QUEENSLAND RACING COMMISSION OF INQUIRY

Commissions of Inquiry Act 1950

FURTHER SUPPLEMENTARY STATEMENT PURSUANT TO SECTION 5(1)(d).

I, **MALCOLM NICHOLAS TUTTLE** c/o Level 10, 300 Adelaide Street, Brisbane, director – business development, do solemnly and sincerely declare as follows:

1. I refer to my previous statement dated 26 July 2013, my supplementary statement dated 10 September 2013 and to the notice dated 10 October 2013 ("Notice") sent by the Commission to my solicitors informing me of potential adverse findings that may be made by the Commission.

2. I wish to elaborate on certain matters discussed in my evidence given in the Commission hearing on 30 September 2013 and 1 October 2013 and to respond to the allegations contained in the Notice.

3. My legal advisers will make written submissions to the Commission of Inquiry addressing the terms of reference, and the potential findings that may be made against me. This statement addresses factual matters.

4. I set out in this supplementary statement my response to specific issues put to me during my examination and to the potential findings set out in the Notice, as far as I can in the limited time that the Commission has allowed me, and with the limited understanding I have of some of the allegations.

5. This supplementary statement is also prepared in the absence of my having relevant material generated at the relevant times, contained in my files, diaries, emails and file

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notes. I am also unaware if my legal advisers have available to them all the material which has been made available to the Commission for example from Tatts Group Ltd, Cooper Grace & Ward and others.

6. I was asked a number of questions about the Product and Program Agreement. One of the matters on which I gave evidence was the agreement that was reached between UNITAB (through Dick McIlwain) and QRL (through David Grace) in November 2008, whereby QRL would retain any race field fees imposed as a result of the Queensland race fields legislation. I wish to elaborate on that evidence because I am concerned that Counsel Assisting the Inquiry may not fully appreciate the importance of the matter and the benefit that was achieved for QRL/RQL and in turn the racing industry. My concern is based on the contention that Counsel Assisting the Inquiry has repeatedly made during the hearings that the issue of the set off under clause 10.2 of the PPA was costing Product Co $500,000 per month and that the amount of loss suffered by Product Co is approximately $91 million during the relevant period for this Inquiry. This contention must be balanced with the agreement reached with UNITAB at the time race information legislation was being considered in Queensland. As I endeavoured to explain in my oral evidence, QRL (and later RQL) was in fact a net beneficiary as a result of the introduction of race fields legislation in Queensland, notwithstanding the off-setting of NSW (and later other States) race field fees by Tatts under the PPA.

7. In this supplementary statement, three-digit references to documents are references to the document number as shown to me in folders during the hearing. I note that during the hearing I was repeatedly shown documents some of which I had never seen before and asked to comment on these documents. I was given no time to reflect on the documents or put them into context.

8. In 2008, when the issue of the race information legislation was being considered, I briefed David Grace of Cooper Grace Ward to provide advice. The issue of whether or not UNITAB could deduct, under clause 10.2 of the PPA, the fees that it was being charged by Racing New South Wales for race information fees was only one issue. The other issue was who would be entitled to the race fields fees charged under the Queensland legislation.

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9. In the letter from Barrie Fletton of UNITAB on 24 July 2008 (Document 005), in which he stated UNITAB's intention to deduct a third party charge under clause 10.2, he also stated a possible solution that we approach the Queensland government to seek the introduction of race information fees in Queensland to assist in compensating for the funds that would be deducted.

10. As document 009 refers, I went to a briefing with the government on the proposed introduction of race fields legislation on 23 October 2008. After that briefing, I looked again at the terms of the PPA because I was concerned to be completely on top of the implications of how the new legislation would impact on QRL. Document 010 is my briefing note to David Grace of Cooper Grace Ward. In that document, one of the issues that I emphasised was the likely loss of any benefit from Queensland race information fees by having to deduct those fees from any amount payable by UNITAB under the PPA. After referring to the amounts that could be lost as third party charges, I stated, "As you can see we need to levy our own charges in return on Tabcorp, for example, to remain viable. My concern in this regard is with PPA 7.5(c) which seems to indicate that we can provide the Qld Racing Program but if we receive payment it is also deducted off the Product fee payable by UNITAB". I also stated at the end of my briefing note, "My main concern at the moment is ensuring that we can charge a fee based on turnover and that the revenue that we would be due to receive is not deducted by UNITAB from the Product Fee."

