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## TRANSCRIPT OF PROCEEDINGS

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**THE HONOURABLE MARGARET WHITE AO, Commissioner**

**MR JC BELL QC, Counsel Assisting**

**MR T PINCUS, Counsel Assisting**

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

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

**QUEENSLAND RACING COMMISSION OF INQUIRY**

**BRISBANE**

**10.00 AM, TUESDAY, 1 OCTOBER 2013**

**Continued from 30.9.13**

**DAY 10**

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**THE COMMISSION RESUMED**

**[10.00 am]**

5 COMMISSIONER WHITE: Yes, thanks, Mr Pincus.

**MALCOLM TUTTLE, CONTINUING**

**[10.01 am]**

10 **EXAMINATION BY MR PINCUS**

MR PINCUS: Commissioner, we're moving to a new topic now which concerns what we call the caps issue?---Yes.

15 Could you take up, please, volume 1, which I think is next to you? Thanks, Mr Tuttle. Just before you get into that, we talked yesterday about Mr Bentley's roles and your role. Do you remember at the start of yesterday - - -?---Yes.

20 - - - and in a sense your long association together on the various thoroughbred bodies and then on the merged entity?---Yes.

Mr Hanmer is worthy of mention in that context too. He was a director of QRL and then RQL?---Yes.

25 For the whole time you were employed there?---Yes.

And he was one of the people on the board you reported to at QRL and RQL?---Yes.

30 And he was chairman of Product Co for the whole time too?---Yes.

And, in fact, the only difference between Product Co and QRL in terms of composition of the board was Mr Bentley's absence from Product Co?---From the thoroughbred board, that's correct, yes. It was other members from Product Co, and, of course, from the other codes.

35

Sorry, I mean from the - between - - -?---Yes.

40 Yes. Correct, got it, thank you. You attended some meetings of Product Co?---Yes.

And the minutes record you of being in attendance at some, and the wording I think is used is also in attendance?---Yes.

45 Does that mean something about the capacity in which you were there?---I would generally attend Product Co meetings if there was something on the agenda that I could have direct input into; something of relevance, and it may be the case that I would not necessarily attend for the full duration of the Product Co meeting.

You might attend to present on some particular topic - - -?---Or to discuss something, yes.

5 And would you be asked to come along by someone on the Product Co side, or were you in touch with the day-to-day conduct of it to know - - -?---Yes.

- - - without having to be asked what was required?---Yes. Certainly within reason, I would have thought that if I felt there was something of benefit in my attendance that, in the normal circumstances, I would simply attend the meeting and be there,  
10 have a look at the agenda, see what was coming up or have a discussion with the chairman about my attendance.

You wouldn't necessarily have to be asked to come along - - -?---No.

15 - - - because you would be generally alert to what was going on that affected Product Co?---Yes, that's correct.

But you had no official role with Product Co; you were an employee of QRL?---None at all. I think the main reason that the thoroughbred offices had a  
20 greater involvement with Product Co other than, say, the offices from the other codes is that, generally, the meetings were held at our offices at - - -

In Deagon?--- - - - at Deagon, and I guess the major component of the distribution resided with the thoroughbred industry.

25 You mean the major component of the distribution of the - - -?---Of the distribution that flowed from Product Co.

The flow from Tatts – from Tatts through Product Co to the industry?---Yes.

30 I understand, and so that means, what, that administrative support was provided by QRL to Product Co?---Basically. We had a greater amount of resources available, yes.

35 Yeah. Was anyone else providing administrative support of the kind that included your involvement? A CEO going along to help on issues that arose?---The only occasion I can recall is when we were moving into Race Information Legislation, and there was a changing as to whether or not Product Co would actually be the agent on behalf of the three codes or whether the individual three codes had to issue the  
40 authorisations themselves, and, at that time, there was a considerable amount of interaction, predominantly at officer level between the three codes, trying to bed in this new system of Race Information Legislation.

45 About the future role of Product Co?---That also came in – that also came up, and if may have come up on a couple of occasions. It may well have been discussed there, but certainly the role of Product Co in respect of being the agent on behalf of the

three codes was discussed when we were implementing Race Information Legislation.

5 Yes?---And I believe the future of Product Co was also discussed subsequent to Racing Queensland Limited becoming the sole control body, because, effectively, the three codes were one.

Yes, I understand.

10 COMMISSIONER WHITE: And that was because Product Co was the agent of the three codes. Is that - - ?---Yes.

You mean, so you never wondered whether there was any point in that relationship continuing?---That's correct, Commissioner, yes. Yes, correct.

15 MR PINCUS: And were you involved in those sorts of discussions in the office, you know, when they arose?---Yes. In terms of the authorisation committee, I think I chaired that committee to commence with to get it moving along, and certainly had an involvement in the - - -

20 Do you mean authorisation to use race information under the Queensland Legislation - - ?---Yes. That's correct, yes. It was more of a – an officer role for us to receive the applications, process the applications, and make sure they were then presented to the appropriate board, because the way the – we had progressed initially was that  
25 Product Co was to be the agent, but I understand that the way the legislation was ultimately implemented there was something that blocked Product Co being the agent, therefore the consideration of each of the applications had to be determined by the individual codes, and caused us a bit of a rethink in the early days of Race Information Legislation.

30 Okay. It sounds a bit like you're pretty involved in all sorts of aspects of the relationship between the rest of the industry and Product Co as part of your role at QRL. Is that fair to say? Sort of an ongoing thing that comes up relatively regularly?---Yes, within reason. Product Co met quarterly, I think?

35 Yes?---So we didn't – it's not as if that Product Co was meeting as regularly, for example, as the QRL or the RQL board, and my involvement would have been predominantly with the directors that came from the thoroughbred code as opposed to the director that came from the greyhound industry or the harness industry.

40 Got it. Okay, thank you. Just back on to the question of the meeting: without going through all the minutes there are some apology entries. There are some where your name doesn't appear at all on the minute of a Product Co meeting - - ?---Yes.

45 - - - and there are others where there's an entry that says apology, and that includes your name. Would that be an indication, do you think, that you were expected to

attend and couldn't?---I suggest it probably came down to the minute taker of the day.

5 Whether they thought you were supposed to be there or not?---Because it – I wasn't – I didn't necessarily act – the secretary of the company, I think, was Tony Hanmer himself, as the chair. The support services in terms of bringing the material together probably occurred with Shara, Shara Murray.

10 Right?---And it would have come down to how the minutes were to be presented, but there wouldn't necessarily be an expectation that I would attend every Product Co meeting, nor necessarily would I be precluded from attending a meeting.

You could have attended if you wanted, and - - -?---Correct.

15 Yeah, and no-one was – if someone was discussing Product Co issues in the Deagon office, generally, you were included if you were there or – and if was relevant to your role?---I would have been, but Product Co never really had a great deal of, if you like, depth to their agendas. If you had a look at the agendas and minutes there wouldn't be a - - -

20 Got it?--- - - - they wouldn't be as significant, for example, as the Racing Queensland Limited board agenda. It was a more extensive and more detailed – because it – Product Co dealt with more specific matters.

25 Yes, and certainly there – I think the answer is yes, to the extent that issues arose - - -?---Yes.

- - - you wouldn't have been precluded from attending a meeting - - -?---No.

30 - - - and you wouldn't have been precluded from a discussion that was occurring in the office?---That's correct.

Okay. Could you turn to tab 1, please, which is your statement?---Yes.

35 We looked at this yesterday. I just want to take you to a couple of bits of it for the purpose of this topic, please?---Yes.

Turn to page 9?---Yes.

40 Can you see – this is under the heading Corporate Governance that's on page 8, but on page 9 - - -?---Yes.

- - - sort of towards the end of paragraph – the second half of paragraph 28 - - -?---Yes.

45 - - - refers to the conflicts register at board meetings, and then it says, "Where Bob Bentley was concerned he went out of his way to ensure that his role as a director of

Tatts Group did not affect the control body. He would be absent from any discussion concerning dealings between the control body and Tatts Group. He had nothing to do with Product Co?---Yes.

5 You knew there was a real risk, at least of a conflict from Mr Bentley between his positions as chairman of Queensland Racing – QRL, and as a director of Tatts?---Yes.

10 And that's inherent in you saying that he went out of his way to ensure that his role at Tatts did not affect the control bodies?---Yes.

And that was the point of him being absent from the discussions that you mentioned?---Yes.

15 When the issue of Race Fields Legislation came up in 2008 – you've already referred to that?---Yes.

And there was discussion about whether the fee payable by Tatts in New South Wales would be deductible from what Tatts paid to QRL - - -?---Yes.

20 - - - or, indeed, to the other control bodies, that was obviously an issue of which Mr Bentley had a conflict?---Yes.

It was a major issue for QRL?---Yes.

25 And for Harness and Dogs?---Yes.

And for Product Co?---Yes.

30 And for Tatts?---Yes.

Do you want to qualify the statement that we just looked at in paragraph 28 of your first statement?---After having seen some of the material before the commission?

35 Yes?---Yes. The – the conflict – the matter of conflict was managed very carefully, and I maintain that, with the declarations made at the – at the various race meeting – various meetings. But the chairman was obviously involved and received a lot of information and material, and I would still suggest, though, that in the provision of a lot of the material and in the chairman receiving that and being involved in – in  
40 certain matters that related to race information and legislation and so forth, that in those cases he would be entitled to receive the material. I believe the – the potential of any conflict, I think, comes about more with the – the use or otherwise of that information or that material. So we had a situation where the chairman of the thoroughbred control body obviously had to have a considerable amount of  
45 knowledge about the factors that were going to affect the wellbeing the industry, and one of those factors was the amount of revenue that was incoming to the – to the

industry and the lion's share of that which was generated as a result of race wagering. So he had to be across a lot of that.

5 And allied to that issue is the question of whether the income that was coming was going to be reduced?---Yes.

And you appreciate that there are two sides to that coin. One is how much QRL is getting, and the other is how much Tatts is getting to keep or getting. Every reduction – deduction that Tatts makes is less money in the pocket of QRL and the industries?---Yes. And certainly my view at the time was that there were two – two major questions to – to be put. One is – or one was, I should say, with the birth of race fields or race information legislation. That seemingly did two things. It seemed to cause – well, it did cause the ability for the codes to charge other operators for the – for the use of the information.

15 Yes?---And it also seemingly caused the control bodies to take into account the – the existing contributions. That's at least what the – two parts of the – of the legislation. It seemed to cause that – cause the control bodies the need to take into account the contributions already being made, and therefore, it was my view that we needed to resolve – we needed to resolve both of those components of the legislation or the regulations in the context of the Product and Program Agreement. So (1) if the legislation provided us with the opportunity to charge for the material, how did that sit in relation to the Product and Program Agreement? And that is dealt with under a particular section where it gives rise to some issues because the Product and Program Agreement essentially, in section 7, 7(b), virtually says that you can't sell the information because it's ours. And there's another section of the Product and Program Agreement which seems to give rise to the TAB having the capacity to offset its costs against the – against the money that flowed through to the industry. So on one hand, because the agreement is structured, in my view, so favourably towards the TAB, we had to be able to establish (1) if we charged for the information, we could keep that money and not have that deducted, but equally, whether or not the TAB had the right to deduct the costs it was incurring as well. So there was two things to be dealt with.

35 Including amounts it was paying to New South Wales under the New South Wales legislation?---Yes, because it would be – it would be a tough pill for the industry to swallow if it went to all of that work with the government to introduce race information legislation and yet it didn't have the consent of Tattersalls to – to keep that revenue.

40 COMMISSIONER WHITE: But, Mr Tuttle, the legislation in Queensland ultimately gave the control bodies a discretion or Product Co a discretion as to whether they would charge a fee to Tatts or not for that information or was able to take into account the fact that they already paid a fee for it. Isn't that the case under the Product Co agreement?---Commissioner, if my recollection is correct, there's two parts to – parts to this. One is that the legislation provided an opportunity for the control body to charge for the wagering use of the information, and in section 113, I

think it is, it also suggested that the control body must take into account fees already paid.

5 Yes, yes?---And contained within the Product and Program Agreement at section 7 – section 7 deals with the rights that the TAB has in respect of the Queensland information.

10 Quite?---It starts off dealing with the exclusive supply of that information, but it then provides the TAB with a range of rights in respect of the Queensland Racing product and the Queensland Racing calendar, and basically it says you can't do anything with it without our permission. And then section (c), 7.5(c), goes on to discuss an annexure to the Product and Program Agreement which purports to freeze in time, at 15 May 1999, what was occurring in terms of the supply of material as well. And it virtually says that, look, you can continue to supply this information to this list of people.

20 Yes. I think probably we're all familiar with the schedule 4 list?---Yes. That's it, yes. Yes, Commissioner, but it does – it does say, look, you can supply it, but if you get any money for it, we're going to take that money, basically.

MR PINCUS: Just returning to the general issue that we were discussing arising out of your desire to qualify paragraph 28, all these things you've been telling us about are questions about the operation of the PPA?---Yes.

25 And all those questions can affect, in different ways, Tatts - - -?---Yes.

- - - and QRL?---Correct.

30 And if they affect Tatts positively, they will affect QRL negatively, in some cases at least?---In this context, yes.

And vice versa?--- Yes.

35 And it's the case, then, isn't it, that the chairman, who is on both entities, must be in a position where any involvement he has in relation to the resolution of those sorts of questions is inherently fraught with risk that he will favour one interest or the other?---Yes.

40 And he, you agreed yesterday, was very influential, and if he expressed his views about matters relating to decisions for QRL, they would be very influential?---Correct.

He'd been around in the industry for a long time?---Yes.

45 He'd been around Tatts for a long time?---Yes.

5 What, in your mind – and this is getting to, I think, the question of how you would like to qualify or recast what’s in paragraph 28 of your statement – was the boundary of what Mr Bentley could do or discuss without getting into trouble in that conflict situation we’ve agreed exists – existed?---Look, certainly in relation to taking part of any decisions, being in a position to vote on – on an outcome of a decision.

And you say that’s the boundary?---No, no, no. That’s the starting point. If we work back from there - - -

10 Okay. He definitely can’t do that?---Yes, yes.

What else can’t he do?---In my view, unreasonably – unreasonably influence the outcome of a consideration.

15 What does unreasonably mean in that context?---Bring pressure to bear to the point where an officer or another director is unable to exercise their own – own right or their own thinking to make a decision.

20 What about just leave out the word unreasonably? Just influence the outcome of a decision in the way that he was extremely influential that we – you agreed?---I think the – the issue of the control body and the TAB – there’s always going to be a – a very fine line, I think, between the two, and - - -

25 A fuzzy line, even?---Potentially, but there could be – there could be discussions and – discussions that the chairman could be involved in that may lead to a sensible outcome or a sensible resolution without it necessarily impacting negatively – one at the expense of the other. Generally speaking, though, in the context of what we’re talking about, around race information and so forth, if one was going to be a winner, the other would be a loser.

30 Yes?---Yes.

35 And so almost any involvement where he at least might have an influence on other people’s decisions was at least risky - - -?---Yes.

- - - and probably improper?---I’m not sure about improper, but certainly there would be risk in that the chairman would be overstepping the mark in terms of his conflict.

40 Yes. If he was involved in discussions that were part of the lead-up to any decisions?---That negatively impacted the industry in favour of Tattersalls or vice versa? Yep.

Well, either way. Yes?---Yes.

45 So if we look back at paragraph 28, when you say he went out of his way to ensure that his role as a director of Tatts Group did not affect the control body, that’s not

right, really, in the sense that you said he was involved in some discussions about those sorts of issues?---Yes. And – and - - -

5 And you agree that it might have affected the control body?---Yes. And I qualified that in our discussion just now, but if I could also state that in preparing my material here, it's been in the absence of having any detailed documentation, any - - -

10 I understand?--- - - - emails, any diaries, any journals, any calendars or any of the notes that I collected and left at Queensland Racing when I departed. So it was – it was prepared based on my best recollection.

I understand. I'm just giving you the opportunity - - -?---Yes.

15 - - - to clarify it now?---And I appreciate that.

And then the next sentence says, "He would be absent from any discussion concerning dealings between the control body and Tatts Group." That's not right either, is it, because - - -?---He was - - -

20 - - - dealings between the control body and Tatts Group would include anything where there was a question that might favour one or the other because those things are dealings?---I guess your question turns on the word dealing. Certainly he wasn't absent from all discussions.

25 It's "discussion concerning dealings"?---Yes, he was involved in discussions that – that – involving race information legislation and so forth.

30 Yes. And those discussions – the subject of those discussions was at least relevant to dealings between the control body and Tatts Group?---Yes.

And that might be said to be concerning dealings between the control body and Tatts Group?---Sure.

35 Okay. So that's wrong, really?---I think what – as I say, the intent of that – and I've explained that I prepared that in the absence of having material. My recollection, after having not been involved for a period of time, is that certainly the chairman would absent himself at meetings, and I don't recall the chairman attending Product Co meetings and of that nature.

40 Once it got to decision point, he was gone?---Yes.

Right. But is it fair to say that up to that point, he wasn't necessarily absent, and, in fact, he would have been involved in discussions - - -?---Yes.

45 - - - on these subjects? And then you say he had nothing to do with Product Co. Now, you've explained that he was never at meetings as far as you can remember?---Yes.

But it's not true to say that he had nothing to do with Product Co, is it?---No. And I've seen documentation that – where I've had discussions with the chairman leading up to matters being presented to Product Co. But the intent of that was basically to outline that he wasn't a part of the Product Co board.

5

And didn't go to the meetings?---Yes.

Okay. But he had something to do with Product Co's business to the extent that he was involved in the sorts of discussions - - -?---Yes.

10

- - - that we've just discussed?---Yes.

It can have effect either way?---Yes.

15

Sorry. Just bear with me for a moment please, Mr Tuttle?---That's okay.

Can we just go to paragraph 40, please, of the same statement. Could you read that, please, and also down to, and particularly read, 42?---Yes.

20

So looking at 40, you were with Mr Bentley when you had a meeting with David Grace?---That was my view.

25

And I just pause to note that that's a qualification on its own, isn't it, from what we were looking at in paragraph 28? That's already inconsistent with the idea that he was absent from any discussions etcetera?---Well, I'm not – not sure that his mere attendance at the meeting put him in – in conflict. We certainly had a – had a meeting with David Grace, and it involved race information legislation. And I could recall, because it was an occurrence that stuck in my mind, that I put a question very squarely to David Grace in respect of whether or not Tattersalls was able to make a deduction or to offset the fee.

30

Yes. And that's right at the heart of the conflict problem for Mr Bentley?---At that stage – at that stage I had – I had put the question, and my recollection is that the chairman was present.

35

Do you agree with me that that's right at the heart of the conflict problem we've been discussing for Mr Bentley?---Yes, it is.

40

And so he's there, and he hears discussion about that issue between you and Mr Grace, who is the lawyer for QRL?---Yes.

45

You say that you used a whiteboard to step Mr Grace through the process, as you understood it, and the legislation, the New South Wales legislation, in draft form?---It may have been the Queensland legislation in draft form.

Okay. And you asked him to consider the position of Tatts in relation to whether it was able to offset, as you've said?---Yes.

And you say that you did the whiteboard thing either at that meeting or at a later meeting?---Yes.

5 Whenever you did that, was Mr Bentley there? I'm just trying to work out whether it was the meeting that you've referred to or whether there might have been more than one meeting that Mr Bentley was at?---Look, I don't specifically recall. I do recall the chairman being with me at a meeting when I had put the question to David Grace about the offset. Whether it was specifically at that meeting or at a later meeting, I'm not a hundred per cent sure, but I do recall stepping David Grace through the –  
10 the likely flow of – of charges and so forth that would result from our legislation being implemented.

Okay. So the answer in terms of Mr Bentley's attendance is he may or may not have been there when you did the whiteboard thing, but he was definitely there when you  
15 raised the question - - -?---That's my view.

- - - of the offset?---Yes.

20 And did – at the time when you raised the question of the offset, did Mr Grace express a view, provisional or otherwise?---I don't believe he did.

When you say you don't believe he did, do you remember that he didn't, or you're just not sure?---I – as close as I could be to being certain, I don't believe he expressed a view because it would have taken some level of research to form the  
25 view, and I'm not sure at that time anyone would have contemplated the prospect of – or contemplated even giving consideration to the offset at that stage. I don't think that had been - - -

30 But you specifically asked Mr Grace about the offset?---At – at either that meeting or either – yes, at that meeting, but I don't know that, leading up to that, there had been any real discussion about whether or not the offset was – whether or not there was some potential that the offset wasn't going to be in place. I think the general feeling at that time was that it was simply given that, given the way the legislation or the regulations were being shaped up – that the product fee was going to be reduced by  
35 the costs incurred by the TAB. And at that time, the – the only legislation, I think, that was top of mind was the New South Wales legislation, because it was either due to take effect very soon – I think the Victorian legislation may have been enacted but wasn't necessarily being applied at that time. So to answer your question, I don't think David Grace would have been in a position to offer a view at that meeting  
40 because I don't believe the nature of this discussion had been – had been had anywhere.

It was new, really – a new topic?---Yes.

45 And you asked him to give you some advice on it?---Yes.

Give QRL some advice on it?---Yes.

COMMISSIONER WHITE: It was you, Mr Tuttle, who expressly asked Mr Grace to provide an advice on this rather than the chairman?---I'm sure it was myself, Commissioner.

5 Thank you.

MR PINCUS: And do you remember if the chairman was there when you asked for advice to be given?---To the best of my recollection he was.

10 Yes. It was when you first raised the question?---Yes.

And do you see yourself as having been the first person to ever mention this issue, really, during the course of the discussion with Mr Grace?---Probably.

15 Could you look then at 42, please?---Yes.

And just read that again. You say, "After initial discussions", which – "discussions" is plural. You mean not just the one with Mr Grace, but other ones. Presumably you talked to him – you didn't just show up at Grace and say, "Oh – Bob, didn't expect you to be here"?---Yeah. It may have been two; it may have been three.

20

Yes?---Yeah.

Some discussions – and you say you did not discuss it with him any further. From what point on did you – do you say you did not discuss it with him any further?---At the time of receiving the – the Grace advice.

25

You mean from the receipt of the Grace advice you didn't discuss it with him any further?---Yes.

30

And in the lead-up to the receipt of the Grace advice – a few times is what you're saying?---Yes, potentially. I – I think – I don't think anyone anticipated the nature of the advice that we received. I'm not sure there was a - - -

35 You expected it to confirm that there couldn't be an offset?---That – that was the general view at the time.

Yes. Was that your view?---Yes.

40 And was that Mr Bentley's view?---I would've thought so.

Did he express that, for example, in the meeting with Mr Grace or one of those several meetings that you've discussed – you've mentioned?---He – I don't believe he expressed it in the meeting with – with Mr Grace. I don't think he had any issue with the – the advice being sought. If he had have, he would've said something; he certainly didn't.

45

But you understood somehow, and he must have told you, that his view was the same as yours. Is that right?---I think – I think that was the general view at the time.

5 Okay?---I – I don't think it would've been the chairman's view in isolation. I don't recall Bob Bentley saying to me my view is that this can't occur.

So you don't want to qualify what's in 42 other than to say that the time after which you didn't discuss the matter any further was when you received the Grace advice?---When I met with – met with Tony Hanmer at the Sofitel, the clear  
10 instruction that I received from the chairman and – was that I was to deal with Tony Hanmer and that Tony Hanmer would – would be the – the person managing this issue. I don't believe I had any discussions with the chairman thereafter in respect of this matter.

15 And we'll get to that Sofitel discussion a bit later, but - - -?---Yes.

- - - just on this topic, you were specifically told, "Don't talk to Bob about it anymore," were you, at the Sofitel meeting?

20 COMMISSIONER WHITE: No. I thought you were saying that Mr – the chairman - - -?---Chairman said to me to - - -

- - - instructed you to deal with Mr Hanmer?---He instructed me to deal with the – to – to deal and discuss this with Tony Hanmer. The - - -

25 MR PINCUS: Sorry. That's before the Sofitel meeting with Mr Hanmer?---Yes.

Okay. Sorry. That's why – I just didn't understand you?---Yes.

30 You don't claim Mr Bentley was at that Sofitel meeting?---No. He wasn't. No.

And the Sofitel meeting was a result of an instruction from Mr Bentley - - -?---Yes.

- - - for you to deal with Mr Hanmer?---Yes.

35 Okay. Well, we'll come back to that. Could you just please then turn away from the statements. If you go to tab 2 you'll see there's a PPA, but we don't need to look at it unless something comes up which necessitates that. So you can just skip that, please, and go to tab 3?---3 – yes. Yep.

40 Sorry, Mr Tuttle. Thank you. Tab 3 – have you seen that document before?---Yes. I would've produced that.

45 And it's a memorandum from you to Mr Bentley dated 28 April?---Yes.

Do you recall where this stands in relation – chronologically in relation to your discussions with Mr Grace and Mr Bentley?---Just going by the date of it, it's obviously much earlier.

5 Yes. And do you remember what the origin was of you writing this document, how it came out? Were you asked to, or did you do it off your own back?---No. It – it opens up by saying following on from our discussion, so I've obviously had a discussion with the – with the chairman.

10 Yep?---And it looks to me as though it's dealing with the relationship between UNiTAB and RISA. RISA was a company that supplied information to - - -

Yes?--- - - - UNiTAB.

15 If you go over to page – the bottom of the second page, though, could you read the final paragraph there, please?---Yes.

Unless I'm misunderstanding it, that's the offset issue, in simplest terms?---Yes. The only – the only qualification of that, of course, is that it's dealing with – it looks to be  
20 dealing with the provision of the information from RISA as opposed to – although it does talk about wagering.

It's a little bit confusing, isn't it? But at least the question of how much money Tatts is entitled to offset for whatever purpose is dealt with?---Yes. It looks to me as  
25 though we are attempting to establish a – a position that identifies the – the – the – the import or export of wagering across the country at that stage.

Okay. And this is very much something that you're discussing with Mr Bentley at this stage?---Yes.

30 As you say, quite a long time before meeting with Mr Grace. If you turn to the next tab, please, it's an email from Mr Lambert to Mr Bentley and, amongst others, you - - -?---Yes.

35 - - - dated the 1<sup>st</sup> of July 2008, and Mr Lambert attaches a paper he's written. Yes?---Yes. Yes.

You see that email? And then if you look at the paper, in the second sentence it says,  
40 "This paper was prompted by a conversation I had with Mr Bentley where he indicated serious concerns about the New South Wales race fields legislation"  
- - -?---Yes.

- - - "and I said that I did not understand its intention – how it worked", and he goes on to explain how it works?---Yes.

45 And so the New South Wales race fields legislation and the potential for it to mean that Tatts will have to pay New South Wales - - -?---Yes.

5 - - - for race information is squarely on the agenda at this stage. And if Mr Lambert's telling the truth in that second sentence, he's been discussing it with Mr Bentley?---Michael Lambert and myself and – I seem to recollect we had at least one, maybe two, meetings with Racing New South Wales at the time. And the chairman, in fact, may have been involved in one of those meetings, and we were talking about - - -

10 Do you mean Mr V'Landys? Is that his name?---V'Landys and Hartnell, I think. Hartnell was the chairman at the time, and we were discussing the – how this may – how this may work. And Michael Lambert – and I heard his – his evidence yesterday, and Michael was involved with a lot of the other CEOs across Australia at the time because of his position on RISA. So he was gaining information from – from RISA meetings as to what was occurring, and I think at this time we were trying to get our mind around how it all might fit together and what the impacts might be nationally - - -

15 Yes?--- - - - as a result of this legislation being put in place.

20 But we've seen that there was already a question of impacts in terms of offsets - - -?---Yes.

- - - and Mr Bentley's got concerns?---Yes.

25 The question [indistinct] is really just whether you agree that the conflict problem is already squarely alive by this time, because Mr Bentley's prompting the writing of papers, given his serious concerns?---Well, at that – at that stage it was – it was certainly emerging. The issue was emerging and - - -

30 Yeah. And the conflict problem was therefore emerging?---Well, it was a matter of how this was going to – how this was going to play out at the time.

35 But it either played out in favour of one or the other?---Nationally, though, in terms of whether other entities had a – a role in respect of this – whether or not the portions or the intent of the gentlemen's agreed could be preserved. So this was still - - -

By Queensland legislation, for example?---Across Australia.

