of the control body[30].

44. Yet Senior Counsel Assisting accused Mr Bentley of misleading the stakeholders in the racing industry by putting on the control body's public website a purchasing policy that was not followed[31]. That allegation was not made on an isolated occasion[32], and Mr Bentley was repeatedly asked why the purchasing policy was published to the world at large, when the premise to the question just wasn't true.

45. Not only was the suggestion just mentioned inaccurate and unfair; so was the extensive questioning of Mr Bentley about the interpretation of the purchasing policies, and the adherence to them. The policy was the responsibility of Mr Adam Carter. However, he was not called to give evidence. Mr Bentley was asked to interpret the purchasing policies on the run, in the witness box.

46. A document was put to Mr Bentley as being the purchasing policy at the start of the relevant period with which the Inquiry is concerned[33]. However, there is no evidence that it was other than a draft. It was said[34] that 'this policy that existed at the commencement of the relevant period . . .'

47. The document was also put to Mr Tuttle as being the purchasing policy[35].

48. The document that was put to each witness was plainly a draft. In those circumstances, the concession extracted from Mr Bentley[36] that the

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28 T10-57.15

29 T10-58.43

30 Perrett statement (30 October 2013) paras 4 and 33

31 T6-15.45

32 T6-21.30; 6-27.3

33 Bentley 330; Tuttle 70

34 T6-8.10

35 T10-65.20

purchasing policy at Bentley 330 applied to the engagements of Contour and to the work carried out under the Infrastructure Plan was obtained on a false premise.

49. Mr Bentley agreed[37], as is obvious, that the draft purchasing policy shown to him, which was subsequently adopted by the board, with an important variation, was cumbersome, and had obviously been drafted from a government policy.

50. Version 3 of the purchasing policy[38] was approved by the Board of QRL on 13 April 2007, but importantly made the public tender process required in the draft for capital works projects exceeding $100,000 "subject to board approval". Mr Bentley explained that the discretion in the board made the position more practical. . In fact, the precise resolution of the board on that occasion makes it quite clear that the board reserved a discretion in such matters. It resolved, "Purchases over $100,000 which previously required an open tender process will in future be subject to Board discretion as to the waiver of an open tender."[39] The evidence makes it clear that this discretion in the board was frequently exercised in relation to the development of the Industry Infrastructure Plan and the carrying out of infrastructure work.

51. When considering the purchasing policy, its applicability and its suitability, it must be borne in mind that until the conception of the Industry Infrastructure Plan, and thereafter its compilation and implementation, infrastructure projects was not part of the operations of QRL. Rather, capital works were carried out by clubs or associations, and the control body vetted applications for funds in that regard.

52. If any criticism is to be made of the control bodies, or of individuals, it is that a purchasing policy adapted to emerging needs of the control body, with its involvement in infrastructure projects itself, was not properly undertaken. The primary responsibility for that lay with the Finance Department. Of course, it is accepted that the ultimate management of the companies lay with the board of directors. However, they relied on senior management, in particular the Finance Department, to develop adequate policies for their consideration.

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36 at T6-9.5

37 T6-12

38 Bentley 331

39 QRL board minutes (RQL.108.006.0146)

53. It is clear, and it was accepted by Mr Tuttle[40], and Mr Bentley, that Contour was engaged on many occasions by QRL and RQL without being required to compete in any tender process. Mr Tuttle gave the following frank evidence[41]:

> "So whatever the policy said, the practice was that if the chair or the board said do this, engage Contour, then it didn't matter what the policy said?--- We took it that they waive the provision to go out to competitive tender or to tender, yes."

54. Mr Bentley said that he considered Contour a preferred supplier[42]. He assumed that the Finance Department had done as they were asked and prepared a list of preferred suppliers[43]. It was not Mr Bentley's job to check whether this was in fact done.

55. Mr Bentley and Mr Tuttle accepted that the purchasing policy document that was referred to them was not strictly followed insofar as Contour was engaged to do work[44].

56. The reasons for that are set out above. QRL and later RQL did not have a project manager or a design engineer on staff. It relied on Contour to perform these functions.

57. Mr Bentley and Mr Tuttle were taken to the Key Principles, found in each version of the purchasing policy document. It is convenient to set them out:

> "Key Principles
>
> In conducting its purchasing activities it is the policy of Queensland Racing Limited to adhere, at all times, to the key principles of:
>
> 1. Value for money;
>
> 2. Quality of product, service, and support;

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40 T10-61.45

41 T10-64.7

42 T6-25.28

43 T6-16.45

44 Bentley at T6-26.41

3. Open and fair competition;

4. Accountability of outcomes;

5. Use of Queensland product where price competitive, and where quality standards are met; and

6. Suppliers are complaint with all taxation requirements.

58. It is submitted that the Commission will find that the engagements of Contour[45] satisfied these key principles on each occasion. There is no suggestion, and there is no contrary evidence, that Contour did other than provide value for money. Nor is the quality of its product, service and support in issue. The outcomes it delivered were first-class. It is a Queensland business. It complies with all taxation requirements.

59. The only key principle that may arguably be open to question is that of open and fair competition. Contour was first engaged in a competitive way. Therefore, it was engaged because it satisfied all of the other key principles, and there were valid reasons why separate tenders were not called on each occasion that Contour was engaged.

60. The sections of purchasing policy document version 3 that witnesses were question about are set out:

"Consulting Services

Queensland Racing Limited uses consulting services in a number of aspects of its operations including legal, information technology, human resource management, financial management, business development, and marketing.

These consultancies vary from short-term "one-off" contracts, to longer-term arrangements, which may encompass a series of different activities (e.g. marketing and promotional work).

For short-term "one-off" contracts the following policy guidelines are to apply:

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45 Of which the Commission should have details

- The six key purchasing principles outlined above are to be applied at all times;

- For contracts under $10,000 in value, preferred supplier arrangements* can be used. That is, where a purchasing officer is satisfied that a consultant that has provided a high quality service in the past, has the necessary expertise to undertake the work, and is available in an appropriate timeframe, that consultant can be appointed without a formal competitive process being undertaken. If such a person is not available, three quotes from prospective consultants should be obtained and evaluated;

  (*Please note that where preferred supplier arrangements are referred to late in this document for other categories of purchasing, similar procedures to those above will apply.)

- For contracts between $10,000 and $100,000, tenders should be called from at least three “preferred” contractors. The selection of these three preferred suppliers, and subsequent evaluation of their proposals, should take into account the six key purchasing principles. The evaluation of the proposals should be undertaken by two accountable officers, and be approved by a delegated officer (Chief Operations Manager or Finance Manager);

- For contracts over $100,000, a public tender process is required subject to board approval, including appropriate advertising of the consultancy. Tenders are to be evaluated, in accordance with the six key purchasing principles, by a panel of no less than two accountable officers, and be approved by a delegated officer.