11. I met with David Grace on 31 October 2008 and we discussed various aspects of the PPA and the proposed race fields legislation. While I do not have a perfect recollection of the meeting, I believe that the issue of what amounts UNITAB could claim from Product Co in respect of Queensland race information fees was clearly discussed. My belief is reinforced by the contents of the email that Bob Bentley sent to Dick McIlwain the following day.

12. The email from Bob Bentley to Dick McIlwain on 1 November 2008 which was copied to me (Document 012) refers to what Bob Bentley described in the email as an "unintended outcome of the race fields legislation as it relates to clauses 7.5(d) and 10.2(c) of the Product and Programme agreement". I believe Bob Bentley meant to refer to clause 7.5(b) or (c) rather than (d). As the email clearly states (by referring to clause 7.5), the concern was as I have stated above, that is whether UNITAB could deduct from the

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Product Fee the amount of any race fields fees received by QRL under Queensland race fields legislation, and not the concern over whether UNITAB would be deducting a 'third party charge' in respect of any race information fees which UNITAB may have to pay to Racing New South Wales (which has been the focus of the questioning by Counsel Assisting the Inquiry).

13. My belief at the time (as recorded in my memorandum to Bob Bentley as far back as 28 April 2008 (document 003) was that Queensland was a 'net exporter' of wagering, meaning that there was more wagering on Queensland product interstate than by Queensland punters on interstate product. The possible impact of clause 7.5(c) of the PPA was of great concern to me.

14. The awareness of having viable wagering content was nothing new, as for many years we had concern for the Queensland product being attractive to punters interstate and consistently worked on having an attractive racing and wagering program.

15. My concern in relation to clause 7.5 was this:

(a) Clause 7.5 is only concerned with Queensland racing product and has nothing to do with Australian racing product – therefore the issue of 'third party charge' is completely irrelevant to this particular aspect;

(b) Clause 7.5(c) says (I am paraphrasing to record my understanding but I believe the words of the clause are clear enough) that Product Co can provide Queensland racing product to certain entities named in Schedule 4, but if any fee is received from those entities then that fee is deducted from the amount that UNITAB has to pay to Product Co – this is clearly stated in clause 10.2(c);

(c) The addendum to Schedule 4 includes TAB Ltd, TAB Corp and WA TAB, being the totaliser wagering entities in New South Wales, Victoria and Western Australia respectively;

(d) While the impact of corporate bookmakers has been significant on Australian wagering, most wagering was still being done through pari-mutuels or totaliser

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wagering entities. So with Queensland being a 'net exporter', Queensland could gain considerably by the introduction of race information fees provided it could keep the fees that are charged to other wagering entities;

(e) However, if such race information fees that were collected from interstate totalisers are deducted from the Product fee that UNITAB would pay under the PPA, then the benefit of the introduction of race information fees into Queensland would be lost or at least diminished considerably;

(f) Further, while clause 7.5(c) made provision for what would happen if we started collecting fees from entities listed in Schedule 4, the only provision dealing with what happens if we try to collect fees from other entities is clause 7.5(b). Clause 7.5(b) says (I am paraphrasing to record my understanding but I believe the words of the clause are clear enough) that Product Co can provide Queensland racing product to other parties not mentioned in Schedule 4 provided we obtain UNITAB's consent. That consent can't be unreasonably withheld if:

i. We don't charge anything to the other entities for providing the Queensland race product; and

ii. UNITAB considers that it is beneficial to the 'Race Wagering Business' (which is defined to mean the race wagering business *conducted by UNITAB)*;

(g) So I took that to mean that basically UNITAB could refuse to allow QRL or Product Co to charge anything to other entities or could impose conditions for its consent.

16. As a result of this analysis, I had doubt in my mind as to whether UNITAB fully appreciated the windfall that it could have obtained from the introduction of race information fees in Queensland. I noted what Barry Fletton had written in July 2008 (document 005) and it seemed to me that he thought that if we can get race information fees introduced into Queensland then we would be keeping those fees as a means of compensating us for what we would be losing in third party charges, being the

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deductions made for fees paid by Tatts to interstate control bodies. But this had to be sorted out, and I thought that it could be sorted out fairly quickly by making sure that the concession that Barry Fletton had indicated in his correspondence was confirmed.

17. The confirmation of this concession from UNITAB is exactly what David Grace's letter of 3 November 2008 (document 015) states. However, I cannot now recall whether document 015 went to Dick McIlwain, as I have been made aware of a later letter from David Grace to Dick McIlwain dated 11 November 2008 (document Bentley 075) which is more detailed and expressly seeks to confirm the intention of the parties that UNITAB would not 'double dip' by claiming the race information fees under clause 7.5 as well as deducting the fees paid by it to Racing NSW as a third party charge.