40 So it all evened out?---Yes, because the intent of the – the intent of the legislation, largely, was to capture those that had been using the information for a long period of time for the purpose of race wagering and have them contribute to the – to the various industries across Australia. So the - - -

45 So one option on the table is that things develop in a way which means there's no real change to the gentlemen's agreement position, in broad terms?---In – in preserving that free exchange of information amongst the - - -

Yeah?--- - - - PRAs, but then capturing the corporates and other bookmakers that had been using the information for a period of time.

5 But other options are that that situation doesn't arise and that either Tatts or QRL is a winner?---But – I accept what you're saying. At this stage, though, this is still emerging. We're still getting our mind around how this might play out nationally and what the impact may be on us. So it's – this is early days. I'm not sure the chairman having an involvement in – in these levels of discussions and becoming informed is necessarily a conflict at – at this stage.

10

But he's directing work being done which is – perhaps distantly, but preparatory to decisions that'll have to be made about these sorts of things?---In due course. Yes.

Yes. Now, tab 5, please.

15

COMMISSIONER WHITE: Can I just – because you were involved with this, Mr Tuttle, can I just clarify - - -?---Yes, Commissioner.

20 I think we heard from Mr Lambert yesterday that this issue was actually being discussed at ministerial level around Australia with the various states and territories. Is that your recollection?---Yes. It had been advanced to that level.

Yeah?---Unfortunately with a lot of those conferences, when it got to racing it – we often didn't get the results that we were seeking.

25

All right. Thank you. But it was taken very seriously, of course - - -?---Very much so. Yes.

30 - - - because it related to quite a significant revenue stream if it – if it occurred, didn't it?---And the breakdown of the gentlemen's agreement was probably some of the most significant wagering reform that we've experienced.

35 MR PINCUS: Yes, and had the potential to lead to a lot less money in QRLs coffers?---It was a – it was a massive breakdown to a – an informal agreement that had stood the test of time for a long period.

40 But was my proposition right? It had the potential to lead to much less money in QRLs coffers?---It – it had the potential to – to lead to changes of revenue for PRAs right across Australia.

40

Yes. But one of the potential outcomes was - - -?---Yes. Yes.

- - - as I've put it, wasn't it? Okay?---Yeah. We were one of the PRAs.

45 Thanks. Tab 5, you'll see, is a letter from Tatts and it says in the last couple of paragraphs, "The PPA works like this and this is notification that if we have to pay

New South Wales, we're going to offset it against what we pay Product Co"  
- - -?---Yes.

5 - - - Racing Queensland, essentially. And then on the next page in the second last paragraph, you'll see the suggestion of legislation, as I take it, to achieved the effect we've already touched on - - -?---Yes.

- - - of evening things out again. Yes?---Yes.

10 So as of the 24<sup>th</sup> of July, you're being told that you're about to lose a whole lot of money. How much exactly isn't expressed in the letter, but it's going to be the subject of an offset unless and until there's some Queensland legislation?---And the purpose of the letter may well be the TAB giving effect to one of its requirements under the PPA. That - - -

15 Sure?--- That may be what he's saying.

But I'm just trying to understand. Your knowledge is that they're telling you right now - - -?--- Yes.

20 - - - we're going to deduct the amount we pay New South Wales?--- Yes. Yes.

And that's going to affect Product Co, but only sort of nominally really because as we've discussed, it's really only an agent?--- It flows through.

25 It's going to affect the three codes?--- Correct.

And it's going to affect QRL the most because it gets 76 per cent of - - -?--- Correct.

30 - - - the revenue?--- Yes.

Yes. And you presumably would have told the chairman of QRL who was going to be affected by this that you'd received that notice?--- I may well have. I don't recall - - -

35 It would be odd if you hadn't; wouldn't it?--- I may well have. It would be unlikely that the chairman wouldn't be aware of this.

40 Yes?--- But I can't recall in 2008 whether I handed it to him. It may appear on one of the agendas, I'm not sure.

It would be unlikely that you wouldn't have told him, leaving aside whether he would have been aware of it?--- And that's a fair – fair proposition.

45 Okay. And tab 6, please. You're requesting Mr Carter and Ms Murray, in this email of the 7<sup>th</sup> of October 2008, to prepare a paper?--- Yes.

And you'll see in the second paragraph commencing "Adam" if you can?--- Yes.

5 The last sentence says, "Ideally, QRL will have a position on this prior to going to the Product Co meeting, and this position can only be properly considered subsequently to the" - - -?--- Yes.

- - - "modelling you are looking at."?--- Yes.

10 Mr Carter, the CFO of QRL, is going to do some modelling?--- Yes.

So as to have a position on the race fields legislation. So QRL can have a position on the race fields legislation before the Product Co meeting?--- Yes.

15 And Ms Murray's part of the paper needs to discuss legal challenges to the existing legislation?--- Yep.

And if you just turn over the page, you'll see that paper. Is this familiar to you?--- Yes.

20 And on page – the second page of the paper, the two dot points, please. If you could just read those?--- Yes.

25 The second bullet point says there may be a reduction, which is a point we've been discussing?--- Correct.

And we've established that was your view, and you knew it was Mr Bentley's view?--- I think we've agreed that it would be likely to be his view, yes.

30 I thought you agreed that you knew it was his view?--- It'd be – it would be likely to be the chairman's view. I mean, it would be unlikely that he would hold an alternate - - -

Everyone had that view, I think may have - - -?--- Yes.

35 - - - been the way you put it?--- Yes.

Okay. And that would've included Mr Carter and Ms Murray. It obviously did include Mr Carter and Ms Murray?--- I don't know their view – what their view was.

40 Well, that's what it says, doesn't it, in that bullet point?--- It's – it's in the paper. I'm just not sure whether they're co-authors of it or – but they may have had that view at the time.

45 Tab 7, please. This is UNiTAB's, I think, first invoice?--- Yes.

And showing the deductions or offsets. And the offset to QRL is 483,000-odd dollars?--- Yes.

And there's proportional offsets to the other two codes?--- Yes.

Now again, you knew that was happening. Mr Carter would have told you - - -?---  
Yes.

5

- - - we're getting 500 grand less a month?--- Yes.

And Mr Bentley knew that was happening?--- I'm sure he would've.

10 It was a significant issue and a significant problem for QRL unless it was  
resolved?--- It was.

And it would affect, for example, whether QRL needed other sources of funding or  
not. If it was going to lose 500 grand a month, it was going to struggle; wasn't it?---

15

Yes, that's true.

Yeah. And would be linked, do you agree, with questions such as the extent of  
government funding that was required for QRL to continue maintaining its role?---  
Extent government funding required?

20

Yeah. If you're losing the money under the - some money under the PPA?--- Are  
you asking whether we were in a hurry to get our legislation in place?

25 Sorry, I'm not with you. I'm just asking you whether - you've got two sources of  
funding basically, don't you, as QRL. You've got the money that's coming under  
the PPA?--- Yes.

That's one source?--- Yes.

30 And another is money as essentially grants from government for specific purposes  
like infrastructure projects.

35 COMMISSIONER WHITE: But I think Mr Tuttle was suggesting that by  
government he thought you meant get the race fields legislation passed in  
Queensland so we can start capturing - - -?--- Yes.

- - - the corporate bookmakers and make up the shortfall?--- Yes.

40 Is that - was that your understanding - - -?--- Yes.

- - - of the question?

MR PINCUS: Yes.

45 COMMISSIONER WHITE: Yeah, I thought it was.

MR PINCUS: That's right. But I'm just trying to get to the basic proposition, which is – another basic proposition, which is that if you couldn't get Queensland legislation through and catch up the shortfall then you'd have less funding and you'd have to consider looking at the other source of funding which we've discussed, which would have been money from government?--- I don't think the two can be linked. The - - -

Why not though? If you - - -?--- Well, I'll explain.

10 Okay?--- The – the legislation being implemented in Queensland was going to provide an opportunity for ongoing revenue, year on year revenue for the industry. Traditionally, grants from government have been just that. They've been a one off grant that wouldn't necessarily provide for sustainable income over time. So that's why I would see a distinction between a grant – a fixed grant from government compared to the implementation of Queensland race information that would give us revenue income over a longer period of time, ongoing.

20 Okay, I understand that. It doesn't really matter very much but the proposition really is only that if you're going to do some infrastructure works at a race club, for example. And you're considering – I think at around this time, looking for the infrastructure – industry infrastructure plan funding then the extent of funding you'd need for infrastructure works surely is linked to the extent of income you're getting?--- Is this the right year?

25 COMMISSIONER WHITE: I think perhaps - - -

MR PINCUS: Move on?

30 COMMISSIONER WHITE: - - - 2009. Yes, I think so. It's a bit early to make that link. From my understanding, that was really a 2009 initiative was it not, Mr Tuttle?--- This is a 2008 invoice, yeah.

Yes. Yeah.

35 MR PINCUS: So let's jump forward to 2009, where you're still losing 500 grand a month. What about then?--- Well - - -

40 Do you think it would have been something that government might have thought about when deciding how much money QRL needed?--- Look, can I say, I don't - - -

Sorry, Mr Wilson's shaking his head. Perhaps that's your answer?--- No, I can answer for myself.

MR WILSON: I'm just trying to understand.

45 WITNESS: I'm just not seeing a link between an application for an infrastructure project - - -

MR PINCUS: You see no link. Okay?--- And the need for Queensland to put legislation in place that gave us income.

5 I wasn't asking you about the Queensland legislation though?--- That was my interpretation of the question.

COMMISSIONER WHITE: Well, I don't – I think then Mr Tuttle can't make the link, Mr Pincus.

10 MR PINCUS: Got it. Thank you, Commissioner. Tab 8, please. Minutes of 13 October 2008 of Product Co. Do you recognise the writing in the “also in attendance” section, where one of the names printed is yours but Mr Bentley's name has been added in by hand?--- No, I don't.

15 Turn over the page, please. Can you see under “General Business” there's a reference to Mr Bentley declaring the directorship of the Sunshine Coast as a conflict of interest?--- Yes, I can see that.

20 And that's a conflict of interest that he would – you would generally declare?--- Amongst others, correct.

Yes. Over the page there's more handwriting. Do you recognise that handwriting?--- No, I don't.

25 Do – you don't have any idea who wrote those things?--- No, I don't.

You can see that – I think it says under “minutes of meeting” where the handwriting starts, “Items for noting: Bill Andrews, all codes should confirm back to Product Co.”?--- I can see that, yes.

30 And further down Tony, I think it says. That's predictably Tony Hanmer?--- Tony H, yep. I believe that.

35 No – underneath the first reference to Tony H is says, “Tony – no authority in existence. Delegate money from all parties to Product Co, \$15,000, to obtain legal info etcetera.”?--- Yep.

40 Does that sound like a record of Mr Hanmer saying that Product Co had no authority to spend money on obtaining legal advice?--- That could be the case.

Is there any other meaning you can give to that? I'm just asking for your help, really. I know you - - -?--- Okay.

45 - - - you didn't write this?--- Tony – no authority in existence. Delegate money from all parties to Product Co, which may be a contribution from the codes, to obtain legal info etcetera. Could be admin costs from Queensland Racing in future. He's talking

about how – seemingly how funding comes together for 15 K, and could be an admin cost for Queensland Racing in the future. That’s basically what it says.

5 Meaning that if Product Co needs to spend money on legal advice, then that could be an admin cost for Queensland Racing. Is that your best guess of what that probably mean?--- That’s a fair interpretation.

We really don’t have any idea who wrote it?--- I don’t know that.

10 And do you remember this meeting of the 13<sup>th</sup> of October? If you look at the contents of it under the heading 4, race field legislation?--- Not particularly, no.

COMMISSIONER WHITE: Mr Pincus, how do we know that this document with the handwriting on it is part of that meeting?

15 MR PINCUS: Well, I’m not asking about the – I just mean the meeting generally and the stuff that’s recorded under number 4.

20 I should clarify that, Mr Tuttle. Perhaps we can leave that question until a couple of pages further on. If you move to the next – past the handwriting page we’ve just been looking at?---Yes.

To the very next page?---Yep.

25 It’s another version of the same – minutes of the same meeting. Can you see again the name written in hand, “Bob Bentley”?---Yep, I can.

And an arrow pointing up to suggest he was also in attendance?---Yep.

30 Do you recognise that handwriting?---No, I don’t.

No idea who wrote that?---None at all.

35 Over the page there’s some more handwriting?---Yep.

Do you recognise that handwriting?---No, I don’t.

Turn to the next page, please?---Yes.

40 This seems to be – it’s not signed, but – the final version of the minutes?---Yep.

And can you look at the section, number 4, for the purpose that I - - -?---Yes.

45 - - - asked you to do in relation to the drafts - - -?---Yes.

- - - which I shouldn’t have done. And you’ll see there’s reference to race fields legislation. Can you read that part, please?---Yes.

Do you remember, having looked at that and seeing that you were there, whether Mr Bentley was there?---No, I don't recall. My recollection is that the chair did not attend Product Co meetings.

5 I think you - - -

COMMISSIONER WHITE: The only problem is under item 2 – if you turn back, Mr Tuttle?---Yes.

10 That would suggest he was there?---And I don't dispute that's contained in the minutes. The – it's interesting, though, that there's a declaration of one only thing contained there. I don't recall the chairman being at Product Co meetings. I'm not saying at all that he didn't have discussions with executive staff, or, you know, obviously he spoke to members of Product Co that were members of the Queensland  
15 Racing and Racing Queensland board, but I don't recall the chairman attending – attending Product Co meetings.

Right.

20 MR PINCUS: Is it fair to say, though, that when you described earlier how the cut-off point was really the receipt of the Grace advice in terms of his – pulling back from involvement, I think is how you described it?---In respect of that matter, he made it patently clear that – that I deal with Tony Hanmer on that specific issue.

25 And then you didn't discuss that issue with him after that, I think is what you said?---That's correct.

But this is before that?---Yes.

30 And it might not be surprising if he was at this meeting given that you hadn't - - -?---Look, I - - -

- - - received the express instructions about - - -?---I don't know that I can be clear. I can't recall the chairman being involved in Product Co meetings. There would be  
35 occasions at board meetings where the chairman would declare an interest, and he might remain for a particular conversation if – if Tony Hanmer and the balance of the board saw no issue with that, but - - -

40 Do you mean at Product Co meetings or at QRL meetings?---No, no, no. At – at board meetings there may be something that - - -

Sorry. The problem is just that board – there are QRL boards and Product Co board?---Yes. But I think I'm just making the point that I don't recall him being at Product Co meetings. But there may be occasions when there would be a matter  
45 discussed, for example, at a board meeting of Queensland Racing or Racing Queensland where the chairman may ask to excuse himself but the chair and the balance of the board might say, look, that's okay. Sit in for the discussion. It's

going to be brief. There's no decision to be taken. They'd have a brief discussion and move on, where the chairman may not leave the meeting, but in the majority of cases, the chairman would declare an interest and leave a Racing Queensland meeting, and I don't recall him attending Product Co meetings.

5

Okay. Thank you. Turn to tab 9, please. If you'd just briefly read that email?---Yes, I've seen that – seen that before.

Okay. You mean just recently or - - -?---Yes, yes.

10

Okay. Overnight, in looking at the material for today?---I'd seen it – I'd seen it before that. I'd seen it in the documents that have been prepared for the commission.

Okay. And have you been through this folder already overnight?---This folder?

15

Yes?---Yes, I have.

Okay. So if you look at the "From" and "To," it says "QT" – one of the tos is "QTRB board"?---Yes.

20

That's Queensland Thoroughbred Racing Board?---Yes, it is.

It doesn't exist any more or – I don't think. It's QRL by this stage, isn't it?---That would have been the - - -

25

COMMISSIONER WHITE: It might have been that you were just remembering the previous identity?---It might have been that I was able to send it to the appropriate people under an old email address or something like that, but - - -

30

MR PINCUS: It's a group, perhaps, with other names – with names underneath it?---It might have been. Effectively, it would have been the QRL board. That would be my recollection of that.

And that would include Mr Bentley?---I would think so.

35

So this email, it's likely, went to Mr Bentley, and you intended it to?---It's – it's likely to have gone to Mr Bentley. I'm just not sure whether or not, with the QTRB board as a cluster of people – whether that was retained specifically because of the – the group of people. It – look, I just raise – it seems unusual that we've gone –

40

QTRB as opposed to QRL.

But even if it was QTRB, it would have included Mr Bentley, wouldn't it?---Unless for some reason we had the cluster of people in that email cluster specific – look, I can't say. The Commissioner raised the point, and it is unusual. I don't recollect whether that included the chairman or not. It probably did.

45

And you probably, having written this email, intended it to?---If the chairman is part of that group, yes.

5 Okay. You refer to having attended a briefing from the government in relation to the Queensland draft bill?---Yes. Peter – Peter Smith and myself attended with officers from the Office of Racing and, I think, some other government – some other government delegates. And we were looking to provide input and keep the implementation of the Queensland legislation moving forward, yes.

10 Yes. And again, the implementation of the Queensland legislation is also an issue that can affect Tatts and QRL in different ways?---Yes.

15 If you look at 7, it refers to one of the key points being the need to consider what role Product Co has in relation to the implementation of the Queensland legislation?---I think that was – at the time there was discussion as to whether or not Product Co could be the agent for the three control bodies.

20 I understand. And you're raising a question with QRL about what Product Co should do?---It – the prospect was that Product Co would be – would administer and act on behalf of the three codes.

25 Under the Queensland regime?---Yes. And I believe that – I can't recall why, but that – it got to a point where that did not proceed, and the authorisations, instead of being issued by Product Co and instead of race information legislation being administered by Product Co – that then finished with each of the three codes. But at that time we would have been discussing the prospect of Product Co being the agent on behalf of the three codes.

30 Okay. If you look at the next tab, please: tab 10. Email of the 29<sup>th</sup> of October from you to David Grace?---Yes.

35 And you say, "Below is an email that has been sent to the board with the attachments." That's presumably the board of QRL?---Yes. And that would flow from the teleconference, I suspect.

The board had a teleconference meeting. So Mr Bentley, it seems, would have been involved?---Most probably.

40 And in a teleconference and in the email sent to the board?---It looks as though it's something I've constructed.

45 And it includes questions, you'll see under the points numbered 1 and 2, about the role of Product Co, again, in the draft Queensland bill?---That's the matter I raised earlier about whether Product Co – Product Co could be the agent.

Yes. And further down under Background, if you read the second paragraph, "Victoria has"?---Yes.

Refers to the New South Wales position - - -?---Yes.

- - - and the set-off for deduction question?---Yes.

5 And you're asking Mr Grace to confirm that UNiTAB is entitled to do this?---Yes.  
Correct.

And you referred earlier to having raised this issue yourself and then having attended  
a meeting with Mr Grace about it - - -?---Yes.

10 - - - with Mr Bentley?---Yes.

And do you think this is the lead-up to that meeting?---It may well have been, yes.

15 So that issue which you recall: you've actually raised it in advance of the meeting, it  
seems?---Yes.

That's one of the main points of talking to him. If you turn to the next page,  
please?---The last page of the memo?

20 Sorry. It's the next tab I mean: tab 11?---Yes.

Excuse me, Mr Tuttle. You see this is a Cooper Grace Ward file note?---Yes.

25 And in "spoke to/conferred with" near the top of the page, there seems to be the  
names Malcolm Tuttle and Bob Bentley written in?---Yes.

And that's consistent with your recollection that you had a meeting, with Mr Bentley  
attending, where you discussed these matters?---Yes.

30 If you turn past the handwritten file note pages, please, you'll see there's some typed  
pages within the same tab?---Yes, I've got those.

We're told this is Mr Grace's transcription of what he hand-wrote - - -?---Yes.

35 - - - in that file note?---Okay.

And can you look, please, at the first page where there's just a little box of  
text?---Yes.

40 "You are a director of Tattersalls, not UNiTAB. You are not a director of TABQ in  
'99." They're references to Mr Bentley?---Yes.

That's confirmatory that he's there, you think?---Yes.

45 Yes?---Yeah.

And then over the page in about the middle there's a reference to 500,000 a month?--- Yes.

5 And that's consistent with him having – Mr Bentley having known if not before then certainly at this meeting?--- Yeah.

Losing that much a month. And if you turn over to tab 12, please?--- Yes.

10 This is the day after the 31<sup>st</sup> of October meeting you've had with Mr Bentley and Mr Grace?--- Yes.

On the Saturday at 11 am, Mr Bentley's writing to Mr McIlwain and copying Mr Grace and you?--- Yes.

15 Do you remember this? Oh, you've looked at it overnight. Did you remember it when you looked at it overnight?--- Yeah, I have a recollection of it.

And if you just read that email, please?--- Yes.

20 Mr Bentley's referring to the unintended outcome as it relates to the clauses specified. Are we right to read the unintended outcome as being the deduction?--- It surprises me because I don't recall – I don't recall leaving the meeting with David Grace with any – with any preconception as to what his advice was going to say. And if this is in – you're saying it's the following day?--- Yes, at 11 o'clock the day  
25 after you've had a meeting with Mr Bentley and Mr Grace.

It does relate to – it does relate to two clauses. It relates to both 7.5 and 10.2. And in reading it, you could form the view that it does relate to the offset. But it also makes reference to 7.5, which is the – which requires the capacity of the TAB to provide  
30 concessions to enable us to collect information as well, I believe.

Well, if you turn back to tab 2 you'll see the agreement. On page 13 you'll see the start of 7.5?--- Yes.

35 Just look at D, please, on the next page?--- Yes.

Is that what you were saying? That doesn't seem to be what you were saying [indistinct]?--- I don't – the two issues – and it's consistent with the – consistent with the material, I think, that I've sent to David Grace is that 7.5(c) - - -  
40

It refers to 7.5(d), the email from Mr Bentley. And it refers, while you're in the PPA, to 10.2 which you'll see over on page 20. And 10.2(c), which refers to the third party charge?--- I'm just not sure the relevance of 7.5(d). And sorry, 10.2 - - -

45 Well, if you look at 10.2(c), you'll see there's the question of the third party charge?--- Yes.

That's the question which - - -?--- Yes.

- - - is the question of offset really; isn't it?--- That is, correct.

5 And so if we look back at the email under tab 10, please?--- Yes.

It seems pretty clear doesn't it, leaving aside 7.5(d), that he's referring to the question of the unintended outcome in relation to the third party charge?--- Correct. Could I just have that tab again, please? Tab - - -

10

10, please.

COMMISSIONER WHITE: It's 12 – it's actually 12, Mr Pincus.

15 MR PINCUS: Sorry, 12. I'm sorry. Well, thank you, Commissioner?--- Yes, it's one of the two. Yep.

Yes. And so there's an unintended outcome. Can you read it in any way other than referring to an unintended outcome in relation to the third party charge? That is  
20 - - -?--- It seems to refer to the third party charge, correct.

Yes. And having a recollection of this email, that's what you remember being the issue that he's asking – he's referring Mr McIlwain to?--- I don't recall that specifically. What surprises me is the timing of this because as I mentioned earlier, I  
25 don't believe David Grace could have even had a view in respect of this when we were leaving the meeting – when we left the meeting. It's come back quickly. I – look, I understand your interpretation of it and I agree with the interpretation of it.

Yes?--- But - - -  
30

And so – well, either Mr Bentley's got that from Mr Grace or Mr Grace hasn't expressed a view but Mr Bentley has determined it himself, if that's the proper interpretation of the email?--- That may be the case.

35 Okay. And then he says you're handling the matter for Queensland Racing and you're available and authorised to discuss the matter for Queensland Racing?--- Yeah.

He's instructing you, if he hasn't done so already, to handle it - - -?--- Yes.  
40

- - - for Queensland Racing. And he's telling Mr McIlwain you'll be doing so and confirming that, I suppose, by copying with Mr Grace?--- Yes.

45 With your phone numbers on the bottom, as my friend points out, so that Mr McIlwain can call you if he needs to?--- Okay, yes.

Now to this extent at least, Mr Bentley's pretty heavily involved in this critical issue which is right at the heart of this conflict; isn't it?--- He's involved, yes.

5 Yeah. If you go to the next tab, please, 13. So on the 3<sup>rd</sup> of November 2008 on the Monday – this is the Monday following the Saturday we've just been looking at. You're writing to Mr Grace, confirming his engagement to provide advice on the draft bill and associated regulations. And that's referring to the draft – presumably that's referring to the draft Queensland legislation?--- Yes.

10 And over the page at 14 – sorry, I should just ask. When you're saying you confirmed his engagement to do that, you understood, didn't you, you could be discussing with him that his engagement – you understood and intended that his engagement extended to also considering the effect of the New South Wales legislation?--- It would be simply formalising that, yes.

15 Yeah?--- Yes.

Tab 14, please. On the same day, you email Mr Grace, copying Mr McIlwain?--- Yes.

20 And you tell Mr Grace to call you regarding Mr McIlwain?--- Yes.

25 And you say you've left a message. And your understanding is that we may be able to sort this out with an initial call and a follow-up letter. What was your understanding? Can you explain what that means, please? And where did you get that understanding from?--- At the time, there would've only been a limited number of people that I could've been speaking to. And I – it's probably stemmed from a discussion with the chairman.

30 You mean it does stem from a discussion with the chairman?--- Oh, I don't specifically recall it. But if you have a look at – have a look at the construction of that, I wouldn't have been speaking to a boarder group at that time.

35 It must have come from the chairman?--- That'd be my view, yes.

And you want Mr Grace to call you to talk about that understanding and how it can be sorted out?---Yes.

40 And you're implementing, do you accept, it must be the case, instructions from Mr Bentley?---It appears that way, yes.

And do you remember what it was that you thought would be the way in which you could sort this out?---No, I don't.

45 But for Mr Bentley to have an understanding that he conveyed to you - - -?---Yes.

- - - can you think of how he could have had an understanding that there was a way to sort it out without him having discussed it with Mr McIlwain?---It appears to say that the chairman has had discussions and he has formed a view that - - -

5 Discussions with Mr McIlwain?---Well, Mr McIlwain or others, and that if I was to call Dick McIlwain along with David Grace we'd be able to see some resolution. That's how it appears on the face of it.

10 And you can't say now whether you know if he did have discussions with Mr McIlwain or not. You just don't remember the context?---Look, I don't recall, but he has obviously had discussions with Mr McIlwain, because he's arranged for me to call him.

15 It's pretty odd, isn't it, given his difficult position that he's talking to Mr McIlwain about this sorting out this issue which has been raised as a unintended outcome?---Yes.

20 And it puts him squarely in the centre of the conflict zone we talked about?---Well, at this stage he's obviously spoken to somebody, and he's formed the view that if David Grace and myself make contact with Dick McIlwain we'll be able to resolve an issue relating to 10.2 and 7.5.

Yeah?---Yep.

25 And he's directing the solicitor for QRL and the CEO of QRL to do things with Tatts to sort it out?---Yes.

With an understanding that it may be able to be sorted out?---Yes.

30 Obviously involves some previous conversations?---Yes.

Yes. Turn to 15, please? Mr Grace writes to Mr McIlwain after talking to him?---Yes.

35 And says, "It's my understanding that," et cetera, if you read the largest of the paragraphs?---Yes.

40 And just turn to tab 16, please?---Can I just make a point on that correspondence though?

45 Yes, please?---The way that is written and conveyed to Dick McIlwain: it simply confirms an understand that if we introduced race information legislation in Queensland and we charge for the use of that information that we're able to retain that revenue that's generated and that that revenue will not be deducted from the funds that flow from the Product and Program Agreement. I don't believe this deals with the so-called third party charge.

COMMISSIONER WHITE: No, it doesn't look like it, does it, Mr Pincus?

MR PINCUS: No, it doesn't, but it deals with an issue which is in the conflict zone, nevertheless, doesn't it, because it can affect the bottom line for QRL and for  
5 Tatts?---It – absolutely. If the concession wasn't provided it would have a significant negative impact on the bottom line for Racing Queensland.

Yes, okay. In - - -

10 COMMISSIONER WHITE: It's a benefit for Racing Queensland, this concession, of course.

MR PINCUS: This is, yes.

15 COMMISSIONER WHITE: Yes.

MR PINCUS: If you turn to tab 16, please. Commissioner, I do note the time, but I'm nearly finished a sort of an area.

20 COMMISSIONER WHITE: Yep, that's fine.

MR PINCUS: 16, you'll see Mr McIlwain is writing to Ms Tucker, who I understand is a Tatts lawyer - - -?---Yes.

25 - - - on the 4<sup>th</sup> of November, the Tuesday, so this is straight after the exchanges we've just seen on the 3<sup>rd</sup> of November?---Yes.