  For longer-term consultancy arrangements (e.g. the ongoing purchase of external legal services that cannot be delivered in-house), which may involve the use of a preferred supplier or suppliers for a range of individual tasks over an extended period of time, the following guidelines are to be followed:

- The purchasing officer may select a consultant for a range of tasks from a panel of preferred suppliers for the type of work involved;

- Prior to such a selection, a competitive process, adhering to the six key purchasing principles of Queensland Racing Limited, to appoint the panel of preferred suppliers must have been undertaken, be appropriately documented, and be signed-off by a delegated officer;

- In selecting the preferred supplier from the panel, the purchasing officer must clearly document the reasons for the selection, and be accountable for that selection. The selection must be approved by a delegated officer; and

- Individual consultancy contracts over $100,000 in value are not to be entered into under these preferred supplier arrangements. For such consultancies, an open tender process subject to board approval, as described above, must be followed."

Preferred Suppliers

As much as possible, Queensland Racing should consolidate its suppliers and utilise preferred suppliers for either off-the-shelf goods/services where there are several sources of supply and the purchase is low risk or where there is an established relationship with a proven record of success. The advantages of using preferred suppliers are that it streamlines and simplifies purchasing, reduces administrative costs and promotes cost savings through volume discounts and exclusivity arrangements. Other benefits are that it minimises costs and risk for suppliers through not being required to regularly prepare and submit quotations.

1.2 Selection of Preferred Suppliers

The selection of preferred suppliers should be based on selection criteria that could include:

- Technical capability and experience

- Financial capacity and viability

- System and management responsibility incorporating product and service compliance with agreed industry standards

- People

- Business/organisation factors

- Favourable referee reports (a successful track record to deliver)

- Queensland Racing's 6 key principles:

    1. Value for money;

    2. Quality of product, service, and support;

    3. Open and fair competition;

    4. Accountability of outcomes;

    5. Use of Queensland product where price competitive, and where quality standards are met; and

    6. Suppliers are compliant with all taxation requirements.

61. Contour provided consulting services. It did so pursuant to a number of short-term contracts. However, the section of the purchasing policy dealing with "one-off" contracts did not apply because of the repeated use of Contour's services. Therefore, Contour fell under the "longer term consultancy services" section of the policy.

62. There was strictly no panel of preferred suppliers, because the Finance Department had not attended to that task, over an extended period[46]. However, it was plain from the evidence, and would be apparent from the documents available to the Commission, that Contour was treated as a preferred supplier. It is, it is submitted, obvious that if a preferred supplier list had been prepared, Contour would have been on it, and properly so[47].

63. It is submitted that the last dot point under the section dealing with longer-term consultancy services arguably applied in the case of Contour. The board decided that a tender process was not required and Contour was thereafter regularly engaged[48].

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46 Mr Brennan in his statement of 11 September 2013 at [8] noted that this had remained on the board action sheet for 14 months.

47 [redacted]

48 Brennan statement (11 September 2013) at pp 2, Bentley statement (21 October 2013) at [25], Tuttle statement (23 October 2013) at [38 (e), (g), (h)].

64. Once the three codes merged and work on the infrastructure plan and later the business cases began in earnest, it became obvious that the purchasing policy did not really address the work that was required. Also, because government money was going to be used in the infrastructure projects, steps were taken to tighten up the purchasing policy. Mr Bentley said that RQL was intent on trying to do the right thing[49].

65. In Version 1.07 of the Purchasing Policy[50], there was introduced a section dealing with the Industry Infrastructure Plan that states:

> "Policy in relation to the approval of supplier payments specifically related to the Industry Infrastructure Plan is as follows;
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> - All invoices must be checked and signed by the Project Director even if outside of delegation limit. The Project Director is to obtain the approval of the CEO or Board if over his delegation limit
>
> - All delegations are to be in line with the RQL purchasing policy
>
> - All items outside of the approved budget with a tolerance level of greater than either 1% or $200K of the project value will require Board approval"

66. The RQL policy[51] applied until it was modified later in 2011. The board of RQL approved a revised policy on 1 July 2011[52]; and Version 1.07 on 4 November 2011[53]. The Office of Racing was told of this new policy[54].

67. At the meeting on 4 November 2011, Mr Hanmer is recorded in the minutes as raising the issue of compliance with government contract obligations and RQL's obligations under RQL's purchasing policy and the necessity for RQL processes to be fully compliant[55].

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49 T6-35.45
50 Bentley 338
51 Bentley 334
52 Bentley 335
53 Bentley 339
54 Bentley 342
55 RQL.104.005.0278

68. An Industry Infrastructure Plan Control Group was also established[56]. The Charter for this Group is exhibited to the first statement of Mr Carter[57].

69. Mr Snowden was first engaged and later employed effectively as an in-house project manager.

70. Later a "sole supplier" provision was drafted by Mr Mathofer, probably using a draft clause sent through on email by Mr Thomson from Contour[58].

71. Mr Bentley said that due to government money being provided for the infrastructure projects going forward, RQL endeavoured to have its purchasing policy revised so as to deal more completely with the infrastructure work that was going to happen. It was not represented to government that such a purchasing policy had always been in place[59].

72. It can be seen that a number of steps were put in place to have controls over what was happening with the development of the infrastructure projects.

73. At all stages during the relevant period, after 13 April 2007, the board of QRL and then RQL retained the discretion to waive the strict application of the purchasing policy. In the case of work under the infrastructure plan, the Commission ought find that contracts for the performance of works were referred to the board for approval, and that approval was given. That was in accordance with the discretion reserved to the board under the policy.

74. Mr Lambert in his statement/submission to the Commission stated:

> "During the relevant period the board considered and approved contracts upon the recommendation of management. In my view those approvals were in accord with the policy and that was certainly the advice of management which had explicit responsibility for the implementation of and adherence to the policy. I note that Deloittes, an internal auditor, in its review of the purchasing policy in June 2009 did not identify significant non-compliance with the policy in respect to tendering arrangements.

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56 see, eg, minutes at Bentley 344

57 ex. 79

58 Bentley 350

59 T6-50.1

> The board did have a process of reviewing the effectiveness of policies and compliance with policies and that was exercised through the internal audit program which reported direct to the Audit Committee, a subcommittee of the board. I will address this process later in this submission. This process is in accord with best practice corporate governance."

75. Mr Hanmer said[60]:

> "I cannot recall any report ever coming to the audit committee from Adam Carter or Deloittes suggesting there was any non-compliance in relation to contractual arrangements involving Contour."