18. During the hearing in the Commission, attention was given to David Grace's advice of 18 November 2008 (document 020) in relation to what David Grace thought about third party charges. However, I point out that David Grace's advice also dealt with clause 7.5 and confirmed what we had discussed and what I believed in relation to that clause.

19. UNITAB did not take any action to deduct monies under clause 7.5 (being the race field fees received by QRL under the Queensland legislation) deducting only the third party charge in respect of the fees that they were paying for the use of interstate information for the purpose of race wagering. As I mentioned in the hearing on 1 October 2013, my belief is that by confirming an understanding with UNITAB, QRL has managed to keep about $117 million in race information fees which is certainly more than the $91 million that Counsel Assisting the Inquiry repeatedly asserted that we had lost.

20. Simply put, in the absence of UNITAB agreeing to waive the provisions of 7.5 (b) and (c) the industry would have been in doubt as to whether it could have collected what I forecast to be in the order of $117 million during the relevant period of the Inquiry.

21. I also wish to comment in relation to the issue of third party charges under the PPA. I have been made aware of certain evidence given by Tony Hanmer on 25 September 2013 (transcript page 6-80, line 33, to page 6-81, line 18). Whilst I stepped David Grace through the process emerging as a result of the introduction of race information

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legislation, I do not recall providing David Grace the information recounted by Tony Hanmer above.

22. From my discussions with Tony Hanmer over the years that he was on the Board and I was working for the control body, I believed that he had a very good understanding of the terms of the PPA. I recall that his view of the PPA and the issue of third party charges was that the part of David Grace's advice of 18 November 2008 that dealt with third party charges was wrong. Tony Hanmer also advised me that Bob Lette was of the same view.

23. During my evidence at the Inquiry, Commissioner White inquired [transcript reference: 9-49, 43] with me as to why I (and others at QRL/RQL) was unable to persuade the industry that what we were doing, was for their benefit, particularly in respect of the infrastructure plan.

24. I believe there were four main reasons why we couldn't seem to sell the plan to the industry.

(a) *General reluctance to change*

The racing industry, in my time at least, has always struggled with significant change. It is marred by many different individual sectional agendas which place parts of the industry in conflict. The industry also suffers from many prejudices which include those whose desires are to keep a hold of the racing traditions of old as opposed to those who seek to adopt a modern approach. Racing has a rich tapestry of tradition which ought to be recognised but not at the expense of securing a viable industry. Finally, there is often conflict between the needs of race clubs that fit into the various levels such as metropolitan, provincial and country.

Even now, Brisbane thoroughbred racing has two metropolitan tracks split by a single road. Whilst there will be passionate argument about the need to retain two racecourses, so close together, commercial realists observe and acknowledge that only one is required with appropriate tracks and facilities to accommodate the level of activity needed

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for the future. This is an issue that will in due course be dealt with but it is what I consider a top order or tier 1 issue.

In addition to these types of issues, there is also a matter of code wagering performance. Harness racing for example underperforms compared to its inter-code share of wagering revenue and its benefit is at a cost to the Greyhound code. When the intercode share of wagering revenue is raised in a Harness context there is considerable push back. This is another top order or tier 1 issue.

Because issues like these stir the emotions, control Boards are often inclined to deal with second and third tier issues as opposed to the issues that really matter for fear of falling out of favour.

(b) *RQL taking equity in racecourses*

The position taken by the former Board of RQL was that it would not invest in race clubs without equity being taken in the facility. Its view was that the industry, through the governing body, should hold a level of equity as a result of significant financial investment in a club facility.

This position was not as well explained as it could have been and clubs were fearful of a takeover or losing a level of independence. What was really intended was that the club would continue to be the club and undertake the activities of a club and RQL would administer the activities that would reasonably be considered industry activities such as race track and training track maintenance. The view was that there were some costs and activities that ought to be borne and undertaken by the control body. In addition to this, standards are more easily achieved and maintained across venues with the one entity responsible for the delivery of the services. We had considerable push back from clubs on the proposition of the industry via RQL holding equity in racecourses.