And he says – well, can you just read it, please?---Yes.

30 How do you understand that email?---It appears as though he's expressing a view as to the possible impact if the charges were levied on the use of the material as opposed to the supply of the material.

Yes, and that's the question about the construction of the PPA - - -?---Yes.

35 - - - as to whether there would be an offset or not?---Yes, and then he also goes on to say in the second-last paragraph that he's made it clear that he didn't believe the PPA ever contemplated a double-dip, which would be the offset of the TPA, but then also purporting to claim the revenue generated by the racing industry as a result of the  
40 race information legislation.

Of the Queensland legislation, yes, and he's encouraging you to get the Queensland legislation approved, which is consistent with what you said: didn't leave anything  
45 out?---Yes.

So – but he understands, it seems, in the first paragraph, that you and Mr Grace had told him that you're okay in terms of not thinking there's any problem with the

offset; you'll just accept the offset. Is that how you read it?---No. Well, my recollection is that we were able to establish a position for the industry where the industry was able to retain the funds collected from race information legislation without completely committing to a third-party charge.

5  
Sorry, can you explain that a little bit more, please?---My recollection of the initial engagement with Tattersalls was certainly to discuss all of this because this was coming up, but for the TAB, but as a result of all of this we were able to secure a position from the TAB where it had provided its consent in respect of 7.5(b) and (c),  
10 that revenue raised as a result of race information legislation could be retained by the industry and that Tattersalls wouldn't lay claim to any of the fees collected, and 7.5(b) and (c) relate to that.

15  
COMMISSIONER WHITE: And that's because of the exclusive nature of the PP  
-- -?---Yes.

20  
Yes?---And that Dick McIlwain's understanding there is that – and he's spoken about the double-dip, so we've obviously had a discussion around, well, if you can keep that, you know, we'll deduct that, but I - - -

25  
MR PINCUS: Sorry, you can keep that: you mean you can - - -?---Well, if you can keep the money that you raise there, but if we incur a fee, you know, we'll deduct that here, and he's talking about not double-dipping. So he's not going to claim the money that we raise as revenue as well as deduct the third-party charge. So - - -

30  
Okay. It's a deal that will possibly lead to an outcome?---Well, he's talking about double-dipping, so he's saying that the TAB will not – if we drew a very long bow with the relevant period, and we're talking about a figure of about 90 million on one hand, he's saying that for the relevant period we will deduct our costs – sorry – if it applied to the relevant period, we will deduct the third-party charge, which is 90 million, but effectively say we will allow you to keep the revenue that has been generated through the relevant period that we're dealing with here - - -

35  
Once the Queensland legislation comes in?---For the purpose of this Commission of Inquiry there's a figure of 90 million being used.

Yes?---So that's the cost incurred by the TAB, and it's been deducted off the fee.

40  
Yes?---As a result of what he's saying here is that's the 90 there, but you can keep the 117 million that will have been generated during the period of this inquiry, so the relevant figure is 117 million that the racing industry can retain, and the TAB for the period of this Commission of Inquiry has deducted 90 million. What McIlwain is saying there is that they're not just going to deduct the 90 million and lay claim to 117 million, he's saying you keep that but we will deduct that. That's the view he  
45 has; the view I had coming away from here is that he we had reserved a position in respect of the third-party charge, the figure of the 90 million.

Okay. So to the extent that he says you're okay in respect of the third-party charge, which seems to be the gist of the first part, that's not right. You haven't agreed with him at that stage, not to worry about the third-party charge?---That wasn't my view, and I think that's borne out in the letter that Grace has sent back to him.

5

Yeah, okay, sure. I'm just trying to – do you remember this conversation?---I can remember the course of events, not the conversation, and this is Dick McIlwain's email to Anne Tucker, so - - -

10 Yeah. Well, he's referring to a conversation that you were involved in?---Yes.

I'm just asking if you remember anything that helps us on that?---No, I don't. Not specifically, no.

15 So if we just recap what we've just looked at, you had met with Mr Bentley and Mr Grace on the Friday. Mr Bentley emailed Mr McIlwain regarding the unintended consequence on the Saturday saying that you and Grace would handle it for Racing Queensland?---Yes.

20 By Monday there was a plan to sort this out?---Yes.

And then here on Tuesday Mr McIlwain is telling his lawyer that it seems, essentially, that it hasn't been sorted out, or will be?---Yes.

25 Okay. Thank you, Commissioner, if that's going to be your time?

COMMISSIONER WHITE: Yes, thank you.

MR PINCUS: Thank you.

30

COMMISSIONER WHITE: We'll take a 15 minute break for [indistinct].

**THE COMMISSION ADJOURNED** [11.25 am]

35

**THE COMMISSION RESUMED** [11.43 am]

40 **MALCOLM TUTTLE, CONTINUING**

**EXAMINATION BY MR PINCUS**

45

MR PINCUS: Mr Tuttle, could you turn to tab 17, please?---Yes. Yes.

QRL minutes of the 7<sup>th</sup> of November 2008. You're in attendance?---Yes.

So is Mr Bentley?---Yes.

5 And if you turn to page 5, you'll see at 4.2 the issue of race fields legislation is discussed?---Yes.

And you might've referred to this, I think, already when you mentioned that sometimes he would remove himself from discussion but not leave the room?---Yes.

10

And this is an example of that?---It seems to be.

So when you say removed himself from any decision or discussion on this item, does that mean he sat there mute?---That's the minute – yes. If – if the – if the board viewed that there was no conflict, on occasions they would permit the chair to remain. If there was a potential of a conflict, the chairman would excuse himself.

15

Yes. But there's a difference between excusing himself as in leaving and - - -?---Yes. That's right.

20

- - - excusing himself as in - - -?---Yes.

- - - doing this, which is removing himself from decision or discussion. I just want to understand what that means, in your understanding, when this is the recorded in the minutes?---My understanding?

25

Yes?---Is that he did not leave the room, but he did not involve himself in any decision or discussion, as it's written.

30 Other than by being an influential person who was sitting there?---Yes.

And if you look at the next paragraph, it notes that there's going to be some advice from - - -?---Yes.

35 - - - Mr Grace on race information legislation?---Yes.

And that's already happened, really, hasn't it? We saw - - -?---And is likely to be ongoing as well, because of the – the stage we're at in terms of the implementation of race information legislation.

40

Yes. Thank you. Can you turn to the next tab, 18, please?---Yes.

On the first page of that – under that tab, you'll see Mr Grace writing to you, "Please find attached – I await your response," and then there's a letter to you - - -?---Yes.

45

- - - referring to the meeting and the telephone discussion with Mr McIlwain?---Yes.

And attaching a draft letter?---Yes.

Can you just have a look at the draft letter to remind yourself about it, please?---Yes.

5 And the solution being discussed involves introducing Queensland legislation as soon as possible, essentially, to restore the previous position?---Yes. And we would've – we would've been underway with that in any event.

10 Yes. And you say over the page, at the last page in this tab, “Okay to go”?---Yes.

And you're carrying out the instructions, really, which were recorded in Mr Bentley's earlier email. You're authorised to handle the matter and Mr Grace is going to deal with it too?---Yes.

15 Then turn to 19, please. Mr Grace sends you draft advice?---Yes.

And he says it's – he's giving you a draft to make sure all the questions you raised are answered, and the underlying history, facts are correct?---Yes.

20 And don't worry about the contents of the draft at this stage. If you just turn over past the draft, you'll see there – after the end of the draft letter you'll see there's an email from you on the 12<sup>th</sup> of November at 8.17 am - - -?---Yes.

25 - - - saying, “I will come back to you as soon as I can”?---That's in relation to the Product and Program Agreement and amendments to the Racing Bill. Yes.

Okay. Well, if you look at the first page under this tab again, you'll see that's the heading of Mr Grace's email to you of Tuesday afternoon?---Yes.

30 And we don't have - - -?---Yes.

- - - the whole email here, but it looks like that's your reply, doesn't it?---It appears - - -

35 It's the same heading?---It appears that way.

You're going to come back to him as soon as you can?---Yes.

40 And why was that? Did you – what did you need to do? What did you envisage the process being, if you can recall, before you go back to him?---Probably as simple as reading – reading his opinion.

45 Thank you. And then at the final page under that tab, you'll see you've left a telephone message for Mr Grace, and he's happy to see you the following week?---Yes.

Do you remember if you discussed that draft advice with Mr Bentley?---I don't believe I would've.

5 Does that mean you don't know whether you did or not?---Yes. That's correct.

And turn to tab 20, please. Mr Grace is then providing to you the following week, further to your recent discussions, the opinion. And he says, "We're happy to discuss with you and/or the chairman of Product Co" - - -?---Yes.

10 - - - "you" being QRL and "the chairman of Product Co" being Product Co, obviously?---Yes.

COMMISSIONER WHITE: Excuse me.

15 MR PINCUS: And the letter is – the letter of advice is addressed to you?---Yes.

And the essence of it – we don't need to go through it – is, amongst other things, that he thinks Tatts is not entitled to make the deduction we've discussed?---Yes.

20 Turn to tab 21, please?---Yes. I've got that.

There's a series of exchanges here between various people concerning whether Mr Grace is going to attend the Product Co and/or QRL meetings. If you could just read them, please?---Yes.

25 They're not very long?---Yes.

This is the subject of a note, a file note, which you write later - - -?---Yes.

30 - - - which we'll look at, and it refers to you meeting Mr Hanmer to discuss the issue at the Sofitel, I think?---Yes.

Mr Hanmer is very insistent in these emails about Mr Grace not attending?---Yes.

35 Why did you understand that he was so insistent?---In David Grace not attending?

40 Yes?---I – I don't know that I'd formed a view as to why he didn't want David Grace to attend. I can speak in respect of my views, and my views were that given the nature of the advice that David Grace – I think it's fairly self-explanatory in the emails, but my view was that David Grace ought to attend to provide background to the entire Product – Product Co board over and above what I'd provided to Tony Hanmer previously when I'd met him at the Sofitel.

45 Because it was a relatively difficult legal construction issue, and you felt it would help everyone to understand it?---Yes.

And if you look at the third last page under that tab, please, you'll see it's an email from Mr Hanmer to you dated the 21<sup>st</sup> November 2008 at 11.49 am?---Yes.

5 And Mr Hanmer's saying he agrees it's a very serious issue. He has to detect the mood and respect the views of his fellow board directors. That's in the first paragraph?---Yes.

10 And then down towards the bottom he says, "On the question of whether David should attend the QRL meeting, this must be a decision for Bob, as chairman"?---Yes.

15 Does that seem right to you, that that would be a decision for Bob?---The chairman had – on this particular issue – and I've mentioned it earlier – had made it very clear that I was to deal with Tony Hanmer on the matter. And I believe in the email exchange I've explained that clearly to - - -

You explained it over - - -?---Sorry?

20 It – you explained that. Yes. We'll get to that. I'm sorry. I should have mentioned – but you say emphatically that wasn't a decision for Bob?---Say that again. It was?

It was not a decision for Bob - - -?---Correct.

25 - - - whether Grace should attend the QR meeting?---Yes.

And - - -?---In respect of this particular piece of advice. Correct.

So Mr Hanmer's telling you that he'll leave it to you to approach Bob?---Yes.

30 And over the page there's your reply, I take it?---Yes.

It's shortly afterwards on the same day and you say, as I think you've just mentioned, "Bob says he's got a conflict and doesn't want to be involved"?---Yes.

35 "So that's why I sought your view. As per your instruction, I'll advise David he's not required to attend the Product Co meeting"?---Yes.

40 And that means, doesn't it, that he's not going to attend the Product Co meeting and the issue of whether he goes to the QR meeting is sort of left in the – it's left unresolved?---Left to me, to some extent.

Left to you – I see. But you don't say what you've done to resolve it in that email?---No.

45 Do you consider that Mr Hanmer was likely to be talking to Mr Bentley about this issue during this period?---I don't know.

You don't know whether he was or not?---No. I don't know. Yeah.

5 And – sorry. Excuse me for a moment. Why, in relation to your email that we've just been looking at, would Mr Bentley be conflicted in a way which would prevent him from determining whether Mr Grace should attend the QRL meeting to discuss this important issue, where he knows that there's been advice requested and knows it's been given?---Yep.

10 He doesn't need to be involved, you've said, in – he wouldn't be involved, you've said, in decisions about what to do about these things?---Yes.

But a decision about whether Mr Grace should attend to assist the rest of the board with understanding the advice - - -?---Yes.

15 - - - is not a decision about the substance of what should be done?---That's correct.

20 So that was my question. Why is there therefore a conflict which means you can't discuss that issue with Mr Bentley?---The chairman had directed that I deal with this matter with – with Tony, and that – that was quite clear to me. Whether it was Tony Hanmer of Product Co or Tony Hanmer of Queensland Racing, it didn't really make any difference as far I was concerned. When I briefed Tony Hanmer at the Sofitel, it was Tony Hanmer. It would seem that the next opportunity to have this considered was at a Product Co meeting, and as it affected the three codes it seemed to be the logical place to position the – the advice and to have Product Co briefed. But on the basis that the chairman had said to me deal with Tony – I think I've expressed that in the email, that I'd – that I'd spoken to Bob. And I was seeking some guidance from Tony as to what I should do next. If it's not going to be considered at the Product Co meeting then should we consider it at the Queensland Racing board meeting? Now, from my point of view it was semantics. It was pretty much the same people.

30 Apart from Mr Bentley, essentially?---That's right. From a Queensland Racing point of view it was pretty much the same people, so it didn't really matter to me whether I was talking to the chairman of Product Co or the deputy chairman of Queensland Racing. I was seeking where do we – where do we then go with this document?

35 Yeah?---And Tony - - -

40 And you've said it's an issue for Product Co, but you don't mean it's not an issue for QRL?---Oh, no. It's an issue for both.

Yes?---And I suspect that the first meeting that was available to have it tabled – and bearing it mind it had implications for three codes that I would've formed the view that, you know, Product Co was an appropriate entity to consider the opinion.

45 Yes. But again, you don't mean the only appropriate entity to consider the opinion?---No. But the Product – there was – I'd suggest that the Product Co meeting came up before the QR meeting and - - -

Yes?--- - - - as it had a three-code implication, that that was the – the more appropriate entity to consider the opinion.

5 Yes. Again, not to the exclusion of QRL?---No.

COMMISSIONER WHITE: No. He said that twice, Mr Pincus: not to the exclusion of - - -

10 MR PINCUS: I'm sorry. I just thought he was saying it again the other way around.

COMMISSIONER WHITE: I don't think so.

15 MR PINCUS: I apologise, Commissioner.

COMMISSIONER WHITE: No – just because the Product Co meeting came up next in time and because, as well, the two other codes were represented there.

20 WITNESS: Correct, Commissioner. Yes.

COMMISSIONER WHITE: They're not on the other QRL board.

MR PINCUS: Thank you.

25 COMMISSIONER WHITE: I understand that. Yes.

30 MR PINCUS: The final email is Mr Hanmer writing to you and he's saying what I think you've just said, which is all the QR directors except Conflict Bob will have been at the Product Co meeting the day before when the whole matter will have been exercised - - -?---Yes.

- - - so he's lost as to why Mr Grace would be needed so soon after the initial discussion?---Yes.

35 He's really saying, "There's no need for Mr Grace to attend QRL because we'll have discussed it at Product Co and Mr Grace won't have been there either"?---Yes.

40 Turn to tab 22, please. This is the minutes of a Product Co meeting dated the 4<sup>th</sup> of December 2008. Could you just note at 1.3, please, the reference to Mr Bentley's prior attendance at a Product Co meeting?---Yes.

This has been signed, you'll see, on the opposite page by the chairman, Mr Hanmer?---Yes.

45 And it's a pretty short minute. Do you agree that it's likely that if Mr Bentley's recorded as needing to be added to a previous meeting minute, that he was probably there?---On the basis that the minutes - - -

MR WILSON: It should be made clear that Mr Tuttle wasn't at this meeting. He's being asked to comment about the minutes of a meeting that he didn't attend.

5 COMMISSIONER WHITE: Yes. That's quite true, although I think the question doesn't suppose his presence but merely asks him to note that it's a contradiction of Mr Tuttle's previous assertion.

You understand that, don't you, Mr Tuttle?---Yes.

10 MR PINCUS: Thank you, Commissioner.

And at 2.2 there's a reference to the letter from Mr Grace?---Yes.

15 "Already previously circulated to all members, addressed to Queensland Racing, is code-specific." What do you understand those words "code-specific" to mean? I know that, again, you weren't at this meeting, but do they mean something to you?---Code-specific? There's three codes.

20 Yep?---So it would be one of the three codes.

But why is it code-specific?---I don't think it is.

25 And is – do you understand the intent of these words to be suggesting that because it was addressed to Queensland Racing, it's code-specific because - - -

MR WILSON: Well, how can - - -

MR PINCUS: - - - Queensland Racing is only for thoroughbreds?

30 MR WILSON: How can he comment about that, with respect, Commissioner?

35 COMMISSIONER WHITE: Well, it's a bit difficult, but you might want to – Mr Pincus might want to engage in some discussion about, perhaps, how that expression was understood amongst the board members who would have received the minutes. He's in a position to do that.

MR WILSON: Yes.

40 COMMISSIONER WHITE: But I don't know that there's any difficulty about that expression, is there, Mr Pincus, anyway.

MR PINCUS: No. It's just that – there's – we're looking at the question of Mr Grace attending one or the other of - - -

45 COMMISSIONER WHITE: Yeah.

MR PINCUS: - - - or neither of the meetings, and what's done with Mr Grace's advice. And here is a minute that is the follow – is the next step after the exchanges of emails we've looked at wherein the position, it seems, taken by Product Co is that it's code-specific and - - -

5

COMMISSIONER WHITE: Yeah. Well, I think perhaps that's – we might just ask Mr Tuttle what he did next.

MR PINCUS: Well, that's true. I just wanted to ask whether he knew what that term meant, and we've got that answer.

10

So the contents are noted by the board. On the 5<sup>th</sup> of December, Mr Tuttle – the next day – there's the Queensland Racing minute. If you turn to tab 23?---Yes.

15 You're in attendance?---Yes.

And could you go to 2.3, please?---Yes.

Just read that, please?---Yes.

20

The chairman offers to exit the meeting for any conflicting matters, but Mr Hanmer says this is a report for noting. Do you remember that part of this meeting and what happened?---No. I don't.

25 You don't remember being at the first Queensland Racing meeting after the delivery of Mr Grace's advice saying that Tatts wasn't entitled to deduct the third party charge?---No. I don't.

30 And when – you see that Mr Bentley offers to exit the meeting. The fact that it's not recorded that he did suggests that he didn't leave the meeting. Do you agree? Oh, sorry. Mr Wilson's got another complaint, I think.

COMMISSIONER WHITE: No. He's just reminding you, Mr Pincus, that Mr Tuttle says he has no recollection of 2.3.

35

MR PINCUS: I know, but Mr Tuttle is the CEO of an organisation of which these are the minutes, and I'm asking him – which seems fair to me – whether he knows if the minutes don't record that the chairman leaves – whether it's likely, in accordance with usual practice, that he didn't leave.

40

WITNESS: In the event that the minutes record the chairman offered to – offered to leave, it – this could be construed that he's offered to leave and he didn't leave. It simply says that he's – he's offered to leave. The – normally if the chairman leaves a meeting it normally says that he excuses himself.

45

MR PINCUS: Thank you?---That's what the minutes would normally say.

Thanks very much. And so if it doesn't say that, it would normally mean that he didn't leave?---That could be the case.

5 And could you turn to 3.6, please, over the next page. You'll see there's a discussion of Mr Bentley's car, and he leaves the room for that discussion?---Yes.

10 Do you agree it seems slightly unusual that he does leave the room for a discussion about his car but he doesn't leave to discuss this important issue which is at the heart of the conflict you've agreed he has?---I'm not aware – I'm not aware of what was discussed at 2.3 – the content of that discussion; therefore, I can't be – I can't be definite with my response to you.

15 Given that there's reference to the Queensland Race Product Co meeting at which, we've seen a minute ago, that race fields legislation was discussed and Mr Grace's advice was tabled and noted, it seems likely, doesn't it, where they say it's a report for noting and those minutes are to be included in the QLR minutes, that there was discussion of those issues at this meeting – at least mention of them?---It – it – it certainly would – would seem likely, but I don't recall what was discussed at 2.3 specifically.

20 What do you think it means to say the board noted above?---That they've noted it.

25 What does that mean? People have just observed that it's happened, but nothing – no resolution has been made or proposed?---Yes.

30 What did you understand, if you can recall around this time, was going to happen in relation to Mr Grace's advice and the issues that it raised?---I wasn't specifically aware as the matter was dealt with predominantly, I understand it – or was intended to be discussed, at least, at – at Product Co. And I'm not aware that I would have had a report or received any feedback from that Product Co meeting at that time.

35 Unless, as it says in the minutes of the QRL meeting that you were at, there was a report of what had happened at the Product Co meeting?---Yes. And I don't know whether the – the David Grace advice was reported at that meeting or not.

40 Well, if it wasn't and the minutes of the Product Co meeting we've looked at are accurate, that means you'd agree that you didn't get an accurate report at the QRL meeting of what had happened at the Product Co meeting?---It's – it's impossible for me to say. I can't recall this discussion at this meeting.

Thank you. Do you think that if Product Co had wanted to get senior counsel's advice in relation to the issues dealt with by Mr Grace, that it would have had any trouble getting money for it from QRL or any other source?---No.

45 It could easily have done so if it had wanted to?---That would be my view.

Turn to tab 24, please. This is the note we've already touched on - - -?---Yes.

- - - referring to a meeting with Mr Hanmer at the Sofitel?---Yes.

And it records Mr Grace has advised that Tatts is not entitled to deduct the race information, as we know?---Yes.

5

Your view was that whether Mr Grace's opinion was right or wrong, it was a very serious issue and needed serious consideration?---Yes.

10 Mr Hanmer told you that there were two opinions conflicting with that of Mr Grace?---Yes.

Can you say – do you remember whether he said whose opinions they were?---I was never advised who the opinions were from.

15 Did you ask?---No.

Did you understand, regardless of which individuals they were, that they were legal opinions?---That was my understanding.

20 And did he say whether they were opinions in writing or otherwise - - -?---No.

- - - when he says he has two opinions?---No, he didn't.

25 And you say – sorry. Did you already say you didn't ask?---I didn't ask, no.

He made it clear that he thought Mr Grace was wrong. If you look at the second page?---Yes.

30 And that's in the second paragraph. He's outlining a construction analysis of the agreement?---Yes.

Very much the sort of thing you'd normally expect to come from lawyers?---Yes.

35 And did he say where those ideas of the interchangeability of supply and use had come from?---No, I don't believe he did.

40 And when you say just below that that he didn't share your view, that there might be a contrary argument but did not want to continue the conversation, what happened when you say he did not want to continue the conversation? Did he say, "Look, I just don't want to talk about it," or do you mean he wouldn't engage with you?---No. I think – I think Tony had had enough of the discussion on the – on the topic, and – and he'd move on to undertake some other business in the – in the offices. It may have been the day of the meeting, but I don't recall it. I don't recall Tony, for example, storming out of my office, but we'd had the conversation about it. He  
45 simply didn't want to continue the conversation any further.

Right. And did that seem unusual to you that he wouldn't want to continue the conversation any further on this really important question for both - - -?---Look, he - - -

5 - - - Product Co and QRL?---He may have – he may have had other – other commitments. I felt it was unusual that I wasn't attending the meeting. That's probably the – probably the thrust of why I've made the – made the record – made the – made the note. But the fact that he's – that he's, you know, finished the conversation and didn't want to continue it and move on – I don't think anything in particular should be read into that.  
10

Okay. Why did you record this note? You said it's because you were worried about not being at the meeting?---The – well, it was advice that – that I'd received, and on the back of the – on the back of the email exchange that I'd had with Tony, I had concerns that there was a piece of advice that was address to me by David Grace, and it was going to be discussed at Product Co, and with a potential determination, in my absence. And I felt – felt it worthy of recording it.  
15

And you also wanted to record that you'd been pressing for Mr Grace to attend and that Mr Hanmer had resisted that?---Yes.  
20

And did you commonly make these kinds of file notes about your discussions with directors?---Not often. This – this was unusual. As it turned out, I think it was one of only a – one of only a couple of meetings that I wasn't able to attend during my time. It was – it was unusual. That's why I kept that note.  
25

Right. But it was also unusual that you were getting strong push-back from Mr Hanmer about your suggestion, which you thought was perfectly sensible, to have Mr Grace attend the meetings?---Tony – Tony was upset at the time, I think, to some extent as well, that – with the chairman asking myself to undertake some work with David Grace, notwithstanding it was subsequent approved by Queensland Racing. I'm sure Tony felt in the circumstances that – that he ought to have had a lead role, and that may well have played into his thinking as well at the time.  
30

Meaning "Don't you interfere, Mr Tuttle. This is my job"?---In relation to Product Co, Tony was very protective of that – of that territory.  
35

Right. Nevertheless, he, I think you said at the start, would – you would have been quite involved in various Product Co things?---Yes.  
40

It wasn't like he'd exclude you from that if you could assist?---Yes.

And he was excluding you from this, really, saying "Don't interfere. We're not having Grace, no matter what you say"?---Well, I think thrust of it was that Tony – Tony saw some level of – some level of intrusion into – into his territory. And that certainly wasn't an intention of mine at the time at all. It was more that I felt it was  
45

an appropriate question to – to ask. And that’s why the question was originally put to David Grace.

5 Yes. You thought it was a really important issue for Product Co and QRL?---It was an appropriate question to put, in my view, yes.

And you were worried that it might look bad in the future that Mr Grace had given important advice and then hadn’t attended the meetings to help the directors understand it?---Well, actually being excluded from the meeting?

10 Yes?---Yes.

And you were recording it to make clear that you did everything you could to try and get him there?---My concern is that there was a piece of advice that was important advice, that had been provided to me, addressed to me, that was potentially going to be determined by others in my absence. So the – it had moved to some extent out of my – not so much out of my control, but it was – you know, I didn’t attend the meeting – was unable to attend the meeting. It was going to be discussed. Potentially, some level of determination – and I simply thought that it was appropriate that, notwithstanding I’d provided some background to Tony Hanmer – that I would be available to Product Co to discuss some of the background and also that David Grace ought to be there.

25 COMMISSIONER WHITE: And as is fairly apparent, to me anyway, Mr Tuttle, you had informed yourself about the legislation and the new legislation coming in and so on. Would you say that some of the other board members of Product Co might not understand it as completely as perhaps you did?---That’s a fair point. In respect of a lot of the groundwork that was undertaken – and we saw earlier an email where Peter Smith who was an operational manager and myself had attended a meeting with government officials to discuss the race information legislation. We were seeking feedback from the board and so forth. It’s very likely that the level of interaction with some of the directors that would come to Product Co, particularly from the other codes, may not have had that level of interaction. So I thought it very reasonable that I be there to provide an update as well.

35 Yes, and did Mr Hanmer, in your view, have that grasp of the legislation?---Tony had a very good understanding of both the legislation and also the – effectively, his bible for Product Co and the Product and Program Agreement; a very good understanding of that.

40 Okay. All right, thank you.

MR PINCUS: You told Mr Bentley about the argument, if we can put it that way, you’d have with Mr Hanmer about whether Mr Grace should attend the meeting?---I’m not sure that I told the chairman about the argument. I’m not sure it was an argument; it was a disagreement if you like in respect of how we should move forward, and, effectively, it moved into the realm of Product Co. At some

stage I would have mentioned to the chairman that we'd had a discussion about it. I couldn't concede that the chairman wouldn't be aware of that at the time - - -

5 Do you remember what the - - -?---but I don't recall a specific conversation where I've said to Bob Bentley this is exactly what's happened with the – with this particular matter or this issue. The point I made earlier, and it was very clear in relation to this particular piece of advice, that it was a matter that was to be – that I was to discuss with Tony Hanmer, and I followed that advice.

10 Yes. Well, Mr Bentley has said something to the effect that you mentioned that you were in a disagreement with Mr Hanmer about whether Mr Grace should attend, and that he asked if you needed help?---I'm not aware of that. I'm not aware of the discussion.

15 Right. You don't remember whether you discussed it with Mr Bentley or not?---No, I don't. The instructions I got from Bob Bentley was very clear in relation to this matter, and that was that I was to deal with Tony Hanmer.