76. Mr Ryan in his statement said:

> "An Infrastructure Committee was formed to take responsibility for the implementation of the Industry Infrastructure Plan. The committee was accountable to and reported to the Board of RQL."

77. Contractors were engaged by RQL on the recommendation of Contour. A tender process, or the seeking of expressions of interest was carried out by Contour. That was entirely sensible and appropriate. The way contractors were selected accorded with normal building industry practices. Until Mr Snowden was engaged, QRL and RQL did not have the expertise to vet tenders or quotes. It was preferable that somebody with expertise, such as Contour, undertook that task[61].

78. In relation to this term of reference, again relevant witnesses were not called. Reference has already been made to Mr Adam Carter and Mr Mathofer. Ms Sharon Drew who in her statement made reference to some non-compliance with purchasing policies was not called. Mr Snowden's statement does not address a number of key issues. Despite being on the initial list of witnesses he was not called in the public sittings of the Commission. Otherwise, there cannot be found in the statements provided to the Commission any specific complaint about compliance with the purchasing policy, nor to support any

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60 Hanmer statement (29 July 2013) at [9]

61 Brennan statement (11 October 2013).

conclusion that the work carried out by Contour, and the contractors arranged by it was other than appropriate, and delivered value for money.

79. The Commission should conclude that the contracts with Contour, and the contracts with entities arranged by Contour were underpinned by sound procurement practices.

80. Turning to the notices of potential adverse findings.

81. It should not be found against any of those persons on whose behalf these submissions are made that during the whole of the period 1 January 2007 until 30 April 2012 they knew or should have known that Contour was not engaged in compliance with the purchasing policy of QRL or RQL.

82. That finding should not be made against Mr Hanmer, Mr Ludwig or Mr Milner because as directors during all or part of the relevant period they were not told that there was any non-compliance with the purchasing policy, and they were not, as directors, obliged to inquire into such matters.

83. The finding should not be made against Ms Murray because there is no evidence that she was involved in the application of the purchasing policy. There was no need for her to inquire into its application, unless something put her on notice of the need to do so. There is no evidence of anything being brought to Ms Murray's attention that necessitated her taking any action.

84. There is no evidence that Ms Murray dealt with Contour.

85. It has already been submitted that the purchasing policy was an internal policy, and was not made pursuant to s. 80(1)(b) *Racing Act*. It was not a policy made to do with the management of the code of racing. It was not mandatory under the Act for the control body to have a purchasing policy.

86. Further, the suggestion was made in the Commission's letter of 17 October 2013 that it may be argued that the purchasing policy was in fact a s. 81 policy. That cannot possibly be correct. Section 81 lists the subject matter of the mandatory policies. There is no basis for trying to construe the section more widely. If the purchasing policy was a mandatory s. 81 policy, then the real issue would lie in the board resolving to adopt a document as an internal

policy only and not put it through the same process for making other policies. That cannot be the responsibility of Ms Murray.

87. In the letter of 17 October 2013, the Commission also suggests that the policy must be a policy under s. 80 because "the Act does not contemplate policies being made other than as policies under the Act". That assertion is absurd. Naturally, the Act can deal with policies that the Act requires. However, it does not follow, as a matter of logic, that a legal entity (which is not established by virtue of the *Racing Act*) cannot make decisions or adopt policies dealing with other matters not related to managing the code of racing. There was nothing in Part 2 of the *Racing Act* (as it was prior to the most recent amendments) which required that the control body could not have any other business function but had to only operate as a control body. An entity that was approved to be a control body could have had other businesses and therefore could adopt policies that are not required for the management of the code of racing. To take an absurd example, if the company's board adopted an internal policy that all administrative staff will only write with purple pens, the statement made in the Commission's letter of 17 October 2013 is exposed as the nonsense that it is.

88. It is not clear on what basis it is asserted that Ms Murray was responsible for the operations of QRL and RQL within the purchasing policy, as reflecting board decisions to approve various versions of the policy. Ms Murray was not the "owner of the policy" or responsible for overseeing its operation. That was the responsibility of the Finance Department, headed by Mr Adam Carter.

89. In those circumstances no finding can be made as set out at paragraphs 2(c)(a) or 7 of the letter addressed to Ms Murray.

90. Otherwise, once it is accepted that the Board had the discretion to waive compliance with the purchasing policy, it is evident that it did so in relation to the engagement of Contour, and the engagement of contractors selected and recommended by Contour.

91. It should not be found against any of those persons on whose behalf these submissions are made that during the whole of the period 1 January 2007 until 30 April 2012 they knew or should have known that on projects in which Contour was engaged in a project management role, it undertook or

managed the procurement process for the engagement of other contractors but did not do so in compliance with the purchasing policy.

92. The difficulty is that the Commission chose only to ask Mr Tuttle questions about this topic, and as is evident from interventions by the Commissioner during Mr Tuttle's evidence on this topic, he was not the right person to ask. He was not familiar with the contracts selected for questions. Questions could have been asked of Mr Brennan, Mr Snowden or perhaps others[62], but the Commission chose not to call those witnesses.

93. There is therefore no evidence to underpin such a finding.

94. In fact, the Commission should find that in sourcing potential contractors Contour did seek tenders or expressions of interest, and recommended to QRL or RQL a contractor to undertake the work.

95. It simply cannot be found that QRL and RQL did not adhere to the purchasing policy during the relevant period at all. As has been submitted the only area that the Commission examined was the application of the purchasing policy to the engagement of Contour, and those other contractors engaged as part of the Infrastructure Plan.

96. There was absolutely no examination of whether, during the numerous other activities carried out in the normal operations of QRL and RQL during the relevant period (bearing in mind that the Infrastructure Plan was but one, albeit important, activity) that was going on whether the purchasing policy was applied.

97. It is submitted that QRL and RQL may not have strictly adhered to all aspects of the purchasing policy as far as such a policy was applicable, but there was an attempt to do so, given that the purchasing policy was not well suited to the work being undertaken in preparing the infrastructure plan, and then undertaking infrastructure projects once business cases were approved by the government. It seems that the Commission is aware that the purchasing policy was not well suited to the work being undertaken in in respect of

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62 Such as Reid Sanders

infrastructure projects, [redacted]

98. The potential finding "there were no, or no adequate, other measures utilized by QRL or RQL to ensure that contracts awarded delivered value for money" is so vague, that a response to it cannot sensibly be made. It is submitted that there is no evidence that the contracts awarded, and the projects delivered did not deliver value for money.