(c) *Consultation and explanation of the IIP*

A consultation program was undertaken in relation to the IIP when the draft plan was in place. Unfortunately this was undertaken following the premature leaking of the plan to the media. There is a balance in respect to industry consultation as with inadequate

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consultation you can attract criticism in this regard and with extensive consultation you can get nowhere as with significant reform all needs will not be met. RQL has had number of major projects scuttled previously as the media and lobby groups have mobilised against the proposed reform. Even with a more extensive consultation program for the IIP, I remain unconvinced that the level of change proposed would have been supported in respect of rationalizing venues and the multi-use of venues. As it was, we found ourselves on the back foot trying to sell what should have been a great story for the industry.

During my time, we never had any reasonable relationship with the only local paper, the Courier Mail, and this has had a significant impact on the view people had of the Control Body.

(d) *Political nature of the Industry*

The industry has, in my time, been reasonably political in nature. Whilst a Control Body has majority support in the industry, it is more likely to be able to deliver reform, however, when that support diminishes it is challenging to deliver the same reform. As it became more likely that the Board and senior executives would be replaced, particularly in the 12 months prior to the 2012 state election, it was apparent that sections of the industry withdrew their support to the extent that some even sought to take steps to block parts of the planned reform to be delivered as part of the IIP, seemingly waiting for a change of Government and a sympathetic Control Body. The Brisbane City Council also openly voiced its opposition to parts of our proposed reform that included Deagon and Albion Park, even though plans had not been lodged. We were, at the time, viewed as being closely aligned with the State Government of the day.

I am uncertain what governance model will be accepted by the industry in the future, as friendly Boards enthusiastic to please will remain popular for a while until the returns are not there for owners and other participants, whilst a reform Board will continue to irritate sections of the industry as it makes change to ensure sustainability in the future.

The real problem for the industry right now is that its income will not continue to meet its costs and reform is needed right now to realign the industry balance sheet. Sooner or

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later, without a sustainability strategy being implemented, the industry will need to seek additional funding from somewhere, probably Government.

I felt that strategies such as a single administration for the three codes was a sound initiative as the Greyhound and Harness codes are too small to stand in isolation and we were on track to save $2million in op-ex costs per year after only two years of operation.

25. In addition to these four key factors, the control body was faced with other challenges during the relevant period, which included the Equine Influenza (EI) outbreak (greatest disease outbreak in the Australian industry ever, that cost NSW and Qld an estimated $1 billion), the global financial crisis, the 2011 floods, droughts, cyclones, the breakdown of the gentleman's agreement (most significant wagering reform since the offcourse TAB was established), the merger of the 3 codes and the gearing up to deliver what started as a $230 million funding plan for industry infrastructure. These were not insignificant issues, and even in times of crisis, such as EI and the floods there were stakeholders within the industry who were not satisfied with the Control Body's efforts.

26. It was in this environment that myself and the other three senior executives found ourselves. I noted, whilst watching the Inquiry that Commissioner White commented to Bob Bentley that the material before the commission about the harassment we received and the toxicity of that environment did not seem that bad. Whilst single articles do not appear to be harassing, it is a combination of newspaper articles, telephone calls, blog posts, comments made at meetings, parliamentary statements, political policies, feedback from race meetings and other comments that saw the environment deteriorate. As such, I couldn't point to single instances but rather a build up of this sort of negativity occurring virtually every day over a period of time.

27. Another matter I wish to clarify is the issue of what my attitude was in mid 2011 to staying at RQL. Mr Pincus asked me whether I used the words, "I'm going to leave" in my discussions with Bob Bentley. I said that I did not use those words, rather, I said words to the effect that I was not going to hang around to be sacked or to face a level of retribution [transcript reference: 9-48, 5]. I outlined to the Commissioner the type of retribution that we could have faced by referring to my supplementary statement of 10 September, 2013, which outlines an instruction to Deloitte to change its report back or its

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unwillingness to do so will be reported to the Government. I felt the Commissioner understood as she offered the comment, "total lack of fairness". It was my view that this was the sort of treatment that we could have expected as a result of our service to Bob Bentley and the RQL Board. I believe that Bob Bentley would have been left with the clear view from all of our discussions at that time that I was not going to hang around unless something favourable could be done to secure my future. I had not started looking for alternative employment at that time but I was certainly ready in my own mind to leave RQL. I felt an obligation to Bob Bentley and to RQL to explain to him how I was feeling at the time prior to going behind his back to look for other employment.