20 Thank you. Turn to tab 25, please? Can you just see that there's an exchange here between you and Mr Grace in which Mr Grace asked whether you had any reply from Tatts, if you see the email at the bottom of the page?---Yes.

And you reply, "Nothing from Tatts so far."?---Yes.

25 Do you remember what that's about, please?---No, I don't.

What do you think it's likely to be about?---I can't recall what we'd be looking for from Tattersalls at that time.

30 Okay, thank you. Tab 26, please? Have you seen this exchange before between Mr Lambert and Mr Hanmer? I mean before you looked at this folder last night?---I – no, I hadn't.

35 Did you know that they were having a disagreement along the lines that's reflected in this exchange of emails?---Yeah, not to the extent that I'm aware of now, though.

You knew they were having a disagreement about it, but not how far it had gone?---Yes, correct.

40 And are you surprised that it had gone so far? Meaning is it inconsistent with - - -?---Yes. I – yes. I knew there was – that Michael certainly had some concerns in relation to the letter, and I'm assuming you'll take me to a March meeting of Product Co shortly.

45 I think so, yes. If you look at the second page of that email exchange you'll see it's the Hanmer email to Lambert. Have you got that?---Yes.

5 At the top of the page there's just a reference I wanted to ask if you could help with. I know these aren't your emails, but it says that Grace, "That I disagree with you when you say the origins of the Grace advice are of no concern to you. The Grace letter was briefed without any involvement by Product Co or any reference to Product Co."?---Yep.

10 "The letter is addressed to Queensland Racing, and Malcolm Tuttle is not an officer of Product Co." What do you understand that to be?---That's potentially Tony Hanmer preserving his patch, if you like, which is Product Co.

He's complaining that it had happened without reference to him?---Yes.

And – okay, thank you. Tab 27, please?---Yes.

15 So on the 14<sup>th</sup> of January you're forwarding to Mr Bentley for his information the exchange below?---Yes.

20 And that exchange includes you talking to Ms Murray about the PPA and saying that New South Wales should not have been charging Tatts for information for September, October, and November?---Yes, and that is likely to relate to the matter I referred to earlier where the chairman, Michael Lambert, and myself had met with Peter V'Landys and Tony Hartnell in respect of the legislation and, potentially, the nominated arrangements with RISA. We had discussed – the Miles in the email there is actually – should be M-y-l-e-s. It's Myles Foreman. Myles is the CEO of RISA, and what we were attempting to do there was claim our rights in relation to a nominated arrangement that we felt should have precluded New South Wales from charging Queensland Racing for a period of approximately three months, and we had met with Peter V'Landys and Tony Hartnell to assess their view of that, and their view was that they were not going to recognise the nominated arrangements with RISA, and it is likely that it's an update in respect of that if it deals with RISA – the RISA issue.

35 Okay, but you agree, don't you, that that is an issue again in which Tatts and QRL's interests may well differ in that it concerned whether for those three months the New South Wales fee will be paid by Tatts?---What we were - - -

40 Is that right?---Well, what we were attempting to do though just so it's patently clear is to have the nominated arrangements recognised so that there would be not necessarily a better position for Tattersalls, but a better position for the Queensland racing industry, and I don't know that the provision of this information gives rise to any concerns. I mean, it's – it relates to something the chairman from my recollection was involved with earlier in terms of meeting with Peter V'Landys and Tony Hartnell.

45 Yes?---New South Wales.

- 5 Yes, but if Tattersalls – just maybe turn over; where [indistinct] simplistic understanding, and you can tell me if it is – but if Tattersalls is not having to pay New South Wales – Tatts not having to pay New South Wales for three months, then the issue of whether it can be set off or not doesn't arise. So it's important in terms of whether the set-off issue exists, and how it needs to be – whether it needs to be resolved or not?---If you took the Tatts' strict position, there's no impact for Tattersalls at all. If you took their restrictive – so that there's a charge from – if there's not a charge from RISA nothing flows through.
- 10 Yes?---If there's a charge from RISA, they're not going to pay it anyway.
- Yes?---So the impact is felt by Queensland Racing.
- 15 Okay. Turn to tab 28, please? Meeting of QRL on the 6<sup>th</sup> of February, of which Mr Bentley's there and so are you?---Yes.
- There at 8.1 is a reference to race information legislation and resolutions?---Yes.
- 20 And the attachment, attachment B, it seems that from the minutes and from the attachment there's no reference to Mr Grace's advice?---Yes.
- Do you remember that meeting and whether the question of deductibility and Mr Grace's advice was discussed at all?---No, I don't recall.
- 25 29, please? This is the meeting of Product Co a month later?---Yes.
- And you're recorded as being in attendance, along with Mr Grace?---Yes.
- 30 If you look at page 2, there's a reference to \$15,000 for professional services, and that's the same number, you might remember, we saw in handwriting on one of the draft Product Co minutes earlier?---\$15,000 on page 2?
- \$15,000 for professional services. It doesn't matter. You see there's a reference there to \$15,000 for professional services?---Yes. I've got it. Yes, yes, yes.
- 35 Due to unforeseen circumstances, additional work was required to be carried out, and as such, the bill has gone up, and - - -?---And at the time, it wasn't just that David Grace was working on a single piece of advice. He was advising us to the mechanisms that we needed to have in place to give effect to the legislation.
- 40 Okay. But it's gone from 15 to 18, and then you see over the page that he wants another five, and the board resolves that the 18 be paid and an additional five be approved?---Yes.
- 45 The point is only just that there's no difficulty getting that through, is there, and it's consistent with what you said earlier?---Yep.

If legal advice is needed, then the money would be forthcoming?---Yes.

And under that, at 2.1.3 - - -?---Yes.

5 Product and Program Agreement. If you can just read that again, please?---Yes.

Mr Lambert and Mr Andrews are pushing for senior counsel advice?---Yes.

10 Mr Hanmer is recorded as having expressed his concerns. “The chairman expressed his concerns”?---Yes.

15 Do you remember what those concerns were, whether they were expressed at this meeting or around that time?---I don’t recall the concerns being expressed, but I believe it may have been this meeting that Michael Lambert was on by telephone, correct. I don’t – I don’t know what the – what his concerns were, no.

He’s saying the company should meet with Tatts to seek a variation of the agreement in order to fix the problem?---Right.

20 Do you agree?---Yes. That’s what it says, yep.

25 COMMISSIONER WHITE: He can read the minutes, Mr Pincus, but he says he doesn’t know what the chairman’s concerns are. I’m not sure that you can push it much further unless you’ve got something different to us.

MR PINCUS: Turn to tab 30 please, Mr Tuttle?---Yes.

It’s a memorandum from Mr Grace to his file - - -?---Yes.

30 - - - about his attendance at the meeting we’ve just looked at. And if you look over the page at page 2, he records in the second dot point under point 4 - - -?---Yes.

If you just read that, please?---Yes.

35 He records that he’s urging that the issue be addressed. “It’s unwise to ignore the advice.” Do you remember that happening at the meeting we’ve just looking at the minutes of?---The March 5 meeting – I can actually recall raising the – raising the matter of the correspondence. And Michael Lambert was on speakerphone, and I can recall Bill Andrews – Bill Andrews had raised the matter, and there was some robust  
40 discussion in relation to – in relation to the advice, but I don’t – I don’t specifically recall any discussion about directors’ duties at the meeting, but certainly the – the David Grace advice was – was considered and discussed.

45 And did – in answer to that question, you don’t remember if Mr Grace said it would be unwise to ignore it?---No, I don’t – I don’t recall that specifically, but David Grace certainly was engaged in discussion around his advice.

And he records that he also said it was necessary to address the issue either by – I’m just extrapolating a bit from the end of that second dot point – taking an adversarial role with Tatts or seeking to change the agreement?---Yes.

- 5 And do you remember that those two options were on the table at the time?---Not specifically, but I can certainly recall David Grace’s presence there and his discussing the – the advice.

10 What was your view, in considering the options which, I take it you accept, did include those two options - - -?---Yes.

- - - as to whether a QC’s advice should be sought?---A key piece of further advice? Sorry?

- 15 Whether a QC’s – whether a silk’s - - -?---Yes.

- - - advice should be sought?---That was certainly – certainly one option for – one option for Product Co. Product Co, though, had a – had a very – through the chairman, had a very strong working relationship with the – with the TAB. There were two or three meetings a year at a product and strategy level, but they were generally just general consensus and conversation meetings as provided for by the Product and Program Agreement. But I don’t – I don’t recall having a particular – particular view as to the course of action that ought to be taken, whether there was necessarily a need to go and procure further advice. There was legal advice on the table, and that was David’s opinion. There was an option of engaging the TAB and having further – having discussions, at least, with the – with the TAB around the nature – nature of the advice. That would have been one option available. But at this time, from my point of view, there was – there was seemingly other competing legal advice available as well. So, as I say, I don’t know that I necessarily had a view that – that there should be a particular course of action taken one way or the other. But we did have a view sitting on the table that suggested that there was an opportunity in respect of this funding that was being deducted by the TAB. And it was, in my view, bearing in mind we have conflicting advice – we’ve got the David Grace opinion. Bob Lette is also a – also a lawyer. Michael Lambert had the – had the – certainly had a lot of the background associated with the – with the RISA position and understood the flow of wagering across Australia. Bill Andrews was a lawyer as well. So we had a fairly – a fairly robust group of people in a good position, in my view, to consider the appropriate course of action.

- 40 And if the appropriate course of action was to do nothing, then did you think that it was sufficient to simply do that on the basis of the robust discussions at board level, or did you consider that it would be necessary to check whether someone else thought that Mr Grace’s advice was correct or not?---Well, the position I – that I had at that time was that there were – that I understood it to be at the time – that there were multiple pieces of advice. Certainly there was the David Grace advice that I was aware of.

But you said when we looked at this earlier that you'd been told that Mr Hanmer had other advices?---That's correct.

5 But you didn't have any idea whether they were written or not and whether they were  
- - -?---That's correct.

Who they were from?---Yes.

10 So you're saying there were other advices, but that's a pretty abstract concept, isn't  
it, when you don't have any idea what advices they are?---Except that the chairman  
of Product Co has informed me of that.

Yes. If there was a written - - -

15 COMMISSIONER WHITE: Don't forget Mr Tuttle was not a member of the board,  
Mr Pincus.

MR PINCUS: I understand that. I understand. I'm just trying to go to his view as  
20 the CEO, Commissioner. I won't take it too much further.

WITNESS: Yes.

25 MR PINCUS: You hadn't seen any other written advice, and you would assume  
that you would have, given that you were involved in the Grace advice, if there had  
been a written advice?---Except that there was some tension created, I think, as a  
result of me asking that question and seeking that advice, between myself and Tony.  
Tony was very protective of Product Co, and I mentioned that – mentioned that  
earlier. And - - -

30 So he might have got some advice that he didn't tell you about because of that  
protectiveness?---He – he may well have, and it was – on my behalf, there was  
certainly no intention to tread on the toes of the chairman of Product Co. Rather, I  
thought it was a question that ought to be put given the pending legislation that we  
were looking to implement.

35 Yes. Can you look at tab 31, please. Mr Hanmer emails Ms Murray, copying  
Mr Bentley. Can you just read that?---Yes.

40 Did you know about this at the time? Have you seen this – did you – had you sent  
this before you looked at this folder last - - -?--- No.

- - - night?--- No, I became – I became aware – I became some time later that an  
email had been sent to the board of Product Co in relation to the David Grace advice.  
And it was – it was identifying that the Product Co advice had not been addressed to  
45 Product Co, and therefore it was an issue for Queensland Racing. But that advice  
actually came to me, I think, from Shara Murray, not from Tony Hanmer. But I can't  
recall – I can't recall seeing this particular advice.

Did Murray tell you that the essence of what had happened is that Product Co considered that the matter was at an end and Mr Hanmer was resisting Mr Lambert's attempts to raise the issue again at QRL?--- No.

5 Turn to 32, please. You'll see at 10.4, which is the last – second last page?--- Yes.

The board's resolved so seek clarification of the agreement from the state, which -- -?--- Yes.

10 Do you remember that happening?--- Yes, I can recall Michael preparing a paper.

And that's really a third option. There was the sort of argue with Tatts, there was the renegotiate with Tatts and there was the – the agreement, that is. And then there's the find out from the state what the agreement means?--- Yes.

15 Tab 33, please. That happens and you wrote – you wrote this letter?--- Yes, I did.

Did you discuss the contents of this letter with others before you sent it?--- I think it was actually settled by – settled by the directors, to be honest.

20 The directors being who?--- I think I've seen something in the documents provided to the commission where I've emailed it to some directors to settle the correspondence.

25 Right. And do you remember who was involved in the discussions -- -?--- No. No, I don't.

-- - regardless of whose on those emails?--- I don't, no.

30 Did you discuss it with Mr Bentley?--- I wouldn't have discussed it with the chairman, no. He had given me a strict instruction in relation to the Grace advice to deal with Tony Hanmer.

Got it. And then ultimately the answer comes back -- -?--- Yes.

35 -- - six months later. And that's the final page you'll see there?--- Yes.

And it says "I can't help"?--- Yes.

40 Now, that's the end of the matter?--- It appears to me that there's discussion in relation to this item in the December – December board minutes.

Right?--- And it's noted in those – it's noted in those minutes. And it appears in the February 2010 board minutes that this is simply – that the response is simply noted.

45 It's a very short -- -

Yeah?--- Note in those minutes.

And so if they're just noted, that's really the end of the matter. There's no further action to be taken?--- Yes.

5 And do you remember if there was any discussion about doing anything else that you were involved in?--- There was – there was a piece of advice around about – around about April 2009 that was provided by Shara Murray. I believe that was tabled and noted. I've seen that in the minutes, I didn't recall it. But in the minutes of QRL at or about that time, it also talks about legal advice being tabled. And I'm not sure if that relates to the advice that Shara had prepared or whether she had actually tabled  
10 additional advice, I can't say. The other – the other thing that we did obviously because each of the control bodies in their own right had to make a determination in respect of the conditions that were appended to an authority for the approval of an authority. Each of the control bodies had to make that determination. That will have been considered by the Queensland Racing board at some stage and minuted, and  
15 there'll be conditions attached to that in the minutes. As the chair or a member of the authorisation committee, and it appears again in the documents before the commission, Shara was responsible for obtaining the board's views in respect of a UNiTAB application and the offset. So at some stage that will have been put to each of the three control bodies, I suspect. And I don't know what the outcome was in  
20 relation to harness and greyhounds. But certainly – certainly there will have been consideration of that at a QRL board meeting at some stage. They will have had to have – the board will have had to have considered an application from the TAB to use the information and must have discussed the conditions to be appended to that. So that will be in the minutes.

25 Okay. Well, what about – what about the question of whether something should be done about Mr Grace's advice that \$500,000 a month is being deducted and shouldn't be?--- Sorry, the question - - -

30 Whether anything was ever done about that during this period we've looked at. Other than what we've seen in these documents, was there ever any further step taken that you know about or any further step discussed to be taken?--- Not that I'm aware of. There was – and again in the documents before the commission, there is a further – and I'm not sure if it's right. There's a further piece of advice. It's a  
35 February piece of advice from David Grace as well. And it also talks about the third party charge. And I had a quick look at it and I must confess, I can't – I couldn't reconcile it to the issue of race fields information. But it certainly deals with the – a third party charge issue. So that was there as well. So there's likely to be multiple pieces of advice in relation to this - - -

40 Okay?--- In relation to this one issue.

45 Does it seem unusual to you, from your perspective as the CEO who is the CEO of a company losing \$500,000 a month that so little was done over so long?--- It is a complex issue. And I accept the – I accept the amount in terms of the cost. But from the outset, with the agreement that was reached with the TAB, we were certainly able to give effect as a result of that agreement to the race information legislation and

retain the revenue that was being generated as a result of that. So it's – you can look at one side of it and simply say well, that's the cost. But I believe in the discussion there needs to be the benefit as well.

5 Yes?--- And I don't purport to suggest that this is a very simple matter to deal with. Certainly the seeking of a further opinion may be – it may be quick and easy to do that. Having a meeting with the TAB may appear to be quick and easy. But this particular issue was not without some challenges. And when you have such a  
10 significant and strong relationship with a business partner that is providing the bulk of the revenue for the industry, it's not without – it's not without the requirement to have exhaustive consideration of the matter. And I know that it's been tossed around that, you know, the prospect of simply obtaining a further opinion ought to have been done. But there is a practical – there's a practical outcome to all of this in respect of the discussions that would be required with the industry's most significant business  
15 partner. So it's not just that easy. And if the – if the QC opinion came back and it said well, look. We don't do anything. Well, it sits there anyway. But there was this opinion on the table - - -

20 But if it came back and said Mr Grace - - -?--- [indistinct]

- - - is absolutely right?--- Well is that – that's right. But there's an opinion on the table. And seemingly at least the information that I was receiving was that there was contrary views in respect of the David Grace opinion. And it's not a – it's not a straightforward issue to deal with. But I don't – I do not disagree that it should not  
25 have simply found itself into a minute where a response from the Office of Racing is simply noted.

It seems to peter out, and you agree that's not - - -?--- The item – the item - - -

30 - - - appropriate?--- Finished up under general business in the minutes of the board.

Yeah, okay. You agree it's just sort of petered out and been allowed to peter out?--- It wasn't pursued.

35 Yes, okay. That's the end of that topic, commissioner. It's early but would you prefer me to continue - - -

COMMISSIONER WHITE: We can finish now.

40 MR PINCUS: - - - with the next one? Or perhaps we could start slightly earlier than usual after lunch.

COMMISSIONER WHITE: Will you – how long do you think you'll be with the final topic with Mr Tuttle?

45 MR PINCUS: I hope very much to finish it this afternoon.

COMMISSIONER WHITE: Whether – well, we can start at quarter past 2. Do you think we'll finish him - - -

5 MR PINCUS: I hope so.

COMMISSIONER WHITE: - - - this afternoon? I don't want to ask Mr Tuttle to come back if we don't need to do that.

10 MR PINCUS: Perhaps if we – if we're – since we're finishing a bit early, if we start a little bit early at two then that 15 minutes might turn out to be important, Commissioner.

COMMISSIONER WHITE: All right. Is that convenient for you to start too - - -?--- Yes, certainly.

15 - - - Mr Tuttle?--- Yes.

Thank you. Is it convenient for you, Mr Wilson?

20 MR WILSON: Yes.

COMMISSIONER WHITE: Okay, thank you. All right. Then we'll adjourn now and resume at 2 o'clock, thank you.

25 **THE COMMISSION ADJOURNED** [12.45 pm]

30 **THE COMMISSION RESUMED** [2.00 pm]

**MALCOLM TUTTLE, CONTINUING**

35 **EXAMINATION BY MR PINCUS**

MR PINCUS: Could Mr Tuttle please have a copy of the Act – the Racing Act.

40 Could you turn, please, Mr Tuttle, to section 78 of the Act?---Yes. I have that.

The heading of the chapter is "Control bodies managing their codes of racing"?---Yes.

45 And in section 78 it refers to the purposes of the chapter, which are to provide for the way in which each control body may perform its function of managing its code of racing. Yes?---Yes.

And subsection (2): “Generally, the control body performs its function by making policies about the management of its code of racing”?---Yes.

5 Policies are an important part of how the control body performs its function?---Yes.

And then over the page at subsection (3), the purpose of policies is to ensure there is guidance for persons involved in the code of racing and transparent decision-making relating to the matters dealt with by the policies?---Yes.

10 And section 80 you’ll see – section 80(1)(b) allows the control body to make a policy for its code of racing because it’s believed to be good management to have the policy?---Yes.

15 And then, of course, there are mandatory policies in section 81. Do you agree that the purchasing policy of QRL and RQL is a section 80(1)(b) policy?---No.

No. What is it then?---The – the purchasing policy, when it was adopted by – at least – Racing Queensland Limited in July 2010 at the board meeting – and these minutes are in the documents before the commission – was adopted as an internal policy.

20 And in fact, in those minutes it’s underscored internal, and the break-up of the policies in the minutes of that particular meeting clearly identify section 81 policies. They clearly identify section 80 policies and they clearly identify internal policies, and my understanding is that the procurement or purchasing policy for at least Racing Queensland Limited was an internal policy.

25 Why would an internal policy not be a policy which the control body is empowered to make under section 80 for good management?---If – it is a policy that the – that the control body is able to make, and I’m not suggesting that it isn’t. But I merely point to the – the minutes and the fact that when the policies were adopted in July 30 2010 the procurement policy, as a policy of the finance department, was adopted as an internal policy. And that’s revealed in the minutes of that meeting.

35 Sure. I understand that. I’m trying to understand what you mean by the term “internal” – what you understood it to mean. You mean that it’s not a policy that has anything to do with the Act?---I’m – I’m not sure how it relates to the Act. The control body would – would derive its power to make a policy from the Act, but the distinction that the – that Racing Queensland had at the time – and I believe Queensland Racing Limited had at the time – was that there was a process that would be required to be undertaken in respect of, for example, section 81 policies, in respect 40 of advertising those policies, when amendments were made to the policies and when new policies were made. And those same standards were not applied to a raft of policies that we considered to be internal policies that were posted on our intranet and were not available externally and posted on our internet.

45 I see. So you say it’s internal in that sense that it’s not for publication, and you wouldn’t expect to provide it to the government under the requirement that policies

be given to the government?---I'm – I'm not aware that we ever provided an internal policy to the government.

5 So when you look over at section 84 subsection (2) and there's an obligation to ensure that a control body's policies are publicly available and then that the control body must give a copy to the chief executive, you say because it's internal it's not a policy - - -?---Our - - -

10 - - - under – that that section applies to?---Our understanding could only have been that it wasn't captured by that section of the Act because of what I've said. For example, they weren't – the internal policies were not advertised on our internet the same as, for example, the section 81 policies.

15 Well, sure. But that's putting the cart before the horse, isn't it, because section 84 says policies have to be publicly available. It doesn't say external policies have to be publicly available. In a sense, once they're external they're publicly available, aren't they?---I guess what I'm saying is I'm not – I'm not sure how, for example, Shara Murray, who had responsibility of bringing the policies forward for approval, had formed the view that our internal policies weren't captured to be the same as the  
20 section 81 or section 80 policies. In terms of their review and their advertising and the provisions of those to the government, all I'm stating is a fact as to how we treated them and how they were adopted by the board.

25 Looking at section 84 now, do you see anything there which suggests that internal policies weren't subject to the requirements of section 84? I'm not asking you to construe the legislation. I'm just asking you, looking at it - - -?---Well – but it's important though, isn't it - - -

30 - - - to help me?--- - - - that if – if I'm going to comment on a part of the legislation that – that I've had a look at the – the words that precede a particular section of the Act and - - -

35 Sure?---I guess the only point I'm making – and I hope I'm making it well enough – was that the treatment of what Racing Queensland Limited considered to be internal policies was separate to the way Racing Queensland Limited treated section - - -

You've certainly made that point clearly?---Okay.

40 I'm just trying to understand what was meant by – and the point is you understood, whatever the meaning of the Act, that it didn't cover – so section 84 obligations didn't cover what you called internal policy, including the purchasing policy?---In a number of areas it didn't, because we did not provide, for example, our internal policies to the government. We did not comply with the – the provisions as to how a policy is made in respect of consultation and so forth that we saw strictly applied to  
45 section 81 policies. Our internal policies – for example, if there was an amendment required or an amendment suggested to an internal policy, we did not seek the views, necessarily, more broadly than – than those internally. The board – for example, if

the board wished to amend an internal policy, it would bring a – a suggestion forward and the policy would be amended without the broader consultation that is otherwise required.

5 And as far as you know, the purchasing policy was never made publicly available or given to the chief executive within 14 days, as required by 84(2), if it was covered by that section?---Correct. That's correct.

COMMISSIONER WHITE: And did – Mr Tuttle, I know you referred to Ms  
10 Murray. Did you rely on corporate counsel to provide the guidance in this field?---Yes. We did, and in fact, at – at a time, I believe, in 2011 the board instructed a – a review of the – of, I think, all of our policies, from memory, but certainly the section 81 and section 80 policies, to be undertaken. And that was in –  
15 in regard to the lawfulness of those policies. There was some suggestion in the media that the – that the board at that time may have been acting unlawfully in regard to one of its policies, and that review was commissioned and undertaken.

And that was undertaken by Ms Murray, was it?---In consultation, I think, with Clayton Utz.

20 Thank you.

MR PINCUS: Would you agree that the purchasing policy was a policy about the management of the code of racing that QRL was undertaking – or subsequently  
25 RQL, the three codes?---The purchasing policy was, in my view, more – it set parameters for our conduct in respect of procurement, our conduct being the conduct of the employees and even directors, if they were engaged in procurement. There's one section of the purchasing policy – it's an opening part there that – I believe it does relate to the procurement of capital works or capital development by race clubs.

30 We'll look at that in a minute?---Okay.

Yep. So what about whether you thought that the purchasing policy “ensured”, in the words of 78(3), that there was “guidance for persons involved in the code of  
35 racing and transparent decision-making”?---For those internally that were engaged in procurement, yes.

Transparent decision-making internally, but not for anyone external?---Yes.

40 And not for the government, for example?---I've mentioned earlier I don't believe we ever - - -

Yeah?---Unless at – for example, once we got towards the infrastructure plan at a later stage. But I don't believe up until then that we had provided our internal  
45 policies to the government.

So if you look at section 80(1), a control body may make a policy for its code of racing because the control body believe it's good management to have the policy. You would say what, that a purchasing policy is not a policy for the code of racing?---Yes.

5

Would you say that the purchasing policy was made because QRL thought it was good management to have the policy?---Yes.

Thank you. You can put the Act down, please. Could you turn to – I hope you've got folder 1. Could you have folder 1, please. Thank you?---Thank you.

10

And your first statement should be under tab 1 – both your statements. If you turn to paragraph 12 of that first statement, please?---Yes.

15 You say in the main compliance with policies and processes was high?---Yes.

Do you intend by that to include the purchasing policy?---Yes.

20 And without going through the detail of it – you can read the – part of it if you like – did you – do you intend, where you go on to talk about the role of Contour and how it came to be involved, to be saying in essence why it was that Contour was not engaged in accordance with QRL and later RQLs purchasing policy?---The – that's in section 13?

25 Really the next – the rest of this part - - -?---Yes, okay. The – I understand what I describe there as dealing with a body of work that was taken – undertaken by Contour, in particular during the development phase of the industry infrastructure plan through 2010 and beyond.

30 Okay?---And there would be a range of projects that were undertaken by Contour, and I understand because I have seen some of the live streaming of the chairman and I know that he has expressed at least his views in respect of Contour, but if I could just contextualise that just for one moment so we understand what we're talking about, the – Contour itself undertook a lot of project management work and of the projects that it managed, leaving aside the procurement of a track at Toowoomba that was determined by the board of Queensland Racing, that of the works that it managed there was something like about \$48 million worth of work that it managed, and in the order of 93 per cent of all of those works went to tender, and that's including Contour's fees. So I hope that puts it into context that it's not 0 per cent of 35 158 million; it's actually about 93 per cent about \$48 million worth of work, including Contour's fees, that actually went out to tender.

40

The tender being done by Contour in each case?---Yes.

45 And so that covers that same per cent – what was the percentage of that again?---Look, it's in excess of 90 per cent, but it's around about 93 per cent of the projects that they managed - - -

5 Yeah?--- - - - actually went out to tender, and I'm just trying to put that into context for everyone so that, because – we did come from a position, at least in the media, where there was \$158 million of work went to this company and nothing went to tender, and that couldn't be further from the truth. The fact is that of that \$48 million – it might be forty-seven million, six hundred – but approximately \$48 million worth of work, competitively, there was about 93 per cent of that that did go to tender. I just hope that contextualises it for a lot of people.

10 Yeah. Well, I understood that, and the point that you were making also is that for all that work that went to tender you said the tender was run by Contour, and Contour has said that it didn't even know there was a purchasing policy, so you accept, don't you, that all of that work may have gone to tender, but it didn't go to tender in accordance with the purchasing policy?---I don't know whether Contour received a copy of the purchasing policy, but I can't accept that those if you like delegated  
15 officers, or those people within RQL, including the chairman, that were dealing with Contour did not provide some level of instruction to Contour. I mean, to think - - -

20 That's a different question from whether they were given the purchasing policy and asked to comply with it?---I'm not aware that they were given the actual policy.

Well, they say they weren't; no-one else has told us they were. You're not telling us they were?---I didn't give them a policy.