99. The various iterations of the purchasing policy were the work of, and responsibility of, the Finance Department, and Mr Adman Carter in particular. It cannot be found that Mr Tuttle had the responsibility to review or revise the purchasing policy, or to improve the adequacy and integrity of, and adherence to the purchasing policy. If he did not have that obligation he cannot be said to have failed to act with integrity in good faith, etc as per paragraph 4 of the Commission's letter directed to him.

100. Neither Mr Hanmer, Mr Ludwig not Mr Milner were responsible for acting as alleged in paragraph 2(a) of each of the letters addressed to them. As board members, when nothing was drawn to their attention, and no report was made by the Finance Department, they had no duty to act. In those circumstances, in respect of each gentleman, the findings proposed at paragraph 3 are not open.

101. Mr Brennan has explained, in great detail in the statements provided by him to the Commission, how the infrastructure procurement worked in practice. There was, in those circumstances no obligation on him to act as alleged in paragraph 2 of the letter addressed to him. Therefore no findings can be made as set out in paragraph 2 of the letter addressed to him.

63 [redacted]

Policies & management - Term of reference 3(b)

The adequacy and integrity of, and adherence to, management policies, processes and guidelines and the workplace culture and practices of the relevant entities, in particular RQL, and the appropriateness of the involvement of the Boards of those relevant entities in the exercise of functions by the executive management team and other key management personnel, including the officer holding the position of company secretary and those involved in integrity matters.

102. This term of reference is of very wide ambit. It is unclear whether the Commission intends to deal with those 'case studies' referred to below under this term of reference, or elsewhere. They are dealt with here, in the submissions, because it is submitted that they do not comfortably fit within any of the terms of reference, yet this is the term of the widest import.

103. There is no evidence, and no putative adverse finding of the Commission, that the Board was inappropriately involved with integrity matters.

104. Mr Birch, a chief steward, made a statement that included[64]:

> "During the period 1 January 2007 to 30 April 2012, I can recall no incident where any member of the Board sought to interfere with any part of my decision making process."

105. Mr Orchard has provided a number of statements to the Commission. He was not required to give oral evidence.

106. In the absence of any suggestion that the board was inappropriately involved, it is not proposed to deal with this further.

107. There has also been no suggestion that the Board was inappropriately involved in or interfered with Ms Murray in her capacity of company secretary.

108. Again, in the absence of any suggestion that adverse findings are going to be made about this topic, it will not be addressed further.

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64 At paragraph 12

109. As has already been submitted, in relation to an earlier term of reference, no specific management policies, processes and guidelines, other than the Code of Conduct, have been identified by the Commission for examination.

110. Numerous policies were referred to in the statement of Mr Adam Carter[65]. In the absence of any notice of adverse findings that such policies were inadequate, were not of integrity, and were not adhered to, this topic will not be addressed further.

111. There was no examination of the involvement of members of the Board in the exercise of functions of the executive management team, other than Mr Bentley. No notice of potential adverse findings has been given to Mr Ludwig, Mr Milner or Mr Hanmer that they inappropriately involved themselves in executive management functions. Accordingly, insofar as they are concerned, there is no need to make any further submissions.

112. The only 'management issue' identified by Senor Counsel Assisting on 19 September 2013 was whether the chairman, Mr Bentley, was active in the day-to-day business of QRL and then RQL to an extent which was not appropriate for a chairman[66].

113. After all of the evidence, so far as Mr Bentley is concerned, the only notified potential adverse finding of his involvement in management matters is that in paragraph 2(a) of the letter to him dated 10 October 2013.

114. It is accepted that Mr Bentley involved himself in the business of RQL and QRL. His involvement was discussed in the Daubner Rafter Report[67]. It was also discussed by Wilson J in *Andrews v Queensland Racing Ltd*, discussed further below.

115. It is accepted that, because the development and implementation of the infrastructure plan was a matter that was very important to him, Mr Bentley was involved in procurement activities pertaining to infrastructure. There is no evidence that he was involved in procurement activities that did not relate to infrastructure policy.

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65 Paragraph 77 and exhibits 97 – 129 (QRL); exhibits 130-153 (RQL)

66 T2-8.26

67 generally at pp 135-9

116. Mr Bentley's involvement in procurement was appropriate to the development and implementation of the infrastructure plan and projects. There has been no evidence identified by the Commission that Mr Bentley acted in a way that compromised the proper division of roles between the Board and management. Mr Tuttle and Mr Brennan in their statements detail the involvement of Mr Bentley. Neither says that Mr Bentley compromised the way in which they carried out their employment.

117. Paragraph 2(a)(ii) of the Commission's letter is vague, and the Commission has refused to further particularize it. In so far as the notice states that Mr Bentley involved himself in "management matters" it is so vague that no meaningful response can be made until some better clarification is given of what is intended to be conveyed by that Statement. Mr Bentley, as Chairman of the Board, appropriately interested himself in the financial performance of the control body. There is no evidence, apart from that of Ms Harris, that Mr Bentley compromised the functions of the Finance Department. Ms Harris was not called to give evidence, and her evidence was contradicted by that of Mr Bentley[68] and Mr Hanmer[69]. The Commission should not, in the absence of hearing from Ms Harris, accept her evidence.

118. No finding should be made in terms of paragraph 2(a) of the notice to Mr Bentley.

119. There was no investigation of the adequacy and integrity of, and adherence to, management policies, processes and guidelines, nor the workplace culture and practices of Greyhounds Queensland Limited or Queensland Harness Racing Limited, at least in the public sittings.

120. Under this term of reference the only policies, processes and guidelines referred to in the public sittings was the Code of Conduct[70]. Reference was also made to the constitutions of QRL and RQL.

121. The Commission looked at a number of specific matters, which are described here as 'case studies'. Those case studies do not comfortably sit within the terms of reference. They are not referred to in the break-down of issues

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68 T2-60

69 T7-10.40ff

70 Bentley 264

document. Those that relate to the period before RQL was incorporated cannot, therefore fall within Term of Reference 3(c).

122. As those on whose behalf these submissions are made understand, from the way the public sittings were conducted, the Commission is looking at:

a. The Ludwig proxy issue;

b. The Andrews litigation;

c. The 'conspiracy' to get rid of Lambert and Andrews from the Board;

d. The Synthetic Tracking Fund Deed compliance;

e. The letter to the Toowoomba Turf Club;

f. The disclosure of the Industry Infrastructure Plan to government before it was disclosed to, and approved by, the board of RQL;

g. The removal of Mrs Watson as a director of RQL.

123. Because the removal of Ms Watson plainly occurred during the period where RQL was the control body, that issue is dealt with under term of reference 3(c).

