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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

11.02 AM, WEDNESDAY, 2 OCTOBER 2013

Continued from 1.10.13

DAY 11

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THE COMMISSION RESUMED

[11.02 am]

5 COMMISSIONER WHITE: Mr Bell.

MR BELL: Commissioner, the position of the commission in relation to witnesses going forward should be stated, and I'll state that now. Firstly, Mr Snowdon and Mr Brennan have been notified by the commission that they will not be required to give evidence here in the public hearing at this time. That means that they may yet need to be called, but at this time the decision has been made not to call them.

COMMISSIONER WHITE: Yes. Thank you.

MR BELL: And therefore, the public inquiry that is being conducted at the present time with these public hearings will now turn to another topic, and that is government overview. And in particular, in that respect the witnesses to be called are Mr Kelly, Ms Perrett, Mr Fraser, Mr Mulherin MP and Mr Lawlor in that order. And after that, it is intended to call, in the week commencing the 14th of October, three witnesses: Mr Seymour, Mr Lette and Mr Godber. The reason they are being called in that week is because of their personal arrangements, and the commission is seeking to make it convenient for them to come at the time that suits them.

I should also mention, Commissioner, another matter, and that is submissions which parties may wish to advance to the commission should they already have leave to appear. And from the website it can be seen that the expectation of the commission is that if a party with leave wishes to make submissions to the commission, the deadline is the 11th of October.

COMMISSIONER WHITE: Yes. Thank you.

MR BELL: And that deadline remains, after consideration by the commission, as appropriate, taking into account the fact of the time necessary to complete consideration of all matters and then write the report. In particular, because of the necessity to accommodate the harness people, Seymour, Lette and Godber, in the week commencing the 14th, it may be necessary for particular parties to seek your leave to provide submissions after the deadline in respect of that evidence.

COMMISSIONER WHITE: Yes.

MR BELL: And if that arises, then I know, Commissioner, that you will deal with it as you see fit at that time. It has been mentioned by me, Commissioner, and in your opening statement by you too, that if appropriate, the commission may notify parties of potential adverse findings that might be made involving them. And I wanted to emphasise, as has always been said, that if appropriate, the commission may notify parties. I say that "may" because with witnesses called in these public hearings so far, at least in the witnesses that were examined first up until Mr Tuttle, express propositions were put to them, and anybody who wishes to appreciate the way a

5 potential finding might be styled, it would be good for them to reconsider the transcript about the matters that were put. That's not to say that no further notice will be given, but that's a very good indication of potential findings that could possibly be made. No conclusions have been reached, as you know.

10 However, if notice is to be given to any party of potential adverse findings, it will occur, that is, the notification will be given, by the 8th of October. That means by the end of the day on the 8th of October. And so, therefore, Commissioner, that's the way the commission is running, and I am conscious of the time that it will take you to write the report and take into account any submissions and further evidence that's forthcoming, and that's why I'm proceeding on the basis of the matters I've just said in order to allow sufficient time for that proper consideration to be given.

15 COMMISSIONER WHITE: Thank you, Mr Bell.

MR BELL: So now, Commissioner, the next witness, who is the first in relation to government overview, is Mr Kelly. Is it convenient to call him now?

20 COMMISSIONER WHITE: It is. It is. Thank you, Mr Bell. Mr Kelly.

MR BELL: Call Mr Kelly, please.

25 COMMISSIONER WHITE: Yes. Thank you. Mr MacSporran, you're a bit out of my view there. Are you going to remain sitting in the second row?

MR MacSPORRAN: Yes. I'm comfortable here, Commissioner. If I have any difficulties, I can raise them, but we're set up here, and we're quite comfortable. It's easier for us to see the witness from this position, certainly.

30 COMMISSIONER WHITE: That's true. You can't see the whites of Mr Bell's eyes there, but perhaps that's preferable.

MR MacSPORRAN: I'm keeping an eye on Mr Bell. He's fully in my sight from this position.

35 COMMISSIONER WHITE: All right, then. I'm the only one who can't see you, so you'll just have to stand up if you - - -

MR MacSPORRAN: Certainly, yes.

40 COMMISSIONER WHITE: - - - want to say anything so I can see you behind Mr Wilson.

MR MacSPORRAN: Certainly.

45 COMMISSIONER WHITE: All right. Thank you.

MICHAEL ANTHONY KELLY, SWORN

[11.09 am]

EXAMINATION BY MR BELL

5

COMMISSIONER WHITE: Now, Mr Kelly, I'm not proposing to take a break this morning because we've started an hour later than usual, so if you do need to pause for a bit, would you let me know?---Certainly.

10

We'll rise at 1 o'clock. Thanks, Mr Bell.

MR BELL: Your full name is Michael Anthony Kelly?---It is.

15

Mr Kelly, you have provided five statements to the commission, the first sworn the 2nd of August, then 16 September, then 27 September and then two on the 1st of October?---I believe that's correct, Mr Bell.

20

Mr Kelly, it was in 2003 that you were first appointed executive director of what might be known as the Office of Racing?---Correct.

And at that time, the Racing Act 2002 was the relevant legislation, was it?---Yes, it was.

25

And the control body for thoroughbred racing at the time when you commenced as executive director involved persons on the board, including Mr Bentley, Mr Hanmer and Mr Lambert?---Yes, that's correct.

30

And then in 2004, appointed to thoroughbred racing control body was Mr Andrews and Mr Ludwig?---I believe those dates are accurate, yes.

35

So therefore, I assume that since your commencement as executive director of Office of Racing, you have come to know those persons reasonably well up until the time of their leaving in April 2012?---Not – not all of the board members. Some better than others. But, yeah, I had dealings with – with the board over that period, yes.

40

Okay. Who did you know well? Who did you deal with a lot to know well?---Well, most of my dealings at the board level were with Bob Bentley or Tony Hanmer. There wasn't very much dealing with any of the other board members.

45

And at the executive level?---Malcolm Tuttle, Paul Brennan, Shara Reid, prior to Jamie Orchard, a man by the name of Andrew Hedges, but then Jamie Orchard, Adam Carter, and then the various chief stewards. Wade Birch is the latest one, and prior to that, Reid Sanders. So they were the main ones.

It's probably best if I approach the Office of Racing this way to understand the reason for your communication with those persons you just mentioned. I understand

the Office of Racing has been divided into two areas: the Office of Racing Regulation - - -?---Yes.

5 - - - and also Racing Science Centre?---Yes, that's correct.

And the commission, I understand – tell me if you agree – is probably more focused upon the Office of Racing Regulation with its terms of reference. Would you not agree?---Thus far, yes, the way I read it, the majority of the terms of reference dealing with the Office of Racing Regulation, although on the issue of oversight,
10 there was a lot of work related to that that comes out of the Racing Science Centre.

Yes. My point being the terms of reference direct the commission, it would seem, to matters that really involved Office of Racing Regulation rather than the science centre?---Yes, I'd agree with that, yes.

15 And in particular, if I can talk a little about the Office of Racing Regulation segment of the Office of Racing, please, I read in Ms Perrett's statement of the 2nd of August '13 that the make-up of personnel in that part, meaning Office of Racing Regulation, were the executive director, yourself - - -?---Yes.

20 And did you just say yes, for the record?---Yes.

And then the director, investigations and compliance, which was Ms Perrett?---Yes.

25 And then four principal compliance officers?---Over differing times through the period you're looking at, there would've been between three and four, depending on who was appointed and who was brought in to do certain jobs. Yes.

30 Okay?---But that'd be around about the right figure.

Okay. She said four; you say three or four, but I've got it?---Yeah.

And one principal integrity officer, who was a veterinarian?---Yes.

35 And one project officer, administration?---Yep.

And that project officer, administration – so I properly understand it – is that for administration within the office?---It is. General office administration, and that person also acts, basically, as my executive assistant - - -

40 Okay?--- - - - looking after my diary and things like that.

Mr Kelly, when I look at Ms Perrett's job description I read "Director – Investigation and Compliance". Does that aptly describe her principal role?---No. I don't – I don't think it does. There's a lot more that's involved with the Office of Racing Regulation than merely just investigations and compliance.

Okay. Does she undertake investigations and compliance in that role?---Yes.

And the investigations and compliance, are they associated with, among other things, the conduct of the control bodies?---Yes.

5

And if I read three or four principal compliance officers, does “compliance” aptly describe their role?---It’s part of the role; they do a range of other activities as well, which I can explain if you want me to.

10 Well, I’m more interested in the compliance part of that activity?---It is a part - - -

They’re involved - - -?---It is a part of their function. Yes.

15 Okay. And that compliance role, does it involve compliance by the control bodies?---Yes.

Okay. Mr Kelly, I wanted to talk to you a little about the range of functions of that part of the Office of Racing, and I see that in your statement which you provided to the commission sworn on 27 September ’13 – do you have a copy of it there, please?
20 In this statement I see in paragraph 3 you defined functions performed by the Office of Racing Regulation, didn’t you?---Yes. I did.

25 And in particular between (a) and (f), I think that those activities involve dealings within government?---Yes. That would be correct.

And then underneath that, if I go to (g) assessment of control body applications – I understand that. That would not have arisen much over the period of 2007 to 2012, of course?---Arose three times, I seem to remember.

30 That’s right. So that wouldn’t be an activity that spans the whole period. It arose three times: one for Greyhound, one for Harness in 2008 and one for the amalgamated body in ’10?---No. There was one from the thoroughbred control body in 2006 - - -

35 Yeah. I said in 2007 and on?---Oh, sorry.

Yeah. Okay?---No. There wasn’t one for the amalgamated control body, because that was done by legislation.

40 Okay. But there was participation by your office in relation to dealings with the proposal for the company that would be the control body, wasn’t there?---Yes. There was.

45 And even though legislation was brought in to effect the replacement of the three control bodies by one, as to the conditions imposed by the Minister, you had dealings about them, didn’t you?---Yes. We did.

Okay. And then if I go to 3(h), you define one function as performance of legislative responsibilities under the Racing Act 2002?---Yes.

5 And that's an ongoing activity, I take it, within the office?---Yes. That's correct.

And then I see in (j) monitoring and liaising with the control body?---Yes. That's right.

10 In defining the functions of Office of Racing Regulation by reference to liaising, what is it – if you can help, and I know it's a broad question – what is it that the office would be liaising with the control body about – what sorts of things?---The – when the control body or bodies are establishing their racing calendars - - -

15 Okay?--- - - - and deciding what their race date allocations are going to be, if they were reviewing issues like breeding incentive schemes, those types of schemes in the industry, changes, perhaps, to the drug control regime. While that ultimately is operationalised at the Racing Science Centre, there was involvement from the Office of Racing Regulation on those types of issues.

20 Okay?---If they're conducting animal welfare investigations or serious investigations into licensee type issues, we may certainly be getting information from them on the progress of those or what the implications might be.

25 What's the – why the liaising with the control body? Is it that the office has a role in the licensing, for example?---Licensing of - - -

30 You were saying just then, "If there was a serious investigation into licensing then we'd be involved"?---Well, we'd be involved in receiving information from the – from the control body on how that was progressing and – and what the issues were.

Why would that happen?---Well, at many times some of those issues would result in the control body taking disciplinary actions against a person. That would then usually be reported in the media or reported on – on some sort of media site.

35 Yep?---There'd, on a range of occasions, be then correspondence into the government, directed to the Minister, about this is being done and – and what's happening? So we – we would have to frame responses, so we're kept aware of what these types of issues were.

40 See, I'm seeing (a) to (f) in your list. I understand those things of liaising with ministers and the – obviously, the chief executive etcetera. I take it that what you mean in (j) in relation to liaising is keeping up-to-date with present issues so that the government is informed – that sort of thing, is it?---That'd be – yes. That'd be a very fair comment, Mr Bell.

45 Okay. It's not so much the liaising in the sense that there's any necessity for the Office of Racing to play a role in the licensing - - -?---No.

- - - but just to keep updated with the information?---Yes.

5 Okay. Because I think that my understanding from many statements made by ministers over the time that the commission's been looking at it, that very much the idea was that the control body would be the one responsible for controlling the industry, rather than government?---Yes. That'd be correct.

10 And government's role, including the Office of Racing's role, was to overview or monitor, as you say in (j), the control body's performance?---Yes.

Okay. And I see that in monitoring the control body's performance, it's necessary to understand the issues at hand?---Yes.

15 Who would it be that would liaise with representatives of the control body about that sort of information? Would it vary, or would it be you?---No. It wouldn't – wouldn't be specifically me. I – I would do it at times and all of Carol Perrett and her team would be doing that as well. Do you want me to stay away from the Racing Science Centre side - - -

20 Yes, please?---Okay. So it'd be – it'd be Carol Perrett and her team, so principally the compliance officers, although the principal veterinary officer had quite significant dealings with the veterinary officer that was – that was employed by the control body on those animal welfare and – and veterinary-type issues.

25 And in (j) you also refer to monitoring. Monitoring – what did you mean by that, please?---Keeping an overview of what the current issues are in the industry and how they were being dealt with by the control body or what I, in my case, identified as emerging issues and how the control body was positioning itself to be able to respond to those type of emerging issues.

30 See, that's an interesting thing for the Commission to understand, because if the control body was involved with the governance of its part of the industry, its part of the – its code, I'm wondering what it is that the Office of Racing has to do with that. What role it sees it as having in that?---As I understand it, that the primary aspect of
35 role was to have – be able to check that the control body had systems in place and processes in place so that they could manage the code of racing that they were responsible for, so – that their licensing systems were fair, that their disciplinary systems were appropriate in how – and by that I mean that there were appeal rights from certain decisions that they might take at the steward level before a penalty was
40 implied, that the rules of racing were made commonly available to everyone who had an interest in the industry. It was in 2003, I believe – I have to check the records – but I don't think the rules of racing were publicly available, so you had a whole range of people participating in the industry who were governed by a set of rules, and it was very hard to get hold of them. So it was those types of systems that developed
45 over a period of time.

Was it? You see, what I'm trying to do, to be straight with you, is to try and understand the line between, for example, let's say the harness racing control body. What's the line between it since 2006 or 7? Let's say 2007: what's the line between it and the Office, because I'm thinking when I read the legislation and look at the background, not knowing how it operates, that the responsibility for the control of the code is with the board and then the company, and the responsibility for the Office of Racing is associated with the Racing Act and the different aspects that it has for the government. Is that how you saw it?---Yes. In broad terms, the control bodies were responsible for managing their code of racing and taking all the decisions necessary to actually run the code of racing.

Yeah?---The Office of Racing responsibilities: yes, very much so for the Act, then, in addition to that, all the other normal activities that happened within a part of government that had really nothing to do with fulfilling any legislative responsibility, which is the business of government.

Yeah. I understand, but the business of government you mentioned in the functions that you put there in your description of those functions, but I'm thinking that – was there a distinct line between the role of a control body under this legislation and the role of the Office, or did they work together?---No, I think there was a distinct line.

Okay. You see, a simple view of the legislation – my simple view, which I'm asking for your assistance about – looks like the role of the government was to regulate the conduct of the control bodies in accordance with the different provisions in the Act, whereas the control bodies were responsible for the regulation of their industry, their code?---Yes, I agree with that proposition.

Okay, and so, therefore, in your position, I appreciate that it's obvious that you would need to be up-to-date with the issues which were facing the control bodies, but they were their issues, weren't they?---Many of them were, yes, just their issues.

You say many: that means there's others that weren't?---Yes.

Okay. What do you mean by that? I know that's a hard question because it's broad-ranging, but I need your help?---No. Well, to use just one example, would be, say, infrastructure - - -

Yeah?--- - - - which I think was of interest.

Yes?---The control bodies were responsible for having the infrastructure to run their race meetings, to make sure it was safe, it was fit for purpose, it was in the right places, so that was clearly their responsibility, but they weren't able to do everything that was necessary to deliver that, because they were short of funds.

Yes?---And that's when they come to government and government then starts to become involved in facilitating how they can have those venues that are appropriate and fit for purpose and that type of thing.

Yes, but that – do you think that that’s a particular aspect of what in fact occurred, namely that the government made its determination to grant a fund or a scheme to fund the infrastructure upgrades? That wasn’t really something under the Racing Act, was it?---No.

5

In fact, it’s not envisaged under the Act?---No.

Okay, but I understand your point. The point is that you make that when that question arose you were – had to be involved in that, in the liaising between the control bodies and government. I’ve got it?---Yes.

10

I see. Well, what I want to do, please, if you don’t mind, is take you to the legislation and ask you for help in relation to parts of it. Could we do that, please?---Certainly.

15

Mr Kelly, do you mind going to section 4, please, of the legislation? You have that there?---Main purposes of Act and how they are generally achieved?

20

Yes, please?---Yes I do, Mr Bell.

If you don’t mind going to (1)(b), I see (1)(b), provides, “The main purposes of this Act,” and then I go to (b), “to ensure the integrity of all persons involved with racing or betting under the Act.” That’s a main purpose?---Yes.

25

And then, “(c) to safeguard the welfare of all animals involved in racing under this Act,” and I think that’s where we go to the Science Centre in particular?---Probably in particular, yes.

30

Okay, and then, “(a) to maintain public confidence in the racing of animals in Queensland for which betting is lawful.”?---Yes.

And that public confidence is very much about fairness, I suppose?---It’s very much about fairness of the outcome of a racing event, very much so.

35

Exactly?---The – do you – would you like me to explain any - - -

No, that’s okay. That fulfils the request, and I said to you it’s about fairness, because if the betting isn’t fair people are going to lose confidence in it and go to football or somewhere?---That’s correct.

40

Yeah, and would you mind going to subsection (2), “Generally, the main purposes are achieved by providing for the following,” and “(a) the process for approving an applicant as a control body.” Well, we understand that; we talked and [indistinct] about that, “(b) the approval of a suitable applicant as a control body to manage a code of racing,” and “(c) the performance by each control body of its function under the Act of managing its code of racing.” That in particular has relevance here to the Commission, don’t you think, reflecting on the terms of reference?---Yes, I do.

45

And then if you don't mind going to (h), it says, "Generally, the main purposes are achieved by providing for the following – the investigation of matters under, and enforcement of compliance with, this Act by authorised officers."?---Yes.

5 Okay, and that surely must be one of the functions that was within the Office of Racing's jurisdiction, would you think?---Yes.

Okay, and (i), "offences and legal proceedings generally."?---Yes.

10 Okay. So when I see (h) and I think about what's in your affidavits, it doesn't appear as if any investigations occurred over the period of your time, with any control body. Do you agree with that? You don't have to answer it now. If you want to think about it more - - -?---I - - -

15 I haven't seen anywhere in reading - - -?---I'd – I'd like to think about it. I – I believe investigations were conducted.

Okay?---Yes.

20 Okay. Let's try this, then. Looking at (h) again, the investigation of matters under and enforcement of compliance with this act by authorised officers – I'm telling you I'm looking at a different version, but we're talking about the same thing. The one I'm looking at is the investigation of matters. You know that, I think, Mr Kelly. So I'm looking at coupling the investigation of matters under and enforcement of
25 compliance with, so do you recall any events when an investigation was undertaken and enforcement of compliance with the Act occurred because of the investigation?---Yes. I do.

Okay. Could you help me with an example, and you can always put in a
30 supplementary statement if you wish?---Well, one of the more recent ones was an investigation of bookmaking activities by a range of bookmakers that – the investigation suggested that they weren't complying with the provisions of the Act and there was various prosecution action taken - - -

35 Okay?--- - - - in respect to that.

And were the control bodies involved in that, or was that a matter for the office to undertake?---The control bodies were – excuse me. The control bodies were involved initially as part of their monitoring of the bookmakers, as one of their
40 licensees. Certain information came to our attention as a result of those investigations that they'd done and the action they'd taken, and then a lot of the evidentiary material that they had gathered as part of their process then came to us with other information - - -

45 I see?--- - - - that was subsequently developed.

And do you recall any investigation of matters and enforcement of compliance with the Act in respect of control bodies during the period 2007 to 2012?---I do.

5 Yes?---Our – our dealings with the control bodies, from – from the Office of Racing Regulation perspective, identified ranges of matters where we thought would – they – they could perhaps be doing business better in a range of areas and some of the issues they were dealing with. And - - -

10 Well, that’s different. I’m not asking about doing business better; I’m asking about investigation that resulted in enforcement of compliance with the Act?---Okay. If – I understand what you’re saying. As far as breaches of the Act - - -

Yeah?---No. None come - - -

15 Okay?--- - - - immediately to mind.

And were any investigations undertaken to see whether any control bodies were in breach of the Act or were breaching the Act - - -?---Yes.