28. Mr Pincus also raised with me the draft Norton Rose advice dated 15 July 2011. I viewed the advice from Norton Rose as being advice that was intended for us, being the four executives. In my mind there was absolutely no doubt that Norton Rose were to be acting for the four executives. This is in accordance with a Board resolution of 8 July, 2011 where the Board is advised that the Chairman has engaged Norton Rose to act on behalf of RQL in respect of providing advice to RQL's four key executives. The Board minute confirms this instruction. In my mind, the Board was receiving advice from Clayton Utz. In relation to the changes that were made to the draft advice of Norton Rose, I thought that if any of the changes that were made to that advice which was finalised on 20 July 2011 were such that there was anything that Norton Rose considered should have necessarily been brought to our attention and the attention of the Board then they would have said so. I stated in my evidence in the hearing that we certainly flagged with Norton Rose the matter of compliance with the Corporations Act. So I fully expected that Norton Rose would take our suggestions for changes to the terms of the advice on Board and consider them but if they felt that anything further had to be advised to us and the Board, given the instructions that had been given to Norton Rose, then they would have advised accordingly.

29. Before taking any changes to the terms for the executives to Norton Rose the executives met to agree what was to be advanced and the changes to the terms of the draft advice were also discussed with Bob Bentley in line with the open lines of communication we had with him on this matter.

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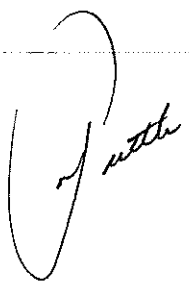
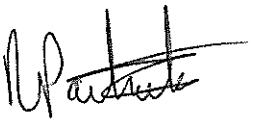
30. In the letter to me dated 12 October 2013, the commission also raises the 2 June, 2011 Clayton Utz advice. This was not raised with me by Mr Pincus. This draft advice came about as a result of a Board resolution to place sixteen employees on employment contracts, some of whom were already on contracts. Of the sixteen employees, ten were to be offered employment agreements until 30 June 2014, with the balance to be offered employment to 30 June 2013. The Board resolution provided that Bob Bentley was to approve the terms relevant to the agreements and the extension of agreements. The draft Clayton Utz advice dealt with this Board resolution which was subsequently rescinded by the Board. I do not believe the draft Clayton Utz advice of 2 June was ever finalised.

31. Whilst I do not personally recall receiving the draft Clayton Utz advice I can recall discussing parts of it with both Bob Bentley and Shara Reid. I believe it was most likely Bob Bentley received a copy of the advice even though the Board subsequently rescinded the applicable resolution.

32. I also note that in Bob Bentley's Board paper of 20 July 2011 reference is made to concerns raised by Clayton Utz in relation to the number of personnel being offered extended employment agreements and also the fact that executive support staff were to be included with those being offered fixed-term employment agreements. I note that these are matters discussed in the draft Clayton Utz advice of 2 June 2011.

33. I never regarded myself as the lead negotiator in the negotiations for amended employment contracts. Matters were discussed between Shara Reid and myself. We reported what was happening to Jamie Orchard and Paul Brennan and sought feedback as required. I think that the documents available to the Commission show that most communications between staff and lawyers were by Shara Reid.

34. The Commission asserts in paragraph 3 of the Notice:

Declarant:  Taken By 

When negotiating amendments to the employment terms of himself, Mr Orchard, Mr Brennan and Ms Murray ("the four executives") in the period leading up to 5 August 2011, Mr Tuttle:

(a) had duties to RQL which were in conflict with his personal interests;

(b) sought, and achieved, amendments which:

(i) were not in the best interests of RQL;

(ii) were substantially in favour of the four executives including himself;

(iii) involved the resources of RQL being wasted, abused or used improperly or extravagantly;

(c) made representations to RQL, to the effect that he was likely to leave his employment at RQL before the next State election unless RQL agreed to amendments of the kind sought, which representations were:

(i) false; and

(ii) made with the intention of inducing RQL to agree to amendments of the kind sought;

(d) failed to disclose (or cause to be disclosed) to the Board, or to any member of the Board, the existence or contents of the draft advices of Clayton Utz dated 2 June 2011 and Norton Rose dated 15 July 2011, which:

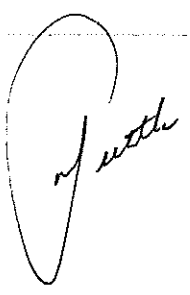
(i) related to the best interests of RQL concerning amendments to the employment terms; and

(ii) may have caused the Board of RQL to question whether the amendments sought by the four executives, and the amendments ultimately made, were in the best interests of RQL.