124. The 'conspiracy' to get rid of Lambert and Andrews has been addressed under term of reference 3(f).

125. First, it is proposed to address the Ludwig proxy issue.

126. Notice of potential adverse findings has been given to Mr Ludwig, Mr Bentley, Mr Hanmer and Ms Murray about this topic.

127. It should be noted that on three occasions[71] objection was taken to the validity of the proxy, and how it was dealt with, being investigated by the Commission[72]. The proxy was that of the Queensland Country Racing

71 T4-36.35; T5-4.35; T8-7.15

72 Objection was also raised by letter from RBG to the Commission on 6 September 2013

Committee. That is not a 'relevant entity' under the Terms of Reference. Mr Ludwig did not act, in relation to the proxy, as a director of QRL, but rather as Chairman of the Queensland Country Racing Committee.

128. Indeed, the Commissioner seemed to accept that Mr Ludwig's conduct concerning the proxy issue itself was not within the Terms of Reference[73], but allowed questioning on the basis that it related to the corporate governance of QRL. It is respectfully submitted that the corporate governance of QRL is not within the terms of reference[74]. They refer only to the corporate governance of RQL, in term of reference 3(c). If corporate governance of QRL is open to investigation, so too must be corporate governance of the Greyhounds and Harness Racing control bodies, yet no such investigation appears to have taken place.

129. Alternatively, it was put by Senior Counsel Assisting that the topic was relevant to the investigation of government oversight. If that is what it is relied on for, no adverse findings should be made against Mr Bentley, Mr Ludwig or Mr Hanmer[75].

130. The proxy itself is before the Commission[76]. There are some obvious deficiencies in the document. The Commission should accept that it was drafted by Ms Murray, and that Mr Ludwig followed her advice both as to the need for a proxy, and the form of the proxy[77].

131. As a director of QRL, Mr Ludwig was the chairman of the Queensland Country Racing Committee ("QCRC")[78]. By s. 70 of the Act, the QCRC could carry out its business as it considered appropriate. Section 73(1) of the Act provided:

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73 T4-83.15

74 T4-84.10

75 It should also be noted that the Inquiry is to be made into the "operations of the former control bodies". Unless the matter relates to the operations of the control bodies, the allegations raised in the statements are irrelevant. This objection was raised in the letter from RBG to the Commission on 6 September 2013

76 Bentley 187

77 T8-8.21; T8-17.12. The solicitors for QRL were also involved in advising of the need for, and form of the proxy

78 s. 68 *Racing Act*, as it then was. The Committee itself was established by s.66 of the Act as it then was

> "Meetings of a thoroughbred entity must be held at the times and places the chairperson of the thoroughbred entity decides."

132. Section 73(2)(b) of the Act provided:

> "The chairperson of a thoroughbred entity must call a meeting if asked, in writing, to do so by at least 3 members of the entity."[79]

133. There was no request to call a meeting of the QCRC for the purpose of deciding how it would vote at the meeting of members of QRL in August 2008 to decide the constitutional change proposed.

134. The Commission should accept that the members of the QCRC knew of the impending meeting of QRL, and the issues that were to be determined at that meeting.

135. Mr Colin Truscott was the administrative officer/secretary for the QCRC. Mr Ludwig explained in his evidence that Mr Truscott was the "go to man" for the QCRC. The Commission accepts that notice of the meeting was sent to Mr Truscott[80]. Unfortunately Mr Truscott does not address what he did with the notice of meeting, in his statement. Mr Truscott was not examined about these matters.

136. Mr Ludwig had discussed the subject matter of the proposed changes to the constitution of QRL with Country Racing persons. He (in company with Mr Bentley and Mr Truscott[81]) attended a tour of country racing regions and spoke to many people in the months leading up to the vote. It cannot be said that the proposed changes to the constitution of QRL was something that was unknown outside of QRL.

137. It is worth noting that Mr Truscott supplied a statement to the Commission. The Commission has apparently not asked him about giving notice to Country Racing members, or the tour, or whether, to his knowledge, the Country Racing representatives knew of the upcoming meeting of QRL.

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79 Mr Ludwig mistakenly thought this was two

80 T8-19.14

81 Truscott statement, paragraph 10. See also the supplementary statements of Ludwig and Bentley

138. Further, material relating to the proposed vote had previously been circulated[82], and it should also be borne in mind that Mr Bart Sinclair, whose column in the Sunday Mail was obviously widely circulated, wrote on the very subject of the proposed changes to the constitution on 11 May 2008[83].

139. It was put to both Mr Bentley and Mr Ludwig that all members of the QCRC had provided statements addressing various matters. Apparently the statements were taken by or at the request of the Commission. The following appears at T8-15.1:

> "Well, what about this? Let's look at the substance of it instead of when the complaints arose. All the commission had to do was say to each of them, could you put a sworn statement in please, whether you got notice of a meeting so that you could have your say. **They all said no**. And then when asked, did you authorise Mr Ludwig to vote on your behalf – no, **all no**. And thirdly, when asked, did you authorise him to vote in favour of him and Mr Bentley and others having a longer term – **they all said no**. (emphasis added)

140. As the following table shows, an analysis of the statements of the QCRC members demonstrates that their evidence was not to the effect represented by Senior Counsel Assisting.

Witness	Aware of proposed changes of QRL constitution	In favour of proposed changes to QRL constitution	Spoke to Ludwig about proposed changes to QRL constitution	Aware of meeting on 6 August 2008	Received notification of 6 August meeting	Voted to appoint Ludwig as proxy
Brosnan	YES	NO	NOT SAY	YES	NO	NO

82 Mr Ludwig's supplementary statement at paragraph 8

83 Bentley statement (21 October 2013) annexure 'RGB 8'

Peoples	YES	NOT SAY	NOT SAY	NOT SAY	NOT SAY	NO
Flynn	NOT SAY	NOT SAY	NO	NO	NO	NO
Fitchett	NOT SAY	NOT SAY	NOT SAY	NOT SAY	NOT SAY	NO
McDonald	NOT SAY	NOT SAY	NOT SAY	NOT SAY	NOT SAY	NO
Roberts	NOT SAY	NOT SAY	NOT SAY	NOT SAY	NO	NO
Webster	NOT SAY	NO	NOT SAY	NOT SAY	NO	NO

141. There appears to be one member of the QCRC who has not given a statement. There were eight members plus the chairman, yet only seven statements have been submitted.

142. Mr Flynn does not say whether he was in favour of the proposed changes or not. In fact, he says that he is *not prepared to say* whether he was in favour or not. Mr Flynn was the only witness to say he did not discuss the issue of the proposed changes with Ludwig.

143. Mr Fitchett in his statement only states that he did not attend any meeting to resolve to appoint a proxy. He does not say anything in relation to Counsel Assisting's other questions.