25 So do you accept that they – if they didn't have the policy – can't have been complying with it when conducting all these tenders?---Unless they were otherwise advertised – advised, not advertised – unless they were otherwise advised.

30 Yes. So unless someone told us they were advised we can assume that they weren't as they themselves tell us?---Well, I'm not sure. There – see, we've had people such as Reid Sanders, Mark Snowdon, Paul Brennan, there were a range of involved in – and indeed the chairman himself – involved in the procurement of Contour's services, and any one of those may or may not have expressed what they desire, but I merely put on the table that to contextualise this that - - -

35 Yep, we understand. I don't need you to say that again?---Okay, thank you.

You say in paragraph 15 that Contour was first engaged by Arben, and if you look at the last sentence – at the last two sentences of that - - -?---Yes.

40 “Contour was working on this project, and was then engaged in an expanded role. This relationship continued over the years.”?---Yes.

45 And Contour itself was never the subject of a competitive tender after the initial engagement. Do you agree with that?---It wasn't the subject of a competitive tender. I agree with that.

So from its initial engagement by Arben for the purpose of the Corbould track – synthetic track – Corbould Park synthetic track - - -?---Yes.

5 - - - it was never subject to any competitive process itself again?---No, but it was measured. it wasn't subject to a competitive process, but its pricing was certainly measured subsequent to that first engagement.

COMMISSIONER WHITE: What does that mean, if I might ask, Mr Tuttle?---Yes. Thanks, Commissioner.

10

I don't want a great long essay of course - - -?---I'll be brief.

15 - - - but I – we're not – if it didn't go to any kind of competitive tender how could you measure it?---There was a quality surveyor engaged for a project that was a stabling project about 12 or 13 million dollars' worth of work, including - - -

20 That's at Corbould Park?---Corbould Park, including Contour's fees. So all of the fees, including Contour's, were subject to assessment by a certified quality surveyor, and then at a subsequent time in 2010 we actually employed an expert from within the field – within the construction field that had what I would consider to be expert knowledge of those areas, including the rates that were being charged at the time.

MR PINCUS: Was that Mr Snowdon?---Yes.

25 So at least in respect of Contour that's an exception to what you say in paragraph 12 about compliance with the purchasing policy being high, isn't it? That is, there's no compliance for Contour for the entire period we're looking at?---No. Again, the policy provides that there can be a waiver in certain conditions if exercised by the board, and the board exercised that in a number of instances, and my recollection is  
30 that it chose to implement that in the early stages of 2007 when the Sunshine Coast Racing at or about April adopted its own purchasing policy, and the key to that policy is that at least that body required a degree of flexibility as to whether or not it chose to go to tender, and the amendments that then were effected by the Queensland Racing Limited policy seemed to follow that within a very short time. So if we look  
35 at those – the minutes of those minutes, it is apparent that the board of Queensland Racing Limited also wanted a high degree of flexibility in terms of the engagement of its contractors.

40 Okay, and you say that every time the board ever considers any procurement matter if they agree to whatever is proposed then that constitutes a waiver of the strict requirements of the policy?---Yes, and in some instances the chairman himself would direct the procurement.

45 Yes, and if there's – do you remember there ever being a discussion about this being not what's required by the policy but rather a waiver of what's required by the policy at board level? There's none recorded in the minutes that we can identify?---No, I doubt there'd be a – that there would be a descriptive minutes saying that we waived

5 the policy, do that, but my understanding is that those involved in the procurement of, for example, Contour, that, you know, if directed to do something or if required to do something by the chair or if they've taken something to the board that was an exception to the policy, if there was a resolution to that effect that they would move forward in accordance with that resolution.

10 Sure. I understand that, but when something is – a default position is you'll comply with the policy and the decision is made not to comply with the policy one would normally expect for that sort of decision to see a reference to the policy, and the decision being to waive compliance with the policy. And that's different, and I'm asking you to accept or disagree, from simply saying do X without any reference to the policy?--- Yes, the minutes might have a specific component that said we waive this part of the policy. They won't have that.

15 Could you turn to your supplementary statement, please, which is the next document under the same tab of that volume. In 15A, you say in relation to the Deloitte report that it was extremely odd that you weren't contacted to provide clarity because of the finding of non-compliance which you refute. And you go on to refer to the issue which you mentioned at some length to the Commissioner this morning about  
20 delegation limits?--- Yes.

25 Deloitte, of course, also says there was noncompliance with purchasing policies. And are you purporting to refute that as well?--- The finding of the Deloitte report insofar as it related to myself – without having it in front of me, I believe it alleged three breaches.

Okay?--- And I refute each and every one of those breaches.

30 Well just forgetting about you personally, what about if the finding is there's been noncompliance with purchasing policies. And that might not be a finding expressly directed at you but you're the CEO of this organisation?--- Yes, I accept that.

35 And so what I'm just asking you is whether, as a CEO, you refute a finding of noncompliance with the purchasing policy?--- In respect of myself, I do. In relation to the - - -

But - - -?--- Well - - -

40 Well - - -

COMMISSIONER WHITE: What about Racing Queensland Limited general? I think that was the tenor of the question.

45 MR PINCUS: That is the tenor of the question?--- There will be I guess thirty or forty, maybe even more, engagements of Contour. And in the absence of – and I understand Mr Brennan has provided a supplementary. But in the absence of looking at each and every one of those procurements and trying to identify what level of

5 board or chairman involvement there was in terms of the procurement, I can't comment. But we accepted that if, for example, the chair required the engagement of a Contour, for example, to move something forward. My understanding is that the officer, whether it was Mark Snowden or Reid Sanders or Paul Brennan – that they would move forward with that engagement.

10 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.

Okay. And that must've been – either there was a waiver, the kind you described, or there was a slip and there was no waiver?--- We - - -

15 But in every case the wording of the policy, leaving aside the prospect of waiver, was not complied with. That is, if there was a requirement for a competitive tender, then that never happened for Contour. We've established that?--- Contour didn't go to competitive tender after the first occasion.

20 So the only way in which there could've been compliance with the policy for Contour was by the waiver process - - -?--- Yes.

- - - you've mentioned. And if there was no waiver of any kind, then there was no compliance for those instances?--- Yes.

25 At paragraph 27 of the same statement, please, you refer to Mr Snowden's statement in which he says that he argued that Contour was not to receive any preferential treatment and the engagement of consultants was to be as per the PP, purchasing policy. In these discussions, both Malcolm Tuttle and Mark Brennan expressed an obligation by QRL to give the work to Contour as Contour had carried out previous  
30 work for RQL. And you say in paragraph 28, "I do not recall Mr Snowden ever raising issues with me regarding the use of Contour for projects outside of the industry infrastructure project." Does that mean that you do recall him raising issues with you about the use of Contour inside the IIP?--- No.

35 So you don't recall him ever raising issues with you about the use of Contour ever in any context?--- Correct.

Inside or outside the IIP?--- Correct.

40 Okay, thank you. You can put that folder down, please. Yes. And take up volume 3. Before you look at that, Mr Brennan has said in his statement that Contour was responsible for tender processes and would review any invoicing from contractors and forward them to QRL for approval. Do you agree with that? I think we've covered it, I want to make sure, that where others such as civil construction  
45 contractors or electricians or anyone else was engaged, the tender process was run by Contour, not QRL or RQL?--- If Contour had the role of a project manager, that would be part of the role of a project manager.

And did Contour essentially have the role of project manager in all of the infrastructure projects which include the synthetic tracks after Arben?--- I'm not 100 per cent sure.

5 Do you know of anyone else who was the project manager other than Contour?--- We may have had at various times internal people managing projects.

Mr Snowdon during IIP?--- Look, Reid Sanders had a role at Corbould Park. Reid Sanders I think also had a role at Toowoomba, for example.

10

COMMISSIONER WHITE: That's with the synthetic tracks, Mr Tuttle?--- Yes.

Yes. Just that rather than building the stables, for example?--- Yes, that's correct.

15 Yeah.

MR PINCUS: Yes. So either someone internal, and employee of QRL or RQL, or Contour as far as you know?--- Yes.

20 And can we look at tab 70, please. The purchasing policy to which you've already referred?--- Yes.

We'll just look at it very briefly because we'll go into more detail to a subsequent version. And you can see that this seems to be the first QRL purchasing policy if you look at the front page?--- Yes. Yep.

25

Yeah. And then if you go over to the final page of the policy proper, it's at page 9 of 11 of that bundle. There's a reference to, "Enquiries regarding these purchasing principles should be directed to the chief operations manager."?--- Sorry, this is in the 2006 policy?

30

No, tab 70?--- Yes.

Page 9?--- Page 9, got you.

35

The last paragraph on the page?--- Yes.

It's saying enquiries regarding the principles should be directed to you?--- Yes.

40 And then turn to tab 70, please?--- I was just on 70.

Sorry, 71. Thank you. This is the purchasing policy I think you've referred to as being adopted by the QRL board with some changes?--- Yes.

45 And will you agree on the front page where it says 1.03 March 2006 that should read March 2007?--- Yes.

And it says that it's approved at the 13 April 2007 board meeting?--- Yes.

5 Turn over the page, please. Under introduction, "This policy has been prepared to provide guidelines and procedures to be followed by officers etcetera when undertaking and managing purchasing activities." Now, you agree that as we – you agreed already it was for management?--- Yes.

And this is really a policy which is being set by the board's approval - - -?--- Yes.

10 - - - for the guidance of management?--- Yes.

And the fundamental idea is that the board will tell management how to do it but the board won't be involved on a day to day basis with purchasing activity you would expect a board normally not to do?--- Yes.

15 Okay. And then you'll see there are key principles set out, of which there are value for money, open and fair competition, accountability of outcomes?--- Yes.

20 And over the page, capital works projects. And you mentioned this already and I think you were going to say something about that. The – my reading of that is that it can't relate to activities being undertaken by QRL - - -?--- [indistinct] the clubs.

- - - but refers to the clubs?--- Yes.

25 So it's irrelevant when it comes to Contour, for example?--- Yes.

Yeah. And consulting services is the next heading. That is relevant when it comes to Contour?--- Yes.

30 And where do contractors that Contour itself engaged come in? Would they be treated as really under the rubric of consulting services?--- They would either be, I would've thought, under the short or the long term.

35 Yeah. But they're not sort of necessarily consultants, are they. And the intent of the policy as you understand it is that they would be covered under this part of it. They're not – because they're definitely not covered under capital works projects?--- Yes.

40 And they're not covered if you go over to page 5 of 15 under other capital purchases?--- Yes, that's correct.

So if you look then at consulting services, the short term one off contracts at the bottom of page 3. Six key purchasing principles need to be applied?--- Yes.

45 Under \$10,000 for further supply arrangements for the use?--- Yes.

Next dot point over on the next page. Between 10 and 100,000 dollars, tenders should be called from at least three preferred contractors?--- Yes.

5 And the selection of these three preferred contractors and subsequent evaluation should be taken – should take into account the six key purchasing principles?---Yes.

10 That means, doesn't it, that however the preferred suppliers arise, they need to be selected somehow by some process? The selection of these preferred suppliers – three preferred suppliers?---Yes.

And that then there need to be tenders called from those three, and then there's a competitive process of some kind between the three?---Yes. And the view that we would've taken is unless that was waived by the board.

15 Yes?---Yep.

I didn't ask you about that. Then the next dot point is for contracts over \$100,000, a public tender process is required - - -?---Yes.

20 - - - subject to board approval, which you've mentioned?---Yes.

And that is the change, I take it you accept, from the previous version of the policy - - -?---Yes.

25 - - - and including appropriate advertising of the consultancy. So there's a public tender process where you put out an ad saying, "We're going to go do \$300,000 worth of earthworks and anyone who wants to do it should apply"?---And – and that's – that's what Contour essentially undertook for Queensland Racing or Racing Queensland.

30 Can you identify an instance where a contract was advertised, publicly advertised?---By either Queensland Racing or Contour?

35 By anyone. Yeah?---I can't. No.

Forgetting about a specific instance, are you aware of any instance, even if you can't identify the project, where that happened?---Whether it was advertised, no. But certainly where – where tenders were called, from a Contour point of view they were called in most cases.

40 Yes. And tenders being called sounds a bit more like the process that's referred to in the dot point above, doesn't it? If they're preferred contractors, they've been selected somehow and then those people who've been selected are asked to tender?---Yes.

45 So that, you can see, only applies to the 10 to \$100,000 bracket on the strict wording of the policy?---Yes.

And so over \$100,000 – that wouldn't cut it, would it? It's – unless the board waives it, it's got to be a public advertising thing?---Yes. And that would come down to the instruction provided to – provided to Contour at the time on the – relevant to the project, I would have thought.

5

Yes. But if it's right, as I've put to you, that Contour never knew about the policy then Contour wouldn't have known that it was supposed to undertake a public advertising - - -?---And I've accepted that I certainly haven't given them - - -

10 Yeah?--- - - - given them the policy. I know what you've said about the - - -

You don't know whether anyone else has?---But I'm not sure what other instructions may have been provided to Contour by other officers or – or, indeed, directors.

15 Then can we just look at longer term consultancy arrangements, please?---Yes.

First bullet point: “Selected consultants [indistinct] range of tasks from the panel of preferred suppliers.” The next dot point: “Prior to such election, a competitive process has to be undertaken to appoint the panel”?---Yes.

20

Again, you don't just become a preferred supplier. You've got to fight to get on to it. You've got to go through a process?---Yes.

Competitive process?---Yes.

25

And in the final dot point there: “Individual consultancy contracts over \$100,000 in value are not to be entered into these preferred supplier arrangements.” You have to conduct an open tender process - - -?---Yep.

30 - - - subject to board approval?---Yes.

And it says, “As described above” – am I right to read that, even though it uses the different word – uses the words “open tender process”, that must be a reference back up to the third dot point under the previous section of public tender process?---This is for the fourth dot point after the longer term consultancies?

35

Yeah. I'm asking whether the concept of open tender process in that dot point is the same as public tender process?---Subject to board approval. Yes.

40 Yes. So advertising, that is, is necessary? It must be necessary, though it's not referred to in that fourth dot point?---It talks about an open as opposed to a closed tender.

Yeah. And that means advertising?---Yes. Putting it out to open tender.

45

Then turn over, please, to page 7 of 15. Preferred suppliers – there's a general blurb about the advantages of using preferred suppliers - - -?---Yes.

- - - and then it says “Indicative supplier list”?---Yes.

5 There’s one available from finance. It should be considered as a first cut, and then under that: “A selection of preferred suppliers should be based on selection criteria that could include”, and there’s a list of dot points, the last of which is the six key principles, which include open and fair competition etcetera?---Yes.

10 The intention seems to be that if there’s going to be any preferred suppliers, there’ll be some selection process involving some competition?---Yes.

And do you know, having followed the previous parts of this commission as you have said you had, that our understanding is there was never a preferred supplier list?---Yes.

15 And do you know otherwise?---Only that - - -

Do you dispute that?---Only that finance have relied on those suppliers that – what they would say would be in the system – that we’d used previously, but they hadn’t been - - -

20 Yeah. Anyone you’ve used previously?---Yes. That’s all. Yes.

No list other than that?---No. No.

25 No list that involved a selection of people [indistinct]?---No. Correct.

Thank you. Then turn, please, to page 13 of that same document: “Summary of Key Controls”?---Yes.

30 The second dot point: “Three quotes required for amounts above \$10,000.” That’s an oversimplification, I - - -?---Yes.

35 - - - take it you’ll agree. At the end it says – under the bullet point list: “In addition to the above, Queensland Racing should perform an annual supplier analysis to review expenditure to determine that value for money is being achieved.” Do you know if that ever happened?---I’m not aware. No.

Do you think you would be aware if it had happened?---Yes.

40 Turn to the – a couple of pages further over you’ll see the minutes where this policy is adopted. And on page 4, please, there’s discussion of the purchasing policy. Are you with me?---Yes. I’ve got you.

45 You’re there, and towards the bottom of that page, the last bullet point: “Purchases over \$100,000 which previously required an open tender process will in future be subject to board discretion”?---Yes.

That's just noting the point that we've already touched on?---Yes.

There has to be a waiver. And over the page, the motion again includes that concept at point 4?---Yes.

5

And it's approved?---Yes.

Do you remember any discussion or debate at that meeting about what was meant by that and what the process would be going forward?---No.

10

I know this is a long time ago?---No. I don't.

Thank you. Turn to 72, please?---Yes.

15

This is an email from Mr Hedges, who's director of integrity operations at that stage - - -?---Yes.

- - - to you on the 11<sup>th</sup> of July 2007: "Project Control Group – Terms of Reference"?---Yes.

20

And if you just briefly note that the document, which I'll show you again in a minute, is for the synthetic track project?---Yes.

25

It's being sent to you for approval by Mr Hedges, if you look at the email?---He's asking me if I'm comfortable with the document. I'm not sure if he's asking me to approve it.

30

Well, if you'd said you weren't comfortable would it have gone ahead?---I – I can't recall the process of getting this document approved. I'm not sure whether it went to a board or went to a higher authority. All I simply saying is that he's – he's asked me if I'm comfortable and I assume – assume that I've given him some feedback.

35

He's running the document past you to see whether you were happy with it?---Yeah. I can see what he's saying; he's asking me if I'm comfortable with the document.

Okay. Turn to tab 73, please. Do you recognise this document?---I'm – I'm – I'd be aware of the document. There was a – a business case prepared for the government to secure some funding for several synthetic tracks.

40

Yes. And given your awareness of what's gone on previously, do you know that Mr Bentley agreed there was a commitment by QRL to use Equestrian Surfaces International - - -?---Yes. I saw - - -

45

- - - to supply the surface Cushion Track - - -?---I saw that. Yes.

- - - from the start, even though it looked like they were keeping the options open?---I – I saw that part of the commission.

Okay. And do you know any differently to that?---No.

If you look at tab – sorry – page 18 of this document, please?---Yes.

5 You can see at the bottom of that page there’s program contractors, reference to Cushion Track being selected in the first paragraph - - -?---Yes.

10 - - - four lines down and in the last paragraph, the last sentence: “The Queensland Racing board are yet to determine if ESI will be engaged to establish the synthetic surface at the second and third sites”?---Yes.

15 And over the page under “Program Governance Arrangements”, there’s a reference to you and Mr Bentley being members of the project control group. And we just saw a minute ago that there are some terms of reference for the project control group, which we’ll look at in a minute?---Yes.

Do you remember that you were part of this project control group?---No. I don’t.

20 Did you have much to do with the synthetic track process?---No.

Anything to do with it?---I was aware that we had a – a group of representatives that – that travelled to observe synthetic tracks internationally.

25 Sorry. I don’t mean what did you know about it; I’m asking what did you have to do with it personally? What – did you – were you involved in any decisions about it? Did you yourself get involved in making those selections?---No.

30 Discussions with suppliers?---I may have been involved with one or two discussions with suppliers, but I certainly wasn’t involved in selecting the – the track or the material.

35 Did you know that by the time of this business case that ESI had been – Queensland Racing had effectively committed to ESI for all three tracks?---I – I may well have, because there was – there was some discussion about the procurement of a considerable amount of material at the time to stockpile the material. I was aware of that – that that was occurring, but my recollection is that – without going back over this ground – but Andrew Hedges had developed the business case. It looks to be in – in consultation with PWC. That had advanced to the government and that was approved, and then there was a process running in tandem where there was a  
40 selection of the – the track or the tracks. I’ve heard the chairman speak the other day about the logic behind having the same surface at two venues. That seems to make sense, but - - -

45 Yeah. But you weren’t involved in that?--- It was not - - -

I’m just asking whether you – did you know about the business case?---I – I knew there was a business case going to - - -

Did you review it?---I probably would have.

5 And do you accept that it's misleading on page 18 where it says "yet to determine"?---If – if the determination was already made it would – it will be misleading.

But you just didn't know that it had already been made?---No.

10 Okay. Thank you. Then as to the project control group again, just go over to page 19 and briefly note the second dot point in addition to the first one, which is oversight of the project. It seems you didn't really perform that role, even though you were on the group – oversight?---No. The - - -

15 And as to the second one - - -?---No. The – the main component of the – of the oversight of the project would have been with Reid Sanders, I think, back at those – back at that time. But I – I can't – I can't even recall the – the control group meeting.

20 Yeah. Well, there may not ever have been one?---There may not have.

Okay. And so when it says, again, to exercise approval – accountable approval processes and appointment of contractors and synthetic product suppliers, you were never involved in that?---No.

25 Turn next to the appendix, please, which is at tab 47 of the document, appendix 2, the project control group terms of reference, and this is the one - - -?---Sorry. Is that tab 47 of - - -

30 No. Sorry. The same tab?---Yes. Page 47?

Page 47. I think I misspoke. I'm sorry about that?---Yes.

35 The reason we didn't look at the last one is the differences from the original version don't matter, but you accept this is the same document, in essence, that was sent to you by Mr Hedges? The same subject matter?---I'm unaware.

Okay. It doesn't matter. Go to the second page, please. Again, you'll see duties and responsibilities, exercise accountable approval processes?---Yes.

40 And I'm labouring the point, I know, but you were never involved in doing so?---Not to my recollection.

And if you go to the heading 5.0 Committee Membership on page 49?---Yes.

45 It's going to contain three members. The standing members will be you and Mr Tuttle?---Myself and Bentley, you mean?

5 Sorry. Mr Bentley. I'm afraid – I'm sorry about that. And then you'll select a third member, and you can see in this case it's contemplated it will be Mr Moffat from the Sunshine Coast. It looks like the idea is that someone from the local – from the place where the track is going to be put in will be a member of the group?---Yes. I can recall seeing a minute, again, in the documents before the commission where seemingly there's a responsibility apportioned to Arben and Reid Sanders to either make the determination or assist with the determination. It may have some relevance.

10 Determination of?---The selection of the track.

Okay. But forgetting about the selection of the track, I'm just asking about the membership of this - - -?---Yes.

15 - - - committee we're looking at – the terms of reference for it?---I can't – I can't recall the group ever meeting.

Right. Never met with Mr Moffat and Mr Bentley to talk about synthetic tracks?---Not that I can recall.

20

COMMISSIONER WHITE: Even more to the point, you can't remember meeting with Mr Bentley to decide who the third member of the committee would be?---I don't, Commissioner. And in respect of Mr Moffat, I would have seen Mr Moffat on the odd occasion when he came to the offices for a meeting of the Sunshine Coast Racing Unit Trust.

25

Right.

30 MR PINCUS: Do you think it's fair to conclude that this stuff never happened because it would have had to happen in relation to Sunshine Coast and then Toowoomba? And they were big projects, and you remember nothing about being part of any of those decisions. It's unlikely you were ever on this group?---I genuinely can't recall even meeting as part of the group.

35 Okay. And you can't recall that there was a group in which you weren't involved, doing the same functions?---There may have been another group, but I can't recall being part of a selection panel or a group to have oversight of these tracks.

40 Okay. And you don't know of anyone else who was doing that apart from those managing the projects?---I don't recall whether there was another group in place.

45 You don't know. Okay. Thank you. 74, please. The next tab. The – if you just – you don't need to read all of the detail, but you can see at the top that Mr Thomson of Contour, in December of 2007, is emailing – I know you're not part of this email, but it's to do with the Rockhampton Racecourse survey, and Mr Thomson, you can see, is asking someone called McKeegs to give a scope of services and fees to do some survey work?---Yes.

And over to the next email, which is two pages further on from that, Brett, who I take it you'll agree must be Mr Thomson again - - -?---Yes.

5 - - - is emailing people called Chris and Tony, who are obviously at his email account as first names only?---Yes.

And if you just look at the start of it, it looks a bit chatty, doesn't it?---Yes.

10 Chattier than the one to McKeegs. The introductory few lines?---Yes.

And he says, "It may lead to heaps of future track work." That's in the second paragraph?---Yes.

15 And then if you turn over another couple of pages, please. Can you look at Mr Brennan emailing Mr Thomson on the 11<sup>th</sup> of January 2008 at 11.05 am. Again, I know you're not on these emails. I'm just asking you if you have anything to explain to us. Mr Brennan is saying to Mr Thomson, "we both agree," that is, he and Mr Sanders, "should ask both companies," which must be Definium and McKeegs we've looked at in the previous two emails - - -?---Yes.

20 - - - "to quote on the second phase and endeavour to assist in determining the winning contractor". And if you read the next paragraph, I take it you agree that it seems there's a desire to select not McKeegs but rather the other option?---You're looking at the - - -

25 "We acknowledge" is how the paragraph starts. Have you got that?---Yes, I have, yep. A little time to read it. It's suggesting that the club – the club has a preference to engage McKeegs because they're contributing to the costs.

30 Yes?---Yes.

And we may need some leverage, which may come through the costing. So what it says in the paragraph above that is "Let's get both companies to quote on the second phase as well as the first phase, and we might be able to differentiate between them on costs." But the tone of it is, as I read it – and I want you to tell me if you think I'm reading it wrong – that there's a desire not to select McKeegs, who Rockhampton wants, but rather the other. Is that a possible reading of it?---I don't understand the circumstances of the time.

40 Okay. Don't worry. Then turn over, please, five pages from there. Just note Mr Thomson of Contour is asking McKeegs for the quote for phase 2. Have you got that? It says "Brett" at the top. 11 January 2008 at 12.54 pm? It was about two pages further on from where we were, I think. Perhaps four pages?---Is that 07 of 37 at the top right-hand - - -

45 They all say that, annoyingly.

COMMISSIONER WHITE: Yes. It means we're looking at the same one?---Starts off Ian, QR need - - -

5 MR PINCUS: It does say that, yes?---Yep. Got it.

I'm just noting it seems like there's a request to McKeegs for a quote for phase 2, which we've looked at?---Yes.

10 And then the same again. If you look over another three pages, a request – sorry. There are quotes coming back from Sunshine Coast-based surveyors, from Contour to Mr Brennan?---Yes.

15 And if you look a bit further down, you'll see Mr Thomson is saying, "I've worked with these guys and trust their outputs will be timely and accurate. My experience is they will do the best job." Contour is telling Mr Brennan, "Choose these guys for this job," which looks like it's going to cost 20-something thousand dollars?---Yes.

20 And turn over one, two, three pages, please. You should see a letter with the letterhead Definium?---Yes.

They were one of the two contractors, the one that had the matey exchange, and I can tell you they're selected. I take it you don't know otherwise?---No.

25 And you can see there's a quote with the numbers we just looked at, under Quotation in the middle of the page, again above \$20,000. So do you agree that this process for the selection of the surveyors is not compliant with the purchasing policy we looked at under tab 71 in that it's between 10 and 100 thousand dollars, and that means tenders have to be preferred from at least three preferred contractors?---And they've only gone to two?

30 And it's only gone to two. And as far as we know, there's no process to select them as preferred contractors?---In the absence of having any other direction from the chairman, I accept what you're saying.

35 Okay. So – but the direction from a chairman only applies to the contracts over \$100,000 anyway?---But – well - - -

40 You think that he could have waived anything, really?---Potentially. The chairman had an active role in a lot of – in a lot of infrastructure and was involved in a lot of infrastructure. Whether the chair has had any particular role on this aspect of this part of the procurement, I can't say.

45 Okay. Turn to 75, please. You can see this is Contour providing a fee proposal in relation to the Rockhampton Racecourse upgrade preliminary design services?---Yes.

If you turn over the – this is on the 11<sup>th</sup> of January 2008. Turn over the page. There's an anticipated budget – it's a guide only – of \$23,000?---Yes.

And if you turn over to the last page of this bundle, you'll see Mr Brennan accepts it some five days later on the 16<sup>th</sup> of January?---Yes.

5 Again, for the same reason as we looked at a minute ago, this is a procurement which is not compliant with the policy?---All I can say, counsel, is that in the absence of being provided with an opportunity, I guess, for the relevant people to have a look at this to see what – what notes or detail they may have, on the face of it I accept what you're saying.

10 Okay. Well, can I tell you I've chosen a few examples. We're doing our best to understand the mass of material too, and you'll have heard from your solicitors there's a mass of material?---Yes.

15 We can't identify any instance where it looks clear that there has been compliance with the policy, and what I'm doing is putting some of these examples to you?---Yes.

20 So you can tell me if you think it's compliant and I've missed something. And I think what I've got from you so far is I might have missed that the chairman could waive compliance across the board if he'd wanted to?---Yes.

And then the board could strictly waive, even if it didn't pay any attention to the policy – if it said - - -?---Yes.

25 - - - "Do this," it was a waiver?---Yes.