20 - - - that you can think of at the moment?---Yes. There were.

25 Okay?---Primarily the section 46 assessment programs that were done with the control bodies, particularly focused – one of them – on the requirement to have all the mandatory policies under the Act and then assessment – firstly making sure that they had them and then an assessment of them.

I’ll come to that one in a moment. That’s a very important one - - -?---Okay.

30 - - - I accept that. Other ones – I mean so what you’re saying there is, “Yes. We did, and in our audit we saw that we needed to investigate whether they had policies and if they complied, and we” - - -?---Yep.

35 - - - “dealt with that.” That’s one important one; I accept that?---Another one that I think was important was the compliance with the collection procedures – the – issued by the Animal Welfare and Integrity Board, and how samples are collected from licensed animals.

40 Okay. I was just talking about control bodies not complying with the Act?---Well, it’s my understanding that the Act requires the – the procedures and the collection procedures issued by the board under the Act, and then they’re published by the board with – the board has the authority to say - - -

45 Okay?--- - - - you need to comply with these when you’re taking samples and dealing with samples.

Yes. I see?---And then that was something that was investigated by us - - -

Okay?--- - - - the compliance with that.

And was there a standard that was being practised that was below the standard required by the Act in that regard, was there?---In – in certain instances - - -

5

Okay?--- - - - there were issues of non-compliance.

Okay. Now, would you turn to section 34, please, of the legislation. Do you have – that’s the one that defines powers of control body for its code of racing. Have you got that one?---Yes. I do.

10

Okay?---Mr Bell, are we – are we on the same - - -

We may not be, having – with the same Act?---Because these changed a little bit over the time.

15

Yeah. I know it did?--- There were amendments.

Let’s see if I’ve got the same one - - -?---Okay.

20

- - - because I’ll read it out and you can ensure that I’m talking about the same thing. When I look at section 34 in any version of the legislation, it looks like the powers of the control body are directed towards regulating the code. Would that be – do you agree with that?---That’d be a fair assessment. Yes.

25

Okay. And in particular, if one thinks about a few examples – 34(1)(c): “The control body may do any of the following for its code of racing – (c) prepare and implement plans and strategies for developing, promoting and marketing the commercial operations of the code.” See that one?---Yes. I do.

30

And then (d): “encourage and facilitate the development of ancillary racing activities for the code”?---Yes. I do.

Okay. And then (f) in particular, if you don’t mind: “distribute an amount, subject to its policies, to a licensed club for use (1) as prize money, (2) for a purpose relating to the operation of a club, (3) to undertake research and analysis for the code,” and then (g) on mine: “make decisions about and allocate funding for venue development and other infrastructure relevant to the code.” You see that?---Yes. Got the same as mine.

40

Well, looking at the scheme, it – the scheme in the legislation – it looks as if the powers given to the control bodies was for regulation of, among other things, the clubs in their code?---Yes, within certain parameters.

45

Yeah – within parameters. The thing it doesn’t appear to do is to provide that the control body would own assets which were used in the function of the – of its code in

the industry. Do you agree with that?---No. It's not a – a specific provision identified in the Act.

5 But it would be against the substance of the Act, would it not? Because if, for example, the control body owned, let's say, one venue itself, I'm thinking that it'd be very difficult for a control body then to have the confidence of the community, the stakeholders, that it was regulating the code without an interest in where the racing was being conducted, for example. Don't you agree? I just can't see that, how a control body that's making the decisions about – for example, looking here, (f),
10 where the prize money goes for races held by the club if, for example, it owns one of the racing venues and it's providing for prize money to go to it. Can you see that?---I – I can certainly understand and - - -

15 That's a problem, isn't it?--- - - - see what – what you're saying. It's an – it's a potential problem that has to be managed. Yes.

20 Well, how could it be possibly be managed with – and keep the confidence of the community, the stakeholders, if, for example, the harness control body owned Albion, for example?---Yes.

25 And people at the Gold Coast were saying, "What about some prize money for us?" And they'd go, "No. We're giving it all to Albion." Now, that's an obvious example, isn't it?---Yes. If – if the control body did that – my recollection is the clubs were ranked in accordance to whether they were a TAB, a non-TAB - - -

30 Yeah. Yes?--- - - - strategic or not, and the prize money allocated to the various race meetings within that class was pretty well constant, I think, amongst that class of racing.

35 Well, that might be so, but I'm just testing the model, you see, because the legislation in section 34, that you administrated during your period there, looks for all money to me like if you're a control body, you're a regulator of your code. You're not a participator, don't you think?---The control body needs – certainly needs to be separated from, for argument's sake, a race club if – if that's the distinction that we're drawing about - - -

40 Yes. That's exactly the distinction. I just don't see how a regulator can participate in that which it's regulating as well. Can you? Can you see that?---I can see how it could participate, how it could own a venue, how it - - -

45 How is that? How could that be?---Well, that's - - -

How could the confidence of the public be upheld if, for example, Queensland Racing, for example, owned a course at the Sunshine Coast and allocated \$10 million to it and none to another club? How could that be seen to be appropriate conduct?
45 Can you see a way?---I can see a way if – if the assessment were done and the

decisions were taken for why, in that example, the Sunshine Coast would be the venue that would get that type of investment.

5 But that's got nothing to do with that. I'm testing the model that a regulator also be deregulated with other participants in the code. That's the thing I'm trying to test with you?---Yes.

It doesn't work as a model - - -?---The control - - -

10 - - - in my thinking?---The control bodies shouldn't be, and I don't believe were, actual race clubs. Albion Park is a perfect example, where it was owned by the harness and greyhound control bodies, but the clubs that actually operated Albion Park were a harness racing club and a greyhound racing club; they weren't the control bodies. So what - - -

15 No. I see you're emphasising to me "owned". You used "owned" - - -?---Yes.

- - - to make a distinction between what, or a distinction from what?---Well, it would be ownership of – of the venue. They - - -

20 Okay. Well, why don't we just lighten it up and say interest in the venue?---Yes, certainly.

25 And we don't have to define it. If, for example, the greyhound control body had an interest, meaning an interest in the sense that it had not ownership but a bias towards that club getting lots of money for its upgrade, rather than appearing to the public as if it had no interest in any club, they were all the same to it, isn't that the way regulators work?---Yes. Yes, I agree with that.

30 I just don't see, in your very experienced position, you could think it could work otherwise. I just don't understand it?---I'm not – I'm not suggesting that it doesn't.

Okay. You see, because looking back at the purpose of the Act, I'm looking at the word confidence, you know, aren't I?---Yes.

35 And public confidence is one thing, to maintain public confidence, and then I see "to ensure the integrity of all persons", and I'm thinking that those sort of concepts – one needs to be careful to ensure that the regulator stays regulating and the participants under the regulator do the participating. Do you agree with that?---I'm sorry,
40 Mr Bell.

Yes. Those sort of concepts dictate, don't they, that the regulator should maintain its position as regulator, as a control body, and those who want to participate in the code are regulated by the control body. Those definitions should be kept clear, should
45 they not?---Yes. That's – that was part of the control body's function, and that's where I think I'm having difficulty grappling with this, because the control body didn't just regulate. That wasn't their only function.

No. That's right?---They were - - -

5 But it works, my model, doesn't it? Insofar as one control body wishes to participate in that which it is regulating, that's not a good model, is my proposition?---In a pure sense, yes, I'd accept that, yes.

10 Okay. Well, give me an impure sense where it works, if you can?---Well, some of the equity sharing arrangements, which I think is what – what you're probably alluding to.

Am I?---I might be – I might be wrong.

15 I'm looking at the future as well, you see?---Yes. Yes, but a significant investment is – is made by a control body into a venue. I believe that they have a responsibility to the wider industry to ensure that investment is – is maintained and it works and it delivers the best possible outcomes that can be done. Now, that can be done in a number of ways. One is the control body taking direct interest in that type of activity.

20 Why would you ever do that way?---Well - - -

Because there's other ways you're about to tell me?---Yeah, yeah. Yeah, there's other ways to - - -

25 I just don't understand how that way could ever work and maintain public confidence at the moment, but help me, please?---Well, if I get to the second, I can probably compare and contrast them. The other – the other model is to hand over complete responsibility for it to another entity to run it, and sometimes you get into significant difficulties when very poor decisions are made. Now, I can provide a real-life
30 example where this occurred if it would assist at this stage.

35 You don't need to. I understand your concept. Your point is that say, for example, there was a club at Longreach – hypothetical – and it was poorly run. The control body might think that it needs to do something before it upgrades the infrastructure and gives it TAB racing?---It may.

Yes. Well, I think that's your example, isn't it? That's the sort of thing that you're thinking of?---No, not - - -

40 There's a number of ways - - -?---Well, that's part of it, but you can also have a club – we'll pick a fictional one – that makes all sorts of contractual arrangements with other entities and incurs a potential for a huge loss if they don't fulfil those obligations.

45 Yes.

COMMISSIONER WHITE: You're thinking about Cairns, I take it?---Yes, Commissioner, that's right, without wanting to actually - - -

You didn't want to finger them?---Yes.

5

But I think we've all read the material?---Yeah. So that's the type of situation that can arise if the control body just takes a completely hands-off approach and just licences the venue, says yes, it's an appropriate venue, it meets workplace health and safety requirements, the fire conditions are in place, so here's your race meetings, and go and do it. There needs to be a balance, and I think that's the point I was trying to get across. There's a – there's a – it's not regulator completely regulates and has absolutely nothing to do with anything else, but it's also not stepping too far over that regulatory line and becoming a race club and actually getting into the business of being a race club and – and – and running the race club.

15

MR BELL: I understand the practical issue you raise, and it's an important one, of course, that must be faced by control bodies going forward into the future too. But when I look at section 34, if it's to be maintained in its present state, I personally struggle, looking at it, to see that what's envisaged is the control body would take investments or would take an interest, meaning a proprietary interest, in venues, for example, as a method of controlling what goes on there. Do you know what I mean?---I do understand where you're coming from, Mr Bell, on that, but I mean, I don't think it's – it's the model that we have. It's not – like, for example, in the United States, the model there is – is very different, where you've got organisations involved in the whole chain of production of – of producing racing product, right from the breeding of racing animals through to owning the wagering companies. So there's a range of models. If you look at – Hong Kong is probably the more restrictive model that is very much the black and white regulating, do nothing else, but I don't know if that approach would quite work – work here with what – with our expectations.

20

Why would that be? Just tell me that, please. I see you saying if you want a look at a full regulatory role and only that role like in Hong Kong, it may not work for us. That is, in Queensland. Is that what you're – you were meaning?--- I don't think it'd work under the current structures and the current, I suppose, provisions of the act.

25

Yeah, okay?--- It would be – and this discussion and debate has occurred within government since – well, for a number of – I imagine, probably 2004, '5. It's about this getting the balance between the regulatory and commercial functions of a control body appropriate and having – making sure that commercial decisions are not being taken to the detriment of a regulatory perspective. And the best example I can give, if it would be of any assistance, is at a drug control regime. And that's why Queensland for a long period of time has kept the actual drug control testing separate from the control body.

30

Yes?--- That's run by the government. Now in New South Wales and Victoria, the drug control laboratories and the systems and the procedures are all run by the

control body. Now, they have very robust internal Chinese walls to deal with that. But to pick up on your point, that's still a hybrid model that doesn't have regulatory commercial. Where in Queensland we very much said that type of integrity function is so core to the delivery of the public confidence in the – in making sure animals are not hit with improving or deproving substances that the testing of that is removed from the control body.

So do I take it then from what you have said that you do not – you think it should not be excluded from a model going forward that a control body might own the infrastructure?--- No, I don't think it should be from my perspective. And I believe the act actually envisages that type of thing happening. And I'm aware that there are a number of organisations who are looking at that type of proprietary model of racing, which is very different to what we've got at the moment. But it's a true commercial operation which raises a whole range of challenges as far as separating that regulatory arm and regulatory function from the commercial operations of the industry.

Okay. Well, let me come back. We're being a little philosophical, I think. I wanted to come back to this legislation and put a proposition to you that when I look at section 34 – and I'm asking for your comment now or into the future. When I look at section 34, it seems to me that the powers do not involve the control body buying investments for infrastructure for its code of racing?--- Could I ask, Mr Bell, is this the most current version of the act?

I think the 2010 act is the one that you're thinking about when the amalgamated control body was established; are you?--- Well, partially because I think the issue of infrastructure is dealt with in different words.

Yes?--- But also I believe, and I hope I'm not wrong. But it's my belief that the 34 powers are now powers including these types of things where the primary head of power for the control body comes from 33.

Yes?--- Which is it is to manage its code of racing - - -

Yes?--- And it has all the powers stated there as well as other necessary powers.

Yes?--- So my understanding – and I know we, when we have been looking at potential changes to suggest to section 34-type powers, they've been specified to really put beyond doubt that a control body has certain functions. So that if there is a challenge to a control body distributing an amount for prize money, well then it's quite clear in the act that that is a power that the control body has. And there's very little potential legal argument over whether you can or can't do that where the other powers that a control may need are really the section 33.

Yes?--- The border.

I take your point. And when I look at 33(1), I suppose that's the one that's been driving my thinking all the way through. That is, to manage its code of racing. And I'm thinking manage means a different thing to own. But you're saying that – not necessarily so?--- I believe it may be part of it, I would say that.

5

Okay. So that might mean if we look at section 33, it might be read that the – a new control body under this act going forward in managing its code, that might involve buying all the race courses in Queensland, for example, or some of them. Because that's a way of controlling the conduct or misconduct of the people who are presently in charge if that's what they are like?--- I find it hard to speculate on that. I mean it's
- - -

10

Okay, well don't speculate?--- No.

15

Don't speculate. So certainly this is the case, isn't it, listening to you this morning. You think that section 33 was complied with in relation to, for example, the Sunshine Coast where the control body for thoroughbred racing to an interest in a unit trust which it gained in relation to the property on which the infrastructure was established up there?--- I don't think that there was anything preventing them doing it from the act. I don't believe the act precluded them from doing that.

20

Okay. So you felt that it was within the scope of managing its code to take an interest – take a proprietary interest in a course at the Sunshine Coast. Now, I understand if you do and I understand why you acted in that way if that's the way you think?--- Well, I don't – I don't think you – I'm not of the view that it's not part of managing their code. But them – it's just a proposition you'd put to me that I don't believe we were involved in approving or recommending - - -

25

No, no, no?--- Having any suggestion about whether they should or shouldn't take a
- - -

30

No, no, no, I know you weren't involved and I'm not suggesting you were?--- Yes.

35

But you must have known about it?--- Oh, yes. Yes.

And you must not have conducted any investigation in relation to it because you must have concluded there was no need for an investigation. That's what I'm thinking because I know that you were very experienced at that time in this area?--- Yes, I – I think I – I can't say.

40

So you did know about the taking of the interest through the unit trust in the Sunshine Coast course in 2006?--- Yes.

45

Okay. And I take it that you're – you reached the view that at least that was within the scope of the legislation for it to do that?--- Yes.

5 Okay. Now, I wanted to ask you to go to section 39, please. What I'm doing, Mr Kelly, is I just want to take you through some of the aspects the legislation that it seems, on any reading of it, gave scope for the Office of Racing, the government through the chief executive or the minister to, for example, audit the conduct of a control body or the control bodies. Okay?--- Yeah.

10 So section 39 first. Section 39 provides that, "A control body must give to the chief executive a copy of its program, for the following year, to audit periodically the suitability of every licensed animal, club, participant and venue to continue to be licensed." That's right; isn't it?--- Yes.

15 And I see that in looking at the documents there was a particular form called a form 9 that would be provided in relation to this each year?---An approved form under the Act.

Yeah?---I accept that is.

20 Okay, and then I see in your affidavit – you tell me if you need to read it – you have said in I think paragraph 38, "Each year, the program required was received and reviewed," in relation to the three control bodies under this Act?---Can I just refer to that statement, please?

Yes, of course: section – paragraph 38. If you look at page 17, please?---Yes.

25 At the foot of the page, and then you if you go over the page you'll see I'm referring to?---Yes, I believe that to be right - - -

Okay?--- - - - that the control bodies provided their annual program into government.

30 Well, what it says is, "Provided," it says, "Each year, the control body program required to be provided was received and reviewed." That's what you say, isn't it?---Yes.

35 Okay. Now, would you be good enough to go to tab 8 in the bundle, please? In folder number 2, I'm told. Now, the Commission's review of the programs provided is set out in this table, and that's not conclusive in the sense that if you think the review of the documents is wrong we invite you to comment or provide further statements, but it seems from this review that it was rare that in fact the control bodies provided their program as required under the legislation. Now, you don't
40 have to answer that now; you can go away and think about it - - -?---I would.

- - - but the position at the moment is that the documents that are in the records of the control bodies seems to be represented by this table, and you can see that, regularly, the provision of the programs were out of time and weren't in the appropriate
45 form?---I can see that in from this document.

Yes?---I'd like to be able to check our documents and that - - -

Yes, of course?-- - - but I certainly understand what you've produced there, yes.

5 Okay. Now, the reason I've shown you this schedule is because in the statement you gave you gave it on the basis that each year the program required was received and reviewed. Now, I don't want to make any big thing about the fact that some people are late and stuff, but the point I'm trying to make is when one looks at the audit programs that are provided and looks at how they rarely complied in time and rarely complied in form on my assessment it may be that compliance officers weren't actually conducting their review properly. Would that be right?--I – that could be right based on what – produced there.

10 Yep, and, in particular, you see in my schedule, if it's right, harness didn't provide a plan at all in 2009, for example. You see that?---Yes, I see that.

15 Okay. So, anyway, you'll hear me say this a little bit today because I want your comment, please, Mr Kelly: if I read your affidavit and took it face value – I'm not going to say this all day – I mean, the point is if I read what you say about the section 39 audit, "Each year, the program required was received and reviewed," I'd think the Commission should relax; it's all done perfectly well, but when we actually look at it, it doesn't look that way. You see what I mean? So could you help us, please, on that?---Certainly.

25 Okay, and would you mind going over to – have you still got the legislation there? I was going to ask you to look at 41, please. Section 41 provides in subsection (1), "Within 14 days after each anniversary day of the commencement of this section, a control body must give to the chief executive a plan for managing its code of racing for a period of at least 1 year starting on that anniversary day," and then, (2), "At the same time the control body must give to the chief executive a notice about whether the control body has been an eligible corporation for the year before the anniversary day," et cetera, and "It must be," looking at subsection (3), "in the approved form." Now, in your affidavit, I think – I hope you've – if you want to look at it, it's – your statement is at paragraph 38 – and that is in particular, please, Mr Kelly, on page 18 of your statement?---Yes, I see that.

35 You say, "Each year, the relevant control bodies provided their annual plan for managing their code of racing. The Office of Racing regulation ensured that these plans were provided in accordance with the requirements of the Act and they are held by the department."?---Yes.

40 So I would think that you're representing to the Commission don't worry about that, it was done properly each year?---I believe they did produce their plan.

45 Okay. Would you go to tab 16, please, of the bundle, and the analysis of the Commission so far is that on not one occasion was there compliance in any year with this. Now, it's impossible for you to take in all the information in the schedule, so I'm just asking you to note it and if you can assist further do it?---Yes, certainly.

5 You see under the heading Due Date it's always the 15th of July each year, and you can see the submitted date, and then the other aspects of whether there was compliance with the legislation. It looks at least to the Commission on the analysis of the documents that have been provided to it from the records that it wasn't complied with on any – the legislation wasn't complied with on any occasion, so I'll just ask you to think about that, please, and maybe provide some other answer again?---Okay.

10 And I think that the reason I'm not asking you to comment, of course, because it would be unfair to tie you down one way or the other, because appreciating your role at the head nobody's asking you whether you checked all these things. I understand that, but in looking at the different parts of the legislation and seeing whether control bodies complied or were asked to comply and whether the Office of Racing actually reviewed what was given to it one might, in the end, if there's not compliance very often, conclude that there was just lip-service paid to the control of the control bodies, or the regulation of the control bodies. That proposition is open, you see?---Yes.

20 Okay, and then I wanted to ask you to go to section 45, please, if you don't mind. In section 45, power is given, of course, to a Minister if the Minister believes certain things?---Yes.