35. As to the allegations set out in paragraph 3 (a), (b), (c) and (d) of the Notice, I say as follows:

(a) My legal representatives will address in submissions whether my duties to my employer were as set out in the letter from the Commission dated 12 October 2013;

(b) I do not accept that when an employee negotiates with his employer concerning his remuneration, he has a duty to his employer that conflicts with his personal interests;

Declarant:  Taken By 

(c) In this particular case, there was no conflict because the Board was taking its own legal advice and I, together with my three colleagues, was taking legal advice. Our lawyers at Norton Rose never advised us that there was any problem with any conflict and in any event the RQL Board confirmed by way of resolution that this is what we should do;

(d) I was not making any decision on behalf of RQL or the Board;

(e) The amendments that were made to my employment contract were made after the Board and the employees had the opportunity to take legal advice as to what was possible. Norton Rose was advising the executives and Clayton Utz was advising the Board;

(f) It was not for me, but for the Board, to judge what was in the best interests of RQL. I do not agree that the amendments to the employment contracts were not in the best interests of RQL. At the time of renegotiation of the employment contracts RQL secured my services until at least the next State election, which it would not have done had the amended employment contracts not been offered;

(g) The contract of employment that I was offered on 5 August 2011 was favourable to me, and was sufficient to persuade me to stay in my employment and remain committed to the matters being pursued by the Board;

(h) I formed the view that notwithstanding the potential damage to my reputation at least I would be suitably compensated for staying on in those circumstances;

(i) I was satisfied when the Board decided to offer terms that had been discussed with and suggested by Norton Rose. The Board expected something to come back for its consideration from the four executives as it resolved that we should get our own independent legal advice and instructed us accordingly. I understood that this offer had also been considered by the Board's lawyers, Clayton Utz. It was open for the Board to reject what Norton Rose had

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suggested and in that event I would have then decided whether what was offered, if anything, was sufficient to convince me to stay at RQL. If nothing had been offered I would have commenced looking for other employment;

(j) I believe that the terms that were negotiated were commensurate with my skills and experience and I understand that Bob Bentley made enquiries in this regard;

(k) I deny absolutely the assertion in paragraph (c)(i) above.

36. In relation to the purchasing policies of QRL and RQL, I believe I made it clear in my evidence that the purchasing policy (prior to the revision made in 2011) was not a published policy of the company which was cast in stone. Rather, it was an internal policy only. It was not posted on the website of QRL or RQL at that time. Further, it was a work in progress over a long period of time. While the engagement of Contour in all but the very first engagement (when it was engaged by Arben Management) was not subject to any public tender process as suggested by the part of the policy that dealt with long term consultants, in my mind that requirement was not a mandatory process that had to be adopted in every case. Rather, my view was the Board could accept that consultants would be engaged in a usual manner without formal tender, as the Board always had power to change or amend such internal policies anyway.

37. The Commission asserts in paragraph 1 of the Notice:

Mr Tuttle knew, or should have known, at all times during the period from 1 January 2007 until 30 April 2012 ("the relevant period") that:

(a) Contour Consulting Engineers ("Contour") was not engaged in compliance with the Purchasing Policy of Queensland Racing Limited ("QRL") or Racing Queensland Limited ("RQL") (generally "the Purchasing Policy");

(b) on projects in which Contour was engaged in a project management role for QRL or RQL, Contour undertook or managed the procurement processes for engagement of other contractors for the projects but did not do so in compliance with the Purchasing Policy;

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(c) QRL and RQL did not adhere to the Purchasing Policy during the relevant period:

(i) at all; alternatively

(ii) in respect of any infrastructure projects QRL or RQL undertook;

(d) there were no, or no adequate, other measures utilised by QRL or RQL to ensure that contracts awarded delivered value for money.

38. As to the allegations set out in paragraph 1 (a), (b), (c)(ii) and (d) of the Notice, I say as follows:

(a) Based on questions that were put to myself and other witnesses during public hearings of the Commission, that the issue of alleged non-compliance with a purchasing policy was that the engagement of Contour, apart from the very first engagement when Contour was engaged by Arben Management, did not follow a public tender process. This assertion of non-compliance did not arise during my time at QRL and RQL;

(b) Apart from later in the relevant period around mid-2011 I had little or no involvement with procurement and in particular procurement of Contour's services or any services procured by Contour;

(c) During the relevant period, officers involved in the procurement of infrastructure services, such as Reid Sanders, Shara Reid, Paul Brennan and Mark Snowden took instruction from Bob Bentley, not me;

(d) I took no issue with Bob Bentley providing instruction in this regard as he was the Chairman of the Board, had more experience than I did in this area and he knew the outcomes required by the Board and Government;