But other than that, you can tell me whatever else you would like to tell me in relation to compliance in these instances or in any other instance you can think of, and your solicitors have access to the same material we've got on all of this?---Yes.

30 If you can do so, please do so; a supplementary statement in the next couple of weeks. That would be very helpful?---Yes.

So I'm putting these to you so you have an opportunity to comment - - -

35 COMMISSIONER WHITE: It's not a couple of weeks, Mr Pincus. A bit smarter than that, thank you.

MR PINCUS: I'm sorry. A bit – by the 11<sup>th</sup> of October is the date that we really need that material by, please?---Yes.

40 When you've said that the chairman might have been involved in waiving the obligation to comply with the policy even where it's not a hundred thousand plus decision - - -?---Yes.

45 - - - It's the case I take it from that that the chairman would do so without there being some formal process of seeking a resolution from the board. If he said go ahead with

this then that would be what would happen?---We would have taken the chairman would be speaking on behalf of the board.

Yes?---Yes.

5

But without there – without knowing there had been a process of putting a proposition to the board, or without see the minutes or anything like that where it had gone to the board?---Again, I can't speak for all of the officers involved. That would more than likely be the case that the officer would take a direction or a request from the chairman to proceed with something, considering that that had been a waive in 10 circumstances that would otherwise require a tender.

And if it was you that's how you would have taken it?---I think I engaged Contour once during the relevant period.

15

But if it was you, that's - - -?---I would. That's how I – yes.

Yes. Even if you had been at the board meetings and hadn't heard any resolution?---Yes.

20

Sorry. If you can turn, please, to 77: minutes of QRL, 9 May 2008?---Yes.

Can you turn to page 6, please, under Toowoomba Synthetic Track? It's toward the bottom of the page. Can you just note the third-last paragraph, the reference to the costs having risen considerably to \$10 million?---Yes.

25

Were you involved in [indistinct] generally not involved with synthetic tracks, but I should check in this context – in any of the detailed exchanges of information with suppliers as to the increasing costs?---No.

30

Then over on page 11, please, the lighting in Sunshine Coast Turf Club, and you see Mr Brennan has advised the board – and I should have noted that you were in attendance of this meeting – that there was an urgent need to install lighting at the Sunshine Coast and Contour had been asked for a quote, and the board approves a management contract for Contour at a rate of 2 per cent of the project cost, estimated to be up to 3.6 million?---I can see that.

35

Yes, and this is an example you would say, would you, of a waiver by the board of an obligation to go to public tender for jobs that are \$100,000?---It's one example of that, yes.

40

Yes, and you don't see any reference there to the policy or to the word waiver or the concept of waiver?---No.

45

Okay. Now, if you go to 78, please, you'll see this is an email from Mr Sanders to other – varying people, including you - - -?---Yes.

- - - and he's proposing an order to Equestrian Surfaces. Again, this is an issue you've said you didn't have much involvement in, but I'm just curious as to – he's really saying to you okay for me to order this substance from Cushion Track, and - - -?---Yes.

5

- - - your reply is, "As discussed, let me know how you got on." Do you know – did that trigger any memory about an involvement you did have in relation to Cushion Track?---Only that there was discussion that I may have mentioned earlier about the procurement of the material at a time when I understood it would appear financially favourable to do so, but nothing beyond that.

10

I see, okay.

COMMISSIONER WHITE: Is that what you recall now that you thought then, or are you just reconstructing it because you have this – in other words, at the time, did you know that it was financially advantageous to take the - - -?---Commissioner, that was the nature of procuring what I would call a stockpile of this material.

15

You understood at the time?---In a – yes. It was because of the, if you like, the components that were – yes.

20

And I understand all of those issues. Thank you, Mr Tuttle.

MR PINCUS: Thanks, Commissioner. Mr Tuttle, just turn to the next page, please. There's an email from you to Equestrian Surfaces. You discussed it with Mr Bentley, and while you continue to wish to work closely with Equestrian Surfaces the timing may not be right for QRL at the moment. There's a proposal, it seems, below, in relation to a new company or a partnership or something. It doesn't matter for present purposes, but if you look at "My initial comments to Paul based on two principles", please?---Sorry, where are you, Counsellor.

25

30

COMMISSIONER WHITE: The top half of the page.

MR PINCUS: It says Phillip, and then there's a paragraph - - -?---Yes, I've got that. Yes.

35

- - - and then it says my initial comments?---Yep.

And there are points numbered one and two: have you got that?---Yes, I have. Yeah.

40

So that's just confirming that at this stage, at least by this stage, you understood there was a commitment to the installation of two tracks by Cushion Track?---Yes.

And you may think of it – another one after that, but it's at least two?---It certainly looks like two more in addition to Corbould Park.

45

Yes, and two more with Cushion Track?---On the basis of – I’m saying there that the surfaces are accepted and continue to perform well.

Yes?---Yes.

5

And if you just skip the next couple of pages, please, and turn to tab 79, there’s a board paper. Have you got that?---Yes, I have.

10 Corbould Park Lights; it’s signed off by Mr Brennan you’ll see on the next page, and the point on the first page is under Background?---Yes.

Mr Brennan is saying he conducted meetings with two lighting companies, and he’s had their finalised quotations for Corbould Park lighting?---Yes.

15 Over the next page, if Fallon, one of the contractors, is used, then it will cost 4.3 million?---Yes.

20 And turn over; after that page, please, you’ll see the board meeting to which this paper relates. You’re there. Turn to the second page; it’s only extracts, so you’ll see numbered page 13 - - -?---Yes.

- - - and the heading is 7.2 Corbould Park Lights?---Yes.

25 Mr Brennan seeks approval for the installation of the lights?---Yes.

30 Approval in accordance with the board paper, Neil Fallon at 4.3 million, and at the bottom the board approves the appointment of Fallon for the installation of lights, and you say again regardless of the lack of reference to policy or waiver this is a waiver, essentially, of the requirements of the policy?---Yes.

Next, turn to the page after the end of those minutes, please, and you’ll see another set of minutes for July?---Yes, I’ve got those.

35 And turn to the second page of that, which is actually page 14; again, it’s an extract?---Yes.

40 At the top it says “Increased industry finding: outline of an approach.” I just note this in passing, it says, “Mr Tuttle sought approval from the board to engage someone called IER to undertake an exercise, and the initial cost is \$84,000.” It says about four paragraphs down?---Yes.

And, “The board approves the engagement of IER in a sharing of costs.”?---Yes.

45 And again, you would say what, that’s not compliant but for it being a waiver because it’s mentioned in the board meeting and approved?--- Yes.

Turn to the next page, please, which is actually 16. Corbould Park lights?--- Page 16?

Yes, please?--- Yes.

5

And at 8.3 you can see in the second paragraph Mr Brennan telling the board that the cost of using Neil Fallon have doubled. It's risen to 7 million?--- Yes.

10 And he has – he says that he'll seek some advice about splitting the quote and come back to the board again. If you turn over after the end of that minute, please, you'll see another board paper. 6 August 2008. Have you got that?--- Yes, I have.

15 And it's again the same subject, lighting at Corbould Park. Second paragraph, it's proposed after – sorry. Contour and QRL have been working with two lighting companies?--- Yes.

After reviewing the quotations, it's proposed to utilise Fallon. And you can see for both tracks it's 7.2 million?--- Yes.

20 And turn over two pages, you'll see another board minute, please. 8 August. I take it the meeting just didn't happen on the 6<sup>th</sup> but it happened on the 8<sup>th</sup>?--- Yes, I've got that.

25 It seems that this is the subject – if you look at page 10, which is the second page of the extract of the minutes?--- Yes.

Under the heading 8.1, Corbould Park lights and stables project?--- Yes.

30 And lighting project, Mr Brennan seeks the board's further approval. And the board approves, in effect, the doubling of the – the engagement of the same contractor at double the costs?--- Yes.

35 So again, no problem with noncompliance with the policy requirement for public advertising because it's all gone past the board?--- Yes.

Okay. 30 August 2008 is the next document if you turn after the end of those minutes. Remembering that we just saw the approval on the 8<sup>th</sup> of August?--- Yes.

40 Mr Thompson thinks he's still helping you decide by telling Mr Brennan that there's a tender analysis. And he recommends Neil Fallon, conveniently?--- I'm unable to comment on that.

45 Okay. But you agree, don't you, that it looks from the minutes like it's already been decided to use Neil Fallon. We've been through that; haven't we?--- Yes.

Okay. So you don't know why Contour is recommending it after the event?--- No, I don't.

But they have purported to do a detailed tender analysis and it looks like, unless there's something missing, that the board didn't have this when it agreed?--- I can't comment, I'm sorry.

5 Then can you just turn over another couple of pages after the end of that tender analysis. Do you see a Contour letterhead dated 5 September 2008?--- 5 September, yes.

10 And it's a letter of intent to enter into the lighting contract with Neil Fallon?--- Yes.

And then it's nominated specialist subcontractors GM Poles and Pierlite?--- Yes.

15 Can I ask you whether you know, if this is a specialist track lighting contract, the people with the real expertise is not Neil Fallon; is it? It's the specialist subcontractors. IS that the way you understand it to be working?--- I believe Pierlite, for example, supply the globes.

Right. Special globes for lighting?--- Yes.

20 And then the poles are the Pole design, presumably?--- I don't know.

But Neil Fallon is big electrical contractor?--- Yes, that's correct.

You know that, okay?--- Yes.

25 Tab 80, please. 9 March 2009; have you got that?--- Yes.

Contour's lighting to Shadforths?--- Yes.

30 And can you turn over to the second page, please, and read that first paragraph?--- Yes.

It looks like Contour's doing the tender process. There's a deadline that's closed and the analysis is almost complete?--- Yes.

35 But they want a submission from Shadforths. They need another person to come in?--- Yes.

That they're selecting by writing to them?--- Yes.

40 They haven't – Shadforths hasn't responded to an ad, it seems. They're writing to them and asking them to be involved?--- Looks like they're chasing them up, yes.

45 And turn over the page. Can you see 20 March 2009, Contour letter?--- Yes.

And they're writing to Mr Brennan at Queensland Racing. "We've analysed the tenders of the nine invitations. The following four contractors delivered a price." They go on to say Leeway's been excluded. See there under 2.0, analysis?--- Yes.

5 Shadforths have the best price. And then if you just flick through it, you'll see there's a detailed analysis that follows?--- Yes.

Is this the sort of document you're familiar with getting from Contour on occasion?--- I haven't been particularly involved in the assessments of the subcontractors.

10 So you mean you've never seen this sort of document before? Or - - -?--- Oh, I may have. But it's not a - it simply wasn't an area of the business that I was intimately involved with.

15 COMMISSIONER WHITE: Was that Mr Brennan's job?--- Amongst other people. But for a period of time, Paul Brennan certainly had carriage of a lot of this work.

20 Who else, then, at - - -?--- Reid - Reid Sanders earlier on.

Well, that - was that only with the synthetic tracks?--- It was not - - -

25 Because he was the chief steward; wasn't he?--- He was. He was, and was the tracks at the - tracks and associated works at both venues. Both the Sunshine Coast and out at Toowoomba.

Yes?--- He was also involved in Rockhampton.

30 Yes?--- And then for a period of time, Paul Brennan was involved. And at the latter part it was Mark Snowdon when Mark Snowdon came on.

All right. And they're the - they're the employees?--- They're the employees and - - -

35 Did it - - -?--- Of course, the chairman. The chairman was involved as well.

Thank you.

40 MR PINCUS: And in relation to this one where they're selecting a contractor for upgrade works at Rockhampton. If we don't have a board minute where this is accepted then do you accept that this is an example of noncompliance with the policy? There's no waiver as you've described it. I'm not telling you to just tell me whether there is a minute or not. But if we can't find one and there isn't one - - -?--- In the - - -

45 - - - does that mean there's been noncompliance?--- In the absence of it being waived by the chairman, the - and it's probably something more for the officers involved in

the procurement. But my understanding is that if they were either directed or requested by the chair to take a course of action - - -

5 Yeah?--- In respect of procurement, they would do that.

Even in relation to this contract for – if you look at the final page of that big bundle, 5.8 plus million dollars. The chairman might have just said in the hallway to Mr Brennan “just engage them.”?--- I would expect that, in relation to the Callaghan Park works that there would be an overarching minute or something to that effect in  
10 relation to the works. And then there’d be a set of activities that need to sit beneath the overarching budget. That’s what I would expect to see.

And just looking at the complexity of this analysis, would you agree that if QRL was going to try to make its own assessment of whether what Contour was telling them  
15 was right and Shadforths, who had come in late, were the best contender. That it would be very difficult for QRL to determine if Contour was right?--- I would expect the officer involved would have to take some advice from Contour.

Yes. And would you agree that it would be very difficult for him to determine if that  
20 was right because the process with so many variables, as you can see in this chart, could have been weighted in a way which favoured one contractor or another. And it would be very difficult to know; wouldn’t it?--- I don’t know. I mean, I think what you’re saying is that – you know, has - - -

25 If you were asked to determine whether - - -?--- For me to go through this, I would need to ask a series of questions of the – of Contour, for example, to explain to me how I’d arrived at their – at their recommendation. Because from my own point of view, I would not have at this time the expertise to run through that without some level of guidance.

30 Okay. Well, if you can turn to the next document after the end of that big long bundle. I’m afraid it’s two back - - -?--- Project budget?

35 - - - from the end of this tab?--- Project budget?

Yeah, after that we’re looking at project budget. And then the document immediately after that is an email with the heading Ingrid Lambert?--- Yes.

40 There’s an email from Mr Brennan to Ingrid Lambert copying Mr Thompson. That’s an email to Contour, I take it you agree?--- Yes.

And he’s saying on Monday the 23<sup>rd</sup> of March confirmation that Queensland Racing has accepted the advice of contour and is happy to appoint Shadforths?--- Yes.

45 And I’ll remind you that the tender analysis and recommendation was dated the 20<sup>th</sup> of March. So this seems to be – Friday the 20<sup>th</sup> of March, this very long, detailed analysis. And on the Monday at lunchtime, Mr Brennan’s accepted it?--- Yes.

And it's pretty unlikely there's been a board meeting unless there's one on that morning where that happens?--- Unless a board meeting coincided with that.

5 Yeah, okay?--- Yep. I accept that.

So we'll check again?--- Yep.

10 I don't know standing here. But if there hasn't been on the 23<sup>rd</sup> of March that morning, then - - -?--- It's unlikely we've gone to a board meeting, yes.

- - - the answer – the only possibility of compliance is the hallway conversation between mister – I mean, you know - - -

15 COMMISSIONER WHITE: You're being a bit flippant there.

MR PINCUS: Oversimplifying it.

COMMISSIONER WHITE: Yes, I think so.

20 MR PINCUS: But a conversation with Mr Bentley?--- Yes.

Which he has approved as chairman - - -?--- Potentially.

25 - - - the engagement?--- Yes.

Yeah, okay. And then you can skip the next page, please, and go to 81. This is a contour letter and you'll see from the end – and it's dated 22 April 2009 – to QRL with a tender analysis for lighting, this time at Clifford Park. The last ones were Corbould Park?---Yes.

30 And the following contractors that are invited: Fallon Town Lighting & Electrical and another. There's an analysis set out and their recommendation is also set out?---Yes.

35 And you can see there were three tenders and they've been narrowed to two. One of them has been excluded from further analysis?---Yes.

40 And this is a contract where if you look over on the second page the prices of the two contenders – you haven't been excluded – is 1.18 and 1.17 million?---Yes.

And, again, if there's no public advertising of this, and it seems there isn't because Contour just says people were invited to tender, then you agree this is non-compliant unless there's been a later process?---Correct. Yes.

45 COMMISSIONER WHITE: I'm just – Mr Pincus, I'm just not quite sure since Mr Tuttle's not involved in any of these processes how useful it is asking him to go through all these documents, having established the proposition early on that there is

a process in his understanding for waiver, and that, although he was a nominated member of the committee, he, in fact, wasn't an active member of it.

5 MR PINCUS: Thank you, Commissioner. There aren't many more examples of this, and I'll skip over them to try and speed the process up.

COMMISSIONER WHITE: Well, it's not about slowing us; it's just about a sense of value for money, value for time of actually engaging in this process with Mr Tuttle.

10 MR PINCUS: Thank you.

COMMISSIONER WHITE: If you think it's a good idea, well, keep doing it.

15 MR PINCUS: Could you turn to tab 84, please, which is skipping a couple of tabs further over?---Yes.

You can see there's a Deloitte report?---Yes.

20 This is a report, I take it you'll agree, to the audit committee, essentially?---Yes.

And if you turn – again, there are only extracts, I think, but if you turn to page numbered 6 in the bottom right-hand corner - - -?---Yes.

25 And this is under the heading from the previous page Key Findings?---Yes.

Can you see under item number 2.2 “Use of panels preferred suppliers important” - - -?---Yes, yes.

30 2.4 “Compliance with purchasing policy minor”, it's said. And turn over then to page number 10 - - -?---Yes.

- - - under the heading “Use of panel preferred suppliers” in the second paragraph, please - - -?---Yes.

35 - - - QRLs purchasing policy makes reference to a preferred suppliers listings spreadsheet?---Yes.

40 But there isn't one. Instead, the spreadsheet listed all suppliers QRL has made purchases from in the current financial year?---Yes.

The spreadsheet also listed all contractual agreements QRL have entered. So the only document that seems to exist is, at least – which I think is what you said earlier – every one that has ever been the subject of a contract with QRL?---Yes. Could I  
45 also make a point on this, and I accept the report and I will have seen it at the time. But to briefly put it into context, the – it does suggest that we – it's important to put in place a list of preferred suppliers. It also says that the breach in respect of

5 purchasing at that at least was minor and I can recall receiving the document. But in the context of what the company was doing at the time, as we worked through to August or September and the activity associated with the preferred suppliers list is captured on the board action sheet and it sat in there for a considerable period of time. I think it's around about 14 months. And it was also captured in our business plan that we would report to the board to half yearly.

10 You mean a past list continues to refer to the need to fix up the preferred supplier list?---Yes, it did. It did. And that sat on a board document for a period of time. But the point I just wanted to make there is that, as we headed towards the end of 2009 when this was captured as an activity, it was a time which the organisation was clearly starting to move towards and think about the amalgamation of three entities into one single control body. And, obviously, a keen focus of what we were doing at or around that time as we moved towards bedding in to the entity that became Racing  
15 Queensland Limited and beyond that in terms of the priority, I can only assume that without apportioning blame, and I accept that I was the CEO of the organisation or the chief operations manager of the organisation. But even though it sat there, it would have had a range of other competing interests in the context of the entire organisation, and the assessment of the need, perhaps, to do this in the context of  
20 other priorities, it may not necessarily have been right at the top in terms of our priorities in a broader sense.

25 Yes. And the point is that you were concentrating on other things and, as you've already accepted, despite this report and despite being on the task list, the board task list you've referred to - - -?---Yes.

- - - there was never a preferred supplier list prepared?---Correct.

30 Can you turn past the end of that Deloitte report, please?---Same tab?

In the same tab, yes. There's just another reference in the minutes of an audit committee meeting. If you turn to the page 3 under item 7 - - -?---Yes.

35 - - - the committee discussing the importance of the panel preferred supplier selection to require the proactive enforcing of the lists?---Yes.

And based on competitiveness. And that goes back to the topic we were discussing in relation to the policy earlier - - -?---Yes.

40 - - - that there seems to be an understanding that if there's going to be a preferred supplier, there has to have been some sort of competitive process for them to get on that list?---Yes.

45 It's not just a list of everyone?---Yes.

And you agree with that. And so, again, despite this reference on 20<sup>th</sup> of June 2009, by April 2012 there's still no list at all?---Yes.

And if you go to 85, please, tab 85, you'll see briefly that this is the purchasing policy that's approved by the board on the 1<sup>st</sup> of July 2010?---Yes.

5 And if you turn to page 7 of 19 under 1.2 Preferred Supplier Listing, there's no list and you knew that at the time?---Yes.

You can skip – no, sorry, if you can go to 86, please?---Yes.

10 Mr Snowden is emailing you, you'll see?---Yes.

And he's given you an overview of work. You've engaged soil surveys. "Contour is continuing", sorry, the first one. "We've engaged soil surveys"?---Yes.

15 "And we've engaged Duke Environmental"?---Yes.

And you – Duke Environmental is \$82,000?---Yes.

20 Now, do you know now that Duke Environmental is a company associated with Contour?---Yes, I do.

And he's – you've just forward it on to Bob FYI?---Yes.

And these are fait accompli. These people have been engaged?---Yes.

25 And do you remember whether you inquired in January 2011 into the process? Would you have inquired into the process of how they were engaged?---I can't recall, to be honest.

30 If you look at the final page 4 of 4, please, you'll see the paragraph numbered 3. "While the consultant's fees have paid when due over the last few months, these costs need to be reconciled against the individual projects and the budget to actual format"?---Yes.

35 Do you remember that issue?---I can recall the – I can recall the industry infrastructure plan development and a lot of the works that were associated with that. And the reason that we actually engaged Mark Snowden initially was to provide a considerable amount of assistance to the chairman in developing a lot of the plans and advancing those plans. In respect of the individual works and the programs, we had Contour through this period. I think Mark had them on a hourly rate for a  
40 considerable amount of the work, and then he moved Contour itself across to a percentage of construction costs at some stage during the process.

45 And at this stage there – the hourly rate is relevant to the budget question, isn't it? They've got a budget only really, and they're just charging on their hourly rate against the budget?---There would have been some indicative budgets prepared by Mark and, arguably, the chairman at an early stage in relation to these works, and they would have been working within those budgetary guidelines. In this period, it

was largely a – it was largely a period of transition up until we had a – we actually had a plan that was funded. A lot of the – I’m assuming a lot of these will be the early works and exploratory works associated with the development plans for the overall infrastructure project.

5

Okay. And so - - -

COMMISSIONER WHITE: They’re the – that’s the work for which a special grant out of the IIP fund was sought subsequently?---Yes.

10

Is that your understanding?---Correct.

MR PINCUS: Some \$2.7 million ultimately?---Yes.

15

And the point is really that this seems to be saying, doesn’t it, that there have been costs paid without controlling them against the budgets. They’re just paying Contour on an hourly rate?---Yes.

Is that the essence of what you’re saying? Thanks. 87, please.

20

COMMISSIONER WHITE: Can I just ask Mr Tuttle something.

Can you recall when Mr Snowdon ceased being a consultant - - -?---Yes.

25

- - - to Racing Queensland and was actually brought onto the payroll as an employee?---Yes. It was in - - -

Was it about July 2011, or was it - - -?---Yes. That would be at or about the time that the funding was approved, and again, for the sake of clarity, Mr Snowdon was Mannix Group. He was one - - -

30

Yes. I understand?--- - - - one – one person, and he actually worked in our offices. For all intents and purposes, he was an employee, and it suited Mark to be engaged in that way and suited us to engage Mark in that way.

35

Yes. It was really just the time that I was interested in?---Yes.

Yes. Thank you.

40

MR PINCUS: Can you go to 87, please. 31 August 2011. Contour fee proposal for the IIP process you’ve just been talking about?---Yes.

And so this is August, as opposed to January, and they’re providing a fee proposal for work which in January was well and truly under way?---Yes.

45

And it says as much, really, in the second paragraph?---Yes.

And if you go over to page 4, table 3.1 has budgets of the kind you were referring to?---Yes.

If you turn next to tab 88, please?---Yes.

5

This is an email from Ms Murray to Mr Snowdon and to you on the 13<sup>th</sup> of September 2011?---Yes.

And Ms Murray says she approved the appointment of StrathAyr - - -?---Yes.

10

- - - but thinks that you should be the person, as the chairman of the IIP CG, the industry infrastructure plan control group - - -?---Yes.

- - - executing the actual award letters?---Yes.

15

And if you turn over the page, you'll see the previous email was Mr Snowdon to you. He says, "We've tendered the civil works at Mackay and are now ready to award the civil contract to StrathAyr - - - "?---Yes.

20

" - - - who won the tender at the lowest price. After the tender was complete, we refined the scope of works" etcetera. "The price is this. It's within budget, and we've instructed the contractor to get themselves established in preparation for commencement. We want to formalise their appointment"?---Yes.

25

And over the page, please, you'll see there's your approval letter signed by you?---Yes.

And the page after that is this form – industry infrastructure plan contract approval form?---Yes.

30

And, sorry, I should have said that you would have seen from the previous letter that StrathAyr is appointed for a lump-sum fee of some \$2.9 million?---Yes.

35

And here you'll see that figure again on the form near the top and a list of the entities who have tendered?---Yes.

Selection panel. And Mr Carter says it complies with RQL purchasing policy. Yes?---Yes.

40

And then you've signed finally – the last person to sign?---Yes.

Is it compliant with the RQL purchasing policy despite the lack of a public tender?---That's what Mr Carter is saying.

45

Would you have asked him about that? Do you remember if you did?---I suspect the – again, the project – the project has been approved by the – by the board, and the –

the components of the project were likely to be reported back to the board within budget.

5 Is it enough for the waiver you've described to occur so as to avoid the strict application of a policy for a whole project to be approved by the board without approving a specific appointment of a contractor?---We – at this time here, we would have been moving towards a – if you like, a higher order of compliance because of the – the state government procurement policy. And part of – part of this – and  
10 around about – about this time, perhaps August 2011, there was a range of activity that had occurred in terms of the development of the plan and the early works of the plan. And one of the recommendations that I put to the board was that we form a project control group. The - - -

15 IIP CG?---That's – that's – yes, that's it. And we put that in place. This form started to, I think, set us on a path of increased or improved – improved compliance. But in terms of the exact process for Mackay, I would need to go back to the minutes to see what had been before the board and what approvals that we actually had in place to enable that appointment to occur.

20 Okay. Well, we'd be grateful for clarification, and as I say, you've got the material that we've got. Tab 89, please. 4 November 2011 minutes. You're there, Mr Tuttle?---Yes.

25 And if you turn over to page 10, toward the bottom you'll see Appointment of Contour, 3.3?---Yes.

Can you just read that section, please?---Yes. Yeah, I can actually recall this – this meeting.

30 Okay. So running through it, at the bottom of page 10, Mr Hanmer has raised the issue of compliance with government contract obligations and RQL's obligations under the purchasing policy?---Yes.

35 And it would be necessary "for RQL processes to be fully compliant"?---Yes.

Why is it necessary for them to be fully compliant if, as you say, it's only an internal policy, not one that matters for the purpose of the government?---The – my recollection is the – probably use the term high order of compliance was required because we were now dealing with government funding.

40 But weren't you dealing with that in the synthetic tracks where there was to be \$12 million advanced?---Yes.

45 So why is it so different at this stage? There's just more money involved?---I can't answer that. The – we certainly had a heightened level of awareness as we – as we moved to implement the – the industry infrastructure plan. There's no question about that. And there was an acute awareness of working towards compliance with

the – with the state government policy. I’m not sure – I can’t recall the level of awareness or – that existed when the \$12 million grant was approved.

5 Can you look over at page 11, please?---Yes.

There’s discussion about the fact that Contour work is already under way?---Yes.

10 Although, their appointment has not been formalised as yet. In the second paragraph?---Yes.

Further down, the work undertaken needed to be properly documented, and probity issues needed to be addressed before further work was commenced?---Yes.

15 The chairman suggests a two-stage process which really involves Contour finishing the business cases and Mackay project and, after that, there being separate contracts for each project?---Yes.

And further down again, Mr Ludwig suggests a quantity surveyor?---Yes.

20 Did you know – you mentioned one project where that happened. Are there any others where that happened?---I’m not aware of that, no.

25 Do you know whether one was engaged generally or proposed to be engaged for IIP purposes?---I can’t recall in my time engaging a quantity surveyor, as the chair of that group.

30 And as to the essentiality Mr Lette refers to of an independent project manager, did that happen during your time at RQL?---Yes. I believe that we – we then looked to separate the – the design and engineering from the project management responsibilities.

35 Can you say a project that actually occurred on which that happened? Do you know?---I don’t, but that was certainly the intention: that both disciplines would stand separate for future projects.

Can you look down then at – the board resolved that?---Yes.

40 There’d be a meeting with Contour – in the first dot point – to settle the contract, so there’s no contract?---Yes.

45 And then just read the next few dot points, which we’ve already covered, and the final one: “Chairman advised the government that a contract with Contour has not at this stage been settled, but RQL has undertaken sufficient audit to satisfy itself that contract rates charged are value for money?---I understood the chairman wrote to the government in relation to this.