25 To give a notice under subsection (2), and, for example, section 45(2)(a), "to make a new policy about a matter, review an existing policy," that sort of thing, and the policies are otherwise defined in the legislation, I think, aren't they?---Yes.

Section 81, and there's two aspects: they can elect to make a policy that isn't essential under section 81?---Yes.

30 But if they do it, if – that is, if they have the policy, then the policy has effect as if an instrument?---Yes.

35 And that's because the legislation is aiming at public confidence in the way the code is being regulated by the control body, because they have to be on the website for example - - -?---Yes.

- - - A policy and so on, so everybody knows what the rules are, and you've just got to comply with them?---Yes.

40 You know all that. In particular – I'll show you your statement so I'm being completely – showing you what I'm thinking of these. In your statement, the same one, if I ask you to go over to paragraph 107, please. Are you ready there?---Beginning RQL?

45 Yeah. RQL, please. 107, your statement, you say, "RQL had a procurement policy in place in July '10 and it was expected that it would be adhered to in control body

purchasing activities. RQL assured government that purchasing activities – activity was being undertaken in accordance with their purchasing policy”?---Yes.

5 You see that? Indeed, the commission, in looking at it, notes at least so far that there was never any compliance with it, particularly in relation to infrastructure spending and the large spends over \$100,000. Now, you were getting those assurances; I’ve got it?---Yes.

10 But it wasn’t happening. Now, that’s difficult, isn’t it, because you’re hearing one thing, I take it, but there’s another thing happening?---We’re – we were getting a range of representations in – in business cases, in communication, that – and actually production of – of a policy saying this is what we have. This is how we do business and – and that was relied upon, those representations.

15 Yes. I’m going to come back to the review. You remember one year there was an audit about policies, and we’ve talked about that. I’ll come back to that in just a second. I understand your point, but you’re saying to me that there were other representations from the control bodies suggesting that “Here’s our policy and we’re complying with it, so relax,” in a sense?---Yes.

20 Okay. And then you say in 108 of your affidavit, “In 2011 it was identified by the Office of Racing Regulation that RQL purchasing policy did not contain enough detail related to the conduct of the Industry Infrastructure Plan-related purchasing activity. The Office of Racing Regulation requested RQL to develop and implement
25 specific Industry Infrastructure Plan-related purchasing process that would be used to ensure the transparency of RQL process and assist in the safeguarding of public interest related to expenditure of the RICDS funding being provided by government to RQL.” I understand that. What was happening was the government had made a decision to grant to the industry some of its revenue in the form of \$110 million over
30 four or five years, and therefore it was necessary to ensure that purchasing policy was specific for that industry expend?---I think it was – I would say it was more important that – that – that the purchasing policy was more robust than the one that they had.

35 Okay. I’ve got it – because there’s a lot of money involved, of course, which is public money?---Yes.

40 Okay. Now, I want you, please, to assist me by going to tab 212 in the bundles, which is volume 6, I’m told, please. I think you’ve got before you – I hope you’ve got before you an email from Ron Mathofer to Carol Perrett of the 13th of December 2011?---Yes. I do.

45 Okay. Thank you. Now, take it from me – I know that your name is not on this, so I’m just asking you to comment on it. You see what has occurred on that day is Mathofer has sent to Ms Perrett a purchasing policy for QRL. “I have been asked to forward to you the current RQL purchasing policy documents, including finance procedures. The addendum was developed to further align the RQL policy with

Queensland Government procurement policy. Please review and provide any feedback you may have.” See that?---Yes.

5 Okay. And I think – would you accept that that appears to be the upgrading of the policy, or the attempt to do it, in accordance with what you’ve said in the affidavit?---I think that – that would be one of the attempts. I think there were a – a range of drafts that they went through - - -

10 Okay?--- - - - but this would be one of them. Yes.

Okay. This draft that came, I’ll show you, results in the final version, because what happens is – if you go to tab 213A, please?---23 December email?

15 Yes, please. What happens is Ms Dart from Racing Queensland writes to Carol Perrett on that date: “Further to Adam’s previous email, I wish to advise that RQLs purchasing policy was adopted by the board on the 19th of December in the format that was sent to yourself. Could you please advise if the Office of Racing is satisfied with this document in its current state or if you require further amendments to comply with the requirements of the funding agreements.” And then what happens is
20 – at 216, if I ask you to go to that, please. If you go to 216 you’ll see at the top of the page Ms Perrett writes back on the 5th of January ’12: “The Office of Racing does not have any issues with the purchasing policy. I previously advised Ron and Adam of this,” meaning Ron Mathofer and Adam Carter - - -?---Yes.

25 - - - presumably. And so therefore one understands that the office must have looked at the policy, at least, or somebody – some compliance officer must have looked at it. Do you recall looking at it?---Yes. I believe I did.

30 Okay. So just let me ask you to go back, please, to 212 – divider 212. In looking at this policy, you see in the heading of this version 1.01, it commences under “Introduction”. Do you see that over the – on the first page of type? Yes – there?---Yes.

35 You see this is the one purchasing policy – infrastructure plan?---Yes. I’ve seen that.

Okay. And it says, “This addendum was prepared to expand on the RQL general purchasing policy, which provides guidelines and procedures to be followed by officers of Racing Queensland Limited when undertaking managing purchasing activities to meet the organisation’s operational requirements and also to meet the objectives of the policy. And then the next paragraph identifies the infrastructure plan: “The Racing Queensland infrastructure plan” – blah blah – “\$110 million”. See that?---Yes. I do.

45 Okay. And then if you don’t mind going to next page, you see “Industry Infrastructure Plan”, that heading, and you see in the first line, the last two words: “strictest guidelines”?---Yes. I do.

And the representation being made to anybody in the public, including to the government, is strict guidelines for purchasing, you'd think, wouldn't you? And then under "Suppliers" you see in the first line, the last word: "preferred" – the word "preferred suppliers"?---Yes. I do.

5

And then the heading "1.1 Selection of Preferred Suppliers"?---Yes.

And the second paragraph there refers to six key principles which, clearly enough, are a representation of all the important points for purchasing policy. Number 1: value for money?---Yes.

10

Okay. And then if you go over the page, "1.2 Preferred Suppliers Listing"?---Yes. Got that.

And the idea was, if you read the first line, inviting suppliers with experience and expertise in key areas – in the key areas that make up the projects. And so in 1.3 the thinking is for prequalification of certain suppliers, obviously?---Yes.

15

Okay. Now, then if you go to "1.5 Applications for Sole Supplier", you'll see it provides in some special circumstances the normal practices as outlined above may need to be set aside. So - - -?---Yes.

20

- - - the slate is clean if a discretion is exercised for this?---Yes. Yes. I - - -

Okay. For these instances, an exemption from normal policy practice may be applied for, and then there's reasons given for exemption?---That's correct.

25

But they aren't all the reasons. There's other reasons, so it's open-ended. You see what I mean?---Just - - -

30

What it says in - - -?--- - - - not that last bit. No.

Sorry. In the second paragraph – I am rushing you a bit. In the second paragraph: "Reasons for such exemptions include" - - -?---But not confined to – yes. Yes.

35

- - - "but are not confined to" – yeah?---I'm with you, Mr Bell. Yep.

And (a): "accessing existing standing offer and/or preferred supplier arrangements"?---Yes.

40

So that must mean that you don't need to comply with this if you've got a preferred supplier arrangement, I suspect. The point of – when the commission reads this it's difficult to define what a preferred supplier arrangement is that's sufficient to not have procurement in the normal way, of having tendering process. Look at (c) for example, Mr Kelly: "a sole supplier situations exists whereby a high degree of technical expertise is required"?---Yes. See that.

45

So that must mean that a sole supply situation – have you got any idea what that means?---If – well, I could – and based on my experience within government - - -

5 Yeah?--- - - - which – a lot of this seems to be running the same sort of themes, but the government policies it had – and obviously in different words, but – and there’s – there was always been a provision in the state purchasing policy for moving away from, say, tenders and quotes and going through a – a process. But it wasn’t just a matter of saying well, we’ve got a sole supplier so we won’t go through any process.

10 Yeah. Exactly?---You still have to do justifications as to why you would be going to a – a sole supplier or – or if there was a – a – one of the ones that arose quite regularly that I had to – well – that I had to deal with – don’t know if it was regularly, but was a case of genuine urgency. And so you didn’t have time to go to – through a tender process and a – a formalised expression of interest and three quotes
15 and assessment. It was this needs to be done, so you – you could exempt from the normal process, but there was still a process around that decision-making.

Yes. I think what you’re describing is the spirit of a purchasing policy is that one’s
20 looking to ensure that you have value for money and transparency. So later, if you’re spending public money, you can go back and ensure that the process was done in a way that people can judge later that it was trying to achieve value?---I would accept that. Yes.

25 If there were there extenuating circumstances like you’re mentioning now, there would be reasons set out so that somebody looking later with transparency could see what the reasons were and see that there was a good explanation for it?---I’d accept that. Yes.

30 Okay. Well, when, for example, the executives are looking at 1.5 and trying to define whether (a) has application – accessing existing standing offer and/or preferred supplier arrangements – I’m not asking you to give a judgment on it, Mr Kelly, but the point about this is it’s very difficult to find definition to it in this policy. And look at the last line underneath it: “Unless the above stated exemption
35 criteria is met, or other compelling reason is able to be supported, the current RQL purchasing policy with addendum will apply to the procurement of goods and services”?---Yes, I see that.

40 And then this is for the infrastructure plan, so it is important. If I go to consulting services, for example, and I see on that page, down towards the foot of the page, “For longer-term consultancy arrangements,” I see the first dot point: “Individual consultancy contracts over 100,000 in value are not to be entered into under these preferred supplier arrangements. Such consultancies, will be subject to board discretion as to the waiver of an open tender - - - “?---Yes.

45 “ - - - as described above, must be followed.” But I can’t find in the policy where it is that the board might exercise that discretion. Do you know what I mean? Because, you see, to define such a discretion and what circumstances it might apply

5 would be important to government when it's 110 million that's going to be being spent on consultants and other people. Okay?---If – if the board was to exercise a discretion there, then there would be – there should be documentation that identifies that decision-making process to getting to the stage of yes, the board is going to exercise a discretion.

Yes. Exactly. Well, with - - -?---Sorry. Sorry. I was going to say - - -

10 Sorry. You go on?--- - - - rather than having it defined in the document, I would take that as just a normal expectation from a – from a corporate entity.

Yes. You're talking about transparency of reasoning, aren't you?---Well, just – just normal decision-making behaviour of – of how you – how you come to that decision.

15 See, the important point about the policy here, the purchasing or procurement policy here, is, I think, that RQL is representing to the government, whose money it is, that they're going to find value for money by complying with this document?---Yes.

20 Okay. And in particular, they're saying to the Office of Racing, "This is what we're going to comply with. How do you – have you got any comment on it?", to make it easy?---Well, I think it even goes more than that. I think it's – the Office of Racing is saying we don't think your purchasing policy is detailed enough or – or appropriate to deal with what is now the infrastructure process.

25 No. That happened, but this is the response, you see?---Yeah. And then they have - - -

30 Produced this?---Reproduced this after a number of backwards and forwards, and this is – is the policy. So that is very much the representation that this is what we are going to be using to move forward with this infrastructure.

35 Yes. That's right. And you see, the reason I'm raising this with you is that it seems important that people were relying upon the Office of Racing to check what they were putting up. I'm sorry. They were relying on Racing Queensland to first put up a sensible purchasing policy that would be directed towards gaining value for money?---Yes.

40 But they were asking the Office of Racing to see whether it was compliant in the sense of looking like something that could achieve that outcome?---Yes.

45 Value for money. And when one looks at it, I can tell you, for example, 1.5, Applications for Sole Supplier, it's very difficult, I'd suggest to you, after the event to judge whether, for example, a situation had arisen that was a sole supply situation, because they could say that's a sole supply situation, and then you look in here and try and find, well, when is that?---Yeah. Mr Bell, I don't – I wouldn't necessarily accept that because while there may be a sole supplier situation under the policy, it's – I don't think that this policy or any of purchasing policies that I'm familiar with

suggest that that's the end of the matter. You just say – you just designate something as a sole supplier and that's – that's it. It has to be reasoned and argued and justified so that the decision is able to be ratified back to say yes, it is a genuine sole supplier.

5 Yes. Look, I agree with you. What you're saying to me is before you can plonk it into the class that might be defined a sole supplier situation, you've got to have reasons?---That's right. Yes. Very much so.

10 That's what you're saying. What I'm saying is I don't even know what a sole supplier situation is meant to mean in this policy to start with. So what reasons to judge against the class – nobody has got any criteria. Do you see what I mean? And there, down the bottom of the page, where it says, “subject to board discretion as to the waiver of an open tender - - - “?---Sorry. I'm lost here.

15 Yes. Let's go back up. Under Applications for Sole Supplier?---Yes, yes.

20 “(c) A sole supply situation”. There is no definition or no criteria there for one to judge whether or not that is – this is a situation where the reasons fit the purchasing policy?---I may very well be wrong, but I read – I think the term sole supplier pretty well speaks for itself. It is the sole supplier. So if you're going to buy a car, I don't think you could say there's a sole supplier unless you had already specified this is all the things that are required, and then that then becomes a reasoned decision to say, well, there is only a sole supplier for this. So it's - - -

25 I totally agree with you. See, the situation here was, it seems, that this provision, Application for Sole Supplier, was inserted in this policy to provide for what had already occurred within Racing Queensland, meaning that they had not been through any tendering process in relation to consultancy. And what they did was they put this provision into the addendum that wasn't there before so as to provide for that situation that had already arisen. And the consequence of that is what's being represented in a sort of vague way is that “We have a purchasing policy. The purchasing policy includes a sole supplier situation”?---Yes.

30

35 “And therefore we can explain to the government why it is we have only ever retained one consultant for engineering services,” for example?---Yes. I understand what you're saying, but as part of that representing to the government, there would be a lot more involved than just saying this is a sole supplier, and we appointed them under 1.5 of the policy. You would need to go behind that decision-making if – if you were – to confirm that that's the case.

40

We have no argument about that. What you're saying to me is there's got to be good reasons for things. Right?---Yes, very much so.

45 Okay. What I'm talking about is a policy that really doesn't make sense, first, doesn't give any direction and, secondly, is being represented to government as if it's going to in the future be complied with when, in fact, this section appears to have

been included for a situation that had already occurred, where there had been no tendering. See what I mean?---I see what you mean.

Okay?---But - - -

5

COMMISSIONER WHITE: Do you want to add something, Mr Kelly?---I just think, putting this in the temporal context of when it was being looked at – and I did see this document – I didn't read that it was a way of fixing up the past.

10 MR BELL: No. I understand that?---This was moving forward with the – the – the infrastructure plan, and this was the – like, from the Beaudesert project on, this was what was applying, because this – this document, I don't believe, well, either existed or existed in this form back - - -

15 That's true?--- - - - pre that Beaudesert situation.

Yes. There was no addendum then?---Yes, yes.

20 They put the addendum in specifically to satisfy the government in relation to the infrastructure plan, as you said?---Yes.

This is the addendum?---Yes.

25 Let me give you one last opportunity. When you read it – and I know it's impossible to remember what you thought at the time. When you read it – I'm trying to test whether there was any thinking in the Office of Racing – that means including Ms Perrett or yourself. You'll see at the bottom of the page there that we have open, it says, "For longer-term consultancy arrangements" – and I have in my mind that Contour, for example, at Racing Queensland was very much involved, so it was a
30 longer-term consultancy arrangement. And I look at dot point 1: "Individual contracts over 100,000 in value are not to be entered into under these preferred supplier arrangements". Okay. "Such consultancies, will be subject to board discretion as to the waiver of an open tender, as described above, must be followed." So I'm thinking that means open tender or the board says no, it doesn't have to go to
35 open tender. Aren't you?---No. I'm reading it differently to that. That - - -

How do you read it?---That if consultancies over 100,000 won't be a preferred supplier arrangement, you will go to open tender. If you don't go to open tender, the board will conduct its process of assessment and – and award. That's - - -
40

I think you're wrong because it says, doesn't it, "subject to the board discretion as to waiver of an open tender". Waiver means - - -?---Yes.

- - - not require. Anyway, it doesn't matter?---Yeah.

45

But my point is, you see - - -?--- But it'd have to go to the board level for a decision if you weren't going to go to open tender.

Yeah?--- Yes, I accept – I accept that.

5 Okay. Well, I can tell you that in the minutes there is no resolution of the board to say that's fine, we're not going to open tender the Contour?--- Is this subsequent - - -

At any time?--- To this - - -

10 At any time?--- Pre-this being developed, I don't know whether – well, listening to the last few days, I don't know whether the board went to tender or not as far as the Contour stuff. But certainly from this point on – and that's why we got so involvement in their procurement activities. They were to be future procurement activities, not for the past ones that - - -

15 Precisely?--- That they'd done.

That's what the representation was by producing the policy to you?--- Yes, very - - -

Okay?--- Very much over this - - -

20 So let me ask you, then. Now we're – now we agree on – now we've got to that point. After this policy came down, do you recall that Contour was very much involved going forward with project management services and preparing the business cases, for example?--- I think Contour had already been engaged well before that process.

25 Exactly?--- Because - - -

They had, and they hadn't been through any procurement process like tendering. There had been no resolution of the board to allow that not to happen?--- I'm - - -

30 It's a little concerning; isn't it?--- Well, now – now that you're putting that to me, yes. It would've been - - -

35 Well, did you have it some other way? Did you understand that – from Racing Queensland that Contour had been through a tendering process to get where they got?--- I understood – and it'd – and I'd – Contour had been selected, I think, for the Sunshine Coast - - -

40 Yeah?--- Project. I think they'd been through some sort of tendering process there.

Not Racing Queensland or Queensland Racing. What happened was there was another company called Arben and it had looked for tenderers?--- And it ran the tendering process to - - -

45 Yeah, and – well, and Contour won that one?--- Right.

But that doesn't mean that Queensland Racing or Racing Queensland ever did one that got Contour?--- No, no, no. What I'm saying is that's my understanding of when Contour became involved.

5 Yeah, that's right?--- And they - - -

You're right?--- And they continued to develop plans and infrastructure stuff - - -

10 Yeah?--- With Racing Queensland. But that wasn't part of the infrastructure strategy. This – that wasn't part of what this policy was supposed to apply to. That was Racing Queensland's procurement activities pre-the infrastructure plan.

15 Yes?--- And Racing Queensland, as my understanding, kept Contour on board as part of developing all those – those business cases that came in.

20 Yes. And I would've thought that if Contour was going to do anything after the date of this policy, you would think that there would've been some tendering or seeking value or some discretion exercised by the board to not do it in accordance with this policy; wouldn't you?--- Depending on when Racing Queensland had engaged Contour for that work they were doing. If it - - -

Sorry, let's just get to the point here. This policy, this addendum, was provided to your office?--- Yes.

25 And it was approved in the sense of saying "we have no quibble with it"?--- Yes.

30 I thought you were saying to me after that date you would've expected that this was complied with?--- Any contracts that – any procurement that Racing Queensland did after that date, we'd have expected that it was complied with, yes.

35 Yeah. So did you know at the time you approved this that in relation to Contour that they would be doing work going forward and there would be no tendering process. Is that you were saying to me?--- No. Well, what I'm saying is Contour was already doing work for Racing Queensland.

I understand that?--- And the documentation that was received had been commissioned by Racing Queensland before this happened. So - - -

40 But did you understand Contour would do any work after this date? New work not commissioned for?--- I thought that they would be part of – in the mix for the infrastructure program moving forward. Yes, definitely. And - - -

45 And was it your expectation that there would be a tendering process for them to win that new work?--- Certainly for - - -

I see?--- And that was outlined in each of the business cases we received, that we would be – that we, from government, would be relying on one of the sections of it that actually – I think they actually provided this as part of those business cases.

5 Okay. Right. Now, when you understood that Contour had done – had been commissioned to do a lot of work in relation to the infrastructure plan before the date of this?--- Yes.

10 Did you understand whether or not they'd been through any tendering process? Did you understand one way or the other?--- No, not – I don't - - -

Okay. You didn't know one way or the other; hey?--- I don't think so, no.

15 Did you know whether or not Racing Queensland had a purchasing policy - - -?--- Yes.

- - - before this?--- Yes, they did.