144. Mr Brosnan and Mr Peoples were aware of the meeting that was called in May 2008. Hence, they were necessarily aware of the proposed changes to the QRL constitution.

145. The only witnesses who said they were against the proposed changes were Messrs Brosnan and Webster. It would have been a simple matter to ask the witnesses whether they were in favour of the change or not. Why this question was not asked or, if asked, why was it avoided were not revealed by the Commission.

146. In summary, while the QCRC members gave statements that they did not authorise Mr Ludwig to vote as their proxy, none of them other than Mr Flynn said that they had not discussed the issue of the proposed changes with Mr Ludwig, and none of them say that they were unaware of the proposed changes at all.

147. The evidence was certainly not to the effect represented by Senior Counsel Assisting in the first and third instances in the exchange extracted above. Again, it is noted that none of these witnesses were called to give evidence so that their evidence could be tested.

148. When the complaint about Mr Ludwig was first raised by Mr Carter QC and others agitating for interest groups that were against those of the then board of QRL[84], the matter was in the hands of the Office of Racing. Various referrals were then made to the CMC, ASIC and the police. While it is correct to say that no further investigation was carried out by the Office of Racing into the issue of whether there had been any breach of the code of conduct, it should be borne in mind that those agitating for an investigation at that time and subsequently were directing their efforts at far more serious allegations – such as fraud. The matter was in fact referred to investigative authorities, and not further investigated by the Office of Racing at the request of Mr Carter QC[85].

149. The evidence of Mr Kelly, of the Office of Racing is also instructive, and should be accepted. Mr Kelly said that he learned that Mr Ludwig had signed a document that was prepared by in-house counsel and checked by external lawyer. He also learned that no one advised Mr Ludwig, a non-executive director who was reliant on personnel within QRL, that he should not vote using the proxy or that he should have called a meeting of the QCRC;. Mr Kelly concluded that while it was within Mr Ludwig's power to instruct QRL's

84 T8-14.42

85 See submissions of Mr Fraser

personnel to call a meeting of the QCRC, his failure to do so could hardly be considered something that could justify a finding of being unsuitable to be associated with the control body. Mr Kelly was aware of the true circumstances of the matter. In his evidence, he stated[86]:

> "As a result of what had happened with the CMC, the meeting with ASIC, the discussions between Ford, Turnbull, myself and Lachlan Smith was the issue of the noncompliance with the requirements for proxies and the process for the constitution wasn't viewed as a major issue of concern. It was an administrative stuff up."

150. With respect that is precisely what happened. There was no fraud. Mr Ludwig did not falsify a proxy, as alleged by Mr Carter QC[87]. There is no evidence of any improper conduct, or dishonest conduct, by Mr Ludwig. The Commission should find that Mr Ludwig honestly believed that he was entitled to act as he did. Advice was received from both Ms Murray, and from an external lawyer.

151. It should also be remembered that nothing turned on the exercise of the proxy. The vote at the meeting was carried 14 to 1, and so even if the proxy had been disallowed, or if the QCRC vote was against the changes to the constitution then the result of the vote would still have been the same. in a fairly short time frame after the events in question, the government rejected the proposed changes anyway.

152. The Code of Conduct did not apply to Mr Ludwig's conduct as chairman of the QCRC. In any event, even if it did apply, it is submitted that whole the exercise of the proxy vote by Mr Ludwig could hardly be seen as conduct of such a heinous kind as to amount to a breach of the Code of Conduct. He was a non-executive director following the advice of senior personnel and lawyers, and at all times he believed he was acting as he was entitled to do.

153. The 'proxy issue' was investigated by the Queensland police. Whilst it was overstating things to say, as Mr Bentley did[88], that Mr Ludwig had been cleared by the CMC, ASIC and the police, nevertheless the police did

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86 T11-55.24-28

87 and the Commission should make that clear in its report

88 in his letter, Bentley 190, and in the Issues for Change document, Bentley 228

investigate the matter and an opinion was provided by Mr Carmody QC (as his Honour then was).

154. No one was misled by Mr Bentley's characterization of what occurred as Mr Ludwig being cleared. Mr Kelly knew what had happened. So did Mr Fraser, as evidenced by his statements to Parliament[89].

155. It should also be noted that further documentation may exist in relation to this matter but no such documentation has been produced. Reference is made to paragraph 17 of Mr Ludwig's supplementary statement where he states:

> "I have commenced defamation proceedings against the Courier Mail in relation to a story it published about this matter. In the course of those proceedings, my lawyers wanted RQL to obtain its records back from the police. Despite requests made to RQL, it has failed to provide any records to us. Therefore, I am at a disadvantage to go into any further detail about this matter".

156. One can speculate as to why the current control body has not assisted as requested.

157. No adverse findings should be made against Mr Bentley, Mr Hanmer or Mr Ludwig.

158. No findings should be made against Ms Murray in the terms set out in paragraph 3 of the letter from the Commission addressed to her. Given that the complaints raised by Mr Carter were referred to the CMC, ASIC and the Queensland Police, and had been made to the Office of Racing there was no remit for Ms Murray to conduct her own investigation.

159. As to paragraph 3(b)(i) of the letter, the Commission has identified the email from Ms Cameron to Ms Murray dated 1 August 2008 as the supposed evidence of the relevant statement. The following comments are made in relation thereto:

a. The email is dated 1 August 2008 which was at a time before any complaints were made about the matter. Therefore, the alleged

89 Bentley 193

statement referred to therein would have to have been made before any complaints were made. As a matter of logic, the statement could not possibly have been made "when complaints were made concerning the above matter".

b. The email is from Ms Cameron and is alleged to confirm what Ms Murray had told Ms Cameron. Yet Ms Cameron was not called to give evidence. Indeed, the Commission has omitted to obtain any evidence from anyone from Cooper Grace Ward on any subject.

c. If Ms Cameron's email accurately records what was allegedly said by Ms Murray to her, then the email does not state that Ms Murray "had checked with the members of the Committee and they had confirmed that Mr Ludwig had authority to exercise the proxy" as the potential findings letter asserts. Rather, the email states that Ms Murray had "spoken to representatives of each of the following bodies … Queensland Country Racing Committee."

d. The evidence on this subject is inconclusive, as Ms Murray has been unable to give evidence and the Commission has not seen fit to call other witnesses who may cast some light on the subject. Therefore, it is submitted that no findings should be made on this subject.