(e) I have reviewed the various documents that are said to be the purchasing policies from time to time; I have reviewed Board minutes where the policy, or proposed changes to the draft policy were discussed; and I have noted that in the Board minutes of 13 April 2007, the Board resolved certain provisions which were to be taken up in the document. Specifically, the

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Board resolved that "*The requirement for an open tender process on contracts in excess of $100,000 may be waived by the Board*". This followed the development of a purchasing policy for Sunshine Coast Racing Pty Ltd;

(f) I also believe that Sunshine Coast Racing Pty Ltd was itself responsible for the engagement of consultants and contractors during the relevant period;

(g) When the merged body, RQL, commenced operation on 1 July 2010, the Board adopted various policies that were required by the *Racing Act*. To my knowledge the purchasing policy was not considered a mandatory policy but rather, as recorded by the minutes, was adopted as "internal policies only" and I understand that the policy was treated as a guide by its users and the Board;

(h) It was always my understanding that the Board retained the discretion not to go to tender on all major projects, as it was reasonable to engage consultants without the need for public tender, or because that would not lead to the best outcome for QRL or RQL. For example, I do not believe that QRL or RQL went to tender for legal services, communication services and some financial services. Rather, it was always my understanding that the Board had the discretion to engage consultants that were considered suitable and reliable;

(i) The ongoing engagement of Contour in relation to the projects that they were managing made sense because of their accumulated expertise and knowledge of the nature of the work that was required to be undertaken. If a different project manager was selected for each project by public tender, in my view, that would have been a very costly and time-consuming process. Also, each new project manager would have to "re-invent the wheel" whereas Contour had a lot of accumulated knowledge from the work they had carried out for QRL and RQL. Bob Bentley always considered Contour to be a specialist consultant;

Declarant: Taken By

(j) In relation to the infrastructure projects that were managed by Contour on behalf of QRL/RQL, it was my understanding that Contour would follow its own tendering and contract management process and policies as referred to in the statement of Brett Thomson dated 27 August 2013. I don't know if Contour was ever provided a copy of the QRL/RQL purchasing policy. I would, however, expect that either Bob Bentley or the responsible internal officer would have advised Contour what their expectation was in this regard at the outset of the project. I would also expect that these advices would have reflected any specific needs of each project;

(k) In relation to infrastructure work that was part of the IIP, greater compliance was required in this regard. In respect of the Mackay project which formed part of the IIP, EOI's were advertised for three major parts of this work. This is highlighted in Brett Thomson's supplementary statement of 27 August, 2013. I have no reason to doubt Brett Thomson. Mark Snowden, who joined QRL and RQL in early 2010, had project management and industry experience and he was engaged to assist Bob Bentley with the development of a viable IIP. Having relevant experience, Mark Snowden was able to review all costs, fees and value for money through the eyes of a professional. A quantity surveyor was also part of the process for the stabling project at Caloundra and the quantity surveyor also reviewed Contour's fees as part of the process. I was also aware that project teams would meet often, both internally and on site, and would visit sites at the conclusion of works;

(l) Later, I facilitated the establishment of an IIP department with dedicated personnel;

(m) In 2011, I advised the Board that I would establish the IIPCG to, amongst other things, improve compliance with procurement as we were to receive funding from the Government for the IIP;

Declarant: Taken By

(n) Some of the initiatives the IIPCG implemented to improve procurement include:

(i) The adoption of process flow charts for IIP activities;

(ii) The adoption of an approval sheet ensuring that legal, infrastructure, finance and the IIPCG all agreed with the any potential engagement;

(iii) The recommendation that a procurement officer role be considered;

(iv) The initiation of an internal IIP procurement audit to be undertaken by a finance officer at arm's length to the IIPCG;

(v) The initiation of a second audit of IIP procurement to follow the first audit (this was undertaken by Deloitte); and

(vi) The development of an addendum to the purchasing policy to comply with state procurement standards.

(o) During the period, reports were also prepared for the QRL/RQL Boards and also Sunshine Coast Racing Pty Ltd. Financial reports against budget were also provided to the QRL/RQL Boards by Adam Carter.

39. As to paragraph 1(c)(i) of the Notice I would find it extraordinary if the purchasing policy was never adhered to. However, that is a matter that the Commission should take up with Adam Carter, as it was his area of responsibility.