20 And did you have any idea of whether it had been complied with in relation to Contour?--- No, I don't - - -

Okay. But you said in the affidavit, I think, that the representations made to you were that the purchasing policy had been complied with?--- Well - - -

25 Isn't that what you said in your affidavit?--- I very – yes, but by very nature of having the purchasing – by being a control body and being a company - - -

30 Yes?--- And putting up a policy saying this is one of our policies in how we do business, that's what I believed is the representation that you can rely on to say its – its not just that – you're not dealing with just any company in the marketplace. This is a control body that's established.

35 Let me see – let me tell you what you've said on oath. "RQL assured government that purchasing activity was being undertaken in accordance with their purchasing policy." In paragraph 107; is that true?--- Yes. Look, RQL did – in our discussions with RQL on this – and the infrastructure stuff started pre-this – this addendum policy.

40 Yes?--- And the representations were that we've got a purchasing policy in place - - -

Yes?--- And that's how we govern with what we're doing.

Yes?--- So that's the assurance and the representation.

45 Okay. So therefore I take it that you must have thought that Contour, that was doing work before this new addendum came in, had been procured in accordance with the old policy?--- Well, yes. I would've thought any supplier who was - - -

Okay?--- Providing goods or services to an organisation, if they've got a purchasing policy, then it's being done in accordance with that policy.

5 Yeah. Well, in fact it wasn't. Contour never went through any procurement policy. RQL never went through any procurement policy for Contour?--- Not – not even the – the exemption provisions that I think that they had? I - - -

No?--- So there was - - -

10 There was no discretion exercise to allow for the exemptions to apply, nothing?--- All right. I accept that.

You don't know that; do you? Because - - -?--- No.

15 - - - you were being assured that it was being complied with. That's what I'm taking from your evidence?--- Well, yes. Yes, they - - -

Okay. So you didn't know about that. And because you didn't know about it, I can understand why you wouldn't investigate it now?--- Not at this stage. But - - -

20 Well, what stage? You're tapping the book. I don't know what you mean?--- Because it was always intended, as part of our assessment program, to go back and investigate these – the infrastructure plan and the Racing Industry Capital Development Scheme.

25 Yes?--- And - - -

Okay. That was an intention; was it?--- It was, and it was made known to Racing Queensland on a range of occasions that - - -

30 Okay. But we were talking about your understanding. Your understanding was, at least before the date of this addendum, that Contour must have been procured in accordance with the purchasing policy that existed?--- Yes.

35 Okay?--- Yes.

So you had no inkling that Contour had in fact not been procured by a tendering process conducted by Racing Queensland; did you?--- I don't believe so, no.

40 Yeah, okay. Now, we talked a few times about the program that was undertaken under section 46. And you've mentioned in particular the one about policies relating to Racing Queensland. May I ask you some questions about that now, please?--- Sure.

45 So could you go to 213 of the book. Do you have that report there?--- I do, it's 2010.

Yes?--- Yes.

You see your signature approving it on the front?--- I do.

5 Now, let me just remind you and you tell me if you'd like to look at it again. Just looking at section 46 about what this is about. "Each year, the chief executive must prepare and give to the minister a program for assessing the suitability of control bodies to manage the relevant codes of racing. The program may focus on a particular control body or on a particular criterion relating to all control bodies. The minister may approve the program for the year, with or without changes." And then away we go?--- Yes.

10

Okay. So for this year, the program that was selected and approved was to assess the policies; wasn't it? Do you recall that?--- Yes, indeed. Section 81 policies.

Okay. Yeah?--- Yes.

15

And if I could show you that, please. You're looking at – I'm looking at the report that was produced for 2010 in accordance with the act. And in particular, I – as I said, that's approved by you. Now, if you go into number 2 which is on page 2 in the bottom right hand corner, please?--- Yep.

20

Do you see it says, "The aim of the 2010 control body assessment program is to determine (1), Racing Queensland's compliance with section 81 of the act, including the consultation undertaken with stakeholders as part of its policy development process." Section 81A?--- Yes.

25

Okay. And if you go over the page, please, Mr Kelly, in to (3), methodology. Have you got that?--- Yes, I do.

30 Okay. The assessment was carried out by two officers of the Office of Racing regulation, initially undertaking an audit of Racing Queensland's website on the 16th of May?--- Yes.

35 With a follow up interview on the 31st May 2011 using a number of assessment questions, attachment 2. Answers to outstanding issues identified were provided by Racing Queensland, attachment 3?--- Yes.

40 We're good so far. And then if you go down to 5.2, please. Assessment criteria 1. Racing Queensland's compliance with section 81 of the act, including the consultation undertaken with stakeholders as part of its policy development process. Have you got that?--- That's in the bold. Yes, I've got you, Mr Bell.

45 That's in the bold, please. Yes. And I think the point is that identification of the consultation that was undertaken was deemed important for this program; wasn't it?--- The – yes.

Okay. And then if you go over the page to page 5 in the bottom right hand corner, please. 5.2.3, “Was the industry consultation undertaken in accordance with the control body’s policy development policy required by section 81A.”?--- Yes.

5 And then if you read that first paragraph, it says that the code of racing policy development policy was made under 81, provides that consultation is a core element of policy development. The policy requires that a formal consultation stage that provides for industry wide input on policy content to be built in to the standard policy development process, including a minimum period of 28 days for comment.
10 Okay?--- Yes.

If you go over to page 6, please, you’ll see the first new paragraph commences “Racing Queensland advised”?--- Yes.

15 Have you got that? “Racing Queensland advised that the urgent policies adopted 1 July ’10 were widely distributed to industry stakeholders for consultation. A copy of each policy was published in the July ’10 edition of Racing Queensland’s magazine, which was sent to licensees and published on Racing Queensland’s website. Stakeholders were asked to provide submissions on the policy by 16 August. Three
20 submissions came in.” You see that in the third last line?--- Yes, I do.

And those submissions, surprisingly, came from all people internal to Racing Queensland. They were Shara Reid, Jamie Orchard and Mr Beavis. That seems odd, doesn’t it; you know? That they’re from within and there’s nobody making any
25 comment from without. Don’t you think that seems a bit odd?--- I don’t know why staff would bother to make a formal submission. But I’m not surprised that nothing came from without.

Okay. Why’s that?--- Well, not all licensees would – well obviously here if none
30 made submissions, no one had any interest in making a comment on the submission.

Well, let’s have a look how - - -

35 COMMISSIONER WHITE: That surprises me somewhat I have to say, Mr Kelly. This seems to be an industry where all manner of people seem very enthusiastic about making their views known?--- Yes, Commissioner.

Do you think that surprised you?--- I – Commissioner, I agree that people make their views known but not necessarily on, you know, internal – or policies of Racing
40 Queensland on that type of thing. It’s more on – on other issues like race dates and prize money and those types of things.

The next paragraph reads, “After reviewing the information provided by Racing Queensland, it is determined that the consultation process undertaken by Racing
45 Queensland meets the industry consultation requirements of both section 81A of the act and Racing Queensland’s code.” Do you see that?--- Yes, I do.

5 Now what in fact happened if one studies the process of this program, particularly in relation to consultation. One will see that there was a meeting between the office representative who was doing this program and Shara Murray. And two other representatives from Racing Queensland on the 31st. So could you go to tab 199, please, which is in folder 5 I'm told, please. Now remember that we're looking at section 46 or the people who are performing this for the Office of Racing, conducting the process which the chief executive is to conduct in relation to a program approved by the minister. And this racing file note you can see I think is dated 31st May '11, Mr Kelly; is it?--- Yes, the one I've got is.

10

Is that what you?--- Yes.

And you see persons involved, Shara Murray, Wendy, Roger Wilesmith?--- Yeah.

15 And KK. And KK, I think, is Kirsty Karlasa?--- Karauria.

Karauria. And she's from the office; is she?--- Yes.

20 Okay. And this is the only diary – this is the only evidence at all as to what the office did to assess whether industry consultation in fact occurred. Because what it records, you'll see, is in about the fourth line, "Wide consultation, board minutes provided." And then it says, "Submissions – only three submissions. Darren Beavis, Shara, Jamie." And then otherwise, there doesn't seem to be any further evidence of assessment in accordance with the program approved by the minister. Now, I don't
25 know whether you know, Mr Kelly, but I'm not just giving you the opportunity to comment. It seems odd, don't you think, that whatever occurred to invite industry consultation – sorry. That was necessary to reach a conclusion that the act had been complied with such that there had been stakeholder consultation in accordance with section 81A is a conversation with Shara. Do you see what I mean?--- It was not –
30 from my reading of this, the policy was published as a draft in the racing calendar – in the racing magazine.

This is what they said, you see, in that paragraph in the report on page 6. It says it was "distributed to industry stakeholders for consultation. A copy of each policy
35 was published in the July '10 edition of Racing Queensland Magazine, which was sent to licensees and published on Racing Queensland's website. Stakeholders were asked to provide submissions to the policies by 16 August."?--- Yes.

40 Right. Is that something that ought to be audited or checked? It just seems that -- -?--- Yes.

-- - a red alert would go up if only three people within Racing Queensland came forward with a submission, and not one person from outside. That there was any real substance to this program being carried out as an audit, in effect, of what was going
45 on in Racing Queensland?--- Well, I would expect from reading that assessment report is that is what was confirmed by this meeting.

5 Well, I think it says “advised”; doesn’t it? “Racing Queensland advised – advised that the urgent policies adopted were widely distributed.” You see that? And then if you look, as I took you, in three as to methodology. All that happened was the assessment was carried out by two officers of the office, initially undertaking an audit of the website on the 16th of May. And then there’s a follow up interview on the 31st May. So that’s what happened. And my point is really this: that yes, it’s ticking the box. But I wonder whether it’s actually investigation of substance?--- Well, I would have - - -

10 It’s hard to comment. I know it is?--- You’d have to ask those two persons doing the audit.

Yeah?--- But to make that finding, then you would satisfy yourself that that is what happened.

15 COMMISSIONER WHITE: And did you do that with those officers, Mr Kelly? Did you raise it with them when you read through – I mean, it’s a bit stark; isn’t it? As you yourself have just commented, three - - -?---Yes.

20 Three internals: that’s surprising?---I don’t believe I would have, Commissioner. I don’t recall back that far, but I - - -

MR BELL: Anyway, it’s a detailed thing, and I appreciate your position as director. Maybe what you did was this came in and you reviewed it as you might when you’re busy, and you approve it and off it goes. The question I’m asking is that all I can see that really you’ve heard as a matter of substance was the people interviewed Shara and so on, and Shara said, “Yeah, we put it on the website and we published it. We got no response, really. We just got Jamie, myself. I made some submission, and somebody else from within the Racing Queensland” – it sort of doesn’t look like it’s a fantastic effort they’ve made to publish it to the stakeholders. Do you know what I mean?---I understand what you’re saying, Mr Bell. Unless I went behind this document to find out actually what – what happened there, I don’t know if that’s all that – that did occur.

35 But you don’t have to go far, do you? Don’t you just go to methodology, where she – where the author states what they did? “The assessment was carried out by two officers looking at the website, with a follow-up interview on the 31st of May, using a number of assessment questions.” See that? It’s not complicated?---No, no, no. And – but – but part of that – that ordered Racing Queensland’s website – you’d – I’d be – I’d be expecting that there’s a confirmation of what is being said happened.

Me too?---Did happen.

45 Me too. Me too. You’d think it would be in the report?---Yes.

But the point about this industry consultation – it’s a bit of a topic that we need to discuss today - - -?---Right.

- - - don't you think, because it's an important aspect, isn't it, under the legislation in relation to policies?---Yes.

5 And the reason is because policies are to be public for the code to read what's required, for example?---Yes.

And not only what's required, but what their control body is representing to the government that they're doing in trying to get value for money with purchasing, for example?---I'd agree. The policies that are published should be complied with.
10 That's what they're there for.

And they're being represented to the people in the industry, the stakeholders, that this is what's happening?---Yes.

15 Don't you agree? And when the legislation provides, for example, under this section that there's to be a program to assess the suitability of the control body to manage the relevant code, I suppose the Minister is going – and the industry are relying upon the fact that the office are checking that it's, in fact, happening, don't you think?---Yes.

20 That's the safeguard put in place?---Yes.

And my point to you is, on the face of the record, on the transparency of this report in relation to policies, it looks like a number of people sat down and said, “Yeah, look, this is what happened. We went to the industry, and we got three responses,
25 namely, all of us three, who are all from within Racing Queensland.” It just sort of – the alert goes up. Do you see what I mean? Is that clear enough?---Yes, I understand exactly what you're saying, Mr Bell, yeah.

30 Okay. So - - -

COMMISSIONER WHITE: Is this a convenient time, Mr Bell, or do you want to ask another question on this topic?

35 MR BELL: No, no. That's convenient. Is that convenient for you, Mr Kelly?

COMMISSIONER WHITE: I thought you were sort of wrapping up.

MR BELL: I was. I was going to something else. Thank you.

40 COMMISSIONER WHITE: All right. Thank you.

2.15, Mr Kelly?---Certainly, Commissioner.

45 **THE COMMISSION ADJOURNED**

[1.02 pm]

THE COMMISSION RESUMED

[2.13 pm]

MICHAEL ANTHONY KELLY, CONTINUING

5

EXAMINATION BY MR BELL

10 MR BELL: Can Mr Kelly see the legislation again, please.

Mr Kelly, I'm going to section 47, please?---Yes.

15 Section 47 provides that "The chief executive may investigate a control body to find out whether it is suitable to continue to manage its code." Now, during the period from 2007, I don't think there was any such investigation, was there?---No. I don't – I don't believe so, Mr Bell. No.

20 And then section 48: "The chief executive may investigate a control body associate to decide whether the associate is a suitable person to be, or to continue to be, associated with the control body's operation." And again, no such investigation occurred?---No. That's right.

25 The sections after that, section 52 – if I ask you to go to that now, please. This establishes, I think, grounds that might establish disciplinary action taking place if they were found to exist?---Yes. I'd agree.

30 And the procedure seems to – in the legislation – seems to follow section 52 into 53, a show cause notice and so on, 55, suspension, 56, censure, 57, direction to control body to rectify a matter. And I think 58 is action by the Minister as required for disciplinary action. And again, those sections were not used during the relevant period, I don't think, were they?---No.

35 Now, could you be good enough to turn over, please, to section 76 while I'm on this legislation. Section 76, if you look back a page, is part of the legislation which has application to country racing associations on the committee?---Yes.

40 Now, you may or not remember this part, but in your affidavit you dealt with it to some extent – dealt with an issue that did arise in relation to a country racing committee. You recall that part?---This is the proxy vote - - -

Yeah?---Yep. Yep. Yes. I do.

45 And in particular, you see that if you go back to 76 - - -?---Yes.

"A question at a meeting of a thoroughbred entity is decided by a majority of votes of the member present. (2) Each member present at a meeting has a vote on each

question to be decided.” And then if you go back to 73 you’ll see, “Meetings of a thoroughbred entity must be held at times and places the chairperson of the thoroughbred entity decides.”?---Yes.

5 And in subsection (4) of section 73: “The chairperson of a thoroughbred entity must give each member of the entity notice of each meeting of the entity at least 14 days before the meeting.” And I think at the time before 2010, this part of the legislation established an electorate, in a sense, for country racing to have a say in some aspects of the industry of its code?---Yes. There was a – a scheme in place with identified country racing associations and way members were elected to them and selected and that type of thing. Yes.

15 Yeah. And the easy part to understand the thinking, I think, is that you see back in the definition – I’m sorry. Forget I said that. Just excuse me one second. The legislation established a number of associations which would – where it was intended that the association would elect a representative to be on the committee. There’d be a committee that’d be chaired by a person nominated by the control body?---Yes. That’s right.

20 And by that means, that committee would carry out its function in accordance with the legislation?---Yes. That’s right.

25 Now, I take it that in understanding the way in which such a committee would operate, it would have to operate, would it not, by the calling of meetings by the chairman?---That would be the – the normal way. Yes.

30 And then because of the voting, there would be notice, presumably, that would go out to the different associations so they could discuss it within their association, come forward and presumably vote at the meeting in relation to motions to be put, in the normal way?---Well, that – that would be – I’m not sure that we – the Act specifies exactly how that should happen, but that would seem, you know, reasonable as how – how it would work.

35 Yeah. Well, if you look at 77 it seems to suggest that there’d be minutes and there’d be a record of resolutions, so one takes it that because they’d provide for voting and provide for meetings and provide for minutes of meetings and records of resolutions, presumably that electorate would have the opportunity to put forward their view through their representatives?---Yes. That was the - - -

40 Okay?---Yes, definitely.

45 Now, would you mind going to tab 28, please. It’s in folder 2, I’m told, your – Mr – Commissioner.

Mr Kelly, what I’m going to do is just take you through the chronology of events by showing you some documents that I think you have, to some extent, referred to in

your affidavit. What I'm doing is looking at the development of this issue about the proposed changes to the constitution in 2008?---Yes. Okay. Yes.

5 And then after, as you recall, what we called the proxy issue before and how it arose?---Yes.

Okay. So I know that this letter would have come to your attention at some time. This was a letter from Mr Bentley. You see at the back of it he's addressing an article that was published in the Sunday Mail by Mr Bart Sinclair, and – are you with me?---Yes. I'm with you. Yes. Yes.

15 Okay. And then if you look at the article, you'll see in the middle column – just to be quick – in the second new paragraph: “The proposed changes to the constitution is for the present board to remain in place till 2012.” So that was the – this man was writing an article about it, about the proposals, and you see that Mr Bentley was addressing the Minister for Racing, the treasurer – because racing was then treasury, I think, wasn't it?---Yes. It would've been. Yes.

20 And you see in the third paragraph of Mr Bentley's letter to the minister: “The board seeks these changes for an extended term in the knowledge of disruption that accompanies elections in this industry,” and he gives recent examples there?---Yes. I see that.

25 And this topic of stability and directorship was a topic that was addressed during this period, wasn't it? Mr Bentley was advancing the proposition that the initial term should be extended longer so that would give stability and the directors would not be answerable to clubs?---This – this is the extension for six – for a six-year term? Is that - - -

30 Yeah?---Okay. Yes – with you. Yep.

35 And what happened was – if I ask you to go to tab 29, please – Mr Bentley then sends a letter to the Minister on the 14th of May 2008. If you look at it and the annexure to it, the summary, you see that about the third line down in the summary: “Initial term three years, no elections. New constitution” – looking at the head of the column – “initial control body term six years, no elections”?---Yes. I can see that.

40 And so – and then that's the first – do you recall that was the first point of substance with the proposed changes to the constitution that were envisaged by Mr Bentley?---That was one of the changes that QRL was wanting to make to its constitution, yes.

45 Yeah, and then if you go down to the page below you'll see independent recruitment consultant in clause 1.1 and throughout the constitution?---Yes.

And then the new constitution removing the definition?---Yes.

And the point – the other point was to remove the process that involved the independent recruitment consultant making a short list from applicants?---Yes, sir.

5 Now, in your affidavit you refer to a briefing note prepared which appears at divider 32, please. Are you with me?---I'm with you, Mr Bell, yes.

Okay. You see at 32 I – this particular copy seems to be copied from your affidavit. It doesn't matter very much, but you see the MK26 up there?---Yes, I do.

10 Okay. Now, this is one you refer to, but it developed – and I'll show you the development – but the main point is there this is not signed by you, this one, and I understand that, but if it's not signed by you and there's amendments to it and it's dated after the date of this and you signed it, it would be necessarily followed that you had input in to the changes?---I would think so, yes.

15 Yeah, so, anyway, this one you refer to, 14 July 2006, I think you can see that, and it looks like Carol Perrett has prepared it as requested by Mr Smith?---Yes.

20 And this: the purpose of this, as you see – of the briefing, that, I mean – was to provide policy advice on the proposed amendments that we're talking about?---Yes.

Okay, and then in the – under issues you see LSU, meaning Legal Services Unit?---That would be right, yes.

25 Okay. Has not identified any legal impediment to the proposed amendments to the QRL constitution, but raises some issues in relation to whether it is appropriate for the directors of QRL to appointed for an initial term of six years, and suggests that a term of four may be more appropriate. You see that?---Yes, I see that.

30 And then if I ask you to go over to the third page of the draft, you see heading Appropriate Term for Directors?---Yes.

35 And then you will see the quotation of – recorded in the briefing note of QRL, where they stated their position?---Yes.

And, “We are of the opinion that appointing directors for a term of six years before initial requirements are to occur does not offend any established principles of proper corporate governance.”?---Yes.