e. However, if the Commission is prepared to make assumptions as to what the facts are, based on incomplete evidence, then it should be noted that Mr Ludwig is a representative of the QCRC, being its chairman, and that is the person to whom Ms Murray is likely to have spoken. Further, document Bentley 293 is an unsworn statement of Ms Murray. We do not know if that statement was ever finalized. However, for what it is worth, paragraph 54 states, "My understanding is that when Bill Ludwig gave me the proxy he was voting according to the views of the Queensland Country Racing Committee and that he had obtained that view from going through the two week, eleven forums and had spoken to what he felt was a greater variety of people in terms of Country Racing".

f. If the evidence in that unsigned statement is reliable (on which we cannot make any submission) then we also note that paragraph 41 states that Ms Murray's understanding was that "the hand of the appointer who could sign off on a proxy form would either be the Chairman, the CEO or whoever is stated under the model rules, or under the Constitution. For the QCRC, I assume this would be the Chairman. I don't believe it's written anywhere." If that evidence is correct, then while it displays an understanding that is contrary to the legal contention proffered by Counsel Assisting the Inquiry as to how the proxy should have been signed, it certainly does not display any dishonesty or disregard for the members of the committee, but rather an error. It would be a said indictment on the burden of regulation if every error that someone made amounted to a breach of a code of conduct deserving of disciplinary proceedings.

160. Turning to the investigation of the facts that led to the Andrews litigation. First it is submitted that this is not an appropriate topic for the Commission to further investigate because it has been dealt with by the Court. Certainly the Commission can take cognizance of the fact that the litigation occurred, and the result of that litigation. However, it is not appropriate to further investigate matters that have been the subject of findings of the Court.

161. An example of this is the pursuit by Senior Counsel Assisting of Mr Bentley about his contact with recruitment consultant Mr Mark Wilson.

162. In her judgment in *Andrews v. Queensland Racing Ltd* [2009] QSC 338 (delivered 23 October 2009)[90] Wilson J found as follows (after hearing much more evidence from more witnesses who had very recent recollections of the events):

> [58] There was nothing untoward in Mr Bentley discussing with Mr Wilson the skills and qualities which he thought the Directors should have. Indeed it would have been remiss of Mr Wilson not to have sought this information. It is unremarkable that Mr Bentley wanted the new board members to have race club experience and some financial and accounting background. And Mr Lambert, too, saw the need for someone with financial and accounting

90 Bentley 176

experience.

[59] By his own admission, Mr Bentley runs "a tight ship". He considers it important to keep those with whom he works informed of what he perceives to be relevant developments and comments by others, as and when they occur. He spoke with Mr Wilson on a number of occasions between April 2009 and the provision of the Shortlist (including on at least one occasion in relation to an unrelated personal matter on which he had previously consulted Mr Wilson). While some may question whether Mr Bentley's modus operandi strikes the appropriate balance between engagement and approachability on the one hand and detachment and circumspection on the other, there is no evidence that he directly interfered in the preparation of the Shortlist. There is no evidence that he knew who was going to be on the shortlist before the letter of 18 June 2009 was received by Ms Murray.

[60] Accordingly I am not satisfied that the second particular of want of independence has been made out."

163. The proposed finding identified at paragraph 2(f) of the letter addressed to Mr Bentley is inconsistent with these findings. Given that the Court, bound by the rules of evidence, having heard all of the relevant witnesses, made its findings extracted above, it is submitted that the Commission should not make the finding proposed by it.

164. In his examination, Mr Bentley dealt with the three occasions he spoke to Mr Wilson. He was not "constantly" calling him, and was not talking to him "all through the process" as was put to Mr Hanmer[91].

165. It was also inaccurately put to Mr Bentley[92] that Wilson J had found that he had possibly directed Mr Wilson. There was no such finding.

166. Mr Bentley acted appropriately and went so far as to take legal advice as to whether he was permitted to speak to Mr Wilson about the qualities of candidates for director[93]

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91 T7-97.15; T7-101

92 at T4-48.35

93 Bentley 161

167. This avenue of inquiry, like the Ludwig proxy issue, was generated by Mr Carter QC in his letter to the Minister dated 6 August 2009[94]. Mr Carter, by his own admission, has no knowledge of what actually occurred[95]. He is obviously antipathetic to Mr Bentley.

168. Mr Bentley accepted[96] that his statement to the Minister[97] that he provided no guidance or direction to the recruitment consultant was not correct. However, as Wilson J found, there was nothing untoward in Mr Bentley's conduct.

169. Mr Bentley has dealt, in his supplementary statement, with the contact he had with Mr Wilson. Indeed, although it was suggested that he was being untruthful in saying that he had discussed a personal matter with Mr Wilson, subsequent enquiry of Mr Wilson has confirmed that such a discussion did take place[98].

170. Mr Bentley did not act inappropriately in his dealings with Mr Wilson, and no finding should be made as notified in paragraph 2(f) of the letter to Mr Bentley.

171. The matter of Mr Bentley's interaction with Mr Wilson was raised because, according to Senior Counsel Assisting:

> "the contention is that Mr Bentley was intent upon getting rid of Lambert and Andrews because they were raising the issue of the deductibility by Tatts of the money under the third party charge"[99].

172. This fanciful conspiracy theory has been debunked in the submissions relating to Term of Reference 3(f). However, it is important to observe that the Commission was not seeking to examine the selection process of directors, per se, and Mr Bentley's involvement in it, but rather it was being examined for the confined purpose of establishing the improper purpose identified in the transcript extract just referred to.

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94 Bentley 168

95 W Carter statement (23 August 2013) para 5

96 T4-17.5

97 Bentley 171

98 Rodgers statement (29 October 2013)

99 T4-37.8

173. There is no utility in making the findings notified in paragraph 4 of the Commission's letter to Ms Murray. The Supreme Court has dealt with the matter. Findings were made in those proceedings. There is no need to make any further findings about the matter. The Commission is able, if it wishes, to refer to the findings made in the Supreme Court judgment.

174. Notice of potential adverse findings have been given to Mr Bentley, Ms Murray and Mr Tuttle regarding clause 4.18 of the Synthetic Track. QRL did undertake a tender process to appoint the contractor to supply and lay the synthetic racetrack at Clifford Park.

175. Annexure MK18 to the supplementary statement of Mr Kelly[100] is a letter from BDO Kendalls, the auditors of QRL, dated 20 October 2009, which confirms that the costs incurred by QRL on the synthetic track at Clifford Park were incurred "**in accordance with the Funding Agreement**". This letter was not referred to any of the witnesses in the public hearings.

176. No findings can be made as foreshadowed in the absence of evidence from Mr Adam Carter concerning what information he gave to BDO Kendalls (which presumably included the funding agreement) or from BDO Kendalls that casts any doubt on the accuracy of the statement made by them in their letter referred to above.