Yes. And as to RQL having undertaken sufficient audit, what does that mean?---I've no idea.

5 To your knowledge, had that been done?---I'm not sure what it refers to.

Are you aware of whether - - -

COMMISSIONER WHITE: So far as you're concerned as a member of that committee – the infrastructure committee – you didn't undertake it. Is that what  
10 you're telling me?---We – in relation to the infrastructure committee – and it would be borne out in the – of the minutes and the worksheets of the infrastructure committee. By the time I brought that committee together an amount of work had been undertaken and - - -

15 I really was just asking you - - -?---Sorry.

- - - about whether you undertook that audit in - - -?---We – we had commenced an audit at two levels. One was an internal audit and it would be referred to as, I think,  
20 a mop-up within the worksheets. And then the intention was that we engage an external auditor to also come in and – and review the level of compliance or non-compliance in relation to a lot of the early works as it related to the plan.

Can you answer it in relation to this particular issue that's recorded here?---No. I can't. I'm sorry.

25 MR PINCUS: And just looking at those words – “satisfy itself that the contract rates charged are value for money” – there's a question, isn't there? One question when looking at value for money is what are the rates? You can say, “Well look, they're charging two per cent and the market rate is four per cent, therefore it's good  
30 value,” for example. But that's not the only question, is it, because you'd need to look at what was provided for the money they were being paid?---Yes. Exactly.

So if they charged a good rate but - - -?---Yes.

35 - - - sent one 15 year old along to the job then it wouldn't be good value?---Yes. Yes.

So the audit can't just be a question about what rates are being charged in the market; it has to be a pretty detailed process to determine what service they're providing  
40 - - -?---Yes.

- - - against the rates they're charging?---Yes.

45 And as far as you know, that process didn't happen?---I'm not aware of it occurring. I certainly didn't commission that – that part of work – that piece of work.

Would it be surprising if that had happened while you were there without you knowing about it - - -?---The - - -

5 - - - given your role in the IPCG?---The chairman may have commissioned that work. The chairman would undertake work in relation to infrastructure that wasn't necessarily captured by the industry – industry infrastructure planning group, the control group, and - - -

10 Or referred to in any documents?---Sorry?

Or referred to in any documents? Would you expect to see some document reflecting the results of that process if it had occurred?---There – there could well be. I – I guess the point I'm making is that the chairman could've had the work undertaken by, for example, Mark Snowden without me being aware of it.

15 Would that be unusual, since you were the CEO and chair of the IPCG?---The – the chairman worked very close with Mark – closely with Mark.

20 And the chairman – what – would do things like that, important things involving auditing the value for money of this main contractor over five years without asking you as the head of IPCG where they're playing a critical role?---He may well have.

25 Is that the sort of thing that he would do?---In relation to infrastructure he had a – a good understanding of infrastructure and he worked closely with the people or the officers within the organisation in respect of infrastructure.

Okay. Can you turn to tab 101, please, and we'll go back. But you'll see there's a letter here from Clayton Utz to the commission?---Yes.

30 And the second paragraph – if you just read that, please?---This is the Clayton Utz - - -

Clayton Utz letter?---Yes.

35 The very last document in this - - -?---Yes. I've got that.

- - - bundle?---And paragraph?

40 And it says, "We are instructed" – in the second paragraph - - -?---Yes.

- - - "that our client cannot locate from his records any formal process or review to ensure that it was receiving value for money on its infrastructure projects during the relevant period" - - -?---Yes.

45 - - - being the five plus year period?---Yes.

5 They can't find any. If we haven't found any, do you think it's likely that there wasn't one?---There was – there was certainly a – a – a QS process undertaken for the – for the stables at Corbould Park, and that was required to satisfy a loan agreement or a funding agreement that was being put in place at that particular time, so that should be within the records of Racing Queensland Limited.

Okay?---Or Queensland Racing Limited.

10 Any others?---The initial engagement of – of Contour and any - - -

Well, they were engaged as design engineers - - -?---Yep.

15 - - - to – under the management of someone else on - - -?---And – and any other – any other work, potentially, that the – the chairman may – may have instructed to be undertaken.

Okay. I'm asking you of ones you were aware of?---No.

20 No. And then go to the next page, please. 3.7, you'll see, just noting that there's approval of an updated version of the purchasing policy at this stage?---That tab's under – sorry.

25 Oh, sorry. It's just the very next page from where you were just looking, I think. Oh, sorry. I took you to the wrong tab, didn't I? Go back to 89, please. Apologise, Mr Tuttle?---Yes.

And then go to the page numbered 13 in the top right corner of that document?---These are board minutes?

30 Yes?---Yep.

The same ones we were looking at a minute ago?---Yes.

35 And I'm just noting at 3.7 there's an updated version of the purchasing policy?---Yes.

It's still being attended to and approved by the board as though it's relevant?---Yes.

40 Do you think it's fair to say that as far as we can tell, looking at the documents we've looked at today, although the board's approving this purchasing policy the only part of it that's being complied with is, on your construction of it, that the board or the chairman can be asked to approve things and then nothing else needs to be done?---Yes. And – and that's in the absence of understanding any – any other assessment or review being taken by any of the officers that were directly involved in  
45 the engagement of these companies.

Okay. But we've seen so far, you agree, scant reference to the policy, including in the board minutes where it's approved and – but whenever there are approvals of work being undertaken there's no reference to it at all?---In terms of a waiver?

5 Yes?---Yes.

If you can go to tab 90, please?---Yes.

10 You see this is an email dated 5 November 2011 from an address, crosmore, and you accept that that's Mr Bentley?---Yes. That's correct.

He's writing to you, Mr Tuttle?---Yes.

15 And he says there's confusion over matters relating to the infrastructure plan. "The work at Mackay has commenced without a formal contract" – this is point 1. "The situation needs to be explained that there are mitigating circumstances"?---Yes. I'm following you.

20 And do you remember what the mitigating circumstances were?---This followed the – the board meeting where the recommendation – where the matter of Contour went forward, where they provided a contract. And at that particular meeting there was considerable discussion amongst the – amongst the directors and they were concerned about a future engagement of – of Contour. The chairman also outlined a number of tasks that he had either had undertaken or he himself had undertaken in  
25 relation to Mackay and directed in respect of other works, and this – this was an email that was sent to me the very next day after the – after the board meeting.

30 Yes. We looked at that meeting?---And it was essentially attempting to set the – set the record straight in respect of what had occurred and where we were at at that time.

Okay. Well, we looked at that meeting, didn't we? That's the one where  
-- -?---Yes. Correct.

35 -- - there was the reference to the -- -?---Yes. Yes.

-- - "undertaken sufficient audit" etcetera. If you look at point 2: "A decision was made by the board some months ago that the board would step aside from taking on executive functions"?---Yes.

40 What does that mean? Does that mean that the board used to take on executive functions and as from the time of the race fields legislation that he refers to decided not to any more?---It's -- -

45 It's just because this is an email to you and I'm hoping you can help us understand it?---It's to me. That's correct. Yep. I'm assuming that the – the chairman is saying that the directors should step away from executive functions. He's suggesting that it was required at the time of race fields legislation.

5 Do you think that's a reference to the concept we've been discussing of the board making all these decisions which the policy looks like it's supposed to govern?---No. I think it's a -- it's a message to -- as much as anything that -- that the directors should remove themselves from a lot of activities that could otherwise be undertaken by the executive staff.

COMMISSIONER WHITE: Mr Tuttle, I get the impression that you're interpreting the words on the page now. Do you recall - - -?---What led to this?

10 - - - this directive from the chair? It's a sort of -- seems to be a clear change of direction?---It does.

Something that might have made everyone sort of have to say, "Hey, this is a big change"?---It - - -

15 "The chairman won't be coming in so often," or something like that?---The -- the -- the chairman -- I think the chairman wasn't able to promote, I think, some of the activities that he wanted to advance at the board meeting. And he -- he had sort of come out the following morning after the board meeting and it was all of a sudden there's a -- it was a change. Yes. It was. It was a -- a directional shift and it's almost  
20 as if the -- a lot of the work the chairman was involved with in terms of the early part of the infrastructure plan was not so much to do with the chairman, but was to do with others. And we were looking to -- to right the ship -- ship. But it was. It was certainly a -- a -- certainly a message, I guess, for -- for everyone concerned that, you  
25 know, all of a sudden now we're -- we're -- we're right. Everyone's spoken about compliance. Tony had raised the issue again at the board meeting, so there was increased interest in that and this was the message that was conveyed to all and sundry on the Saturday morning.

30 All right. Thank you, Mr Tuttle.

MR PINCUS: Mr Tuttle, could you turn to the next page, please, point 4 at the very top of the page. I just want to briefly ask you if you know what -- if you just read that first paragraph, there's reference to the application for Deagon Development  
35 being [indistinct] well, that's just a reference to planning assessment, is it, for Deagon?---This is point 4?

The top of page 2?---Yes.

40 And -- yes?---Yes. I've got that.

It's a reference to the planning concept of self-assessability. It's nothing to do with procurement?---Yes.

45 And then go down to 7, again noting there's no formal contract with Contour. We've discussed that. You're agitating for it to be addressed?---Yes.

And there's a references to the two stages that we've look at previously in the minutes?---Yes.

5 And at 14, could you read that, please?---Yes.

It says for the awarding of any future contracts, the process needs to be strictly according to RQL policies?---Yes.

10 It seems that the corollary of that is that past contracts haven't been strictly in accordance with RQL policy?---Yes.

15 On Mr Bentley's assessment?---Yes, and the chairman would be completely aware of that, being actively involved. And he's saying that the situation can be recovered. You know, we need to – we now need to be compliant and in respect of what has occurred leading up to this point in relation to the infrastructure plan, we need to get our house in order retrospectively.

20 But you've said compliance would just be – it would be enough for Mr Bentley to say to someone, "Do this," and there would be no need to pay any more attention to the policy. So why was there all this alarm about changing the process to be in accordance with the policy when he could have just said in this email, "From now on, continue to ask me if you want to do something"?---I think, though, in this context that the chairman has been discussing these matters with the Office of Racing and he, himself, is becoming aware that there needs to be, if you like, a high level of compliance because we are looking to align ourselves with a high standard, a state government procurement standard.

25 Well, but that's not what's referred to in this paragraph. He's talking about strictly in accordance with RQL policies?---Yes.

30 And so my question was what does this mean in circumstances where you've described that if it's enough for Mr Bentley to simply, say, appoint Shadforth and that would be compliant?---My interpretation of that is it's simply the choice of the chairman's words and to read them with, you know, intent today, I think is challenging given the context within which they were sent out at the time. I believe what he's saying there is that the work – the work that we've done, that we've undertaken today in relation to the infrastructure plan, working through that transition to get the plan up and running, hasn't been compliant for a range of reasons. We need to now have a look at that and see what we can do in terms of compliant with that amount of work. I don't believe this has any reference to work in 2007 or 2008. It's the work that relates to the infrastructure plan.

40 Over on the next page, where to from here, there's jobs for you. Can you see that?---Yes.

45 Malcolm is too?---Yes.

And there's emphasis on those concepts, I think we've seen before?---Yes.

But including copyright, which we haven't looked at previously?---Yeah.

5 There was an issue of – that arose, wasn't there, with Contour as to who owned the copyright?---correct.

And is it fair to say that, without going through the documents, after you requested that the default position in Contour's contracts be changed so that RQL owned the  
10 copyright?---Yes.

And Contour agreed?---Yes.

And then you say, I've discussed – sorry, another one is adherence to RQL  
15 policies?---Yes.

That's one of your jobs, and so you understood that to mean adherence to RQL  
policies in a way different from the way you've described so far in our  
discussion?---The chairman would have a broad concept of the, and I'm sure he's  
20 talking about the RQL procurement policy here.

Yes?---He'd be aware that – I've mentioned the higher order of compliance because  
of the state government requirements with the industry – infrastructure funding  
coming from the government, and he will be saying - - -  
25

Sure, but within that – within that policy there's no real concept of higher order of  
compliance. It's either compliance or not, isn't there?---No. I accept – I – sorry.

I'm just trying to get to – at this stage, we saw that there was a policy approved not  
30 very long ago. That's the only purchasing policy?---Yes.

And that's the policy of this day, and you've said that that policy is to be construed  
as to mean that the board or indeed the chair alone could waive any compliant with  
any other part of it?---Yes.  
35

And so how can you have a higher order of that? It's enough simply to have it  
waived. Do you mean there shouldn't be any waiver anymore?---Because the  
chairman – the chairman is seeking – seeking funding or had approved funding from  
the government, and one of the requirements was compliance with state government  
40 purchasing policy. I'm not aware whether that policy actually has a waiver in it.  
That was exercised by the board and the chairman previously under the RQL policy.

Is there a reference in this document to the state government policy that I don't know  
about?---If it's not there, it's not there, but he will be – the chairman will have been  
45 aware that we had to become more compliant as a result of the standards contained  
within the state government purchasing policy.

I don't think I can take that any further. Can you go to the next page, please?---Tab 91?

5 No, no. Just the next page, not the next tab?---Yes.

And if you'd go over to the page after that, you'll see the first email in this chain. It's an email from you to Mr Snowdon?---Yes, yes.

10 It's in November of 2011. If you just read it briefly and see if you remember it, please?---Yes. I do. I can recall sending this to Mark on the very same day I received the chairman's email.

15 Yes. And so following the presentation to the board, which again is the same day, there are a number of matters to be addressed?---Yes.

And this is following from Mr Bentley's email?---Yes.

20 And the first issue is this IP one we've mentioned, then it says right to government advising what has occurred to date with the engagement of consultants to satisfy government timelines etcetera?---Yes.

And also advising how we're going to satisfy it ourselves in terms of value for money and probity?---Yes.

25 Now, I've asked you about how you satisfied yourself, and you said you weren't aware of any way in which that had been done?---That's correct.

30 And so you're hoping that Mr Snowdon can say so?---Well, with his industry experience in terms of percentages of costs and industry rates, he may be able to make a comment in relation to that better than I could.

35 But you're not saying tell them that we have; you are saying I hope we have and that you will be able to explain it, Mr Snowdon. Because you don't know, I think you said, whether you have satisfied yourselves or not?---Look, I'm not aware of that, and I'm not aware of what the chairman may have instructed or what Mark Snowdon may have done. Mark may have been able to comment in respect of the work that's been undertaken, the quality of the work and the rates involved, because he was from within the industry, the industry that we're talking about in terms of infrastructure and development.

40 Yeah, I am just asking about your word in your email of November 2011 to Mr Snowdon?---Yes, yes.

45 Saying advised the government how we have satisfied ourselves in terms of value for money and probity?---Yes.

It looks like that means that you believe that you have satisfied yourselves and that Mr Snowden should tell them how that was done?---Mark Snowden may well have done that. I'm not aware of it. He may well have done that. He headed up the infrastructure - - -

5

He may well have what, advised the government or satisfied – or satisfied?---He may well be able to satisfy the government in respect of the value for money proposition with his knowledge and what he'd undertaken to date.

10 But [indistinct] you don't know of any way in which there has been satisfaction achieved?---That's correct.

And if you turn over the page, please, at the top it says pair out work subsequent to the business cases. Does pair out mean give two people a chance to tender?---No. It would mean separating the work that was not related to the – directly related to the business cases. Sorry – pair out all work.

15

If you look at the bit in brackets, it might help you to understand this is not just a rollover for Contour, competitive tender to apply?---Yes. So it seems to flow from the separation of the roles, perhaps, that was raised by Mr Let at the board meeting so that it's not just a matter of moving with – with Contour, but it also looks as though I'm asking him to separate out the work that was undertaken for the business cases with ongoing or future work.

20

25 Okay. So what is not just a rollover for Contour? The business – the work after the business cases?---It looks that way. Yes.

Okay. There will be competitive tenders after that?---Yes.

30 And as we know, there haven't been beforehand?--- In some instances, yes. Yes.

For Contour ever?--- Yes.

Apart from the very first instance - - -?--- The initial engagement.

35

- - - when they were engaged as a - - -?--- Correct.

And as an engineer?--- Correct.

40 Competitive tender process is required as per RQL purchasing standards. That reads very much like what you think RQL purchasing standards require as competitive tender processes; doesn't it?--- Yes, it does.

45 And is there any other way to read it?--- Well, and compliant with any or all requirements of government. So we are obviously becoming more aware of the – the requirements of government in terms of procurement.

Yeah, well that's a separate concept; isn't it? But if you just look at the first half of that line?--- Yes.

5 Is there any way to read that other than - - -?--- No.

- - - that's what RQL purchasing standards require?--- Yes.

And that's different from what you've told me today; isn't it?--- Except that I've outlined that in my view, officers would've taken instructions from the chairman.

10

Yes?--- And - - -

Competitive tender processes are required - - -?--- Yep.

15 - - - as per the standards unless the chairman says don't worry about it?--- Correct, yes.

Okay. Then that's probably enough for the rest of that document. Can you turn to 91, please. There's been reference to writing to the government - - -?--- Yes.

20

- - - to confirm them – confirm what's being done. This is, I put to you, the letter that was for Mr Kelly?--- And this will stem from the November 5 meeting, yes.

25 Yes. And it's referring to the IIP in the second paragraph. "We've amended and incorporated the fundamentals" - - -?--- Yes.

- - - "of the purchasing policy" - - -?--- Yes.

30 - - - "as part of our commitment to providers of services to RQL?--- Yep.

What does that mean, do you understand?--- This is the second paragraph?

35 Yeah, the first sentence of the second paragraph. "We've incorporated the fundamentals of the purchasing policies as part of the commitment to providers of services to RQL."?--- I've got no idea to be honest.

It seems sort of like mumbo jumbo?--- It does.

40 Then the next paragraph, "We wish, however, to advise that in Mackay due to urgency, it was necessary to appoint Contour. This appointment did not involve the preferred process of seeking competitive fee submissions."?--- Yes.

45 And over the page, "In order to satisfy value for money" – and you'll see there are three points. So it seems that if Mr Snowdon's drafted this letter as was the idea in your previous email or been involved in working out how to satisfy the government in terms of value of money and probity, that these are the points he's come up with. Does that seem to be the chronology to you?--- I'm not sure who's drafted it. But it

certainly points out – it’s under the – in order to satisfy the value for money. Now whether that was Mark Snowdon or the chairman who had compiled this, I don’t know.

5 Well, on the 5<sup>th</sup> of November you had told Mark Snowdon to - - -?--- Yes.

- - - to – that one of the jobs was writing to government and advising how we’ve satisfied ourselves. And I think you said a minute ago you thought Mark Snowdon would be the one to explain whether you’d done so and if so, how?--- Yes, he would have that information. Yes.

10

And so here there’s three points on the second page of that letter - - -?--- Yes.

- - - we were just looking at. One of them is comparative industry rates, and that’s just the rates alone?--- Yes.

15

Someone says that they’ve assessed that the rates are okay. CCE is experienced and there’s been some negotiation so that the fees come in below budget?--- Yes, I see that.

20

And do you think those things look like they do meet the requirement to satisfy value for money?--- In part.

It falls a lot short of the sorts of notions we’ve been discussing, doesn’t it, in terms of where you’re looking at rates alone you’d need to look at what service is actually provided and compare that against other services provided in the industry. And you’d need to assess somehow whether the overall project management have led to good value. It seems a bit thin is all I’m asking you to comment on?--- I can comment on what’s contained there but I don’t know what – what work Mark may have undertaken in respect of the first and the third dot points. So there’s not a lot of detail in those three dot points. What there may be in behind there, I don’t know.

25

30

Okay.

35 MR WILSON: To be fair to Mr Snowdon, Commissioner, I’m instructed that the 2000-odd documents that were delivered last week on three discs contain a whole email chain leading up to this letter. So perhaps they could be put to Mr Tuttle.

COMMISSIONER WHITE: Mr Wilson, I hope you’re not really serious about that. 2000 emails to Mr Tuttle.

40

MR WILSON: No. In the documents that were provided last week, there are email – there’s an email chain leading up to this letter. Mr Tuttle said a few times, “I’m just looking at this letter and I’m not sure what’s behind it.”

45

COMMISSIONER WHITE: Quite. Quite.

MR WILSON: There are documents that are behind it.

COMMISSIONER WHITE: Thank you. Mr Pincus, you've heard Mr Wilson.

5 MR PINCUS: Yes.

COMMISSIONER WHITE: Are you familiar with the chain of emails leading up to this letter?

10 MR PINCUS: No, I'm not. I'm not, Commissioner. There may well be a chain of emails and we'll try to locate them. But we've looked at some of the emails, I think, namely the one on the – on the Saturday the 5<sup>th</sup> of November before this letter is sent on Monday the 7<sup>th</sup> of November. There may be others around that time. I'm trying to understand Mr Tuttle's knowledge of this process which seems to follow directly  
15 after he gives some instructions to Mr Snowdon on Saturday the 5<sup>th</sup>.

COMMISSIONER WHITE: Well, it might well be it has to be done subsequently when counsel's had an opportunity to have a look at those emails, Mr Wilson.

20 MR WILSON: Certainly, Commissioner. It's just that – I raise because Mr Tuttle was saying a few times - - -

COMMISSIONER WHITE: I accept that.

25 MR WILSON: And then I was instructed that in fact there are these documents behind it.

COMMISSIONER WHITE: Yeah. I certainly am not cognoscente of them either. I haven't had a look at those that make up this final draft which – I mean, this final  
30 letter which went. So we'll keep that in mind. And if anything needs to be done about them in fairness to Mr Tuttle or to Mr Snowdon, that can be dealt with.

MR WILSON: Thank you, Commissioner.

35 MR PINCUS: Commissioner, may I invite mister - - -

COMMISSIONER WHITE: If you could just make a note of that, Mr Pincus.

40 MR PINCUS: Yes.

COMMISSIONER WHITE: Or Mr Kingston can do that.

MR PINCUS: Thank you. May I invite Mr Wilson to provide us those emails to save time in achieving the result he's indicated he thinks is appropriate.  
45

COMMISSIONER WHITE: If you can – if Mr Rogers can assist further, because he's clearly seen them and identified them so he's been able to give you instructions, Mr Wilson.

5 MR WILSON: Yes.

COMMISSIONER WHITE: He's not just plucking it out and saying well, there might be. He's actually seen them. If he's got a sufficient marker in his system to identify them - - -

10

MR WILSON: I think that might be the - - -

COMMISSIONER WHITE: - - - that might - - -

15 MR WILSON: That might be the key.

COMMISSIONER WHITE: It's a problem for all of us, of course. If you don't actually mark things when you see them it's a bit more difficult. Anyway, any assistance would be much appreciated, thank you.

20

MR PINCUS: I think I'll – I've said it and I'll say again that I'm not purporting to produce anything like a complete record of all the correspondence relevant to procurement over this period. I'm trying to put some issues that seem to us to arise to you, particularly where it seems that you were involved at or around the time.

25 And asking for your comment on what seems to have been happening?--- I understand that.

You understand that. I'm certainly not trying to mislead you by leaving documents out. If there are other documents you know of which might help and you can help your solicitors find them then that would be very helpful?--- I've identified quite a few and I found it very challenging - - -

30

It is challenging, thank you?--- Trying to find them.

35 COMMISSIONER WHITE: Yes. And when we said 200,000 documents, I think that was an underestimate, Mr Wilson. You probably feel much the same.

MR WILSON: Well we got three more CDs this morning.

40 COMMISSIONER WHITE: I can't tell you how many more statements that I got in the last two days.

MR WILSON: Surely Racing Queensland has exhausted their enquiries by now.

45 COMMISSIONER WHITE: Oh, well, we'll wait and see.

MR PINCUS: If you're looking at the second page of that letter we've been on, please, I just want to continue with asking you if you've got anything to help us understand?--- Yes.

5 It says in the middle of the page, "RQL confirms its efficient probity has been incorporated into the appointment of CCE in this role to ensure appropriate value for money." It's pretty firm. It's ensuring value for money. Do you – again, you don't have anything to offer as to how that might have happened?--- It's a comment under the hand of the chairman.

10

Yes?--- I can't add anything, no.

And there's a couple of references, I think there's one on the first page and then there's two more in the paragraphs below where we just were looking, to the fundamentals being acquired?--- Yes.

15

And the fundamentals being implemented on all appointments. What are those fundamentals do you think? What do you understand that – them to mean?--- They would be the principles, I suspect, that underpin the purchasing policy.

20

What are – you mean the 6D principles?--- Well, that's my comment in relation to the chairman's words.

That's your best understanding of what it could properly mean. You'd have a better idea than me, that's why I'm asking you. We weren't there. You were there involved proper comments about this - - -?--- It's not – it's not my - - -

25

- - - the day before?--- It's not my letter, though, and I'm trying to jump into the mind of another person some time ago. I'm happy to guess that it relates to the six principles but I don't know.

30

Thank you. Could you turn to tab 92, please. IIPCG minutes of the 10<sup>th</sup> of November 2011?--- Yes.

35 Which you're in attendance as chairman?--- Yes.

And at point 5 - - -?--- Yes.

- - - there's a note. Again, we've seen this, that Contour has multiple roles and that's less than ideal?--- Yes.

40

And then you'll see the last sentence commencing on that first page. "Mr Mark Snowdon has undertaken to ensure that in these circumstances, any instructions or invoices between the consultant and the project manager are vetted and approved by him."?--- Yes.

45

Do you know what that means? What's he – what's Mr Mark Snowdon going to do?--- That he is going to scrutinise invoices that – and instructions exist between the manager and a sub-consultant.

5 So who's – can you give me examples of who might be the consultant and who's the project manager? Do you mean a situation where there's a – I'm sorry, this is – there's no trick to this – I just really want to know. I don't want [indistinct]?---No. I expect that if there's a – a consultant sits beneath the project manager that Mark Snowdon is going to involve himself in that area between the project manager and a  
10 consultant that sits beneath the project manager.

I see. You see, Mr Snowdon subsequently to this – and we don't have these emails, but I'll just tell you – writes to Contour and says that – something to that effect, and Contour writes back and says we have no idea what you mean in terms of us, and it  
15 seems that he doesn't really know either. It looks a bit like – sort of a process that sounds good but doesn't really mean anything in practice. He's going to vet instructions or invoices and approve them. That doesn't look like it's likely to be compliant with part of compliance with the purchasing policy there?---It looks to me as though it's an additional step to vet what's occurring between the project manager  
20 and a sub-consultant. That's how it reads.

I see, and at 6 you'll see in the second paragraph down Mr Mathofer's going to work through the RQL purchasing policy and the state purchasing policy, paying particular attention to the points raised in an email from Ms Perrett of the Office of  
25 Racing?---Yes.

And identifying any discrepancies in the purchasing policies and discuss them with Mr Kelly to rectify any issues. The outcome is the procurement document is further developed, meaning both RQL and government standards on value, transparency,  
30 and probity?---Yes.

And that's a concept you've been referring to: the incorporation of attention to the government standards as well as RQL?---Correct.

35 And the general sense of it is to look and see whether the state policy is stricter, and make sure that the RQL one catches up?---It's to – virtually to back-to-back the policies, so - - -

40 Yeah?--- - - - the RQL policy reflects the requirements of the state government policy.

Right, and if the state government policy said just after chairman and the RQL policy might have been changed just to that? It wasn't necessarily to make it more consistent with probity and value for money and those sorts of concepts. It may have  
45 been to make it less?---No, I can't accept that. The - - -

You were going to make it stricter, with a higher plane of compliance, I think you said?---Yeah, that certainly seems to be the intent, but - - -

5 Okay?--- - - - we want to ensure compliance with the requirements of government in respect of procurement.

Okay. Can you turn to 93, please? Can you see that, if you go to the second page, Mr Thomson of Contour is emailing Mr Snowdon, copying in you and others?---Yep.

10 And do you remember seeing this email?---Mr Thomson is saying there's been a meeting – if you look at the top of the second page of that email – a meeting concerning probity issues with Contour acting as both project managers and engineers?---Yes.

15 And he says we've never been the project manager. Do you remember that issue coming up?---This will flow from, again, from the meeting on November 5.

20 And there's this issue which we've seen in subsequent documents as well: the dual role is less than ideal, et cetera?---Yes.

So this issue is being addressed: is that right?---Yes, correct.

25 And the way in which Contour is suggesting can be addressed is that they're not project managers and they never have been?---And Contour will be angling for continued work I suspect.

30 Yes. If you go back to the first page, Mr Thomson is writing again to Mr Snowdon, copying you again, and you are saying in the second paragraph in the second sentence - - -?---I'm sorry. Is this the 6.28 pm email?