40 And then underneath that you see, “It has been suggested by Legal Services Unit that a term of six years may have the potential risk of fostering a board which becomes stagnant, without fresh ideas.”?---I see that.

45 Now, this next part, “While that may be true of some boards, the directors of QRL, Bentley, Hanmer, Lambert, Ludwig, and Andrews, have shown no signs of being devoid of fresh ideas, with the thoroughbred code undergoing probably the greatest period of reform and improvement in its history. The board of QRL has

implemented wide-ranging reforms.” Now, thinking back, that view – that view about the board, was that a view you held?---Yes. I subscribed to that, yes.

5 Okay, but did you hold any respect for the view of the Legal Services Unit that six years may have the potential risk of fostering et cetera, fostering a board that which becomes stagnant, without fresh ideas. Did you - - -?---That was a view that Legal Services had, but their input into this was from the legal perspective. I mean, that’s a comment that could be made, but – and we may come to it. What I was seeking from Legal Services was a legal opinion on what the request from Queensland Racing was
10 as far as the constitutional change, not a view on whether six years fosters this or stagnant or fresh ideas.

15 So, therefore, you had no regard for that statement they made in their briefing paper?---No. It’s not that I had no regard for it. It’s a view that, yes, I could take on board. It’s an opinion outside what I believe was what we were looking from Legal Services Unit - - -

20 Yeah?--- - - - which was a legal interpretation of what Queensland Racing had proposed as the first issue to get over.

But was it a risk that ought been taken into account by a decision-maker, do you think?---It’s one of the factors that you would weigh into it, yes.

25 Okay, and then I show you that draft. It’s dated the 14th July, and, as I say, it did refer to the Legal Services Unit, and if you don’t mind going to the document which appears at 34, please. This one seems to be dated the following day: you see 15 in the top right-hand corner?---Yes, I do.

30 And this one – if you look at the back of it I think you see your signature on it?---My initials at the bottom of there, yes.

Your initials on there, and so, therefore, I infer that you may have had a role in this draft?---I would have certainly seen it if I initialled it, yes.

35 Okay. Now, as you state, from the first draft, if I have you look at the heading Issues on this one, the 15th of July – tell me if you want to go back to tab 32 – that has been taken out, that is, the reference to, but some – but raise some issues in relation to whether it is appropriate for directors of QRL to be appointed for a term of six years and suggest - - -?---I’m sorry, Mr Bell. I’m lost: which - - -

40 Yes, okay. Under Issues on the 15th of July - - -?---Yeah, I’ve got that one, but the previous one.

45 Okay. See it says, “LSU has not identified any legal impediment.”?---Yes.

And after that in the first draft, which appears to have been prepared by Carol Perrett, she records further that the issues raised by the LSU - - -?---Which was the number of that first draft? That's what I'm struggling with.

5 Yes. It's just under heading. It doesn't have a number.

COMMISSIONER WHITE: 32.

10 MR BELL: In 32, yes, at divider 32?---Thank you. Yes. Okay, I'm with you, Mr Bell, yep.

Yep, okay. So that part has been deleted: you would accept that?---Yes.

15 And then if you go over, please, in this draft, to 15 – sorry – in this briefing that is signed by you to Appropriate Term of Directors on the last page?---Yes.

You see in paragraph 18 the change seems to be there are arguments that a term of six years - - -?---Yes.

20 - - - and what's been changed is that those arguments came from the Legal Services Unit. Now, do you recall having a role in making changes to this briefing note or not?---In general terms, yes, I do.

25 Okay. Now, the reason it was prepared, can you recall, was it seems that there was to be a meeting between the treasurer and Mr Bentley on the 18th of July, and you were asked to prepare a briefing note for that meeting. Do you recall that?---I don't recall, but there may have been.

30 Let me see if I can help you. If you don't mind going to 33, please, you'll see at the top - - -?---Yes.

Sorry, treasurer Meeting with Bob Bentley, 18 July?---Yes. No, I accept that, Mr Bell, yep.

35 Yep?---I just couldn't recall that, sorry.

40 No, that's fine. I understand, and what seems to have occurred is that Carol Perrett drafted the first note and you signed the second one dated the 15th, and, presumably, it went to the treasurer for his meeting with Mr Bentley on the 18th. That was the purpose of it?---Well, it was the purpose of it. It would've – it should've gone to my boss and through to the under treasurer - - -

Yeah?--- - - - before it got to the treasurer, but - - -

45 Yeah, absolutely, but the purpose was for the treasurer to be in a position to address Mr Bentley at the - - -?---Yes.

Yeah, and what occurred was that this matter, if you turn over in divider 33, please, to the third sheet in?---Yes.

5 Just have a look at that and you'll see the personal secretary of the treasurer wrote an email?---Yes.

And then you see above there was a request for you to attend the meeting?---Yes.

10 Do you recall attending the meeting?---I don't specifically. No.

Okay. So what seems to have occurred is that the – Mr Bentley had written about the proposed amendments to the constitution, and the treasurer was to have a meeting with Mr Bentley about that proposal and other things?---Yes.

15 Okay. And you were involved in providing some background to the treasurer for his consideration?---Yes.

And that included getting some legal advice as well?---Yes.

20 And I think the legal advice is what you attached to the back of your briefing paper – if you go back to 35. You see that briefing note from the legal services unit?---No. I'm sorry. I don't.

COMMISSIONER WHITE: Perhaps not there, Mr Bell.

25 MR BELL: We'll just get it for you. Just wait?---Oh, no. I – I do, Mr Bell. Sorry. It is here. Yes.

30 Yeah. Okay. Very good. Now, if I ask you to go now, please, to tab 36?---Yes. I'm there.

35 Okay. Do you recall what occurred was that on the 14th of August, Mr Smith of Mr Fraser's office, of the treasurer's office, sought from you a brief in relation to the questions addressed there in his handwritten note and attached the relevant letters that had come in relation to the proposed changes?---Yes. That appears that way. Yes.

40 Okay. And in particular I think – if you look at the top left-hand corner you'll see the due date 28 August?---Yes.

And does that normally mean that your response for providing the briefing would be the 28th or about that time?---No, not necessarily. It'd be not later than the 28th.

45 Okay. Not later – okay. And do you recall what occurred after you received this note on the 14th – on or about the 14th?---Would've started preparing the brief that'd been requested, I would suspect.

5 And do you recall the situation changed in that complaints were brought to your attention, or at least propositions were raised with the treasurer, in relation to the way in which the matter had been addressed by Racing – Queensland Racing?---I don't recall the specific dates, but I know there – there were complaints from a range of people - - -

Okay?--- - - - concerning the proposed changes to the constitution and in particular the voting process with the country racing committee or associations.

10 Okay. Now, if you go to 38, divider 38, please, Mr Kelly. On the 21st of August it seems that Mr Smith forwards you this action sheet – forwards to you this action sheet and asks you to commence an investigation of the allegations by Mr Carter and Clarke and Kann and Mr Peoples?---Yes. I see that.

15 Okay. And the due date for it is specified as the 11th of September, you can see?---Yes.

20 And then to refresh your memory, you'll see at the back of that brief – that action sheet, the letters. You see that?---I do. There's - - -

Let me show you. You see where Mr Carter's signature is?---Yes. Yes. I see. I just – is it just that one letter?

25 I think there was another one too, if you go over - - -?---I think there was one from Clarke and Kann.

Yes. Clarke and Kann - - -?---Yes. I've got that one.

30 - - - over a few pages. But just turning back to Mr Carter's, if you don't mind, the proposition from Mr Carter in his second last paragraph under "Conclusion" – just above his signature you'll see: "Finally, Minister, I urge you to initiate independent inquiry into matters relating to 6 August meeting and that such inquiry be undertaken not by the racing division but preferably by CMC and/or ASIC." See that?---Yes.

35 It seems, in any event, that the decision made by Mr Smith was that you, in fact, perform the first investigation. I shouldn't say – the investigation, wasn't it? That's clear, isn't it?---That – that's what he's written, but – but I would not accept the proposition that Mr Smith details investigations and allocates investigations – saying investigate the issues, not launch an investigation.

40 Right. So where it says, "Please commence investigation of the allegations as discussed," you mean he doesn't mean "Mr Kelly commence investigation"?---No. He's sending it to my office, saying investigate the issues raised.

45 I'm sorry. What I mean is it's addressed to you and I appreciate it might be to the Office of Racing. Is that what you mean?---No. No, no. That's - - -

COMMISSIONER WHITE: Are you looking at the right document, Mr Kelly?
That's the – I think we're talking about the - - -

5 MR BELL: Divider 38?---38. Yes. Yes, Commissioner.

COMMISSIONER WHITE: Yes. Yeah. Thank you?---Yes. Lachlan Smith says
please commence investigation of the allegations made. Yes. I accept that.

Yeah?---Yes.

10

And that's directed to you, I think, isn't it?---Well, everything that comes in is
directed to me.

Sorry?---Everything that came in – yes – is directed to me.

15

COMMISSIONER WHITE: It's got your name on it, though?---Yes. Yes. But - - -

MR BELL: I'm just trying to – I'm struggling with what you're saying. What are
you meaning to say? It was directed to Ms Perrett, was it?---No, no. No. I – I was
20 struggling over the form of words you used about Lachlan Smith directed that an
investigation - - -

I'm sorry?--- - - - commence. That – that's what I was struggling with.

25 Well, what he was doing was requesting you commence an investigation of the
allegations, was he not?---Yes. Yes.

Okay?---Accept that.

30 So that's the 21st, and if you look at that letter from Carter it seems to have come in –
it seems to be dated the 19th and received the 20th, looking at the page behind. I think
you can only read it that way?---Yeah. 20th - - -

Something like that. It doesn't really matter?--- - - - or the 22nd. Yes. Yeah.

35

But certainly by the time that Mr Smith signs his note he's got it, and that's the 21st
of August, isn't it?---Yes.

40 Okay. And – now, did you undertake an investigation into the allegations?---No.
We didn't.

Okay. Did events pass that?---They did. Yes.

45 What happened, that you can remember?---That all of the – I think Mr Carter's – all
of the complaints and issues raised in his correspondence were referred initially to
the CMC and then subsequently referred to ASIC. And I'm – I still am not sure how
it occurred, but I know the Queensland Police Service also got involved as well.

Did you ever conduct an investigation under the legislation, under the Racing Act?---No. We didn't.

5 I see. Well, let's have a look what did, in fact, happen. If you go to 39, please, it seems that what happened is that you were involved in preparing a briefing note to the treasurer, which was dated the 22nd?---Yes.

And just look over the back. You'll see your initials at the foot of the page?---Yes.

10 And it seems that Mr Bradley too signed it on the 22nd of August?---Yes.

And if you look at the heading of the briefing note, you'll see "date approval required by: 22nd." So the request in the briefing note is for approval by the treasurer on that day, isn't it?---Yes. That's the date that's there. Yes.

15 Yeah. And not only that, it's gone to the under treasurer Mr Bradley and he's signed off on the same day that it was prepared, the 22nd?---Yes.

20 Okay. Now, let's just have a look at the substance of it – the briefing note, I mean. If you go to paragraph 1: "To provide advice on the request to ratify proposed amendments." So I'm taking it that this has got nothing whatever to do with the investigation that was requested in relation to the matters complained about by Mr Carter, of course, has it?---No. I don't believe so.

25 Okay. And then in paragraph 11 the briefing note records, "In reviewing the proposed amendments to the constitution, the only integrity-related issue that has been identified is the - - -?---Sorry, Mr Bell.

30 I'm sorry?---I've lost you here. What - - -
11, please?---11.

On the first page, at the foot of the page?---All right. Sorry.

35 Sorry. "In reviewing the proposed amendments to the constitution, the only integrity-related issue that has been identified is the proposal regarding the removal of the independent recruitment consultant"?---Yes.

40 See that? So we don't see at that point any issue about the extended term, of course?---No.

That's gone altogether, hasn't it?---Well, it's not mentioned there, no.

45 Yes. That's right. So there's nothing about the inquiry. There's nothing about the extended term or any concern about that. And then if you turn over the page to Decision, paragraph 18. "Your decision must be either to ratify or not ratify the proposed amendments to the QRL constitution. There is no power for you to modify

the resolution passed by QRL, by ratifying only part of the resolution”?---Yes, I see that.

5 See that? So it seems that, in fact, after the request for an investigation was made the day before, the next day you prepare a briefing note, or Carol Perrett does and you initial it, to the treasurer, proposing that a decision be made either to ratify or not. That’s right, isn’t it?---No. I’d – I’d say what’s happened there is the two documents have passed themselves in the night. I mean, we’ve been dealing with the RQL request to change their constitution, and that matter has been – being dealt with. And then subsequently there’s been the issues raised by – by Smith. And that’s why in 10 the treasurer’s office they’ve already – aware that they’ve requested for matters to be investigated.

15 But that would be extraordinary, wouldn’t it, Mr Kelly, that what happens is the briefing note that we’re referring to, dated 22nd of August - - ?---Yep.

- - - is signed by the under treasurer on the 22nd of August as well?---Yes.

20 And presumably referred to the treasurer after there had been a request the day before to investigate a matter of integrity?---Could you tell me the tab of the Smith - - -

25 COMMISSIONER WHITE: 38, Mr Kelly?---Thanks, Commissioner. Well, that’s – I still believe that these two things were going at the same time because Smith has signed that on the 21st.

30 MR BELL: Yes. But look above it. He says “as discussed”. So on the 21st, you two had discussed Mr Carter and Clarke and Kann’s complaints. You see that? Have you got me?---Yes, I’ve got you. Okay?---Yes.

35 So it looks like you know by that time, just by the document – you may not remember, but on the 21st or at least by the 21st, there’s been a discussion about Carter and Clarke and Kann and Mr Peoples, and an investigation has been discussed between you. “Please commence investigation of the allegations made.” Yet on the 22nd there’s a briefing paper – a briefing note prepared by you and others within the office and given to the treasurer, which has in it a proposal that he not ratify the proposed amendments. See that in the recommendation?---Yes. I understand exactly 40 what you’re saying, but I have no recollection of what the as discussed is. Whether that was a substantive discussion – I mean, it could have been anything.

45 Okay. Let me help you. You see, what’s happened is that Bentley has put forward the proposal for ratification of the constitutional changes which have been considered by the members of Queensland Racing and approved, and then it comes to the Minister for his approval because that’s a requirement under the - - ?---Yes.

5 - - - conditions of the constitution. And what happens is that you are asked to prepare a briefing note for the treasurer. You're not asked to do it urgently or anything like that. In fact, the date we talked about before was – the date for it to occur was somewhat later, which is 36. Let's have another look at it., You have to prepare it by the 28th of August. You see the due date? I said by the 28th of August? 36?---36. Yes.

10 By the 28th of August, you're to prepare a briefing note for the treasurer in relation to this, yet after some discussion, at least, about an investigation, on the 22nd you recommend – you and the under treasurer recommend that he not ratify the proposed amendments of QRL constitution, which - - -

COMMISSIONER WHITE: Isn't it in 18 you must either ratify or - - -

15 MR BELL: Just over the page, Commissioner.

COMMISSIONER WHITE: I'm sorry. Yes. Yes, I beg your pardon.

20 MR BELL: So the recommendation from the Office of Racing is “do not ratify the proposed amendments”, which, of course, would mean, as in fact turned out, that that would be the end of the matter?---Not – the end of RQL constitution changes, yes, definitely.

25 Yes, yes. So you recall how these events unfolded in relation to this part or not?---In – in very broad terms, yes.

30 Okay. Was there some pressure to find a solution to put an end to this inquiry that Carter was raising and that Clarke and Kann were raising and Mr Peoples was raising?---Not as far as I was aware, to me, no.

35 Do you recall that, in fact, at the end of this matter, after, as you said, CMC and ASIC and the police undertook the consideration that they did, the way the treasurer dealt with it was the way recommended here? That was to not ratify the proposed amendments and then announce that that was the end of the matter. And that was the end of the matter, wasn't it?---Yes.

40 Yes. Now, my question is, was there any investigation ever performed by the Office of Racing in relation to whether there had been any breach of the Racing Act?---No, there wasn't.

45 Okay. Well, let me have a – ask you to look at this, please. Would you go to tab 40, please. It seems that at midnight on the 23rd of August, Mr Lion, at least, was the author of Courier-Mail article published in relation to Mr Ludwig facing a probe into vote-rorting. You see that?---Yes, I do.

Okay. And it records, doesn't it, if you look down a few paragraphs – you take your time. It records the complaint by Mr Carter where he raises doubts - - -?---Yes.

- - - over the validity of votes. And you'll see the second-last line, "Both men have rejected the claims," referring to Mr Bentley and Mr Ludwig?---Yes.

5 And then in the last: "The Queensland Country Racing Committee solicitor, Tim Ferrier, last night demanded that Mr Fraser not approve the new constitution"?---Yes.

10 Okay. And then over the page: "Mr Fraser last night – Mr Fraser, their treasurer, last night" – I'm about four paragraphs - - -?---Yes.

- - - down, Mr Kelly – "last night said that he had not contacted the CMC and had only just read the August 19 letter"?---Yes.

15 Okay. Now, in fact, what did occur was the matter was referred to the CMC, wasn't it?---Yes.

20 Let's have a look at this. Would you – I'll get you to get the next folder please, Mr Kelly, which is folder 3, and I'm asking you to go to tab 41, please. It seems that what happened was the treasurer then issued a media release announcing that he was, in fact, going to refer to CMC?---Yes.

Now, do you recall what happened in relation to the CMC reference?---How it – how it was referred there?

25 No. What happened when it did go there? Can you recall? If you can't recall, just say?---I can – I can recall now, having seen documentation as a result of the commission hearings.

30 Okay?--- But prior to that, I knew that the CMC had declined to investigate or had said they didn't have jurisdiction or something to that effect.

Okay, very good. And if you look at 42, you see the reference to the CMC by Mr Bradley?--- Yes.

35 And that was to the chairman of CMC. And then if you go to the next, which is 43, you see the CMC response. And you've said, I think, in your affidavit that even though you've now read this, you didn't read it at the time?--- I - - -

40 That's your recollection; is it?--- My recollection is that I had not seen this CMC response until it was published in the - - -

Okay?--- Statements.

45 But in any event, looking at it now – and I'm not suggesting you did see it, I don't know either. 25th of August '08, received 27. No jurisdiction is exactly as you say. In the last five lines, I also note that there are provisions under the Racing Act for the chief executive to investigate the suitability of a control body to continue managing

its code of racing. It seems that ASIC and/or chief executive may be best placed to deal with concerns raised. Now whether or not you saw that, do you think that that is sensible, what Mr Needham said there?--- I can understand what he's saying. I don't
- - -

5

Well - - -?--- I don't – I don't feel comfortable criticising what Robert Needham – has expressed an opinion and I don't think I'm able to do that.

Well, okay. But do you see now the statement, forgetting who wrote it, is a sensible
10 proposition? We can't investigate it, we don't have jurisdiction. But there are people with jurisdiction. Why don't you get them to do it?--- Yes, I can - - -

Okay?--- Accept that.

15 So what happened after that, as you said – if you go to divider 44, please. And can you recall that what happened, in fact, was that it was then referred to the CMC?--- To ASIC.

I'm sorry, to ASIC, yes?--- Yes, I know it was referred to ASIC. It was - - -
20

Okay. Now, just one thing. May I show you 48, please, in passing. Mr Kelly, do you recall that what happened was that the office sought legal advice from Mr Dunphy in relation to the constitution?--- Yes, I am aware of that.

25 And in September – and if you turn over the page to the second page, you see the advice required sheet. Have you got me?--- Yes, I have. I'm just - - -

Okay. And you see number 1, “Can the minister decide to approve the application to amend a constitution if Queensland Country Racing Committee has not followed the
30 process?”?--- Yes.

And then if you go down a few – if you go down right underneath this, it looks like, I think, Carol Perrett who was requesting the advice, but you were cc'd on. It looks like what's recorded is the chair of the committee did not call a meeting of the
35 members and did not obtain the written agreement of at least three of its members as to how he should vote at the class A members meeting. It looks at least like if that's right – did you know who the chair was?--- The chair – the chair of the Country Racing Committee at the time was Bill Ludwig. And I believe that that was – well, it was certainly well known by us and the department. I mean, when this issue first
40 started, we contacted Shara Murray who was the company secretary. And because there was – there was – you know, now an issue here about had it been done properly. And very early on in the piece I think she confirmed either to Carol or myself that she thought she – you know, had not complied with the process as required. I don't think that - - -

45

COMMISSIONER WHITE: Had or had not?--- Had.