177. The letter dated 30 January 2009 sent by Mr Bentley to members of the Toowoomba Turf Club[101] was only part of a body of correspondence and other documents relating to the decision to install a synthetic track at Toowoomba. The reasons why that decision was taken are outlined in detail in Mr Bentley's supplementary statement. Statements were obtained from a number of persons that were members of the Toowoomba Turf Club at the relevant time, but none of them were examined during the public sittings. A request was made that Mr Neville Stewart, the former chairman of the Toowoomba Turf Club be examined, but that was refused.

178. It would be unfair to make any findings based on one letter in isolation, when it is plain that there was a considerable interchange, and provision of information, about the synthetic track proposal that went beyond one piece of

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100 M Kelly statement 2 October 2013

101 Bentley 364F

correspondence.

179. The actual content of the Industry Infrastructure Plan was not disclosed to each of the members of the Board of RQL until 24 September 2010[102]. The plan was approved by the Board of RQL on 28 September 2010. Thereafter it was presented to government, and once approved by government work began on the preparation of business cases so that the various infrastructure projects could be implemented.

180. It was incorrectly put to Mr Bentley and Mr Ludwig that the plan had been supplied to the government before it was approved by the Board[103]. It was put that:

> "One thing is for sure in the government officers' statements. It's clear that it was with cabinet before it went to the Board."

181. That assertion was simply wrong, and it was unfair to examine Mr Bentley and Mr Ludwig on the basis that it was correct.

182. There was a meeting on 18 August 2010. Below is a table of the attendees at the meeting and whether they said that a copy of the plan was provided. No witness said that the plan had gone to cabinet.

Attendees	*Given statement*	*Called in public hearing*	*Says discussed plan*	*Says actually saw a plan*
Premier Bligh	N	N	-	-
Dep. Premier Lucas	N	N	-	-
K Smith	Y	N	Y (para 39)	N

102 Minutes of meeting of that date are Bentley 137

103 T4-65.17; T4-69.9; T4-74.40; T8-25.15

Treasurer Fraser	Y	Y	Y	N (T13-19.39)
Min. Lawlor	Y	Y	N	N

183. Mr Lawlor was not even asked any questions about the meeting on 18 August 2010. Mr Fraser is despite pointed questioning from Counsel Assisting, would not say that he saw the plan.

184. Other government witnesses - Lindsay, Middleditch, Foley, Ford, Foley, Buckby, Bradley, Booker, Barber do not say anything about seeing an plan or even discussing a plan.

185. There was then evidence of a meeting on 2 September 2010. Mr Beavers at paragraph 43 in his statement refers to a meeting with Mr Bentley and Mr Bradley on 2 September 2010. He says a strategic plan was proposed. He does not actually say a plan was shown, but says that a plan proposed various projects around the State. Mr Bradley does not mention a meeting on 2 September 2010.

186. Another meeting took place on 10 September 2010. Mr Bradley says at paragraph 61 of his statement that a "Strategic Asset Plan" was presented. However, a copy of the presentation is annexed to his statement. It is the power point presentation. It is not the entire IIP. At paragraph 63 Mr Bradley said: "This proposal was the precursor to the proposal which formed the substance of CBRC Submission 3255 and CBRC Decision 4210". Clearly the presentation was different to the final Industry Infrastructure Plan.

187. A meeting was held on 14 September 2010, attended by Mr Fraser, Mr Bradley, Mr Lawlor and Mr Ken Smith. This meeting is referred to in Mr Fraser's evidence[104]. There was a discussion of a proposal for funding based on sale of Albion Park. Mr Fraser said:

104 T13-20.27

"I remember at the time that what was being proposed – that essentially the government would underwrite the sale, and we kicked that into touch pretty quickly."

188. From this, it can be concluded that whatever plan was being discussed could not have been the plan that the board of RQL considered on 24 and 28 September 2010.

189. There were plainly discussions with government about aspects of the proposed plan, and particularly about funding what was proposed. However, the contention that the finalised plan was given to the government before it was approved by the Board of RQL should be rejected as it is not supported by any evidence.

190. Both Mr Bentley and Mr Ludwig freely admitted that they went to meetings with government ministers and departmental officers. It was appropriate for them to do so, as there was no point presenting a plan to the board of RQL for approval before there was a reasonable likelihood of it receiving government approval and funding[105].

191. Mr Ludwig in his evidence admitted that he did not disclose to other members of the board of RQL that he had met with the government and discussed aspects of what would be in the plan. However, it is not correct to say that Mr Ludwig had discussions with the government about ***the*** Plan.

192. Further, there is nothing in the evidence to say that any failure to tell other board members about the discussions held with government was the reason that caused members of the Board of RQL to have limited time to consider the Plan prior to being called upon to approve the Plan on 28 September 2010.

193. On 16 October the Commission responded to a request from RBG as to the representation that was allegedly made to government. The Commission stated that the representation that was made to government was that the board of RQL had approved the plan. No such representation was made. The evidence does not suggest that any such representation was made. In his evidence, Mr Ludwig was referred to paragraph 39 of Mr Ken Smith's

105 T4-78.30ff

statement. Mr Smith merely states, "The meeting was about the racing strategic plan. Discussions included proposals for significant rationalization of facilities."

194. If there was no complete plan presented at any meeting with government then there could hardly have been a representation made to the government that the plan had already been approved by the board of RQL.

195. The reasons why the plan was kept confidential are obvious. They have been adverted to in that part of the submissions dealing with Contour's involvement. They have also been referred to in that part of the submissions dealing with the removal of Mrs Watson as a director. What transpired with Mrs Watson leaking details of the plan to her interest group, and then seeking to undermine the plan it was the very thing that Mr Bentley, and the government, was trying to avoid.

196. It cannot be found that either the Greyhound control body or the Harness Racing control body were in any way misled by Mr Bentley. The Commission assiduously avoided referring to Mr Bentley's letter dated 5 February 2010[106]. It makes his position clear.

197. Mr Hanmer in his supplementary statement has dealt with what is contained in paragraph 2(f) of the Commission's letter to him dated 10 October 2013. It is not proposed to reiterate what is said in the statement.

198. Mr Bentley in his supplementary statement has dealt with what is contained in paragraph 2(h) of the Commission's letter to him dated 10 October 2013. It is not proposed to reiterate what is said in the statement.

The above case studies are presumably the best that the Commission can offer to discredit and criticize those persons on whose behalf these submissions are made. Not only do they fail to come up to that mark, but they demonstrate that even if the discrete criticisms have some credence, over a period of 5¼ years there is very little that QRL and RQL did wrong.

106 Bentley statement (11 September 2013) annexure 'RGB 6'