35 Sorry, it was directly – I think it was the page directly before the one we were just looking at. It should be the first page under the bundle 93 – under the tab 93?---Yes, I've got that.

And if you look at that first page there's an email on the bottom half of the page, and there are three paragraphs. If you look at the middle one?---Yes, I've got that.

40 The second sentence of that paragraph?---Yes.

45 “Hence, and in our opinion,” says Contour, “the definition of roles within the team now require detailed definition. We note that Mr Snowdon's role has been confirmed only relatively recently.” So there's been some confusion, I guess, is what they say?---Unless he's talking about his engagement as a full-time employee of RQL, and it would flow again from the November 5, where there's a separation of the project management to the engineering design.

Yes?---And - - -

5 And so what [indistinct] to be saying is Mr Snowdon is now being the project manager, which I think you've said was part of the intention?---And his department was probably expanding at this time, because we have a project to move forward with.

10 Yep, and then if you go over to the last page in this same tab, please, it's an email on Monday following that Saturday exchange we've just looked at from Mr Snowdon to you?---Yes.

And I can tell you – it's not in here – but you have sent that previous exchange on to Mr Snowdon for comment, and these are his comments?---Yes, okay.

15 Do you remember that?---I don't, but I don't doubt that I would have done that.

20 And he's telling you what his comments are. The second paragraph, "Contour are concerned they may lose this role due to the requests to maintain independence."?---Yes.

And he says in point 1 as one of the two issues he sees their role as lead consultant, which it seems he's saying is the terms are fluid, and can involve project management as well. If you look at the first paragraph - - -?---Yes.

25 - - - their role as lead consultant, and also performing other consultant roles if they don't act in the best interests of the client principal?---Yes.

30 And that's really the point, isn't it? There's a risk of that because it's hard to monitor what they're doing if they're both – if they're managing themselves in a sense?---And the board had required – Bob Lette had raised that at the meeting that we needed the separation.

35 Yep, but not prior to the IRP where they were both engineer and project manager?---And, again, I'd need to go back to the projects to see what roles they had on each one, because I wasn't intimately involved in every project, but there may have been some projects where they undertook both roles.

40 Okay, and it says they're preparing in point 2: Mr Snowdon is preparing an IRP procurement policy?---Yes.

And he doesn't have any problem below that with Contour continuing as project managers as long as they are working in the best interests of the client?---Yes.

45 And then turn to 94, please? Mr Mathofer you'll see here is writing to various people, including you?---Yes.

You appear on the third line. It's the 1<sup>st</sup> of December. He's attaching a draft addendum to the purchasing policy, and this is the thing we've just seen referenced to: the IRP procurement policy, essentially?---Yes.

5 Do you agree with that?---Yes.

And he attaches a draft addendum for review and feedback?---Yes.

10 Could you look at that document, please? If you turn to page 1 of 9 you will just see that it just says it's a draft, and the date is 25 November?---Yes.

And looking at the document itself it says under Introduction it's been prepared to expand on the RQL general purchasing policy, which provides guidelines and procedures et cetera, and also meeting the objectives of the policy?---Yes.

15

Two paragraphs down from that, "Given the size and scale of each project, the addendum is being developed to ensure the necessary additional steps are taken to ensure all projects funded are completed in an accountable and transparent manner to the highest standards."?---Yes.

20

And the next paragraph refers on the third line to probity and accountability: see that?---Yes.

25 And key principles: and they're the same key principles, aren't they, we looked at before, except in point 4 where the word probity has been added?---Yes.

And under policy there's reference to the focus on preferred suppliers. We've seen those words before too. Do you agree that's not new?---Yes.

30 In the industry infrastructure plan, can you read that first paragraph? It refers to the need to adhere to the strictest guidelines - - -?---Yes.

- - - and stand up to rigorous scrutiny?---Yes.

35 And, again, this is consistent with what I think you agreed, which is that the idea was for this process to lead to something stricter than was the existing policy?---To lead to compliance with the state government requirements, yes.

40 And under the heading Suppliers there's a reference, again, to the general advantages – we've seen this before – of preferred suppliers?---Yes.

And then selection of preferred suppliers: again, it's the same. There needs to be a selection process, including reference to the six key principles?---Yes.

45 Over the page, Preferred Supplier Listing: the listing concept seems to have changed. "The preferred supplier listings for infrastructure plan projects are to be developed by inviting suppliers with experience and expertise in the key areas to

tender, thereby forming a supplier panel.” So you get listings, which are really, it seems, panels that arise from some sort of competitive process of tendering?---Yes.

5 And that may be further refined. We don’t need to look at prequalifications up to [indistinct] for present purposes, I don’t think. There’s a reference if you look at the bottom of the section to a prequalification database?---Yes.

Do you know whether there ever was one?---No, I don’t.

10 Outsourcing of supplier panel selection, you can see there’s a reference to local buying?---Yes.

And we’re told that Contour and Duke Environmental are two organisations that are on local buyer?---Yes.

15 Do you know that’s the case?---No, I don’t.

Then on the next page, consulting services - - -?---Yes.

20 - - - it’s the same, I suggest. If you identify important differences - - -?---As the previous policies, yes.

25 - - - please tell us. And then over further summary of the controls, and the second dot point refers to – and you’ve got that at the last page – yeah. The second dot point refers to three quotes required for amounts of \$10,000 or more where a preferred supplier is not used?---Yes.

30 So the preferred supplier concept could only be if there had been a process to select them?---Yes.

And, as we know, there’s no list so it means that above 10,000 is going to be three quotes?---Yes.

35 But, again, it’s an oversimplification, isn’t it, of the consulting services section where we’ve seen there’s a need for an open tender above 100,000?---Unless the State Government purchasing policy precluded what Racing Queensland had previously undertaken in terms of a waiver, any intention would be that that wouldn’t – that wouldn’t apply going forward.

40 Well, if you look back at that section, consulting services on page 5 of 9, you’ll see there’s still the subject to board discretion as to the waiver of an open tender wording?---And that could only remain in there on the basis that this is compliant with the State Government requirements. That was the intention of developing this addendum.

45 Right. So if the State Government requires don’t contemplate this process of waiver, then you think that there’s something wrong with the addendum?---The clear task for

5 Ron Mathofer, who had carriage of the project, was to develop an addendum that we could rely on that would not cause any conflict between how we were going to apply procurement moving forward with the requirements of the State Government. So I doubt there will be anything in the – because Ron was talking to the government about it. He was engaging with the government – Mark Snowdon was engaging with the government as well – to ensure that the addendum we developed satisfied the State Government requirements.

10 Were you involved in that process?---It would have come to the - - -

You received this email, and did you review the document?---I don't know that I would have. It would be a – the task had to be undertaken and the task would have been required of an individual or individuals to satisfy our needs in respect of that level of compliance, and that will have been undertaken and I'm assuming, ultimately, it's gone to the board for approval. But the key to the addendum was to ensure that level of compliance with the state's requirements.

20 Okay. Then you'll just see underneath the summary of key controls there's, again, a reference a bit similar to what we've seen previously “performing a routine supplier analysis to review expenditure to determine value for money has been achieved”. And we've been through that?---Yes.

25 This doesn't prompt any different response from the one you've given previously?---No.

30 Next tab, please, 95; we're getting there, I promise. Mr Snowdon on the 2<sup>nd</sup> of November. If you just look over first to the earlier email in the chain on the next page, you'll see Mr Snowdon writing to Mr Thomson on Contour and copying you?---Yes.

35 “As per our discussions, we need to implement the following section criteria to the appointment of all suppliers of the industry infrastructure plan. Could you please initially prepare something for Contour. We will need this produced on all suppliers engaged to date for our records.” Now, this seems to be asking, just reading that on its face, for Contour to prepare something for themselves and also for all suppliers other than Contour previously engaged to justify them as having been preferred in some way?---And this may be part of the – the audit that I referred to earlier that we commissioned at the IIP level, where we wanted to backtrack over the work that was undertaken in the earlier – earlier stages of the infrastructure planning – the development planning of the infrastructure plan.

40 The mop-up, I think you call it?---That's what it was, and that's what we - - -

45 And that's really a process of making it look compliant even if it wasn't. Is that fair to say?---To a large extent, but in relation to the infrastructure plan, because we were seeking – seeking funding from the – from the government. So we were – I don't think we were initially, but it got to a point where a considerable amount of

expenditure had been undertaken, in the order of a couple of million dollars or more, and we were looking to try to establish, where we could, a level of compliance to meet the needs of the government to free some funding up out of the overarching amount of approximately a hundred million.

5

Then if you go back to the start of this exchange, please, you'll see on the first page of it – again, still under tab 95. At the bottom, just noting briefly, Mr Thomson writes back quite some time later. So the first email was 7 November. He's writing back on the 2<sup>nd</sup> of December. He's saying, "We compiled a comprehensive response, and we want to meet with you to talk about it. It includes selection criteria for preferred suppliers"---Yes.

10

And then Mr Snowden replies, again copying you, and he says, "I'll talk to you about it, but in the meantime, I would appreciate it if you could provide the information relating to Contour as per the email of 7 November to set you up as a preferred supplier." So the idea is that they will become a preferred supplier, having not previously been one for the purposes of the - - -?---The panel?

15

- - - references to preferred supplier in the policy?---For the purpose of the panel?

20

To be on a panel - - -?---Yes.

- - - or something, yes?---Yes.

Okay. And it seems that he's saying, doesn't it, that Contour has misunderstood, and he's not asking for all the suppliers. He's really only asking for Contour to be a preferred supplier. He may mean either, I suppose?---Well, he's certainly asking for the information for Contour, and earlier he was asking for Contour and others.

25

Okay. Could you turn over and just note after that exchange of emails there's another one from Mr Brennan to Mr Fulcher. I know you're not on this email, but if you just look at the subject matter. It's Cairns, and in the first paragraph referring to a fee proposal for Cairns?---Yes.

30

So Mr Brennan to Mr Fulcher of Contour, and then over the page again, Mr Thomson to Mr Brennan and Mr Fulcher, copying, amongst others, you - - -?---Yes.

35

- - - on the same subject matter, Cairns procurement. "With regard to Paul's email below," which – it's not clear, but - - -?---Yes.

40

- - - it seems likely it's the same email we looked at, about a week beforehand?---I only note that they're several days apart. That's all.

Well, in any event, he – Mr Thomson is saying, "We would consider the situation," which I put to you must mean the situation in relation to - - -?---Cairns?

45

- - - Contour's engagement in Cairns - - -?---Yes.

- - - to fall within the auspices of sole supplier criteria of the state government procurement policy?---Yes.

5

Do you remember this email?---It doesn't particularly stand out, but I will have received it. I'm copied on it.

10 And it might not particularly stand out because I think you've said generally you weren't really involved in this part of the process. You didn't ask a lot of questions about it?---I would have – I would have instructed it to occur, and Ron Mathofer, I think, was the officer who had carriage of it, but I wouldn't necessarily have been involved in the detail associated with it.

15 About halfway down the email, it says, "This part of the document described the process for application for sole supplier that may be used to introduce the concept to the board." So it's proposed by Contour to be a new concept that the board can have introduced to it?---Yes.

20 And if you turn over the page, can you have a look. It says "Normal Practice" at point 2?---Yes.

Normal practice is tendering to three or more firms?---Yes.

25 And then under the next heading, Reasons for Exemption, "There are five main reasons - - - "?---Yes.

And if just read at least the first four, please?---Yes.

30 Turn over the page and you'll see under the heading – the document is headed Cairns Sub-Project of the RQL IIP Versus Government Procurement Policy. And there's Justification under point 3. "The 'sole supplier' process is required," and there's reasons which are referable to the thing you've just read - - -?---Yes.

35 - - - on the previous page. And then the last dot point: "There is only – truly only one consultancy available to RQL that has on offer the required" – and there's a list of their advantages?---Yes.

40 And over the next page there's more, if I can put it this way, spruiking for Contour. "Hourly rates and percentage fees of Contour have been compared against industry norms and benchmarked - - - "?---Could you just – just explain me the top – what's at the top of the page, please?

45 "Probity," it says?---Yes, I've got it.

So the first dot point: "Achieving value for money"?---Yes.

They're all "Achieving value for money". There's different ways in which it's said that can be achieved by the use of Contour?---Yes.

5 And then there's more documents along the same lines. If you turn to the next tab, 96, you'll see that Mr Mathofer is sending to Ms Perrett and copying you – sorry – copying Mr Carter. And he's saying, "Ms Perrett, have a look at this addendum which was developed to further align the RQL policy with Queensland government procurement policy"?---Yes.

10 And can you see that at 1.5, the concept of applications for sole supplier is - - -?---Yes.

- - - is there?---Yes.

15 And that, if you read points A to D, I take it you'll agree, seems to have been lifted from the document that's come from Contour? It's – at least to be the same as the contents of the documents from Contour. If you want to look back at it - - -?---No, no, no.

20 - - - you can do so?---No.

And could you turn, while keeping your hand, if possible, in tab 96, back to tab 94, please - - -?---Yes.

25 - - - where you'll see that the draft addendum circulated on the 1<sup>st</sup> of December?---Yes.

And can you note that the sole supplier idea has been inserted between these two versions?---Yes.

30

And it looks like that idea of sole supplier has come from Contour?---Yes.

You don't know any different?---No, I don't.

35 It also looks like, even on its face, the application for sole supplier reasons for exemptions – this is back under tab 96 - - -?---Yes.

40 - - - are all targeted out at applying to Contour and allowing Contour to keep being engaged as the sole supplier?---It certainly appears that Contour would be eligible for sole supplier status.

45 Yes. And it would also – it would both justify, in a sense, retrospectively, their existing role and justify an ongoing role?---I don't think there was any intention for retrospective application of this, but certainly ongoing. If the – the basic instruction for the – the addendum or the amendments to the procurement policy of RQL was to be aligned with state government procurement policy. I – I couldn't understand why sole supplier would appear in our addendum unless it was provided for in the state

5 government procurement policy, but the intention – the intention of putting this document together was to ensure compliance moving forward. The chairman had already written to Mike Kelly and outlined that there would be a degree of noncompliance in respect to Mackay and other business cases, and he had dealt with that. This was looking to the future in terms of our compliance.

10 Okay. And, looking to the future, it looks like it's really saying for Contour it'll clearly be able to be engaged, in a sense, by a permanent exemption because it meets those?---So long as it complied with the requirements of a sole supplier, it would be eligible to be engaged.

Well, can you look at those requirements and tell me which of those there was a risk of it not continuing to comply with. Perhaps (d)?---Yes.

15 But even then, you don't have to satisfy all these reasons. You can just have one and in fact maybe even some other reason because the introduction says, "Reasons for such exemptions include but are not confined to"?---Yes.

20 So it seems like it's really a way of saying you can use a sole supplier whenever you think it's appropriate?---It does say though at the bottom of those points there unless the above stated exemption criteria - - -

Yeah?--- - - - is met.

25 So if we look at what those above stated exemption criteria are, "Reasons for such exemptions include but are not confined to". So it's not even an exclusive list and it - - -?---But I think though that - - -

30 - - - includes, for example, presuming subsequent stages of multi-stage procurement processes. Now, everything that Contour ever did forever from now would be, in a sense and particularly under the IIP, surely described as a multi-stage procurement process?---The only point I make though in relation to this, it would suggest and reasons for exemptions include but are not confined to – it would seem that they include those and it does say that the above stated exemption criteria is met. I  
35 would've thought that - - -

COMMISSIONER WHITE: And then it goes on, "Or other compelling reason is able to be supported"?---Yes.

40 I think we're all getting a bit tired - - -?---Yes.

- - - missing those.

45 MR PINCUS: We're getting there. I promise, Commissioner. Can I just put to your squarely that this document and the inclusion of sole supplier, firstly, doesn't come from what could be called the State Procurement Policy. Do you know

whether it does or not?---I don't know whether it -- I don't know whether it came from the State Government Procurement Policy.

5 Did you check?---What I've said earlier though is that the intention to develop this document was to ensure compliance with that policy.

Yeah. And I understand the intention?---Okay.

10 I'm asking you whether you know if it did come from there or not, if it did actually comply with the state government policy?---I don't know whether it complied, no.

15 Okay. And can I also put to you that if it's really a device to permit the ongoing engagement of Contour, without having to go through any steps at all, compliant otherwise with the policy?---On the face of it, it would seem that Contour would be eligible for sole supplier status.

But do you agree that it looks like and is a device specifically to achieve that end?---Well, I can't answer that. The - - -

20 COMMISSIONER WHITE: You could say that unpleasantly minded persons might draw that conclusion, Mr Tuttle?---It would appear to me that Contour would meet the requirements for sole supplier.

25 MR PINCUS: Okay.

COMMISSIONER WHITE: That's about as good as you're going to get, I think, Mr Pincus.

30 MR PINCUS: It is. Thank you, Commissioner. Tab 97, I just note that there's a board paper for the meeting of the 19<sup>th</sup> of December, originator Adam Carter?---Yes.

And if you look at the purpose, to seek approval for the addendum, to address the need for additional policy controls?---Yes.

35 And to better align the policies under background issues the need for tight controls?--- Yes.

40 And under the next paragraph, commencing a comparison review, you see in the final line a reference to maintaining strict controls over all procurement requirements?--- Yes.

And down under executive summary, the addendum seeks to strengthen the RQL purchasing policy?--- Yes.

45 For the IIP?--- Yes.

And again, the need for tight controls. And then at the bottom of that paragraph, strict policy guidelines?--- Yes.

5 Over the page under legal implications, the policy may assist with future claims of impropriety and malfeasance?--- Yes.

10 And that's what you're worried about, that you're trying to ensure that you can continue to engage Contour, who you're heavily reliant on already because they've been so involved already, without later being accused of wrongdoing?--- Look, I didn't prepare the board paper and I don't know that I had any input into the board paper at all. They're the words of Adam Carter. I'm certainly not thinking of impropriety or malfeasance or anything like that. And I stress the main purpose was to ensure compliance with the state government requirements.

15 Yeah, you don't need to say that again. You have stressed it - - -?--- Okay.

- - - very – very much, thank you. If you look at the next document, you'll see the addendum is there?--- Yes

20 And it's board approved on the 19<sup>th</sup> of December?--- Yes.

You can look at it if you like but it's the same as the draft sent to Ms Herrett?--- I accept that. I accept that.

25 And it contains the sole supplier bid?--- Yes.

Then past that addendum, you'll see the minutes that the board paper was prepared for, Monday 19 December?--- Yes.

30 You're there?--- Yes.

And you would've received a paper as the CEO that your CFO had prepared; wouldn't you?--- They – yeah, I would've received the agenda with all the documents.

35 Yeah. And if you look at page 12, you'll see there's a reference to appendix C, the purchasing policy addendum. The board discusses it and no amendments are requested?--- Yes.

40 Did you see it as any part of your role to be reviewing the addendum and seeing whether it was really achieving the end that was referred to in the board paper of making everything tight and strict?--- I would've put faith in the – in the finance department. Ron Mathofer had main – the main carriage of it. It was discussed at the industry infrastructure planning group committee. He would've had input from  
45 the CFO and I would've had confidence in what they prepared.

Okay. If you turn to 99, please, skipping one tab. Mr Brennan has – you’ve all left and Mr Brennan is now at Contour on the 29<sup>th</sup> of March?--- Yes.

5 This is immediately after the resignation of the four executives?--- Yes.

And he’s writing to Mr Carter and Mr Snowdon, you’ll see. I know you’re not involved in this but can you see he says, “The below table highlights the proposed fee schedule and the value of the fees.”?--- Yes.

10 And there’s a comparison of budget to invoice. And you agree this is the sort of thing that Mr Snowdon was saying hadn’t been done some time ago. And we saw that reference in an earlier minute?--- Yes.

15 And Mr Brennan’s asserting that Contour’s of the belief that Racing Queensland should accept the proposal as it forms the basis of a binding contract factually provided in August 2011. Now, that’s a time when Mr Brennan is at Racing Queensland, of course?--- Yes.

20 And he’s saying now that he’s at Contour that there was a binding agreement with Contour at that time?--- Yes.

25 It looks strange; doesn’t it? Do you know whether Mr Brennan had any contact with Contour about his employment at Contour prior to his resignation from RQL?--- I’ve spoken to Mr Brennan about it and he’s outlined to me that he’d had no discussions with Contour about leaving RQL to go to Contour.

And you had no knowledge of any connection between them, which suggests that the position might have been otherwise?--- Correct.

30 And so at the bottom you’ll see, “Due to the level of scrutiny this issue may receive, Contour believes the best option is to utilise the proposal provided some seven months ago.” And then over the page, Mr Bentley has signed up. And I know you weren’t involved but this looks like part of the same process, doesn’t it, of the mock up you’ve referred to. They’re signing up a contract - - -?--- Yes.

35 - - - to show that it’s all in order. And that’s it, we’ve finished that topic. Can I just put a couple of propositions to you for a final response. First, the policies weren’t complied with in any instance that we can identify, before or after the addendum. And if you can identify an instance where they were complied with other than by waiver - - -?--- Yes.

40 - - - then that would be – that would be good. And if you can identify instances where they were complied with by a waiver which wasn’t recorded at board level, that would also be good?--- Yes.

45 Do you understand those propositions?--- I do.

We – it seems that Contour itself conducted the procurements for at least the vast majority if not all of the QRL and RQL infrastructure projects but was not required to comply with QRL and RQL purchasing policy. And again, if you can tell us something different then we ask you to do so?--- In responding to that, I'll need to  
5 talk to my people. But I would need to discuss that with a lot of the people that were involved directly with – directly with procurement. Because quite simply, I haven't contact, for example, with Reid Sanders for a good number of years. Mark Snowdon since my departure of Racing Queensland Limited. I don't know what has been kept on file at Racing Queensland Limited. So I'm going to struggle simply with access  
10 to – with records, documents, even being able to have discussions with some people to - - -

Yep?--- Identify what they have undertaken. And - - -

15 I understand all that. The invitation stands, and the point that arises out of this is that the point of procurement policies is to allow the process to be established?--- Yes.

And for later people to be able to look and see that it was complied with?--- Yes.

20 We've got these hundreds of thousands of documents you've had reference to and we can't see that it's complied with. So the documents don't seem to establish that. And if you can't help us, you can't help us. There's no point in you talking to someone else and giving us their evidence. And perhaps your solicitors who act for other people can try and do so. Then the next proposition is although assurances  
25 were given to the government that value for money was achieved by the use of Contour for Contour itself and for the subcontractors it recommended and managed, it's impossible now to say whether that's right. You can't say whether value for money was achieved. We don't have all the documents to determine that?--- I can't rely on any material that I have to demonstrate that.

30 And you don't know of any audit or similar process that was done to determine that, other than the one you've referred to where there was a quantity surveyor involved - - -?--- Yes.

35 - - - in the stabling project, at the requirement of a funder?--- Yes.

And when the IIP came to light from mid-2011, there was an ostensible focus on stricter compliance. But the – it was a charade and in fact it was designed to make it look to the government like there was going to be strict compliance but in fact allow  
40 Contour to continue to be engaged despite having never been through a competitive process since it did so as an engineer on one project in 2007 or '8?--- Sorry, are you asking that I provide a further submission in relation to - - -

45 Well, no. I'm just telling you what the propositions are?--- Yes.

That it seems to me it may arise from the material. So if you've got anything else to say, you can say it now or know that you can say it later in a supplementary submission if you like?--- The - - -

5 It's entirely up to you?--- Well, I'm happy to say it now. In terms of the infrastructure group, it was a group that I had recommended. And it'll be borne out in the minutes that I've advised the board that I'm bringing this group together for the purpose of moving towards greater compliance as we'd been through a transition period and establishing the infrastructure plan. And I believe that along the way and  
10 borne out in the minutes we have a – we had an appropriately constituted group with formally kept minutes. And I believe that a review of those minutes will demonstrate that we had a heightened awareness of compliance moving forward. And we had been through a period where there was a mop up required. There will be resolutions in those minutes demonstrating that we need to put retrospective resolutions to the  
15 board of Racing Queensland Limited. The – one of the sheets we have in there in terms of approval, we'd developed those so that it would go through our finance department, through our legal department, through our infrastructure department. And then finally it would come to me as the chair of the infrastructure group to sign off on behalf of the entire group. So I don't accept that it was a charade. We had a  
20 charter, we met on a regular basis and we were active in moving towards a greater level of compliance. And I believe the addendum actually points to the fact that the development of that and the purpose of the addendum was moving us in that direction, notwithstanding that there had been some noncompliance during that transitional period. And our purpose – and it will be borne out in the minutes that we  
25 – we understood that there was noncompliance in the transition. We speak about things like mop up. The infrastructure group itself commissioned an internal audit of where we were at, with a view then to subsequently engaging an external auditor of what we had done. So it was actually – it wasn't – it wasn't something that we were trying to hide. We recognised - - -  
30

When was that internal audit?--- There was an internal audit.

When was that? After mid-2011?--- It would've been towards the end of 2011.

Yep?--- Yes. But subsequent of the - - -

Did you receive the results of that?--- Sorry?

5 Did you receive the results of that while you were there?--- The internal audit?

Yes?--- I can't recall, to be honest. But there was a - - -

10 Is that a document that may have been done by Mr Carter and Mr Mathofer?---  
Certainly they would've been involved in it. But the purpose of it, though, was to  
have another accountant at arms length to the infrastructure activities undertake the  
internal audit, with a view to getting our house in order before we then engaged an  
external auditor to come in and have a look at our – our activities. But - - -

15 So like a - Deloitte being the internal auditor?--- Deloitte is the external to come in  
to conduct the internal audit.

I see?--- Yes.

20 Okay?--- But - - -

So what I'm asking is did that happen?--- I believe it did.

Before you left?--- I'm not sure.

25 Okay. All right. Is there anything else you want to say?--- No.

I don't have any further questions, Commissioner. I'm sorry it's taken longer than  
anticipated but I'm glad we saved 15 minutes at lunch time or it'd be worse.

30 COMMISSIONER: Well, that mea culpa is accepted then, Mr Pincus. Now, Mr  
Wilson, do you want to ask Mr Tuttle any questions? And let me tell you, if you're  
going to be very long, we might have to ask Mr Tuttle to come back tomorrow. Or  
are you going to do what you've done with your other clients and do it by way of  
35 supplementary statement if there is anything that he wants to add beyond what Mr  
Tuttle has already said?

MR WILSON: Yes to your fine point.

40 COMMISSIONER: All right then, thank you. Mr Tuttle, whilst it looks very – as  
though your – we're finished with asking you questions, it may be that something  
else arises and you might have to be asked to answer some further questions. But as  
thing presently stand, that doesn't look so likely. But you're free to go with that  
caveat?--- I understand that. Thank you.

45 COMMISSIONER: All right. And we have sat on longer, just so you don't have to  
come back tomorrow?--- I appreciate it.

Not to make you feel exhausted at the end of the day?--- Thank you.

5 **WITNESS STOOD DOWN**

[4.26 pm]

COMMISSIONER: All right, thank you. Anything else, Mr Pincus?

10 MR PINCUS: Commissioner, the only suggestion was whether – and I know this hasn't been raised previously – there may be some consideration given to a slightly later start tomorrow. Not because of finishing a little bit late today but because as we know, we move to new topics and new witnesses probably. And there are some considerations about who should be next and preparation in that regard.

15 COMMISSIONER: All right. Well - - -

MR PINCUS: I haven't discussed it with Mr Bell, I should record. But he may not be ungrateful for a small period of grace in the morning.

20 COMMISSIONER: Well, all right. 10.30? 11? Just give me a bit of a hint so I can tell everybody present. And if you can't then I'll just pick a time and - - -

MR PINCUS: I would suggest 11.

25 COMMISSIONER: - - - then tell people to look at the website.

MR PINCUS: I would suggest 11, Commissioner. And then going through to lunch.

30 COMMISSIONER: All right then. Thank you. 11 o'clock tomorrow. 11 tomorrow. But can I suggest that those who have an interest in being here, and there are some weary faces that I see day in and day out, you should perhaps just check with our website just in case some different time emerges after we've had some discussions.

MR PINCUS: That's a sensible solution, Commissioner. Thank you.

40 COMMISSIONER: Yes, all right. So we'll just leave it at 11 but that's not set in stone at all. Thank you. Thank you, Mr Bell.

**MATTER ADJOURNED at 4.48 pm UNTIL  
WEDNESDAY, 2 OCTOBER 2013**

45