Had?--- Confirmed that they had – sorry, Commissioner, had not.

5 Had not?--- So we had, I suppose, early on satisfied ourselves as far as we could that there had been noncompliance with what the constitution required as far as class A members, class B members and voting rights and process. I don't think that was – that was not unknown to the department.

10 Well, there was a more important question. Did this arise in your mind at any time; do you recall? The fact that somebody in the maze had signed a proxy on the basis that it had been approved by the committee?--- I don't ever recall seeing that proxy form until it was here, available in the commission's process.

15 No, but let's think about it. The proposition about it being done wrongly, that is that the chairman has recorded there he did not call the meeting of the members and did not obtain the written agreement of at least of its – of at least three of its members?--- Yes.

20 And how he should vote at the class A members meeting tends to indicate, does it not, that what Mr Carter was saying was somewhat right. And that was that the proxy that he'd referred to in the letter that you've had given to you, in fact was a proxy gained without authority?--- That was just – yes, certainly possible.

25 Okay. And if you look at even the note back at divider 48A, please. I think we've looked at it. We – I'm sorry, 48, I should say. At 48?--- This is the Barry email.

This is the instructions to Barry?--- Yes.

30 And about halfway down you see the larger paragraph. The argument advanced by QRL is that if there is noncompliance with the requirements of section 76, the vote of the committee can be disregarded and the votes of the other class A members relied on. QRL used the analogy of noncompliance with electoral requirements during a general election?--- Yes.

35 Yeah. But the point is, it would seem, that the person who had voted in favour had done it without authority. That seems to be assumed, doesn't it, to get to here?--- I think that – that had been confirmed by Shara Murray, that she had not complied with what the constitution required as far as getting all the proxies or the – I don't recall exactly now but there was noncompliance certainly confirmed.

40 Did you, at the time that you received a copy of Mr Carter's letter, have a look at it? What he was contending? Do you recall that?--- I would have read - - -

Let me refresh your memory?--- I would have read it, yes.

45 The – sorry?--- I would've read it, yes.

Yeah. The contention was, you see, that Mr Ludwig had represented, by way of a proxy, that he had been validly authorised to (a) vote and (b) vote in favour of the constitutional changes that had the effect of extending his term and Mr Bentley's and others, and getting rid of the independent recruitment agent.

5

Yes?--- Okay. So it seems at least by this time that everybody's accepting that Mr Ludwig didn't do the right thing. He was representing he did have authority when he didn't. Do you see what I mean? Or at least that was potentially so?--- Yes.

10 Okay?--- I accept that, yes.

Okay. Something worth enquiring into, one would think. And that's why it's with ASIC and the CMC?--- Yes.

15 Okay. So then if you go to 49, please. This is an email from Mr Ford of treasury to Mr Bradley and to you – cc'd to you in relation to a meeting that occurred with ASIC?--- Yes.

20 Okay. Do you recall receiving that – this email? Or not?--- No, but I – I looked over it.

Okay, I understand?--- Yes.

25 Anyway, the point of it is, you see, it records things that happened at a meeting with the ASIC representative Marie Blake in the first line?--- Yes.

30 And then key outcomes were: dot point one, "The assessment, which is the precursor in ASIC process to a formal investigation, identified no breaches of the Corporations Act. Therefore, there will be no formal investigation launched." Third dot point, "There were a number of elements of the process, especially around the use of Queensland Country Racing proxy, which raised ethical questions and a lack of transparency. These are not issues within ASIC's remit."?--- Yes, I see that.

35 And then down in the next paragraph, "We discuss next steps for the treasurer. Options seem to be:" Dot point one, "To refer the matter back to QRL on the basis of the concerns about transparency etcetera, and direct that they pass the proposed constitutional changes through the process again, this time with proper independent audit supervision."?--- Yes.

40 "To reject the proposed changes". And then the third point – I'm sorry. And then the next paragraph, "If the Treasurer were of a mind to finalise this consideration of the matter quickly, it may be worth consideration of a ministerial statement to the regional parliament in Cairns, outlining the CMC and ASIC responses and his decision to reject the constitution and return it to QRL."?--- Yes.

45

And then you see in the last line of that, "I have asked Mike Kelly to start some precautionary drafting of a statement."?--- Yes.

Okay. That's what happened; isn't it?--- Yes, it is.

5 That was the decision taken. And the thinking was at the meeting, was it, that by taking that option there was less trouble ahead because you could put an end to the matter altogether by rejecting the constitutional changes suggested and refer it back to the company so that it could do it again if it wanted to?--- Well, that's one of the options outlined there. I don't – I don't think there was thinking that there would be – I think you said less trouble. I don't think that was the issue. I think by this stage – and I'd already recommended earlier on in the piece, and it had been all the way to
10 the Treasurer's office, that we reject the – the independent recruitment consultant has always been a key aspect of any recruitment for control bodies. And we saw that within government as being a very important safeguard to have so that you've got someone to do that.

15 Understood?--- And that as the primary concern with the QRL proposal for change. The six year issue - - -

20 Well, I'm not really interested in that. What I'm interested in, as you probably know, is I'm looking at the integrity of one of the associates of QRL, you see?--- Yes. Yes, yes.

Okay?--- But – I'm sorry, I might be a bit long winded.

25 That's okay?--- I'm just getting to the point. As a result of what had happened with the CMC, the meeting with ASIC, the discussions between Ford, Turnbull, myself and Lachlan Smith was the issue of the noncompliance with the requirements for proxies and the process for the constitution wasn't viewed as a major issue of concern. It was an administrative stuff up.

30 Not by Carter?--- No probably not, but I'm talking within.

And not by Clarke and Kann, who represented the Queensland Country Racing Committee. And not by Peoples, who was the representative?--- I accept that, yeah.

35 They're important, they're stakeholders in the industry; are they not?--- I accept that wasn't their view.

Okay?--- Yes.

40 So we've got to talk about everybody?--- Yes.

Not just from one point of view. From their point of view it was a matter of integrity?--- Yes.

45 And what was happening was somebody was trying to bypass, they were contending rightly or wrongly. Somebody was trying to bypass them in relation to these

important constitutional changes and they didn't like that very much; don't you agree?--- Yes, yes.

5 Okay. So let's have a look at 50, please. That is divider 50. And you see that Mr Ford writes to you, Mr Kelly, on the 17th of October. "Thanks, early indications from Lachlan are that the Treasurer's Office supports the approach we have outlined, although I'm not sure whether he'll reject the proposed constitutional changes on integrity grounds or content grounds." That's okay. And if you wanted to read your email below, you see what you've written. "I will now update and finalise the
10 relevant brief that contains the detailed legal advice."?--- Yep.

And next sentence, "I will have it to you Tuesday." Have you got that so far?--- Yes, yes. I'm with you.

15 Okay. Now – and if you go to 51 to complete the picture, and I'll come back to your role in a minute, this was a letter from ASIC on the 22nd of October after the meeting which says much the same as what happened at the meeting, I think; doesn't it?--- Yes, I'm familiar - - -

20 And this was one that you received, I think?--- Yes, I'm familiar with this letter.

Just turn over to page 2 of it. Do you see about three quarters of the way down, just above specific issues. "ASIC's decision not to commence a formal investigation should not be interpreted as a conclusion that no misconduct has been made out or
25 that ASIC has in some way approved the conduct."?--- Yes.

And then specific issues, "In responding more specifically to the issue raised and the correspondence received by the Treasurer, I note that it is not the role of ASIC to provide legal advice either generally or in particular." And then if you go over to the
30 next page under the heading "Queensland Country Racing Committee Proxy", second paragraph, "As you will be aware, QCRC is a committee established pursuant to section 66 of the Racing Act. The operation, function and management of QCRC are not matters that fall within the laws that ASIC regulates." Certainly, it would fall within the Office of Racing's jurisdiction – chief executive's jurisdiction; wouldn't
35 it? Because it has investigation powers in relation to associates?--- Yes.

Okay?--- It – depending on the issue, it may, yes.

40 Okay. Depending on the issue did you say?--- Yeah, I mean there's not a general power of investigation into every issue.

Okay. Was that a relevant point here in this consideration? Is that why you made it to me just then?--- No, I – I think it was probably discussed in those discussions I mentioned between Ford and myself, Turnbull, Lachlan Smith. It was about the
45 seriousness of what this was and how it had been explained to us by particularly QRL at the time.

Well, I hope you took Carter's view and Peoples' view and the - - -?--- Yes.

- - - QCRC's view as well as just QRL – Queensland Racing's view?--- Yeah, they were the - - -

5

Did you?--- That was all into the mix. But what I'm trying to – trying to make clear is - - -

10 Yes?--- This wasn't just me sitting there with all these documents making a decision on whether it's a breach of the act, whether we're going to investigate it. This was the department's view.

15 Okay?--- And I'm just somewhat concerned that you're thinking it's just Mike Kelly sitting there with these documents.

No, no. You're the only one in the witness box at the moment. I'm looking for your view?--- Well, okay.

20 And your view seems to be yes, this is a matter for CMC, they should investigate. They don't have jurisdiction. ASIC, they don't have jurisdiction. We have jurisdiction but nothing happens. That's what I'm investigating with you now?--- Well, we potentially could have jurisdiction.

25 Oh? Can you explain that, please?--- Well – and this is with the benefit of now having seen the CMC letter, because I suppose - - -

30 Well, forget about the CMC letter. I accept what you say. I'm saying at a point here, when ASIC writes back and says hey, there could've been misconduct, we're not saying there isn't. And you've accepted that under the Racing Act it's your office - - -?--- It is.

- - - that has the jurisdiction to investigate?--- And the jurisdiction that I think would apply would come into the heading of the suitability of a control body.

35 Or of an associate of the control body?--- Or of an associate, okay. I - - -

Well, that's right on the button there; isn't it?--- I accept that.

40 You know why it's right on the button, Mr Kelly? Can you see why it's right on the button? You tell me if you can't?--- Yes, I can. I'm - - -

45 Okay, good. So just turn over to the next one and we'll see really what your reasoning was for not investigating, I think. 52. This is an email from you to Mr Ford; isn't it?--- Yes, it is.

Okay. And, "Lachlan has just advised me that it would be most unlikely that Treasury will table the ASIC letter. Rather, it seems he will make a ministerial

statement on the subject. Accordingly, I've attached a rough one that the Minister's office will no doubt want to amend etcetera."?--- After you have made any changes you think appropriate.

5 Yeah, absolutely. But let's look at your draft?--- Yes.

Because if we look at your draft, we don't need to worry about what changes they made at the moment. Now, this was your draft of the statement in relation to this; wasn't it?--- Yes, it was.

10

Okay. I'll let you read it because I wanted to ask you a question or two, please?--- Yes, all right.

You've read it?--- I've - - -

15

Okay?--- Read this very recently.

In the third paragraph, you promote to the Treasurer that he say, among other things, "As Treasurer, I referred this matter to my department for advice and was advised that due to the nature of the allegations, the matters raised should be referred to the CMC for investigation. This was done on the" – blank blank. "On 25th August, the CMC advised my department the allegations were" – diddle diddle – "and the matters may more appropriately be one for ASIC to review." Next paragraph: "ASIC advised my department on 22 October that they have reviewed the complaints made and will not be taking any action in respect of them. In coming to this conclusion, ASIC has given due consideration to the evidence available." Is that a fair reflection, do you think, of their letter, Mr Kelly?---It's – it's not a completely accurate reflection of their letter, but this statement – there's a degree of puffery in these ministerial statements.

25

Well, accuracy I'm looking at. Forget about puffery?---Yes. But – but neither the CMC nor ASIC are taking any action with it.

That's right?---And – and they're the key themes that - - -

35

I don't think they are, because what you're doing there is stating the reason, aren't you, that they're not taking it?---Yes, and that was what was requested and what was asked for. This - - -

40 You're not addressing my question. You know that. My question is this: where you state in the last two lines, "In coming to this conclusion, ASIC has given due consideration to the evidence available" – see that?---Well, actually it's given some consideration. Yes. Due is - - -

45 Okay. Well, what you've told – what you're suggesting the treasurer says is, just going to the sentence before, "The Australian Securities and Investments Commission advised my department on 22nd October that they had reviewed the

5 complaints made and will not be taking any action in respect of them. In coming to this conclusion, ASIC has given due consideration to the evidence available.” That doesn’t, does it, accurately record what ASIC, in fact, had in their letter or told you at the meeting, does it?---It’s true and to the effect that ASIC is not going to be taking any action, but - - -

10 Why are you saying that? I’m asking – you know what I’m asking you about. Don’t keep going back to that. Answer my question, otherwise it’s concerning, you see?---Yes. No - - -

15 You haven’t stated with accuracy, have you, at all, what ASIC’s conclusion is, have you?---I have rolled up what the discussions were between – within the department about how this was going to be dealt with - - -

20 Okay. I see?--- - - - and put it - - -

25 So you’re going to say that, are you? When you drafted this statement, you’re going to defend what you said there as accurate? Is that what you’re doing?---No, not – not at all. No, I’m not - - -

30 Okay. What’s inaccurate about it?---I’m not saying that. It doesn’t - - -

35 What’s inaccurate about it?---It doesn’t provide the detail that was provided in the ASIC letter to any extent. I concede that. I accept that.

40 Mr Kelly, that’s not the point at all: the detail. You see, what I’m suggesting to you is it misrepresents what ASIC concluded. It suggests they looked at the evidence and concluded there was nothing in it, whereas, in fact, you know they didn’t do that. They concluded there was nothing in it in respect of their jurisdiction but - - -?---Yes.

45 - - - expressly said, “We’re not saying there’s no misconduct. Don’t say that about what we found,” didn’t they?---I accept that from the ASIC letter, yes.

50 Okay. So where you promoted that paragraph for the treasurer, were you not promoting a misleading statement, Mr Kelly?---Yes, in those terms, yes.

55 Okay. And then the next paragraph: “This matter has been considered by both CMC and ASIC, and neither agency is interested in the issues raised by the complainants. The complainants’ motivations can only be speculated upon”?---Yes.

60 Where did you get that from?---From the discussions with Lachlan Smith on what the intent of this statement was to be.

65 Well, let’s look at the first part of it. That’s not right, is it? “Neither agency is interested in the issues raised by the complainants.” That’s not right, is it? “Interested” means they elect not to go there rather than they don’t have jurisdiction to go there. Don’t you agree with that?---Yes, I accept that.

Okay. So that's misleading, isn't it? That's meant to mislead. That's intended to mislead, isn't it, Mr Kelly?---It's certainly intended not to explain the whole detail, yes, and, well - - -

5 Well, that's different to what I put to you. Do you agree with what I just said? That was intended to mislead?---This statement doesn't reflect the ASIC view.

Okay. What about this, then? This statement does not accurately reflect the truth. How's that?---Yes, I concede that.

10

Okay. And then the next paragraph, if I ask you to look at it, please: "Let me place on the public record that neither Bob Bentley or Bill Ludwig, who were the focus of these unsubstantiated complaints, have been found to have acted in any manner that was inappropriate. It is unfortunate that these two people have had to suffer the personal attack made on them by the complainants that has now been exposed for what it is." Mr Kelly?---Yes.

15

Comment on that, please. What is that about, Mr Kelly?---That's to - - -

20 Mislead the public in Queensland? Is that what it's about?---Well, it would mislead wherever it was – it was provided.

It's going to Parliament, Mr Kelly. Pretty important stuff?---I accept that, Mr Bell, but this is a first cut of a statement that's going to go up through a range of other people to - - -

25

I know. Mr Kelly, I know that?---I mean, I'm not – I'm not sending this straight to the treasurer, saying here, say this in Parliament. This is – because I - - -

30 Why would you send him something that's all misleading and got no truth to it, because he's not – he's a Minister. He's not going - - -?---I know.

- - - to go and look at it, is he?---He's – he's not - - -

35 His job isn't to go and look at all the letters and check that you're telling the truth in all this statement?---What was - - -

That's not his job?---No, but that was – the rest of the chain of the department that would go through would have input into this, and particularly his adviser, Lachlan Smith, is the one who requested this statement and provided a context of how it was going to be delivered.

40

We're playing a game here now, aren't we? You know what I'm talking about, and I know what you're talking about?---Look, I know this was drafted for a particular purpose.

45

And what was the purpose?---And the purpose - - -

To get Mr Ludwig out of trouble? Is that what it was for?---No. The purpose - - -

Well, it looks like it, doesn't it?--- - - - was to put this whole constitution complaint issue - - -

5

To bed?--- - - - to bed, yeah – finished.

Well, in your jurisdiction, as the senior member of the Office of Racing, with jurisdiction to investigate these matters so that the public remains with confidence in the control bodies, is that the appropriate thing to do?---That was the decision taken within the department on this issue.

10

What about you? I'm talking about you?---Well, I went along - - -

15

What was your position on it?---My position on – on this whole issue was that the noncompliance with the requirements of the constitution were done in a way where there was poor advice provided from the company secretary to the people involved. It was an administrative stuff-up that shouldn't have happened, and the key issue of what RQL wanted was to remove the integrity – the independent recruitment consultant. And that issue was the primary one that I was focused on because that had been the key safeguard since 2006.

20

COMMISSIONER WHITE: Well, why attack the complainant in such a very intemperate way, Mr Kelly?---Commissioner, that was the type of statement that I was asked to draft in those discussions with - - -

25

Do you personally have no integrity?---I think I do, Commissioner. I - - -

30

Well, how could you include that? How could you not say that is totally inappropriate to do that?---Well, in review it is. It is. I shouldn't have done that.

MR BELL: You see, in particular, the reason, Mr Kelly, this is important, I think, is – don't you – is that from Queensland Racing's point of view, something has gone wrong. People who are stakeholders in the industry put up a complaint, indeed, to the Minister, knowing or at least, I should say, hoping that something legitimate would occur, like a proper investigation of the alleged misconduct. Indeed, the result is that the head of the department, that is, I'm sorry, the head of the Office of Racing promotes that they be attacked by the treasurer – they be attacked for their complaints. You see what I mean? That's why it's important, I think, isn't it?---Yes, I accept that.

35

40

Okay. And then the second-last paragraph: “The matter has been reviewed by two of the country's best regulatory authorities, and neither is interested in it.” The same point, I think, there. Don't you?---Yes, I accept that.

45

“As a matter – as far” – I'm sorry. Start again. “As far as I am concerned, this matter is now finalised, and no further resources are going to be wasted on pursuing

complaints that quite obviously do not have any veracity”?---Well, that’s the same point.

5 Okay. Well, who is somebody who’s a stakeholder trying to make a complaint that they didn’t get their constitutional vote going to turn to if they can’t turn to the Minister and the Department, please, Mr Kelly? Do you know?---I would have said ASIC, but, obviously - - -

10 Well, we did that?---Yeah.

We’ve been through that?---Yeah.

CMC: been through that?---Yeah.

15 Jurisdiction: coming back to the Racing Act, there is jurisdiction, and we all agree there, and so not only doesn’t that jurisdiction get exercised, they get – the head of the department – the head of the Office of Racing coming at them hard, as if on the side of Mr Ludwig and Mr Bentley. That’s odd for a regulator to do that, don’t you – do you agree with that? Is that odd?---I do, and all I can say is this – my words
20 reflect what I had been asked to produce through the department and the Minister’s office.

25 Okay. Well, that’s scary, frankly, because what you are saying is not only didn’t you have any integrity, but other people higher up than you didn’t either. Is that what you’re saying?---What I produced there was - - -

30 Listen to my question again: we won’t run away from it. What that’s saying is not only didn’t I and Mr Kelly have any integrity in relation to this matter, but neither did the people above me in the department. Is that what you’re saying? Is that what you’re saying, Mr Kelly?---Potentially, you could say that, yes.

Okay?---I mean, I’d just like to make the point that - - -

35 Yes, please?--- - - - this was provided. There was no negative – this is wasn’t a statement that was made, so it was obviously amended at other stages, but there was no negative feedback or comment coming back to me along the lines that you’d suggested to date. There was – there’s nothing to that. That’s why I am so - - -

40 You know that’s – you know what’s sad about that? Is that those people who are stakeholders in the industry who made the complaint, they don’t know that, do they? They’re never going to get to know that. The only reason this has come about that we know about this is because of this inquiry?---Yes.