40. The Commission asserts in paragraph 2 of its Notice:

Mr Tuttle:

Declarant:  Taken By 

(a) was responsible for the operations of QRL and RQL within their established policies, including the Purchasing Policy;

(b) knew or should have known that clause 4.18 of the Synthetic Track Funding Agreement entered on 26 June 2007 required QRL to undertake open tender processes to appoint contractors to supply and lay the racetracks;

(c) failed to take, or cause QRL or RQL to take, steps to:

(i) assess or have assessed:

A. **the adequacy and integrity of, and adherence to, the Purchasing Policy;**

B. **QRL's compliance with clause 4.18 of the Synthetic Track Funding Agreement;**

(ii) improve generally the adequacy and integrity of, and adherence to, the Purchasing Policy; and

(iii) address the matters listed at (1)(a) to (d) above.

41. As to the allegations set out in paragraph 2 (a), (b), and (c) of the Notice, as was noted in my evidence during the Inquiry, the purchasing policy was an internal one. The policy's owner and creator, Adam Carter, was responsible for ensuring the policy was up to date and had a responsibility to me and the Board if he had any concerns regarding its effectiveness or any concerns with compliance with the policy. He did not raise issues with me and as far as I am aware did not raise issues in this regard with the Board. I confirmed in evidence, that I felt that as it was adopted and treated as an internal policy the Board or the Board through the Chairman had the ability to waive provisions of the policy. During my discussions with Adam Carter regarding the business and operations of QRL/RQL he never raised with me, as CEO, any issues of non compliance or non-adherence to the guidelines of the purchasing policy. I believe that in the operation of the policy he also understood that the Board or the Board via the Chairman had the ability to waive the provisions of an internal policy.

42. I note from my review of QRL/RQL Board minutes for the purpose of this Inquiry that the purchasing policy was listed to be updated in respect of 'preferred suppliers' for many months. I also note, from the Deloitte report dated in June 2009 (Document 332) that Adam Carter, is listed as the responsible person for achieving compliance with respect of purchasing.

Declarant: Taken By

43. I have been shown a copy of the Synthetic Track Funding Agreement dated 26 June 2007. I cannot recall reading the agreement before I did so for the purpose of preparing this supplementary statement. I note that clause 4.18 states: "*The Recipient must undertake open tender processes to appoint contractors to supply and lay the racetracks, whereby the achievement of a value for money price can be demonstrated, to the satisfaction of the State.*" The selection of the contractor appointed to supply and lay the racetracks was undertaken by the seeking of expressions of interest from those suppliers in the field. I also note that under clause 4.16 under which the project manager was to be appointed, such appointment was not required to be made after a tender process.

44. Adam Carter was the owner of the Purchasing Policy. Adam Carter was also responsible for the acquittals associated with the Government funding for the Synthetic Tracks. As such, he understood what was required in relation to the acquittals to allow funding to be drawn down. I assume some declaration will have been required to be made to allow funds to be drawn down. I do not recall Adam Carter ever raising a possible non-compliance issue in respect of this funding agreement. I note that this agreement was established in 2007 and it may well be that Adam Carter, or Mr Hedges who was involved at the time, had sought some dispensation at the time from the Government due to the Board making an early decision to use the same synthetic track at both Caloundra and Toowoomba.

45. The Commission asserts at paragraph 4 of the Notice, the following:

When he acted, or omitted to act as the case may be, as specified at each of sub-paragraphs 2(c) and 3(b) to (d) above, Mr Tuttle did not operate:

(a) with integrity;
(b) in good faith;
(c) in the best interests of QRL, RQL and the racing industry;
(d) consistently with his fiduciary duties to QRL and RQL;
(e) consistently with his contracts of employment with QRL and RQL;

Declarant: Taken By

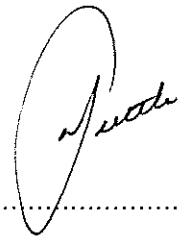
(f) in accordance with QRL's and RQL's Code of Conduct and with section 18 of the Public Sector Ethics Act 1994;

(g) consistently with sections 180 and 181 of the Corporations Act 2001.

As to the allegations set out in paragraph 4 of the Notice, I say that I always acted with integrity, in good faith, in the best interests of RQL and the racing industry, consistently with my fiduciary duties to RQL, consistently with my contract of employment and in accordance with RQL's Code of Conduct in all of my dealings with my employer, including the re-negotiation of my employment contract. I say that I did this for the entire duration of my employment which was approximately twenty three years.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1867.

SIGNED AND DECLARED)
at Birtinya)
on 23 October 2013)
in the presence of:)



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Rebecca Ann Patrick

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Justice of the Peace Reg No. 106955