45 Otherwise, those poor people think that the treasurer, for example, doesn’t want to know about their complaints, doesn’t care about their vote that they’re entitled to under the legislation. Legislation: does that not mean anything?---Yes.

Okay. Well, it should mean a lot, because that's what you were supposed to be regulating, I thought, the Racing Act, weren't you?---Yes.

5 And you weren't doing a very good job at it on this occasion, were you?---Not on that, no.

10 So what happens after that is this: if I take you to 53, please, this is a briefing note, and you see it was at least drafted by the Office of Racing on the 24th of October for the treasurer?---Yes.

15 Okay, and then in paragraph 6, if you don't mind going to that, please, "In reviewing the proposed amendments to the constitution, the only issue of concern that has been identified is the proposal regarding the removal of the independent recruitment consultant." Now, you've said a few times that was a important matter, that is, the independent recruitment consultant?---Yes.

20 Was it important that they were getting an extended term, and there were views that had a risk to it, even though it wasn't a risk that you thought was a valid one. Is that important?---That was a concern at the time.

25 Yeah, but it's not in there, you see. It doesn't appear in this briefing note which the – one would think that it'd be good if there was a risk like the Legal Services Unit thought it should be in there – should – they put it in their briefing note, but it didn't end up in this one that was actually going to go to the Minister, because now, it was coming to a time we had to make a decision, you see?---Yes.

30 In any event, paragraph 8, please. On 25 August '08, CMC indicated that it had assessed the matter, and would not be reviewing it as these were matters more properly in the jurisdiction of ASIC, and then in 9 the matter was then referred to ASIC. ASIC has advised that an assessment has been conducted and no breaches of Corporation identified, therefore, no formal investigation would be undertaken. So there's no – just turn over, please, to 19 before I take you any further – "While a formal investigation has not been conducted, information provided by the secretary and the chair of Queensland Racing indicates that in casting the vote on behalf of
35 Queensland Country Racing Committee at the class A members' meeting there was non-compliance with section 76 of the Racing Act as no meeting of the committee has been held, and only verbal approval to cast the vote has been obtained." And only verbal approval: did you check that, whether there was verbal approval before putting that in there?---That was the advice that we would have been provided by the
40 company's secretary.

Yeah?---Yes.

45 Did you check with the complaints, because they were saying they didn't get any say – they say they didn't get any notice, they didn't get any say, and they certainly didn't authorise Mr Ludwig to take a proxy to the meeting and vote in favour?---No, we wouldn't have checked with the complainants, no.

But isn't that important to do, check both sides of the stories like the court does, or – isn't that a regulated role? I may have been too hard on that one. Mr Kelly?---Well, yes, we could have checked with all the people who attended - - -

5 Well, I'll tell you what: when we came to the Commission I didn't know either, so I just sent the notice out to them and said did you get notice? Did you vote in favour? Did you give authority to the proxy? They all said no on oath. Why didn't you do that?---Because I think at this stage it was pretty clear that the constitution wasn't going to be approved.

10

Yeah, but I'm talking about integrity, you see. You know, public confidence in the system?---Yes, I accept that, Mr Bell.

15 Remember, that's one of the main objectives in the Act?---Yes, I accept that.

15

So when you read the Act as the director of the Office of Racing you realise that's one of the main objectives. You have the power to investigate in relation to an associate, but you don't do it. You don't even ask those people who are complaining about not having their constitutional right. You know what I mean?---Yes, I do.

20

20, "A valid and relevant consideration when exercising your discretion to either ratify, not ratify the amendments of QRL constitution is whether there has been any clear non-compliance with the provisions of the Racing Act." And let's see what's you – what's recommended in 23, "It's recommended that you do not ratify the proposed amendments on the basis that removal of the requirements for an independent recruitment consultant to prepare the short list of applications for director positions has the potential to diminish the transparency of the recruitment system." There's the reasons; you don't mention that there has in fact – everybody accepts – been a breach of the Act. That's important too wouldn't you think?---Yes, but the key issue is the constitution. The recommendation is that the constitution not be approved. None of the proposals for changes be approved.

25

30

35 Yeah, I understand, but we agree – we can agree on this: that you're recommending do not ratify, I've got that part, but the part I'm talking about is on the basis that, you see, the reason?---Yes.

It's not saying the Act's been breached, these people didn't get a vote?---No.

40 And it's not saying, you know, in fact I did ask them and in fact they didn't get any notice?---And I accept that.

Okay, and then, please, would you mind going to 56, please?---Yes.

45 I started when I read this, if you don't mind looking at it too, please, starting right at the bottom. You'll see Lachlan Smith of the Minister's office writes to you and to Carol Perrett. You see that?---And to others.

And he – beg your pardon?---And to others.

And to others, and he puts you on notice about the statement intended to be made?---No, it was a statement that had been made.

5

Had been made?---Yes.

And you see next you write back, “Let’s see what Question Time holds.” I see that, and then above that, you see that Mr Smith writes to Carol Perrett and cc’s you, “We’ve spoken to Bob today, but it would be great if somebody from Office of Racing could follow it up today with a call about what the decisions ASIC and the constitution change rejection means in practice,” and then if you go above that you see that you write back to Mr Smith, “I have spoken to him as below. All is okay.”?---Yes.

15

I’m taking that to mean you spoke to Bob Bentley?---Yes, that would be right.

And you spoke to him about the fact that the government has rejected the application for approval of the constitutional changes?---Yes.

20

And did you speak to him about the ASIC and CMC business or not?---I don’t believe I did. I believe what I spoke to him there about was saying to him that – and this the – to Lachlan Smith about what it all means is that it’s been rejected and that’s the end of it. If you want to go back and have any more amendments of it you’ve got to start the whole process again and do it properly.

25

Okay. What I was looking at when I saw your words there in your email: “I have spoken to Bob” – I’m putting “Bob” in instead of “him “ – “I have spoke to Bob as below,” so I look below and I see a call about what the decisions – ASIC and the constitution change rejection – means in practice, and I’m thinking that means that you spoke to Bob about, “Bob, how does this affect you in practice, that we’ve rejected these constitutional changes?” And Bob said to you, “It’s all okay”?---No. That’s not right, Mr Bell.

30

Okay. So do you recall what you spoke to with Bob and what he said to you or not?---I broadly do, because I know that Bentley in particular and probably others in QRL were – they were upset when the treasurer didn’t approve their constitutional changes, and that’s the – the reference to the all is okay, that’s meaning I’ve spoken to Bentley about this and told him it’s finished. The treasurer’s made the statement. If you want to do anything else with your constitution you’re going to have to go through the whole process again and – and he was okay with it.

40

Yeah. I understand. So it would seem at least that the – that you, at least in that conversation, didn’t raise with him any integrity questions about what Mr Ludwig had done?---I wouldn’t think so. No.

45

Or that, in fact, he, the chairman, had not done anything about the allegations of stakeholders in the industry?---Probably not. I don't recall exactly, but probably not.

5 You see, if I was hypothetically out there as stakeholder in the racing – thoroughbred racing industry at this time and I saw this file, I'd think you were on their side, the directors' side, and not on the side of anybody who wants to get in their way and make a valid complaint, even, or potentially valid complaint. You see what I mean?---I can see what you mean.

10 That's how it looks. Don't you agree that's how it could look?---That's how it could look.

15 Yeah. And so it's soul-destroying, confidence-destroying, isn't it, for the stakeholders in the industry to see that you, for example, aren't behind a fair adjudication of their complaint. Don't you think?---Yes, partially. But I'd qualify that by saying since – from the very beginning of this issue of the constitutional change, I was opposed to any recommendation to ratify and I think the documents show that.

20 Yes. But had they left in the independent recruitment agent, you would've been behind it?---Well, I don't know.

25 Well, that's the only ground you ever said was objectionable in your briefing notes?---And that's - - -

So you were happy for them to have a longer term?---That's the only one that I ever really turned my mind to, because - - -

30 I thought that's exactly what you did in the briefing notes. What you were doing was informing people – because you were the head of the Office of Racing – what valid thinking was as to the proposal, and the valid thinking, in your mind, was the independent recruitment agency point is fundamental to shortening the list of applicants for directorship, but no problem with the length of – the extra length of their term without an election. That's clear, isn't it? That's really clear, Mr
35 Kelly?---Yeah. I – yes.

40 Yeah. So just going back to this – so finishing this 56, which is the email: “I have spoken to him as below. All is okay.” Were you apologising to Mr Bentley that you couldn't approve it?---No. I wasn't.

45 Okay. Would you go over to 57, please. This is an email from Kirsten Wishart on the 29th of October, and it's in relation to a meeting with Mr Bentley: “Attendees: treasurer, Lachlan Smith, Bob Bentley. Bob wishes to discuss ASIC decision and other issues.” Do you recall anything about that?---No. I don't, but I wouldn't be surprised if I got invited to attend. I've normally attended meetings with the treasurer and Lachlan if racing people were coming in. I may have, but I don't recall it.

5 And do you recall Bob's position in relation to the ASIC inquiry and the CMC inquiry and the other issues at all?---I know he was quite upset that his proposed amendments to the constitution hadn't been approved and that the issues with – with ASIC and the CMC, he – he viewed them as – as vindicating that he hadn't done – or that he and Ludwig and the – the rest of RQL hadn't done anything wrong. That – that's my - - -

Okay?--- - - - impression.

10 Did you accept that?---No.

Did you investigate it?---No. No.

15 What they were telling you was - - -?---It wasn't investigated. No.

- - - possibly – beg your pardon?---No. I've said it wasn't investigated.

20 No. But my point is this: when the chairman's saying to you, "That's rubbish. There's nothing in that. We did everything okay," in circumstances where you have on the table complaints that are concerning to the government - - -?---At - - -

25 - - - and you don't investigate it, it clear – it's clear, isn't it, what the commission must infer is you accepted what Bentley and what Ludwig said?---No. It – I think Bentley would be the first to recognise and admit that the process that was used within the company as far as doing this whole process was flawed. His view, from my recollection, is that that was not really that big of an issue. I mean that the process wasn't followed, but - - -

30 Yeah. I understand. I understand?---I'm trying to recall here that - - -

Constitutionally, technicalities got in the way or something – that sort of thing?---Something like that.

35 Yeah. I understand?---And the point that I made clear to him, and I think – I think the treasurer also made clear to him was that you've got to do these things according to Hoyle and if your constitution says you've got to do certain things, you do have to do them.

40 Okay?---You can't just ignore them. Now, that – that's my recollection from that time back that - - -

45 Okay. In any event, just to conclude that part of our discussion, Mr Kelly, one view of your position in relation to these complaints is that you accepted what Bentley and Ludwig or Bentley and/or Ludwig told you despite the view – the versions from the complainants?---No, because we'd already been told by the company's secretary that there had been non-compliance with the requirements of their constitution as far as these votes.

COMMISSIONER WHITE: But in your draft letter you talk about – or in the draft briefing note. I beg your pardon. You accept that Mr Ludwig had had, as you were told, verbal approval for the position that he took on the voting?---Yes, Commissioner.

5

So you did accept that?---That’s what we were told. Yes. Yes. And I put it in a briefing note.

So you didn’t investigate whether that was correct or not?---No. That’s right.

10

MR BELL: So the question is who told you that? Was that Mr Bentley? It obviously was Mr Bentley or Mr Ludwig, wasn’t it?---It wouldn’t have been Mr Ludwig, because I didn’t speak to Mr Ludwig.

15

Okay. So Mr Bentley says to you, “He had verbal approval.” Did that happen?---He ---

COMMISSIONER WHITE: It might have been Ms Reid – Shara Reid or Shara Murray, you know, at the time. I think you mentioned her name.

20

MR BELL: Mr MacSporran’s saying that it might have been Mr – Ms Reid who told you that?---It may have been - - -

25

Okay?--- - - - and it would’ve been more likely, because we had a number of discussions - - -

Okay?--- - - - with her, because she was the company secretary.

30

Very good.

MR MacSPORRAN: Commissioner, I think that that para 9-10 briefing note seems to clarify that point. He talks about the [indistinct] approval being a breach of the Act.

35

COMMISSIONER WHITE: Yes.

MR MacSPORRAN: And the company secretary, which has to be Ms Reid, I think.

40

COMMISSIONER WHITE: I think so.

MR MacSPORRAN: I think he said that before.

COMMISSIONER WHITE: Thank you, Mr MacSporran.

45

MR BELL: Okay. Thank you.

So Mr Kelly, if you go to 63, please. Just looking at the letter on the left, it would seem that from the government comes notice to Mr Grace - - -?---Sorry.

5 I'm sorry. Yes. It's the first page of the document?---This is the 25 November - - -

Yes, please?---Yes.

I think this is notification in relation to the decision?---Yes.

10 Okay. And you had mentioned the statement that the minister made in parliament. And if you need to look at it it's there on the right-hand side, and there's nothing that I'll ask you about that?---Yes.

15 Okay. 58, please, Mr Kelly?---Do you want me to - - -

I'm sorry, no. Generally, it seems that Mr Carter, when the announcements were about the decisions of the ASIC and CMC, didn't drop the matter and maintained his position for investigation with the Treasurer?--- Yes, it would appear so.

20 Okay?--- Yes.

And then if you turn over, please, to 59. You see that what happened is that this was referred to the police. This matter was referred to the police, I should say?--- Yes, I - - -

25 Okay?--- I wasn't aware of this at the time.

30 Okay. Just excuse me for one second, please. And then – yes. 75, please, Mr Kelly. It seems what happened was then the Queensland Police conducted an investigation, received a report from Mr Tim Carmody. And that was that there was insufficient evidence to pursue charges against anyone involved?--- Yes.

35 So at the end of that matter, it would seem that there was no resolution of the issue at hand; don't you accept?--- Yes.

40 Okay. So the stakeholders in the industry were left with no decision from any person. There was no decision from CMC or ASIC. The police found insufficient evidence to pursue a charge. And the confidence of the industry is left with it hanging in the air in a sense?--- Yes, all right. Yes.

45 Okay. Now, I'm just looking at the date on that to give reference to something I was going to ask you questions about now. You see that media release says 13 February 2009?--- Yes.

Trying to reflect back is difficult, I know. But the events involving the complaints about the proxy appear to occur from about August 2008 after the meeting of, I think, the 5th of August or 6th of August. And then eventually the police resolve their

5 position by this press statement on the 13th of February 2009 as you can see there. I wanted to ask you a little bit about in that period whether you can recall other dealings you were having with Queensland Racing and Product Co as to a dispute or a position of difference that was being taken by different directors of Product Co and Queensland Racing on an issue of Mr Grace, the solicitor's legal advice that he had provided to Queensland Racing. Do you remember that issue?--- Yes, I do.

10 Okay. Would you mind going to divider 68, please. This email is not directed – 68. This email is not directed to you but in a moment I'll show you how it came to you, please. This is one from Mr Lambert, who you knew to be a director?--- Yes.

Okay. To Mr Hanmer, who I think you knew as the deputy chairman of Queensland Racing?--- And the chair of Product Co.

15 And chair of Product Co. 11 December 2008. And Lambert seems to be recording his view of Mr Hanmer's reaction to an issue he raised; doesn't he?--- Yes.

20 And then he says, "First, I'm not concerned about the Grace letter." Sorry, "How the Grace letter arose or the motivation of Mal." And then over the page you see, "Second, I agree with your" – and, "Third, I have no problem with how you have handled the matter."?--- Yes.

Okay. And then do you recall this issue now that I've shown you that?--- Yes, I do.

25 Okay. And then if you go to 70, please. The document at 70. This seems to be Mr Hanmer's email back to Mr Lambert - - -?--- Yes.

30 - - - on the 14th of December. And Mr Hanmer's saying, in the third line, "The Grace letter was brief without any involvement by Product Co or any reference to Product Co."?--- Yes.

35 And then you see in the next paragraph, the second line. "In initially reading David Grace's advice, my judgment was that it was exceptionally tortured, unconvincing and extremely thin on its assessment. On that basis, I sought advice from the Racing Office. They concurred with my view."?--- Yes, I see that.

Do you recall anything involving you expressing that – such a view?--- I did not use those words, no.

40 Okay. In any event, if you don't mind turning over, please, to 21. I'm sorry, not 21, 71. Sorry. So it seems that on the 18th of December Mr Hanmer sends to you, "Re Grace advice. Mike, sorry about the rather garbled account re Product Co and David Grace's advice. It might be interesting for you to read Michael Lambert's comments back to me after he behaved in such a petulant way about being unable to change the outcomes of the last Product Co meeting he did not attend. His letter is at the bottom of the page. Mine is above it"?---And I think this email included an email trail of

45
- - -

Yes. Exactly?--- - - - all the previous ones.

And just turning over – sorry. It included those emails I’ve just shown you, I think?---Yep.

5

Indeed – just excuse me one second. And then if you go to 71A please, Mr Kelly?---Yes.

And I think what you do with that email is it looks like you forward it on to Carol Perrett?---Yes, I did.

10

And are you able to recall why Mr Hanmer was sending you this, this sort of discourse between directors, at all?---I think – I think he’d – he’d already rung me about this issue and said to the effect that Malcolm Tuttle had got some advice. There was – there was disagreement, obviously, at Product Co between Lambert, Hanmer, and I think Tuttle was involved as well.

15

Did you know what the disagreement was about?---Well, from that – from that email trail, it was clear they were disagreeing about the content of the Grace advice.

20

Well, not so much the content, because they both would have had the document, you’d think. So the content was clear. What do you think their disagreement was about?---A disagreement between directors that was becoming quite personal, I think, and moving away from an issue and into personalities.

25

Yes. But it was a disagreement about the value of Grace’s advice, do you think?---Potentially, yes.

Okay. Now, I’m just - - -?---I think there was also some disagreement about Malcolm Tuttle going off and getting it without approval or authorisation or something like that. It was a whole range of issues that they were emailing each other about.

30

It looked like the chairman of Product Co was trying to involve you in it, don’t you think?---Yes.

35

And did you get involved in it?---Yes, I did.

And what involvement did you have, please?---I said I didn’t want any involvement. It was an issue for Product Co and the control bodies. And – and I’m aware of this issue from seeing documentation. My position both verbally and in writing has been get your own legal advice on this.

40

Okay. So in that - - -?---I was trying to be involved in this by Hanmer, Tuttle, Lambert. I mean, I had phone calls from all of them, all trying to get me to express an opinion and express a view, and I felt like – come in and be the referee and sort this issue out and tell them what the answer was, and that - - -

45

Why was your view that they get legal advice when they had it?---Because it was a serious issue.

Yes?---And - - -

5

But what – sorry. Go on?---And if – they’d already taken advice from Mr Grace. If there was disagreement about the correctness or otherwise of that advice at a board level, then you would think the next thing you’d do would be get other advice to – to clarify.

10

But is that true, Mr Kelly? I know that you are a lawyer as well. I know that you’re not - - -?---I wasn’t at this stage.

15

Okay. Well, isn’t it true, even being other than a lawyer, that what a layman might think of the legal advice in respect of representing the stakeholders in the industry mightn’t be that important? It might be important to do something about the advice?---Yes.

20

You’d agree with that?---Yes.

And over time – I’ll show you the correspondence now, but over time it seems that it was made plain enough to your office that nothing has been done about it?---This issue dragged on for quite a period of time, yes.

25

And no doubt you’ve seen press or had reports about the public sittings here that it went on, the whole period, until – in fact, it’s still going on?---Yes.

30

And the point of it going on – what I mean by that is taking no action means that Tatts continues to charge a large amount from that which the control bodies might otherwise be entitled to, should the court determine that way?---Yes.

35

But in particular, you see – just wondering if you saw yourself, as the head of the Office of Racing, as having any role in relation to their neglect to take any action?---I thought they had taken action. I thought they had got, or were – yeah, had got advice. I certainly was under the impression they were seeking it.

Other than Grace?---Other than Grace.

40

I see. You mean from you?---No, not from me.

Okay. And who told you that?---I believe it was Shara Reid, and it was in a passing conversation on an unrelated issue to do with race fields.

45

And do you recall about when that was or not?---It was – it was while we were doing – it was to do with the race field. It wasn’t – it was after the race fields legislation had been passed, and we were having lots of discussions with the control body and

particularly Shara about the systems they had to put in place to give effect to the legislation and collect - - -

5 Yes. Yes, that was licensing - - -?---Yes.

- - - for the corporate bookmakers and so on?---And collecting the fees and that type of things.

10 I understand your point. I was during that period, you can recall, that there was some conversation with Shara Murray about Queensland Racing taking further legal advice?---Talking about provisions in the legislation and how – and what the impact was going to be on their ability to charge corporates and what systems they had to put in place.

15 I see?---And the Grace – the issue of the Grace advice came up coincidentally, and the form of works I – I’m not sure, but it was – I was left with the impression that we’ve still got that Grace issue which we’re getting advice on.

20 Sorry. I wasn’t precise enough. What I was trying to investigate was the Grace issue did cover a number of things, including the race fields legislation generally, but in particular, it covered the entitlement of Tatts to be able to deduct from the sum that was payable to the control bodies, asserting that it was a third party charge, that is - - -?---Yes.

25 - - - the New South Wales charges, for example, were third party charges. That’s the part of the advice I’m particularly interested in to talk to you about. And do you recall anybody discussing with you that they were obtaining advice about that?---That was – that was the discussion with – that came up incidentally with Shara – that they still had to get advice on the Grace advice.

30 I see. And did that satisfy you? Did that satisfy anything that you felt might have raised an antenna that your role should come into play?---No. They – they were dealing with the matter. it was a commercial industry matter to do with their commercial operations.

35 Okay. Well, what seems to have occurred, Mr Kelly, is that from about the time the advice was obtained in November 2008 right through 2009, they were – somebody was corresponding with you, seeking your views and seeking for you to make investigations, which were all fruitless, we know, don’t we?---Yes.

40 Okay. Would you mind going to 80, please, in your bundle?---Yes.

45 This was one of the letters, no doubt, that you can recall receiving about – this one, 31 March ’09?---I – I recall receiving two letters: one from Product Co and one from Queensland Racing.

Okay. This one looks like the Product Co one?---Yes. Correct.

And seeking for you to illuminate them as to the Queensland government's commercial intent in 1999. See that?---Yes.

5 And the implications. And what did you do about this request? Can you recall, please?---I provided – I produced a response to this which I sent to Tony Hanmer as a draft, and I – want me to - - -

Well, let's go over to 81, and tell me if that's what you're talking about?---Yes, that would be the one.

10 And this proposition of the fact that you've sent your response as a draft is something you've addressed in your affidavit; haven't you?--- Yes.

15 And why was it, to alert me, that you thought it was sensible for the Office of Racing director to write him the response in draft, please?--- well, the reason I wrote it to Hanmer was he was the chair of Product Co and he was the one who'd written to me. And this issue was still – this is all around – there'd been the previous correspondence, I knew there was still various views between Lambert, Hanmer, Lette. The idea of providing him this response was so that he would know and
20 Product Co more generally would know that they were not going to be winding me and the government into getting involved in their internal - - -

Okay?--- Decision making process. The expectation was that this would be discussed with those other directors and say we need to sort this out. That was what
25 I was trying to achieve by this.

But that's not what you said at the time is the reason; is it? It's a different reason you put at the time for giving it in draft. Have a look at the email?--- Yeah, make sure it answers questions asked - - -

30 Okay?--- In the letter, yes.

Okay. Now that means, does it not, that Hanmer only need read it to see whether it answers the question or not. There's no other reason that you state there for it being
35 in draft; is there?--- Not in the email, no.

Well, not in the email. But this is the contemporaneous document that you write to Hanmer and say, "Have I addressed the question?"?--- Yes, okay. I accept that.

40 And I suspect the only answer you're looking for is yes or no. And if he says no, you'll say "What else do you want me to address?" Well, of course; don't you?--- Not necessarily. I - - -

Well, no, not necessarily. But that's the question you're asking him; isn't it, Mr
45 Kelly?--- Yes. Does this answer the questions - - -

Yes?--- Raised.

A very simple question?--- Yes.

Okay. See, what happens here, if you think about it – have a look at the date of this, 1st April. Do you know when he comes back and says yes, please, and you send it?
5 Two months later. Two months?--- Yeah, I think after - - -

That's not the time that it takes to go yes, thank you or no, it doesn't?--- And that's why I believe it would – should – would've been and was to be discussed with the other Product Co members.

10 But why? Why would it be discussed with them? He's the one who wrote to you. He's chairman. And he says, "Can you tell us this?" And you write back, "Just wanted to make sure it answers the question asked"; okay?--- Yes.

15 You see, when people ask that question, it, I suggest to you, means that you just need to know whether I addressed what you asked me. That's all that needs to be answered. It's not so you can talk about what I'm going to write you and see whether you like it or not?--- It's not that. And Mr Bell, I know this has been raised a number of times.

20 Yep?--- And my draft is exactly the same as what the actual letter I sent was.

Yeah, it is. But - - -?--- And if there's some connotation that I was trying to give anyone information that they shouldn't have, I reject that.

25 I'm not suggesting that?--- Because I had advice - - -

Nobody's suggesting that. Don't worry about that?--- I had advice in 2006 - - -

30 Don't worry about that, Mr Kelly. Nobody's suggesting it?--- Okay.

You're wasting your breath?--- Okay. Because - - -

35 What I'm suggesting is when you write this email, your intention was to get Hanmer to say yes or no, you have addressed my question; you see?--- Yes.

Okay?--- All right, yes.

40 But what happens is – if you go over the page, what happens is – I'm sorry, over two pages, please. Tab 83, Hanmer doesn't answer your question at all. What Hanmer says to you is, "Dear Mike, thank you for your draft and speedy response. Can we just hold this for a couple of days while I make a couple of calls?"?--- Yes.

45 Now, that is odd; isn't it? When you ask the question "Does this cover it?" and the man who's asked the question says, "I just want to make a couple of calls." Isn't that odd?--- No, I read that to mean that was the calls to the other Product Co directors or particularly Lambert and Tuttle to sort this disagreement out that I was aware of

where they were all having – all trying to involve myself and the government into sorting out what was a commercial issue for Product Co.

5 I see. So anyway, I think what you're saying to me is that your interpretation of this was that it was fine, it was still trying to answer your question?--- Still trying to answer - - -

Your question being, "Have I covered everything you wanted?"?--- Yes.

10 And that's all it was?--- That's right.

Is that what you're saying? Okay. And then 84, please. "Will do, let me know when to send it." - - -?--- Yes.

15 - - - you're saying to Mr Hanmer. Did you ever think of writing to Lambert as well with it?--- No, I didn't.

20 Okay. And then 85, please. And he says "Roger that" to you, meaning he got your message; didn't he?--- Yes, that would be - - -

And then 87, please. And this is when you write exactly what you had already put in the email?--- Yes.

25 Now, after you wrote this letter on the 28th of May where you recommended in the third sentence that Queensland Race Product Co obtain its own legal advice, did you chase up whether they had?--- No, I didn't. That was the matter that subsequently arose, as I say, in passing with the Shara Murray conversation.

30 Okay?--- I was under the understanding that they had.

35 Would you mind going to 89A, please. You must have thought it was odd when you got this letter, Mr Kelly, from Mr Hanmer asking the same question. See, my point is this. You said in your first email, "Tell me if I've covered what you want."?--- Yes.

And at some point, you must have been satisfied that he felt you had, so you sent the earlier letter. Do you know what I mean?--- Yes, I don't – I just - - -

40 Okay. And then you get this letter on the 4th of June from Mr Hanmer, again asking the same question. That's odd; isn't it? Do you think?--- I don't recall a second letter from Hanmer.

45 Okay. If a letter was written on the 4th of June, it seems – I'm sorry, start again. Do you not recall receiving this letter?--- No.

Okay?--- I recall getting two pieces of correspondence on this.

Okay?--- One from Hanmer and from Tuttle.

5 Now if you go to 90, I think you'll see Tuttle's letter. That's the one you received from Tuttle, isn't it? Take your time?---And this attached the Grace advice, I think, this letter.

Yeah. That's right. I think that's in the first line?---Yes.

10 But that's the letter – the second letter you referred to that you received from Tuttle?---Yes.

Okay. Now, your answer to that letter took some real time, didn't it?---It did.

15 And why was that?---At the time around this 2009 – mid-2009 was when Queensland Racing had approached government about redirection of wagering tax. There was a whole range of work going on about doing – getting that process assessed and done. Then there was an issues paper, A Case for Change.

20 So you were busy?---There was – there was – this was an extremely busy time. Yes.

Okay. Well, just factor this fact – factor this in: Hanmer had already written you an email – a letter asking for advice. You had responded to him on the 28th of May, in that you had given him the information that he'd requested?---Yes.

25 Okay. Tuttle writes to you on the 23rd of July. What was it about this letter that was different, that requested something different, please?---It – it really didn't - - -

Sorry. What I mean is a different task. I'm not being technical. I - - -?---No.

30 What was it you hadn't done before?---Well, nothing. It – this letter should have been responded to much quicker. I accept that, and it fell through the cracks and it wasn't dealt with quickly. It was – I have no explanation other than that, Mr Bell.

35 Okay. Well, my point is this really, as a matter of substance, not that – I know that correspondence goes awry. My point is that Hanmer writes to you and says, "What's the – what was the commercial intent back in '99?" You write a response and you write that response only after you ask him, "Does this answer your question"?---Yes.

40 And clearly enough, he must have said, "Yes. You got it." He writes – Tuttle writes to you asking what appears to be a similar question?---Yes.

45 And this one, you're telling me, took six months to respond to because you were busy, and it asked the same question. I'm just a little mystified by that?---Well, not just because we were – the letter obviously sat and wasn't dealt with, and I've got no excuse for that.

Okay?---I mean - - -

Look, I understand the delay, but the reason I'm asking – pressing a little bit is because I don't see much different in the letter. They're just repeating the thing; it's just addressed from a different person. Do you know what I mean?---It is.

5 Okay?---I accept that, but it's – it's once again asking the same thing. It's saying we have this issue and we want you to give us legal advice on it. We want you to solve it for us. You – we want you to tell us what to do. Now, that – I couldn't do that. That wasn't my role to do.

10 No. No. I didn't think it was asking for legal advice, was it? It was asking for - - -?---It's getting pretty close to it.

Okay?---I mean they were - - -

15 I thought it was – well, you see, what you eventually responded was that “There was no people still here who could tell me, and no information left in the records. Took me a bit – you know, I had to look at that”?---Which we did.

20 That's different from legal advice; that's finding things. You know what I mean?---Yeah, but – I do – Mr Bell, with respect, this was a legal issue that they were heading down a track, and as soon as they got – and what they all wanted was a letter from me giving them an answer so that they could then wave that at everyone else and say see? This is what the government says.

25 Okay?---Now, that was not our role to do.

So you didn't write that the next day? “This is not our role. I've told you once before” - - -?---No.

30 - - - “Get legal advice. I'm not going to give you any more answers”?---No. I didn't.

You didn't think that was smart, to do that, rather than wait six months to write back?---I didn't purposely wait six months, Mr Bell.

35 Okay?---It wasn't as though it was sitting there on my desk and I was looking at it every day saying I'm - - -

No, no. I know. I know. 106, please. You were reminded about the letter but, weren't you - - -?---Yes.

40 - - - not long afterwards – I shouldn't say that. You were reminded about the letter earlier?---I think it was a fair while afterwards that Mal Tuttle - - -

Yeah. It was November. You're right. 106, please.

45 COMMISSIONER WHITE: That's in another folder, Mr Bell.

MR BELL: Number 4, please, Commissioner.

So there Tuttle's chasing you here, by the look of it?---Yep.

5 And he's including Mike Kelly there. You see that?---Yes. Yes. This - - -

COMMISSIONER WHITE: Mr Lambert.

MR BELL: Oh, I'm sorry. Not Mike Kelly, Michael Lambert?---Yep.
10

Of course he's chasing you. "Any further update at this stage regarding our query on the race field cost being offset against the product fee?" So that's the question, and then if I ask you to go to 113, please?---I'm not sure I got this email, Mr Bell.

15 I thought this was your email – 113?---No, no. The 107 - - -

107?--- - - - [indistinct] speaking to, because - - -

Sorry?---I remember being - - -
20

Number 106, is it, just - - -?---I only – sorry – 106.

Yep?---I remember being hunted up once by Malcolm, and I don't think this was the email that did that.

25 Okay. Well, in any event, looking at the - - -?---Because I was – I was in America on those dates.

30 Yeah. Well, don't you think if it's addressed to racing@qld.gov.au it's eventually going to come to your attention?---Well, I would hope so. Yes. But I wouldn't guarantee that.

Really?

35 COMMISSIONER WHITE: What's the top line mean, Mr Kelly?

MR BELL: I think that means, doesn't it, that you've sent it on to somebody else on the 8th of December, which I'm going to take you to in a minute?---Okay.

40 That's all it is. So if you go to - - -

COMMISSIONER WHITE: Well, I'm just raising it because I thought, Mr Kelly, you said that it hadn't come to your attention?---Commissioner, I don't – I don't – I only recall getting one email from Mal Tuttle about - - -

45 Would someone in your office have had access to your emails? Were you still away at that time?---I wouldn't think so, Commissioner. No. I just - - -

So they'd wait for you to come back?---Yes, and - - -

MR BELL: Okay. So then if - - -?---Sorry, Mr Bell. What number?

5 No. It's okay. I'm sorry. 113, please?---Right. Yes. Yeah. So I recall this one, but
- I know you've shown me that other email from Tuttle, but it doesn't seem to be the
same as one that I've provided in one of my statements.

10 Okay. The chase-up one?---Yeah.

Okay. Well, this one's important. This is from you, isn't it?---Yes. It is.

15 To Carol Perrett: "Can you please prepare a letter back to Malcolm Tuttle" -
MT?---Yes. That'd be right.

"I have discussed with DF"?---David Ford.

David Ford - "and the old Queensland Office of" - - -?---Gaming Regulation.

20 - - - "Gaming Regulation has nothing of interest on the issue." Did that take a long
time, to do those things?---No. I don't - - -

Okay?---I don't believe it did.

25 So what that means is that your inquiry of David Ford - obviously took time to get
on to David Ford?---No.

But you were - sorry?--- No, we - we met regularly. He was - he was my direct - - -

30 Yeah, that's what I mean?--- Supervisor.

"So I have discussed with David Forward and effectively nothing. The QG was not
part of the contractual negotiations." QG?--- The government.

35 Okay. So there we go. So there was nothing there all the time. And that took a call
to Mr Forward; did it?--- No, I wanted to check that. I didn't - I checked with
David. It was aware - this goes back to the 2006 advice and cabinet process. So
people were aware of this whole Product Co, Tatts, third party - call it what you will.
40 And our concerns were -because it was quite clear that as a policy position, the
government was not involving itself in the commercial operations and decision
making of Product Co or by this stage it was Racing Queensland Limited. And I
would've alerted him that we've got this next letter in. And my intended response is
it's not an issue for the Queensland Government, you need to go and sort this out
yourself. We haven't got anything of any - any use to them.

45

Yes. Yes. Anyway, you know the point I've been pushing you on. And that is that
it doesn't look like a lot of work was undertaken over the six month period?--- No.

5 So one tends to ask, if you're in the position I'm in, "Why would Mr Kelly, who's a very able man, take six months to respond to a request for information that he'd already been asked and given an answer and responding to the same person again? And he has nothing to give"?--- No, I'm responding to Tuttle. I know that's been raised a couple of times. It was to Tuttle.

Okay. Sorry, to Tuttle. But it's the same people; isn't it?--- It's the same people and I have no excuse for the correspondence not getting action more quickly.

10 Okay?--- I've accepted that.

Could it be - - -?--- At - - -

15 - - - there was another reason why you were slow?--- Yes, there was very much another reason we were slow.

Yeah. You were busy, you mean?--- That's exactly right.

20 Okay. But that's not like you to take that long, six months, to respond to a request from a control body when you're the director of the Office of Racing; isn't it?--- No, Mr Bell, you - you're - - -

25 I'm missing the point?--- Yeah, I haven't explained myself properly. It wasn't that this letter came in and it was sitting on my desk and I was looking at it every day for six months saying - - -

30 Did it go away off your desk; did it?--- No. Saying I'm too busy to deal with it, I've got to do these other things. The letter came in and where it ended up I don't know. And it was off my radar completely, forgot completely about it. And there was so many other things that we were dealing with that it was just - - -

35 You see, I'll tell you why it's a concern and I'm pushing on it, Mr Kelly, so you're completely clear. Every month that nothing's happening on this, the stakeholders in the industry in Queensland are missing out on about \$500,000; you see? A month. A month?--- Well - - -

So three went - - -?--- Potentially.

40 Potentially. Potentially, exactly?--- Not based on something else that exists.

Sorry?--- Well, I'm referring to the Crown Law advice that - - -

45 But you didn't tell anybody about the Crown Law advice; did you?--- And - and that's exactly right, I didn't. I could've solved this problem on day 1 by saying hey, got this advice and here's a copy of it. And - - -

But, you see, I think it's wrong?--- Well – and I don't have a view either. It's – and that's – that's been my position since the very beginning.

5 I think that's the point about the directorship, you see, that you must have clearly seen. Somebody had to resolve the question. There was advice going to Queensland Racing saying they can't deduct it. You had in your mind, did you, that there was another advice that said they can deduct it? Is that right, what I'm saying so far?--- I was aware of that other advice.

10 Yeah?--- Yes, very much so.

And so there was a – there was an issue each way. And these people were just letting it go on and on and on?--- And I believed they were going to take their – go and get another set of advice.

15 Why would you think that when they've written to you for information?--- Well - - -

Anyway, you've said what you want to say. Just - - -?--- I can't explain it any better, Mr Bell.

20 Okay?--- I'm sorry.

Go to 126, please. In 126, there's your answer back, I think; isn't it?--- Yes, that's correct.

25 And you've mentioned in there, "Following exhaustive searches of our records and enquiries with relevant government agencies." Did you undertake that?--- John Patterson from my office had a search of our files. And I looked as well. That would be the only place they would – the old racing branch, racing division, office of
30 racing files have been the same since – I mean, they're included in our office.

Okay. So anyway, Mr Kelly, did you have any conversations or any email or other correspondence with Mr Hanmer where he asked you to hold on this advice too, like the earlier one?--- No.

35 Okay. Did you have any with Mr Bentley?--- No.

Okay. Just excuse me for one second, please. While we're in this bundle please, Mr Kelly, would you mind going to 121? Oh, it's 4.30, Mr Kelly. I'm sorry.

40 COMMISSIONER WHITE: Have you – you're finished that topic; are you?

MR BELL: I have. I have finished that, yes.

45 COMMISSIONER WHITE: Discern – so perhaps it is a convenient time - - -

MR BELL: Thank you.

COMMISSIONER WHITE: - - - to stop.

MR WILSON: Commissioner, could I raise a matter before you rise?

5 COMMISSIONER WHITE: Yes. Can I let Mr Kelly leave the witness - - -

MR WILSON: Oh, of course, yes.

10 COMMISSIONER WHITE: Yes, thank you. Mr Kelly, I have to ask you to come back tomorrow. It's a 10 o'clock start?--- Certainly, Commissioner.

Thank you. If you want to step down now, you can do that while I hear from Mr Wilson.

15

WITNESS STOOD DOWN

[4.29 pm]

COMMISSIONER WHITE: Yes, Mr Wilson.

20

MR WILSON: Commissioner, it's to ask for you – for the commission to produce to us the Crown Law advice that Mr Kelly has just been referring to and which Mr Bell has obviously read because he said he disagreed with it.

25 COMMISSIONER WHITE: Yes.

MR WILSON: Can we be provided with that advice?

COMMISSIONER WHITE: I'm not sure quite what the status of it is, Mr Wilson.

30

MR BELL: Commissioner, the commission has no objection. It's up to Crown Law whether they'll - - -

COMMISSIONER WHITE: Yes, I thought - - -

35

MR BELL: - - - provide it, of course. So - - -

COMMISSIONER WHITE: Mr Thompson's here so perhaps he can - - -

40 MR BELL: Well, he may, you know, answer it when he wants to.

COMMISSIONER WHITE: Yes, I think so. That's what I meant by the status of it, Mr Wilson.

45 MR THOMPSON: We'll take some instructions, Commsisioner.

COMMISSIONER WHITE: All right. Well, you communicate with Mr Wilson directly then about that.

MR THOMPSON: Yes.

5

COMMISSIONER WHITE: And then if he wants to have a spat about it, I guess we can do that. All right, thank you. Adjourn till 8 o'clock.

10 **MATTER ADJOURNED at 4.30 pm UNTIL THURSDAY, 3 OCTOBER 2013**